

SCHOOLS: Under Section 9331, Laws of Missouri, page 350,
SCHOOL DISTRICTS:—which amended same section of the Revised Statutes
of Missouri 1929, the school district may be dis-
solved by a vote of two-thirds of the resident
voters and taxpayers who are present and voting
for dissolution.

3-26

March 23, 1934.



Mr. Sam M. McKay,
Attorney at Law,
De Soto, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in
which you inquire as follows:

"I have another legal tangle, on which it
has been requested that we secure your
opinion. It is a school fight.

Consolidated District No. 1, of Jefferson
County, was organized several years ago.
These people have been to the Supreme
Court on two or three occasions on diff-
erent phases of the situation. There has
been a sharp division between those in
favor of the Consolidated District and a
High School, and those who were opposed
to it. Last week, there was an election
held pursuant to proper notices on the
question of disorganizing the Consolidated
District. Those favoring this dissolution
received more than two-thirds of the votes
cast at the election.

Section 9331, Article 4, Chapter 57, R. S.
1929, was repealed by the Legislature of
1931, and the Legislature re-enacted a new
section known as 9331, which is identical
with the old section, except the words
'present and voting.'

The State Superintendent of Schools issued
a Revised School Law in 1931, in which there
appears, under the new section, certain
citations. These cases, of course, were
prior to 1931.

The Directors who favor the continuation of
the Consolidated District have taken the
position that that is the interpretation
of the present law, which required a two-
third majority of all the resident voters
of the District. However, I do not take

that view, and they have asked me to secure an opinion from you as to what effect the words 'present and voting' will have on the interpretation of this question by the Courts.

I have advised the Directors that the vote dissolved the Consolidated District, but they prefer to have an opinion from you, and I will appreciate it if you will get us this information as soon as possible, as the Directors of the Consolidated District are posting notices for election of Directors, and there are notices being posted in the old school districts from which the consolidated was taken and organized, to vote for directors in the common school district."

In order that we may clear up this controversy and avoid further difficulty to the district, we shall attempt to discuss the law as it was before the amendment of 1931, as well as after the amendment. Section 9331, R. S. Mo. 1929, provides 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 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 shall vote to dissolve any 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 article 3 of this chapter."

In the foregoing section it is specifically provided that "if two-thirds of the resident voters and taxpayers of such school district shall vote to dissolve ^{and} town, city or consolidated school district," then the district shall be dissolved. In

State v. Sheridan Consolidated School District No. 1, 274 S. W. 1073, the Supreme Court held that, under Section 11242, R. S. Mo. 1919, which was Section 9331, R. S. Mo. 1929, a vote of two-thirds of the resident voters and taxpayers of the district was necessary to dissolve it. The Court says at page 1075:

"The foregoing analysis of section 9772, R. S. 1899, applies directly and authoritatively to section 11242, R. S. 1919. The last named section, after reciting the conditions precedent to the holding of the meeting, continues, saying: 'And at said meeting if two-thirds of the resident voters and taxpayers of such school district shall vote to dissolve,' etc. The phrase, 'at such meeting,' refers to the 'time and place, when and where, the fact whether or not' two-thirds of the resident voters and taxpayers of such school district shall vote to dissolve. If the phrase 'at said meeting' were transposed, so that the reading would have been 'if two-thirds of the resident voters and taxpayers of such school district at said meeting shall vote to dissolve,' then, it would be plain that a majority of two-thirds of only those voting at the meeting was required; but, as the sentence is framed, it plainly means that at said meeting it is necessary that two-thirds of the resident voters and taxpayers--that is, two-thirds of the total number of resident voters and taxpayers of the district--must vote to dissolve in order that the disorganization of the district may be effected.

The cases cited under this point, we think, have no persuasive effect, because, first, section 11242 is not ambiguous; and again, being clear in its requirement, the question of whether it leads to oppressive or inconvenient results is one to be considered by the Legislature and not by the courts."

It will be noticed that the Supreme Court construed the statute as it was written and declared it unambiguous. The Court also stated that whether or not such a construction of the plain terms of the statute would be oppressive and inconvenient was a question for the Legislature to determine. It is apparent that the Legislature thought that the statute, as then written and construed by the Supreme Court, was not a

good law, for in 1931 the Legislature, in Laws of 1931, page 350, amended Section 9331, R. S. Mo. 1929. An examination of the amended section discloses that the only change made was to insert the words "present and voting." Such was the only purpose of the Legislature as is indicated by the enacting clause and section, which reads as follows:

"That section 9331 of article 4, chapter 57, Revised Statutes of Missouri, 1929, relating to consolidated school districts--how disorganized, be and the same is hereby amended by inserting the words 'present and voting,' between the words 'district' and 'shall' in line 23, so that said section when so amended shall read as follows:

Any town, city or consolidated school district heretofore organized under the laws of this state, or which may hereafter be organized, shall be privileged 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 article 3 of this chapter."

There can be no doubt that after the Laws of 1931 went into effect that it is no longer necessary, to dissolve a consolidated district, to have a two-thirds vote of the resident voters and taxpayers, but it is only necessary to have the votes of two-thirds of the resident voters and taxpayers present and voting. As the statute now stands a person must be a resident voter and taxpayer in the district in order to be qualified to vote, but a vote of two-thirds of such qualified voters present and voting is now sufficient to dissolve the district.

You state in your inquiry that^{at} an election duly held more than two-thirds of the votes cast at the election were in favor of the dissolution of the district. Under the statute now in force, the district was legally dissolved as of the date of the election, although two-thirds of the resident voters and taxpayers might not have cast their ballots at the election. Since the district has been legally dissolved, the consolidated district would have no standing and have no right to elect directors.

It is therefore the opinion of this Department that while prior to the amendment of 1931, both by statute and judicial construction, it was necessary, in the dissolution of a school district, that two-thirds of the resident voters and taxpayers should vote in favor of such proposition, yet the amendment of 1931 was made for the very purpose of changing this requirement, and since the effective date of that amendment the district may be dissolved by a vote of two-thirds of the resident voters and taxpayers of such district who are present and voting in favor of the dissolution. In other words, it is no longer necessary, to dissolve a district, that a vote of two-thirds of the resident voters and taxpayers be in favor of the dissolution.

We, therefore, conclude, upon the facts stated in your inquiry, that consolidated district No. 1 has been legally dissolved under the law as it now is, and that such district is no longer a legal entity.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

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