

SCHOOLS: Not necessary that board of education in  
SCHOOL DISTRICTS: reorganized school district designate  
COUNTY SUPERINTENDENTS: boundaries of voting precincts. In election  
COUNTY CLERK: of county superintendent, county clerk should  
ELECTIONS: deliver to president or clerk of board tally  
sheets of size and number sufficient to contain names of all qualified voters of district. If district in three counties, should deliver three sets of tally sheets for each polling place.



March 21, 1955

Honorable John C. Kibbe  
Prosecuting Attorney  
Moniteau County  
California, Missouri

Dear Sir:

This is in response to your request for an opinion dated January 24, 1955, which reads, in part, as follows:

"Our county superintendent of schools, Mr. Alfred Lloyd, has requested that I make inquiry concerning some questions arising in regard to the election of such county superintendents this coming April. Our Tipton school district has pupils from a total of three counties. The statute says that the board may designate one or more voting places, and it might designate voting places in each of the three counties.

"Should the board designate the boundaries of voting precincts within its district? The statute is silent on this point in a situation where ordinary precinct lines cannot be extended. For this reason it is difficult for the county clerk to know the probable size of the poll books which he is to furnish.

"In the event that the board designates a voting place at some point outside Moniteau County, where Moniteau County voters do not ordinarily vote, should the Moniteau County Clerk send poll books to such voting place?"

The Tipton school district to which you refer is a re-organized district and governed by the laws applicable to six-director school districts. Hence, your request involves the interpretation and construction of the following two

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statutes: Section 165.330, MoRS, Cum. Supp. 1953, and Section 167.020, RSMo 1949. Section 165.330 reads as follows:

"1. 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 six o'clock a. m. and closing at seven 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.

"2. 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; provided, that in all cities and towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants, said elections may at the option of the board be held at the same time and places as the election for municipal officers with the judges and clerks of such municipal election serving as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose.

"3. Should such school district embrace terri-

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tory not included in the limits of such city or town, the qualified voters thereof may vote at such voting precinct as they would be attached to, provided the ward lines thereof were extended and produced through such adjoining territory; provided, that in any year in which a county superintendent of public schools is to be elected that the qualified voters of such town, city or consolidated district where registration of voters is required, must vote in the ward or precinct of which they are residents, if the place of voting has been so designated by the board of education; provided, that if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town and said school election shall be conducted within the limits of such other incorporated city or town in the same manner as hereinbefore provided for cities or towns having a population exceeding two thousand and not exceeding seventy-five thousand inhabitants.

"4. All school districts in cities, towns and villages in this state which are now or which may hereafter be under special charter shall hereafter hold their annual school elections on the first Tuesday in April, and the members of the boards of education now serving in such districts shall continue to serve until the first Tuesday in April next following the expiration of the terms for which they were elected or appointed, and until their successors are elected and qualified."

Under the above statute the board of education has the authority to designate the polling place or places within the district. It may either conduct the school election in conjunction with the election for municipal officers, in which

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event the voters at the school election would vote in the city precinct in which they live or in which they would be if the ward lines were extended beyond the city limits where the district encompasses territory not included within the city, or it may designate any other place or places within the district. With one exception, the board is not required to designate more than one polling place (Armantrout v. Bohon, Mo. Sup., 162 S.W. (2d) 867). The exception is that if there is any other incorporated city or town within the district there must be at least one polling place in such other incorporated city or town.

If the school election is conducted separately and not in conjunction with the city election, the qualified voters of the district may vote in any polling place within the district so designated by the board of education. If the election is conducted in conjunction with the city election, the statute prescribes the method for determining the precinct in which the voters of the district must vote, i.e., by extending the ward lines beyond the city limits. In either event there is no necessity for the board of education to designate the boundaries of voting precincts.

The remainder of your first question concerning the size of the poll books to be furnished by the county clerk and the second question involve Section 167.020, RSMo 1949, which reads as follows:

"1. At least forty-five days before the annual school meeting in any year when a county superintendent of public schools is to be elected, any person desiring to be a candidate for election to the office of county superintendent of public schools must file with the county clerk a written declaration of his candidacy for the office, which declaration shall be filed by the county clerk and no filing fee shall be charged. At least ten days before the annual school meeting in any year when a county superintendent of public schools is to be elected, the county clerk shall cause to be printed ballots with the names of the candidates who have filed declarations of their candidacy printed thereon in alphabetical order, said ballots to be substantially in the following form:

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OFFICIAL BALLOT

Tuesday, April .. 19..

For County Superintendent of  
Public Schools

(Vote for one by drawing a line through  
all names except the one voted for)

. . . . .  
. . . . .  
. . . . .

"2. The clerk of the county court shall cause to be delivered to the president or clerk of the board of school directors of the various districts of the county a sufficient number of ballots for the voters of the district and a tally sheet of sufficient size to contain the names of all the qualified voters of such districts, which tally sheets shall so far as practical conform to the form of poll book set out in section 111.510, RSMo 1949, relating to general elections; and in making the returns of such election, the tally sheets shall be certified by the chairman and secretary of such annual school meeting and attested by the members of the board of directors of the district, who may be present. The voting for county superintendent shall be by ballot and all ballots cast shall be counted for the persons for whom cast, and it is hereby made the duty of the members of the board of directors and the chairman and secretary of the annual school meeting to see that each ballot so cast is counted for the person receiving the same, and it is hereby made the duty of the chairman of the annual school meeting, within two days after such meeting, to transmit the tally sheets and all ballots, in person or by registered letter, to the clerk of the county court; such ballots to be in a sealed package, separate and apart from such tally sheets,

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such package being properly designated. It shall be the duty of the county clerk, within five days after the annual school meeting, to call to his assistance two magistrates or two qualified voters of the county, and cast up the vote and issue a commission to the person receiving the highest number of votes, for which commission he shall receive a fee of one dollar to be paid by the person commissioned. A tie vote shall cause a vacancy in the office of county superintendent, which shall be filled by appointment by the governor, and the person so appointed shall hold such office till the next annual school meeting and until his successor is elected and qualified. In case a school district is divided by a county line, the county clerk shall transmit to the president or clerk of the board of directors of such districts two sets of tally sheets and the voters residing on each side of the line shall vote separately and returns shall be made to each county as herein provided. For transmitting the returns of such election, the chairman of the annual meeting shall receive the sum of one dollar to be paid out of the incidental fund of the district.

"3. The provisions of this chapter shall, so far as practicable, apply to village and city elections so far as affects the election of county superintendent of public schools and so far as not conflicting with existing laws, which are sufficient to safeguard such elections. Any person, upon whom there is imposed an official duty by this chapter, and who shall violate any of the provisions herein, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment."

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Under this section the county clerk is to deliver to the president or clerk of the board of education a tally sheet of sufficient size to contain the names of all the qualified voters of the district. In case the district is divided by a county line, he is to transmit two sets of tally sheets to the president or clerk of the board because there will be voters from each county voting on the county superintendent of their respective counties.

In this case, however, the district lies in three counties. Although the situation is not expressly provided for in the statute, the intention obviously is in such a case that three sets of tally sheets be provided so that the voters of the district residing in each county may vote on their respective county superintendents.

The tally sheets are not sent directly to the polling places, but are delivered to the president or clerk of the board of education, who in turn delivers them to the polling place or places. For that reason it is not necessary that the county clerk be concerned with the amount of tally sheets distributed to each polling place. His duty is to supply sets of tally sheets sufficient in size to contain the names of all the qualified voters of the district. As a practical matter in this case, if more than one polling place is designated by the board of education, three sets of tally sheets for each polling place should be delivered to the president or clerk of the board of education and the board should indicate to the county clerk the size and number of tally sheets needed.

#### CONCLUSION

It is the opinion of this office that it is not necessary that the board of education in a reorganized school district designate the boundaries of voting precincts within its district.

It is the further opinion of this office that in elections of county superintendents of schools the county clerk should not send tally sheets directly to the polling place or places within the district, but should deliver to the president or clerk of the board of education of the school district tally sheets of a size and number sufficient to contain the names

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of all the qualified voters of the district. Where a district lies in three counties, three sets of tally sheets for each polling place designated by the board of education should be delivered by the county clerk to the president or clerk of the board.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

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