

SCHOOLS:
BUILDING AID:

Building aid, as provided by Sec. 19, Laws of Mo. 1931, page 346, is payable only to consolidated or enlarged school districts.

September 27, 1938

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Honorable Lloyd W. King
State Superintendent
Jefferson City, Missouri

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Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department based upon the following questions:

"Section 19 of the 1931 School Law found on page 346 of the 1931 Session Acts states that there shall be paid to any consolidated or enlarged school district * * * \$1,000.00 for each school building abandoned when a new building is erected. Section II of the same act shown on page 334 of the 1931 Session Acts gives a definition of an enlarged district.

"(1) Do these two provisions limit abandonment aid to only consolidated districts and to the enlarged districts set up by the county districting board? If a number of rural districts voluntarily annex themselves to another rural district, might this district then become eligible for the abandonment aid?

"(2) If several rural schools annex themselves to a village district as defined in Section 9194 R. S. Missouri 1929, might this village district then become eligible for abandonment aid?"

As both of your questions involve the same principles of law, we will treat them together in this opinion. They involve the construction of school laws.

The rule for construing school laws has been stated by the Supreme Court of this state in the case of *State ex inf. v. Morgan*, 187 S. W. 54, 57, in the following language:

"It has been the policy of this court, in construing the statutes relating to schools and school districts, to give them a liberal construction, and to uphold the same whenever it can be done without violating the plain provision of the law."

On the question of the right of the Legislature to alter or create school districts, we find the rule stated in Vol. 56 C. J., page 197, Sec. 48, as follows:

"A state legislature has full and exclusive power, subject to express constitutional limitations, and except as it may have delegated such power to a subordinate officer or agency, to create, organize, establish, or lay off school districts or other local school organizations, or to divide, unite, enlarge, change the boundaries of, or otherwise alter existing districts and organizations, or to provide for such creation or alteration, * * *."

The Legislature has power to delegate this authority. This rule is set out in Vol. 56 C. J., page 199, Sec. 49, in the following language:

"The power of the legislature to create, organize, or alter school districts and other local school organizations may be by it delegated, or authority to exercise such power granted, to such officers, boards, or other subordinate agencies as the legislature may designate or establish."

Following the foregoing rules, the Missouri lawmakers have delegated their power of creating and altering school districts to boards named in the various statutes.

By Laws of Missouri, 1913, page 722, which is now Section 9345, R. S. Mo. 1929; et seq., consolidated school districts may be formed. Consolidated districts shall have an area of at least fifty square miles and an enumeration list of at least two hundred children of school age.

In 1931 the lawmakers provided for the formation of what is known as "enlarged school districts." Laws of Missouri, 1931, page 335. Section 1 of said law is as follows:

"The county superintendent of schools of all counties in this state shall, not later than August fifteenth after the taking effect of this act, call a meeting of the presidents and clerks or secretaries of the various school districts in his or her county, whether common, consolidated, city or town, said meeting to be held on the 15th day of September, next succeeding, beginning at 10 o'clock a. m. of said day, at the county seat of his or her county, and at a place of meeting to be designated by said county superintendent of schools, as said meeting is provided for by sections 9468 and 9469 of the Revised Statutes of Missouri, 1929, which meeting when assembled, shall be called to order by the county superintendent of schools, and shall proceed to organize by the election of one of its members as chairman and another as secretary. Each president and each clerk or secretary of every board of school directors within the county, whether common, consolidated, city or town, or in the absence of any such, a duly authenticated proxy for any of such officers, as such proxies are provided for by section 9469, shall be entitled to one vote on all matters properly coming before such meeting by virtue of the above named sections and on all questions

properly coming before such meeting by virtue of the provisions of this act. When organized as above provided, the meeting shall proceed to select a county districting board of six members, who may or may not be members of such meeting, to divide the entire county into proposed enlarged school districts as hereinafter provided for. Each person elected, or appointed, on this board shall be a citizen of the United States, and of the state of Missouri, and a resident of the county, and shall be not less than twenty-one years of age. Provided, that not more than three members of such board shall come from any county court judicial district. Provided, that not more than one member of said board shall be chosen from the same municipal township, but should there be less than three municipal townships in any county court judicial district, such judicial district shall have only so many members of such board as it contains municipal townships, and the remainder of said board shall be chosen from municipal townships in the other county court judicial district: Provided further, that if any county has less than six municipal townships, then after one member of the board shall have been chosen from each municipal township, there shall be chosen from the county at large enough members to make a board of six. The county superintendent of schools shall be ex-officio secretary of such board, and shall have the deciding vote in case of a tie vote. Such board shall, within thirty days from the date of their selection, meet at a time and place to be designated by the county superintendent of schools, organize by the selection of one of their number as chairman and proceed to district the entire county into proposed enlarged school districts as provided by this act. If any member of such board shall fail or refuse to act in such

capacity, the board may choose some person eligible to act in his or her stead. A majority of such board shall constitute a quorum for the transaction of all business. The members of the board selected as herein provided shall take and subscribe to an oath or affirmation, which oath or affirmation may be administered by each other, and shall be as follows: 'I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of Missouri, and that I will faithfully and impartially discharge the duties imposed upon me as a member of the board selected to divide..... county, state of Missouri, into proposed enlarged school districts, to the best of my ability, according to law, so help me God.'

Such enlarged school districts must have an assessed valuation of one million five hundred thousand dollars and an area of at least fifty square miles, unless the county superintendent, with the approval of the state superintendent, consents to a smaller area.

By the Act of 1931 pertaining to enlarged school districts, Section 19, Laws of Missouri, 1931, page 346, it is provided as follows:

"There shall be paid to any consolidated or enlarged school district in which a new school building has been erected in accordance with plans approved by the state superintendent of schools, the sum of \$1,000.00 for each school building abandoned on account of such new building. This amount shall be paid in the same manner as other state apportionment aid and at the time of the next annual apportionment following the opening of school in the new building and the abandonment

of the school building or buildings: Provided, however, that any consolidated district receiving building aid under the provisions of this section shall not receive building aid under section 9357, and such districts as elect to receive building aid under said section 9357 shall not be entitled to aid under this section."

This section being in the 1931 Act particularly relating to enlarged school districts, and by special reference including consolidated districts, we do not therefore think that it would apply to any other district. To receive the benefits of this section, the district must be a consolidated or enlarged school district formed under the foregoing laws relating to consolidated and enlarged school districts. By applying the maxim, "The expression of one thing is the exclusion of another," we think that by the lawmakers only including the consolidated and enlarged school districts in said Section 19, Laws of Missouri, 1931, page 346, as to who could receive the one thousand dollars building aid, it excluded all other districts.

CONCLUSION

1. We are therefore of the opinion that only consolidated and enlarged school districts are entitled to the building aid prescribed by Section 19, Laws of Missouri, 1931, page 346, and that if a number of rural districts voluntarily annex themselves to another rural district, not following the procedure for forming a consolidated or enlarged district, the district to which they attach themselves is not entitled to the building aid provided by said section.

2. For the same reasons, we are of the opinion that if several districts attach themselves to a town or village district which is not a consolidated or enlarged

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district, that such town or village district is not entitled to receive the benefits of said Section 19, supra, unless such town or village district forms itself into a consolidated or enlarged district.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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