

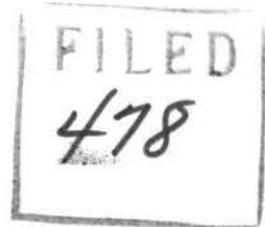
BONDS:
SCHOOLS:

When the voters of a reorganized school district have approved building bonds, such bonds may be issued after subsequent approval by the voters of a reorganization plan which will result in the creation of a new district if the bonds are presented for registration before the board of directors of the new district organizes pursuant to Section 162.301, RSMo 1969.

OPINION NO. 478

December 15, 1971

Honorable Christopher S. Bond
State Auditor
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Bond:

This is in response to your request for an opinion on the following question:

"Does the board of education of a school district continue to have authority to issue building bonds of such district subsequent to an election at which voters approved a plan of reorganization of the school district and prior to the holding of an election to select a new board of education?"

"Shall the State auditor register such bonds?"

We understand the voters of a reorganized school district (herein referred to as the "old reorganized district") approved a bond issue September 21, 1971. On November 30, 1971, the voters of an area comprising all of the old reorganized district and a common school district approved a plan of reorganization pursuant to Section 162.191, RSMo 1969; said plan having been submitted to them by the county board of education pursuant to Section 162.181, RSMo 1969. The old reorganized district and the common district will constitute a new reorganized district. Directors for the new district will be elected at an election to be held December 20, 1971. As of the date of this opinion, the bonds of the old reorganized district have been approved by that district but have not yet been issued, pending registration by the State Auditor.

A review of the case law of this state reveals no decision directly in point to your first question of the opinion request. The statutory provisions for the commencement of existence of a new district and the dissolution of the old districts which become a part of a new district are not entirely clear. However, we are

Honorable Christopher S. Bond

of the opinion that the new district commences existence at the time its first board of directors organizes, which must be within four days after the directors are elected. See Section 162.301, RSMo 1969.

We believe that House Bill No. 468 of the 76th General Assembly, truly agreed to and finally passed and signed by the Governor, governs the election of the first board of directors for the new district. That bill provides:

"Section 1. Section 162.241, RSMo, 1969, is repealed and one new section enacted in lieu thereof, to be known as section 162.241, to read as follows:

"Section 162.241. If a proposal to form a six-director district under provisions of section 162.223 receives a majority of the votes cast on the proposition at the organization election, the state board of education or the county board of education, in the case of a district formed under provisions of sections 162.171 through 162.191, shall order an election in the district to be held not more than thirty days after the date of the election when formation of the district was approved. This election shall be for the purpose of electing six members to serve on the school board of the district. The election shall be conducted in the manner provided by sections 162.361 and 162.371 at the polling places selected by such persons or body in the county or counties charged with conducting such elections. A letter from the commissioner of education, delivered by certified mail, to the president of the county board of education of the county to which the district formed by provisions of section 162.223 is assigned shall be the authority for the county board to proceed with election procedures in the same manner as they would be performed by the district board of education were it in existence; but the costs of the election shall be paid from the incidental fund of the new district. Two directors shall be elected to serve until the next annual election, two to serve until the second annual election, and two to serve until the third annual election."

While it might appear from the first clause of the first sentence of that bill that it has reference only to consolidation of school

Honorable Christopher S. Bond

districts under Section 162.223, RSMo 1969, a procedure of no moment to this opinion, we believe the reference to Sections 162.171 through 162.191 in the first sentence of that bill indicates the bill has application to reorganization of school districts, the procedure we are concerned with in this opinion. Sections 162.171 through 162.191 are concerned with school district reorganization; and if House Bill No. 468 were read to only apply to consolidation under Section 162.223, the reference to Sections 162.171 through 162.191 would be meaningless.

Therefore, under House Bill No. 468, the directors of the newly reorganized school district are chosen thirty days after the election approving the plan of reorganization. That is the procedure that is being followed in the new district which will include the old reorganized school district which is the subject of this opinion.

We are of the opinion that prior to the election and qualification of the board of directors of the new district, the old district continues in existence with full power to perform all acts permitted by law, including the issuance of building bonds. If the board of directors of the old districts did not have such power, there would be a gap between the time a plan for reorganization was adopted and the organization of the first board of directors of the newly reorganized district. During such gap the schools in the area involved would have no governing body, a result we believe the legislature never intended. Having found that the old reorganized district continues in existence until the directors of the newly reorganized district assume office, we find no authority that would limit their power to issue bonds.

Therefore, you may proceed to register the bonds of the old reorganized school district if presented before the board of directors of the new district comprising the old district organizes pursuant to Section 162.301; provided you find the bonds to otherwise be in proper form.

CONCLUSION

It is the opinion of this office that when the voters of a reorganized school district have approved building bonds, such bonds may be issued after subsequent approval by the voters of a reorganization plan which will result in the creation of a new district if the bonds are presented for registration before the board of directors of the new district organizes pursuant to Section 162.301, RSMo 1969.

The foregoing opinion which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,


JOHN C. DANFORTH
Attorney General