

SCHOOLS: Petition for change of boundary lines between  
SCHOOL DISTRICTS: six-director districts must be signed by  
qualified voters who come from and equal 10%  
of the qualified voters of one of districts  
affected and may originate in either district  
affected thereby.

February 16, 1960

Mr. Hubert Wheeler  
Commissioner of Education  
State Department of Education  
Jefferson Building  
Jefferson City, Missouri



Dear Mr. Wheeler:

This is in response to your request for opinion dated  
January 20, 1960, which reads as follows:

"Section 165.294 providing for the change  
of boundary lines in six director school  
districts was amended in 1959, 70th General  
Assembly, by changing the part relating to  
the petition. Since the publication of the  
amended act, inquiries have come to this  
Department for information about the appli-  
cation of this law as it relates to the  
petitioners of the district or districts  
desiring the change of boundary. The ques-  
tion at issue is whether the petitioners  
must all live in one district or whether  
part of the petitioners may reside in one  
district and the remainder in another to be  
affected by the change.

"For consideration of the inquiries about  
the provisions of the amended law, the part  
relating to the petition, reference is made  
to the following laws:

"Section 165.293, repealed laws 1955, page  
536, prior to its repeal provided in part  
that all the provisions of Section 165.170  
relating to the change of boundary lines of  
common school districts shall apply to town,  
city and consolidated districts.

Mr. Hubert Wheeler

"Section 165.170 relating to the petition for change of boundary lines provided 'that the district clerk of each district affected, upon the receipt of a petition desiring such change, and signed by 10 qualified voters residing in any district affected thereby shall post a notice of such desired change in at least 5 public places in each district interested 15 days prior to the annual meeting, or by notice in all the newspapers for the same length of time.'

"In the case 103 SW 493 --- When the proposed change of boundary affects two or more districts the law does not require 10 petitioners from each district, but such petitioners may all reside in one district, or part of them may reside in one and the remainder in another to be affected by the change.

"In 1955 the General Assembly enacted Section 165.294 which provided for the change of boundary lines between six director school districts and repealed Section 165.293 which authorized six director districts to proceed under the common school district act in changing boundary lines.

"Section 165.294 as enacted in 1955, applicable only to six director districts, provided in the part relating to the petition that 'when it is necessary to change the boundary lines 10 qualified voters who are taxpayers in any district affected may petition the boards of education in the districts affected for a change of boundary lines. The secretaries of the school districts shall post notices of the desired change in at least 5 public places in each district affected at least 15 days prior to the annual school election, or publish notice for the same length of time in all the newspapers of the districts.'

"Section 165.294 was amended in 1959 so that the part relating to petitions now provides that 'when it is necessary to change boundary lines 10% of the qualified voters who are taxpayers in any district, as determined by the

Mr. Hubert Wheeler

total vote cast for county superintendent of schools in said district at the school election held on April 7, 1959 or succeeding elections, affected may petition the district boards in the districts affected for a change in boundaries. The secretaries of the district boards of education shall post a notice of the desired change in at least 5 public places in each district affected at least 15 days prior to the next annual school election, or publish notice for the same length of time in all the newspapers of the districts.

"The Supreme Court (1907) in the case reported in 103 SW 493 ruled in the construction of the phrase 'voters in any district affected' that all the petitioners may reside in one district, or part of them may reside in one district and the remainder in another district to be affected.

"There seems to be no difficulty in applying the court's construction to Sections 165.170 and Section 165.394 prior to their amendment. The problem arises when trying to apply the court's construction to the provision of Section 165.294 as amended in 1959. The amended act is limited to 10% of the voters in any district (affected) as determined by the total vote cast in said district for the county superintendent of schools on April 7, 1959, or succeeding elections. The limiting phrase which provides 'as determined by the total vote cast in said district for the county superintendent of schools' is the part which makes it difficult to apply the court's construction of the law as ruled in the case reported in 103 SW 493.

"I shall be glad to have your advice and official opinion in answering the following questions:

1. Does the provision of Section 165.294 --- '10% of the qualified voters who are taxpayers in any district as determined by the total vote cast for county superintendent of schools in said district \* \* \* affected may petition the district boards in the districts affected for a change in boundaries' --- apply to only one district or could the petitioners come from both districts affected?

Mr. Hubert Wheeler

2. If the petitions must come from only one district could it be from either district affected, or would the petition have to come from the district giving up the territory?

3. If the petitioners can come from both districts affected would this require 10% of the vote for county superintendent in each district, or in other words, would a valid petition require 10% of the total vote for county superintendent of schools in both districts affected by the change of boundary lines?"

Reduced to its essentials, Section 165.294, as amended by the 70th General Assembly, provides that 10% of the qualified voters in any district affected may petition for change of boundaries. The number of qualified voters in the district is to be determined from the number of votes cast for county superintendent of schools in said district. The petition may then be presented to the district boards in the districts affected.

By the use of the singular in referring to the source of the petition and the plural in authorizing the presentation of the petition to the boards of the districts affected, it is apparent that the Legislature intended that the petition could, and must, originate in one district and that the percentage requirement is applicable to that district, and not both. If it were meant to require 10% of the qualified voters in both districts, it would have used the words "districts affected" in referring thereto, not "any district affected" as it does.

The Legislature having changed the requirement from a flat number of ten qualified voters to a percentage of the voters in any district affected, the decision of the court in State ex rel. Rose v. Job, 205 Mo. 1, 103 SW 493, is no longer applicable. As the statute now reads, the petitioners must come from one district, which may be either district affected, and must equal 10% of the qualified voters therein.

#### CONCLUSION

It is the opinion of this office that a petition for change of boundaries between two six-director school districts must be signed by qualified voters who come from and equal 10% of the

Mr. Hubert Wheeler

qualified voters of one of the districts affected by the proposed change and that such petition may originate in either district affected thereby.

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