

SCHOOLS: CONSOLIDATED DISTRICT may not divide itself to form two new districts; however, consolidated district may change its boundaries so that part of its territory would be annexed to another district.

February 13, 1936.

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Honorable Elbert L. Ford  
Prosecuting Attorney  
Dunklin County  
Kennett, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"I have been requested by T. J. Douglass, Superintendent of Schools of this County, to get an opinion from your office relative to the division of a consolidated school district.

"There are about nine thousand acres of land in the Southeast corner of Dunklin County with a valuation of \$142,850.00, that is in the Deering District No. 6 - C at Deering in Pemiscot County, Missouri.

"The pupils enumerated in Dunklin County in May 1935, was one hundred and ninety-eight. The school tax rate of this district is \$2.00 per hundred.

"The citizens living in this County which forms a part of this school district are desirous of organizing a school district of their own in order that they may establish a school as there are no schools in Dunklin County to serve the pupils residing therein.

"Please advise me at your earliest convenience what procedure the inhabitants of this district would have to take in order to divide this district and establish one of their own. According to Section 9343 R. S. 1929, it appears the law makes no provision for dividing a city or consolidated district into two or more districts."

Section 9343, R. S. Mo. 1929, reads as follows:

"All the provisions of section 9275, relating to the changes of boundary lines of common school districts, and all the provisions of sections 9278 and 9279, relating to the division of property between common school districts, shall apply to town, city and consolidated districts."

We agree to the statement made in your letter as follows: "According to Section 9343, R. S. 1929, it appears the law makes no provision for dividing a city or consolidated district into two or more districts," in view of the two cases decided by the Supreme Court of Missouri, en banc, namely, State ex inf. v. Sweaney, 270 Mo. 685, and State ex rel. Buckley v. Thompson, 19 S. W. (2d) 714.

In State ex inf. v. Sweaney, supra, the court, after quoting Section 9343, supra, said the following (page 691):

"Plaintiffs in error contend that the above section authorizes the division of a town, city or consolidated school district into two new school districts, while defendants in error contend that it merely provides for changing the boundary lines of such school district, but does not provide for dividing the same into two new districts. After careful consideration of the statute,

we have reached the conclusion that the above section does not provide a way for dividing a town, city or consolidated school district into two new districts. If Section 10881, supra, had provided that all the provisions of section 10837, Revised Statutes 1909, should apply to town, city and consolidated districts, then there could be no question but that provision had been made for so dividing such districts, because Section 10837, supra, expressly provides for dividing one common school district into two new districts. But instead of the Legislature saying that all the provisions of section 10837 should apply to town districts, it merely said that 'all the provisions of section 10837 relating to the changes of boundary lines of common school districts' should apply. Referring then to Section 10837 we find that the only express provision therein for changing boundary lines is the provision for changing 'the boundary lines of two or more districts.' Other express provision is made for dividing one district into two new districts. It, we think, becomes at once apparent, that the provision for changing the boundary lines of two or more districts could not, by any process of construction, be held to provide a way for dividing one district into two new districts."

In State ex rel. Buckley v. Thompson, supra, the court (pages 718-719), said the following:

"Respondent says that this proceeding was without authority and void. If there is any legal authority therefor, it must be found in sections 11201 and 11253, R. S. 1919. Section 11201, applying only to common schools, provides what shall be done 'when it is deemed

necessary to form a new district, to be composed of two or more entire districts, or parts of two or more districts, to divide one district to form two new districts from the territory therein, to divide one district and attach the territory thereof to adjoining districts, or to change the boundary lines of two or more districts.' Section 11253 reads: 'All the provisions of section 11201, relating to the changes of boundary lines of common school districts, \* \* \* shall apply to town, city and consolidated districts.' In State ex inf. v. Sweaney, 270 Mo. 685, 691, 195 S. W. 714, this court in banc held that section 10881, R. S. 1909, now section 11253, supra, only made applicable to town, city and school districts the provision of section 10837, R. S. 1909, now section 11201, supra, relating to changing 'the boundary lines of two or more districts,' and provided no way of dividing a town, city, or consolidated district into two or more districts. By the same course of reasoning, even if it be said that in the instant case there was a change of the boundaries of the one district rather than a division of it into two districts, it follows that the provision sought to be made applicable by this reference statute is here unavailing because such provision relates only to change of boundary lines of two or more districts."

Sections 11201 and 11253, R. S. No. 1919, were carried forth in the 1929 revision and are now found as Sections 9275 and 9343, respectively.

You will note that the Supreme Court in the above two cases specifically held that a consolidated district could not divide itself so as to make two districts. However, Division No. 1 of the Supreme Court of Missouri, in State ex rel. Consolidated School Dist. No. 1, Pike County v. Thurman et al., 274 S. W. 800, held that a change in boundaries between two

districts, one of which was a consolidated district and the other a common school district, was permissible, and same being accomplished by virtue of the provisions of Section 9275, R. S. Mo. 1929.

The facts in your case show that a consolidated school district only desires to divide itself, which, in our opinion, it cannot do. However, if a change of boundary was sought between two districts, then it would be permissible.

The court in *State ex inf. v. Sweaney, supra*, made this further observation as to how a consolidated district could be divided - and that was by disorganizing same. Note the language of the court, at page 692, on that subject:

"Of course, if a town, city or consolidated district should by a two-thirds vote disorganize the territory thereof could, under the provisions of Section 10870 be organized into a common school district and this common school district in turn, under the provisions of Section 10837, be divided into two new districts. Plaintiffs in error, however, did not undertake to proceed by that route, but have undertaken to accomplish the same result by the decision of a board of arbitration acting by appointment of the county superintendent of public schools, as provided by Section 10837, *supra*. We are of the opinion that the provisions of Section 10837, under which plaintiffs in error acted, have no application to town, city or consolidated school districts."

From the above it is our opinion that a consolidated school district cannot divide itself in order to establish two districts out of the one. However, bear in mind that we are not holding that a consolidated district could not change its

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boundary so that part of said district could be annexed to another district as was done in State ex rel. v. Thurman, 274 S. W. 800.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

JLH:EG