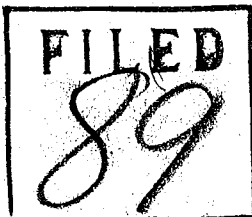


REORGANIZED SCHOOL  
DISTRICT:



When a school district becomes a part of a reorganized district, it loses its former identity; it cannot thereafter be removed from or voted out of the reorganized district, for the reason that it has lost its original identity, and for the further reason that even if it had not lost its former identity, no such powers are vested in the reorganized district; that if and when the reorganized district becomes dissolved, all of the territory formerly comprised in it becomes unorganized territory.

April 7, 1954

Honorable Donald P. Thomasson  
Prosecuting Attorney  
Bollinger County  
Marble Hill, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"When a school district is consolidated with other adjoining school districts into a reorganized school and contributes all its school funds on hand into the funds of the reorganized school district, is it entitled to its proportionate share of such funds originally contributed in the event it is removed from or voted out of the reorganized school district."

Subsequently, in response to some inquiries by us regarding your opinion request, you wrote as follows:

"Thank you for your letter of March 17th and in reply, by a reorganized school district I refer to the reorganization of a school district in accordance with Section 165.677 RSMo 1949. The particular reorganized school district to which I refer is the Patton School District of Bollinger County, Missouri, which was enlarged in accordance with the reorganization plan prepared by the Bollinger County Board of Education and included several school districts, two of which are now contemplating removing or disassociating themselves from the reorganized district. It is my understanding that a reorganized school district may disorganize in accordance with Section 165.707 and Section 165.263 through Section 165.373 RSMo 1949. If one or more common school districts can remove themselves from a reorganized school district then these common school districts want to take back the exact amount of all the funds which they contributed at the time they went into the reorganized school district."

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Your question, whether, when a school district is removed from or voted out of a reorganized school district, it is entitled to its proportionate share of the reorganized district funds, is predicated upon the assumption that after a school district has been consolidated with other school districts in a reorganized district it "may be removed from or voted out of the reorganized school district."

We believe this assumption to be without foundation. We are unable to find any method by which a district may be removed from or voted out of a reorganized district. On the contrary, we do not believe that there is any way in which this can be done.

We note your statement that the reorganization in the instant case was under Section 165.667 RSMo 1949. The subject of "reorganization of school districts" is treated in Section 165.657 through Section 165.707, and, of course, includes Section 165.677, mentioned by you. That section reads:

"Upon the receipt of such reorganization plan from the county board of education, as provided in section 165.673, subsections 2, 3 and 4, the state board of education shall examine and either approve or disapprove such plan. If the plan includes any proposed district with territory in more than one county, the board shall designate the county containing the greater portion of such proposed district based upon the assessed valuation, as the county to which that district shall belong. Such approval or disapproval shall be conveyed to the secretary of the county board of education within sixty days following receipt of such plan by the state board of education. In the event the state board of education shall find that such reorganization plan is inadequate, it shall return said plan to the secretary of the county board of education accompanied by a full statement from said state board of education as to its reasons for finding such reorganization plan inadequate. The county board of education shall have sixty days to review the rejected plan, make alterations, amendments and revisions as may be deemed advisable and return the revised plan to the state board of education for its approval. If the revised plan is disapproved by the state board of education the county board of education is hereby required to propose and submit its own plan to the voters on the first Tuesday in November, 1949; provided, that no enlarged district may be so proposed or submitted without the approval of the state board of education which does

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not have an assessed evaluation of at least five hundred thousand dollars, or one hundred pupils in average daily attendance for the preceding year, and such plan shall be submitted to the qualified voters, as herein provided, in the same manner as if the plans had been approved by the state board of education. Nothing in sections 165.657 to 165.707 shall be construed as preventing the establishment and operation of more than one school in any enlarged district."

Section 165.707, R. S. Mo. 1949, reads: "Changes of boundary lines and disorganization of enlarged districts may be effected as now or hereafter provided by sections 165.263 to 165.373."

It will be noted that the above section relates to changes of boundary lines of the reorganized district and to disorganization of the entire reorganized district.

Section 165.263 through 165.373, referred to above, certainly do not provide for the removal of a district from a reorganized district by changing the boundary lines of the reorganized district, nor do they provide any means of voting a district out of a reorganized district. As a matter of fact, it appears to us that when a school district goes into and becomes a part of a reorganized district, it completely loses its identity, becomes merged indistinguishably with the other district which together compose the reorganized districts, and could not be recreated by any act of the reorganized district, or by the courts.

This is clearly true when the entire reorganized district is dissolved.

In the 1919 case of State v. Consolidated School District No. 3, 209 S.W. 96, an information in the nature of a quo warranto was filed for the purpose of annulling the corporate franchise of Consolidated School District No. 3, on the ground that it had failed to perform all of the duties imposed upon it by law, to-wit, the maintenance of a high school.

At l.c. 97, the Missouri Supreme Court in its opinion stated:

"\* \* \* The learned trial judge found that respondents had not established or maintained a high school or consolidated district school since the organization of said consolidated school district No. 3, whereupon he rendered judgment, on June 14, 1918, 'that said consolidated school district No. 3 of Pike County, be and the same is hereby dissolved,

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and its charter, rights, and franchises in all respects forfeited and held for naught,' and further, that its directors named in the present proceeding be ousted from their positions and shorn of all authority as such directors. The learned trial judge further ordered and decreed that the several school districts out of whose territory said consolidated district was formed be restored to all the rights they had prior to the establishment of said consolidated district with full power and authority in each of said districts 23, 26, 28, 32, and 33 to manage its own school affairs by a board of directors, as if no consolidated school district had ever been formed."

At l.c. 98, the court stated:

"Plainly the judgment of the circuit court which sought to resuscitate the defunct school district was de hors the pleadings in this case and de hors the power of the court to render. Laws 1913, p. 723, Sec. 6; State ex inf. v. Smith, 271 Mo. loc. cit. 177, 196 S.W. 17. If the present consolidated school district was legally established (which is the basic allegation of relator's suit), then its dissolution, even if validly decreed, would not, per se, restore the corporation franchises of the previous school districts, nor restore its directors to their former offices and functions. Neither was it the judicial power of the circuit court, after dissolving the consolidated district, to re-create and restore the former districts or their officers, even if such issue had been within the pleadings, for when the former districts ceased to exist as such, the terrain comprehended within them became a part of the new consolidated districts formed thereof, and upon a valid dissolution of the latter such terrain would become 'unorganized territory' (R.S. 1909, Sec. 10776), and could thereafter be organized into school districts only by the method prescribed in the statute and upon the votes of its inhabitants (R.S. 1909, Sec. 10836). It is clear, therefore, that so much of the judgment of the learned trial court as undertook to reincorporate the former school districts and refunction their officers was outside the issues on trial, as well as outside the pale of judicial authority. So much, therefore, of the decree in the present case as undertook to do this, was a simple nullity."

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In the more recent (1949) case of Hydesburg Common School District v. Rensselaer Common School District, 218 S.W.(2d) 833, the St. Louis Court of Appeals affirmed the holding in the 1919 case referred to above.

These cases, we believe, are authority for our position that, when a common school district goes into a reorganized district, it loses its identity and cannot be re-established by any action of the district or of a court; that when the reorganized district becomes dissolved all of its territory becomes unorganized territory; and that school districts can only be formed out of it by positive action on the part of people residing in it, by acting to establish a new district or districts out of the old territory. There is, of course, specific statutory procedure by which this can be done. Since this is the situation, there can be no question of a district recovering any money or property from the reorganized district, "in the event it is removed from or voted out of the reorganized district." This, because of the fact that it cannot be removed from or voted out of the reorganized district.

#### CONCLUSION.

It is the opinion of this department that when a school district becomes a part of a reorganized district, it loses its former identity; that it cannot thereafter be removed from or voted out of the reorganized district for the reason that it has lost its original identity, and for the further reason that no such powers are vested in the reorganized district; that if and when the reorganized district becomes dissolved all of the territory formerly comprised in it becomes unorganized.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General

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