

SCHOOL DISTRICTS: Has the Board of Directors of a Consolidated District the sole power to select school sites and can such power be exercised arbitrarily

April 12, 1938

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Mr. Donald B. Dawson
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Dear Sir:

This Department is in receipt of your request for an official opinion which reads as follows:

"A controversy has arisen here in Bates County between the board of directors of the Consolidated School District and some of the residents of the district. The district voted bonds for a new building, and the question involved is: does the board of directors of a consolidated school district have the sole power to locate and select the site for a new school building? Section 9330 would seem to hold that the power is in the board of directors, but can that power be exercised arbitrarily and unreasonably? The school board in question is considering two sites for the new school building. A petition signed by 105 resident voters of the district opposes both of the sites selected by the board and gives pretty good reasons for objecting to the sites and proposes a third which meets with the approval of the 105 signers. Therefore, if the board is not allowed to exercise the power of selection arbitrarily and unreasonably, the signers of the petition feel that if the board continues

to ignore the 105 people who have objected to the board's selections, their action would be arbitrary and unreasonable. What is your opinion? "

It appears from your letter that there are two questions asked, to-wit:

First, Does the Board of Directors of a Consolidated School District have the sole power to locate and select the site for a new school building?

Second, If so, can that power be exercised arbitrarily and unreasonably?

I

Relative to your first question we cite you the case of Gladney et al. v. Gibson et al., 208 Missouri Appeal, l. c. 80, wherein the Court said:

"The language of this section (now 9330 and the kindred section 9327) clearly indicates that it was the intention of the Legislature that in a common school (three director school district) district the authority to select a schoolhouse site be vested in the resident taxpayers of the district assembled in annual meeting but that in a city, town or consolidated district such authority be vested in the board of education."

And, at l. c. 85 of the same decision the Court says:

"In conclusion we may say that in

view of the nature of city and town school districts, and the various statutes applicable thereto, it seems well nigh inconceivable that the Legislature intended that the question of selecting a high school site should be left to the qualified voters of such districts. As said above, elections held in such districts are required to be by ballot, and conducted as are elections for State and county officers; and the polls must be kept open from seven o'clock A. M. to six o'clock P. M. now Section 9341 (section 11251). No provision whatsoever is made by law for submitting at such an election the question of the selection of a schoolhouse site or the changing of such a site; nor does this appear practicable. To leave the matter entirely to the judgment of the qualified voters of the district, would mean that each voter would have the right to vote for any site that he might indicate. There is no provision in the law as to how a voter shall indicate on his ballot what site he is voting for. An effort to have each voter, of his own initiative, point out or describe the site of his choice, might well lead to utter confusion. And if the board of education should designate two or more sites, between which the voters are to choose, then the voters would be precluded from exercising their independent judgment in the matter, being confined to a choice between the sites submitted by the board. And for this there is no sanction in the law."

Again, in a later case decided by the Supreme Court in *State v. Wenom*, 32 S. W. (2d) 1. c. 62, the Court said:

"As to the location of the school site, there can be no question but that it is left to the discretion of the school board in consolidated districts."

Hence, it is conclusively established that the board of directors of a consolidated school district has the sole power to locate and select school sites.

II

Relative to your second question, it does not appear that our courts have passed directly on the precise question you ask, that is to say, we find no case where the power or discretion exercised by the board in selecting a particular site was attacked on the ground that the power or discretion as exercised was arbitrary or unreasonable. However, in this connection, the Kansas City Court of Appeals, in *Velton v. School District of Slater*, 6 S. W. (2d) 1. c. 654, in quoting with approval from a South Carolina case, said:

"When the exercise of judgment and discretion is vested, either by law or contract, in an individual or governing body, a reservation is implied that it must be exercised in good faith and reasonably. In determining whether it has been so exercised, the Court will not substitute its judgment for that

of the individual or body in whom the discretion has been vested. In such a case, the inquiry is: Does the action under consideration fail to measure up to any fair test of reason? If the facts and circumstances are such that reasonable men may differ as to the wisdom and expediency thereof, the judgment and discretion of those vested with authority to decide must be upheld. It follows that a very clear case of abuse of discretion must be made out to warrant judicial interference."

Your letter does not detail sufficient facts or circumstances surrounding the apparent controversy existing between the board and the voters of the school district for this Department to intelligently arrive at a conclusion whether or not a "very clear case of abuse of discretion" is made out by the action of the board. You being, no doubt, in possession of all the facts, and having in mind what is said in the aforesaid last mentioned case, will be in a position, no doubt, to resolve the question one way or the other.

CONCLUSION

I

The Board of Directors of a consolidated school district has the sole power or discretion to locate and select a site for a new school building.

III

A very clear case of the abuse of discretion must be made out to warrant judicial interference with

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the action of the Board of Directors in the selection of a school site.

Respectfully submitted

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APPROVED

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