SCHOOLS:
SCHOOL DISTRICT DIRECTORS
QUALIFICATIONS:

Annexation of portion of one school district to another; construction of requirement that director of school district be resident taxpayer of district.

March 24, 1947

FILED
1

Honorable George P. Adams
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Mr. Adams:

We are in receipt of your letter of March 20, 1947, requesting an opinion from this department, which reads as follows:

> "An issue has been raised and presented to me by the School District of Mexico relative to the eligibility of an announced candidate to become a director of the School District of Mexico if elected this coming April 1.
>
> "The issue is two-fold, namely, (1) is this candidate a resident taxpayer of, that is, does he reside within the territory embraced by the school district, and, (2) has the candidate paid, or will he have paid, a state and county tax within one year next preceding the election on April 1, as provided by Sec. 10469, Revised Statutes of Missouri, 1939.
>
> "The facts so far as I can ascertain them are as follows: Prior to July 7, 1903, the land upon which the candidate's residence is located, and in which he lives, was not embraced in, nor a part of the Mexico School District. On said July 7, 1903, the School Board of Mexico in called session passed the following motion:
>
> "'On motion the following territory having been released from the district to

which it belonged was added to the Mexico School District:

"'S.W. 1/4 of the S. E. 1/4 Section 13, Township 51, Range 9

"'Also the N.E.1/4 of the N.W. 1/4 and the West half of the N.E. 1/4 and the West half of the S.E. 1/4 Section 14, Township 51, Range 9.'

"The county surveyor states that part of the land released or transferred, towit, the Northeast fourth of the Northwest fourth of Section 14, Township 51, Range 9, contains the residence of the candidate.

"A committee from the School Board in the effort to make all investigation possible with respect to the aforesaid release or change of boundary made inquiry and they could find no records of School District #55 pertaining to change of boundary or transfer of the aforesaid land to the School District of Mexico, nor did the County Superintendent of Schools, nor the County Court have any records of School District #55 pertaining to the aforesaid change of boundary or release of the aforesaid land.

"The land above described was added to the Mexico School District by a projection into School District #55 in the formation of a 'T', and which territory as projected includes a scattered few residences, and the children living in such residences have been attending Mexico schools, so far as I know, from and since the above board minutes of the Mexico School District.

"Did the Mexico School District legally acquire the territory in question so as to make the candidate a 'resident' of that district? The candidate's property has been

> assessed as being in School District #55 and his 1946 taxes and prior taxes have been credited tp School District #55. Therefore, if you conclude that he is a legal resident of the Mexico School District is he a 'resident taxpayer' of said Mexico School District so as to be eligible for the office of director?
>
> "I will appreciate very much your opinion as to whether or not the candidate in question is a resident taxpayer of the Mexico School District and has paid a state and county tax 'within one year next preceding the election' to be held on April 1, 1947, under the above circumstances."

From our telephone conversation I understand that there are only two residents other than the candidate in the area which was annexed to the Mexico School District in 1903, and further, that the taxes paid by the other two residents have, since 1903, been credited to the Mexico School District; that the candidate's taxes were, until sometime between 1939 and 1941, credited to the Mexico School District, but after 1941 have been credited to School District No. 55.

The specific questions for our consideration are as follows: First, is the candidate a resident of the Mexico School District; and, second, is he a resident taxpayer within the meaning of the statute?

The statute setting up the requirements for school directors is Section 10469, R. S. Mo. 1939, which reads:

> "The qualified voters of the district shall, annually, on the first Tuesday of April, elect two directors, who are citizens of the United States resident taxpayers of the district, and who shall have paid a state and county tax within one year next ppeceding their election or appointment, and who shall have resided in this state for one year next preceding their election or appointment, and shall be at least thirty years of age, who shall hold their office for three years and until

> their successors are duly elected and qualified; and all vacancies in the board shall be filled for the unexpired term."

In order to answer the first question we must determine whether or not the annexation of the portion of District No. 55 to the Mexico District was proper so as to meet the legal requirements. At the meeting of the Mexico School District on July 7, 1903, a motion was passed to annex to the Mexico District a portion of the territory which was District No. 55. That motion indicates that the proper statutory procedure was followed in such annexation and even though the minutes of the school board meeting are the only records which have been found concerning this matter, we submit that there is a presumption that public officers properly perform their duties and follow the correct procedure in the absence of a showing to the contrary. In fact, there have been no records found relating to school matters in District No. 55. Our view is strengthened here by the fact that the children living in the annexed area have been attending the schools in the Mexico District as residents of that district presumably since 1903. The case of Henry v. Dulle, 74 Mo. 443, said at pages 451 and 452:

> "But were it even necessary that the clerk of the board should certify the resolution to the township clerk, and that the township clerk should act upon it, before the resolution could be operative, yet still, in view of the fact alleged in the petition that since the organization of the City of Jefferson into a single school district the board of education has assumed control and directed the county clerk to include the out-lots in the list of taxable property liable to be taxed for the support of said school; and in view of the fact shown by the evidence that plaintiffs acquiesced therein by the payment of such taxes for the years 1870, 1871, 1872 and 1874, and the further fact that one of the plaintiffs voted at the election for school directors for the years 1878, 1879 and 1880; and in view of the further fact, shown by the map of the board of education of the City of Jefferson, and also the maps of township 44, range 11, offered in evidence, that the sub-districts in said township were made to conform to the resolution of the

> board, and that according to all three of these maps the out-lots were embraced in the Jefferson City district, and not in any of the sub-districts, the presumption may be justified and indulged that the secretary of the board of education of Jefferson City did his duty in certifying the resolution of the board to the township clerk, and that the township clerk acted upon it and made the sub-districts of the township to conform to it. * * *"

And further, this presumption is not weakened even though the statutes have not been technically complied with, as was said in State v. Begeman, 2 S. W. (2d) 110, at page 111, as follows:

> "In the first place, it is the salutary law that our courts must give a liberal construction to the working of the school laws. Indeed, the section of the statute, supra, requires no records to be kept of many of the jurisdictional prerequisites, and the fair presumption is indulged that preliminary steps have been complied with when the county superintendent entertains jurisdiction on appeal. State ex rel. v. Andrea, 216 Mo. 617, 116 S. W. 561; School District v. Chappel, 155 Mo. App. 498, 135 S. W. 75.
>
> "In the latter case, this court held that it is our policy not to require extreme technical compliance of the school laws, but only a substantial compliance with the statutes, and that the efforts of laymen who carry into effect the laws pertaining to schools is accomplished when a substantial compliance has been had. As said in School District v. School District, 181 Mo. App. 583, 164 S. W. 688, technical niceties should be brushed aside, and we should rather 'seek to effectuate the beneficent spirit revealed, in aid of the efforts of well-meaning laymen. Because of this, substantial compliance will suffice.'"

A liberal construction is given to the working of the school laws. In State v. McKown, 290 S. W. 123, l. c. 126, it is said:

> "* * * Informalities in proceedings of this character, especially in regard to the public schools, are entitled to little consideration, if the material portions of the governing statute are complied with. School Dist. v. New London School Dist., 181 Mo. App. 589, 164 S. W. 688, and cases. Although the proceedings may be informal if conceived in honesty, and thus conducted, they will not be set aside. School Dist. 14 v. School Dist. 27, 195 Mo. App. 504, and cases 507, 193 S. W. 634."

The case of State v. School Dist. of Lathrop, 284 S. W. 134, went still farther, holding that if such procedure is not absolutely correct it will not be overthrown where there has been long acquiescence. The court said at pages 136, 138, 139, 141 and 141:

> "At the regular annual meeting of all the school districts, April 3, 1917, the school district of Lathrop, school district No. 44, and school district No. 45 voted to extend the boundaries of the district of Lathrop so as to include all the territory in the two country districts, Nos. 44 and 45. The illegality of that proceeding is asserted by the relators. They claim that the proceeding was void, and the district of Lathrop has no authority or jurisdiction over the territory which formerly comprised districts Nos. 44 and 45, and no right to collect taxes on the property therein; that the respondents Rogers and Stonum residing in the territory of the original districts Nos. 44 and 45 have no authority to act as directors of the school district of Lathrop. The respondents say that the proceeding was regular, and that the relators are guilty of such laches as to preclude their right to have it annulled."

"* * * So that the present proceeding, instituted eight years after the original vote, the regularity of which he challenges, is the first time when a proper proceeding has brought the matter to the attention of any court.

* * * * * *

"The Stamper Case, 90 Mo. 683, 3 S. W. 214, supra, was a proceeding by injunction to restrain the collection of school taxes, on the ground that the school district was never legally organized, and the court had this to say (loc. cit. 687, 3 S. W. 215):

"'Conceding, for the purposes of this case, without determining the question, that the change thus made was irregular and in excess of the powers conferred. * * * * * In view of these facts, and the further fact that, during an interval of four years, the de facto existence of the district was recognized and parties interested have adapted themselves to the changed condition of things, presumably for school purposes, and incurring expenses necessarily incidental to conducting a school, we are fully justified in affirming the judgment of the circuit court on the ground, if on no other, that plaintiff, by his laches, has allowed a condition of things to exist for four years which would make it inequitable to grant the relief prayed for.'

"That aptly applies to the situation here. * * * * *

"In the Westport Case, supra, 116 Mo. loc. cit. 593, 22 S. W. 888, it was held that the state may by long acquiescence and continued recognition of a municipal corpora-

tion be precluded from bringing a proceeding to deprive it of franchises long exercised. * * *

* * * * * *

"* * * Unless some equity in favor of the state is shown, its laches ought to preclude it from attempting to cancel the proceedings by which the district of Lathrop was extended and cause the injurious results which would follow from the disorganization of that district. The inclusion of districts 44 and 45 in the district of Lathrop was undoubtedly intended to secure better school facilities for the children of those districts as well as the district of Lathrop. District 45 had had no school for four years. District 44 wanted the change. The result was a high school as well as a grade school. The best facilities were offered by the city for the education of its children, facilities which were denied children of these two districts before their inclusion in Lathrop district. There is not a suggestion in the record that there could possibly be any improvement of the schools or of school facilities or the opportunities for the children of former districts 44 and 45 to go to school by restoring the former condition. On the contrary, it is a reasonable inference that they would not be served as well. District 45 had no school, and the children there had to go to Lathrop before the change. Thus without any evidence that the school conditions would be improved, but with a situation which suggests that they would be impaired, with no complaint from any one who had school children or is interested in any school, this court should exercise its discretion and deny the relief sought.

"The proceeding is dismissed."

As far as we are able to determine there has been no question raised as to the validity and legality of the annexation proceedings in the present case.

Therefore, since that portion of District No. 55 under question here was legally annexed to the Mexico District, the candidate here is a resident of the Mexico School District within the meaning of Section 10469.

Now we come to the question of whether or not the candidate is a resident taxpayer of the Mexico School District. The candidate has paid his taxes for the year preceding the election date and since we have established that he is a resident of the Mexico School District the only remaining factor is as to the crediting of his taxes to the wrong school district. Until several years ago the taxes paid by the candidate were credited to the Mexico School District in which he resides, but after 1941 they have been erroneously credited to School District No. 55 by the county officials. Such an error should not preclude a person from election as county school director. The case of State ex rel. v. Brown, 172 Mo. 374, sets out the duties of the various county officials in this matter and shows the effect of an erroneously credited tax but does not indicate that the taxpayer is in any way discredited as a resident taxpayer of his district because of such error. The court said at l. c. 379-380, 381:

> "* * *'The plaintiff as curator of Hamilton was returned by the district clerk as being in district No. 4, and the county clerk, without ignoring the enumeration lists, could not have placed him elsewhere. The assessor is not required or authorized to determine the school district of a taxpayer; the "assessor's book" which he makes up--legally made up--contains no such information. The assessor has to do with no <u>particular tax</u>, but his duty is ended when he has ascertained and listed all the taxable real and personal property in his county, with the name of the respective taxpayer (Sec. 7531, R. S. 1889; amended, Laws 1893, p. 216), and made his assessment book therefrom.
>
> "'The assessor's book when turned over to the county court would not contain the

> number of the school district of any taxpayer, and hence the qualization board could not remedy any such wrong as is here complained of. The alleged wrong first arises, when the county clerk, after the assessor's books are corrected and adjusted, makes out the school tax book, and then fails to proceed in so doing as the law directs. *
>
> If this tax is properly due district No. 2, then the fact appears it has never been assessed or extended by the county clerk for district No. 2, but has been assessed or extended at a different rate in another district, and how then can the collector be compelled to collect a tax for district No. 2 which has never been extended by the county clerk? If the county clerk had no right or authority to assign the curator to district No. 4, and assess a tax against him according to the rate fixed by said district, then such taxation is simply illegal and void, and his property is not subject to levy to pay the same, and if seized and sold by the officer may be recovered * * * * *"

"And in the case of State v. Heath, 132 S. W. (2d) 1001, the assessor failed to include the respondent in the assessment. However, this error did not affect respondent's obligation to pay the tax as a resident taxpayer. It was said at l. c. 1005:

> "It is clear that, under the rule of State ex inf. Bellamy ex rel. Harris v. Menengali, supra, respondent was a resident tax payer of the district because he had paid taxes for 1935 (based on June 1, 1934, assessment) and continued to own the same taxable property in the district at all times thereafter. Even though the assessor failed to include him in his assessment of June 1, 1935, this omission did not relieve him of his obligation to pay the 1936 taxes, and these taxes could be collected by following the statutory procedure. * * * * *"

The situation involved here is very similar to that in the case of State v. Fasse, 189 Mo. 532, where the court said at pages 536-537:

> "'Appellant insists the requirement that a school director must be a resident taxpayer of the district means that he must have paid taxes for school purposes within the district. That contention cannot be adopted without enlarging the language of the statute and changing its intention. The meaning is that a person who is a qualified voter of the district and also a taxpayer is eligible. A qualified voter is defined in the same section to be one who, under the general laws of the State, would be allowed to vote in any county for State and county officers and who has resided in the district thirty days preceding the school district meeting at which he offers to vote. Any person who possesses those qualifications is a qualified voter as defined in section 9798 (9759?) in regard to the qualifications of school director. If he is also a taxpayer (that is, a person owning property in the State subject to taxation and on which he regularly pays taxes) he is eligible to the office of school director whether he has in fact paid a tax within such school district or not; otherwise, when a new district is formed no one would be eligible to the office of school director; or, if territory is taken from one district and attached to another, no person residing in the newly attached part would be eligible to the office of school director in the district to which it is attached until he first had paid a school tax therein. Provisions are made by the statute for the formation of new districts and also for changing the territory of districts. (R. S. 1899, sec. 9742.) The statutes bearing on the subject must not be so construed as to have unreasonable consequences, and the construction contended for by appellant, we think, would have."

In that case the statute requiring school district directors to be resident taxpayers of the district is construed to include a resident who is a qualified voter of the particular school district and who is also a bona fide taxpayer. We submit that this construction is equally applicable in the present situation and that the candidate here is a resident taxpayer of the Mexico School District within the meaning of Section 10469.

Conclusion

Therefore, in view of the foregoing authorities, it is the opinion of this department that the candidate here is a resident taxpayer of the Mexico School District within the meaning of Section 10469, R. S. Mo. 1939, and qualified to run for school director of the Mexico School District.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DD:EG