

SCHOOL DISTRICTS: Boundaries

January 10, 1940

Hon. L. Cunningham, Jr.  
Prosecuting Attorney  
Camden County  
Camdenton, Missouri

1-11



Dear Sir:

We are in receipt of your request for an opinion, dated December 30, 1939, which reads as follows:

"In the Eastern part of this County the last geodetical survey changed the boundary line between two school districts sufficiently to move a man's house from one district to the other, the latter school district had refused to recognize the survey and are refusing to admit the man's children to school in that district without the payment of tuition. The latter district is a consolidated district and provided transportation while the former district is a common district and if the man's children attended school there it would necessitate their walking several miles to school.

"It is my opinion that the geodetical survey should be recognized and the line established by it by the governing line, however, the board of the latter district are not inclined to accept either my recommendation or the recommendation of the Superin-

January 10, 1940

tendent of County Schools and desire that I secure your opinion upon the matter. I would appreciate your sending me the opinion in duplicate so that I may keep one for my files and send one to the board of schools."

The provision in our statutes for formation of consolidated districts is Section 9345 R. S. Missouri, 1929, which reads as follows:

"Three or more common school districts, or a village district having less than two hundred children of school age by last enumeration, together with two or more adjoining districts, may be consolidated into a new district for the purpose of maintaining both primary schools and a high school by proceedings had in accordance with the provisions of section 9275. When such new district is formed it shall be known as 'Consolidated district No. \_\_\_\_\_ of \_\_\_\_\_ county,' and shall organize at a special meeting within fifteen days after the formation thereof; such organization and the government of such consolidated district shall be under and in compliance with the laws governing town and city school districts as provided in article 4 of this chapter."

Section 9275, R. S. Missouri, 1929, which is referred to in Section 9345, supra, reads as follows:

"Formation of new districts.-- 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 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, it shall be the duty of the district clerk of each district affected, upon the reception of a petition desiring such change, and signed by ten qualified voters residing in any district affected thereby, to post a notice of such desired change in at least five public places in each district interested fifteen days prior to the time of the annual meeting, or by notice for same length of time published in all the newspapers of the district; and the voters when, assembled, shall decide such question by a majority vote of those who vote upon such proposition. \* \* \*

We set forth here your description of the east boundary line of the consolidated district:

" \* the records show the consolidated district to be bounded on the East by the following line beginning at the Southwest corner of the Southeast quarter of the Southeast quarter of Section Sixteen (16) Township Thirty-eight (38) Range Fifteen (15) West; thence run South to the Southeast corner of the Northeast quarter of the Southeast quarter of Section Twenty-one (21); thence run East to the Southwest corner of the Northwest quarter of the Southeast quarter of Section Twenty-two (22); thence run South to the Southwest corner of the Southwest quarter of the Southwest quarter of the Southeast quarter of Section Thirty-

four (34); thence run West to the Southwest corner of the Southwest quarter of the Southwest quarter of Section Thirty-four (34); thence run South to the Southeast corner of the Southeast quarter of the Southeast quarter of Section Sixteen (16) all in Township Thirty-eight (38) and Thirty-seven (37) of Range Fifteen (15) in Camden County, Missouri."

The above description was voted on by the people in the establishment of the East boundary of the Consolidated District. The problem now arising is whether the prior erroneous survey or the present correct survey is to govern the description voted on by the people.

In 11 C. J. S. 635, the rule set forth is as follows:

"\* \* \* However, a resurvey based upon an original survey which is erroneous is not controlling and where an original survey is erroneous and a new corrective survey is made, the new survey controls."

Cited in support of this rule is Mengel v. Leach, 226 S. W. 883. The court in that case held that where the survey of a portion of the city was erroneous and a new survey was made, the rights as to lots in such portion of the city should be governed by the new, and not the old, survey. We think the present case is analogous to the Mengel case, supra.

Hon. L. Cunningham, Jr. (5) January 10, 1940

CONCLUSION

In view of the above statutory provisions and authorities, it is the opinion of this Department that the lines set by the present geodetical survey should be recognized. It follows, then, that the children mentioned in your request should be allowed to attend school in the Consolidated District.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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TYRE W. BURTON  
(Acting) Attorney General

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