

CONSOLIDATED SCHOOL DISTRICTS:

1. Board of Directors in Consolidated School District can compel children living in a certain ward district to attend the building in that ward.
2. When a ward building is closed the Board of Directors of the District must pay the transportation of all children living in that ward who live more than three and one-half miles from any proper school.

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November 28th
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Mr. Cecil Jenkins,
County Superintendent of Schools,
Savannah, Missouri.

Dear Mr. Jenkins:-

We have your letter of October 11, 1933, in which was contained a request for an opinion as follows:

"The Fillmore Consolidated District requested me to write to you for your opinion on two questions.

"The Fillmore District is a consolidated district composed of a town or central district and three rural districts. Since the consolidation, some years ago, the district has considered the old boundary lines between the old districts as the ward boundary lines of the consolidated district.

"Several families from the country ward schools think that they are getting better facilities by sending their children to the central building. This has been the custom for the last several years and has grown so that in one of the rural districts, twelve children in that ward are attending the central building, leaving only eight in the rural building.

"Now the questions which the board asked are:

"1. Can the board compel the children living in the ward district, to attend that building or do the children have the right to attend any building in the district if the building is easier of access or furnishes, in their opinion, better work?

"2. In the ward mentioned above, if the board should close the ward building as provided under Section 9354 of the School Law, would the board be compelled to pay the transportation of all children living in that ward, or only those now attending the ward school?

"I will appreciate an answer as quickly as possible."

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Section 1, Laws 1933, page 388, amending Section 9354, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 9354. TRANSPORTATION--MAY BE VOTED ON.- The question of transportation of pupils may be voted upon at the special meeting above provided for, if notice is given that such a vote will be taken. If transportation is not provided for in any school district formed under the provisions of sections 9351 to 9358, inclusive, it shall then be the duty of the board of directors to maintain an elementary school within three and one-half miles by the nearest traveled road of the home of every child of school age within said school district: Provided, transportation of pupils or the maintenance of elementary schools within three miles and a half of each child of school age in the district shall not be required in consolidated districts now or hereafter organized under the provisions of sections 9351 to 9358, inclusive, where such consolidation has not placed said children further from an elementary school than they were prior to said consolidation: Provided however, no transportation shall be furnished if there be any school within three and one-half miles of such pupil but assignment shall be made as provided by Section 18 of an act of the 56th General Assembly, found on Page 344, Laws of Missouri, 1931. Provided further, that when the average attendance in any elementary school for any month falls below ten, the school board shall have authority to close such elementary school for the remainder of the term and provide transportation for the pupils of such elementary school to some other elementary school or schools in said district. Such transportation shall be paid for out of the incidental funds of the district: Provided further, that if transportation is not provided for, any consolidated district may, by a majority vote at any annual or special meeting, decide to have all the seventh and eighth grade work done at the central high school building, provided fifteen days' notice has been given that such vote will be taken. Such seventh and eighth grade work at the central high school may be discontinued at any time by a majority vote taken at any annual or special meeting."

Section 18, Laws, 1931, page 344, referred to in the section quoted next above provides as follows:

"Sec. 18. PUPIL TO ATTEND MOST ACCESSIBLE SCHOOL, ASSIGNED BY COUNTY SUPERINTENDENT, TUITION.- Whenever any pupil is so located that an adjoining school is more accessible, the county superintendent shall have the power and it shall be his duty to assign such pupil to such adjoining district: Provided, if a school district shall be divided by a county line, or it is deemed advisable to assign pupils to a district in an adjoining county, then the county superintendent of the county wherein the pupil resides shall make the

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assignment, subject to an appeal to the state superintendent by any county superintendent whose county is affected, and the decision of the state superintendent shall be final; provided, the attendance of such assigned pupil shall be credited for the purpose of apportionment of state funds to the district in which the student lives, and the board of directors of the district in which said student lives shall pay the tuition of such pupil or pupils so assigned: Provided, such tuition shall not exceed the pro rata cost of instruction."

Section 9211, Chapter 57, Article 2, Revised Statutes of Missouri, 1929, said article being entitled, "Laws Applicable to all Classes of Schools", provides as follows:

Sec. 9211. VISITATION OF SCHOOLS. It shall be the duty of the board to visit the schools under their care, examine into their condition and the progress of the pupils, advise and consult with the teachers, and to exercise such supervision as will best promote the interests of the schools?

On the first question contained in your letter, the above sections are the ones coming the closest to the situation and since there are no decisions whatsoever on this point, we shall attempt to give the above sections the most reasonable construction in view of the wording of the statutes, the probable legislative intent, and the object to be attained.

We are of the opinion that the Board of Directors has power to compel the children living in the ward district to attend that ward building. In the section of the Laws of 1933 above quoted, the sole amendatory part is the addition of the second proviso clause providing in part for the assignment of pupils and referring to the section of the Laws of 1931, above quoted, in connection therewith. The section of the Laws of 1931 provides in effect that pupils shall attend or be assigned to the most accessible school. While the words of the section refer to assigning a pupil to an adjoining district, we are of the opinion that the legislative intent was to provide for the assignment of a pupil to the most accessible school and that this should hold true even though such school were in another district. If a legislature goes so far as to provide the board or county superintendent with the power, and impose the duty, to assign pupils to the school of another district, it must be intended that such power and duty should exist for the assigning of pupils to certain schools of the same district. We are, therefore, following the well known rule of law that wherever possible, effect should be given to the legislative intent, express or implied.

Going further, Section 9211, above quoted, provides in part that the board shall exercise such supervision as will best promote

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the interest of the schools. The interest of the schools, of course, means the interest of the people as a whole in the particular community. If the board does not have the power to compel the children of a certain ward to attend that ward school, the situation alluded to in your letter readily arises. Some people who are able to do so send their children to the central school and attendance falls off in the ward school until it is necessary to close same. Then transportation at the cost of the district must be provided for all children over three and one-half miles from any elementary school, and this added expense falls indirectly not only on those whose children have been attending the central school but also on those who were content to have their children attend the ward school. Our view on this matter is therefore supported by implied statutory authority and the rules of sound public policy. Clearly, the board should have this power for the best interests of those whom it represents.

On the second question, we are of the opinion that should the board close the ward building as provided in the section of the Laws of 1933, above quoted, it would have to pay the transportation of all children living in that ward without discrimination, i.e., so long as said children are not within three and one-half miles of another proper school.

There is but one case on this question but it is sufficient as to the principle of law expressed by our courts. The case we refer to is the case of State ex rel. Gastineau vs. Smith, 196 S.W. 115. This opinion was written construing section 4, laws 1917, page 511, which section with some changes has come to be section 9354, Revised Statutes of Missouri, 1929, as amended Laws 1933, page 388. The proviso clause of the statute affecting this situation has, however, remained unchanged. In this case, the court at page 115, stated as follows:

"On reading the act of the Legislature it is clear that, if a vote is taken- and one was taken in this instance- to transport children who live farther than $2\frac{1}{2}$ miles from a schoolhouse in the district, the transportation must include all children within the district falling within the class, and does not contemplate that the directors may use the incidental funds of the entire district to transport certain children in the district living more than $2\frac{1}{2}$ miles from a schoolhouse and not transport other children in the district living more than $2\frac{1}{2}$ miles from a schoolhouse. In other words, the act does not contemplate that a majority of the voters in the district or the school directors will be permitted to discriminate against certain children or certain parts

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of the district. The whole district is taxed to create an incidental fund, and if used at all for transportation it must be used without partiality or discrimination."

Without comment on the equities involved, we feel the above case to be controlling in this matter.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

APPROVED:

Attorney-General.