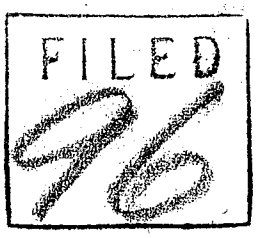
BOARDS OF EDUCATION:
SCHOOL DISTRICTS:
ANNEXATION OF DISTRICTS:
TRANSPORTATION OF SCHOOL CHILDREN:

Boards of education are authorized under Section 165.303, RSMo 1949, to transport pupils from territory annexed prior to, as well as subsequent to, the effective date of this section.



April 18, 1956

Honorable Hubert Wheeler, Commissioner
Department of Education
Jefferson Building
Jefferson City, Missouri

Dear Mr. Wheeler:

This will acknowledge receipt of your opinion request of March 30, 1956 in which you ask the following:

> "Inquiry has come to this Department requesting information about the laws which relate to the transportation of pupils of annexed territory, and their application to school districts. Section 165.303, RSMo 1949 provides that whenever an entire district or a part of a district shall have been annexed to a town or city district, as provided in Section 165.300 the school board is authorized to provide transportation for the pupils of the annexed district or part of district. This law was enacted by the Sixty-fourth General Assembly and became effective on July 18, 1948.
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> "Many town or city school districts in this state have received or annexed other districts or parts of districts; some of such annexations took place prior to July 18, 1948 and many others subsequent to this date. Boards of education have in several districts where territory was received by annexation, found it necessary, and have provided transportation for the pupils, especially for the annexed areas received after the effective date of the law which authorized transportation. The question at issue in this inquiry is whether the school board has authority under this law to transport pupils from territory which was annexed prior to July 18, 1948 when there was no law authorizing school boards to transport pupils from such territory.

"The authority of the board of education to transport pupils from annexed districts or parts of districts also involves the laws which provide for the distribution of state transportation aid. Section 165.143 provides that any school district which makes provision for transporting its pupils as provided by law shall receive state aid. There is no question about the apportionment of state aid for the transportation of pupils from territory which has been annexed since the enactment of Section 165.303 July 18, 1948. However if boards of education should have the legal authority to transport pupils from territory which was annexed prior to the effective date of this act, the district would also qualify for state transportation aid.

"Transportation aid has never been paid by the State Department of Education to any district for the transportation of pupils from territory which was annexed prior to passage of Section 165.303. This Department has construed this act to apply only to annexations subsequent to the date it became law, July 18, 1948. The context of Section 165.303 indicates that it applies only to some event taking place in the future after the taking effect of the law. No provision is made in this act for school boards to transport pupils from territory annexed prior to the enactment of this law.

"The phrase 'shall have been' is future perfect tense, which represents an event as completed in future time, and does not refer to the past, therefore when used in the statutes it would indicate that which is to be done and perfected after the date of the enactment of the law. The provision of Section 165.303 which provides that '....whenever an entire district or part of a district shall have been annexed to a city or town district and authorizes the board to provide transportation' seems to contemplate an action to be perfected in the future subsequent to the date of the enactment of the law, July 18, 1948. Therefore it would appear that boards of education would have no authority to transport pupils from territory annexed prior to the enactment of this law. Also the district would not be entitled to receive state aid for such transportation.

"I shall appreciate your advice and official opinion in answer to the following questions:

1. Are boards of education authorized by Section 165.303 to transport pupils only from territory annexed subsequent to the enactment of this law which became effective July 18, 1948 or is this law general enough to extend the authority to transport pupils from territory annexed prior to the passage of this act?

2. Since state aid shall be paid under Section 165.143 to any school district which makes provision for transporting its pupils as provided by law, would the apportionment of such aid be limited or restricted to such transportation as has been legally authorized by law?"

Article I, Section 13 of the 1945 Constitution of Missouri prohibits laws which operate retrospectively. Said Section reads as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

It appears to this writer, however, that Section 165.303, RSMo 1949, does not operate retrospectively. Said Section reads as follows:

"Whenever an entire district or a part of a district shall have been annexed to a city, town or village school district, as provided in section 165.300, the school board of the city, town or village school district to which the district or part of district is annexed is hereby authorized to make necessary arrangements to transport the pupils of the annexed district orpart of district to the school or schools designated by the board for said pupils to attend."

It is a well-settled rule of construction that constitutional and statutory provisions are to be construed as having a prospective operation only unless a different intent is evident beyond reasonable question (State ex rel. Scott v. Dirckx, 211 Mo. 568, 577, 111 SW 1). However, a statute is not retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing (Endlich on Interpretation of Statutes, Sec. 280, p. 377; State ex rel. Ross to Use of Drainage Dist. No. 8 of Pemiscot County v. General American Life Ins. Co., 336 Mo. 829, 85 SW2d 68, 74).

The standard definition of a retrospective law is as set forth in Dye v. School Dist. No. 32 of Pulaski County, 355 Mo. 231, 195 SW2d 874, 879, where the court said:

> "* * * A retrospective law is one that relates back to, and gives to a previous transaction, some different legal effect from that which it had under the law when it occurred. A statute is not retrospective merely because it relates to antecedent transactions, where it does not change their legal effect. * * *"

Quoting from Sedgwick on Statutory and Constitutional Law, the court said in State ex rel. v. General American Life Ins. Co., supra, SW2d l.c. 73:

> "'A statute which takes away any vested right acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability, in respect to transactions already past is to be deemed retrospective or retroactive.'"

As seen, retrospective means operative in the past. Section 165.303, supra, does not require transportation to be furnished prior to the effective date of the act. Such would be an impossibility in that an act to be done cannot be performed in the past. Consequently, the section does not operate retrospectively.

A law may apply to the past, however, without being retrospective. The statute in question (165.303, supra), applies to the past as well as to the future. It provides that whenever there shall have been an annexation, as provided in the preceding section, 165.300, RSMo 1949, transportation must be arranged. The construction to be given the words "shall have been" depends upon the legislative intent. The words were construed in the case of Gulf Refining Co. v. Evatt, 74 N.E. 2d 351, (Ohio) in which the court said at l.c. 355:

> "We are of the opinion that it was the design and purpose of this legislation to embrace any situation where it 'shall have been determined' that the property 'should not have been assessed as' realty or in which the property 'shall have been removed' from the realty duplicate. We are persuaded that if the General Assembly had intended the section to apply only to tax years after its enactment, it would have said 'shall be' instead of 'shall have been', just as, if it had intended the provisions of such section to apply only to tax years preceding its enactment, it would have said 'has been.' Therefore, the phrase 'shall have been' appears to have been designedly employed for the purpose of making the statute applicable to tax years preceding its enactment as well as to tax years subsequent thereto. * * *"

In the case of Clark et al. v. Kansas City, St. L. & C. R. Co., 118 S.W. 40, 219 Mo. 524, the court at l.c. 535 construed the same words as follows:

> "Therefore, if the law says it is to operate only upon cases to be brought thereafter, if it in terms excludes pending cases, then we have nothing to do but to enforce it. Attending to that view, we do not read the statutes as contended by counsel for the respondent. Its use of the future form of the verb, 'commence,' as developed in the phrase 'shall have been commenced,' in correct usage in the discourse of good writers and speakers, includes the past as well as the future. That phraseology in a statute has been held by the Supreme Court of Connecticut to be 'susceptible of both past and future application; they (the words) furnish a convenient form for legislative use when it is desired to give all-inclusive force to a single expression. Therefore as they may mean future, or past and future, it becomes a question of legislative intent in each statute.' (Norris v. Sullivan, 47 Conn. 474). To the same effect is People ex rel. v. Board of Education, 110 N.Y. Supp. 769."

See also the case of Norris v. Sullivan, 47 Conn. 474, where the Supreme Court of Connecticut said:

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> "The words 'shall have levied' are susceptible of both past and future application. They furnish a convenient form of legislative use when it is desired to give all-inclusive force to a single expression. Therefore as they may mean future, or past and future, it becomes a question of legislative intent in each statute."

For a similar construction, see People ex rel. Eckersen v. Town Board of Education, etc. of School District No. 10 Haverstraw, 110 N.Y.S. 769, 126 App. Div. 414.

It appears to this writer that the legislature intended for the section (165.303, supra), to apply to the past as well as to the future-that "shall have been annexed" was intended to mean districts annexed under the annexation section (165.300, supra), and not to mean districts annexed subsequent to the effective date of this particular statute. A different construction would be in opposition to our concept of fairness and equality under the laws since it would, in effect, under Section 165.143 RSMo 1949, allow free transportation to children in districts annexed subsequent to the effective date of the statute while it would deny the same to the children in the districts annexed prior to the effective date of said statute.

Since it has been concluded that Section 165.303, supra, applies to the past as well as to the future, it does not seem necessary to answer the second question in the opinion request.

CONCLUSION

It is therefore the opinion of this office that boards of education are authorized under Section 165.303, RSMo 1949, to transport pupils from territory annexed prior to, as well as subsequent to, the effective date of this section.

Very truly yours,

JOHN M. DALTON
Attorney General

MLH/hw/bi