SCHOOLS: May consolidated school district extend
boundaries to take in part of consolidated
district in another county

February 7, 1938

Mrs. May Bowlin
Superintendent
Cass County Public Schools
Harrisonville,Missouri

Dear Mrs. Bowlin:

This is to acknowledge your letter as follows:

"There has been submitted to me the
question of whether or not a consoli-
dated school district in one county
can extend its boundaries so as to
take in part of a consolidated school
district in another county? If the
extension can be made, would the dis-
trict making the extension and the
part to be included in the exten-
sion be the only portion that would
have a right to vote on the question?

"The foregoing questions are such as
will affect every county in this
state and as such will be of such
general interest, I have hope that
you may give your opinion on same.

"Section 9343, R. S. 1929, provides,
'All the provisions of Section 9275
relating to change of boundary lines
of common school districts, shall
apply to town, city and consolidated
school districts.

"Section 9275 R.S.1929,provides for
change of boundary lines of two or
more districts.

"In the case of State vs. Thurman,
274 S. W. 800, the court holds that
a change of boundary lines may be
made between a consolidated school
district and a common school dis-
trict, or between two consolidated
school districts but you will note
that the two consolidated districts
concerned do not lie in two differ-
ent counties. The main question
that is confusing me is the fact
that one consolidated district lies
in Cass County and the other dis-
trict concerned is also a consoli-
dated district across the line in
Bates County.

"In the case of State vs Gwaltney,
28 S. W. (2) 678, seems to pass upon
the right of Appeal. But does this
case hold that a consolidated school
district in one county cannot extend
its boundary so as to take in part
of a consolidated school district in
another county? For example, when
the consolidated school district No.
1 in Cass county wants to extend its
boundary so as to take therein the
north half of consolidated school
district No. 2 in Bates county,
could the extension be made by Dis-
trict No. 1 in Cass voting for the
extension and the north half of
District No. 2 in Bates county vot-
ing separately for the extension?

"I trust that you can give your
opinion relative to the foregoing
matters."

We agree with you that the decision of the Su-
preme Court in State ex rel. v. Thurman et al, 274 S.W.
800, is difficult to be reconciled with the opinion

of the Springfield Court of Appeals in State ex rel.
v. Gwaltney, 28 S. W. (2) 678. The conflict apparent-
ly exists when a consolidated district has territory
which extends in two counties. As we understand the
facts in your case, however, the consolidated district
does not have territory in two counties, but seeks
to acquire territory in an adjoining county, and hence
we believe the opinion of the Springfield Court of
Appeals in State ex rel. v. Gwaltney, supra, does not
apply. Note the language of the Court in the Gwaltney
case at page 680:

> "It is our opinion no appeal
> lies from an election on a
> proposition for a change of
> boundaries between a consolidated
> district and an adjoining dis-
> trict, when the territory of the
> consolidated district lies in two
> counties."

Your letter states that a consolidated district
in Cass County wants to extend its boundaries so as
to take in territory of a consolidated school district
located in another county. In our opinion such is
permissible, relying as authority upon the case of
State ex rel. v. Thurman, supra.

Section 9343, Revised Statutes Missouri 1929,
is part of Article IV, Chapter 57, which relates to
"city, town and consolidated schools." Said Section
provides that the provisions of Section 9275 "relating
to the changes of boundary lines of common school
districts * * * * shall apply to town, city and con-
solidated districts." Section 9275, Revised Statutes
Missouri 1929, pertains to the formation of new dis-
tricts, and we can see no distinction between the
formation of a new district when territory is taken
from a consolidated district and a common school dis-
trict, or between two common school districts or two
consolidated districts, because the formation of new
districts is all that is done, whether it be common

school districts or consolidated school districts, by
virtue of Sections 9275 and 9343, supra.

The Springfield Court of Appeals based its
ruling in the Gwaltney case solely on the method of
appeal from a decision of the voters when a change
of boundaries was proposed, because Section 9275
provides that the appeal shall be referred to the
county superintendent of schools, and the district
had territory in two counties. In the Thurman case
the appeal went to the county superintendent of
schools in which the land was located and was evident -
ly sanctioned by the Court, even though not mentioned
in the opinion.

If property of a consolidated district located
in Cass County is sought to be annexed to a consolidated
district of Bates County, then the county superinten-
dent of schools of Cass County would be the one to
decide the question in the event of an appeal, in our
opinion; and if there were a dispute as to the superin-
tendent's decision, the same could be reviewed by the
proper court by certiorari as was done in the Thurman
case.

We are attaching hereto copy of opinion
rendered by this Department on February 13, 1936, to
Honorable Elbert L. Ford, Prosecuting Attorney,
Dunklin County, relating to consolidated districts
changing their boundaries.

From the above and foregoing, it is our
opinion that the boundary lines of two consolidated
school districts may be changed so that part of the
property of one district could be annexed to another
district, even though the territory be situated in
different counties. Section 9275, supra, is self-

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explanatory as to the notice to be given and the voting
upon the question proposed.

                              Yours very truly

                              OLLIVER W. NOLEN
                              Assistant Attorney General

APPROVED

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J. E. TAYLOR
(Acting) Attorney General

JLH LC

Inclosure