

SCHOOLS: City, town and consolidated school districts may change their boundaries in the same manner as common school districts under Section 9275, R. S. 1929, even though such change takes a part of the territory of the city and puts it into an adjoining district.

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Hon. Lloyd W. King, Superintendent,
Department of Public Schools,
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of March 17th, 1939, which reads as follows:

"Inquiry has come to this Department from the school board of Flat River concerning the change of their school district boundary lines. The facts, as related to this office, are as follows:

During the last part of the year, 1938, the incorporated city of Flat River extended its city limits. The new territory included by the extension of the corporate limits of Flat River was located within the Esther School District boundary lines. Section 9325, R. S. 1929, provides that the extension of the limits of any city, town, or village shall have the effect to extend the limits of such town or city school district to the same extent, and such extension of the limits of any city or town school district shall take effect on the first day of July next following.

Therefore, beginning July 1, 1939, the new territory included in the Flat River municipal corporation would also become a part of the Flat River School District and thereby be detached from the Esther School District. The Esther School District has no incorporated town or village within the district boundary lines.

The two school districts herein affected are giving serious consideration to some possible solution of their school problems and need advice in answer to the following questions:

1 - Granting that the extension of the Flat River City corporate limits has automatically extended the school district boundary lines, which, after July 1, 1939, will include a considerable portion of the present Esther School District, would it be legal, under the provisions of Section 9275, for these two districts to authorize, at the annual election April 4, 1939, a change of school district boundary lines back to the original boundary, while, at the same time, the Flat River municipal corporation would contain the territory in question and lie within the present Esther School District?

2 - If the boundary lines could be restored under the provisions of Section 9275, R. S. 1929, and, at the same time, the corporate limits of Flat River could legally extend across school district boundary lines, would it be legal to submit a proposition for the changing or restoring of school district boundary lines at the April 4, 1939, annual election, since the extension of the corporate city limits does not become effective until July 1, 1939?

3 - May territory lying within an incorporated city legally belong to another school district for school taxation and attendance purposes?

4 - If it is not legal for the Flat River and Esther School Districts to re-arrange their boundary lines back to the original location, and, at the same time, permit the Flat River incorporated municipal limits to extend into the school district of Esther, would the proper legal procedure to restore the original school district boundary lines be the giving up by the Flat River municipal corporation the territory that extends into the Esther School District?

I shall appreciate an early reply giving your opinion in answer to this

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inquiry, as all propositions for the changing of school district boundary lines this year must be submitted at the annual election on April 4, 1939."

Your letter assumes that the extension of the corporate limits of Flat River automatically will extend the limits of the School District of Flat River to coincide with the new boundaries of the city. We think this is a correct assumption in view of the plain provisions of Section 9325, R. S. 1929, as amended at page 449, Laws of 1937. See also the case of State ex rel. v. Brown, 31 S. W. (2d), 215.

The question, therefore, is whether a city or town school district and an adjoining school district can change their boundary in such a manner that part of the territory of the incorporated city or town can be placed in the adjoining school district.

It must be borne in mind that every organized school district is an independent corporate body. Where such school district is a city or town district, it nevertheless is a separate corporate entity, wholly independent of the corporate entity known as the city or town. The independent relationship between city school districts and the cities themselves is illustrated in the following language of our Supreme Court in the case of State ex Inf. v. Henderson, 145 Mo. l. c. 335-336:

"Counsel concede that a school district is not a department of the municipal government like the fire department, police department or water-works whose existence is an incident of the city

government. On the contrary each organized school district is an independent body corporate under the laws of this State. Their characteristics and powers are well defined by the Kansas City Court of Appeals in *Waterworks Co. v. School District*, 23 Mo. App. 241, as follows, speaking of the school district of Kansas City: "By this act, I am of the opinion, the divorcement of the school district of Kansas City from the municipal government is complete. It is an independent corporation in every vital particular. The title and control of the school buildings are effectually vested in the board of school directors, the school district corporation. The school board determines all questions as to the raising of money for revenue. The county officers are the agents by which the revenue is collected. The city government has no voice nor agency in the matter. It has nothing whatever to do with the school buildings or other property of this incorporated district. . . . This affords additional evidence, to my mind, of the purpose of the legislature to make the school district a separate legal entity from the municipal organization."

A case further illustrating the fact that a city and a school district are separate entities was the case of School District v. Goodding, 120 Mo. 67, decided in 1894. In that case, the city of Macon extended its corporate limits. Thereupon the School District of Macon brought a suit asking the court to order the County Clerk to extend the taxes on the territory thereby added to the city at the rate provided for the city school district. The school district contended that the extension of the city limits automatically extended the limits of the school district on the theory that the law contemplated that the boundaries of the city and those of the school district must be the same. The court held that the extension of the city boundary did not automatically extend the boundary of the school district, and in the course of the opinion the court said, l. c. 72:

"Chapter 143 (R.S.1889) prescribes the course to be followed for altering the boundaries of school districts. It is not necessary to set forth the particulars of the statute in relation to that subject. It is enough to say that the enlargement of a city or town composing such a district does not, of itself, effect a change in the boundaries of the district. The latter retains its integrity as a body corporate until changed in the manner prescribed by the law."

The above case was decided before the provisions now appearing in Section 9325, supra, providing that extension of the city limits automatically extended the limits of the school district was passed, but it illustrates the fact that the territorial

limits of the city and those of the school district of such city do not necessarily have to be the same. The automatic extension provided in Section 9325, supra, was passed in 1895.

Since school districts are separate entities created by statute, it follows that we must look to the statutes governing them to ascertain when and how the boundaries may be changed.

Section 9275, R. S. Mo., 1929, sets out the method by which two or more common school districts may change their boundaries. Section 9343 R. S. 1929 reads as follows:

"All the provisions of Section 9275, relating to the changes of boundary lines of common school districts, and all the provisions of sections 9278 and 9279, relating to the division of property between common school districts, shall apply to town, city and consolidated districts."

Section 9343 specifically provides that the portions of Section 9275 which relate to boundary lines between common school districts shall apply to town, city and consolidated districts. This is but another way of saying that if two or more school districts, one or all of which may be a town, city or consolidated district, desire to change their boundary lines, they shall proceed in the same manner as two or more common school districts are required to proceed to change their boundary lines.

Section 9343, supra, has been before the courts several times. For instance, in the case of State ex inf. v. Sweaney, 270 Mo. 685, was a case where there had been an attempt made to divide a town school district under the pretext of changing its boundary lines under the provisions of said section. In the course of the opinion the court said, l. c. 691:

"Plaintiffs in error contend that the above section authorizes the division of a town, city or consolidated school district into two new school districts, while defendants in error contend that it merely provides for changing the boundary lines of such school district, but does not provide for dividing the same into two new districts. After careful consideration of the statute, we have reached the conclusion that the above section does not provide a way for dividing a town, city or consolidated school district into two new districts. If Section 10881, supra, had provided that all the provisions of section 10837, Revised Statutes, 1909, should apply to town, city and consolidated districts, then there could be no question but that provision had been made for so dividing such districts, because Section 10837, supra, expressly provides for dividing one common school district into two new districts. But instead of the Legislature saying that all the provisions of section 10837 should apply to town districts, it merely said that "all the provisions of section 10837 relating to the changes of boundary lines of common school districts" should apply. Referring

then to Section 10837 we find that the only express provision therein for changing boundary lines is the provision for changing "the boundary lines of two or more districts."

While the foregoing case decided that Section 9343 did not authorize division of a town district under the pretext of changing its boundary lines, we think it strongly infers that town school districts could change the boundary lines between them and other school districts by complying with the provisions of this section. Such was the interpretation given to the opinion in the Sweaney case by our Supreme Court in the later cases of *State ex inf. v. McKown*, 315 Mo. 1336, 290 S. W. 1.c. 128; and *State ex rel. v. Thompson*, 19 S. W. (2d) 1.c. 719.

In the case of *State ex rel. v. Thurman*, 274 S. W. 800, the Supreme Court held that Section 9343 authorized a consolidated school district and another school district to change their boundary lines by taking part of the territory from the consolidated district and adding it to the other district. There would seem to be no reason for a court holding that Section 9343 was applicable to consolidated school districts, but not to city or town school districts, since the language plainly says that it is applicable to town, city and consolidated districts, and since, as we have seen, the corporate entity of the city is entirely separate and distinct from that of the city school district.

Hon. Lloyd W. King

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CONCLUSION

It is, therefore, the opinion of this department that two or more town, city or consolidated school districts, or one or more town, city or consolidated school districts and one or more common school districts, may change their boundaries by complying with the provisions of Section 9275, R. S. 1929, even though such change of boundaries takes some of the territory of an incorporated city and puts it into a school district which adjoins such city.

Yours very truly,

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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