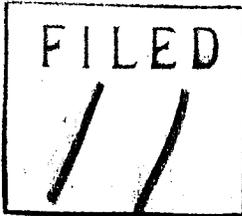


SCHOOLS: School district cannot by method provided for
change of boundary lines absorb another entire
COUNTY COURT: district; new district, to be composed of two
entire districts, must have within its limits
COUNTY TREASURER: twenty persons of school age; attempted formation
of new district invalid so that county court has
no duty to assign number to proposed new district
and county treasurer has no duty to honor warrants
of new districts or to transfer funds of old
districts to proposed new district.



June 11, 1954

Honorable Edwin F. Brady
Prosecuting Attorney
Benton County
Warsaw, Missouri

Dear Mr. Brady:

This is in response to your request for opinion dated
April 28, 1954, which reads as follows:

"I have been requested by the County Court
of Benton County, Missouri, and the County
Treasurer of said county for an opinion
regarding the duties of said Court and said
county treasurer with respect to the school
district and school warrants hereinafter
mentioned. It is therefore requested that
you give me your opinion in regard to this
matter.

"Prior to March 22, 1954, a petition signed
by 20 qualified voters of School District
No. 90, which contains 7 persons of school
age, and School District No. 92, which con-
tains 10 persons of school age, in Benton
County, Missouri, was filed with the clerks
of the respective districts, praying for a
change of the boundaries of Dist. No. 90
so as to include all of Dist. No. 92. At
the annual school meetings of said districts
on April 6, 1954, the proposition presented
by said petition was approved by the voters
of both districts. Subsequently notices
were posted over 10 days prior to April 27,
1954, and on April 27, 1954, 21 days after
the action taken to form a new district by
changing the boundaries of Dist. No. 90 so
as to include Dist. No. 92, an election was
held, and a board of directors was elected

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by the voters of the new district composed of former districts No. 90 and No. 92. Both districts lie wholly in Benton County.

"Section 165.170, RSMo 1949, provides the manner in which the boundaries of school districts may be changed and in which new districts may be formed or created, further providing that no new district shall be created or boundary line changed by which any district shall be formed containing within its limits less than 20 persons of school age. Section 165.193, RSMo 1949, provides that the voters of a newly created district shall assemble within the district within 15 days after the formation of the new district pursuant to notices being posted for 10 days prior to such meeting.

"Is it the duty of the County Court to assign a number to the district formed by the action of the voters of Dist. No. 90 and Dist. No. 92?"

"Is it the duty of the county treasurer to transfer the funds of Dist. No. 90 and Dist. No. 92 to the credit of the new district and to honor warrants drawn by the board of the new district? If it is his duty to honor such warrants, should he do so without warrants being drawn by the boards of Dist. No. 90 and Dist. No. 92 for the transfer of such funds to the new district?"

Your precise questions relate to the respective duties of the county court and the county treasurer with regard to action taken by school districts Nos. 90 and 92 of Benton County. Their duties are necessarily dependent upon the validity and result of the action taken, which must be considered first before their duties can be determined.

It is not entirely clear from your request whether the voters approved a change of boundary lines or the formation of a new district. Section 165.170, RSMo 1949, provides that "When it is deemed necessary to form a new district, to be composed of two or more entire districts, or parts of two or more districts, to divide

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one district to form two new districts from the territory therein, to divide one district and attach the territory thereof to adjoining districts, or to change the boundary lines of two or more districts," certain procedure shall be followed.

Assuming, however, that the petition, notices and ballot call for a change of boundary lines, we do not believe that the attempt accomplished anything because a school district cannot, under the guise of a change of boundaries, absorb another district.

In State ex rel. Consol. School Dist. No. 2 of Pike Co. v. Ingram, 2 S.W. (2d) 113, two consolidated districts had sought to change their boundary so that one would be absorbed in the other. The court pointed out that there are four things which a common district may do by election with regard to the territorial extent and status of the district. When deemed necessary and subject to certain conditions precedent it may hold an election: (1) To form a new district, to be composed of two or more entire districts, or parts of two or more entire districts; (2) to divide one district to form two new districts from the territory therein; (3) to divide one district and attach the territory thereof to adjoining districts; or (4) to change the boundary lines of two or more districts.

By virtue of another section of the 1919 Statutes (present Sec. 165.293, RSMo 1949), all the provisions of that section relating to the changes of boundary lines of common school districts were made applicable to consolidated districts. It had been previously held in State ex inf. v. Sweaney, 270 Mo. 685, 195 S.W. 714, that these four various contingencies were not coextensive and that a provision for a change of boundary lines did not provide a way for dividing one district into two new districts.

In the Pike County case, as here, the effect of the action taken was to form a new district out of the territory of two entire districts, but since the formation of a new district is entirely different from a change of boundary lines, which was all that was authorized for consolidated school districts, it could not be done by the method provided for the change of boundary lines. The court said, l.c. 115:

"In the case at bar, the end to be attained was confessedly that of permitting consolidated school district No. 4 to take over the

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whole of the territory of consolidated school district No. 2, in consequence of which consolidated school district No. 2 could no longer continue to exist. Such being true, it is at once apparent, from what we have said above, that such proceeding could not properly be designated as a change of boundaries of the two districts, but that it necessarily fell within one of the other classifications embraced in section 11201, R.S. 1919. However, under section 11253, R.S. 1919, the provision of section 11201, R.S. 1919, relating to changes of boundaries, is the only one of the four provisions therein which can be held to apply to a consolidated school district. * * *

Since a change of boundary lines contemplates the continued existence of both districts after the change, if that was the method employed here we believe the action taken was void and of no effect.

As stated above, common districts may also hold an election for the purpose of forming a new district, to be composed of two or more entire districts. Such was the effect of the action taken here. However, in so doing the district is confronted with the plain proviso of Section 165.170, RSMo 1949, which says:

" * * * provided, however, that no new district shall be created or boundary line changed by which any district shall be formed containing within its limits by actual count less than twenty persons of school age, or by which any district shall be left containing within its limits by actual count less than twenty persons of school age; * * *"

Section 165.177, RSMo 1949, also states:

"No new school district shall be formed nor shall any school district be divided so that the new district formed or the territory left by the division of a district shall contain an assessed valuation of less than fifty thousand dollars and an enumeration of less than twenty persons of school age or at least eight square miles of territory and twenty persons of school age."

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The argument can be made, of course, that where you have two districts with a total of less than twenty children of school age, both individually and combined, the districts are no worse off after the formation of the new district than they were before. Nevertheless, the plain wording of the provisos in Section 165.170, supra, and of Section 165.177, supra, admit of no exception and leave little room for argument. If the Legislature had seen fit to make an exception in cases such as this it could well have done so. Since it has not, we must conclude that any attempt to form a new district which has within its limits less than twenty persons of school age is void.

Therefore, regardless of whether the action taken by districts Nos. 90 and 92 was for a change of boundary lines or for the formation of a new district, in our opinion the attempt was invalid and of no effect. This being so, the districts exist as they did before the election and the county court has no duty to assign a number to the district thus attempted to be formed and the county treasurer has no duty to transfer the funds of districts Nos. 90 and 92 to the credit of the purported new district or to honor warrants drawn by the board of the purported new district.

CONCLUSION

It is the opinion of this office that a school district cannot by the method provided for change of boundary lines absorb another entire district; that a new district, to be composed of two entire districts, cannot be formed unless the new district will have within its limits at least twenty persons of school age; and that when either of these things is present so that the action in changing the boundary lines or forming the new district is illegal, hence void and of no effect, the county court has no duty to assign a number to the new district thus attempted to be formed and the county treasurer has no duty to transfer the funds of the two old districts to the purported new district or to honor warrants drawn by the board of the purported new district.

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

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml