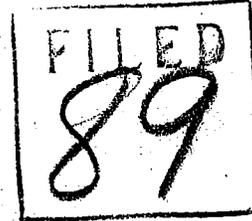


SCHOOLS: County plan of reorganization may be submitted even though it includes territory of another county which has less than one year previously voted upon a rejected plan of reorganization for such other county.

SCHOOL DISTRICTS:

December 1, 1958



Honorable Francis Toohy, Jr.
Prosecuting Attorney
Perry County
Ferryville, Missouri

Dear Sir:

This is in response to your request for opinion dated July 25, 1958, which reads as follows:

"The County School board of Perry County submitted to a vote a plan for reorganization for the County on April 15th, 1958. This reorganization plan failed to receive the sufficient votes to carry in Perry County. Since this election the Madison County board has petitioned the Perry County board to assign the Oak Grove district #59 of Perry County to the Madison County board for the purpose of placing it in their reorganized district #R3 of Madison County. This would be the second reorganization for District #R3 of Madison County and the question then arises whether the Oak Grove District #59 of Perry County would be entitled to vote on the reorganized plan of District #R3 in the event that said district was assigned to Madison County. The statute is clear that an election can not be called for one year after the failure of a reorganized plan within a county. It is not clear whether the Oak Grove district if attached to Madison County would be entitled to vote on a reorganized plan in the Madison County district. So would you please give an opinion as to the following question:

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"May a district which has voted as part of a reorganized plan in one County be assigned to another County and thence vote on a reorganized plan in that County although a year has not elapsed since the reorganized plan was submitted in the county of which it was a part?"

By subsequent letter dated November 21, 1958, you have advised us that the major portion of the assessed valuation of the reorganized district which proposed to include the Oak Grove District No. 59 of Perry County would be in Madison County.

The statute in question is Section 165.693, RSMo 1949, which reads as follows:

"In the event that any proposed enlarged district has not received the required majority affirmative vote, the school districts constituting the proposed new school district shall remain as they were prior to the election, but in all such cases the county board of education shall prepare another plan in the same manner as provided for the first plan and the second plan shall be submitted to a vote in like manner as the first, but not sooner than one year nor later than two years after the date of disapproval of the first plan. Any subsequent plan shall not be submitted sooner than one year following the date on which the last vote on reorganization was taken."

The time element involved in the above statutory provision has been considered only twice by the appellate courts of this state. Those cases are: Willard Reorganized School Dist. No. 2 of Greene County v. Springfield Reorganized School Dist. No. 12 of Greene County, Mo. App., 248 SW2d 435; State ex rel. Rogersville Reorganized School Dist. No. R-4 of Webster County v. Holmes, 363 Mo. 760, 253 SW2d 402. Neither of these cases has any direct bearing upon the question at issue except it can be said as a fair inference from the latter case, and its reference back to State ex inf. Rice ex rel. Allman v. Hawk, 360 Mo. 490, 228 SW2d 785, that the prohibition against the

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submission of a subsequent plan not less than one year following the date on which the last vote on reorganization was taken is mandatory.

The general scheme of reorganization has been considered in the Webster County case, supra, and in the enclosed opinions issued to Honorable Hubert Wheeler dated January 14, 1949, and to Honorable Weldon W. Moore dated September 9, 1953. Consequently, it will be unnecessary to set that scheme out again in detail. Suffice it to say, that the "plan" of reorganization contemplated by Sections 165.657 - 165.707, RSMo, is a county plan.

It is further contemplated that some proposed enlarged districts encompassed by a county plan would include territory in another county. For example, it is provided in Section 165.673, RSMo 1949, that the county board of education shall "Cooperate with boards of adjoining counties in the solution of common organization problems." In Section 165.677, RSMo, Cum. Supp. 1957, it is provided that: "If the plan includes any proposed district with territory in more than one county, the (state) board shall designate the county containing the greater portion of such proposed district based upon assessed valuation as the county to which such district shall belong." (Word in parentheses supplied.)

In discussing the reorganization law, the Supreme Court said in the Webster case, supra, at SW2d 1.c. 403:

" * * * Its purpose was to promote the rapid merger of the multitude of small, inadequately equipped and financed school districts of this State into fewer and larger districts with financial resources to provide adequate buildings, teaching staffs and equipment. * * *"

At SW2d 1.c. 404, the Court said further:

"The object and purpose of the law is to effect a general reorganization of the school districts of this State. It should be liberally construed to the end that its ultimate objective may be attained. State ex rel. Acom v. Hamlet, supra, 250 S.W. 2d loc. cit. 498. * * *"

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If a desirable plan of reorganization for Madison County would include Oak Grove District No. 59 of Perry County, the laws concerning reorganization should be liberally construed so as to effect this if possible to do so.

The prohibition in Section 165.693, supra, is not against the holding of an election within a district within a certain period of time as in Section 165.300, RSMo, Cum. Supp. 1957, which was the subject of the Hawk case, supra. Rather, it is against the submission of a "subsequent plan," i.e., a county plan. Construing the statute liberally in order to effectuate the purposes of the law, we believe it does not prohibit the submission of a Madison County plan under the circumstances outlined in your request, even though less than one year has elapsed since the submission of the Perry County plan.

CONCLUSION

It is the opinion of this office that a county plan of reorganization of school districts may be submitted even though it includes territory of another county which has less than one year previously voted upon a rejected plan of reorganization for such other county, provided the major portion of the assessed valuation of the proposed enlarged district is in the county submitting the plan.

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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