

SCHOOL DISTRICTS:

Section 10484, Revised Statutes of Missouri, 1939, is applicable to consolidated school district as well as city, town or village school districts.

June 14, 1946



Honorable James P. Hawkins
Prosecuting Attorney
Dallas County
Buffalo, Missouri

Dear Mr. Hawkins:

We received your letter containing a request for an opinion based upon the following statement:

"Under the following facts could a mandamus proceeding be successfully brought?

"The necessary petitioners in a common school district have presented a petition to their three member board to call a special election for the purpose of being annexed to an adjoining Consolidated School District under section 10484 of the Revised Statutes of 1939. The board refuses to call the election contending that said section does not provide for annexation to a consolidated school district, but only to City or town districts. This consolidated school district is purely such as it does not have within it's boundaries a city, town or incorporated village."

Your question actually concerns the applicability of Section 10484, Revised Statutes of Missouri, 1939, to consolidated school districts. The question arises as to whether or not Section 10484 is applicable to consolidated school districts by reason of the naming in the statute of "any city, town or village school district." In construing the statute there are two theories. The first is the maxim of "expressio unius est exclusio alterius." However, this rule will never be applied to defeat the plainly indicated intention of the legislature. (See Missouri Digest, Vol. 26, Statutes, Key 195 for cases discussing this rule and its applicability.) The other theory in construing a statute is that all statutes which are in pari materia should be construed together in order to give effect, if possible.

(For cases discussing the applicability of the rule see Missouri Digest Vol. 26, Statutes, Key 225.) By reviewing the early volumes of the statutes it is clearly seen that from 1909 down to 1935 the articles and sections, contained in each revision of the statutes, contained the same subject matter and seek to accomplish the same purposes. Without question, the statutes of 1939, Article 5, Sections 10466 to 10517 should be construed together under the rule of pari materia. Article 5, Chapter 72, R. S. Mo. 1939, is entitled "Laws Applicable to City, Town and Consolidated Schools." It is obvious that the legislature intended all the sections in Article 5, Chapter 72 to be applied to consolidated school districts as well as city, town or village school districts. The mere failure of the legislature to specifically name consolidated school districts in Section 10484 does not render said section inapplicable to same. Furthermore, a specific announcement by the Supreme Court of Missouri that these laws are applicable to consolidated school districts is found in the case of Killam v. Consl. School Dist. of Lincoln County, 277 Mo. 458. At l.c. 468, the Supreme Court made the following statement:

"By the Act of 1913 (Laws 1913, p. 722) Article 4, Chapter 106, Revised Statutes, 1909, was made to apply to consolidated school district and county districts adjacent, where formerly it only applied to towns and villages and school districts adjacent."

Article 4, Chapter 106, R. S. Mo. 1909, is under the 1939 statutes as Article 5, Chapter 72, and contains the Sections from 10466 to 10517. A reading of the session acts of 1913, page 722, Section 1, shows that it was clearly the intent of the legislature for these laws to be made applicable to consolidated school districts. Said section provides as follows:

"The qualified voters of any community in Missouri may organize a consolidated school district for the purpose of maintaining both elementary schools and a high school as hereinafter provided. When such new district is formed it shall be known as consolidated district No. _____ of _____ county, and all the laws applicable to the organization and government of town and city school districts as provided in article IV, chapter 106 of the Revised Statutes of Missouri, 1909, shall be

applicable to districts organized under the provisions of this act." (Underscoring ours.)

Holding as we do that Section 10484 is applicable to consolidated school districts, under the decision of the Supreme Court, supra, and the legislative enactment, quoted supra, it next becomes pertinent to inquire as to how such procedure, as is provided for in Section 10484, may be procured. Section 10484 provides as follows:

"Whenever an entire school district, or a part of a district adjoining any city, town or village school district, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting for said purpose by giving notice as required by section 10418. * * *"

The use of the term "shall" in the above quotation indicates that the duties provided by the statutes are mandatory upon the school board, and their actions are not discretionary. In other words, the duty of the school board is ministerial in this instance. In the case of State ex rel. Gault v. Gill, 88 S. W. 628, 190 Mo. 79, the court pointed out that the calling of an election is mandatory, and a ministerial function. Specifically, the court said as follows:

"* * * Upon receiving the petition of the fifteen qualified voters and taxpayers of the district, the law imposed upon the board of directors the purely ministerial duty of ordering an election and giving notice thereof in the manner prescribed by the statute; in the performance of which duty they were invested with no discretion, and when they had performed that duty they became functus officio in the matter, which then passed into the hands of the qualified voters of the district, and it was for them and not for the directors, or any number of them to determine how it was to be disposed of."

In the case of State ex rel. West v. Linn County, 234 S. W. 54, 290 Mo. 134, the court pointed out that the County Superintendent of Schools had the duty to call a meeting for the consolidation of a school district upon the presentation of a proper petition. To restate this matter, the duties imposed by statute upon the school board, in this instance, are duties of a ministerial nature, and are not duties involving their discretion.

The school board has no other course to pursue but to execute the duties imposed upon them by the statute, upon being presented with a proper petition. Upon the presentation of a proper petition, as provided for in Section 10484, the Board of Directors shall order a meeting as is required by said section,

In answer to your specific question "under the following facts could a mandamus proceeding be successfully brought?", we wish to point out the ruling in the case of State ex rel. Rutledge v. St. Louis School Board, 33 S. W. 3, 131 Mo. 505, there the Court held: "If a school board is under a clear statutory duty to order an election, mandamus will lie to compel the performance of that duty", and further the case of State ex rel. Sturgeon v. Bishop, 189 S. W. 593, 195 Mo. App. 30, is applicable, the Court holding: "Mandamus is the proper remedy to compel the authorities to proceed with an election where the proceedings are regular and no matter of discretion remains to be disposed of."

CONCLUSION

It is, therefore, the conclusion of this department that Section 10484, Revised Statutes of Missouri, 1939, is applicable to consolidated school districts, and that it is the duty of the school board upon being presented with a proper petition, to call an election as provided for in Section 10484, to determine whether or not a common school district wishes to adjoin a consolidated school district, per the direction and authority of Section 10484, Revised Statutes of Missouri, 1939, that this duty to call an election is ministerial in nature, and the school board is divested of any discretion in the matter. Without complete knowledge of the facts in your case, we cannot say whether or not mandamus will lie, but mandamus is the proper remedy if the facts of your case come within the law cited supra.

Respectfully submitted,

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General