

COUNTY BOARD OF EDUCATION) County board of education has no authority  
EMPLOYMENT OF ATTORNEY ) to employ attorney to advise board with  
reference to preparation and submission to  
voters of plan for reorganization of school  
districts.

September 25, 1951

Honorable Elza Johnson  
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415 South Main  
Carthage, Missouri



Dear Sir:

We have your recent letter in which you request an opinion of this department. Your letter is as follows:

"I would like to have from your office an opinion on the following question:

"Is a County Board of Education, provided for by Sections 165.657 to 165.707 Revised Statutes of Missouri, 1949, authorized to employ attorneys to assist and advise the Board in reference to the preparation and submission to the voters of the plan for reorganization of school districts provided for by such Act, and may the attorneys' fee be considered as part of the cost of holding such election to be charged to each component district embraced in the proposed enlarged districts under the provisions of Section 165.680."

We have examined Sections 165.657 to 165.707, RSMo 1949, and fail to find any provision specifically granting to a county board of education organized under the provisions of Section 165.657 authority to employ an attorney or attorneys to advise it in connection with the preparation and submission to the voters of a plan for the reorganization of school districts. We are of the opinion, therefore, that unless there is some provision in the statute providing for such boards, from which provision such authority can be implied, such authority in fact does not exist. We suggest the fact that such boards are

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created and assigned their functions by Sections 165.657 to 165.707, RSMo 1949, inclusive, and must necessarily derive their authority from the provisions of said sections. The only provision relative to expense involved in an election called by the board is embodied in Section 165.680, RSMo 1949, and is as follows:

"\* \* \*Each judge and each clerk shall receive compensation of five dollars per day. The county board of education shall supply ballots, polling books and all other materials required in the election. The cost of election supplies and the compensation of election officials shall be charged to each component district embraced in the proposed enlarged district in proportion to the total assessed valuation and shall be paid from the incidental fund. \* \* \*"

We suggest the fact that the above quoted statute specifically mentions certain expenses connected with the election and provides for their payment by the component school districts embraced in the proposed enlarged school district but fails to mention among these expenses the cost of having an attorney to advise the board in calling and conducting the election provided for by law. Since said section specifies certain expenses in connection with the election chargeable to component districts and fails to specify attorneys fees, we are of the opinion that said section cannot be relied upon as authority for hiring an attorney and charging the component districts with the attorney's fee.

The only other section to be construed in answering your question is Section 165.670, RSMo 1949, which provides as follows:

"Each member of the board shall be reimbursed for the actual expense incurred in the performance of duties as a member of the board. All such expenses shall be itemized and approved by the president of the board and certified by the secretary to the state comptroller. Said reimbursement shall be paid from the state school moneys fund."

While it is true that this department has heretofore expressed its opinion to the effect that under a given set of circumstances a county board of education might employ an attorney and compensate him from the State School Moneys Fund under the authority of the last above quoted section the facts upon which that opinion was based involved litigation for the purpose of collecting from one of

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the component school districts its proportionate share of the expense of an election called by the county board and it was our view that under these circumstances since it was the duty of the board to conduct the election and since the expenses thereof were to be borne by the component school districts in accordance with the provisions of Section 165.680, supra, and since it was impossible to collect the proportionate share of the expense of the election from one of the component districts without a suit which rendered necessary the services of an attorney, the authority to employ the attorney might be implied, we do not believe, however, that the reasoning of the aforesaid opinion applies to the facts involved in your inquiry or that the last-above quoted section warrants the employment of an attorney by the County Board of Education for the purpose of advising the Board with reference to the election.

CONCLUSION

We are accordingly of the opinion that a county board of education has no authority to employ an attorney to advise it with reference to the preparation and submission to the voters of the plan of reorganization.

Respectfully submitted,

SAMUEL M. WATSON  
Assistant Attorney General

APPROVED:

  
J. E. TAYLOR  
Attorney General

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