

SCHOOLS: Board of directors of school district may direct where pupils will attend school within the district in order to provide best educational facilities for school children.

JOHN M. DALTON
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John C. Johnsen
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Mr. Max B. Benne
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Dear Sir:

Your predecessor, Mr. Walter L. Mulvania, requested an opinion of this department shortly before he finished his term of office. We are assuming that you, as the present prosecuting attorney, would be interested in receiving the opinion, and therefore we are submitting it to you on the basis of the request made by Mr. Mulvania. His letter, in part, reads:

"May the school board of a Reorganized School District, organized pursuant to the provisions of Sections 165.677 to 165.703 of R.S. Mo. 1949, determine where the children in the elementary grades shall attend school within the district? It will be the purpose, of course, of the Board to continue various schools within the district for the reason that the facilities are inadequate at the central school building to accommodate all those who might like to attend there. This very problem has arisen in another reorganized district where the parents decided to send their children into the Tarkio school instead of the school closest to them, which caused the school rooms to become terribly overcrowded.

"Because this is an act that has been recently enacted I find no decisions on this particular point. If the Board has general supervisory control over the district to the extent that it can direct

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that the children in the country shall attend the school nearest them, then the problem of overcrowding can be immediately solved."

Under Section 1, Article IX of the Constitution of Missouri, the responsibility for the establishment and maintenance of free public schools has been reposed in the General Assembly. In carrying out this responsibility the General Assembly has enacted many laws providing for the organization and operation of school districts throughout the state and laws declaring the powers and duties of boards of directors of school districts.

The Supreme Court of Missouri, in *Kansas City v. School District of Kansas City*, 356 Mo. 364, 201 S.W. (2d) 930, in declaring that a school district was an instrumentality of the state, said at S.W. l.c. 933:

" * * * A school district is a 'public corporation' forming an integral part of the State and constituting that instrumentality of the State utilized by the State in discharging its constitutionally invoked governmental function of imparting knowledge to the State's youth. *The School District of Oakland v. The School District of Joplin*, 340 Mo. 779, 102 S.W. 2d 909, and cases therein cited. It has been said a school district is in no sense a municipal corporation with diversified powers, but is a quasi public corporation, 'the arm and instrumentality of the state for one single and noble purpose, viz., to educate the children of the district.' * * *"

The sections of the statutes hereinafter referred to will be those contained in the Revised Statutes of Missouri, 1949, unless otherwise indicated.

Sections 165.657 to 165.707 provide for the organization, maintenance and operation of reorganized school districts.

With regard to the directors of reorganized school districts, Section 165.687, in part, provides:

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" * * * The directors above provided shall be governed by the laws applicable to six-director school districts."

Under the above statute we must look to the laws applicable to six-director school districts in determining the statutory powers and authority of the board of directors of a reorganized district.

Pertaining to the powers and duties of the board of directors of school districts which are applicable to six-director districts, Section 163.010, in part, provides:

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district - said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. * * *"

Section 163.120 provides:

"It shall be the duty of the board to visit the schools under their care, examine into their condition and the progress of the pupils, advise and consult with the teachers, and to exercise such supervision as will best promote the interests of the schools."
(Emphasis ours.)

Under Section 165.370 the board of directors is given the power to establish the site of the schools within the district which it governs. Thus the section reads:

"When the demands of the district require more than one public school building therein, the board shall, as soon as sufficient funds have been provided therefor, establish an adequate number of primary or ward schools, corresponding in grade to those of other public school districts, and for this purpose

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the board shall divide the school district into school wards and fix the boundaries thereof, and the board shall select and procure a site in each newly formed ward and erect a suitable school building thereon and furnish the same; and the board may also establish schools of a higher grade, in which studies not enumerated in section 168.050, RSMo 1949, may be pursued; and whenever there is within the district any school property that is no longer required for the use of the district, the board is hereby authorized to advertise, sell and convey the same, and the proceeds derived therefrom shall be placed to the credit of the building fund of such district."

The appellate courts of this state have had occasion to determine the authority of school boards under the last-quoted section.

In the case of *Velton v. School Dist. of Slater*, 6 S.W. (2d) 652, a taxpayer's suit was brought by resident taxpayers of a school district to enjoin the school board from moving the grade school in said district to a high school building and moving the high school to the grade school building. Allegations were made that the high school building was not centrally located or properly equipped for elementary grades and was not easily accessible to pupils of grade school age and that it would necessitate a large number of small children traveling a greater distance to attend school. The Kansas City Court of Appeals, in ruling favorably to the school board of the district in its exercise of discretionary power in changing the sites of the particular schools, said at l.c. 654:

"The board of directors has full discretion in the matter of changing the schools and schoolhouses in this district, and it appears that after the expiration of many years subsequent to the erection of the two buildings that the board, for some reason or reasons, good and sufficient to themselves, have decided to move the grade school to the high school building and the high school to the grade school building. We cannot interfere with their discretion

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in the matter. Aside from this, so long as both buildings are continued to be used for school purposes (no distinction between the two being made in the statute) there is not in the proposed interchange of pupils such a diversion of the use of the buildings as would warrant interference by the courts.

"Of course, the board having a right to locate the buildings, the matter of convenience to the pupils was one peculiarly within the discretion of the school board. While some of the grade school pupils may be inconvenienced after the change is made, and it is not stated what proportion of the grade pupils will be inconvenienced, the law, contrary to the contention of plaintiffs, makes no distinction as to the two classes of pupils in this regard. No allegation is made in reference to the center of school population in this district. It may be that, taking the school children as a whole, the convenience of the majority may be better served by exchanging the pupils as proposed."

Under the above case the action of the school board, which was upheld by the court, in effect determined where the pupils of elementary and high school age would attend school. This action was declared to be a discretionary power which the court would not disturb.

In the case of State ex rel. Miller v. Board of Education of Consol. Sch. Dist. No. 1 of Holt County, 21 S.W. (2d) 645, resident taxpayers of a school district instituted an action in mandamus to compel the board of directors of a school district to reopen the grade schools within the district which it had previously closed. The school board had been of the opinion that the outlying grade schools within the district were unsatisfactory for school purposes and had closed said schools. The school board then exercised its discretion to open a grade school in the high school building within the district. In ruling that the school board had such authority the Kansas City Court of Appeals, at l.c. 649, said:

" * * * We think there is no question but that the board of education was within its rights when it exercised its discretion to

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open a grade school in the high school building in each of the school years, 1923-1924 and 1924-1925. There is no question raised concerning the adaptability of the central or high school building for this use or that there was not sufficient room in it, after taking care of the high school pupils, for the opening of a grade school therein. So we are not called upon to decide what would be the result had the board interfered with the high school pupils in opening the primary school in the building. From all the evidence shows, it appears that there was sufficient and suitable room in the high school building for conducting a grade school of the kind that was requested of the board at the time, and we would not be justified in saying that the board abused its discretion in the matter under all of the circumstances."

Again in the above case, the effect of the action of the school board was to declare where the grade school children would attend school.

Under the above authorities it would seem that the board of directors of a reorganized school district would have the authority and discretionary power to prevent the overcrowding of school facilities at the central school building, which, if permitted, would not promote the best interests of the school or the pupils attending.

By statute the board of directors is given the supervisory control over the schools within its district and may act in the manner that will best promote the interests of the school.

By statute the board is empowered to make needful rules and regulations for the organization and government of its school district. Under such authority we believe that the board of directors could take such action required to eliminate or prevent an overcrowded condition in the schools within the district in order to provide the best educational facilities possible for the school children.

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CONCLUSION

In the premises, it is the opinion of this department that the board of directors of a reorganized school district would be authorized to direct where school children within the district would attend school in order to eliminate or prevent an overcrowded condition within any school or schools within the district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Frank Thompson.

Yours very truly,

JOHN M. DALTON
Attorney General

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