

TOWNSHIPS: A petition for change of boundary of town-
BOUNDARY LINES: ships should come from the voters of each
PROCEDURE: township affected.

September 11, 1941.

County Court
Ripley County
Deniphan, Missouri



Attention: Presiding Judge

Gentlemen:

This is in reply to yours of recent date wherein you requested an opinion from this department on the following statement of facts:

"Harris Township in Ripley County, Missouri, at last election voted a Stock Law in said Township. Since that time about one half of the citizens of said Harris Township petitioned to the County Court of Ripley County to make new Boundary lines through Harris Township, and this was being done by said petitioners to get from under the Stock Law that was then in force.

"Now in reading the statutes Article 3 Sec. 13700 seems to me to give the County Courts the right to change Boundary lines of Townships or create new Townships by their petition, but my understanding of reading said section in order to change the lines of Townships, that it should be a petition by each Township affected.

"What we wish to get settled on is that the part of Harris Township that wants the lines changed by their petition to the County Court did not have any petition from the Doniphan Township offered to the Court. So as Doniphan and Harris would be the two effected Townships and the only petition was by the Part of Harris Township to the County Court. I contend that it is not legal under the law, but the lawyers here say that it is, and please give us an opinion on this matter at your earliest convenience as I think your opinion will settle this matter for good."

Section 13700, R. S. Mo. 1939, and referred to in your request, reads as follows:

"Each county court may divide the county into convenient townships, and as occasion may require erect new townships, subdivide townships already established, organize better township lines, and may, upon the petition in writing, of not less than twenty-five per centum of the legally qualified voters of each township affected, as such vote was cast in the last preceding general election for the office receiving the greatest number of votes in the township or townships affected, consolidate two or more existing townships, into one township, or otherwise reduce the number of townships, or change the boundary lines thereof, as may be deemed advisable."

You state that a petition for change of a boundary line from only one township affected has been presented

to the county court, and that it is contended by some of the authorities that a petition from all townships affected is not necessary.

We find no authority for such a contention. In the case of State ex rel. Rose et al. vs. Job, 205 Mo. the question of notices and petitions for change of boundary line of a school district was considered. The procedure for such a change was prescribed by what is now Section 10410. In the Job case, l. c. 28, the court in discussing a provision of that section, which has some similarity to the provisions of said Section 13700 relating to the petition, said:

"It is next contended that the proceedings to organize the new school district were without force and effect, and therefore void, for the reason that the petitions were not signed by ten qualified voters residing in each district affected. Under the provisions of section 9856, Revised Statutes 1899, it is made a part of the duty imposed upon the State Superintendent of Public Schools to distribute copies of the law relating to schools, accompanied with instructions for the carrying into execution of such laws, all of which is required to be printed in a separate volume. In obedience to the requirements of that section, the State Superintendent sent out for the guidance of all the school districts in this State his interpretation of the particular provisions of section 9741, which is now in judgment before us, and doubtless numerous school districts of this State, whenever necessity required, have been guided by such interpretation. The instructions to the school districts upon the proposition now before us,

were as follows. 'When it is desired to form a new district or to change the boundary lines of two or more districts, the first step is the preparation of a petition clearly setting forth the change desired, which petition must be signed by at least ten qualified voters, "residing in any district affected thereby." It is not necessary that the voters all reside in the same district -- part may reside in each district, but every signer must reside in some one of the districts affected by the proposed change. As many petitions should be prepared (all alike) as there are districts affected, and one petition be presented to the clerk of each district affected. The law makes it the duty of the clerk, without any action of the board of directors, upon receipt of the petition to post a notice in at least five public places in the district of which he is clerk, fifteen days prior to the time of the annual meeting. A failure to do this subjects the clerk to a fine of not exceeding one hundred dollars.'

"Now, while it is true that the interpretation as given by the State Superintendent to this section would not be conclusive upon the courts who are called upon to interpret it in accordance with the well-settled rules of construction, yet we do say that the practical construction given this law by the officers whose special duties imposed upon them the proper administration of the school laws of the State, is entitled to great weight when the law which they have had occasion to construe is called in question before the courts. We have carefully considered this section and our conclusion is in harmony with the interpretation of the State Superintendent as herein indicated.

"It will be observed from the language employed in the section that it is not essential that the petition should be signed by ten qualified voters residing in each district affected. The section 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, etc., 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,' not residing in each district affected, but 'residing in any district affected thereby.' It will be noted that when the lawmaking power was designating the person who should receive the petition, it designated the district clerk of each district affected, but when treating of the sufficiency of the petition which was received by such clerk it did not limit the qualification of the voters to sign the petition to residents of each particular district, but simply required, upon the reception of a petition signed by ten qualified voters residing in any district affected thereby, to give notice.

"We are unwilling to disturb the practical construction given this statute by those whose duties impose upon them the proper administration of the school laws of this State."

The rule in the Job case was based somewhat on an interpretation by the administrative official. We have no such interpretation here and no reason for such a ruling. The rule of statutory construction which should be applied here is stated in the case of *Chief Administrator vs. Kansas City, Clay County & St. Joseph Railway Company*, 286 Mo. 523, l. c. 534 as follows:

"* * * The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used. All other rules are incidental and mere aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill. * * *"

Here we have a statute which states in plain language that the petition for change of boundary of a township must be signed by at least twenty-five percent of certain voters in each township affected.

It cannot be successfully contended that the township to which lands are added by such a change is not affected, while the township from which such territory is taken by such a change is affected, or vice versa.

CONCLUSION

It is, therefore, the opinion of this department that petitions in writing signed by not less than twenty-five percent of the legally qualified voters of each township affected, must be presented to the county court before the court is authorized to change the boundary lines of such affected townships.

Respectfully submitted,

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APPROVED:

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