

*Note: Section 165.300 (now 167.44) has been amended and now provides that no election shall be called on the proposal within 2 years after the election.*

SCHOOL DISTRICTS: Proceedings as prescribed by statute for  
ELECTIONS: consolidation of school districts must be substantially complied with. Common school districts in annexation election cannot vote to annex to either one or the other of two consolidated districts at same election.

April 12, 1951

Honorable George Henry  
Prosecuting Attorney  
Newton County  
Neosho, Missouri



Dear Sir:

This will acknowledge receipt of your letter of March 2, 1951, which reads as follows:

"A question has arisen in Newton County involving an interpretation of Section 165.300, relative to what may be included in the petition for annexation of a common school district to a city or consolidated district. The voters have in mind the idea that perhaps they can so word their petition so that in one election it will be determined whether or not their school district will go to one of two consolidated school districts.

"To better explain this, they want their proposition to be so worded that the voters will vote for an annexation to Midway Consolidated School District or for annexation to Granby Consolidated School District and then let the majority rule. I have checked the annotations and the digest but have found no cases in point. It is my opinion that they cannot so double up in their petition for the reason that such a proposal would in effect determine two issues at one election.

"There is no question here over the division of a school district but they seek to vote on whether or not the entire district shall go to Midway or Granby Consolidated School District. Should their petition be worded in the usual manner,

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i.e. whether or not their school district would go to Midway Consolidated School District for example, then in case that proposition was voted down their district would remain as it is for at least two years. That is the situation they hope to avoid since they want to go either to Granby or to Midway and do not wish to remain a common school district any longer.

"I would appreciate the opinion of your office on this proposition."

It is understood that your question is whether or not a petition for consolidation can be made for consolidation of a common school district to a consolidated school district or to another consolidated school district. This is to be contained in one petition carried through and voted upon by the voters at the same time. Section 165.300, RSMo 1949, in regard to the ballot to be cast, provides, in part, as follows:

"4. The voting at said special school meeting or special election shall be by ballot, as provided for in section 165.267, in the case of common school districts, or as provided for in section 165.330 in the case of town, city or consolidated school districts, and the ballots shall be

For annexation

and

Against annexation,

when the whole district is to be annexed, but if only a part is to be annexed, the ballots shall read

For Release

and

Against release.

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Reference is made in regard to annexation of common school districts, to Section 165.267, RSMo 1949. In its application to these matters, this section states:

"(1) \* \* \* the secretary shall keep a tally and report to the chairman, who shall announce the result; and if a majority of the votes cast are for organization, the chairman shall call the next order of business."

It may be seen that in such procedure, an alternate choice of two different consolidated school districts could prevent any choice from having a majority, i.e., if there were 68 voters, 22 of whom voted for annexation to Granby Consolidated School District, 26 for annexation to Midway Consolidated School District, and 20 against annexation, there would be no majority cast for annexation as the 26 cast for Midway, or the 22 cast for Granby may be presumed to have desired to have voted against annexation, rather than be annexed to a different school district. In the above quoted subsection of Section 165.300, RSMo 1949, it is believed that a ballot is prescribed which demands substantial compliance.

In regard to the question of priorities of petitions, we quote from State ex rel Fry v. Lee, 314 Mo. 486, l.c. 506:

"In our opinion, the power conferred by the foregoing statute upon the County Superintendent of Public Schools to determine and locate the boundary lines of a proposed district calls for the exercise of a judicial, or a quasi-judicial, discretion and function, rather than the exercise of a merely ministerial duty. (State ex rel. v. Wright, 270 Mo. 376.) This is evident from the language of the statute, which provides that, 'in determining these boundaries, he shall so locate the boundary lines as will in his judgment form the best possible consolidated district, having due regard also to the welfare of adjoining districts.' In matters calling for the exercise of a judicial function or duty by two or more

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tribunals of co-ordinate jurisdiction, it is a well-settled principle of law that the tribunal which first acquires jurisdiction of the subject matter retains jurisdiction until the determination of the matter in controversy, and no tribunal of coordinate power will be permitted to interfere with, or thwart, its action. (15 C.J. 1134.) \* \* \*

In State ex rel. Pike County v. John P. Gordon, State Auditor, 268 Mo. 321, l.c. 326, where Pike County had submitted a proposal to voters, as follows:

"Shall the county court of Pike County, Missouri, be authorized and empowered to incur an indebtedness and to issue bonds of said county of Pike to the amount of seventy-five thousand dollars for the erection of a courthouse in the city of Bowling Green, in said county of Pike, and to incur an indebtedness and to issue bonds of said county of Pike to the amount of twenty-five thousand dollars for the erection of a courthouse in the city of Louisiana, in said county . . . ?"

James T. Blair, Judge, said, l.c. 327, 328:

"III. This court has long held that under a statute like that just referred to, two separate and distinct propositions cannot be combined and submitted, jointly, as one question, 'so as to have one expression of the vote answer both propositions, as voters thereby might be induced to vote for both propositions who would not have done so if the questions had been submitted singly.' (State ex rel. v. Wilder, 217 Mo. l.c. 269, 270, and cases cited.) No decision in this State questions the principle, and courts of other states have almost uniformly applied the same rule. (Citing of cases.)"

"Relator's counsel do not question the existence of the rule, \* \* \*"

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In State ex rel. City of Joplin v. William W. Wilder, State Auditor, 217 Mo. 201, in considering the proposition submitted to the voters to construct a storm sewer in the Willow Branch District and a sanitary sewer in Sanitary District No. 7, in one proposition, the Court said, l.c. 269:

"But there is another reason why a peremptory writ should not be awarded in this case, and that is that the proposition submitted to the voters embraced two separate and distinct propositions; one for the construction of a public sanitary sewer in District No. 7, in West Joplin, and another for the construction of a storm sewer in Willow Branch District, in said city. In the way this was submitted to the voters, they had no alternative than to vote, if they voted at all, for or against both propositions. They could not vote for one and against the other, however much they might have desired to do so."

In State ex rel. Rice ex rel. Allman, et al., v. Hawk, et al., 360 Mo. 490, 228 S.W. 2d 785, Aschemeyer Commissioner related the history of an attempted annexation in Newton County, l.c. 492, as follows:

"On April 1, 1948, the qualified voters of said Common School District voted upon two propositions at a special election conducted under the provisions of Sec. 10484, R. S. 1939, as re-enacted and amended by Laws 1947, Vol. 1, p. 507, Mo. R. S. A. Sec. 10484. One proposition was to release a specified portion of the territory of said Common School District for the purpose of annexation to Fairview Consolidated School District No. C-1. The other proposition was to release the remainder of the territory of said Common School District for the purpose of annexation to Midway Consolidated School District No. C-9. The two propositions were submitted on one ballot and both were defeated."

The Court did not rule, however, on the legality of the 1948 petition as this petition was defeated. However, Aschemeyer Commissioner said further, l.c. 496:

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"\* \* \* By its very terms, the statute recognizes only one purpose, which is to permit the annexation of territory of one school district to another, whether the proposal be to annex all or only a part of the school district."

From the above, it appears that the simultaneous vote upon the annexation violates the purpose of the legislative enactment prohibiting such special election for a period of two years.

In Farber Consol. School Dist. No. 1 v. Vandalia School Dist. No. 2 et al, 280 S.W. 69, St. L. Ct. of App., with regard to compliance with the statutes, the Court said, l.c. 71, 72:

"\* \* \* The statutes named relate to separate and distinct methods of dividing and forming districts, annexing territory, and changing common boundary lines. State v. Scott (Mo. Supp.) 270 S.W. 382. And from the ballots it is observable, though the point is somewhat technical, that the voters in all the districts did not vote upon the identical propositions, which must be done. School Dist. v. Neal, 74 Mo. App. 553. If it was an election for annexation, the Farber ballot should have been 'for release' or 'against release.' That is the express language of the statute."

In regard to whether the provisions of Section 165.300, RSMo 1949, and related statutes are mandatory or directory 29 C.J.S., Sec. 55, p. 73, states:

"Mandatory character. Statutes respecting the duties of public officers in preparing for election are mandatory, and substantial obedience may be required by proper proceedings. Where the duties imposed on a board of election commissioners and the manner of their performance are particularly pronounced in the law, they must be followed or the acts of the board are invalid. Provisions in election laws relating to the duties and

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acts of election officials, which are mandatory if enforcement is sought before election in a direct proceeding for the purpose, are generally to be construed as only directly in proceedings attacking the election after it is held."

CONCLUSION

It is, therefore, the opinion of this department that when a school district or districts desire to become a part of a consolidated school district, in accordance with Section 165.300, RSMo 1949, the ballot for such annexation must comply with the ballot provided in said section. Therefore, a common school district cannot vote to annex to either one or the other of two separate consolidated school districts at the same election.

Respectfully submitted,

JAMES W. FARIS  
Assistant Attorney General

APPROVED:



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J. E. TAYLOR  
Attorney General

JWfab