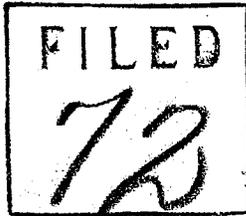


SCHOOLS: Where extended boundary lines of two school districts intersect at a point so that districts touch, they "adjoin" within the meaning of Sec. 165.300, RSMo 1949, so that one may be annexed to another.



June 7, 1956

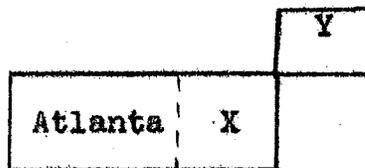
Honorable Charles A. Powell, Jr.
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Mr. Powell:

This is in response to your request for opinion dated April 24, 1956, which reads as follows:

"The County Superintendent of Schools of this County, Miss Mary Graves, has asked me a question relative to the annexation of school districts pursuant to provisions of Section 165.300, MoRS, 1949, on which I can discover no decided cases.

"The question is clarified by the following diagram:



"District X has been annexed to the Atlanta, Missouri School District. Does District Y 'adjoin' the new Atlanta District (cornering as it does) in such a way that it can also be annexed to the Atlanta District within the meaning of the above appropriate section dealing with annexation."

The pertinent portion of Section 165.300 to which you refer reads as follows:

"Whenever an entire school district, or a part of a district, whether in either case

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it be a common school district, or a city, town or consolidated school district, which adjoins any city, town, consolidated or village school district, including districts in cities of seventy-five thousand to five hundred thousand inhabitants, desires to be attached thereto for school purposes, * * *

The use of the terms "adjoining," "adjacent," "contiguous," etc., frequently causes confusion because in common parlance they are often used interchangeably, while technically and legally they have entirely different meanings. In the above section on annexation the word "adjoins" is used, as is the word "adjoining" in Section 165.170, RSMo, Cum. Supp. 1955, relating to the division of a common district and the attachment of its territory to "adjoining" districts, and in Section 165.270, RSMo 1949, relating to the formation of a consolidated district out of a village district having less than two hundred children of school age together with two or more "adjoining" districts, while Section 165.273, RSMo 1949, provides for the formation of a consolidated district out of "adjacent" city, town or consolidated districts, regardless of size or enrollment or one or more city, town or consolidated districts, and one or more "adjacent" common districts. Since the Legislature has consistently used the word "adjoining" in all statutes relating to annexation and formation of districts with the exception of Section 165.273 where the word "adjacent" is employed, and since at no place is contiguity and compactness required as it is in some instances, e.g., senatorial districts (Art. III, Sec. 8, Const. of Mo. 1945; Preisler v. Doherty, Mo. Sup., 284 SW2d 427), we presume that by the use of the word "adjoining" in Section 165.300, supra, is meant something other than "adjacent" or "contiguous."

Webster's New International Dictionary, Second Edition, Unabridged, furnishes us with the following definitions:

"Adjoin: To lie contiguous to; to be in contact with; to abut upon; sometimes, inaccurately, to be near or in proximity to."

"Adjoining: Contiguous; adjacent."

"Adjacent: Lying near, close, or contiguous; neighboring; bordering on; as, a field adjacent to the highway.

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"Syn. - Nigh, juxtaposed, meeting, touching. - ADJACENT, ADJOINING, CONTIGUOUS, CONTERMINOUS, ABUTTING agree in the idea of proximity. Objects are ADJACENT when they lie close to each other, but not necessarily in actual contact; as adjacent fields, villages. They are ADJOINING when they meet at some line or point of junction; as adjoining farms, estates adjoining the river. CONTIGUOUS properly applies to objects which touch along a considerable part or the whole of one side; as, a row of contiguous buildings, a wood contiguous to the plain. But contiguous is often loosely used without the implication of contact; as, contiguous towns. * * *"

A review of a few cases wherein the courts have construed these various terms is helpful and necessary in determining what is meant by the word "adjoining." For example, in *Wild et al. v. People ex rel. Stephens*, 227 Ill. 556, 81 NE 707, the statute required contiguity. The court held, in regard to a situation similar to the one presented here, that the areas were not "contiguous." At NE l.c. 708, the court said:

" * * * The only way in which the 310-foot strip touches or adjoins the 200-foot strip is by the fact that they corner with each other. The west line of the first extended is the east line of the second, and the south line of the first extended is the north line of the second. No vehicle, and in fact no person, could pass from one strip to the other without passing over or upon lands not within the village. The two strips last mentioned are not contiguous. * * *"

In *Hewey v. Gudahy Packing Co.*, 269 Fed. 21, 23, the court recognized that "adjacent" was not synonymous with "contiguous" in the following language:

" * * * The term 'adjacent,' as employed in the statute, has a broader meaning than 'contiguous.' It signifies also neighboring or in close proximity, though not touching. * * *"

In *Lefler v. City of Dallas* (Tex. Civ. App.), 177 SW2d 231, the statute in one place authorized the annexation of "adjoining"

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territory and in another referred to "adjacent" territory. In that case a strip of land ten feet wide and three-fourths of a mile long connected the annexed property with the city limits. The court held that the annexed territory was both "adjoining" and "adjacent."

The Illinois court, in *People v. Keechler*, 194 Ill. 235, 62 NE 525, 527, construed the word "adjacent" thus:

" * * * The word 'adjacent' is defined by Webster and other lexicographers to mean, 'to lie near'; 'close, or contiguous.' It is sometimes said to be synonymous with 'adjoining,' 'near,' 'contiguous.' In some decisions courts have held it to mean 'in the neighborhood or vicinity of'; in others, 'adjoining or contiguous to.' *State v. City of Kansas City*, 50 Kan. 522, 31 Pac. 1100; *In re Camp Hill Borough*, 142 Pa. 517, 21 Atl. 978; *U. S. v. Northern Pac. R. Co.*, 29 Albany Law J. 24; *Henderson's Lessee v. Long*, 1 Cooke, 129, Fed. Cas. No. 6, 354; 1 Am. & Eng. Enc. Law (2d Ed.) p. 633; *Miller v. Cabell*, 81 Ky. 184; *In re Municipality No. 2 for Opening Roffignac St.*, 7 La. Ann. 76. We do not regard any of these cases as furnishing a guide by which to arrive at a definition of the word as used in the foregoing section. It has no arbitrary meaning or definition. Its meaning must be determined by the object sought to be accomplished by the statute in which it is used. This consideration manifestly controlled each of the courts in the interpretation placed upon the word in the cases cited. The sections of the school law which authorize the board of trustees to change the districts in a single township, as well as section 51, supra, were manifestly intended by the legislature to empower them to re-district the township or townships, 'in their discretion,' when properly petitioned for, to suit the wishes or convenience of a majority of the inhabitants of the township or townships.
* * *

The terms "adjacent" and "adjoining" have been distinguished by the New Jersey court in *Yard v. Ocean Beach Ass'n*, 49 N.J. Eq. 306, 24 A. 729, 731, as follows:

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" * * * The word 'adjoining' implies a closer relation than 'adjacent.' The latter word, uncontrolled by the context or subject-matter, is not inconsistent with the idea of something intervening. But the primary meaning of the word 'adjoining' is to lie next to, to be in contact with, excluding the idea of any intervening space. Johnson v. District of Columbia, 9 Cent. Rep. 653-655; People v. Schermerhorn, 19 Barb. 540-556; In re Ward, 52 N.Y. 395; Akers v. Railroad Co., 43 N.J. Law, 110. * * *"

The most nearly analogous case we have found, however, is Independent Consol. Sch. Dist. No. 66 v. Big Stone County (Minn.), 67 NW2d 903. There the statute required that the territory to be annexed "adjoin" the district. As in the facts presented here, appellant's lands cornered upon the district. The Supreme Court of Minnesota held that was sufficient to constitute it as "adjoining" land. In so holding the court quoted from 2 C.J.S., Adjoin, page 2, as follows:

" * * * the phrase [adjoining] has been defined as premises which touch and are connected, or in contact, with the other premises involved, rather than those merely lying near or adjacent, * * *."

We take it, then, from the Wild case that these two districts would not be "contiguous," but there is no requirement of contiguity or compactness in the statutes relating to the formation or annexation of school districts. Apparently, with regard to annexation, the Legislature intended to leave the matter of the form and shape of districts primarily within the discretion of the voters in the areas sought to be annexed and the board of the district to which the area is being attached, the only requirement being that it "adjoin," i.e., touch at some point. Since these districts do adjoin, i.e., touch, at the point where the boundary lines intersect, in our opinion District Y can be annexed to the Atlanta District under Section 165.300, supra.

CONCLUSION

It is the opinion of this office that where the extended boundary lines of two school districts intersect at a point so

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that the two districts touch at this point, they "adjoin" each other within the meaning of Section 165.300, RSMo 1949, so that if other requisite facts are present the one may be annexed to the other under that section.

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

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml