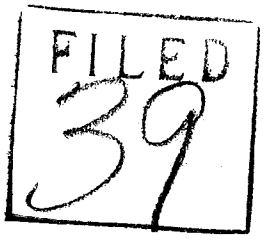
SCHOOLS: Failure of board of directors of a consolidated school district to act upon a petition to dissolve the district does not invalidate their subsequent official actions,

BONDS: including the calling and holding of an election for a bond issue. When notices calling for a bond election state that the purpose of the election is to obtain a loan to erect a school building at a particular place, that it is necessary that upon an affirmative vote the building be located at the place indicated in the notice.



September 30, 1954

Honorable Albert L. Hencke
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"I request an opinion on the following: In 1950 five rural school districts voted to consolidate and form a Consolidated district. In 1952 a petition signed by twelve legal voters and taxpayers was filed with the new consolidated district requesting disorganization of the district. Five copies of the petition were filed. Since that date the board of the new consolidated district has refused to act upon the petition on the grounds that they need not do so. In 1953 the new consolidated district voted bonds for building a new school. This vote was the fifth election on same since the above mentioned petition to disorganize was filed. The bond issue further stated that the school was to be located on a particular piece of ground.

"(1) Was the bond issue legal with aforementioned petition pending?

"(2) Must the board erect the school on the property designated in said bond issue?

"(3) Is the board responsible for the money spent if the bond elections were not legal?"

It will be assumed that the real property referred to in the notice, upon which the building is to be built, is property already owned by the school district.

Your first question is: Was the bond issue legal with the afore-mentioned petition pending?

It would be our opinion that the bond election and issue were not illegal because of the fact that a petition to dissolve the consolidated district had been filed in 1952, and had never been acted upon. The statute followed then was no doubt what is now paragraph 1 of Section 165.310, MoRS, Cum. Supp., 1953, which reads:

> "Town, city, consolidated or enlarged school district, dissolution, procedure--effect.--1. Any town, city or consolidated school district heretofore organized under the laws of this state, or which may be hereafter organized, shall be privileged to disorganize or abolish such organization by a vote of the resident voters and taxpayers of such school district, first giving fifteen days' notice, which notice shall be signed by at least ten qualified resident voters and taxpayers of such town, city or consolidated school district; and there shall be five notices put up in five public places in said school district. Such notices shall recite therein that there will be a public meeting of the resident voters and tax payers of said school district at the schoolhouse in said school district and at said meeting, if two thirds of the resident voters and taxpayers of such school district present and voting, shall vote to dissolve such town, city or consolidated school district, then from and after that date the said town, city or consolidated school district shall be dissolved, and the same territory included in said school district may be organized into a common school district under sections 165.163 to 165.260."

The above section does not state whether or not the notice which must be signed by at least ten resident taxpayers is to be filed with the school board, but the inference is that it should be, and you state that in your case this was done, and that five copies were filed with the board, also. It would appear, therefore, that the proper steps were taken to initiate a vote on

dissolution of the district. You state further that the matter rested at that point, since the board refused to take any action on the matter.

The statute above quoted would appear to impose the duty on the board, under the circumstances, to arrange for and to hold elections. In an opinion rendered by this department on July 20, 1936, to the Prosecuting Attorney of Barry County we so held; and likewise in an opinion rendered November 15, 1950, to Honorable J. R. Eiser, Prosecuting Attorney of Holt County, a copy of which is enclosed. This latter opinion held that the board should do this within a "reasonable" time after receipt of the petition. If this be the law and if the petition in your case complied with the law, then the board in your case could no doubt have been compelled by legal action to proceed to arrange for and hold the election. However, this was not done, and the question before us is simply whether the failure of the board to do what it should have done in this particular invalidated all of its subsequent actions, including calling an election for a bond issue. We do not believe that it would, since we are unable to find any law, statutory or case, which so holds. Furthermore, there cannot be any question about the fact that the district was not dissolved merely by the filing of the petition. In an opinion rendered by this department August 17, 1953, to Honorable William J. Cason, Prosecuting Attorney, Henry County, we held that a public meeting must be held before such dissolution could be effected, and the statute (Section 165.310, supra) holds that at least two-thirds of those present at such a public meeting must vote for dissolution before dissolution can be effected. Clearly this was not done, and so on the date that the bond election was called and held the district had a legal existence. Therefore, if the law was complied with in regard to the bond election, it would have been legal. It would not, as we stated above, have been invalidated by failure of the board to act upon the petition with them in 1952.

Your second question is: Must the board erect the school building on the property designated in said bond issue?

In regard to this, we direct attention to paragraph 1 of Section 165.040, MoRS, Cum. Supp., 1953, which reads:

> "Building loans -- approved by voters -- bonds.-- 1. For the purpose of purchasing schoolhouse sites, erecting schoolhouses, library buildings and furnishing the same, and building additions to or repairing old buildings, the board of directors shall be

> authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. The question of any such loan shall be decided at an annual school meeting or at a special election to be held for that purpose. Notice of such election shall be given at least fifteen days before the same shall be held, by at least five written or printed notices, posted in five public places in the school district where such election is to be held, stating the amount of the loan required, and for what purposes. It shall be the duty of the clerk to sign and post such notices. The qualified voters at such election shall vote by ballot. Such ballot shall contain a brief statement of the amount and purposes of the loan and the following:
>
> '_' FOR THE LOAN
> '_' AGAINST THE LOAN
>
> Voters shall vote by placing a cross mark (x) in the square opposite their choice. A cross mark (x) in the square before the words 'FOR THE LOAN' shall be counted as a vote for the issuance of the bonds, and a cross mark (x) in the square before the words 'AGAINST THE LOAN' shall be counted as a vote against the issuance of the bonds. If two thirds of the votes cast on such proposition shall be cast for the loan, the board, subject to the restrictions of section 165.043, shall be vested with the power to borrow money, in the nameof the district, to the amount and for the purpose specified in the notices as aforesaid, and to issue the bonds of the district in evidence thereof."

It will be noted from the above that the printed notices referred to shall state "the amount of the loan required, and for what purposes." In your case the notice, we assume, stated that the purpose of the loan was to erect a new school building at a particular place. We do not believe that the notice need to have specified the place where the building would be erected, but having done so, we believe that the building must be erected at such place, since it is conceivable that some voters at least who voted affirmatively would not have done so had they not felt assured that the building would be erected at a particular location. It may also be that the petitioners unnecessarily included the location in the notice only because they were aware

of the sentiment to have the building so located. In any event, the proposition voted on was, not simply to vote for a loan to erect a school building, but to erect a school building at a particular place, and this we believe must be observed.

On April 12, 1949, in an opinion to Honorable L. Clark McNeill, Prosecuting Attorney of Dent County, a copy of which is enclosed, we held that a school board may use the funds realized from a bond issue only for the purpose for which the electors of the school district voted the issue.

Your third question is: Is the board responsible for the money spent if the bond election were not legal?

Inasmuch as we have held in answer to your first question that the bond election was legal insofar as the filing of the petition for dissolution was concerned, there becomes no point in answering your third question.

CONCLUSION

It is the opinion of this department that the failure of the board of directors of a consolidated school district to act upon a petition to dissolve the district does not invalidate their subsequent official actions, including the calling and holding of an election for a bond issue.

It is the further opinion of this department that when the notices calling for a bond election state that the purpose of the election is to obtain a loan to erect a school building at a particular place that it is necessary that upon an affirmative vote the building be located at the place indicated in the notice.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

Encs. (3)

8-17-53 to Wm. J. Cason
11-15-50 to J. R. Eiser
4-12-49 to L. Clark McNeill

JOHN M. DALTON
Attorney General

HPW:DA