

Filling of vacancy in office of School  
; Director of Consolidated School District  
: at annual meeting, a void act, where  
SCHOOLS : notice under Section 10418, R. S. Mo., was  
: not given beforehand.

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March 24, 1944



Honorable Charles S. Greenwood  
Prosecuting Attorney  
Livingston County  
Chillicothe, Missouri

Dear Mr. Greenwood:

This is in acknowledgment of your letter of March 15, in which you request an opinion on the subject of schools, from this office. The text of your letter is as follows:

"Some taxpayers in a Consolidated School District in this County have consulted me with respect to their rights and remedy, if any, based upon the following facts:

"In September, 1942, one of the directors in said district walked out of a Director's meeting with a statement to the effect that he would no longer have anything to do with the Director's meetings, thereby, I think, creating a vacancy in the Board.

"In preparing the notice for the annual meeting of the voters to be held in April 1943, notice was given that among other business to be transacted would be the election of two directors (whose terms regularly expire) at that time, but gave no notice of any intention to elect a third member to fill the vacancy caused by the refusal to serve of the third director whose term would not be up until two years; but at the annual meeting without any notice being given of an intention to fill the vacancy at the Election, the voters elected three members of the Board, two of whom were elected for the purpose of succeeding the director whose term expired at that time; the other whom was to

fill the supposed vacancy on the Board. This third member is not performing the duties of the director and his supposed term will not expire until following the School Election to be held in April, 1945.

"The question is, whether this director who was elected to fill the vacancy, without any notice having been given to the voters that the third director would be elected, can legally continue to hold the office, and if not, what the remedy, if any, would be as against him?

"I am not fully satisfied as to the answer that should be given to these people and I would appreciate it very much if you would advise me your opinion and conclusion based upon the above stated facts."

Section 10418, R. S. Missouri, 1939, provides:

"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."

You will notice that this section requires "giving the time, place and purposes of such meeting." Inasmuch as a notice was not given to the voters of the proposed filling of this vacancy, there was no compliance with the terms of this section.

In State ex rel, School District v. Smith, 80 S. W. (2d) 858, the Court construed this section and states at page 860: "The purpose of a notice is to inform the voters of the propositions to be acted upon at the meeting. Where, as in this case, the statute requires a notice to be given, any action taken by the voters without notice or with an insuffic-

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ient notice is void."

You, therefore, still have not legally filled the vacancy in your school board. There are several methods of filling vacancies provided by the statutes of Missouri. One is under Section 10419, where the voters at the annual meeting elect a director to fill the unexpired term after proper notice under Section 10418; the other, under Section 10423, is by the Board of Directors appointing someone to fill the vacancy whowould hold office until the next annual election. A person holding a public office illegally may be ousted by quo warrante.

Under Sec. 1782, R. S. Mo., 1939  
State ex rel, v. Rose, 84 Mo. 198  
State ex rel, v. Ellis, 329 Mo. 124  
State ex rel, v. Baker, 104 S. W. (2d) 726.

CONCLUSION.

It is therefore the conclusion and opinion of this office that the filling of a vacancy in the office of school director for a consolidated school district at the annual school meeting when notice was not given of such an intention, as provided by Sec. 10418 R. S. Missouri, 1939, was a void act.

Respectfully submitted

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APPROVED:

ROY McKITTRICK  
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RJF:LeC