

SCHOOLS: : Under Section 10410 R. S. Mo., 1939, Board
: of Arbitration passing on change of boundaries
: between two districts NOT authorized to
: allow change of one district is left with
: less than twenty persons of school age,
: or if territory to be added to other district
: does not contain persons of school age.

April 15, 1944

Mr. Glen Simpson, Superintendent
Sullivan County Public Schools
Milan, Missouri



Dear Mr. Simpson:

This will acknowledge your letter of April 8,
in which you request an opinion, as follows:

"At the recent school election, an attempt to change the boundary between two schools was made, in accordance with the provisions of Sec. 10,410. One school voted in favor of the change and the other voted against such change. Now an appeal has been filed with me, and I have appointed a board of arbitration, as provided in Sec. 10410.

"I notice the following provision in that section:

"No new district shall be formed, 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 by actual count less than twenty persons of school age.

"Here is my problem: One of the districts affected (the one in which the farm is now located), has less than twenty persons of school age at the present time. If the farm is changed into the other district, it will make no difference in the number of persons of school age either way, because there are no persons of school age residing in the home.

"Would the above provision prohibit any right of appeal in this case, or if the case is brought before the board of arbitration,

would the board be compelled to leave the boundary as it is now, because of the fact that there are not twenty persons of school age living in the district at the present time.

"I have set April 18 as the date for the board to consider the case, so will you please inform me before that date if you possibly can do so."

Your letter involves a construction of the following parts of Sec. 10416 R. S. Mo. 1939.

"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:

"* * * It is further provided that in changing the boundary line between the two established districts, one district shall not encroach on the other simply for the acquisition of territory."

You will note that the statute clearly provides that no district shall be left with less than twenty persons. This clause is not a mere repetition of the prior clause stating that no district shall be formed containing less than twenty persons of school age. It adds something to this statement and could only apply to the situation you have here where the district already had less than twenty persons of school age. It is submitted that there is a good reason for this rule, for if you were allowed to constantly decrease the boundaries of your districts now containing less than twenty persons of school age it would be very unlikely that that district would ever attain twenty persons.

It is also difficult to see how your situation can escape the other prohibition of the statute, that is, that no district shall be formed solely for the

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purpose of obtaining territory. You state that no person of school age is going to be added by the locating of this farm you speak of, in the other district. The purpose therefore couldn't be to add new pupils to the new district.

In School District No. 14 vs. School District No. 27, 195 Mo. App. 504, it is stated:

"If there were no school children on these transferred lands, no other reason being assigned, it is manifest that the change was merely to acquire more territory."

CONCLUSION.

It is therefore, the conclusion of this office, that under Sec. 1041C, R. S. Mo., 1939, the Board of Arbitration would have no right to make a change in boundaries of two districts where one district would be left with less than twenty persons of school age, even if the district prior to the suggested change had less than twenty persons of school age. Said Board also could not authorize a change where lands not containing persons of school age would be transferred to another district.

Respectfully submitted,

ROBERT J. FLANAGAN
Assistant Attorney General

APPROVED:

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LeC