

SCHOOLS: Public meeting must be held to dissolve a consolidated school district. Proposition to form common school districts cannot be submitted at the same public meeting wherein an election is conducted to vote on the proposition of dissolving a consolidated school district.

ELECTIONS:



October 24, 1952

Honorable Robert E. Crist
Prosecuting Attorney
Shelby County
Shelbina, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which reads:

"Section 165.310, M.R.S.A. 1949, relates to dissolution of a consolidated school district, and provides for a public meeting of the resident voters and taxpayers in order to effect a dissolution. Please advise if under Section 165.310 or any other Section, it would be possible to effect a dissolution of a consolidated district which was organized under the reorganization plan of 1947, by having a regular election and casting ballots from morning to evening rather than having a public meeting.

"Also, please advise if it would be possible to effect a dissolution of a consolidated school district and to reorganize into common school districts at the same election."

Section 165.310, RSMo 1949, provides for the procedure to be followed in dissolving or disorganizing a town, city or consolidated school district, and reads as follows:

"Any town, city or consolidated school district heretofore organized under the laws of this state, or which may be hereafter organized, shall be privileged

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to disorganize or abolish such organization by a vote of the resident voters and taxpayers of such school district, first giving fifteen days' notice, which notice shall be signed by at least ten qualified resident voters and taxpayers of such town, city or consolidated school district; and there shall be five notices put up in five public places in said school district. Such notices shall recite therein that there will be a public meeting of the resident voters and taxpayers of said school district at the schoolhouse in said school district and at said meeting, if two-thirds of the resident voters and taxpayers of such school district present and voting, shall vote to dissolve such town, city or consolidated school district, then from and after that date the said town, city or consolidated school district shall be dissolved, and the same territory included in said school district may be organized into a common school district under sections 165.163 to 165.260."

(Emphasis ours.)

The above statute refers to a "public meeting" rather than a special or regular election wherein the resident voters and taxpayers vote on the proposition of dissolving the school district. While the statute makes reference to a public meeting, it is apparent that when such a meeting is called an election is conducted at said meeting to vote on the proposition of dissolving the school district.

In the case of State v. Clements, 305 Mo. 297, 264 S.W. 984, the Supreme Court of Missouri had occasion to consider the above statute and what it required. The court was considering a lawsuit brought to determine whether or not a consolidated school district had been properly dissolved. In referring to what is now Section 165.310, supra, the court, at S.W. l.c. 986, said:

"The statute does not provide for the taking of any particular steps to evidence the disorganization or dissolution of a consolidated school district by the meeting provided for in the statute, other than that two-thirds of the resident voters and

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taxpayers vote for dissolution at a meeting duly called for that purpose. Such meeting is necessarily governed by ordinary and orderly parliamentary usage, which requires that announcement be made of the decisions reached by the meeting upon questions properly pending before it, and that minutes be kept of the proceedings of such meeting. Of very necessity, such minutes constitute prima facie proof of what transpired at such meeting.

" * * * Before the result of the election could be declared, ascertainment must be made by the meeting of the total number of resident voters and taxpayers of the district. The statute gave the meeting the power to dissolve the consolidated district. The power to determine, at least prima facie, all the facts authorizing such dissolution necessarily resided in the meeting itself. It seems clear, therefore, that the declaration of the minutes of the meeting, that the 394 votes cast for dissolution constituted the votes of more than two-thirds of the resident voters and taxpayers of the district, constituted prima facie proof of that fact, also. Such is the necessary result of the powers conferred upon such meeting by the Legislature. * * *"

In view of the language in the above case it is our thought the statute in question contemplates that a public meeting be held at which time an election is conducted to vote on the proposition of dissolving the school district. Such a meeting must be conducted according to the ordinary rules of parliamentary procedure, and written minutes must be kept which are prima facie proof of what transpired at the meeting and the results of the election so conducted.

It is difficult to see how a regular election could be held in the manner you have indicated and at the same time comply with all the requirements as declared by the court in the above case. Moreover, there is no statutory machinery or procedure for conducting such an election.

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While the time for such a public meeting could probably be extended from morning to evening, it would still have to be conducted as a meeting in the manner outlined by the court. Therefore, in answer to your first question, the dissolution of a consolidated school district would have to be accomplished by a public meeting as required by Section 165.310, supra, rather than by a regular election.

Now to proceed to your second question.

Referring again to Section 165.310, it is provided that after the date of dissolution the territory within the school district which has been dissolved may be organized into a common school district under Sections 165.163 to 165.260.

We believe it would first be necessary to dissolve the school district in an election conducted in a public meeting before an election could be held to organize as a common school district. This would preclude voting on both propositions at the same election or at the same meeting.

Whenever a consolidated school district is dissolved it becomes unorganized territory. It was so held in State v. Consolidated School Dist. No. 3 of Pike County, 277 Mo. 28, 209 S.W. 96.

Section 165.163, RSMo 1949, provides for the organization of a common school district, and, in part, reads:

"Whenever there shall be in this state any territory not organized into a common school district, and containing within its limits twenty or more pupils of school age, three or more taxpayers of such territory may call a meeting of the qualified voters of such unorganized territory, or such part thereof as they desire to organize into a school district, by first giving fifteen days' notice of the time, place, purpose of the meeting and boundary lines of the territory proposed to be organized. * * *"

Under the above statute it would appear that a common school district is organized from unorganized territory. Consequently the unorganized territory would first have to exist before steps could be taken as set out in the above statute to organize a common school district. We believe this would necessarily require a separate election to organize a common school

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district subsequent to an election wherein a consolidated district was dissolved and which resulted in the creation of unorganized territory.

In the Pike County case, supra, the trial court by its judgment undertook to dissolve a consolidated district and at the same time re-create the former common school districts. In holding that the trial court had no such power the Supreme Court, at S.W. l.c. 98, said:

" * * * If the present consolidated school district was legally established (which is the basic allegation of relator's suit), then its dissolution, even if validly decreed, would not, per se, restore the corporate franchises of the previous school districts, nor restore its directors to their former offices and functions. Neither was it within the judicial power of the circuit court, after dissolving the consolidated district, to re-create and restore the former districts or their officers, even if such issue had been within the pleadings, for when the former districts ceased to exist as such, the terrain comprehended within them became a part of the new consolidated districts formed thereof, and upon a valid dissolution of the latter such terrain would become 'unorganized territory' (R. S. 1909, Sec. 10776), and could thereafter be organized into school districts only by the method prescribed in the statute and upon the votes of its inhabitants (R.S. 1909, Sec. 10836). It is clear, therefore, that so much of the judgment of the learned trial court as undertook to reincorporate the former school districts and refunction their officers was outside the issues on trial, as well as outside the pale of judicial authority. So much, therefore, of the decree in the present case as undertook to do this, was a simple nullity."

We believe that in the above case it is indicated that the dissolution of a consolidated school district and the organization of a common school district cannot be accomplished at the same time, and that the organization of common school districts can only be accomplished as prescribed by statute after the unorganized territory is created.

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Moreover, we believe that the matter of dissolving a consolidated school district and the reorganizing of common school districts are two separate propositions. You inquire if they could be submitted at the same election, although you do not state just how this would be done. We do not believe that the two propositions could be united and submitted as one proposition to the voters of the school district inasmuch as such practice has been condemned by the courts in similar elections where this has been done. State ex rel. Pike County v. Gordon, 268 Mo. 321, 188 S.W. 88; State ex rel. City of Joplin v. Wilder, 217 Mo. 261, 116 S.W. 1087.

CONCLUSION

Therefore, it is the opinion of this department that a public meeting must be held to dissolve a consolidated school district wherein the voters and taxpayers residing within the school district vote on the proposition of whether or not the school district should be dissolved.

Further, it is our opinion that the voters and taxpayers of a consolidated school district cannot vote on the proposition of dissolving the school district and the proposition of organizing common school districts within the consolidated school district territory in the same election held at the public meeting.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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