

SCHOOLS: School board meetings to be valid must be called by the president of the board.

August 7, 1950

#267
8/25/50

Honorable Homer L. Swenson
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Dear Sir:

This will acknowledge your letter requesting an opinion on the validity of school board meetings which have not been called or attended by the president of the board. That portion of your letter setting forth the facts, in part, reads:

"A situation has arisen in Wright County in which the Directors of the common school district, other than the President of the Board, have called meetings of said Board without requesting the President to call said meetings, nor has the President refused to call any meetings.

"These meetings have been called and business has been transacted such as signing teachers contracts, signing and issuing of warrants, and other transactions. The President has not attended such meetings."

We note that the school district in question is a common school district.

Regarding the organization of the board of directors of a common school district and the holding of meetings, Section 10422, R.S. Mo. 1939, provides:

"The directors shall meet within four days after the annual meeting, at some place within the district, and organize by electing one of their number president; and the board shall, on or before the fifteenth day of July, select a clerk, who shall enter

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upon his duties on the fifteenth day of July, but no compensation shall be allowed such clerk until all reports required by law and by the board have been duly made and filed. A majority of the board shall constitute a quorum for the transaction of business: Provided, each member shall have due notice of the time, place and purpose of such meeting; and in case of the absence of the clerk, one of the directors may act temporarily in his place. The clerk shall keep a correct record of the proceedings of all the meetings of the board. No member of the board shall receive any compensation for performing the duties of a director."

We note in reading your letter that the employment of teachers or signing of teachers' contracts is a part of the business which has been transacted by the board members, other than the president. Section 10342, R.S. Mo. 1939, pertaining to all classes of schools, in part, provides:

"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. * * *"

Regarding school meetings, the rule is that they must be conducted in conformity with the requirements of the statutes. This would include the calling of the meeting, transacting business coming before the meeting and the keeping of minutes and records thereof.

In State v. Lawrence, 178 Mo. 350, the court, in construing a statute similar to Section 10422, supra, said at l.c. 373, 374:

"Section 9761, Revised Statutes 1899, provides as follows for the organization of the board and the transaction of business:

"The directors shall meet within four days after the annual meeting, at some place within the district, and organize by electing one of their number president; and the

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board shall, on or before the fifteenth day of July, select a clerk, who shall enter upon his duties on the fifteenth day of July, but no compensation shall be allowed such clerk until all reports required by law and by the board have been duly made and filed. A majority of the board shall constitute a quorum for the transaction of business: Provided, each member shall have due notice of the time, place and purpose of such meeting; and in case of the absence of the clerk, one of the directors may act temporarily in his place. The clerk shall keep a correct record of the proceedings of all meetings of the board.'

"It will thus be seen that the officials of the school district - a body corporate - must conduct the business of the district in an official way, as indicated by the statute.

"To have issued a school warrant, binding upon the district mentioned in this cause, for the purchase of the books sought to be purchased by it, the directors in such transaction would be required to meet as a board, with one of their number as clerk; who is required to keep a correct record of the business of such meeting; then, as a body, make the purchase, order the warrant drawn in conformity to the requirements of the statutes, all of which must be evidenced by the record of the meeting."

Concerning the calling of the meeting, the rule is stated in 56 C. J., Section 233, page 355, as follows:

"A school district meeting must be called and notice thereof given by the officers or persons authorized by law to do so; and the proceedings of a meeting called or warned by unauthorized officers or persons are invalid."

Certainly, as to the contracting for teachers, Section 10342, supra, seems to be clear in providing that the meeting wherein such

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contracts are executed must be called by the president of the school board, and we also believe that it is the power of the president to call special meetings of the school board, as well as to preside over them.

In the case of Johnson v. Dye, 142 Mo. App. 424, the court, in construing a statute with provisions similar to those of the quoted portion of Section 10342, supra, said at l.c. 427, 428:

"In regard to the meeting, the statute (sec. 9766) reads: 'The board shall have power at a regular or special meeting to contract with and employ legally qualified teachers for and in the name of the president, and each member notified of the time, place and purpose of the meeting.'

"It stands admitted that the president did not call the meeting, which it is claimed, was held at the home of the defendant on April 1. * * *

"If the statute is mandatory, then in as much as the president did not call this meeting and refused to attend it, it was irregular, and the plaintiff would not be entitled to recover, as a teacher cannot be legally employed except at a regular or special board meeting. (Pugh v. School District, 114 Mo. App. 688, 91 S.W. 471.)

"The statute authorizes a majority of the board to hire a teacher. This means that a majority acting at a legal meeting, and does not mean that directors acting separately, although a majority of the board, can make a binding contract. (Kane & Co. v. School District, 48 Mo. App. 408; Johnson v. School District, 67 Mo. 321.)

"It is the general rule that where the charter, statute, or by-law of a corporation, provides a method by which the notice shall be given of a special meeting, its provisions must be obeyed. * * *

"The statute expressly provides that special meetings shall be called by the president

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of the board. There is no authority for any other member to call a special meeting. It stands admitted in this case, that the president did not call the meeting at which it is claimed the two directors employed the teacher, and therefore, we are of the opinion that the meeting was not a legal one."

We find no statutory authority permitting members of the school board, other than the president, to call a meeting of said board, and the statutes above cited indicate that the president is the proper person to call said meetings.

CONCLUSION

In the premises, it is the opinion of this department that school board meetings of a common school district which have not been called by the president are invalid and are illegally convened to transact the business of the school district.

Respectfully submitted,

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APPROVED:



J. E. WILSON
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