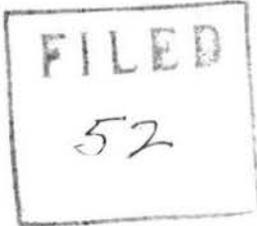


SCHOOLS: Part of C-2 District of Audrain County
cannot be detached therefrom and attached
SCHOOL DISTRICTS: to Mexico District, either by annexation
or change of boundary lines, because the
two districts are not contiguous.



March 13, 1958

Honorable Lon J. Levvis
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Mr. Levvis:

This is in response to your request for opinion dated
February 19, 1958, which reads as follows:

"I desire your opinion on the following
statement of facts:

"Mexico School District No. 58 is a
six-man Board of Education School District.
Adjoining this District on the West is a
common School District known as Jesse
School District. Adjoining Jesse School
District on the West is a part of Consoli-
dated School District C-2.

"At the present time a petition has been
presented to the Directors of C-2 request-
ing that portion of C-2 lying South of
Highway No. 22 be detached from C-2 and
included within the boundaries and made
a part of the Mexico School District No.
58. Simultaneously a petition has been
presented to the Directors of Jesse School
District requesting that all territory in
Jesse School District be included in the
Mexico School District. Another petition
has been filed with the Board of Education
of the Mexico District requesting that the
territory included within the Jesse School
District and that part of C-2 lying South
of the Highway No. 22 be included within
the Mexico District.

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"No part of C-2 District at the present time adjoins any part of the Mexico School District. However, if all three districts voted affirmatively for the proposed changes the lands would all be adjoining.

"There is further pending at this time petitions to the C-2 Directors to attach all of C-2 District North of Highway 22 into the Centralia School District and still another petition requesting that all that part of the C-2 District lying South of said Highway be included in the Centralia School District.

"The Directors of School District C-2 wish to be advised whether the petition to adjoin that part of the territory lying South of Highway 22 is a legal and valid petition, inasmuch as it is not now contiguous to the Mexico School District, although, as stated above, if approved by the Jesse School District, C-2 School District, and Mexico School District, the newly formed District, or at least the boundaries of the newly formed District, would be changed so as to constitute one completely attached School District.

"Reference is made to Sections 165.70 and 165.294 Revised Statutes of Missouri."

Although it is not clear from your request which of the several methods of alteration of school districts is being employed in this instance, we have examined them all and find that the petition which has been presented to C-2, asking that the part of C-2 lying south of the highway be included within the Mexico District, is invalid under any theory.

You have referred us to Section 165.170, RSMo, Cum. Supp. 1957, and Section 165.294, RSMo, Cum. Supp. 1957. In this connection we refer you to the case of State ex inf. Taylor ex rel. Schwerdt et al. v. Reorganized School Dist. R-3, Warren County, Mo. App., 257 SW2d 265, where the court said:

" * * * Section 165.170, supra, however, applies to common school districts and not to consolidated school districts, except

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insofar as it is made applicable thereto
by section 165.293 RSMo 1949, V.A.M.S.
which confines its application to the pro-
visions relating to boundary lines. * * *

See also State ex inf. Conkling ex rel. Hendricks v. Sweaney, 270 Mo. 685, 195 SW 714; State ex inf. Pulley ex rel. Harrington v. Scott, 307 Mo. 250, 270 SW 382; State ex rel. Consolidated School Dist. No. 2 of Pike County v. Ingram, Mo. App., 2 SW2d 113.

These cases firmly established the fact that even when Section 165.293, RSMo 1949, was in force, none of the provisions of Section 165.170, authorizing the formation of new districts or the division of districts, was applicable to six-director districts. In lieu of the reference statute, Section 165.293, Section 165.294, RSMo, Cum. Supp. 1957, was enacted, setting forth the procedure to be followed by six-director districts in changing boundary lines. Consequently, aside from reorganization, there are only two methods authorized for the alteration of six-director districts, i.e., change of boundary lines under Section 165.294, supra, and annexation under Section 165.300, RSMo, Cum. Supp. 1957.

With regard to the petition which has been presented, asking that all of Jesse District be encompassed within the boundaries of the Mexico District, we might mention parenthetically that the only method which can be employed to effectuate this purpose is annexation under Section 165.300, not by change of boundary lines under Section 165.294. See enclosed opinion to Edwin F. Brady dated June 11, 1954.

In order for annexation proceedings to be available, the territory sought to be annexed must adjoin the district to which it is to be attached at the time the petition is presented. It was so held in Willard Reorganized Dist. No. 2 of Greene County v. Springfield Reorganized School Dist. No. 12 of Greene County, Mo. App., 248 SW2d 435, 443, where the court said:

"We hold that the statutory requirement involved in this case, that the school districts be adjoining before proceedings can be taken to annex the same, is mandatory."

Since C-2 does not adjoin the Mexico District at any point at this time, no part of it can be annexed to the Mexico District.

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We hardly need any citation of authority for the proposition that a change of boundary lines under Section 165.294, supra, contemplates contiguous estates, i.e., a common boundary line. However, we call attention to the following language of the court in Farber Consolidated School Dist. No. 1 v. Vandalia School Dist. No. 2, Mo. App., 280 SW 69, 1.c. 71:

" * * * The statutes named relate to separate and distinct methods of dividing and forming districts, annexing territory, and changing common boundary lines. State v. Scott (Mo. Sup.) 270 S.W. 382. * * *"
(Emphasis ours.)

See also the definition of "boundary" in Black's Law Dictionary, Second Edition, as follows:

"By boundary is understood, in general, every separation, natural or artificial, which marks the confines or line of division of two contiguous estates."
(Emphasis ours.)

Since "boundary" is not a technical word, it must be given its ordinary and usual meaning (§1.090, RSMo 1949), signifying a common boundary between two contiguous estates. Since the Mexico District and C-2 are not contiguous, there, of course, cannot be a change of boundary lines between them.

CONCLUSION

It is therefore the opinion of this office that the petition presented to Consolidated School District C-2 of Audrain County, requesting that a part of C-2 be detached therefrom and attached to the Mexico District, is void because the two districts are not contiguous.

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
Enc.