

SCHOOLS:

ANNEXATION:

ELECTIONS:

TIME:

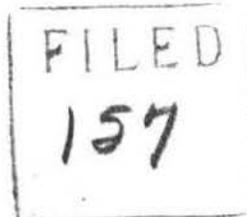
1. Where more than one petition to call an annexation election is presented to a school board, the board has a duty to order an election upon the first valid petition before the remaining petitions are acted upon;

2. Where an annexation election has been held and an annexation offered, the receiving district must act upon the annexation within a reasonable time. A delay of nine months in acting upon an annexation offer is not unreasonable as a matter of law, but depending on the circumstances of each case, may be considered unreasonable by a court.

OPINION NO. 157

August 4, 1965

Honorable Alden S. Lance
Prosecuting Attorney
415 West Main Street
Savannah, Missouri



Dear Mr. Lance:

This opinion is issued in response to your request for an official ruling.

You make two inquiries:

- 1.) Where three petitions to call annexation elections are presented to the school board at different times, may the board ignore the first two petitions and order an election upon the third and last filed petition?
- 2.) Where a district has held an election and approved annexation of the whole district to another district, would acceptance by the board of the annexing district be valid if delayed until nine months after the election and offer to annex?

I.

Your first inquiry was answered by this office in Opinion No. 38 issued 4-27-59 to Warren E. Hearnes (copy enclosed). We ruled therein that where more than one petition to call an annexation election is submitted to a school board, it is their duty to call an election on the first petition received.

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In State ex rel. Kugler v. Tillatson, Mo., 312 S.W.2d 753, the Missouri Supreme Court stated, regarding annexation elections, at l.c. 756: "Assuming that a concededly valid petition is presented; then the duties of the Board are merely ministerial; namely, to post the notices and present the proposition to the voters."

You have not informed us that any of the three petitions were invalid. It is our opinion that the school board had a duty to call an election upon the first valid petition.

II.

You inform us that the annexation election was held in June, 1964, and acceptance by the receiving district was made in March, 1965.

Section 165.300(2), RSMo. Supp. 1963 (then in effect), provides that after the annexation election is held:

"2. Should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of such city or town school district shall from that date be changed so as to include said territory, and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action."

(NOTE: Section 165.300 was renumbered by the new school code effective July 1, 1965, and is now Section 162.441, RSMo. Supp. 1963 Appendix. The new law authorizes only annexation of whole districts.)

The statute does not specify a time within which the annexation must be accepted by the annexing district. Thus, a reasonable time is implied.

" * * * Although the section does not specify the length of time within which the board in the annexing district must act the law would supply the deficiency and require

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the board of directors to meet within a reasonable length of time to consider the advisability of accepting the released territory, so that no extended hiatus would occur in any event between the action of one board and the action of the other. In the meantime the original district in which the vote took place would be obligated to continue to maintain the schools, so that the provision of educational facilities would not be interrupted." State at inf. of Taylor v. Reorganized School District R-3, 257 S.W.2d 262, 266.

We are informed that the board of the annexing district about which you inquire met soon after the election and voted to table the annexation request. Nine months after the election they again considered acceptance. Is this delay unreasonable?

In State at inf. of Taylor v. Reorganized School District R-3, quoted supra, the annexing district delayed acceptance two and one-half months. The court held this delay not unreasonable as a matter of law.

In Mullins v. Eveland, Mo.App., 234 S.W.2d 639, a petition seeking consolidation was filed with the county superintendent. He took no action for 18 months. The court held this delay to constitute abandonment of the consolidation.

Delay in pursuing a reorganization plan was considered in State ex rel. Dalton v. Reorganized District No. 11, Mo., 307 S.W.2d 501. The court held that the facts in each case must be examined to determine whether a delay in acting is unreasonable.

Based upon our review of the above cases we are of the opinion that a nine-month delay is not unreasonable as a matter of law. When all material facts are presented, a court may or may not hold this particular delay to be unreasonable.

The question here, of reasonable delay or not, is one of fact. As such, it can be properly decided only in an adversary proceeding where evidence can be heard and judged.

Therefore, this office cannot properly rule upon your second inquiry other than to provide the guidelines as set out above.

Honorable Alden S. Lance -

CONCLUSION

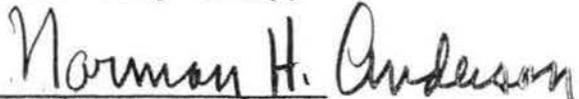
Therefore, it is the opinion of this office that:

1. Where more than one petition to call an annexation election is presented to a school board, the board has a duty to order an election upon the first valid petition before the remaining petitions are acted upon;

2. Where an annexation election has been held and an annexation offered, the receiving district must act upon the annexation within a reasonable time. A delay of nine months in acting upon an annexation offer is not unreasonable as a matter of law, but depending on the circumstances of each case, may be considered unreasonable by a court.

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

Yours very truly,


NORMAN H. ANDERSON
Attorney General

Enclosure