

SCHOOLS) Board of Directors of six director school district not
) authorized to determine right of duly elected director
) to his new office.

March 14, 1950

Honorable Roderic R. Ashby
Prosecuting Attorney
Mississippi County
Charleston, Missouri



Dear Sir:

The following opinion is rendered in compliance with your request of February 3, 1950, reading as follows:

"U, V, W, X and Y are members of Z School Board. A has been duly elected as a school board member. A does not have a State and County Tax Receipt, neither is A's name on the county tax books.

"Should U, V, W, X and Y refuse to swear A in as a member of the Z School Board when A cannot produce a tax receipt showing that A has paid a state and county tax within the preceding twelve months?"

Section 10469, R. S. Missouri, 1939, prescribes the qualifications for directors of a six director school district, and reads as follows:

"The qualified voters of the district shall, annually, on the first Tuesday of April, elect two directors, who are citizens of the United States resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding their election or appointment, and who shall have resided in this state for one year next preceding their election or appointment, and shall be at least thirty years of age, who shall hold their office for three years and until their successors

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are duly elected and qualified; and all vacancies in the board shall be filled for the unexpired term."

A school district is a corporation created by statute; its board of directors is what the statute makes it, having only such powers and functions as are expressly delegated to it. (Consolidated School District No. 6, Jackson County v. Shawhan, 273 S.W. 182.)

Section 10470, R. S. Missouri, 1939, as re-enacted Laws of Missouri, 1945, page 1649, provides for the organization of the board of directors of a six director school district within four days after the annual meeting. In your opinion request you disclose that "A" has been duly elected as a school board member of the school district in question. Although Section 10469, R. S. Missouri, 1939, supra, prescribes the qualifications for directors of a six director school district, we have been unable to find any statute giving such directors the right to challenge the election of a duly elected director to his office by prescribing and imposing a rule that he must present a state and county tax receipt showing that he is a taxpaying citizen. In the case of Fly v. Jackson, 45 S.W. (2d) 919, 226 Mo. App. 203, the Springfield Court of Appeals in this state was discussing the proper method to try title to office in Missouri, and quoted approvingly from ruling case law as follows at 226 Mo. App. 203, l. c. 211:

"* * * 'Quo warranto will lie only when the party proceeded against is either a de facto or a de jure officer in possession of the office, and an office that is vacant is in possession of no one. However, a person actually obtaining office with the legal indicia of title is legally in possession thereof, and is a legal officer until ousted. Such an incumbent is an officer de facto if not de jure, that is, one who is in possession and discharging the duties thereof under color of authority. By color of authority is meant authority, derived from an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer. If the office is actually filled by one holding under the legal indicia of title, there can

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be no inquiry except upon quo warranto,
and until the incumbent is ousted no one
else can have any enjoyment of the
office."

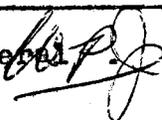
CONCLUSION

It is the opinion of this office that a person duly elected
as a member of a board of directors of a six director school
district may not have his right to exercise such office challenged
by other members of such school board who would refuse to administer
the oath of office to him until he presents a state and county tax
receipt showing that he is a taxpaying citizen of the county.

Respectfully submitted,

APPROVED:

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Assistant Attorney General

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JLO'M/feh