

CONSOLIDATED SCHOOLS:

The Board of Directors of a consolidated school district have full authority over all schools lying within the area of the consolidated district.

April 20, 1949



Mr. James L. Paul  
Prosecuting Attorney  
McDonald County  
Pineville, Missouri

Dear Sir:

This office is in receipt of your recent request for an official opinion upon the following question:

"Where a school district was consolidated under the provisions of the consolidation act of 1909 and the consolidated district has permitted the operation of outlying schools within the consolidated area which had an enrollment of twenty or more, does the consolidated district now have the power to discontinue the operation of the outlying school and transport all the students to the central school?"

Your inquiry comprises two distinct questions, the first of which is: Where a school district was consolidated under the provisions of the Consolidation Act of 1909, and the consolidated district has permitted the operation of outlying schools, with an enrollment of twenty or more, within the consolidated area, does the consolidated district now have the power to discontinue the operation of these outlying schools? Your second question is: If the consolidated district has the power to discontinue the operation of these aforesaid outlying schools, does it have the power to transport the students of these said outlying schools to the central school?

In reply to your first question, restated by us above, I would call your attention to Section 10495, R. S. Mo. 1939, which states:

"When the resident citizens of any community desire to form a consolidated district, a petition signed by at least twenty-five qualified voters of said community shall be filed with the county superintendent of public schools.

On receipt of said petition, it shall be the duty of the county superintendent to visit said community and investigate the needs of the community and determine the exact boundaries of the proposed consolidated district. In determining these boundaries, he shall so locate the boundary lines as will in his judgment form the best possible consolidated district, having due regard also to the welfare of adjoining districts. The county superintendent of schools shall call a special meeting of all the qualified voters of the proposed consolidated district for considering the question of consolidation. He shall make this call by posting within the proposed district ten notices in public places, stating the place, time and purpose of such meeting. At least fifteen days' notice shall be given and the meeting shall commence at 2 o'clock p.m. on the date set. The county superintendent shall also post within said proposed district five plats of the proposed consolidated district at least fifteen days prior to the date of the special meeting. The plats and notices shall be posted within thirty days after the filing of the petition. The county superintendent shall file a copy of the petition and of the plat with the county clerk and shall send or take one plat to the special meeting. The special meeting shall be called to order by the county superintendent of schools or someone deputized by him to call said meeting to order. The meeting shall then elect a chairman and a secretary and proceed in accordance with section 10467, R. S. 1939. The proceedings of this meeting shall be certified by the chairman and the secretary to the county clerk or clerks and also to the county superintendent of schools of all the counties affected. If the proposed consolidated district includes territory lying in two or more counties, the petition herein provided for shall be filed with the county superintendent of that county in which the majority of the petitioners reside. The county superintendent shall proceed as above set forth and in addition shall file a copy of the petition and of the plat with the county clerk of each county from which territory is proposed to be taken: Provided, that all plats and notices

posted as required in this section shall not be filed or posted unless approved and signed by the county superintendent of all counties in which any part of such proposed district shall lie: Provided further, that should any county superintendent fail or refuse to sign all plats and notices as required in this section, the case may be appealed to the state superintendent by any other county superintendent interested and the decision of the state superintendent shall be final."

We would call your further attention to 10498, R. S. Mo. 1939, which states:

"Whenever any consolidated district is organized under the provisions of this article, the original districts shall continue until June 30th, following the organization of said consolidated district, and at that time all the property, money on hand, books and papers of the school districts whose schoolhouse sites are included within said consolidated district shall be the officers of aforesaid districts be turned over to the board of directors of the consolidated district, and also all bonds outstanding against the aforesaid districts shall become debts against the consolidated district. The division of property and money on hand in case school districts are divided by the formation of any consolidated district shall be governed by sections 10413 and 10414."

You will note that the above quoted section states that whenever a consolidated district is organized under the provisions of Section 10495, quoted above, that the original districts comprised within the consolidated district shall continue until June 30 following the organization of said consolidated district, at which time all of the property, money on hand, books and papers of the school districts, whose schoolhouse sites are included within said consolidated district, shall, by the officers of the aforesaid district, be turned over to the board of directors of the consolidated district. This section has been sustained in the case of State ex rel. Smith et al. v. Gardner, et al., 204 S.W. (2d) 319, 1.c. 321, which states:

"It will be seen from the above quotation that after the consolidated district is organized, that it is the plain duty of the common school

districts absorbed by the consolidated district to turn over to the latter all property, money on hand, books and papers of their respective districts. They have no discretion in this matter. Theirs is a ministerial duty."

We would also call your attention to the case of State v. Board of Education of Consolidated School District No. 1, 21 S.W. (2d) 645, 1.c. 649, which states:

"It is claimed by the relators that to permit the closing of the two schools in question by the directors would be permitting, in effect, the board to move a school without the consent of the voters of the district. However, if it can be said that such is the effect of their action, it would make no difference for the reason that it is well settled that the board can move a school in a consolidated district without the consent of the voters. *Velton v. School District* (Mo. App.) 6 S.W.(2d) 652; *Gladney v. Gibson*, 208 Mo. App. 70, 233 S.W. 271."

From the above we deduce that following consolidation the board of directors of the consolidated district possess complete authority over all school property, money and school matters within the area of the consolidated district. In your case it appears that the board of directors of the consolidated area may not have, following the fact of consolidation, chosen to exercise all of the authority which had become vested in them by virtue of the consolidation and their election to the board of directors, to the extent that they permitted the continued function of some schools within the consolidated area independently of the direction of the board of directors of the consolidated district. It is the opinion of this office that the board of directors may assert this authority at any time subsequent to its investment in them, and that this authority comprises the power to close any school within the consolidated area, provided they comply with Section 10496, R. S. Mo. 1939, which section will be considered in our discussion of your second question.

Your second inquiry restated by us is: If the consolidated district has the power to discontinue the operation of these aforesaid outlying schools, does it have the power to transport the students of these said outlying schools to the central school?

In this case we would call your attention to Section 10496, R. S. Mo. 1939, which states:

"The question of transportation of pupils may be voted upon at the special meeting above provided for, if notice is given that such a vote will be taken. If transportation is not provided for in any school district formed under the provisions of sections 10493 to 10500, inclusive, it shall then be the duty of the board of directors to maintain an elementary school within three and one-half miles by the nearest traveled road of the home of every child of school age within said school district: Provided, transportation of pupils or the maintenance of elementary schools within three miles and a half of each child of school age in the district shall not be required in consolidated districts now or hereafter organized under the provisions of sections 10493 and 10500, inclusive, where such consolidation has not placed said children further from an elementary school than they were prior to said consolidation: Provided, however, no transportation shall be furnished if there be any school within three and one-half miles of such pupil but assignment shall be made as provided by Section 10461: Provided further, that when the average attendance in any elementary school for any month falls below ten, the school board shall have authority to close such elementary school for the remainder of the term and provide transportation for the pupils of such elementary school to some other elementary school or schools in said district. Such transportation shall be paid for out of the incidental funds of the district: Provided further, that if transportation is not provided for, any consolidated district may, by a majority vote at any annual or special meeting, decide to have all the seventh and eighth grade work done at the central high school building: Provided, fifteen days' notice has been given that such vote will be taken. Such seventh and eighth grade work at the central high school may be discontinued at any time by a majority vote taken at any annual or special meeting."

From the above it will be seen that the board of directors may, when the average attendance in any elementary school for any month falls below ten, provide transportation for the pupils of such elementary school to the central school.

We would call your further attention to section 10326, R. S.

Mo. 1939, which states:

"Whenever the board of directors of any school district or board of education of a consolidated district shall deem it advisable, or when they shall be requested by a petition of ten taxpayers of such district, to provide for the free transportation to and from school, at the expense of the district, of pupils living more than one-half mile from the schoolhouse, for the whole or for part of the school year, said board of directors or board of education shall submit to the qualified voters of such school district, who are taxpayers in such district, at an annual meeting or a special meeting, called and held for that purpose, the question of providing such transportation for the pupils of such school district: Provided, that when a special meeting is called for this purpose, a due notice of such meeting shall be given as provided for in Section 10361. If two-thirds of the voters, who are taxpayers, voting at such election, shall vote in favor of such transportation of pupils of said school district, the board of directors or board of education shall arrange for and provide such transportation. The board of directors or board of education shall have authority and are empowered to make all needful rules and regulations for the free transportation of pupils herein provided for, and are authorized to and shall require from every person, employed for that purpose, a reasonable bond for the faithful discharge of his duties, as prescribed by the board. Said board of directors or board of education shall pay by warrant the expenses of such transportation out of the incidental fund of the district: Provided, that this section shall include pupils attending private schools of elementary and high school grade except such schools as are operated for profit."

It is the opinion of this office that when the number of pupils in average attendance at any elementary school within the consolidated area falls below the average of ten for any month, that the board of directors of the consolidated district shall have authority to provide transportation for the pupils of this school to the consolidated school.

It is our further opinion that whenever the board of directors of a consolidated district shall deem it advisable, or when they shall be requested by a petition of ten taxpayers of such district

to provide for the free transportation to and from school, of all pupils within the district, said board of directors shall submit to the qualified voters of such consolidated district, at an annual or special meeting, the question of providing such transportation, and that if two-thirds of the voters, who are taxpayers, who vote at such election, shall vote in favor of providing such transportation, the board of directors shall arrange for such transportation.

#### CONCLUSION

It is the conclusion of this office that the board of directors of a consolidated district have the power to close schools lying within the area of the consolidated district.

It is the further conclusion of the office that when the number of pupils in average attendance at any elementary school within the consolidated area falls below the average of ten for any month, that the board of directors of the consolidated district shall have authority to provide transportation for the pupils of this school to the consolidated school.

It is the further conclusion of this office that whenever the board of directors of a consolidated district shall deem it advisable, or when they shall be requested by a petition of ten taxpayers of such district to provide for the free transportation to and from school, of all pupils within the district, said board of directors shall submit to the qualified voters of such consolidated district, at an annual or special meeting, the question of providing such transportation, and that if two-thirds of the voters, who are taxpayers, who vote at such election shall vote in favor of providing such transportation, the board of directors shall arrange for such transportation.

Respectfully submitted,

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APPROVED:

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