SCHOOLS: Sufficiency of petitions for

SCHOOL DISTRICTS: change of boundary lines.

ELECTIONS:

FILED
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May 6, 1954

Honorable Edwin W. Mills
Prosecuting Attorney
St. Clair County
Osceola, Missouri

Dear Mr. Mills:

This is in response to your request for an opinion dated March 27, 1954, which reads as follows:

> "Mr. Roy Hilte, President of the Lowry City Consolidated School District (No. 4 of St. Clair County) asks if the enclosed petitions for releases of different parts of his district are in proper form and what procedure should district take at this time in regard to them.
>
> "One is praying for an election to release certain territory to the Osceola Independent (Consolidated) School District.
>
> "The other prays for an election to release other territory to the Iconium (Common) School District.
>
> "These territories are not contiguous and are independent of each other.
>
> "It appears that under Sec. 165.300 the first above mentioned must be voted on at a special election (although it provides for annexation and is silent as to a release.)
>
> "On the other hand the release to the Iconium Common School District under Sec. 165.170 can only be voted on at an annual meeting.
>
> "Not only that, but the ruling stated in State vs. Reorganized School District (Point III)

257 S.W. (2) l.c. 266, is to the effect that two different independent propositions cannot be submitted to the voters at the same election.

"I take it that the proposition to release the designated territory to the Iconium common School District can be voted on properly by the voters of both districts at the annual meetings; while the proposition to release territory to the Osceola Consolidated School District must be postponed to a special election to be called by the Lowry City Board.

"I enclose copies of the petitions and ask the opinion of your office as to what steps should be taken at this time on the petitions by the Lowry City Consolidated School District board of directors. They would much appreciate an opinion before the annual meeting of April 6th."

For sake of convenience we shall treat the two petitions separately and quote them, omitting the description of the land and signatures:

"Lowry City, Missouri, February 4, 1954.

"We the undersigned, residents of the land hereinafter described, most respectfully pray the Lowry City Consolidated School District No. 4 to release and transfer us and our property to the Iconium School District from your District.

* * * * *

"And that you take the necessary steps to make a legal transfer.

* * * * *"

"To: Mr. H. L. Norfolk, Clerk
Lowry City Consolidated District IV

> "We, the undersigned qualified voters of Lowry City Consolidated District IV, county of St. Clair, state of Missouri, desire the following changes in district boundary lines:
>
> "The territory thus described to be released from the Lowry City Consolidated District IV and attached to the Osceola Independent School District:
>
> * * * * *
>
> "and hereby petition you to post a notice of such desired change in at least five public places in each district interested in or affected by such change, fifteen days prior to the time of the annual meeting.
>
> * * * * *"

The first petition for release to the Iconium School District, a common district, is governed by the provisions of Section 165.170, RSMo 1949. For the sake of brevity we will not quote that section in full. A portion thereof provides, however, that "When it is deemed necessary * * * to change the boundary lines of two or more districts," certain steps specified therein shall be taken in order to effectuate such purpose.

Although Section 165.170, supra, in and of itself is applicable only to common districts, the provisions thereof relating to changes of boundary lines are made applicable to town, city and consolidated districts by Section 165.293, RSMo 1949. The fact that changes of boundaries between a consolidated district and a common district may be effected by Section 165.170 was determined in State ex rel. Consolidated School Dist. No. 1 of Pike County v. Thurman, 274 S.W. 800. See also State ex rel. Diehlstadt Consolidated School Dist. of Scott County v. Gwaltney, 28 S.W. (2d) 678, 679.

Section 165.170, supra, is the only section under which the Lowry Consolidated District can proceed in order to release property within its boundaries to the common district because a common district does not have the power of annexation under Section 165.300, RSMo 1949.

Under Section 165.170 the same identical proposition must be voted upon at an annual election in both districts to be

affected by the change. In Farber Consol. School Dist. No. 1 v. Vandalia School Dist. No. 2, Mo. App., 280 S.W. 69, 72, it was said:

> " * * * And from the ballots it is observable, though the point is somewhat technical, that the voters in all the districts did not vote upon the identical propositions, which must be done. School Dist. v. Neal, 74 Mo. App. 553. If it was an election for annexation, the Farber ballot should have been 'for release' or 'against release.' That is the express language of the statute."

Statutes with regard to the creation and alteration of school districts must be substantially complied with, but such statutes and the proceedings thereunder receive a reasonable and liberal construction at the hands of the court. The test for determining the sufficiency of the required petition and notice is stated in State ex rel. Rose v. Job, 205 Mo. 1, 28, 103 S.W. 493:

> " * * * As was said in Mason v. Kennedy, 89 Mo. l.c. 30, 'The important thing for the voter in each district to know, was how his district was to be affected by the creation of the new district (or by change of boundary) and what particular territory his district would lose in the creation of the new one (or by changing said boundary line). Of all this the notices and petitions fully informed the voter, and this was sufficient.'"

See also State ex inf. Mansur ex rel. Fowler v. McKown, 315 Mo. 1336, 290 S.W. 123, 126.

We believe that the petition for transfer of the described territory to the Iconium District meets this test and is sufficient.

The transfer of territory from the Lowry District to the Osceola District, both being consolidated districts, can be effected in one of two ways. It can be done under the provisions of Section 165.300, in which case it is technically an annexation by the Osceola District, or under the provisions of Section 165.170, in which case it is technically a change of boundary lines. In either case the ultimate result would be a change of boundary

lines by the two districts, but that there is a difference between the requirements of the petition, notice, ballot, etc., depending upon which procedure is being followed, was established in the case of Farber Consol. School Dist. No. 1 v. Vandalia School Dist. No. 2, supra.

A petition might be so worded as to meet the requirements of either Section 165.170 or 165.300 so as to authorize a proceeding under either section. Although we believe the second petition for transfer of property to the Osceola District meets the test and is sufficient for a proceeding under Section 165.170, i.e., a change of boundary lines, which must be voted upon at an annual election in both districts to be affected by the change, we do not believe it would be sufficient to authorize a proceeding under Section 165.300, i.e., an annexation proceeding, in which only the district from which the property is to be annexed votes at a special election on the proposition of release and the board of the annexing district accepts or rejects the territory.

The last portion of the petition, in which the petitioners request the clerk to post the notice of the desired change in at least five public places in each district interested in or affected by such change, which is unnecessary under Section 165.300 but essential under Section 165.170, would lead the voters to believe that the matter was going to be voted upon in each district, which is not true under an annexation proceeding. Any possibility of confusion in the petition, notice and ballot as to which method is being employed should be avoided if at all possible. See Farber Consol. School Dist. No. 1 v. Vandalia School Dist. No. 2, supra. The petition for proceeding under Section 165.300 should more nearly follow the one described in State ex inf. Taylor ex rel. Schwerdt et al. v. Reorganized School Dist. R-3, Warren County, Mo. App., 257 S.W. (2d) 262, 264.

In summary, we believe that both petitions are sufficient in form to authorize the submission of the propositions to the voters at an annual election, providing all the other provisions of Section 165.170 are followed. The first petition for release to the Iconium District cannot be used as the basis of a proceeding under Section 165.300. The second petition is insufficient to warrant a submission of the proposition at a special election, as upon an annexation proceeding, and should be amended and resubmitted as above provided.

We are enclosing copy of an opinion of this office directed to Honorable William R. Collinson dated May 4, 1942, which holds

that a special election may be held on the same day upon which the date of the regular election falls.

You also seem to be of the opinion that both of these propositions could not be submitted to the voters in the same election because of the language of State ex inf. Taylor ex rel. Schwerdt et al. v. Reorganized School Dist. R-3, Warren County, supra. In that connection we call your attention to the case of State ex rel. Becker v. Smith, 335 Mo. 1046, 75 S.W. (2d) 574, 575, where the court said:

> "There is but one point for the determination of this court; that is, whether two separate and distinct propositions were submitted as one proposition and voted on jointly.
>
> "'The vice of "doubleness" in submissions at elections is universally condemned. It is regarded as a species of legal fraud because it may compel the voter, in order to get what he earnestly wants, to vote for something which he does not want. State v. Maitland, 296 Mo. 338, 246 S.W. 267, 272. The rule inhibiting doubleness has been tersely stated as follows:
>
> "'" Two propositions cannot be united in the submission so as to have one expression of the vote answer both propositions, as voters may be thereby induced to vote on both propositions who would not have done so if the questions had been submitted singly." * * *'"

Therefore, it seems clear that the vice of doubleness in submissions at elections condemned by the court is not the submission of separate propositions to be voted upon singly but, rather, the submission of two separate and independent propositions as one to be voted upon jointly. If submitted separately, these two propositions could be voted upon at the same election if otherwise submissible at the same election.

CONCLUSION

It is the opinion of this office that the petition quoted herein for release of territory from the Lowry Consolidated School

Honorable Edwin W. Mills

District to the Iconium (common) School District is sufficient in form to initiate proceedings under Section 165.170, RSMo 1949, for change of boundary lines; that the petition for release of territory from the Lowry District to the Osceola Consolidated School District is sufficient in form to initiate proceedings under Section 165.170, RSMo 1949, for change of boundary lines; but that the latter is not sufficient to authorize proceedings under Section 165.300, RSMo 1949, for annexation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml
Enc (1): Opn. 5-4-42 to
William R. Collinson