

SCHOOLS: County court cannot annex unorganized territory, under Sec. 10409, R. S. Mo. 1939, where there are more than twenty pupils of school age within such unorganized territory.

May 17, 1945



Honorable Roy Scantlin
State Superintendent
Department of Public Schools
Jefferson City, Missouri

Dear Sir:

We have your letter of recent date, which reads as follows:

"This Department is again confronted with the problem of the apportionment of state school moneys to the Waynesville School District of Pulaski County on account of the attendance of pupils resident in the defense housing unit of the Fort Leonard Wood Military Reservation owned by the United States Government. This problem was presented to your Department for advice in my request of February 11, 1944, for an official opinion. At that time the defense housing unit named above was not considered a part of the Waynesville School District.

"Your opinion of April 19 held that the State Superintendent of Schools is not authorized to grant state aid to the Waynesville School District based upon the fact that it is providing educational facilities for pupils residing in the Fort Leonard Wood area.

"Since your official opinion has been issued, the Board of Education of the Waynesville School District petitioned the county court for the annexation of the housing unit on the

May 17, 1945

Fort Leonard Wood Reservation along with parts of other school districts considered as unorganized territory since the establishment of the military reservation. The county court in its order of March 26, 1945, officially annexed the territory as set out in the petition which is presumed to include the housing unit of the military reservation. A copy of the court's order is attached.

"A question has arisen whether or not the county court has authority under Section 10409, R. S., 1939, to accept the housing unit of the Fort Leonard Wood Reservation as unorganized territory and officially annex it to the Waynesville School District, thereby extending the school district line across the military reservation.

"The laws of this state do not seem to give county courts or school districts any jurisdiction over territory located within military reservations such as Fort Leonard Wood. The question has also arisen in other states. I refer you to one instance in the case of State ex rel. Moore v. Board of Education of Euclid City School District, 57 N.E. (2d) 118. Court of Appeals of Ohio, Cuyahoga County, March 20, 1944.

"The court in this case held that the Federal Government has exclusive jurisdiction over the property and the state or city could not build a school house within the area if it so desired. Basing its decision on this premise and noting the burden that may be cast upon the shoulders of local taxpayers if the children residing in all such federal projects are entitled to free schooling, the court denied the petition.

"If the territory in the housing unit in the Fort Leonard Wood Reservation should become a part of the Waynesville School District of Pulaski County and the pupils' attendance should be counted for establishing teaching

May 17, 1945

units and other apportionments according to the laws of this state, the amount so apportioned would be far short of the cost of providing the education facilities required. Then the additional cost of paying for educating these children would be a burden upon the taxpayers in the remainder of the district who reside outside of the military reservation.

"I shall appreciate your advice and official opinion in answer to the following questions:

"Has the Pulaski County Court the power to annex territory lying within the Fort Leonard Wood Military Reservation owned by the United States Federal Government when petitioned by the adjacent Waynesville School District of said County?

"If so, would such annexation give the Waynesville Board of Education the legal authority for counting the pupils living in the housing unit of the Fort Leonard Wood Military Reservation as resident pupils in making application for the state school moneys apportionments?"

Your letter submits two questions. However, the second question is contingent upon the answer to the first question, and if the answer to the first question is "no", then the second question need not be answered, since the opinion of this office of April 19, 1944, referred to in your letter, would be the answer to the second question under those circumstances.

While your letter does not so state, you have advised us that the territory which the county court undertook to annex contained several hundred pupils of school age. This fact becomes important in connection with a discussion of Section 10409, R. S. Mo. 1939, which reads as follows:

"Whenever there shall be in this state any territory not organized into a common, town

May 17, 1945

or city school district, and not containing within its limits twenty or more pupils of school age, any three or more taxpayers in such unorganized territory, or in any adjacent common, town or city school district, may file a written petition in the office of the clerk of the county court praying that such unorganized territory shall be attached to the nearest and most available common, town or city school district, and at the next meeting of the county court the said petition shall be taken up and heard by the court, which shall, after being duly informed and advised, make an order annexing such territory to the nearest and most available common, town or city school district, and thereupon such territory shall become a part of such district, which fact shall be duly entered by the proper officers upon the tax books and other records of the county."

It will be noted that by the foregoing statute the county court is only authorized to annex unorganized territory to another school district if said unorganized territory does not contain as many as twenty pupils of school age. Since the Fort Leonard Wood Reservation, referred to in your letter, contains several hundred pupils of school age, it follows that Section 10409 does not furnish any authority for the county court to annex such reservation to the Waynesville School District.

It would seem that the purpose of Section 10409, supra, was to take care of a particular situation. That situation was where there was unorganized territory which did not contain as many as twenty pupils of school age, and in such a situation the county court was given authority to attach said territory to some other school district in order that the children in such territory could receive the benefits of public schools. Clearly, the situation referred to in your letter does not come within the provisions of said section.

CONCLUSION

It is, therefore, the opinion of this office that the order of the County Court of Pulaski County made on the 26th

Honorable Roy Scantlin

-5-

May 17, 1945

day of March, 1945, undertaking to attach the Fort Leonard Wood Reservation to the Waynesville School District, under the provisions of Section 10409, R. S. Mo. 1939, was void and of no effect.

Respectfully submitted

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

HHK:HR