

SCHOOLS & SCHOOL DISTRICTS: when, does the present terms of the County Board of Education of a third class County expire, under the provisions of paragraph four (4) of the new section 165.657?

COUNTY BOARDS OF EDUCATION: In third class Counties with two (2) County Court Districts, and under the provisions of paragraph five of said statute, may the voters in one County Court District vote on candidates in the other County Court District? Does the Legislature have the power to terminate or shorten the term of a properly elected and serving County School Board member?

January 10, 1964

Opinion No. 360  
1963



Honorable Darold W. Jenkins  
Prosecuting Attorney  
Saline County  
Marshall, Missouri

Dear Mr. Jenkins:

This opinion is rendered in response to your request of August 27, 1963, for an official opinion of this office. Your inquiry, which relates to Senate Bill No. 327 of the 72nd General Assembly which repealed and re-enacted Section 165.657, RSMo, is threefold:

1. "When . . . do the present terms of the County Board of Education of a third class County expire, under the provisions of paragraph four (4) of the new section 165.657?"
2. " . . . in third class Counties with two (2) County Court Districts, and under the provisions of paragraph five (5) of said statute, may the voters in one County Court District vote on candidates in the other County Court District?"
3. "Does the Legislature have the power to terminate or shorten the term of a properly elected and serving County School Board member?"

I.

Your first and third inquiries are closely related, hence we shall discuss them together.

Honorable Darold W. Jenkins

The County Board of Education set up by Section 165.657, RSMo 1959, is a creature of the Legislature, As such, the Legislature may modify or abolish it as may seem necessary unless prohibited by the Constitution.

"In this state our courts always have recognized and applied the doctrine supported by the great weight of authority in America that no one can acquire a vested right in an office established by the legislative department of a state or municipality. All offices are created for the public good, and the rights of their incumbents are subordinate and inferior to that prime object. The power to create, unless restrained by law, includes the power to abolish, and an officer elected or appointed even for a definite term takes office with the implied understanding that the power which created the office may abolish it before the expiration of his term, in which event he will find himself out of office. \* \* \*" Sanders v. Kansas City, 162 SW 663, 665.

Accord: State ex rel. Tolerton v. Gordon, 236 Mo. 142, 139 SW 403, 407; Higginbotham v. Baton Rouge, 306 U.S. 535, 538. Thus, the Legislature has the power to end the terms of County Board of Education members serving under Section 165.657, RSMo 1959.

The prior law, Section 165.657, RSMo 1959, created in all counties boards of education of identical membership, terms, and method of selection. Under Section 165.657, RSMo 1959, a six-member County Board of Education was selected by the members of the school district boards. Two members were selected each year to serve a three year term. This same scheme was used in every county.

Senate Bill No. 327 substantially changes this statute. It sets up not one scheme to be used in all counties but two schemes, one for counties of the first class (Senate Bill No. 327, §§ 1-3), another scheme for counties of the second, third and fourth class (Senate Bill 327, §§ 4-7). The scheme to be used in first class counties is substantially a continuation of the scheme the prior law applied to all counties.

Honorable Darold W. Jenkins

However, the new scheme to be used in second, third, and fourth class counties is significantly different. The new scheme provides for boards of education elected by popular vote. This radically departs from the method of selection used under the prior law. The significance of this change is manifest by the section of the Act which provides for the entire membership of the board to be elected at the next annual school election Senate Bill No. 327, §5.

Although the existing boards of education in second, third and fourth class counties are not abolished by express words of Senate Bill No. 327, this is its necessary implication. The new law provides for the selection of the entire membership of the board by a fundamentally different method, popular vote. We therefore conclude that Senate Bill No. 327 creates new boards of education in all second, third and fourth class counties and that the prior boards cease to exist with the election of the new boards "at the annual school election next following the effective date of this act"; namely, April 7, 1964.

We note one exception to the above conclusion. Senate Bill No. 327, §7 provides:

"7. In the event there is only one school district in any county, the board of education for that district shall serve as the county board of education."

Thus, in counties to which section seven, supra, applies, the old county board of education ceases to exist on the effective date of Senate Bill 327 and the school district board serves as the county board.

## II

We turn now to your second inquiry, to wit: under Senate Bill No. 327, §§ 4-7 may the voters of one county court district vote on candidates to be elected from the other county court district? For convenient reference, we shall here set out the provisions of sections four and five of Senate Bill No. 327, to wit:

"4. There is created in each second, third and fourth class county in this state a county board of education whose members shall be elected by popular vote at the annual school election held on the first Tuesday in April in each year. Each member shall be a citizen of the United States and of the State of Missouri;

Honorable Darold W. Jenkins

a resident householder of the county, and shall be not less than twenty-four years of age. Nominations for board members shall be filed with the secretary of the county board of education at least thirty days before the election. The county board of education shall prepare ballots and publish notice for such election in the same manner as for boards of education in school districts.

"5. At the annual school election next following the effective date of this act, six members shall be elected whose terms shall be determined at the first meeting of the board subsequent to the election as follows: In each county court district the member receiving the highest number of votes shall serve for three years; the member receiving the next highest number of votes shall serve for two years, and the member receiving the least number of votes shall serve for one year. Thereafter each member shall serve for three years. Not more than three members shall be elected from one county court district.

Senate Bill No. 327, §§ 4 and 5, creates in each county of the second, third and fourth class a county board of education of six members to be elected by popular vote. Senate Bill No. 327, §§ 4 and 5, expressly provides that a six-member board shall be elected by popular vote and that not more than three of the six members shall be elected from each county court district. But nowhere is there an express provision as to whether the voters of one county court district shall vote upon the candidates from both districts or only upon those candidates to be elected from their district. The intention of the Legislature, which is determinative of the meaning of this and every statute, is not found here in the express words of the statute. Therefore, it must be found by analysis of the other provisions of the new law and the prior law in light of reason and the rules of statutory construction.

We are of the opinion that the intention of the Legislature manifest in Senate Bill 327, §§ 4-7, is that the voters in each county court district shall vote only on those candidates for

Honorable Darold W. Jenkins

membership on the county board of education to be elected from their district and not those to be elected from the other county court district.

As we have noted supra, Senate Bill No. 327 sets up two distinct schemes, one for first class counties, the other for second, third, and fourth class counties. In the first scheme of the new law we find the limitation, "Not more than three members of the board shall reside in any county court district". (Emphasis added) Senate Bill No. 327, §2. Substantially the same words were used in the prior law. However, under the second scheme of the new law we find the limitation, "Not more than three members shall be elected from one county court district". (Emphasis added) Senate Bill No. 327, §5.

Obviously the limitation under the second scheme (second, third and fourth class counties) is not a requirement merely that three of the members be residents of each county court district. If the Legislature had intended merely a residence requirement, the words, "reside in", as were used in the prior law and the first scheme of the new law would have better expressed such an intent.

Furthermore, it is a rule of statutory construction that where language used in one section is different from that used in other sections of the same statute and different from that used in a prior statute, it is presumed that such language is used with a different intent. Wine v. Commonwealth, Mass, 17 N.E. 2d 545 [6]. The words, "reside in" and "elected from", manifest a difference in the first and second schemes of Senate Bill 327.

It is clearly expressed under the prior law and under the first scheme (first class counties) of the new law that all of the electors may vote on all of the members of the county board. Whether or not the same is true under the second scheme of Senate Bill No. 327 is your inquiry. Both of the schemes under the new law and the scheme of the prior law provided for county board members to be elected. In this respect all schemes are alike. Under the prior law and under the first scheme of the new law the electors are the members of the boards of the school districts. Under the second scheme of the new law, the electors are the people, i.e. a direct popular vote.

If under the second scheme (second, third and fourth class counties) of Senate Bill No. 327 all electors of the county may vote on all members of the county board, the sentence "Not more than three members shall be elected from one county court district", would be nothing more than a residence requirement, if that. But, we have already established that it is not. The words "elected from" are only consistent with the alternative construction; namely, that under the second scheme the electors

Honorable Darold W. Jenkins

of each county court district shall vote upon only the members of the county board to be elected from their district. The change of the words, "reside in", of the prior law to the words "elected from", of the new law are significant of the Legislatures intent. The one construction of Senate Bill No. 327, §§ 4-7, consistent with this intent is that three members of the county board shall be selected by the people of each county court district.

Senate Bill No. 327 limits each county court district to three of the members of the board. Under the first scheme each membership is voted upon separately, each being elected by a majority vote. However, under the second scheme if the members were selected by the voters of the entire county, those candidates who receive the greater number of votes may not always become the elected members. This is so because under the second scheme all members will be elected simultaneously. Let us illustrate the possible anomalous results by an example:

Assume: the candidates are A, B, C, D, E, and F, w, x, y, and z. Candidates A through F are from county court district one and candidates w through z are from district two. The total votes from each district are:

<u>Candidate</u>	<u>Votes District One</u>	<u>Votes District Two</u>	<u>Total</u>
A	None	1,200	1,200
B	500	600	1,100
C	700	310	1,010
D	950	50	1,000
E	600	300	900
F	500	300	800
w	700	None	700
x	100	500	600
y	400	50	450
z	10	400	410

Applying three-member limit to such a hypothetical election would mean: The members of the county board of education would be A, B, C from district one and w, x, and y from district two. A, though he received no votes in his own district was elected -- actually by the voters of district two. The converse is true of y. More voters in district one preferred D to represent them than any other candidate from that district, and more voters county wide preferred D than w, x, and y, yet, D does not become a member. Nor do ~~E~~ E and F become members although they received more votes than w, x, and y. Various other examples could

Honorable Darold W. Jenkins

be given of possible anomalous results occurring from members of the county board being elected by voters of the entire county.

If the candidates from each county court district are voted upon by the voters of their district, the members elected will directly relate to the votes they receive and it will not be possible for the voters of one district to elect the members from the other district. The anomalies discussed supra will not occur.

We are aware that if one county court district was substantially more populous than the other then the membership the board would not exactly represent the will of the majority of voters in the county. However, the three-member per county court district limitation of Senate Bill No. 327 §2 and §5, manifests a legislative intent that not only the interests of the majority but also the interests of each county court district are to be represented by the members of the county board. In our opinion, election of three members by each county court district better harmonizes with this intent and purpose.

One may foresee several possible abuses if the voters of one county court district could vote upon the members to be elected from the other district. For example: if one county court district was more populous than the other, as is the case in many counties having one large urban area, the larger district could select not only the members to be elected from their district but also the members to be elected from the other district. Or if the election were closely contested in one district, a minority in the other could control the membership of the board.

We also note ~~the~~ the provisions of Senate Bill No. 327, §5, for determining the duration of the initial terms. The opening phrase, "In each county court district \* \* \*," of itself indicates a legislative plan of elections within each district.

We therefore, conclude that the Legislature in enacting Senate Bill No. 327, §§ 4-7 (applicable to second, third, and fourth class counties) intended that the voters of each county court district should elect three members from their district and that the members of the county board of education are not to be elected by a vote of the entire county.

Honorable Darold W. Jenkins

CONCLUSION:

Therefore, it is the opinion of this office that:

1. The Legislature has the power to abolish the county boards of education created by Section 165.657, RSMo 1959.

2. Senate Bill No. 327 of the 72nd General Assembly abolishes the county boards of education created by Section 165.657, RSMo 1959, in counties of the second, third and fourth class as of April 7, 1964, except as to those counties coming within §7, which are abolished as of the effective date of the Act.

3. In counties of the second, third and fourth class, under Senate Bill No. 327, §§4-7, the three members to be elected from each county court district shall be elected only by the voters of their respective districts and not by the voters of the county as a whole.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Louis C. DeFoe, Jr.

Yours truly,

---

THOMAS F. EAGLETON  
Attorney General

LCD/dg