

SCHOOL RECORDS:  
MUNICIPAL CORPORATIONS:  
CONTRACTS:  
PUBLIC RECORDS:  
RECORDS:

School districts may be termed "Municipal Corporations". Records and contracts required by statute to be kept by school districts are within the scope and effect of Sections 109.180 and 109.190 RSMo. Cum. Sup. 1961, and are open to inspection at all reasonable times. Records required to be maintained by statute are "public records"

February 5, 1963

OPINION NO. 205 (1962)

OPINION NO. 12 (1963)

Honorable Loicen O. Boyd  
Prosecuting Attorney  
Worth County  
Grant City, Missouri



Dear Mr. Boyd:

This opinion is in answer to your inquiry, which is stated as follows:

"Does the public or a taxpayer of a reorganized school district have the right to inspect the minutes of a regular or special meeting of the Board of Education? May the specific contracts or actions of the Board of Education be withheld from inspection by an interested taxpayer?"

You have stated that this is a reorganized school district. In this regard it must be pointed out that the Missouri statutes list only four classifications of schools in Missouri. They are classified as follows by Section 165.010, RSMo 1959:

"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

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

Therefore, a reorganized school district, which by Section 165.687, RSMo 1959, is organized as a six-director district, must be classified under subsection 2, 3 or 4 of Section 165.010 and be governed by the statutes applicable to them. Further, as stated in State ex rel Reorganized School District of Jackson County vs. Holmes, 360 Mo. 904, 231 S.W. 2d 185, the statutes governing six-director districts must be construed in connection with the general school laws of the State of Missouri.

The primary records and contracts required of school districts within the State of Missouri are set out by the following statutes:

Section 165.213, provides for the organization of the board of directors, the appointment of the various officers of the board, and that the clerk shall keep a correct proceeding of all meetings of the board;

Section 165.220, sets out in detail the duties of the clerk of the school district;

Section 165.273, provides for the manner of consolidation of school districts and of the notices which are required thereunder;

Section 165.320, provides for the organization of the board and the duties of the officers in six-director districts and provides that the duties of the secretary

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or clerk shall be the same duties as those set forth for other districts as enumerated in Section 165.220, and other sections concerning common school districts;

Section 165.237, provides that the clerk shall keep certain records which must be furnished to the county clerk and the county superintendent;

Section 163.140, provides for an audit report which must be made public;

Sections 432.070 and 432.080 provide the manner in which a school district must execute contracts and that duplicate copies of every contract which is entered into by a school district must be filed in the office of the county clerk or in such office or with such officer of the school district or other municipal corporation as may be charged with the keeping of the contract.

The above list is not intended to be all inclusive, however, the above sections are the main statutes concerning records and contracts of school districts which are required to be maintained, and we must now determine if any of the above records and contracts are open to inspection by the general public.

In regard to what may be termed public records, Senate Bill 284, 71st General Assembly, enacted in 1961 as Sections 109.180 and 109.190, provide as follows:

"Section 1. Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement.

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"Section 2. In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any person has the right of access to the records, documents or instruments for the purpose of making photographs of them while in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The work shall be done under the supervision of the lawful custodian of the records who may adopt and enforce reasonable rules governing the work. The work shall, where possible, be done in the room where the records, documents or instruments are by law kept, but if that is impossible or impracticable, the work shall be done in another room or place as nearly adjacent to the place of custody as possible to be determined by the custodian of the records. While the work authorized herein is in progress, the lawful custodian of the records may charge the person desiring to make the photographs a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done."

From a reading of this statute it may be seen that if school district records and contracts may be said to be either state, county or municipal records kept pursuant to the statute, they are then such records as are contemplated by Senate Bill 284, 71st General Assembly, enacted 1961, and are open to personal inspection at any reasonable time by citizens of the State of Missouri.

However, before even considering the effects of Senate Bill 284, 71st General Assembly, it is our opinion that the records and contracts required to be kept by statute are public records and are available for inspection.

The 1943 case of State ex rel Kavanaugh vs. Henderson, 169 S.W. 2d 389, in speaking of records required to be kept by statute held that when any record was required to be kept it became a public record and open to inspection. It is there stated, l.c. 392:

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"In all instances where, by law or regulation, a document is required to be filed in a public office, it is a public record and the public has a right to inspect it. 53 Corpus Juris, Section 1, Pages 604 and 605; Clement v. Graham, 78 Vt. 290, 63 A. 146. Ann.Cas. 1913E, 1208; Robison v. Fishback, 175 Ind. 132, 93 N.E. 666, L.R.A. 1917B, 1179, Ann.Cas. 1913B, 1271; State ex rel. Eggers v. Brown, 345 Mo. 430, 134 S.W. 2d 28."

To the same effect is the case of Disabled Police Veterans Club vs. Long, 279 S.W. 2d 220, where it is stated, l.c. 223:

"[6] Independently of statute the term public records covers not only papers expressly required to be kept by a public officer but all written memorials made by a public officer within his authority where such writings constitute a convenient, appropriate or customary method of discharging the duties of the office. International Union, etc. v. Gooding, 251 Wis. 362, 29 N.W.2d 730, 735; Conover v. Board of Education, etc., 1 Utah 2d 375, 267 P. 2d 768, 770; People v. Shaw, 17 Cal. 2d 778, 112 P. 2d 241, 259.

"[7] Generally, any writing or document constituting a public record is subject to inspection by the public. State ex rel. Kavanaugh v. Henderson, supra. Nor is it essential that the inspection of public records be limited to persons who have some legal interest to be subserved by the inspection. Neither does it detract from the right to inspect public records that it is done for others for compensation. State ex rel. Eggers v. Brown, etc., 345 Mo. 430, 134 S.W.2d 28. And the right to inspect carries with it the right to make copies. State ex rel. Conran v. Williams, 96 Mo. 13, 19, 8 S.W. 771.

"[8] This right to inspect and to copy

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public records is not an unlimited right. It is subject to such reasonable regulations as may be imposed to prevent undue interference with the proper functioning of the public officials involved. State ex rel. Eggers v. Brown, supra."

In Missouri as early as 1888 our Supreme Court in the case of State ex rel Conran vs. Williams, 96 Mo. 13, 7 S.W. 771, held that any record required to be kept was a public record and thereby open to inspection by the public. From other jurisdictions we find the case of Conover vs. Board of Education of Nebo School District (1954), 267 P. 2d 768, which held that the minutes of a school board meeting were public records and open to public inspection, stating therein, after citing authorities to the contrary, at l.c. 770:

"\* \* \* We believe, however, that the more pertinent cases are found in a long line holding that whenever a written record of a transaction of a public officer in his office is a convenient and appropriate mode of discharging the duties of his office, and is kept by him as such, whether required by express provisions of law or not, such a record is a public record.\* \* \*"

The court then continued, at l.c. 771:

"The truth about official acts of public servants always should be displayed in the public market place, subject to public appraisal \* \* \*"

Although there are cases to the contrary, it is believed that the above cases present the sounder view and in light of the right of the general public to know the actions of their public officials the records and contracts required by statute to be maintained by a school district are public records and as such the public has the right to inspect them, which right includes the privilege to copy them subject to reasonable regulations of the official custodian.

Having determined that the records and contracts re-

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quired by statute to be kept by school districts, are public records and subject to inspection by the public, we must now determine if they are such records and contracts as contemplated by Section 109.180 and 109.190, RSMo. Cum. Supp. 1961, and in this regard we must determine whether these records and contracts may be rightly termed state, county or municipal records. To do this it is first necessary to determine the status of school districts, for the answer to their status will determine whether their records come within the purview of the above statute.

It is stated in the case of *State ex inf McKittrick vs. Whittle*, 333 Mo. 705, 63 S.W. 2d 100, 1.c. 102, citing *City of Edina to use vs. School District*, 305 Mo. 452, 276 S.W. 112, 1.c. 115:

"Under the Constitution of 1875, the public schools have been intrenched as a part of the state government and it is thoroughly established that they are an arm of that government and perform a public or governmental function and not a special corporate or administrative duty. They are purely public corporations, as has always been held of counties in this state."

It is evident from this statement and from numerous other early Missouri cases that a school district has for a long period of time been classed as a quasi-public or governmental corporation. It may be termed a civil subdivision of the state which is formed for the purpose of aiding in the governmental function of the education of our children.

While there are many older cases in Missouri which hold that a school district is not a "municipality" or a "municipal corporation" it is believed that the more realistic and better view is that set forth in *Laret Investment Company vs. Dickmann*, 345 Mo. 449, 134 S.W. 2d 65, wherein it is stated, 1.c. 68:

"The term 'municipal corporation' is sometimes used in a strict sense to designate a corporation possessing some specified power of local government. In a broader sense it includes public, or quasi public, corporations designed

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for the performance of an essential public service. See Dillon on Municipal Corporations, Fifth Ed. Sec. 32.

"This court has adopted the broader definition. In State ex rel. Caldwell v. Little River Drainage District, 291 Mo. 72, loc. cit. 79, 236 S.W. 15, loc. cit. 16, we said: 'In its strict and primary sense the term "municipal corporation" applies only to incorporated cities, towns, and villages, having subordinate and local powers of legislation. Heller v. Stremmel, 52 Mo. 309. But in the larger and ordinarily accepted sense the term is applied to any public local corporation, exercising some function of government, and hence includes counties, school districts, townships under township organization, special road districts and drainage districts.'

"See also State ex rel. Kinder v. Little River Drainage District, 291 Mo. 267, 236 S.W. 848; Grand River Drainage District v. Reid, 341 Mo. 1246, 111 S.W.2d 151; State ex rel Caldwell v. Little River Drainage District, 291 Mo. 72, 236 S.W. 15; Harris v. William R. Compton Bond Co., 244 Mo. 664, 149 S.W. 603.

"The broad definition of a municipal corporation requires that it be formed for the purpose of performing some governmental function. \* \* \*"

The 1941 case of Russell vs. Frank, 348 Mo. 533, 154 S.W. 2d 63, a case in which the legality of a school tax was questioned, stated that a school district is a municipal corporation, and in doing so stated as follows, l.c. 67:

"Appellants also contend that even though this tax be not for building purposes it is authorized under the general powers of the legislature to levy taxes for state purposes non-municipal in their nature.

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An elaborate argument, with the citation of many authorities, is made to sustain this point. It will be unnecessary to analyze all of the cases cited because the argument is squarely opposed to the express language of the constitutional provision here involved. The section above cited imposes a special and specific limitation on school taxes. The tax in this case was levied not by the state but by the school district, which is and was a municipal corporation as we have defined that term in *Laret Investment Co. v. Dickmann*, 345 Mo. 449, 134 S.W. 2d 65. The very purpose for which such municipal corporation is created is that of the maintenance of a school system. \* \* \*

The same reasoning as set forth in the *Russell and Laret* cases, supra, was sustained in our Supreme Court in *St. Louis Housing Authority vs. City of St. Louis*, 239 S.W. 2d 289. It is there said, l.c. 294-295:

"\* \* \* Municipality now has a broader meaning than 'city' or 'town', and presently includes bodies public or essentially governmental in character and function and distinguishes public bodies, such as plaintiff, from corporations only quasi-public in nature. 42 C.J. p. 1413; 61 C.J.S., Municipal, page 945; *Curry v. Sioux City Dist. Tp.*, 62 Iowa 102, 17 N.W. 191. But the two terms (municipality and municipal corporation) are often interchangeably used. Likewise, 'municipal corporation', in the broader sense now includes public corporations created to perform an essential public service and 'is applied to any public local corporation exercising some function of government'. 'Municipal corporation' now also includes a corporation created principally as an instrumentality of the state but not for the purpose of regulating the internal local and special affairs of a compact community. \* \* \*

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Also, school districts have been termed by our federal courts as municipal corporations; *Harrison vs. Hartford Fire Insurance Company of Hartford, Connecticut*, 55 F. Supp. 241.

The views as set out above concerning the municipal status of school districts is reflected to some extent in textbooks on municipal corporations. *Dillon on Municipal Corporations, Fifth Edition, Section 32; the Law of Municipal Corporations by Eugene McQuillin (1949), Volume 1, Section 207, page 451.*

As may be seen from the above cases, school districts may be classed as "municipalities" or "municipal corporations" (the terms being used interchangeably). This being so, it would follow that the records and contracts required by statute to be kept would be included within that class of records contemplated by Sections 108.180 and 108.190, RSMo. Cum. Supp. 1961. This is all the more so when we look at the evil and the mischief intended to be corrected by the enactment of these two sections. It is evident that this more liberal interpretation of the term "municipality" or "municipal corporation" is only just and correct.

#### CONCLUSION

Therefore, it is the opinion of this office that:

1. The records and contracts required by statute to be maintained by school districts are public records and are therefore subject to inspection at all reasonable times.

2. School districts within the State of Missouri may be termed "municipalities" or "municipal corporations" and therefore the records of such school districts required by the statutes to be maintained are such records as contemplated by Sections 108.180 and 108.190, Cum. Sup. 1961.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert R. Northcutt.

Very truly yours,

THOMAS F. EAGLETON  
Attorney General