

SCHOOL DISTRICTS: Portion of a consolidated school district may
ANNEXATION: be annexed to another district after a vote
of the voters of the whole of the district
sought to be annexed favoring the release of
the portion sought to be annexed and after
acceptance by the school board of the proposed
annexed district.

May 16, 1951

Honorable R. E. Moulthrop
Prosecuting Attorney
Harrison County
Bethany, Missouri



Dear Mr. Moulthrop:

We have your letter in which you request an opinion of
this department. Your letter is as follows:

"An opinion is respectfully requested
from your office covering the following
question:

"May a part only, of a consolidated
school district organized under Senate
Bill #307 -- 64th General Assembly, by
vote, annex to another adjoining con-
solidated school district?

"If so, who may vote at such election--
the qualified voters of the whole district
or only those who live in the part that is
proposed to be annexed to the second district?"

Section 165.300, RSMo 1949, is as follows:

"1. Whenever an entire school district, or
a part of a district, whether in either case
it be a common school district, or a city,
town or consolidated school district, which
adjoins any city, town, consolidated or village
school district, including districts in cities
of seventy-five thousand to five hundred
thousand inhabitants, desires to be attached
thereto for school purposes, upon the reception
of a petition setting forth such fact and signed
by ten qualified voters of such district, the
board of directors thereof shall order a special
meeting or special election for said purpose by

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giving notice as required by section 165.200; provided, however, that after the holding of any such special election, no other such special election shall be called within a period of two years thereafter.

"2. Should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of such city or town school district shall from that date be changed so as to include said territory and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action.

"3. In case an entire district is thus annexed, all property and money on hand thereto belonging shall immediately pass into the possession of the board of said city or town school district; but should only a part of a district be annexed thereto, said part shall relinquish all claim and title to any part of the school property and money on hand belonging to said original district, and that portion of the district remaining must contain within its limits thirty children, and thirty thousand dollars assessed valuation, or thirty children and nine square miles of territory.

"4. The voting at said special school meeting or special election shall be by ballot, as provided for in section 165.267, in the case of common school districts, or as provided for in section 165.330 in the case of town, city or consolidated school districts, and the ballots shall be

"For annexation

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"and

"Against annexation,

"when the whole district is to be annexed,
but if only a part is to be annexed, the
ballots shall read

"For release

"and

"Against release." (Underscoring ours)

We are of the opinion that the above quoted section of the statute is applicable to the question involved in your opinion request. Said section provides that whenever a part of a school district, whether it be a common school district or a city, town, or consolidated school district adjoining any city, town, consolidated or village school district, desires to be attached to either a city, town or consolidated school district for school purposes and whenever the board of directors of the district, a portion of which district desires to be annexed to another consolidated district, shall receive a petition setting forth that fact relative to that district signed by ten qualified voters of said district said board shall order a special meeting or special election for the purpose of voting upon the question by giving notice as required by Section 165.200, RSMo 1949.

Said Section 165.200, supra, insofar as it applies to the giving of notice is as follows:

"* * * If no schoolhouse is located within the district, the place of meeting shall be designated by notices, posted in five public places within the district fifteen days previous to such annual meeting, or by notice for same length of time in all the newspapers published in the district, giving the time, place and purposes of such meeting."

The aforesaid section, 165.300, supra, first above quoted, in paragraph (2) thereof provides in substance that should a majority of the votes cast favor such annexation the secretary shall certify that fact, together with a copy of the record, to the district to which the portion proposed to be annexed

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is to be annexed, whereupon the board of said last mentioned district shall meet and consider the advisability of receiving such territory. The statute further provides in substance that should a majority of the members of said board favor such annexation the boundary of the district receiving the new territory shall from that date be changed so as to include said territory and that the board of the annexing district shall immediately notify the clerk of the district a portion of which has been annexed of its action.

Paragraph numbered (4) of said Section 165.300, above quoted, provides in substance for the conduct of the meeting and of the election in the district a part of which is to be annexed to another district and provides that in instances in which only a portion of the district is to be annexed to another district as distinguished from instances in which the whole district is to be annexed to another district the ballots upon which the voting is done shall read "for release" and "against release."

Certain questions may occur in connection with the consideration of the applicability of the above quoted section to the question embodied in your letter and we should therefore give some attention to a consideration of such questions. We preface this discussion of said questions with an expression of our opinion to the effect that a part only of a consolidated district organized under S.B. 307, 64th General Assembly which is the same as Section 165.657, RSMo 1949, may by vote annex to another adjoining consolidated school district. We are of this opinion because there is no language in said Section 165.300, supra, which excepts any school district in the state of Missouri which adjoins any city, town, consolidated or village school district or which excepts any part of such district from the provisions thereof.

We are also of the opinion that in any election on the question of release of a portion of any such district for the purpose of annexation to any city, town or consolidated school district all qualified voters of the district, a portion of which is to be annexed, are entitled to vote.

It will be noted that you limit your question to such consolidated school districts as were organized under Senate Bill No. 307, 64th General Assembly, which act is embodied in Sections 165.657 to 165.707, RSMo 1949, inclusive. The question may occur as to whether any district organized under said act is a consolidated district within the meaning of the term consolidated district as used in the Missouri statutes. We are of

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the opinion that in cases in which, under said act, districts have been formed which are composed of two or more preexisting districts, said districts are in fact consolidated districts because a consolidation has actually been accomplished. We believe that we are supported in this opinion by reason of the use of the word "consolidation" as a descriptive term in the act itself and more particularly in Section 165.697, RSMo 1949, which is part of said act which section is, in part, as follows:

"In all school districts enlarged under the provisions of sections 165.657 to 165.707, in which the erection of a new central school building or any addition to present building so selected by reason of consolidation is a part of the approved plan, state aid shall be provided in the amount of one-half of the cost of said building and equipment but the total state aid for this purpose shall not exceed twenty-five thousand dollars for any enlarged district. * * *" (Underscoring ours.)

The question may occur as to whether districts organized under said section have any different status than that of any other school district of this state insofar as the applicability of the provisions of the aforesaid Section 165.300 is concerned. In answer to that question we wish to state that we are of the opinion that the status of such districts is no different than that of any other school district in the state of Missouri insofar as the applicability of the provisions of Section 165.300 is concerned for the reason that said Section 165.657, supra, merely provides a new method of forming school districts which method sometimes amounts to consolidation of smaller districts and when a district is formed by said method and under said act it is a school district of the state of Missouri, and since Section 165.300, supra, applies to any school district of this state which happens to adjoin any city, town, consolidated or village school district or to any portion of any such district so adjoining any such district, it certainly applies to school districts organized under Senate Bill No. 307, 64th General Assembly, which act is embodied in Sections 165.657 to 165.707, RSMo 1949, inclusive. In further support of our opinion to the effect that Section 165.300, supra, is applicable to districts organized under Sections 165.657 to 165.707, RSMo 1949, inclusive, we point out that Section 165.707, RSMo 1949, which is a part of the reorganization act, provides as follows:

"Changes of boundary lines * * * of enlarged districts may be effected as now or hereafter provided by sections 165.263 to 165.373."

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We comment that Section 165.300, the section which we hold to be applicable to the districts which you have in mind, is one of the sections designated in Section 165.707, above quoted.

Another question which may arise in the construction of Section 165.300, supra, is whether or not the statute limits the districts to which other districts may be annexed to city, town or village school districts to the exclusion of an ordinary consolidated school district which is not a city, town or village school district. The reason that this question occurs is that in the beginning of said Section 165.300, supra, the types of districts to which another district or a portion thereof may be annexed are described as city, town, consolidated or village school districts. Whereas in paragraph numbered (2) of said section it is provided that should a majority of the votes be cast by the district, a part of which is to be annexed to the other district, in favor of annexation, the secretary shall certify the fact with a copy of the record to said city, town or village school district and fails to mention consolidated districts as one of the kinds of district to which such fact might be certified. We are of the opinion however that the mention of consolidated districts in the beginning of the section definitely shows that it was the intention of the Legislature that not only city, town or village districts but also ordinary consolidated districts could receive portions of other districts by annexation, and that the omission in paragraph (2) of the section of consolidated districts among those to whom notice of the outcome of the election in the other districts was to be given does not cast any doubt upon the intention shown by the first portion of the statute which definitely includes ordinary consolidated districts among those that may receive other districts or portions thereof by annexation. We believe that an intention on the part of the Legislature to the effect that the result of an election on the question of release of a portion of a district for the purpose of annexation to an adjacent consolidated district may be certified to the board of the said adjacent consolidated district may be inferred from the fact that consolidated districts were mentioned in the first part of the section as districts to which other districts or portions thereof may be annexed.

CONCLUSION

We are accordingly of the opinion that if a part only of a district organized under S.B. 307, 64th General Assembly, Section 165.657, RSMo 1949, desires to be annexed by an adjoining consolidated district and if ten qualified voters of the district, a

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portion of which district desires to be annexed, shall present a petition setting forth that fact to the board of directors of said district, said board of directors shall give notice of election, said notice to be given in the manner prescribed in Section 165.200, RSMo 1949, and if at such election the voters of the district vote to release the portion which desires to be annexed to another district and if the district to which it is desired for said portion to be annexed upon receipt of due notice of the fact of the vote for such release by the other district shall by vote of its board of directors vote for the acceptance of the new territory, the annexation of the portion of the school district desiring to be annexed by the consolidated district shall be an accepted fact.

In answer to your second question we are of the opinion that in the above mentioned election the voters of the entire district, a portion of which is to be released by one district and annexed by the other, have a right to vote on the question of release.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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