

SCHOOLS:
SCHOOL DISTRICTS:
COUNTY COURTS:

Land in Howell County is not "unorganized" territory and county court therefore cannot place it in another school district.

July 26, 1961



Honorable Patrick O. Freeman, Jr.
Prosecuting Attorney
Oregon County
Alton, Missouri

Honorable Harold Henry
Prosecuting Attorney
Howell County
West Plains, Missouri

Gentlemen:

This is in answer to your joint request for an opinion dated April 4, 1961, on the basis of the facts presented in your letter as follows:

"Oregon County, Missouri, lies adjacent to Howell County, Missouri on the west. R-3 School District was re-organized in the year 1951 and approved by the voters and by the Department of Education of the state of Missouri.

"R-3 School District of Oregon and Howell Counties, Missouri, consists of land in Oregon County, Missouri and a lesser portion in Howell County, Missouri, and the principal school buildings thereof are located in Koshkonong in Oregon County.

"Prior to April 21, 1920, the E 1/2 of Section 15, Township 23, Range 7 in Howell County, Missouri, was a part of consolidated district #1 of Howell County.

"Prior to April 21, 1920, the East Half (E 1/2) of Sections twenty-two (22) and twenty-seven (27) of Township twenty-three (23), Range seven (7), in Howell County, Missouri was part of school district #93 of Howell County, Missouri.

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"On April 21, 1920, at an annual school meeting a school election was held in Howell County in consolidated district #1, district #93, and district #78 for the purpose of detaching the East Half (E 1/2) of Section fifteen (15) of consolidated district #1 and detaching the East Half (E 1/2) of sections twenty-two (22) and twenty-seven (27), from school district #93 and attaching said lands to school district #78.

"The above proposition carried in district #78 but was defeated in consolidated district #1 and district #93. Apparently, immediately thereafter a Board of Arbitration was appointed to decide the issue and the following appears on the Plat Records of the school district of Howell County in the office of the County Clerk. There is no signature following this entry but appears to be in order and in proper sequence and which is as follows:

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"At Annual School Meeting 1920 a Proposition was submitted to detach from Consolidated District One the East Half of Section 15 twp 23 R 7 and attach to Dist. 78; carried in District 78, defeated in Consolidated District. Board of Arbitration met at office of County Supt. April 21 - decided appeal in favor of plaintiff District 78 awarding such territory.

"At same meeting proposition was submitted to attach East Half of Section 22, and East half of Section 27, Twp 23 R 7, detaching same from District 93, - Proposition carried in District 78, defeated in Dist. 93 Appeal made by 78, and plaintiff district 78 awarded territory. 4/21/20

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"Sections One & Two added by vote Annual Meeting April 6, 1920. Also East 1/2 Sec. 15, East 1/2 Sec. 22, & East 1/2 27 added April - 1920 by action of Board of Arbitration at meeting April 21 1920.

"The Plat Records of school district #78 of Howell County evidence that the East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27) thereafter were a part of school district #78 and apparently all of the students and citizens of the East Half (E 1/2) of Sections fifteen (15), twenty-two (22) and twenty-seven (27) from April of 1920 to 1951 attended school district #78 in Howell County.

"About March 13, 1951, an election for the re-organization of R-3 school district of Oregon and Howell Counties was held and approved by the voters and the Missouri Department of Education whereby school district #78 of Howell County became a part of Re-organized School District #3 of Oregon and Howell Counties. School district #78 which was annexed to R-3 of Oregon and Howell Counties included among other lands the East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27) as aforesaid of Howell County. The re-organization of R-3 in 1951 appears to be in order and the school plat records of both Oregon and Howell Counties and all other records evidence that the East Half (E 1/2) of Sections fifteen (15), Twenty-two (22), and twenty-seven (27) are located in the R-3 school district of Oregon and Howell Counties, Missouri, from 1951 to date.

"Since 1951 the students from East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27) have attended R-3 school district at Koshkonong, the citizens of East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27) have participated in school

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elections and citizens from said sections have served on the school board as Directors of R-3. The tax collector of Howell County has from 1951 to date paid the school taxes collected by Howell County from the East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27) to the Treasurer of R-3 School District of Oregon and Howell Counties.

"R-3 School District of Oregon and Howell Counties has outstanding school bonds which as aforesaid embrace as part of its district the East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27).

"Apparently since April 1920 there has been no question raised concerning the aforesaid findings of the arbitration committee, nor remonstrance by the citizens of the East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27) of Howell County.

QUESTION

"Based upon the foregoing facts, is the East Half (E 1/2) of Sections fifteen (15), twenty-two (22), and twenty-seven (27) unorganized school territory as within the meaning of the term as used in Section 165.167 R.S. Missouri 1949?"

The question you asked arose out of a petition filed in the County Court of Howell County and recorded in Record Book T, page 413 and dated February 20, 1961, which petition was signed by six persons and the petition reads as follows:

"We, the undersigned taxpayers, qualified in accordance with Section 165.167 Public School Laws, State of Missouri, hereby respectfully request the County Court of Howell County, Missouri to make and duly record upon the Tax Books and other proper records of Howell County, an order pursuant to the provisions of said Section 165.167 and restore the East boundary line of the former Mt. Pleasant School District as pertains to land Section 15, 22, and 27.

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"And, we further petition the Court, that by virtue of said boundary restoration, same having been changed prior to this date, without proper recording, procedure, authorization or vote of record, that the land Sections affected be declared in the former Mt. Pleasant School District now consolidated and known on Howell County Books of Record, as Reorganized District 1."

On February 21, 1961, the following proceedings were had in the County Court of Howell County:

"Court now takes up the matter of acting on the petition presented by Art Gutfahr, Rt. #1, West Plains, Missouri, on February 20, 1961, requesting the County Court to annex the E 1/2 of land Sections 15, 22, & 27 Twp. 23 R. 7W to School District R-1, according to the provisions of Section 165.167, Missouri School Laws.

"Court voted unanimously in favor of the foregoing named petition and ordered the County Clerk to so change the boundary line of R-1 to include the E 1/2 of land Section 15, 22, & 27 in Twp. 23, Range 7 W."

Since your question and the above quoted petition and proceedings all mention Section 165.167 RSMo 1959, we quote said section:

"Whenever there shall be in this state any territory not organized into a common, town or city school district, and not containing within its limits twenty or more pupils of school age, any three or more taxpayers in such unorganized territory, or in any adjacent common, town or city school district, may file a written petition in the office of the clerk of the county court praying that such unorganized territory shall be attached to the nearest and most available common, town or city school district, and at the next meeting of the county court the said petition shall be taken up and heard by the court, which shall, after being duly informed and advised, make an order annexing such territory to the nearest and most available

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common, town or city school district, and thereupon such territory shall become a part of such district, which fact shall be duly entered by the proper officers upon the tax books and other records of the county."

Section 165.167 RSMo 1959 is the only section we are able to find which gives a county court any authority to attach territory to a school district or in any way change or modify the boundaries of any school district. In order for the county court of Howell County to change the boundary line of Reorganized District R-1 of Howell County to include the territory involved, as it purported to do in its order of February 21, 1961, it must be shown that the territory comes within the provisions of Section 165.167 RSMo 1959. There are two requirements in this section. One is that the territory contains less than twenty pupils and this requirement is not under consideration in the facts presented in this opinion. The other requirement is that the territory be "not organized into a common, town or city school district". The "unorganized territory" referred to by you in your question is the territory "not organized into a common, town or city school district". The common, town and city school districts are defined by Section 165.010 RSMo 1959 as follows:

"The public school districts organized under any of the laws of this state are hereby classified as follows:

"(1) All districts having only three directors are common school districts;

"(2) All districts outside of incorporated cities, towns and villages, which are governed by six directors are consolidated school districts;

"(3) All districts governed by six directors and in which is located any city of the fourth class, any city organized under a special charter which has less than one thousand inhabitants, or any town or village, are town school districts; and

"(4) All districts in which is located any city of the first, second or third class, or any city organized under a constitutional charter or under a special charter, which has one thousand but not

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more than three hundred thousand inhabitants, are city school districts."

The primary question in this case is a question of fact and not of law, and the question is whether the facts show the territory involved was "unorganized territory" so as to bring it within the provisions of Section 165.167 RSMo 1959.

In considering the petition quoted above and filed in the office of the county clerk in Howell County on February 20, 1961, we conclude that this petition, on its face, does not show that the territory was unorganized territory. The petition requests the county court to "restore the East boundary line of the former Mt. Pleasant School District" and the petition requests an order of the court that the land affected "be declared in the former Mt. Pleasant School District". The petition makes no affirmative statement showing that the territory, at the present time, is "not organized into a common, town or city school district" so as to bring the territory within the provision of Section 165.167 RSMo 1959.

The order of the court on February 21, 1961, does not follow the petition in an attempt to "restore the East boundary line of the former Mt. Pleasant School District" and it is not an order that the land affected "be declared in the former Mt. Pleasant School District". The order speaks of the petition as a request "to annex" the land and it "ordered the county clerk to change the boundary line of R-1". Thus there is no finding that the territory in question was "not organized into a common, town or city school district" and the order does not attempt to "attach unorganized territory" to another school district under the provisions of Section 165.167 RSMo 1959.

From all of the facts presented in your opinion request, it is abundantly clear that the land in question has for many years been "organized into a common, town or city school district". Since the reorganization on March 13, 1951, this territory has been a part of Koshkonong Reorganized School District R-3 of Oregon County. This district is a town school district as defined in paragraph 3 of Section 165.010 RSMo 1959.

According to the facts presented in your opinion request, the territory in question was a part of School District No. 78 of Howell County from April 21, 1920 to the date of the reorganization on March 13, 1951. Prior to April 21, 1920, part of the land was in Consolidated District No. I of Howell County, and the remainder of the land was a part of Mt. Pleasant School

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District No. 93 of Howell County. Therefore, as far back as the records presented indicate, this territory has always been "organized into a common, town or city school district" because it has been a part of one school district or another for these many years. It is not "unorganized territory" and therefore does not come within the provisions of Section 165.167 RSMo 1959.

All of the maps, plats and records on file with the State Department of Education in reference to Koshkonong Reorganized School District R-3 of Oregon County and Reorganized School District R-1 of Howell County clearly and conclusively show that the territory in question is now a part of Koshkonong Reorganized School District R-3 of Oregon County, and has been a part thereof since the reorganization of that district. All of said records further show that the territory in question has never been a part of Reorganized School District R-1 of Howell County.

CONCLUSION

It is therefore the opinion of this office that the land in question has for many years been "organized into a common, town or city school district" and the land is therefore not "unorganized territory" and does not come within the provisions of Section 165.167 RSMo 1959.

The foregoing opinion which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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