AUTHORITY OF COUNTY BOARD OF EDUCATION: AUTHORITY OF STATE BOARD OF EDUCATION: REORGANIZATION PLANS:

(1) A county board of education may withdraw a proposed plan of reorganization prior to the time the state board of education has acted thereon. (2) The State Board of Education is authorized to comply with a request of the County Board of Education to withdraw a proposed plan of reorganization.

June 1, 1956

Honorable Hubert Wheeler
Commissioner of Education
Jefferson City, Missouri

Dear Mr. Wheeler:

This will acknowledge receipt of your opinion request of May 10, 1956, in which you ask the following:

> "The County Board of Education of Atchison County has requested from the State Board of Education the privilege of withdrawing a proposed county plan for the reorganization of school districts in that county. This request was received just prior to the time when the State Board of Education was to give consideration to the proposed plan. This has raised the question as to the right of the County Board of Education to recall a plan after it has once been filed with the State Board of Education, or even the authority of the State Board to permit a county board to recall a plan for further study and revision.
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> "The following facts are submitted for your information in giving consideration to this request.
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> "The Atchison County Board of Education submitted a revised fourth plan of district reorganization dated March 30, 1956 which was filed with the State Department of Education on April 4, 1956. On April 25, 1956 the Atchison County Board adopted a motion to recall the revised fourth plan on file with the State Board of Education and instructed the secretary of the county board to submit a request to the State Board of Education. A copy of the letter directed to Hubert Wheeler, Commissioner of Education, and dated May 1, 1956, which contained the request recalling the revised fourth plan was as follows:

> "'At a legally called meeting of the County Board of Education of Atchison County, Missouri, on the date of April 25, 1956, held at 8:00 p.m., the motion was made by Mr. H. Charles Cox that the revised plan, dated March 30, 1956, be recalled for further study and revision. The motion was seconded by Mr. William Beckman and carried.
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> "'Voting for the motion were: H. Charles Cox, William Beckman, Cecil Van Meter, Jr., Willis Barnhart, Charles Zuck, and Henry Bowness. Voting against the motion, none.
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> "'The Secretary of the Board was instructed to mail a copy of this resolution requesting the recall of this plan to the State Board of Education for their consideration.'"

"This request was signed by Henry Bowness, President of the County Board; S.W. Skelton, Secretary of the County Board; and notarized by Harry Emrich, May 1, 1956.

"This statement of request recalling the plan was received by the State Board of Education on May 2, 1956. The State Board of Education, in an official session May 4, 1956, had before it for consideration the Atchison County revised fourth plan and also the County Board's request recalling the revised fourth plan. The State Board delayed action on this revised fourth plan pending a legal decision on the matter of withdrawing plans.

"Section 165.673 is the basic law which authorizes a county board of education to make a study of the county's needs and propose plans of reorganization. Section 165.693 supplements the basic act by authorizing the county board to submit subsequent plans for reorganization of school districts. Section 165.677 (amended Laws of 1955, House Bill #60) sets out the procedure to be followed by the State Board of Education in approving or disapproving a county plan in whole or in part.

"I should be glad to have your advice and official opinion in answer to the following questions:

> "(1) In the absence of any specific laws which would authorize the withdrawal of plans by a county board of education, are there any general laws or implied authority that would give the county board the legal right to withdraw county board plans for further study and revision if such request is made prior to the time the State Board acts upon such proposed plans?
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> "(2) If the county board of education should have the authority to withdraw submitted proposed plans for further consideration, would the State Board of Education have the legal authority to comply with such a request?"

As pointed out in the opinion request, Sections 165.673, RSMo 1949, 165.693, RSMo 1949, and 165.677, Cum. Supp. 1955, deal with the matter of procedure of both the county board of education and the state board of education in the process of reorganization of school districts. It appears that nowhere in the statutes has the Legislature defined the scope of authority of said boards in the performance of their duties under the above cited sections. Although there are no cases which have determined the authority of the boards of education under those sections, there are cases in which analogous problems have been determined.

In the case of State ex rel. Thorp vs. Phipps, 49 S.W. 865, 148 Mo. 31, taxes were levied against defendant's property pursuant to an annexation which defendant claimed to be invalid. One of defendant's contentions was that an estimate of the amount of tax money needed had been improperly withdrawn. A statute provided that the school "shall forward to the county clerk an estimate of the amount of funds necessary to sustain the schools of their district for the time required by law, or, when a longer term has been ordered by the annual meeting, for the time thus decided upon, together with such other amount for purchasing site, erecting buildings, or meeting bonded indebtedness and interest on same, as may have been legally ordered in such estimate, stating clearly the amount deemed necessary for each fund, and the rate required to raise said amount.'" The Supreme Court of Missouri said at l.c. 36 of the official report:

> "(2) On the trial the defendant introduced evidence tending to prove that in pursuance of the election, another and different estimate from the one in question was made and forwarded to the clerk, in which the apportionment was

> different from that suggested in the notice of the election and from that adopted in this estimate. But as that estimate was withdrawn and never acted upon, and the estimate in question substituted therefor and was the one upon which the levy was made, we do not see how the validity of this tax can be in any way affected by the fact that such an estimate was made, or by any defects thereof."

In the case of Pope vs. Lockhart, 252 S.W. 375, 299 Mo. 141, under a statute like or similar to the one involved in the Thorp case, supra, one of the deputies of the county clerk changed or mutilated the estimate levy. The majority of the school board learned of this change in the certificate of the estimate, withdrew the altered estimate and framed a second certificate like the first that had been authorized. On the question of the authority of the board to make the withdrawal, the Supreme Court of Missouri said at l.c. 146 of the official report:

> "The statute (Sec. 11142, R.S. 1919) makes it the duty of the school board to make the estimate of the funds necessary to sustain the school in its district and state the amount and the rate required to raise it. Section 11183, Revised Statutes, 1919, makes it the duty of the county clerk 'on receipt of the estimates . . . . . to assess the amount so returned on all taxable property, . . . except he shall not exceed stated limits which do not affect the question in this case. The withdrawal and correction of the mutilated estimate was lawful. [State ex rel. v. Phipps, 148 Mo. l.c. 36, 37.] It is clear that the Legislature committed to the school board the duty to make the estimates for the year, and that the board kept its estimate well within the lawful limits of the levy constitutionality authorized by the voters. The courts are not expressly given authority to revise the estimates of the board, and will not arrogate to themselves such power merely because it may be thought the levy recommended will raise a sum in excess of the needs of the fund for which the levy is made, nor yet because there may be some evidence tending to show an intent to divert the money, after its collection, to another purpose, since this can be dealt with when such attempt at diversion is made. [c.,

> C.C. & St. L. Ry. Co. v. People, 208 Ill. l.c. 11, 12, and cases cited; 1 High on Injunctions (4 Ed.) Sec. 544, pp. 517, 518, 519.] The power given the board is 'highly discretionary' and legislative in nature."

See also the case of West et al. vs. Tolland, 25 Conn. 133, where the court determined the question of the authority of certain petitioners to withdraw their petition. Said petition was one for the construction of a highway. In holding that the petitioners did have such authority, the Supreme Court said at l.c. 136 of the official report:

> "ELLSWORTH, J. The single question presented in this case is, whether the plaintiffs had a right to withdraw their petition, after a verbal communication by the county commissioners, that they were of the opinion, and so decided, that the highway prayed for was not of public convenience and necessity. We think they had. The case was still undecided by the commissioners, in the eye of the law, and it remained so until the commissioners had drawn up and signed the report and presented it to the court, or the clerk of the court, to which it is returnable, or at least to the parties or their counsel; until this was done, they could not be said to have put their decision into legal form, or to have divested themselves of power to deliberate further, and change their opinion if they saw fit, upon giving notice to the parties. Somewhere there must be a point, to distinguish between mere opinion or purpose, and a fixed and unalterable judgment. Where is this point, in the doings of commissioners, whose report becomes a part of the records of the court? We think their report alone can speak their official acts, and therefore to that only can we look to know what those acts are. We are satisfied that nothing short of this will answer the requisites of the law, and that until they have finished and signed the report, they have not divested themselves of power to act in the premises, as they may have occasion. The same is true of auditors, committees in chancery and jurors. In the case of the latter, it has often been ruled on the circuit, that the plaintiff may suffer a nonsuit at any time before the verdict is placed in the hands of the clerk. Up to that moment any juror may withdraw his assent to the verdict, and the panel may destroy it or modify it as they please."

Closely related to the question of withdrawal of a petition and also analogous to the issue with which we are concerned is the matter of withdrawal of signatures from a petition for the creation or alteration of a school district. It is generally held in such situations that a signature may be withdrawn from the petition prior to the time that action has been taken thereon. See the following language in 78 C.J.S., Schools and School Districts, Section 37(3), page 706-707:

> "A signatory of a petition for the creation or alteration of a school district may have his signature withdrawn or erased therefrom before the petition is filed or the jurisdiction of the officer or board to whom the petition is directed has attached, but according to some authorities a signatory may not as a matter of right withdraw his signature thereafter, although withdrawal may be allowed where good cause is shown. However, other authorities hold that in the absence of statute providing otherwise, a signatory may withdraw his signature from the petition as a matter of right at any time before final action on the petition. In any event, a signatory has no right to withdraw his signature after action on the petition has been taken except where the attempted action is entirely unauthorized and void, although if he was induced to sign by misrepresentations he may apply for leave to withdraw his signature. Applications to withdraw signatures may and should be considered in passing on the petition, where discretion to grant or refuse it is vested in the officer or board to which it is presented."

From the above cases and authority, it appears to this writer that a county board of education may withdraw a plan of reorganization before it has been acted upon by the state board of education. Further, there is no indication in the above quoted sections of the statutes that such a plan may not be withdrawn for further study and revision. To hold otherwise might well subject a plan approved by the state board of education to the voters under Section 165.680, Cum. Supp. 1955, which plan would not be the most suitable and desirable one in the interest of the school districts concerned.

As to the authority of the state board of education to comply with the request to withdraw, the authority of the county board of education to make the withdrawal necessarily implies the authority of the state board of education to comply therewith. There would

be no authority in the state board of education to comply with the request to withdraw if the county board of education was without authority to make the withdrawal, but it having been decided that the county board of education has the authority to withdraw the plan of reorganization prior to the time that the state board of education has acted upon the proposed plan, it follows that the state board has the authority to comply with said request.

CONCLUSION

It is therefore the opinion of this office that:

(1) A county board of education may withdraw a proposed plan of reorganization prior to the time upon which the state board of education has acted thereon.

(2) The state board of education is authorized to comply with a request of the county board of education to withdraw a proposed plan of reorganization.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Yours very truly,

JOHN M. DALTON
Attorney General

HLH/bi