

PUBLIC SCHOOLS: Under Sec. 9329 Laws of Mo. 1931, p. 333, when there is an equal division of the Board in the hiring of a teacher, the Co. Sup't. has authority when requested by three directors to cast the deciding vote.

12-2
October 30, 1933.

Hon. Owen C. Rawlings,
Prosecuting Attorney,
Marshall, Missouri.



Dear Sir:

This department acknowledges receipt of your letter of October 23, 1933 relating to the interpretation of Sec. 9329, Laws of Mo. 1931, p. 333. Your inquiry is as follows:

"I should appreciate an opinion as to the authority granted the superintendent of schools by section 9329 of the Revised Statutes of Missouri 1929, as amended by the Laws of 1931 at page 333 thereof, in the following specific instance, to-wit:

Three of the six regular directors of a consolidated school district oppose the hiring of a certain teacher, and the other three directors favor such hiring; the county superintendent of schools is asked to come in and cast the deciding vote for, or against, such teacher. Three of such directors have requested the county school superintendent to attend to this matter. Some of these directors raise a point as to whether the hiring of a teacher is such a 'question' as comes within the purview of the statutes set out in the above section.

The situation is one where the present teacher was regularly hired at this board at the beginning of the present term, and, thereafter, it was found that such teacher was related to one member of the board within the prohibited degree in the anti-nepotism act; so the related director has handed in his resignation and stepped out, new members have been selected to complete the board membership, and, all this time, the teacher in question has been permitted to continue teaching but has never been legally hired.

Much interest is being manifested in this particular community over this matter, and it

seems questionable as to whether concerted action and harmony can readily be obtained. The county school superintendent, it seems, must be called in to cast the deciding vote on almost every action before the board. Friday morning, October 27th, 1933, the board is to convene again, presumably for the purpose of selecting this teacher and if possible, I should like to have your reply in hand by that time."

The statute upon which you desire an interpretation, namely, Sec. 9329, Laws of Mo. 1931, p. 333, is as follows:

"Within four days after the annual meeting, the board shall meet, the newly elected members be qualified and the board organized by the election of a president and vice-president, and the board shall, on or before the fifteenth day of July of each year, elect a secretary and a treasurer, who shall enter upon their respective duties on the fifteenth day of July; said secretary and treasurer may be or may not be members of the board. No compensation shall be granted to either the secretary or the treasurer until his report and settlement shall have been made and filed or published as the law directs. A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board shall vote therefor. When there is an equal division of the whole board upon any question, the county superintendent of schools, if requested by at least three members of the board, shall cast the deciding vote upon such question, and for the determination of such question shall be considered as a member of such board. The president and secretary, except as herein specified, shall perform the same duties and be subject to the same liabilities as the presidents and clerks of the school boards of other districts."

I.

Under Sec. 9329, Laws of Mo. 1931, p. 333, when there is an equal division of the board in the hiring of a teacher, the County School Superintendent has authority, when requested by three directors, to cast the deciding vote.

The Legislature in 1933 amended Sec. 9329, supra, in only one respect, the same being in the following words, to-wit:

"When there is an equal division of the whole board upon any question, the County Superintendent of Schools, if requested by at least three members of the board, shall cast the deciding vote on such question, and for the determination of such question shall be considered as a member of such board."

When the whole board (six members) are three for the hiring of a teacher and three against the hiring of said teacher, the same creates an equal division, and if the hiring of a teacher can be classified under the expression "any question", then the County Superintendent of Schools may cast the deciding vote.

In the sentence just preceding the one above quoted, it is provided that a quorum may transact business with the following exceptions: relating to a contract, employing a teacher, approving a bill, and ordering a warrant. When any matter involves these exceptions, it is necessary that a majority of the whole board shall vote, but the Legislature has not seen fit to define "any question", nor has it placed any exceptions thereon, and we cannot draw any hair-line distinction nor classification as to just what questions the County Superintendent may cast the deciding vote on, and on what questions he may not cast the deciding vote. The plain language of the statute reads "any question", and when a situation exists as to whether or not a certain teacher shall be hired and the board is hopelessly deadlocked, it is the opinion of this department that it involves a question. If the same involves a question and is to be classified under "any question", then the County Superintendent of Schools has the right to cast the deciding vote.

Black's Law Dictionary, p. 978 defines "question" as follows:

"A point on which the parties are not agreed and which is submitted to the decision of a judge, jury, or board of arbitration."

The general section relating to the duties of the board is Sec. 9327, R.S. Mo. 1929, which is as follows:

"The government and control of such town or city school district shall be vested in a board of education of six members, who shall hold their office for three years and until their successors are duly elected and qualified, and any vacancy occurring in said board shall be filled in the same manner and with like effect as vacancies occurring in boards of other districts are required to be filled, and the person appointed shall hold office till the next annual meeting, when a director shall be elected for the unexpired term."

By this section the government controlling the business of the district is in the hands of the board, and the amended section, quoted supra, was evidently intended to be a solution of any difficulty when the board is unable to decide on any problem or question.

We can only conjecture as to what was in the minds of the Legislators when this amendment was made, but it is reasonable to assume that this was one of the very conditions which the Legislature by the amendment was seeking to remedy. Perhaps it had observed a school board involved in a hopeless wrangle over the selection of a teacher, the result being that no school was being conducted in the district or the school was delayed in starting its term.

CONCLUSION

Your question has never been decided by any court in Missouri and we have arrived at our decision solely by interpretation of the plain language of the statute and that is: When the whole board is equally divided on the question of hiring or not hiring a teacher, then the County Superintendent of Schools, after being requested by three or more members, may cast the deciding vote.

This department has heretofore rendered an unofficial verbal opinion to members of a school district in your county involving the same situation. However, after due consideration of the matter, we have come to the conclusion that we were in error.

Respectfully submitted,

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APPROVED:

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