

JUNIOR COLLEGE DISTRICTS: (1) Public school districts presently operating a junior college are not junior districts within the meaning of the junior college district act. (2) public school district which is now offering a junior college course may be organized into a junior college district or may be included as one of the districts for the organization of a junior college district in two or more contiguous public school districts. (3) state

board of education has full discretionary power to determine which petitions or proposals meet their standards for organization and which petitions or proposal will be submitted for a vote in those instances in which two or more petitions encompass a part of the same territory. (4) board of education of a public school district operating a junior college may discontinue or dissolve such junior college courses at their pleasure. A junior college district organized under the provisions of the junior college district act cannot force a discontinuance or dissolution of a junior college operated by a public school district so long as such junior college conforms to the scholastic standards established by the

(over)

November 9, 1961

Honorable Hubert Wheeler
Commissioner and Administrative Officer
State Board of Education
Jefferson Building
Jefferson City, Missouri



Dear Mr. Wheeler:

On October 20, 1961 you requested an opinion from this office concerning junior college districts in answer to the following questions:

"1. What is a 'junior college district' as defined in the junior college act, Sections 165.790 to 165.840, Laws of 1961? Would it include a public school district offering two-year college courses under Section 165.123, Laws enacted in 1927, and if such districts are junior college districts, would they have the power to levy taxes, issue bonds, etc., or, is reference made to such districts merely for the purpose of identifying them as regular public school districts that offer college courses?

"2. In the organization of junior college districts as defined by law, could a district that is now offering an approved two-year college course be included as one of the contiguous districts in the proposal for the formation of a new junior college district, or, could one district that now offers a two-year college course be formed into a junior college district under the provisions of the new junior college law?

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"3. When two or more petitions for the proposed organization of a 'junior college district' which include overlapping or conflicting territory are presented to the State Board of Education and each such proposed organization meets all of the required standards, would the State Board have full discretionary power to determine which proposal shall be given priority and submitted to the voters?

"4. Since the board of education of a public school district has discretionary power to offer two-year college courses, subject to the approval of the State Board of Education under Section 165.123, would the local board of education have the authority to discontinue or dissolve the junior college courses when such program is no longer needed or desired?

"Would the organization of a new 'junior college district' by including only one public school district that now offers two-year college courses, or by the annexation method in forming a junior college district, or by including one of the present public school districts that was offering two-year college courses on the effective date of this act, together with other adjacent districts, be equivalent to discontinuing or dissolution of the college courses offered under the provisions of the old law, Section 165.123?"

We will answer your questions in the order in which they are presented.

Senate Committee Substitute for Senate Bill No. 7 of the 71st General Assembly (Sections 165.790 to 165.840, RSMo, Laws 1961, pp. _____) does not specifically define a "junior college district". From a reading of the entire act, we understand a junior college district to be a public educational institution or school district organized in accordance with the provisions of sections 165.790 to 165.840, RSMo, Laws 1961, p. _____, and which provides instruction, classes and schools beyond a four year standard high school course in

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programs of not more than two years for pupils in the 13th and 14th year courses. This does not include private junior colleges, and we are concerned only with public institutions or districts. In answering your first question we first consider the laws relating to public junior colleges which were in effect prior to October 13, 1961, and which are as follows:

Section 165.123, RSMo 1959:

"Any public school district in this state which now has or hereafter may have a fully accredited high school may provide for two-year college courses in such schools, on the approval of and subject to the supervision of the state board of education."

Section 168.230, RSMo 1959:

"Whenever the board of education or board of directors of any school district of any city in this state that now has or may hereafter have a population of seventy-five thousand or more shall have established one or more city teacher-training schools for the purpose of training teachers for the elementary schools and shall have provided in such teacher-training school or schools at least a two-year professional course of instruction in advance of a four-year standard high school course, any such city school district shall be entitled to state aid as herein provided."

These sections provide for a junior college to be operated by a public school district. Such junior college is operated voluntarily---no such school district can be compelled to operate a junior college. The same school district and school board which operate the elementary and high schools in the district also operate the junior college. Establishment or discontinuance of the junior college has no effect on the existence of the local school district with respect to the operation of elementary and high schools. They are school districts which operate a junior college, and not "junior college districts" within the meaning of the junior college district act. There was no legal authority for the establishment or existence of a "junior college district" as a separate

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and autonomous school district, prior to the junior college district act. (Senate Committee Substitute for Senate Bill No. 7, 71st General Assembly, Sections 165.790 to 165.840, RSMo, Laws 1961, p. _____.)

Certain sections of the junior college district act would seem to indicate that there were junior college districts in existence prior to its enactment. Such language is found in Section 167.793 and Section 165.840, RSMo. The applicable language of these sections is as follows:

Section 165.793:

"1. Junior college districts formed prior to the effective date of sections 165.790 to 165.840 and those formed under the provisions of sections 165.790 to 165.840 shall be under the supervision of the state board of education."

Subsection (5) of Section 2 of Section 165.793:

"Supervise the junior college districts formed under the provisions of sections 165.790 to 165.840 and the junior college districts now in existence and formed prior to the effective date of sections 165.790 to 165.840;"

The only possible effect of the language of these sections referring to junior college districts formed prior to the effective date of this act or junior college districts already in existence is that if there are any such districts, they shall be under the supervision and control of the State Board of Education. It is our opinion that there are no "junior college districts" which were established or in existence as legal entities with taxing authority prior to the effective date of the junior college district act. There were only public school districts which operated a junior college. The language of the statutes referred to above concerning junior college districts established or in existence prior to the effective date of the junior college district act is completely ineffectual for the purpose of making such junior colleges into junior college districts. It was probably inserted to guarantee that any junior college operated by a public school district in Missouri would be under the direction and control and supervision of the State Board of Education.

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Other provisions of the junior college district act which implement the supervision of the State Board of Education over such colleges are sections 13 and 15 of Senate Bill No. 7, (Sections 165.830 and 165.837.) Section 13 of Senate Bill No. 7, (Section 165.830) refers to school districts offering two-year college courses under Section 165.123 RSMo, and provides that they shall be entitled to receive state aid if they meet all the standards established by the State Board of Education. Section 15 of Senate Bill No. 7, (Section 165.837) is interrelated with this section in that it provides that if a school district operating a junior college has refused, without good cause, to honor a petition for annexation for junior college purposes by an adjoining school district, the State Board of Education may hold a hearing and withhold payment of state aid to the offending school district for its junior college. This is another specific implementation of the supervision of the State Board of Education over existing junior colleges operated by school districts in the State of Missouri.

The specific placement of these colleges under the supervision of the State Board of Education and the specific provisions applicable to them to implement the supervisory authority of the State Board of Education over such colleges belies any intent of the legislature to make such junior colleges into a junior college district within the meaning of the junior college district act. If they had been automatically made into a junior college district, there would be no need for these special provisions applicable to the existing junior colleges.

Nowhere in the junior college district act or in any other law does it say that a school district offering a two-year college course is specifically designated a Junior College District. Under the junior college district act, there are specific provisions for a petition and an election at which the proposition of the establishment of a junior college district is presented to the people. At this election, the trustees of the junior college district are also elected. Section 165.797 states that "such junior college district shall be in addition to any common, city, town, consolidated, re-organized, special or other school districts existing in any portion of such area."

The junior college district act does not specifically designate or change a junior college operated by a public school district into a junior college district. If the

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legislature had intended such a change to be made, it could have very easily said so in plain words. The two references in the act to "junior college districts (now in existence and) formed prior to the effective date of the act" are effective only for giving the State Board of Education supervision over all public junior colleges. Other provisions of the act refer to "school districts offering two-year college courses under section 165.123, RSMo" and make special provisions for such districts with respect to receiving state aid, annexation of adjoining districts to such district for junior college purposes only and thereby forming a junior college district, and the further provision is made that no such district may be dissolved except as now provided by law.

All of these provisions are convincing evidence that the legislature did not intend to transform public school districts which operate a junior college into junior college districts.

For the reasons presented, in answer to your first question, we conclude that public school districts presently operating a junior college under authority of Section 165.123 or Section 168.230, RSMo 1959, are not "junior college districts" within the meaning of that term as used in Senate Committee Substitute for Senate Bill No. 7 (Sections 165.790 to 165.840, RSMo, Laws 1961, p. _____).

Your second question concerns the inclusion of a school district presently operating a junior college in a petition or proposal to form a junior college district.

Section 1 of Senate Bill No. 7, (Section 165.790,) states that a junior college district may be established. It states that in any public school district or in any two or more contiguous public school districts in the state, the voters therein may establish a junior college district in the manner specified in Senate Committee Substitute for Senate Bill No. 7 by presenting a petition. The language of this section in saying that a junior college district may be established in any public school district is all inclusive. It includes every public school district in the state regardless of whether the school district is a common, city, town, consolidated, reorganized, special or other school district and regardless of whether the school district is presently operating a junior college. Any public school district now existing in the State of Missouri which operates a two-year college course is included in this phrase of "any public school district." There is no language in any other part of the act which would exclude them.

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In answer to your first question we concluded that school districts which operate a junior college are not junior college districts. Such districts are not expressly excluded from the application of the provisions of the junior college district act for the establishment of a junior college district. Since they are not excluded from such provisions, they are included in them. At no place in the junior college district act are such school districts prohibited from establishing a junior college district. Since they are not prohibited from so doing, they are permitted to establish a junior college district the same as any other public school district.

We therefore conclude in answer to your second question that a public school district which is now offering a junior college course may present a petition or proposal to form a junior college district therein, or may be included in a petition or proposal as one of the contiguous districts for the formation of a junior college district.

Your third question concerns the problem of two or more petitions or proposals for the formation of junior college districts which overlap or include a part or all of the same territory in each petition.

The applicable portion of the junior college district act is Section 165.800. This section provides that when a petition signed by 5 percent of the voters is presented to the State Board of Education praying that a junior college district be organized, the State Board of Education shall order an election. The only prerequisite is that the State Board of Education determine that the area proposed to be included within said district meets the standards established by the State Board of Education for organization. The word "shall" is mandatory and the State Board of Education would have to order an election for each petition presented provided that the petition met the standards of the Board of Education for organization. Any discretion of the Board of Education in ordering an election hinges upon a determination of whether the petition meets the standards for organization. The State Board of Education has not yet established such standards. These standards must be established prior to the organization of any district. This is required by Section 165.790. Under this same section the standards established by the State Board of Education shall include, among other things, three specific requirements which are: whether a junior college is needed, whether the assessed valuation is sufficient to support the college and whether there were a sufficient number of high

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school graduates to support the college. These three things must be included in the standards, but they are not exclusive. The State Board of Education may make any other reasonable requirement in its standards for organization which it may deem advisable. The State Board of Education may make some reasonable standards concerning the priority of petitions for the establishment of junior college districts which include the same territory in two different petitions, and particularly in determining whether a junior college is needed. In establishing these standards, the language of Section 2 of Senate Bill No. 7, (Section 165.793) is helpful as a guide. This section refers to the duties of the State Board of Education. Of particular application in this instance is paragraph 2 of Section 2 of Section 165.793 which makes it a duty of the State Board of Education to:

"(2) Set up a survey form to be used for local surveys of need and potential for two-year colleges; provide supervision in the conducting of surveys; require that the results of the studies be used in reviewing applications for approval; and to establish and use the survey results to set up priorities;"

It would therefore seem apparent that the standards for organization established by the State Board of Education should contain a requirement that the survey referred to be made, that the results thereof be used in reviewing applications, petitions and proposals for approval; that the State Board of Education may determine priorities between two or more petitions or proposals which encompass a part or all of the same territory; and that the State Board of Education, in the exercise of its discretion, may approve or disapprove any application, petition or proposal in accordance with what it determines to be the need in such proposed district and in the best interests of the districts involved, when such territorial overlapping occurs.

Accordingly, in answer to your third question, it is our opinion that the state board of education would have full discretionary power to determine which petition or proposal had met the standards for organization established by the State Board of Education, and consequently could determine which proposition would be submitted to the voters in those instances in which two or more petitions encompass a part or all of the same territory.

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The fourth question concerns the effect of the junior college districts act on present public junior colleges.

By Section 165.840 public school districts operating a junior college are under the supervision of the State Board of Education and they shall conform to the scholastic standards established by the board. Such colleges were already under the supervision of the State Board of Education by the terms of the statutes under which they were established and are operated. This section makes a further provision that they must conform to the scholastic standards established by the State Board of Education. If such a junior college did not conform to the junior college district scholastic standards, it is presumed that the State Board of Education could dissolve or discontinue such a junior college for such noncompliance since the junior college is under the supervision of the State Board of Education.

Section 165.830 provides that school districts offering two-year college courses under Section 165.123, RSMo, are entitled to receive state aid (\$200.00 for each 30 semester hours of college credit) the same as junior college districts organized under the junior college district act, provided that the school districts offering two-year college courses meet the standards established by the State Board of Education for junior college districts. A granting of state aid only on condition that the standards are met is an additional tool given to the State Board of Education for use in their supervision of the junior colleges operated by public school districts.

Section 165.840 provides that the junior colleges operated by a public school district shall conform to the scholastic standards established by the State Board of Education, but it further provides that "no such district may be dissolved except as now provided by law and in no instance because it does not meet the standards for organization established by the State Board of Education under the provisions of Section 165.790." This simply means that while the State Board of Education has supervision over the junior college, it cannot dissolve or disband the public school district as such. This section gives the State Board of Education supervision over the junior college only. It does not give the State Board of Education any power or authority to dissolve the school district or to interfere with the operation of elementary and high schools by the district. Such a district can be dissolved only in the manner now provided by law for any other school districts of the same kind or class.

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Section 165.837 may have some effect on junior colleges presently operated by public school districts. This section provides that an adjoining school district may annex, for junior college purposes only, to a school district offering a two-year college course under Section 165.123, RSMo 1959 on October 13, 1961, and receiving aid under subsections 1 and 2 of Section 165.830. This annexation shall be in accordance with the provisions of Section 165.300 which requires a petition by ten voters to be presented in the district seeking to annex; a special election; and a majority vote in favor of annexation. The school board of the receiving district which is operating the junior college then determines if they want to accept the annexation. If the annexation is approved, a special junior college district is formed of the entire territory and the effect upon the junior college operated by the public school district would be the same as if a junior college district had been formed by a petition and election under Section 165.800. If the annexation is refused by the board of the receiving school district which operates the junior college, there are provisions in this section for a hearing before the State Board of Education which may in its discretion withhold a portion or all of the state aid from said district which is payable under Section 165.830 if the State Board of Education finds that refusal to honor the petition for annexation was made without good cause. The net effect of this section is to provide an additional method of forming a junior college district and to provide the State Board of Education with an additional tool in their supervision of junior colleges in the form of economic pressure by the refusal of state aid for a junior college operated by a public school district under these conditions.

Your question is intricately involved with the problem of what happens to a junior college operated by a public school district when a junior college district is formed. Section 165.123 is still in effect and is still authority for a public school district to operate a junior college. This is true regardless of whether or not a junior college district is organized. However, the junior college operated by the public school district must conform to the scholastic standards established by the State Board of Education and this is true regardless of whether or not a junior college district is organized. We therefore conclude that the organization of a junior college district in a public school district which operates a junior college does not in and of itself discontinue or dissolve the junior college or college courses offered by the public school district under the provisions of Section 165.123. The provisions of Section 165.123 are permissible.

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They are not compulsory. Since they are permissible and not compulsory, a public school district may operate a junior college or may discontinue the operation of the junior college at its pleasure. If the board of a public school district desires to continue the operation of a junior college in such district under the provisions of Section 165.123, the State Board of Education cannot force the dissolution of such junior college so long as the public school district operating the junior college conforms to the standards established by the State Board of Education. It is therefore legally possible to have two junior colleges in operation in the same school district; one operated by the public school district and the other operated by a junior college district organized under the provisions of the junior college district act. It should be noted here that if a junior college district is formed under the junior college district act, such junior college district must operate a junior college because of the provisions of Section 165.817 which require that a junior college district "shall provide instruction, classes, school or schools for pupils resident within the junior college district who have completed an approved high school course."

We are of the opinion that a junior college district cannot force the dissolution of a junior college operated by a public school district and cannot take over such junior college contrary to its will. However, we feel that the provisions of the junior college district act are designed to facilitate the acquisition or taking over of the junior college by the junior college district. This intention is expressed by Section 165.833 which makes provision for a school district to lease, sell or convey property suitable for junior college purposes to an institution of higher education such as the junior college district.

In answer to your fourth question, we conclude that the Board of Education of a public school district operating a junior college under the provisions of Section 165.123 may discontinue or dissolve such junior college courses at any time they desire. We further conclude that a junior college district organized under the provisions of the junior college district act cannot force the discontinuance or dissolution of a junior college operated by a public school district so long as such junior college conforms to the standards established by the State Board of Education, but that the junior college district act is designed and intended to facilitate the transfer of the operation of such junior colleges from the public school district to the junior college district organized under the provisions of the junior college district act.

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CONCLUSION

It is therefore the opinion of this office as follows:

1. Public school districts presently operating a junior college are not junior college districts within the meaning of the junior college district act.

2. A public school district which is now offering a junior college course may be organized into a junior college district or may be included as one of the districts for the organization of a junior college district in two or more contiguous public school districts.

3. The state board of education has full discretionary power to determine which petitions or proposals meet their standards for organization and which petitions or proposals will be submitted for a vote in those instances in which two or more petitions encompass a part of the same territory.

4. The board of education of a public school district operating a junior college may discontinue or dissolve such junior college courses at their pleasure. A junior college district organized under the provisions of the junior college district act cannot force a discontinuance or dissolution of a junior college operated by a public school district so long as such junior college conforms to the scholastic standards established by the state board of education. The junior college district act is intended to facilitate the transfer of junior colleges operated by public school districts to a junior college district organized under the provisions of the junior college district act.

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

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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