

SCHOOLS:
DIRECTORS AND CLERKS:

Different questions relating to
school directors, their qualifications
and election of the clerk and their
records.

May 18, 1939



Mr. Earl C. Kearbey
County Superintendent of Schools
Carter County
Ellsinore, Missouri

Dear Sir:

This is in reply to yours of recent date wherein
you submit the following statement of facts in your
request:

"At the annual school meeting Apr. 4,
two directors were legally elected.
A Meeting was called by the Presi-
dent of the old board for Friday
night Apr. 7 to qualify the new
members.

"Before Friday night the two new
members went to the home of the
old member and proceeded to have
a meeting without due notice to
the two retiring members or the
district clerk.

"An outsider was appointed clerk
of the new board, and the old di-
rector swore in the two new members.
They ignored the meeting that was
called by the president of old board
for Friday night. The new board had
no clerk record book, but kept a
record on scrap paper withheld from
district clerk.

"I am wondering if their meeting was legal as there was only one member of the old board present. Perhaps it is not necessary for the old out-going members to be present.

"The new board has hired a teacher, signed a contract, but a copy of the contract is not in the dist. Clerk's record book as they had no record book. They would not give the minutes of the board meeting to the regular clerk who serves until July 15, 1939.

"The new directors did not sign their oath in a record book at the time.

"They have by this time made arrangements for a clerk's record book I am informed.

"Both school boards are trying to hold their organization and both are transacting business. Which clerk shall I recognize as the official officer? Would you care to give me some advice and state your opinion? The county attorneys seems to recognize the new board but there seems to be two sides to me. I would appreciate any information you might give."

To begin with we have the rule that the office of school district director is a creature of the statute and we must look to the statutes to ascertain what such duties are. Your question particularly relates to the organization of the school board. There seems to be no question but what two directors were duly elected to the

board in which the controversy now exists.

With respect to the duties of directors in relation to their organization we find these are set out in Section 9289, R. S. Missouri 1929, which are as follows:

"The directors shall meet within four days after the annual meeting, at some place within the district, and organize by electing one of their number president; and the board shall, on or before the fifteenth day of July, select a clerk, who shall enter upon his duties on the fifteenth day of July, but no compensation shall be allowed such clerk until all reports required by law and by the board have been duly made and filed. A majority of the board shall constitute a quorum for the transaction of business; Provided, each member shall have due notice of the time, place and purpose of such meeting; and in case of the absence of the clerk, one of the directors may act temporarily in his place. The clerk shall keep a correct record of the proceedings of all the meetings of the board. No member of the board shall receive any compensation for performing the duties of a director."

While this section requires the directors to meet within four days after the annual meeting, I find that by an opinion from this department dated May 17th, 1933, written by Honorable George B. Strother, Assistant Attorney General, to Honorable Melvin Englehart, Prosecuting Attorney, Fredericktown, Missouri, which holds that the time requirement for the holding of the meeting

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is merely directory and that the directors could qualify at any time thereafter. I am enclosing a copy of this opinion for your information.

By Section 9287, R. S. Missouri 1929, the law provides that the directors shall hold their office until their successors are elected or appointed and qualified. It appears from your letter that it is the contention of the old directors that the new directors have not legally qualified, and for that reason they are attempting to hold over.

Section 9288, R. S. Missouri 1929, requires the directors, after they have been elected, to take and subscribe an oath before entering upon his duties of their oath. This oath is to be spread upon the records of the district. The oath may be administered by any member of the board. I note from your letter that the old member of the board who was not up for reelection administered the oath to two newly elected directors. It also appears that this new board met within four days after the election as is provided by said Section 9289, and after being sworn in by the old directors elected the clerk and their oaths were administered and spread upon a paper which was kept for a record of that meeting.

In regard to the selection of the clerk it seems that by Section 9289, supra, that the clerk shall be elected on or before July fifteenth and shall enter upon his duties on July fifteenth following. The duties of the district clerk are set out in Section 9308, R. S. Missouri 1929, which provides in part as follows:

"The district clerk shall keep a record of the proceedings of all annual and special meetings of the qualified voters of the district; also, the proceedings of the board of directors. He shall make copies of the election notices, contracts with teachers, certificates and all other papers relating to the business

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of the district, and securely keep the same. He shall transmit to the county superintendent, on or before the fifteenth day of July in each year, a report embracing the following items: * * * * *

Section 9309, R. S. Missouri 1929, requires the district clerk to procure the necessary record books for the proper transaction of the business of the district.

By Sections 9289 and 9308, supra, we think the lawmakers intended that the clerk would hold his office until July fifteenth, unless he resigned or is removed as is provided by Section 9291, R. S. Missouri 1929, which is as follows:

"The board shall have power to remove the district clerk from his office for dereliction of duty and appoint another in his place, to whom the former incumbent shall immediately deliver his books and papers pertaining to the office."

It is the duty of the clerk to keep the record of the meetings of the board as is provided by said Sections 9289 and 9308. If the clerk is absent from any meeting of the board, then some member of the board may keep the record. Section 9289, R. S. Missouri 1929.

From the statement which you have submitted it also appears that the new board, at their first meeting, attempted to elect a new clerk who kept the record of that meeting. Since the old clerk who had been elected for a term expiring July fifteenth had not resigned nor had he been removed as is provided by Section 9291, supra, we do not think the action of the board in selecting a new clerk was valid. Apparently the new board did not follow the statute in this matter and since the statute is their guide the old clerk is the one who should have kept the record of the meetings. The rule on this question is

stated in Volume 56 C. J., page 334, at Section 205:

"A board of education, or of directors, trustees, or the like, of a school district or other local school organization can exercise its powers in no other mode than that prescribed or authorized by statute. * * * * *

This brings us to the question if the clerk who acted at the meeting of the new board was not the duly elected official, are the proceedings of the new board at its meetings void? Volume 56 C. J., page 338, Section 211, provides as follows:

"As a general rule, and, in some states, under statutes expressly so requiring, a board of education, or of directors, trustees, or the like, of a school district or other local school organization should keep written minutes or a written record of its proceedings and official acts, but its unrecorded acts are not thereby void.

" * * * * * A statute requiring the board to keep a record book is complied with by clipping or pinning a record of a meeting to the pages of the record book."

It also appears from your letter that the board has entered into a contract employing a teacher, but the copy of this contract is not in the district clerk's record book, that is the old district clerk. On the question of keeping the record of a contract we find the rule stated in Volume 56 C. J., pages 495, 496, Section 539:

"As a general rule a school board should keep a record of their proceedings at each session and their acts relative to the execution of a contract should appear therein; but their unrecorded acts as to contracts are not void."

According to this rule, if the contract with the teacher has been properly entered into with the new board, even though it is not spread upon the records of this district, still the contract with the teacher would not be void.

If the district clerk, whose term is to expire July fifteenth, fails to meet with the new board, then one of the members of the board could act as clerk and make up the proper records including in the minutes of such meeting the actions of the board which have taken place heretofore and which have been recorded by the party whom the board attempted to select as the clerk before the old clerk had been removed or had resigned.

If the old district clerk refuses to act as clerk for the new board, then under Section 9291, supra, the new board would be authorized to remove him and select a new clerk.

CONCLUSION.

From the foregoing we are of the opinion that the newly elected members of the school board, together with the old member who held over, are the duly elected and qualified members of the school board; that they were authorized to meet within four days after the school meeting and organize without notifying the outgoing members of the board; that it was the duty of the clerk of the district who had been selected for a term ending July fifteenth to attend their meetings and record their action in the record books for the district; that his failure so to do, if informed of

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the meeting, would constitute a ground for his removal; that in the absence of the clerk of the board a member of the board can act as clerk; that the new board is not authorized to select another clerk whose term will begin before July fifteenth unless the old clerk resigns or is removed; that the new board may keep its records on a sheet of paper and later enter them on the records of the district book for that purpose; that if the new directors were duly sworn in by the old member of the board, their oaths may be entered on the records of the district at any time thereafter; that if the new board has entered into a contract with the teacher and the contract is not spread on the records of the district it is not void for that reason.

We are further of the opinion that in conducting the affairs of the school district you should recognize the acts of the newly elected directors with the old director who held over as the acts of the school district.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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