

SCHOOL DISTRICTS:  
ELECTIONS:

The school district reorganization law does not permit a county board of education to call an election in only one of the enlarged districts proposed by the reorganization plan, the remainder of the proposed enlarged districts not voting thereon.



September 9, 1953

Honorable Weldon W. Moore  
Prosecuting Attorney  
Texas County  
Houston, Missouri

Dear Mr. Moore:

The following opinion is in answer to your letter of August 11, 1953, in which you state as follows:

"The Texas County Board of Education desires to submit a reorganization plan for the entire county to the State Board of Education and if the State Board of Education approves the plan, the County Board desires to call an election in only one of the proposed enlarged districts. The remainder of the enlarged districts not voting on the plan. The County Board wants your opinion as to whether or not they may proceed in this manner.

"Section 165.680 M.R.S. 1949 '.....The secretary of the County Board of Education shall call an election in each proposed enlarged districts .....

"It seems to me that the County Board is not submitting a county plan, rather, they are submitting a plan for reorganization of a part of the County."

From the last paragraph of your letter, we take it that the plan of the county board would not affect every existing school district but that some would be left undisturbed; and from the use of the word "districts" rather than "district" in the first paragraph, it appears that the portion of the county that would be affected, would be divided into, not one, but a number of new and enlarged districts. Thus, it seems that the county board desires to reorganize only a portion of the county by taking the existing school districts in such portion of the county, reorganizing them into at least two new and enlarged districts and allow the residents of only one of the proposed enlarged districts to vote on the entire plan.

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While it is the opinion of this office that the school district reorganization law does permit a plan which would reorganize only a part, and not all, of the existing school districts of a county, we cannot conceive of the validity of an election that is participated in by the voters of only one of the enlarged districts proposed by the plan so far as the creation of other proposed enlarged districts is concerned.

The applicable law is found in Senate Bill No. 307, Laws of Missouri, 1947, Volume 2, pp. 370-377, which also appears as Sections 165.657 to 165.707, RSMo 1949. This law went into effect July 18, 1948, and effected radical changes pertaining to the enlargement of school districts.

In the consolidated cases of State ex rel. Rogersville Reorganized School District No. R-4, of Webster County vs. Holmes, State Auditor and State ex rel. Reorganized School District No. 5, of Washington County vs. Holmes, State Auditor, 253 S.W. (2d) 402, 1.c. 403, the legislative intent underlying the Act was disclosed in the following words:

"\* \* \* Its purpose was to promote the rapid merger of the multitude of small, inadequately equipped and financed school districts of this State into fewer and larger districts with financial resources to provide adequate buildings, teaching staffs and equipment.  
\* \* \*"

The first four sections of the law, deal with the formation and organization of the county boards of education. The next section (165.670) deals with the expenses of the members of county boards of education; and Section 165.673 provides for a comprehensive study of each school district by the county board of education, specifying what such study shall include and requiring a specific plan of reorganization to be submitted by the county board to the state board of education; then, Section 165.677 provides that upon receipt of the plan of reorganization, the state board shall give its approval or disapproval, and directs that in the event of disapproval, a second plan shall be submitted; and that, should it be disapproved by the state board, then the county board should submit its own plan to the voters. Section 165.680, RSMo 1949, deals with election on proposed enlarged districts and provides as follows:

"Within sixty days after receipt of approval by the state board of education of the reorganization plan, the secretary of the county board of education shall call an election in each proposed enlarged school district that

lies wholly within the county or has been designated by the state board of education as belonging to the county. The notices of such election shall be by written or printed notices, signed by the president and secretary of the county board of education. Such notices shall be posted in at least three public places within each school district affected by the proposal and shall also be published at least two times in at least one newspaper of general circulation in the county or counties affected by said proposed enlarged district, the last published notice not less than six days prior to the date of election. The county board of education shall select and designate the voting place or places in each proposed enlarged school district and shall, also, select and appoint three judges and two clerks of such elections for each polling place, all such persons to be residents of the proposed enlarged school district. The judges and clerks shall be sworn and the election otherwise shall be conducted in the same manner as elections for state and county officers. Each judge and each clerk shall receive compensation of five dollars per day. The county board of education shall supply ballots, polling books and all other materials required in the election. The cost of election supplies and the compensation of election officials shall be charged to each component district embraced in the proposed enlarged district in proportion to the total assessed valuation and shall be paid from the incidental fund. All qualified voters resident in the proposed enlarged school district shall have the right to cast their ballots for or against the proposal. The ballot shall be in the following form:

- For the proposed enlarged district
- Against the proposed enlarged district  
Check with cross mark (X) in the square desired.

The judges and clerks of the election shall certify to the secretary of the county board

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of education the total votes for and the total votes against the proposed enlarged district. A majority affirmative vote of the total votes cast shall be required for adoption of the proposed enlarged district."

(Emphasis ours.)

In view of the plain and unambiguous language we have underlined in the above-quoted statute, the conclusions appear inescapable that every qualified voter residing in each proposed enlarged district must be given a chance to express his approval or disapproval as to the plan effecting the geographical area in which he resides; that there is no authority whatsoever for a voter of another proposed district to speak for him; that each voter must cast his ballot at a polling place located within the proposed district where he resides; that there must, in other words, be an election in each proposed enlarged district; and that no legal effect can be given to the desire of the Texas County Board "to call an election in only one of the proposed enlarged districts, the remainder of the enlarged districts not voting on the plan."

"\* \* \* Now every person having the qualifications prescribed by the Constitution has the right to vote, \* \* \*."

(State vs. Brown, 33 S.W. (2d) 104, l.c. 107.);

and certainly, a resident of one proposed enlarged district is as much concerned with a redistricting plan as a resident of another proposed enlarged district--one's right of suffrage can be no greater than that of the other.

In ruling upon the constitutionality of the school district reorganization law, the Supreme Court in State ex rel. Reorganized School Dist. No. 4 of Jackson County vs. Holmes, 231 S.W.(2d) 185, l.c. 192, recognized the voting right of a resident of a proposed enlarged school district, in the following language:

"Under this act, a resident of a proposed reorganized school district who has resided in the county of his residence for the period of time prescribed by the Constitution is entitled to vote on the formation of the reorganized school district whether the voting place is located in the county of his residence or in an adjoining county. \* \* \*."

(Emphasis ours.)

The following language from the same case is also pertinent, wherein the Court said at l.c. 191:

"The Legislature has always, as a matter of policy, left to the resident voters the settlement of all questions involving the organization of school districts. The local voters act to determine such questions either through the mode of petitioned elections or by petitions to the appropriate public official or officials clothed by law with the power to annex or detach territory. The resident voters of the particular territory are the delegated agents of the Legislature to administer the enabling legislation, thereby implementing the legislative intent to obey the constitutional mandate of insuring the establishment and maintenance of free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years. *People v. Deatherage*, 401 Ill. 25, 81 N.E. 2d 581."

(Emphasis ours.)

Not only do the voters of each proposed enlarged district have a right to participate in the election, but the ultimate decision of whether or not a particular proposed enlarged district shall be formed, rests with them and is independent of the outcome of elections in other proposed enlarged districts. In support of this proposition, attention is invited to the form of ballot set out in Section 165.680. The voters do not adopt or reject the entire county plan but only that part pertaining to the proposed enlarged district wherein they reside, and

"Not later than three days after the election as provided for in section 165.680, the secretary of the county board of education shall certify to the state board of education the results of the election in each proposed enlarged school district."

Section 165.683, RSMo 1949.  
(Emphasis ours.)

For further support of the above proposition, see Section 165.687, RSMo 1949, pertaining to the election of six directors in the newly created districts, which section reads as follows:

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"If the proposal to form such enlarged district has received a majority of the votes cast on such proposition the county board of education shall order an election in such enlarged district, \* \* \* \* \* for the purposes of electing six directors \* \* \*."

(Emphasis ours.)

Thus, one proposed enlarged district may be created while another fails. Section 165.693, RSMo 1949, states the following:

"In the event that any proposed enlarged district has not received the required majority affirmative vote, the school districts constituting the proposed new school district (not districts) shall remain as they were prior to the election, but in all such cases the county board of education shall prepare another plan in the same manner as provided for the first plan and the second plan shall be submitted to a vote \* \* \*."

(Emphasis and parenthesis ours.)

While an election must be called in each of the proposed enlarged districts, the question may arise as to the number of voting places required therein. In this regard, Section 165.680 vests authority in the county board of education to designate only one voting place in a particular enlarged district, if it so desires. See: Op. Atty. Gen. 37-51, July 13, 1951, and Armantrout vs. Bohon, 162 S.W. (2d) 867, 871.

As stated earlier, we believe that the statutes in question do permit a plan which would reorganize only a part, and not all, of the existing school districts of a county. While Section 165.673 requires the county board of education to make a comprehensive study of each school district in the county, the reorganization plan is not required to change the boundaries of every district. It seems that in Willard Reorganized School District No. 2 of Greene County vs. Springfield Reorganized School District No. 12 of Greene County, 248 S.W. (2d) 435, the plan finally submitted to the voters of Ritter School District and Springfield School District, which they approved and which resulted in a reorganized

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school district known as Springfield School District No. 12, it (as distinguished from earlier plans), did not propose reorganization of any other districts. As a matter of fact, since enactment of the statutes above referred to and pursuant thereto, many old districts in numerous counties have been consolidated into enlarged districts while other districts of such counties have remained untouched. We see no objection to this if the statutory procedure is adhered to; and in this regard, we invite attention to State ex inf. Mayse, Pros. Atty. et al. vs. Goodwin et al., 243 S.W. (2d) 353, where, in a quo warranto proceeding, the Supreme Court said, l.c. 354:

"The first point made is that the plan submitted to the voters did not include a plan for the entire county. The agreed statement of facts shows that the voters of Consolidated Districts R-4 and R-5 did not vote in the election; that these districts are now and were in 1949 consolidated school districts. The law, Sections 165.673, 165.677, supra, relied upon by relators, did not require the county authorities to submit a plan of reorganization which would disturb the boundaries of every school district in the county. The agreed statement of facts shows that the entire county was considered and changes deemed necessary were made and submitted to the voters. We rule the point against the relators."

(Emphasis ours.)

In view of the foregoing, it would seem that if only a part of a county can be organized into a number of enlarged school districts, then--by the same token--only a part of a county can be organized into a single enlarged school district.

"\* \* \* A reorganized school district may be formed anywhere in the state if the terms and conditions prescribed by this act are followed. \* \* \*"

(State ex rel. Reorganized School Dist. No. 4 of Jackson County vs. Holmes, 231 S.W. (2d) 185, l.c. 191.)

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The act did not contemplate one plan and one plan only, the effect of which would solve all the problems and permanently reorganize every district in the county. The following language from the consolidated cases of State ex rel. Rogersville Reorganized School District No. R-4 of Webster County vs. Holmes and State ex rel. Reorganized School District No. 5 of Washington County vs. Holmes, 253 S.W. (2d) 402, l.c. 405, is pertinent in this regard:

"Furthermore, we think the act itself evinces an intention on the part of the Legislature that schools may be reorganized under the provisions of this law throughout the years to come regardless of the fact that the calendar schedule therein provided has expired. In Par. (3) of § 165.673, it is expressly provided that the county boards of education shall 'Continue to study the school system of the county and propose subsequent reorganization plans as conditions warrant.' \* \* \*."

Thus, while conditions may or may not warrant the proposal of only one reorganized or enlarged district in Texas County at the present time (in which case only the residents of the proposed district would vote on the plan), so long as more than one enlarged district is proposed, there must be an election "in each proposed enlarged school district", under the mandate of Section 165.680.

#### CONCLUSION

Under the school district reorganization law, it is not permissible for the county board of education to call an election in only one of the enlarged districts proposed by the reorganization plan, the remainder of the proposed enlarged districts not voting on the plan.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. James A. Vickrey.

Yours very truly,

JOHN M. DALTON  
Attorney General

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