SCHOOLS: Subsection 1 of Section 162.096, RSMo 1969, does not authorize the State Board of Education to reconsider after January 15, 1971, assignments of non-operating districts lawfully made prior to that date.

March 2, 1971

FILED
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OPINION NO. 124

Honorable W. D. Hibler, Jr.
State Representative
Ninety-third District
Room 402
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Hibler:

This is in response to your request for an opinion of this office with respect to the following question:

> "I need an opinion on Section 162096 Missouri Revised Statute 1969. My question refers to the last three lines of the first paragraph of sub-section 1 of this statute.
>
> "What I want to know is whether, when an assignment of a non-operating district has been made and announced before January 15, 1971, is it possible for the State Board of Education to reconsider their decision and assign the non-operating district concerned to an operating district different than the one to which the announced assignment was made."

Subsection 1 of Section 162.096, RSMo 1969, states as follows:

> "Nonoperating districts to consolidate, when, failure, effect of -- districts to operate as six-director districts and consolidate, when, failure, effect of. -- 1. If any school district is not operating schools and has not combined its territory with that of one or more districts which do operate schools through one of the procedures provided by law within one

> year after August 25, 1969, the state board of education shall assign the territory of the district to one or more districts which operate schools. The assignments shall be announced not later than January 15, 1971, and shall become effective on July 1, 1971."

We assume that your question is directed to the last sentence of Subsection 1 of Section 162.096 which reads as follows:

> ". . . The assignments shall be announced not later than January 15, 1971, and shall become effective on July 1, 1971."

We interpret your question to be whether the State Board of Education can reconsider and possibly change after January 15, 1971, but before the effective date of the assignments -- July 1, 1971 -- assignments lawfully made prior to January 15, 1971.

The primary rule of statutory construction is to ascertain from the language used the intent of the legislature and to put upon the language used its plain and rational meaning in order to promote its object. Donnelly Garment Co. v. Keitel, 354 Mo. 1138, 193 S.W.2d 577, 581 (1946). Primary emphasis must be placed on the language used and all words must be considered in their ordinary and plain meaning. Section 1.090, RSMo 1969; Christy v. Petrus, 365 Mo. 1187, 295 S.W.2d 122, 126 (1956); Playboy Club, Inc. v. Myers, 431 S.W.2d 228, 231 (Mo., 1968). When the language of the statute is explicit and unambiguous and its meaning clear and unmistakable:

> ". . . there is neither reason nor room for judicial construction . . . and, we find nothing in Section 443.430 (or in any related statute) which would indicate a legislative intent that the non-technical and commonplace language hereinbefore quoted from the cited statute should be construed otherwise than in its natural, plain and ordinary sense and meaning, or which would afford any legitimate basis for refusal to accept and apply that language honestly and faithfully . . . ." State ex rel. Hopkins v. Stemmons, 302 S.W.2d 51, 55 (Mo.App., 1957); State ex rel. Cobb v. Thompson, 319 Mo. 492, 5 S.W.2d 57, 59 (1928).

The plain and ordinary meaning of the last sentence of Subsection 1 of Section 162.096 would be that the State Board of Education shall announce the assignments not later than January 15, 1971. Certainly, there is no express authority granted to the State Board of Education

to announce assignments after January 15, 1971, or to change assignments after January 15, 1971.

However, it could be argued that if the direction to the State Board of Education to announce the assignments not later than January 15, 1971 is directory rather than mandatory, the State Board could reconsider and could change its assignments after January 15, 1971. The general rule is that the use of the word "shall" in a statute is construed to be mandatory. State ex inf. McKittrick v. Wymore, 119 S.W.2d 941, 944 (Mo., 1938). However, a statute fixing the time within which a public officer is to perform an official act regarding the rights and duties of others is directory, unless the nature of the act to be performed or phraseology of the statute is such that the designation of the time must be considered a limitation on the power of office. Mead v. Jasper County, 322 Mo. 1191, 18 S.W.2d 464, 465 (1929). In determining whether a particular statutory provision is directory or mandatory, the prime object is to ascertain the legislative intent from a consideration of the statute as a whole, bearing in mind its object and the consequences which would result from construing it one way or the other. State ex rel. Ellis v. Brown, 326 Mo. 627, 33 S.W.2d 104, 107 (1930); State ex rel. Hay v. Flynn, 235 Mo.App. 1003, 147 S.W.2d 210, 211 (1941); and State ex rel. Hanlon v. City of Maplewood, 99 S.W.2d 138, 141 (Mo., 1936).

In applying these rules to the instant case, we must determine the legislative intent behind the phrase in Section 162.096: "The assignments shall be announced not later than January 15, 1971. . .". It is the belief of this office that the legislature chose a date five and one-half months prior to July 1, 1971, for announcing the assignments of non-operating districts so that the receiving districts would have ample notice that they would be responsible for additional territory at the beginning of the school year 1971-1972. For receiving districts to have this information well in advance of the beginning of the 1971-1972 school year (July 1, 1971) is necessary for planning purposes. Most of the arrangements for a school year -- financial, personnel, transportation, etc. -- are made between January and July preceding the beginning of the new school year. For instance, under Section 165.191, RSMo 1969, it is the duty of the county superintendent of schools in each county of the State, in cooperation with the clerk of the board of the district, to prepare, not later than March 1 of each year, a detailed budget of estimated receipts and disbursements for the use of the officers and voters in connection with the problem of school tax rates. Furthermore, under Section 164.011 the school board of each district is required to prepare annually an estimate of the amount of money to be raised by taxation for the ensuing school year and the tax rate required to produce that amount. Most school districts prepare this estimate long before the date it is due -- July 15 -- so that a determination can be made whether it will be necessary to seek voter approval of a school tax rate

increase. Also, most school boards must make a decision early in the calendar year whether it will need additional teachers for the ensuing school year. Under Section 168.126, probationary teachers must be advised on or before April 15 whether they will be retained by the school district. School transportation plans must also be made prior to July 1, particularly if new buses must be obtained.

Based on the foregoing, we conclude that the legislature instructed the State Board of Education to make the assignments of non-operating districts prior to January 15, 1971, so that all those affected by the assignments would have ample notice and could plan accordingly. If the State Board of Education were permitted to reconsider these assignments and possibly change them after January 15, uncertainty would be injected into the situation which we believe is contrary to the legislative intention.

CONCLUSION

Therefore, it is the conclusion of this office that Subsection 1 of Section 162.096, RSMo 1969, does not authorize the State Board of Education to reconsider after January 15, 1971, assignments of non-operating districts lawfully made prior to that date.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Very truly yours,

JOHN C. DANFORTH
Attorney General