

SCHOOLS: Consolidated district may change location without the vote of taxpayers.

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April 17, 1942

Mr. Edward Cusick  
Prosecuting Attorney  
Pulaski County  
Waynesville, Missouri

FILE  
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Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"For a number of years the Waynesville Consolidated School District has maintained a grade school and a high school in the same building in the City of Waynesville. It is now proposed to convert this building into a high school only. It is further proposed to erect two grade school buildings, one of these to be erected one mile east of the present City of Waynesville and the other is to be erected  $1\frac{1}{2}$  miles west of the present City of Waynesville. Thus, when the proposal is carried out the grade school children in Waynesville will have to travel at least one mile farther than they do at the present time.

"The Board of Education proposes to make these proposed changes without submitting the question to a vote and without having the proposals voted on by the electorate of the District. The proposed buildings

are to be constructed by direct Federal grants without using any of the District money.

"The question is, does the Board of Education have the power in the absence of the vote of the electorate to so abolish the present site of the grade school and to establish new grade school sites at other points in the District?"

Article 5, Chapter 72 of the Revised Statutes of Missouri, 1939, relates to consolidated schools. Section 10471 of that article provides as follows:

"When the demands of the district require more than one public school building therein, the board shall, as soon as sufficient funds have been provided therefor, establish an adequate number of primary or ward schools, corresponding in grade to those of other public school districts, and for this purpose the board shall divide the school district into school wards and fix the boundaries thereof, and the board shall select and procure a site in each newly formed ward and erect a suitable school building thereon and furnish the same; and the board may also establish schools of a higher grade, in which studies not enumerated in section 10627 may be pursued; and whenever there is within the district any school property that is no longer required for the use of the district, the board is hereby authorized to advertise, sell and convey the same, and

the proceeds derived therefrom shall be placed to the credit of the building fund of such district."

Section 10574, R. S. Mo. 1939, provides in part as follows:

"In all such school districts as are mentioned in article 5 of this chapter that have or that may hereafter have a population exceeding five thousand and not exceeding one hundred thousand inhabitants, the board of education of such school districts shall have full power, by an affirmative vote of not less than two-thirds of all the members of such board, to locate and direct and authorize the purchase of sites for schoolhouses, libraries, school offices and public parks and playgrounds adjacent to the schoolhouse site or elsewhere in said school district, and, by a like vote, to direct and authorize the sale of any real estate or other property belonging to such school district; \* \* \* \* \*"

We believe that it is well settled that the board of the consolidated school district has the power to change the school site and move a school without the vote of the taxpayers. Crow v. Consolidated School Dist. No. 7, 36 S. W. (2d) 676; State ex rel. Gehrig v. Medley, et al., 28 S. W. (2d) 1040; State ex rel. Miller v. Board of Education, 21 S. W. (2d) 645, 222 Mo. App. 120; Gladney v. Gibson, 233 S. W. (2d) 271, 208 Mo. App. 270. In the Crow case, supra, all the authorities were reviewed and we quote at length from that case because what was said there answers the question submitted in your request. The Springfield Court

of Appeals, through Judge Bailey, said, at l. c. 676, 677:

"There is little dispute as to the facts, which tended to prove the allegations of the petition. Plaintiffs have assigned numerous errors involving principally questions of law. These may be considered, however, as embracing but three points, the principal one of which is thus stated:

"That under the admitted and undisputed facts of this case that the Board of Education had no authority to change the location of the grade and high school building, from the site upon which the district had established and maintained such building, and to abandon the same and locate said such new school building for both the grade and high school upon a new and different site, without the authorization of the qualified voters of said district, as provided in subdivision 11 of section 11210, R. S. Mo. 1919. The Court erred in dismissing plaintiffs' petition and denying affirming injunction, as prayed therein."

"This same proposition was briefly considered by this court in the case of State ex rel. Gehrig v. Medley et al., 28 S. W. (2d) 1040, which was a mandamus proceeding to compel the directors of this consolidated district, which plaintiffs now are attempting to enjoin in the present action, to erect and equip a school building on the old site. In the Gehrig Case we said:

"It seems to be contended by relators that the school board in a consolidated district has no power to change a school site unless authorized by a vote of the resident taxpayers. There is no merit in that contention. The board in a consolidated or city school district has the power to change the site without a vote of the taxpayers. Section 11241, R. S. Mo. 1919; Gladney v. Gibson, 208 Mo. App. 70, 233 S. W. 271; Young v. Consolidated School District No. 3, 196 Mo. App. 419, 193 S. W. 627; Velton v. School District, 222 Mo. App. 997, 6 S. W. (2d) 652.' Loc. cit. 1042 of 28 S. W. (2d).

"We are of the opinion the court was correct in thus stating the rule. Appellants have very forcefully and insistently attempted to show that the board of a consolidated district has no such power as here attempted to be exercised in selecting a new site when the district already owns a site theretofore used for a common school. It is said that the only power the board of a consolidated district has to select a schoolhouse site is derived from section 11241, Rev. St. Mo. 1919, and that where that section is inapplicable the change of site must be upon a vote of the qualified voters as provided by section 11210, Rev. St. Mo. 1919. The latter section sets forth the powers of the qualified voters of a common school district when assembled at the annual meeting. However much in error we may have been in ruling on the question of the power of the school board of a consolidated district to change a school house site, we are firmly convinced

section 11210 has no application whatever to consolidated school districts. We consider that matter definitely settled in the Gladney Case, supra, wherein the St. Louis Court of Appeals in considering that section of the law, said:

"That section relates alone to common school districts, and has to do with the powers of the qualified voters of such districts "assembled at such meeting." It manifestly has no application to a town school district where no such annual meetings are held, but where elections, to vote upon propositions that may be lawfully submitted, are required to be by ballot and conducted in the same manner as elections for state and county officers. See section 11251, Rev. St. 1919. If, as appellant contends, we must look to the "general school laws" to determine where the authority for selecting or changing a high school site, in districts such as this, is vested, we regard it as clear that the provisions of section 11210, supra, cannot be said to be general in character, applicable to districts other than common school districts. Not only is it a section found in an article which is expressly made applicable to common school districts, but the very terms of the section are such as to render it inapplicable to a district such as that here involved.' Loc. cit. 79 of 208 Mo. App., 233 S. W. 271, 273."

#### CONCLUSION

It is, therefore, the opinion of this department that the board of a consolidated school district may change the

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location of a school without a vote of the taxpayers of  
the district.

Respectfully submitted,

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APPROVED:

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ROY MCKITTRICK  
Attorney-General

AO'K:CP