SCHOOLS: School board acting on own initiative, without ratification of qualified voters (Sec. 9195, R. S. 1929), cannot issue warrants for tuition and cost of transporting pupils.

May 7, 1938

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Honorable Charles F. Lamkin, Jr.
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Mr. Lamkin:

This Department acknowledges receipt of your letter of May 3d, wherein you request an interpretation of certain sections relating to transportation of school children. Your letter of request is as follows:

> "A school district in this county, having less than twenty-five children last year arranged with the board of an adjoining district for the transportation and tuition of the pupils of school age to that adjoining district, acting under Section 9195 R. S. Mo. 1929. I will appreciate your advising me whether this arrangement can be legally carried out from year to year by the action of the board alone. I will also appreciate your opinion on the meeting referred to in the last sentence of the pertinent statute. Does this last sentence mean that a two-thirds vote is required to ratify the action of the directors in sending children to another district, or does it mean that when such meeting takes such action that the children must thereafter be sent to another district until another meeting rescinds the action? If the board, acting on its

> own initiative sends the children of the district to another district, may that board lawfully issue warrants for the payment of tuition and for the cost of transporting pupils?"

Section 9195, R. S. Mo. 1929, referred to in your letter, is as follows:

> "Whenever any school district in this state, now organized or that may be hereafter organized under the laws of this state, shall fail or refuse, for the period of one year, to provide for an eight months' school in such year, provided a levy of forty cents on the one hundred dollars' valuation, together with the public funds and cash on hand, will enable them to have so long a term, the same shall be deemed to have lapsed as a corporate body, and the territory theretofore embraced within such lapsed district shall be deemed and taken as unorganized territory, and the same, or any portion thereof, may be attached to any adjoining district or districts for school purposes, in the same manner as is now provided in section 9273: Provided, that no school district shall be deemed to have lapsed where the failure to make the needed provision for the eight months of school results from the irregular or void proceedings had for that purpose: Provided, that in any district enumerating fewer than twenty-five children the board may, from year to year, arrange with the board or boards of other district or districts for the admission of all children of school age in said district containing fewer than twenty-five children enumerated, and, if desired, arrange for

> transporting children to and from school. And, when ratified by a two-thirds vote of the qualified voters of said school district, voting at a special meeting, such arrangements shall be final, and the board will be authorized to issue warrants upon the teachers' fund for payment of tuition, and upon the incidental fund for the payment of cost of transporting pupils."

In determining the questions to the effect: First; Is it necessary for two-thirds of the qualified voters of the district to ratify the action of the board? Second; If the voters do ratify the action of the board, is such ratification permanent, annual, or for a specified time, which the voters could rescind at their will? We are only concerned with the last proviso of Section 9195, quoted supra. One rule of statutory construction is to the effect that when a proviso is in a statute all of the words contained after the proviso are to be taken into consideration and deemed a part of the proviso.

Analyzing the proviso we find that the first element is that the district must contain fewer than twenty-five children; that the action of the board is discretionary as it uses the word "may"; that the action of the board is to be taken "from year to year"; and we think clearly, that in order for the action of the board to become legal and binding, two-thirds of the qualified voters of the district shall ratify the same. The further logical construction of the statute is to the effect that the qualified voters must take action annually because the board can only take action "from year to year." Conditions may vary from year to year. The district may not have fewer than twenty-five enumerated children from year to year. It may vary and have more or less; if more, the board would not take such action. Hence, the ratification by two-thirds of the qualified voters will expire and when enumeration again became less than twenty-five certainly it would be necessary for the qualified voters to again ratify the action of the board.

We are enclosing opinion rendered by this Department on February 21, 1938, to Mr. G. Frank Smith, Superintendent

of Schools, Oregon, Missouri, wherein a similar construction is placed on Section 9197, R. S. Mo. 1929.

As school boards are creatures of the statute their powers are limited to those expressly given by statute. (Consolidated School District No. 6 vs. Shawhan, 273 S. W. 182.) Therefore, we are of the opinion that if the board acts on its own initiative without the ratification of the qualified voters, as provided by Section 9195, supra, that said board cannot issue warrants for tuition and the cost of transporting pupils.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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Enc.