SCHOOLS: Limitation on submission of subsequent plan of reorganization applicable only to area within which vote was taken on previous plan, and not to remainder of county wherein no vote has been taken within one year.

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January 29, 1960

Mr. Hubert Wheeler
Commissioner of Education
State Department of Education
Jefferson Building
Jefferson City, Missouri

Dear Sir:

This is in response to your request for opinion dated November 9, 1959, which reads as follows:

> "Questions are often asked as to the frequency of presenting to the voters proposed enlarged school districts in various areas of the county by the county board of education. In some counties, Section 165.693 has been interpreted to mean that the one year limit refers to the last date that any reorganization plan was submitted in the county, while in other counties the limitations of this law seem to have been interpreted to refer merely to a previous election held in any particular or proposed area rather than to elections in other areas in the county. In other words, it is suggested by some that a subsequent reorganization election could be held within a proposed area so long as no election had been held in that specific area within a one year period although an election may have been held elsewhere in the county within that time.
>
> "Section 165.673 provides in part that the county board of education shall make a comprehensive study of each school district in the county and prepare a plan of reorganization and submit such plan to the state board of education.

"Section 165.693 provides for submitting a second plan and subsequent plans. Any subsequent plan shall be submitted to a vote in the same manner as other plans. The Attorney General, in his opinion of January 14, 1949, ruled that a plan of reorganization, to be submitted by the county board of education to the state board, must include all school districts in the county even though some districts are not to be enlarged. Therefore, any county plan must take into consideration all of the districts in the county.

"Section 165.677 provides that upon receipt of the county proposed reorganization plan the state board of education shall, within 60 days, examine and approve or disapprove such plan, either in whole or in part. If the state board finds the reorganization plan inadequate in whole or in part it shall return the plan to the county, indicating the parts which it has approved and listing reasons for finding any part of the plan not approved. The county board then has 60 days to review the rejected part of the plan in order to make alterations and return it to the state board for further consideration. If the revised plan of the part which was disapproved is again disapproved by the state board the county board shall propose and submit its own plan, or part, to the voters within 60 days following the disapproval of the revised plan.

"Section 165.680 requires the county board to submit to the voters of the district, within 60 days, any plan approved by the state board of education. Section 165.677 provides that when the county board of education proposes its own plan in accordance with the provisions of the law, it shall be submitted to the voters within 60 days following the receipt of the disapproval of the revised plan or part.

"You will observe that the state board of education may approve a proposed county plan in part and disapprove the remainder of the plan. When any part of the county plan is approved the law

directs that it shall be submitted to the voters within 60 days after it is approved by the state board. When the county board proposes its own plan as provided in the law, it may be considerably later than the state board's approval of the original plan, therefore, the elections could be held two or three months later than those of the part or parts approved by the state board.

"Section 165.677, referred to herein, makes provision for a county proposed plan to include the entire county but the state board of education has discretion in its examination of such plans and may approve only a part of the county proposed plan and disapprove the remainder, however, the county board, in submitting such a plan, may not propose the formation of new enlarged districts for each area of the county since some of the districts may have already been enlarged, or local conditions make it such that the county board may propose that certain districts remain the same as they exist at that time. Any area that is finally disapproved by the state board of education, the county board is authorized by law to submit its own plan from such disapproved areas, either covering all or part of such areas to be submitted to the voters. In proposing their own plans for the enlargement of districts, often county boards do not propose and submit to the voters all of the disapproved areas remaining in the county. Possibly only one or two proposals are submitted to the voters for certain specific areas. It frequently happens that with the changing of conditions, other areas not being submitted to the voters find it desirable to form enlarged districts even though the period of one year has not lapsed since the vote was taken in certain other proposed areas. If the one year limitation in Section 165.693 can be interpreted to apply to the holding of elections in any particular proposed district, rather than to elections in other areas of the county, it would help to expedite the calling of elections for the enlargement of school districts when certain

areas of the county appear to be ready for such action.

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

Presuming that any county board's plan, submitted to the state board includes all school districts in the county, even though some districts are not to be enlarged as directed in the Attorney General's opinion of January 14, 1949, does the one year limitation in submitting proposed enlarged districts to the voters by the county board of education apply in the limitation of such elections to a one year period from the last date on which the last vote for reorganization was taken within the county,

or

could this section be interpreted to mean that the one year limitation shall apply only to the particular territory in which an election was held rather than to elections in other areas of the county?"

The controlling statute involved in the determination of your question is Section 165.693, RSMo 1949, which reads as follows:

"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 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 in like manner as the first, but not sooner than one year nor later than two years after the date of disapproval of the first plan. Any subsequent plan shall not be submitted sooner than one year following the date on which the last vote on reorganization was taken."

The question arises out of the fact that this office has ruled that a plan of reorganization is a county-wide plan even though it might not propose the formation of enlarged districts in all the territory of the county. This must of necessity be true because in the preparation of such a plan of reorganization the county board of education must consider the whole county in order not to affect some area adversely by the formation of an enlarged district in some other part of the county. Therefore, in this sense, a plan of reorganization is a county plan.

However, this office has also ruled that such a plan of reorganization need be voted on only in the proposed enlarged districts (opinion to Weldon W. Moore, September 9, 1953).

In construing a statute, the prime duty is to give effect to the legislative intent as expressed in the statute. Remedial statutes are not in all events to be taken literally, but are to be interpreted so as to give effect to the legislative purpose, and to such purpose is to be ascribed a reasonable and not a technical meaning. Warrington v. Bobb, Mo. App., 56 SW2d 835.

Technically and strictly, when a plan of reorganization is considered as a county plan, the last sentence of Section 165.693, supra, prohibits the submission of a county plan sooner than one year following the date on which the last vote of reorganization was taken anywhere in the county. However, when this statute is read in the light of its apparent purpose and the general purpose of the reorganization laws, it acquires a different meaning.

As yet, no case in Missouri has been decided wherein the exact question involved here was determined. However, the general object and purpose of the reorganization laws and the time schedule set out therein were discussed in State ex rel. Rogersville Reorganized School Dist. No. R-4 of Webster County v. Holmes, 363 Mo. 760, 253 SW2d 402, 404. There, the court said:

> "The object and purpose of the law is to effect a general reorganization of the school districts of this State. It should be liberally construed to the end that its ultimate objective may be attained. State ex rel. Acom v. Hamlet, supra, 250 S.W.2d loc. cit. 498. And especially should this be done where no contention is made that any public or private right has been impaired or injured by mere tardiness of action.

> "It is readily apparent that the schedule was placed in the law primarily because the Legislature deemed a general reorganization of the school districts of this State to be of urgent need. But it was the need that prompted the urgency. No suggestion is made that the need became any the less subsequent to expiration of the schedule. Surely, therefore, the Legislature did not intend that a belated or tardy compliance with either of these two provisions of the schedule would be construed to defeat the end to be accomplished when both are so clearly intended to expedite rather than to abort the fulfillment of the need. * * *"

In that case, reference was made to State ex inf. Rice ex rel. Allman v. Hawk, 360 Mo. 490, 228 SW2d 785, which, in turn, discussed and distinguished Schur v. Rural High School Dist No. 1, 112 Kan. 421, 210 P. 1105. The latter case involved a statute which authorized the formation of a rural high school district and contained a provision that an election for the formation of such a district "shall not be called oftener than once in every two years."

As stated above, the Missouri court, in the Hawk case, drew a distinction between that case and the one which it had under consideration involving the annexation statute, Section 165.300, RSMo, C.S. 1957, so that on its facts the Kansas case might or might not be persuasive. But, that is something which we need not decide now. The Kansas case did, however, set out the purpose of such a limitation. At P. l.c. 1107 the court said:

> "All that the two years' inhibition intended was to prevent the electors from being harassed with frequent elections on the same or substantially similar propositions."

It would appear that the Legislature had the same purpose in mind when it enacted the last sentence of Section 165.693, supra, i.e., to prevent the voters from being harassed with frequent elections on the same or substantially similar propositions. That being so, its purpose can be effectuated by construing it to mean that a plan for the formation of a particular enlarged district cannot be submitted sooner than one year following the date on which the last vote on formation of that proposed enlarged district was taken. It is not necessary,

in order to effectuate this purpose, that it be construed technically so as to prohibit the formation of a proposed enlarged district in some other part of the county because the voters there will not have voted on the previous plan and are not harassed thereby.

In view of the declared over-all object and purpose of the reorganization laws as set out in the Holmes case, supra, and the urgent need for such reorganization, neither this nor any other statute should be strictly construed so as to hinder or unnecessarily delay the attainment of the ultimate objective, the general reorganization of the school districts of this state. If the last sentence of Section 165.693, supra, were construed so as to prevent the submission of a plan in a part of the county where no vote on reorganization had been taken within a year, it would unduly and unnecessarily restrict the expeditious fulfillment of the legislative purpose.

In disposing of this matter it should be pointed out that the decision in State ex inf. Rice ex rel. Allman v. Hawk, supra, is not controlling in this instance. That case construed Section 165.300, RSMo, C.S. 1957, the annexation statute. By its terms, and under the court's decision, after an annexation election has been held within a school district no other such special election shall be called within a period of two years thereafter. Although the court did not dwell on the point or actually consider the purpose of this limitation, its purpose is apparently the same as that in Section 165.693, supra, that is, to prevent the harassment of the voters. The court pointed out that Section 165.300 recognized only one purpose, the annexation of part or all of one district to another, and that, by its terms, it prohibited the calling of any <u>such</u> special election for that purpose within two years after an election on annexation. It should be noted that, regardless of the fact a proposition under Section 165.300 might be changed so as to propose the release of a different part of the district, the voters of the whole district vote thereon so that it is necessary to say that no election may be held under Section 165.300 within two years of a prior election thereunder in order to effectuate the purpose of preventing the harassment of voters. Consequently, our reasoning herein, considering the purpose of the limitations contained within the two statutes, is consistent with the decision of the court in the Hawk case.

CONCLUSION

It is therefore the opinion of this office that the limitation in the last sentence of Section 165.693, RSMo 1949,

Mr. Hubert Wheeler

prohibiting the submission of a subsequent plan of reorganization of school districts sooner than one year following the date on which the last vote on reorganization was taken, was designed to prevent the harassment of voters and, consequently, applies only to the area included within the limits of a proposed enlarged district wherein a vote was taken under a previous plan, and not to the remainder of the county where no vote has been taken within one year.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

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