

SCHOOLS:
SCHOOL DISTRICTS
STATE BOARD OF EDUCATION:
SCHOOL ANNEXATION:

Section 165.300, RSMo Supp. 1963, (after July 1, 1965, renumbered as Section 162.441) does not require approval by the State Board of Education of a school district annexation where the districts adjoin.

OPINION NO. 71

February 5, 1965



Honorable Charles G. Hyler
Prosecuting Attorney
County of St. Francois
Courthouse
Farmington, Missouri

Dear Mr. Hyler:

This opinion is issued in response to your request of January 18, 1965. You inquire:

"Does Section Five of 165.300 [RSMo Supp. 1963] require the State Board of Education to give written approval of the proposed annexation by the Desloge School District to the Bonne Terre School District before they can proceed with an election concerning this matter."

Subsection (5) of Section 165.300, RSMo Supp. 1963, states as follows:

"Any school district may annex to any high school district in the county in the manner provided by this section if, prior to the time the proposition is submitted to the voters of the district, the annexation is approved in writing by the state board of education."

The words "any school district" seemingly indicate that Subsection (5) applies to all school districts and hence one might conclude that all annexations must be approved by the State Board of Education. However, a reading of the full statute and a knowledge of the prior revision of this statute manifests the error of such a conclusion.

Section 165.300 as amended in 1963 has five subsections. Subsection (1) provides:

"Whenever an entire school district, or a part of a district, whether in either case it be a common school district, or a city, town, or consolidated school district, which adjoins any city, town, consolidated or village school district, including districts in cities of seventy-five thousand to seven hundred thousand inhabitants, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting or special election for said purpose by giving notice as required by section 165.200; * * * " (Emphasis added)

Subsection (2) provides for the certifying of the election results and the approval of the receiving district.

Subsection (3) provides for the transfer of property.

Subsection (4) provides for the form of ballot.

These first four subsections existed (with slight variation not material here) in Section 165.300 prior to the 1963 amendment. In 1963 Subsection (5), quoted supra, was added.

(Note that Section 165.300 will be renumbered after July 1, 1965, as Section 162.441.)

Subsection (1) authorizes any school district to annex to any six-director district which adjoins. Prior to 1963 it was held by the courts that the requirement that the districts adjoin was mandatory. See: Willard R-2 v. Springfield R-12, 241 MoApp 934, 248 SW2d 435, 442-443.

Section 165.300(1), prior to the 1963 amendment, authorized all districts to annex to an adjoining six-director district. The receiving district might or might not be one maintaining a high school. The annexing districts might be in different counties. No approval of the State Board was required. The amendment of 1963 did not change the provisions of Subsection (1) so far as material here.

Subsection (5), added in 1963, authorizes districts to annex only if: 1) the receiving district maintains a high school;

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2) both districts are in the same county; 3) the State Board approves. No requirement is made that the districts adjoin.

The word "adjoin" is the key. Where districts adjoin, they may annex as provided by Subsections (1) - (4). Where the districts do not adjoin, they may annex only if they meet the three additional requirements of Subsection (5).

As to your particular inquiry, if the school districts adjoin, they may annex without the approval of the State Board of Education; if they do not adjoin, Board approval is required.

The State Board of Education informs us that it has construed Section 165.300, both before and after the 1963 amendment, in accord with our conclusion here.

We are informed that the Desloge and Bonne Terre School Districts do adjoin. Thus, these districts may annex under Section 165.300 without approval of the State Board of Education.

CONCLUSION

Therefore, it is the opinion of this office that Section 165.300, RSMo Supp. 1963, (after July 1, 1965, renumbered as Section 162.441) does not require approval by the State Board of Education of a school district annexation where the districts adjoin.

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

Yours very truly,


NORMAN H. ANDERSON
Attorney General