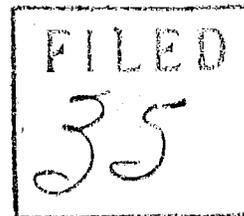


FUNCTIONS OF BOARDS  
OF EDUCATION:

Powers and duties of the board of Education of consolidated school districts after organization of new district, and powers of board of directors of old district which form part of the consolidated district.

January 24, 1947



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Honorable Percy W. Gullic  
Prosecuting Attorney  
Alton, Missouri

Dear Mr. Gullic:

This will acknowledge receipt of your letter of recent date and addressed to the Honorable J. E. Taylor, Attorney General, Jefferson City, Missouri, requesting answers to several questions, all relative to the consolidation of school districts, which said letter is in words and figures as follows:

"A consolidated school district comprised of five districts and more than fifty square miles has been organized in Oregon County Missouri as provided for in sections 10493 to 10500 inclusive. It is our understanding as set out in section 10498 that this organization does not take effect until July 1st following the organization. This brings several questions up regarding procedure:

- First: Does the newly elected board of six directors as elected at the organization meeting have any authority before this date?
- Second: Can a levy for the ensuing year be voted or a bond be voted?
- Third: Can a school site be contracted for?
- Fourth: Who will call the election for this coming April?
- Fifth: Who has jurisdiction in employment of the teachers for the coming year and can the present teachers hold their contracts under the continuing contract law if not notified (more teachers are employed now than there will be teaching units for next year.)"

With your questions before us, we shall proceed to answer them in consecutive order as given and as follows:

First - Your letter states that the newly consolidated district

was organized under Section 10493 and 10500, inclusive, supra.

Section 10493 states, in part, as follows:

"\* \* \*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 5, Chapter 72, R. S. 1939, shall be applicable to districts organized under the provisions of sections 10493 to 10500, inclusive."

Section 10467, R. S. Mo. 1939, relative to the organization meeting, is pertinent, and in part as follows:

"First- \* \* \*When all present shall have voted, the chairman shall appoint two tellers, who shall call each ballot aloud and the secretary shall keep a tally and report to the chairman, who shall announce the result; and if a majority of the votes cast are 'for organization,' the chairman shall call the next order of business.

"Second- To elect six directors, as follows: Two shall be elected for three years, two for two years and two for one year, and each director shall be elected separately and the result announced in the manner prescribed for organization. If said election is held at a special meeting, from then until the next annual meeting shall be taken as one year, so far as relates to the terms of the directors elected. The directors chosen must comply with the requirements of section 10470 of this article. The chairman and secretary of such meeting shall keep a record of the proceedings thereof and turn the same over to the board of education of such district, to be entered upon its records by the clerk of such district."

Section 10470, R. S. Mo. 1939, provides, in part, as follows:

"Within four days after the annual meeting, (in this case a special meeting), the board shall meet, the newly elected members, who shall be qualified by the taking of the oath of office \* \* \* and the board organized \* \* \*. \* \* \*The president and secretary, except as herein specified, shall perform the same duties and be subject to the same liabilities as the presidents and clerks of the school boards of other districts."

The Springfield Court of Appeals in State ex rel. Fleener v. Consolidated School District No. 1 et al, 238 S. W. 819, 1. c. 820-21, in discussing this identical point said, in part, as follows:

"By section 11243 the board of education of any consolidated school district shall, except as therein provided, 'perform the same duties and be subject to the same restrictions and liabilities as the boards of other school districts acting under the general school laws of the State.' The tax levy of which complaint is made in the case at bar was under sections 11244, 11151, and 11209, all of which figures in the government of the consolidated district. We see, therefore, that many and various provisions of the school law must be considered in determining the power and authority of a consolidated district.

"\* \* \*We think that the reasonable and liberal construction to place on section 11252, (now 10498, supra) on which relators rely, is that the old districts which went to form the consolidated district would cease to function on June 30th after the consolidation, but that the section in no wise affects the functioning of the consolidated district. Any other construction would result in utter confusion and irreparable injury. Suppose it be, as relators urge, that the consolidated district could not

function until June 30th after its organization. The old districts were absorbed into the consolidated district on October 22, 1920, and thereafter had no power to do anything except to finish the business under way, and at the end of the school year, June 30th, make the turn over as required by section 11262. (Now Section 10498, supra.) There would be no annual meeting of the old districts, because they would have no powers left except to continue as provided in section 11262. If the consolidated district could not function till June 30th, there are many things that it might not do then, because certain things are required to be done at the annual meeting, and the statute fixes the annual meeting on the first Tuesday in April." (Underscoring ours.)

In this case, a consolidated school district was organized October 22, 1920, and at the annual school election, the following April, voted bonds, which were held valid, although the old districts continued to exist until the end of the school year for certain purposes.

Second - Section 10483, R. S. Mo. 1939 states, in part as follows:

"The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as the board may designate, beginning at 7 o'clock a. m. and closing at 6 o'clock p. m. of said day. The board shall appoint three judges of election for each voting place, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by order of said board, shall issue

certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by the secretary of the board: \* \* \*  
(Underscoring ours.)

Section 10328, R. S. Mo. 1939, is in part as follows:

"For the purpose of purchasing school house sites, erecting schoolhouses, library buildings and furnishing the same, and building additions to or repairing old buildings, the board of directors shall be authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. The question of loan shall be decided at an annual school meeting or at a special election to be held for that purpose. \* \* \*"  
(Underscoring ours.)

Our Supreme Court, in State ex rel v. Gordon, 261 Mo. 631 1. c. 646-7, in the interpretation of this identical section stated as follows:

"It is finally insisted that the Act of 1913 does not confer authority upon consolidated school districts organized thereunder to issue any bonds whatsoever.

"Literally speaking this insistence is true, but when we take into consideration the fact that the Legislature was dealing with the general education of its citizens and authorized this higher class of instruction, it is apparent that it intended that the general school laws of the State, in so far as applicable, should be read in connection with this class of schools,

- in order to carry out the general design and intention of the legislative body.

"The Legislature knew that this class of schools had no school property--lands, buildings or other instrumentalities-- with which to carry on the school work, no more than the ordinary public school has when first organized, without resort should be had to borrowing money for those purposes. That being true we must look at the general school laws of the State regarding this subject, and read it in connection with this incomplete act; and by so doing, we find that section 10777, Revised Statutes 1909, (now section 10328, supra) provides for the issuance of bonds for the purposes for which those in controversy were issued." (See State ex rel. Fleener v. Consolidated School District, supra.)

Third - Section 10471, R. S. Mo. 1939, provides, in part, 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; \* \* \*."

Section 10348, R. S. Mo. 1939, provides, in part, as follows:

"Whenever any district shall select, at the

annual or any special meeting, one or more sites for one or more schoolhouses, or the board of education in city, town or consolidated school district, under the provisions of the statute applicable thereto, shall locate, direct and authorize the purchase of sites for schoolhouses, libraries, offices and public parks and playgrounds, or additional grounds adjacent to schoolhouse site or sites, and cannot agree with the owner thereof as to the price to be paid for the same, or for any other cause cannot secure a title thereto, the board of directors, or board of education aforesaid may proceed to condemn the same in the same manner as provided for condemnation of right of way in article 2, chapter 8, R. S. Mo. 1939, and upon such condemnation and the payment of the appraisal, as therein provided, the title of said lot or land shall vest in the board of directors or board of education aforesaid for use in trust for the district and the purpose for which the same was so selected and located. \* \* \* (Underscoring ours)

The Springfield Court of Appeals in Crow et al v. Consolidated School District No. 7 et al, 36 S. W. (2d) 676 l. c. 677, said, in part, as follows:

"\* \* \*The general law referred to in section 11243 (supra) is found in article 11 of the school laws. The only section of the general law having to do with the selection of school sites is section 11143, providing for condemnation proceedings, and as pointed out by the St. Louis Court of Appeals in the Gladney Case, supra. The language of this section clearly indicates that it was the intention of the Legislature that in a common school district the authority to select a schoolhouse site be vested in the resident taxpayers of the district, assembled in annual meeting, but that in a city, town or consolidated district such

authority be vested in the board of education. And when this section is considered with section 11241, supra, (now section 10471, supra) and with section 11238, Rev. St. 1919, vesting the government and control of town and city districts in a board of education, and it is borne in mind that the authority here in question is not, by any other statute applicable to a district of this character, vested in the qualified voters of the district, it seems quite clear that by section 11241, supra, it was intended to confer upon the board authority to select and acquire, or change, high school sites, as well as sites for schools of lower grade; that the authority to "establish schools of higher grade" was intended to carry with it the authority to select a site and provide a home for the school. " (Underscoring ours.)

In Consolidated School District No. 2 v. O'Malley, 125 S. W. (2d) 818, l. c. 820, our Supreme Court said:

"Even so, the quoted part of Sec. 9333 provides that the board of education of a consolidated school district shall perform the same duties as the boards of school districts acting under the general school law. In other words, Sec. 9215 (now Sec. 10348, supra) of the general school law, by this reference, is incorporated into the statute relating to city, town and consolidated school districts. If so, plaintiff was authorized by Sec. 9215 (now Sec. 10348, supra) to condemn the lots in question for school purposes."

Fourth - It will not be necessary for anyone to call the annual school election. The date is set by law, Sec. 10483, supra. However, it will be necessary for the board of education of the newly formed consolidated school district to select the place for holding the annual school election, appoint the judges,

and otherwise decide on all the propositions to be voted on at the annual school election, give notice of the election, print the ballots etc., as provided for in sections 10469, R. S. Mo. 1939, and 10483, supra.

Fifth - (a) The newly elected board of education will employ the teachers and a superintendent for the newly created consolidated school district for the ensuing school year, as provided for in section 10342, R. S. Mo. 1939, which is in part as follows:

"The board shall have power, at a regular or special meeting called after the annual school meeting, to contract with and employ legally qualified teachers for and in the name of the district; all special meetings shall be called by the president and each member notified of the time, place and purpose of the meeting. \* \* \* All transactions of the board under this section must be recorded by and filed with the district clerk: Provided, that the board of education of any first-class high school may employ a superintendent either before or after the annual school election."

(b) It will be necessary for the board of education of the newly formed consolidated school district to notify the present teachers in writing that their services will not be needed for the ensuing school year; provided, of course, the services of any of them will not be required, or failed to be elected for the ensuing school year, as provided for in House Bill 63, Section 10342A, Page 890, Laws of Missouri 1943, which is, in part, as follows:

"\* \* \* It shall be the duty of each and every board having one or more teachers under contract to notify each and every such teacher in writing concerning his or her re-employment or lack thereof on or before the fifteenth day of April of the year in which the contract then in force expires. Failure on the part of a board to give such notice shall constitute re-employment on the same terms as those provided

in the contract of the current fiscal year; and not later than the first day of May of the same year the board shall present to each such teacher not so notified a regular contract the same as if the teacher had been regularly re-employed. \* \* \*

It is the general rule in this State where one corporation goes out of existence by being annexed to or merged in another corporation that the subsisting corporation is entitled to all the property and answerable for all liabilities. Thompson v. Abbott, 61 Mo. 176, 1. c. 177, State v. Smith, 121 S. W. (2d) 160 1. c. 162.

#### CONCLUSION

It is therefore the opinion of this department:

1. That the board of education of the consolidated district has full power and authority to carry on the business of said district, such as:

- (a) Providing for funds for maintaining the school for the ensuing school year.
- (b) The voting of bonds to erect a new school building, repair old school buildings, equip new or old school buildings.
- (c) To select, contract for, and/or condemn land for new sites.
- (d) To select the place and hold the annual school election.
- (e) To elect teachers and a superintendent for ensuing school year, and to notify teachers now teaching in the old districts that he or she has been elected to teach in the consolidated school district, or has failed to be elected to teach in the said consolidated

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school district for ensuing school year.

2. That the old districts which merged into the consolidated school district, remain in operation, without any powers or functions, except to carry on its respective school until the end of the school year and then at that time turn over all of the property of the old districts to the board of education of the consolidated school district.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR  
Attorney General

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