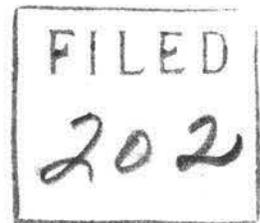


SCHOOLS: 1. Where all members of the county
COUNTY BOARD OF EDUCATION: board of education (Section 165.657
NOTICE: et seq., RSMo) have actual knowledge
of the time, place, and purpose of a
meeting reasonably in advance, failure to mail written notice as
prescribed by Section 165.663, RSMo 1959, does not invalidate
the meeting. 2. If no notice (either that prescribed by Section
165.663 or any other) is given of a meeting of a county board of
education and all of the members do not attend and the absent
members could have attended if notified, then the meeting and any
transactions thereat which require board action are invalid.

August 31, 1964

Opinion No. 202

Honorable Frank Conley
Prosecuting Attorney
Boone County
Columbia, Missouri



Dear Mr. Conley:

This opinion is issued in response to your request of
May 15, 1964.

You inquire as to what notification is necessary for a
valid meeting of the county board of education. Specifically
you inquire as to the effect of failure to give notice by the
method prescribed in Section 165.663, RSMo 1959.

From your letter, supplemented by our telephone conver-
sation, we are informed of the following: On April 7, 1964,
six members of the county board of education newly created
by Section 165.657 (4), RSMo 1963 Supp., were elected by
popular vote. On April 10, 1964, some members of the former
county board (existing under Section 165.657, RSMo 1959) and
some of the members of the new board assembled. No notice,
written or oral, was given to anyone that the new board would
meet on that date. The members of the old board were verbally
notified at an earlier meeting that the old board would meet
on that date. No notice by the method prescribed in Section
165.663 was given of a meeting of either the old or the new
board. Two persons who were members of both the old and new
boards were not present on April 10. All other members of
both boards were present. On April 10 officers of the new
board were purportedly elected.

Honorable Frank Conley

The county board elected April 7, 1964, was not a continuation of the former board. Section 165.657 (4), RSMo 1963, Supp., created a new body in second, third and fourth class counties to be selected by popular rather than representative election. All six members of the new body were elected April 7, 1964. Thereafter the prior body existing under Section 165.657, RSMo 1959, ceased to have official existence. Thus we must consider the events of April, 10 as involving two separate and distinct boards and two separate meetings.

We are of the opinion that where no notice of the meeting is given and not all of the members attend and the absent members could have attended, if notified, then the meeting and any transactions thereat requiring board action are invalid.

The affairs of a school district which require board action must be transacted at a valid board meeting.

"The separate and individual acts and decisions of the director members, even though they be in complete agreement with each other, have no effect. They must be assembled and act as a board." State v. Consolidated School Dist. No. 3, Mo. App., 281 SW2d 511, 513.

This office has ruled that two directors of a common school district cannot function without proper notice to the third member. See Opinion No. 51 (5-17-38) to Charles F. Lamkin, Jr., enclosed.

As stated in Corpus Juris Secundum:

"As a general rule, which, in some jurisdictions, has been enacted into an express statutory requirement, a proper call or notice of a meeting of a board of education, or of directors, trustees, or the like, of a school district or other local school organization, must be given or communicated to each member of such board in advance of such meeting, in order to render proceedings had thereat valid, and a want of such notice to any member who does not attend the meeting will invalidate the action taken, * * *." 78 C.J.S., Schools § 1236.

Honorable Frank Conley

Section 165.663, RSMo 1959, provides for notice of meetings of the county board of education as follows:

"Written notice of any meeting shall be given by mail to each member of the board by the secretary at least six days before the date of any meeting."

Therefore, an essential prerequisite of a valid meeting of a board of education is notice to all members of the board who can possibly attend.

Having concluded that notice to the members of the county board of education is a requisite for a valid meeting, must the notice be given only in the manner prescribed by Section 165.663? We are of the opinion that where all members of the county board of education have actual knowledge of the time, place and purpose of a meeting reasonably in advance of the meeting that failure to give notice in the manner prescribed by Section 165.663 does not invalidate the meeting.

Having notice basically denotes a state of knowing. For certain purposes the law infers (rebuttably or conclusively) that if certain acts have been done then a party has knowledge e.g., recording of instruments, notice by publication. This by-force-of-law notice we term constructive notice. To distinguish constructive notice from the basic concept of notice, the term actual notice is used. Constructive notice has been described as "the law's substitute for actual notice" 39 Am. Jur., Notice § 7. Constructive notice is the creation of day to day expediency.

To one giving notice, constructive notice is utile and necessary, nevertheless it is inferior to actual notice from the point of view of the person charged with having knowledge. If the purpose of a notice is to give another knowledge, giving actual notice best achieves the purpose. Thus, where actual notice is given reason requires that the failure to give constructive notice be considered as without consequence. To conclude otherwise would be to reason that where substitutes are permitted the use of the real is not sufficient.

The notification prescribed by Section 165.663 is to be conveyed by mail. Generally speaking, under this statute proof of mailing notice would satisfy the requirement of notice of the meeting whether or not the notice was received. 66 C.J.S., Notice § 18 (e). Hence, the notice prescribed by Section 165.663 is constructive as opposed to actual notice. It is an expedient substitute for actual notice.

Honorable Frank Conley

The purpose of Section 165.663 is twofold. The notification is primarily to give the members of the board advance knowledge of the time and place of board meetings. The secondary purpose of Section 165.663 is to allow the expediency of constructive notice by mail. Could it be reasonably argued that placing a notice in a mail box with the contingencies of the notice being lost in transit, misdelivered or the addressee being absent or removed, is a more effective method of conveying the facts than direct personal communication? We think not.

We note that in some circumstances actual notice does not excuse compliance with formal notice requirements. In these cases notice is not merely to give knowledge but also to make and preserve a formal record, e.g., notice of appeal. See: Merrill on Notice §§ 505 et seq.

With these rules in mind let us examine the notice prescribed by Section 165.663 (quoted supra, p. 3). Nothing in Section 165.663 requires the preservation of the notice. We do not see any formal significance in the document per se. The purpose of the notice there prescribed is primarily to give knowledge and not to make a record. We conclude that Section 165.663 does not create a formal notice requirement such as cannot be satisfied by actual notice.

You have informed us that all the members of the old county board were notified at the last preceding meeting of the board of the April 10 meeting. Under such facts it is our opinion that failure to mail notice as prescribed by Section 165.663 did not invalidate the meeting of the old board held April 10, 1964. The members of the old board had actual notice. This was sufficient.

Note by analogy the case of Johnson v. Dye, Mo. App., 127 SW 413, which involved the meeting of a common school district board. In that case the court held that where the members of the school board agreed at a lodge meeting to hold a board meeting on a certain date, that meeting was regularly called and the absence of the president and clerk did not affect the legality of the meeting.

You have informed us that no notice, under Section 165.663 or otherwise, was given of a meeting of the new board. Thus, the events of April 10 did not constitute a valid meeting of the new board unless by some factor notice was waived or excused.

Honorable Frank Conley

You do not inform us that notice was waived. Thus, that possibility is eliminated and will not be discussed further.

The law often excuses notice where all the members not notified are actually present. However, from your information only four of the six members of the new board were present. Attendance by or notice given to a majority or a quorum is not sufficient.

The county board of education is a deliberating body. Section 165.673 obligates the board to study, prepare and revise reorganization plans, to approve audits and budgets, to advise with school officials. Also the board selects its own officers. These matters require deliberation and the exercise of judgment. The decisions of the board are the joint and collective judgment of its members. Every member of the board has the right to participate by discussion, persuasion, and vote in forming the decisions of the board. Also it should not be forgotten that the members of the board are the representative voices of the citizens. To allow some members of the board to transact business without giving notice to the other members would be contrary to these rights and interests. See: McQuillan on Municipal Corporations, 3rd Edition, §§ 13.08, 13.37. Thus the presence of four of six members of the new board on April 10 did not excuse notification.

Notice was given to the members of the old board of the meeting of April 10, 1964. Since the county board of education elected April 7, 1964, was not a continuation of the prior board, notice to the old members of the meeting of the old board is not notice nor excuses notice to the new members of a meeting of the new board. Each board and each meeting must be considered separately.

Where the time and place of a meeting is prescribed by statute the courts have held this alone sufficient notice. 78 C.J.S., Schools, § 133 (b). As to the first meeting of the board, Section 165.660 states:

"The said county board of education shall, within four days after its election, meet in the office of the county superintendent of schools and organize by electing one of its members as president."

Honorable Frank Conley

Although this statute prescribes the place of the meeting, it is indefinite as to the date and time (within a four day period) of when the first meeting shall be held. Therefore, it is our opinion that Section 165.660 is not notice nor does it remove the obligation to give notice of the first meeting. (We note that Section 165.663 requires six days notice whereas Section 165.660 requires the first meeting to be held within four days of the election. However since no attempt was made to give notice under Section 165.663 it is not necessary for us to decide here the effect of the four day provision of Section 165.660 upon Section 165.663).

From the foregoing it appears that the members of the new county board were not notified, in any manner, written or oral, actual or constructive, of the purported meeting of April 10, 1964, and that notice was neither excused nor waived. We therefore conclude that no valid meeting of the new board was held.

Conclusion

It is the opinion of this office that:

1. Where all members of the county board of education (Section 165.657 et seq., RSMo) have actual knowledge of the time, place, and purpose of a meeting reasonably in advance, failure to mail written notice as prescribed by Section 165.663, RSMo 1959, does not invalidate the meeting.

2. If no notice (either that prescribed by Section 165.663 or any other) is given of a meeting of a county board of education and all of the members do not attend and the absent members could have attended if notified, then the meeting and any transactions thereat which require board action are invalid.

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

Very truly yours,



THOMAS F. EAGLETON
Attorney General

Encl.