

SCHOOLS: CONSOLIDATED SCHOOL DISTRICTS: Election to dissolve consolidated district under Sect. 9331, must be held at the consolidated school building and the notice of election to dissolve must be given by the Board of Directors.

July 20, 1936

Honorable Ted Frossard  
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Dear Sir:

This Department is in receipt of your letter of July 6, wherein you request an opinion as to the legality of an election to dissolve Purdy School District, Consolidated District No. 8. Your letter is as follows:

"I am writing to you in regard to the above School District. In the year 1928, Purdy, Missouri, a municipal corporation, of some 400 hundred people, had and maintained a high school of the first class, offering 4 years of high school work, in addition to the eight grades.

"Several common school, rural, districts adjoined Purdy District and it became desirous to Consolidate Purdy District and 9 rural school districts, thus making one Consolidated District.

"In 1928 an election was held for the purpose of Consolidating and the Consolidation of the 10 districts was perfected. Thereafter the Consolidated School District was known and styled as Purdy Consolidated School District No. 8, Barry County, Missouri. It was run and operated as a Consolidated School District thereafter, a High School being maintained in the Town

of Purdy, at the old High School building, with grade schools being maintained at the school houses in each of the rural districts, as they were before consolidation.

"In the annual school election held in said District in the year 1936, the voters assembled, voted that thereafter all general and special elections held in said School District should be held at the High School Building in said District. The High School Building is nearly centrally located within the District.

"Some months after the annual School election of 1936, a notice signed by 10 resident taxpayers of said School District, voters, was presented asking for an election to disorganize said School District. The election was called, but not by an order of the School Board, the notices were signed by the 10 resident taxpayers and voters, and the election was called to be held at a school house in one of the outlying sections of the Consolidated District. The place where the election was attempted to be held was some 5 miles from the High School Building. The Section of law governing disorganization of such Districts is Sec. 9331, R. S. 1929.

"You will note that in Sec. 9331, the election is to be held at the school house in said district.

"There are several hundred voters in said School District. Only 150 votes were cast at the election to disorganize. There were 150 votes for disorganization.

"The question is, Was a special election for the purposes of disorganizing said School District, held at a school house in an outlying part of the Consolidated

District a legal election? It is to be kept in mind that there are 10 school houses in the Consolidated District. The central High School Building located in Purdy, then a school house in each of the old 9 common school districts, and that school was held in each of these buildings by the Consolidated District.

"It is the contention of those who desire to disorganize the District that an election for that purpose could be held at any of the school houses within the District, since the law says that such election shall be held at the school house.

"It is the contention of those who do not want the District disorganized, that the words the school house as used in Sec 9331 of the Statutes 1929, refers to and means the central school house, in this case the High School Building.

"Section 9331, Statutes 1929, does not provide who shall post the notices calling such special election. The notices calling the special election in this case were not posted by the District Clerk. They were posted by some of those who wanted the District disorganized. Neither was any petition to call such election presented to the Board of Directors, nor did the Board of Directors call or order the special election to disorganize the District.

"Section 9310, R. S. 1929, provides that the District Clerk shall post all notices required by law, when duly ordered by the Board for any annual or special school meeting, etc. This section applies to common School Districts, but may also be applicable to Consolidated Districts

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wherein it is sought to disorganize same.

"The facts are that it is causing some anxiety and disturbance. Those who think the District is disorganized have met, re-organized their old common school districts, elected a Board of Directors for same voted a levy and have presented same to the County Clerk, demanding that their revenue for the coming school year be set out to them. The Board of Directors of the Consolidated District are still functioning and intend to carry on the school as a Consolidated District.

"Will you please give me your opinion as to whether the election held to disorganize the Consolidated District was legal."

In determining the legality or illegality of an election and the dissolution it will be well to bear in mind the terms of the section under which the election for the dissolution was held.

Section 9331, Revised Statutes Missouri 1929, was amended by the General Assembly of 1931, so that said section now reads as follows: (Laws of Missouri 1931, page 351)

"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

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district at the school house 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."

The material change made by the Legislature was by inserting the words 'present and voting,' whereas, the old section of 1929 contains the clause "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, etc." The Supreme Court has held that under the old law it is necessary for two-thirds of the taxpayers to vote to make the proposition carry, whereas, now, it is only necessary that two-thirds of the resident voters and taxpayers of said school district present and voting. Therefore, if the election was regular in every other respect and of the number of votes, 156, to-wit, 150 would constitute a valid number of taxpayers present and voting at such election.

This District has been in existence since 1928, but we assume the taxpayers and voters of the district have become divided in the sentiment and attitude towards the district, some desiring dissolution others desiring to retain the present district. Such conditions often arise in school matters and roads, which is to be regretted, but, as in the instant case, too often cannot be avoided. Coming closer to the main question in your letter, to-wit: Whether the recent election wherein a notice signed by ten resident taxpayers of the district was presented, asking for an election asking to disorganize the district, was legal and valid?

We note in your letter that a notice signed by ten resident taxpayers of the school district was presented asking for an election to disorganize the school district. The election was called but not by order of the school board.

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You do not state who called the election but we shall discuss whose duty it is to call the election. Section 9333, Revised Statutes Missouri 1929, names the duties, restrictions and liabilities of boards of city, town and consolidated schools. The pertinent part is as follows:

"The board of education of any town, city or consolidated school district shall, except as herein provided, perform the same duties and be subject to the same restrictions and liabilities as the boards of other school districts acting under the general school laws of the state: \* \* \* \* \*

Likewise, Section 9327, Revised Statutes Missouri 1929, refers to the government and control of an ordinary school district, as follows:

"The government and control of such town or city school district shall be vested in a board of education of six members, who shall hold their office for three years and until their successors are duly elected and qualified, and any vacancy occurring in said board shall be filled in the same manner and with like effect as vacancies occurring in boards of other school districts are required to be filled, and the person appointed shall hold office until the next annual meeting, when a director shall be elected for the unexpired term."

Section 9328, Revised Statutes Missouri 1929, refers to the election of directors of consolidated schools.

Section 9329, Revised Statutes Missouri 1929, amended by the Legislature of 1931, Laws of Missouri 1931, page 333, refers to the organization of the board and duties of the officers. Bearing in mind Section 9333, which contains the sentence "The board of education of any town, city or consoli-

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dated school district shall, perform the same duties and be subject to the same restrictions and liabilities as the boards of other school districts," whose duty is it to order the election in pursuance to the notice of the ten tax-paying petitioners?

Section 9310, Revised Statutes Missouri 1929, refers to notices and is as follows:

"It shall be the duty of the district clerk to post all notices required by law, when duly ordered by the board, for any annual or special school meeting; also, those required by law to be posted by the district clerk without such order of the board; and all such notices shall be given as provided in section 9283."

Section 9283, Revised Statutes Missouri 1929, refers to the annual meeting of the district and is as follows:

"The annual meeting of each school district shall be held on the first Tuesday in April of each year, at the district schoolhouse, commencing at 2 o'clock p. m. If no schoolhouse is located within the district, the place of meeting shall be designated by notices, posted in five public places within the district fifteen days previous to such annual meeting, or by notice for same length of time in all the newspapers published in the district, giving the time, place and purposes of such meeting."

The above section has been upheld in the case of State ex rel. v. Consolidated School District 238 S. W. 819.

This section also refers to the annual meetings of a consolidated school district.

In the case of State ex inf. Barrett v. Clements 305 Mo. 1. c. 314, Judge Woodson, in a dissenting opinion, in discussing the election held for the dissolution of a district, states the facts to be as follows:

"The evidence shows that the meeting convened at the school house in the consolidated district about two o'clock in the afternoon of said date; that it was called to order by the president of the board of education of the district, from a platform in front of the building; that more people were present than could get into the school house; that the meeting was organized by the election of G. L. Story as chairman, and A.O. Billings as secretary; that relators herein, and others opposed to the dissolution of the district, were present at the meeting in large numbers; and that they attempted to elect a chairman, were outvoted, and refused to take any further part in the meeting, but, for the most part, remained on the grounds until its close."

Thus it will be noted that it is the duty of the board of education of a consolidated district to call an election for the dissolution of the district; the business affairs of the school district are lodged in the board of education. The statutes confer such powers on the board or education or directors. Therefore, the calling of all elections and the statutory procedure as set forth in Section 9331 must be done by the board. If we concede for a moment that it is not necessary for the board or the secretary to give notice of such elections, then, any ten taxpayers in any part of the district at any time could hold a meeting at any school house in the district by putting up five notices

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in five public places in any one school district. We think, clearly, the statute refers and has in mind that a board of education of a consolidated or main school district, where the central building is located and the affairs and business of the consolidated district are held or transacted, should call the election and the notices be prepared and put in five public places throughout the consolidated school district. We are further persuaded to this conclusion that a part of Section 9341, Revised Statutes 1929, now Section 9341, Laws of Missouri 1933, page 381, in referring to the annual school election of consolidated schools says,

"At such convenient place within the district as the board may designate."

You state that the election was held at one of the outlying rural school district school houses, and the contention is made that the statute is complied with when the election is held, "at the school house in said school district."

The title of Section 9331 is, "town, city or consolidated school district, how disorganized."

In the instance of a town or city there is usually one building, while in a consolidated district there are one main centrally located building and numerous other rural grade schools in the district, as is the case in the Purdy School District. If a dissolution election were held for the purpose of dissolving a town or city school district, assuming that the notice was regular, then, of course, "at the school house in said district" could only refer to the school building in the said town or city, but in the case of a consolidated school district there are, as stated before, one main building or buildings and numerous rural school houses. We think, clearly, that the phrase "at the school house in said school district" in the case of a consolidated school district, could only refer to the central and main consolidated school district building located in said district and organized under Section 9345, Revised Statutes Missouri 1929, which likewise provides that such organization and the government of such consolidated district shall be under and in compliance with the laws governing town and city school districts, as provided in Article IV of this Chapter and Sections 9351,

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9352 and 9353, Revised Statutes Missouri 1929.

CONCLUSION

We are of the opinion that the election held in the Purdy School District is void, invalid and illegal for the reason that the notice, under the facts as stated in your letter, could not constitute legal notice, and, second, that the place of the voting was not the legal place as contemplated by the statute; that the election held did not give the voters and taxpayers of the district free opportunity in the entire district to express their sentiments either for or against dissolution; that by the notice and the place of the election the voters of the district were deceived and prevented from expressing their wishes in regard to the matter by inconvenience in place of voting and by failure of notice. The voters and taxpayers in the other districts, other than the one in which the attempted election was held, could have only been notified or could have known that such a purported or attempted election was being held by rumor or hearsay. In the last analysis, the real test of the validity of any election in addition to statutory requirement is, does every voter have an opportunity to express his preference for or against any proposition. For the reasons heretofore assigned we hold that such an election is invalid and illegal.

Respectfully submitted,

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APPROVED:

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