

*sent to
M. J.*

SCHOOLS: (1) Upon filing of petition for consolidation with county superintendent of schools, or filing of petition for annexation with school board of a common school district, jurisdiction attaches when the petition is filed. (2) In the formation of a consolidated school district the superintendent, in laying out the boundary lines of the proposed consolidated district, cannot include in such district part of a previously organized consolidated district.

July 30, 1946



Hon. Joe H. Brown
Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Sir:

This will acknowledge receipt of your letter of July 11, 1946, requesting an opinion from this department upon the following statement of facts:

"On June 5, 1946 eight rural school districts in Greene County, Missouri, to-wit: Districts Nos. 50, 54, 55, 56, 57, 77, 78 and 79, filed a petition with the County Superintendent of schools of Greene County, Missouri, praying that they be consolidated and organized into a consolidated school district. This petition was signed by more than 25 qualified voters residing in the proposed consolidated district. The County Superintendent of Schools assigned to said proposed district the number, Consolidated School District No. 10.

"The County Superintendent of schools investigated the needs thereof and determined and located the exact boundaries of the proposed consolidated district.

"The County Superintendent called a special meeting of the qualified voters of the proposed consolidated district for considering the question of consolidation. Said meeting was called for June 29, 1946. This call was made by posting within the proposed district 10 notices in public places, stating the place, time and purpose of such meeting. These notices were posted on June 14, 1946, being 15 days before the date of said meeting.

"The County Superintendent also posted on said June 14, 1946 five plats of the proposed consolidated district. The plats and notices were posted within 30 days after the filing of the petition.

"The County Superintendent filed a copy of the petition and of the plat with the County Clerk.

"On June 29, 1946 the said County Superintendent attended the special meeting, called it to order and a chairman and secretary were elected.

"The vote was taken by ballot on the proposed consolidation and the vote was 273 for consolidation and 130 against consolidation. Six directors were elected, two for three years, two for two years and two for one year. In other words, the statutes pertaining to proposed consolidation of school districts were strictly followed.

"On the 6th day of June (after the petition for consolidation above mentioned was filed with the County Superintendent of Schools) the Board of Directors of Rural District No. 57 (one of the eight rural districts in the proposed plat) had a meeting and voted to hold an election on June 24 to vote on the question of whether or not they should be annexed to another consolidated school district, to-wit: the Willard Consolidated School District. Notices reading, 'Done by order of the Board this 6th day of June' were posted. This election was had on June 24 and the district voted to be so annexed to the Willard Consolidated School District. On the evening of said June 24, the Board of Directors of the Willard Consolidated School District met and by majority vote accepted Rural District No. 57 in its consolidated school district.

"We would like to have the opinion of the Attorney General on (a) the legality of the formation of the new consolidated school district; (b) whether or not, upon the filing of the petition

with the County Superintendent of Schools, jurisdiction over the subject-matter of the proceeding was acquired by and vested in said superintendent of schools; (c) whether or not, if such jurisdiction was thus vested in the County Superintendent of Schools, Rural District #57, by order of its Board of Directors, could take any steps to be annexed to any other school district until the determination of the petition and election for the proposed consolidated school district.

"Due to the fact that estimates of income and expenses for the proposed consolidated school district must be filed by July 15 with the County Clerk, we request that you please give this your immediate attention.

"The only case we have found which is in point is the case of State ex rel vs. Lee, State Supt. of Public Schools, 284 SW 129."

In your letter of July 15, 1946, in reply to our letter asking for additional information, you enclosed the following statement:

"Question No. 1: Rural District No. 57 had a petition signed by 10 persons.

"Question No. 2: No. It was filed after the consolidation petition of 8 districts was filed.

"Question No. 3: District No. 57 joins the Willard Consolidation.

"Question No. 4: The proposed 8 district consolidation contains 248 children enumerated, without District no. 57 there would be only 191."

We are in receipt of a letter from Mrs. Nannie Coward, Superintendent of Public Schools of Greene County, in which she states that the petition for the formation of the consolidated district was received in her office about 9:30 A. M., June 5th, and that the petition for annexation of School District No. 57 to the Willard Consolidated School District was received by the School Board of School District No. 57 on the morning of June 5th, and she indicated in a telephone conversa-

tion that the petition for the annexation was received by the Board of Directors of School District No. 57 before she received the petition for the consolidation of the eight common school districts.

In rendering you an opinion regarding the validity of the annexation or consolidation, this opinion will necessarily have to be one in which the answer to your questions is given on the basis of certain facts. Since this is true, our opinion will apply only to the facts stated therein, and the actual time of the filing of the petitions for annexation and consolidation is a matter that will have to be determined before a definite answer can be given to your questions.

The answer to your questions involves two matters: First, the matter of jurisdiction, and second, whether or not a consolidated school district which is being formed can include as part of its territory part of a previously consolidated school district.

In regard to the first matter, it is our opinion that jurisdiction attaches upon the receipt of a petition for annexation or a petition for consolidation. Therefore, the matter of whether the annexation of School District No. 57 to Willard Consolidated School District was valid depends on whether or not the petition for annexation was received by the Board of Directors of School District No. 57 before the petition for consolidation of the eight common school districts was filed with the Superintendent of Schools of Greene County.

In the case of State ex rel. Fry v. Lee, 314 Mo. 486, 1. c. 501, the Supreme Court of Missouri said:

"Relators contend that the first jurisdictional act under the statute is the filing with the county superintendent of public schools of a petition signed by at least twenty-five qualified voters of the community. Respondent, on the other hand, contends that the first jurisdictional act under the statute is the posting, by the county superintendent, of the plats and notices required by the statute."

The court, page 507, said:

" * * * Immediately upon the filing of the petition, jurisdiction over the subject-

matter of the proceeding was acquired by, and vested in, the Superintendent of Public Schools of Camden County, and such jurisdiction remained in him until the question of the formation of the proposed consolidated district was determined by the qualified voters of the proposed district at the special meeting called by him for the consideration of that question. * * * "

The court, page 503, said:

"State ex rel. v. Young, supra, chiefly relied upon by respondent in support of his contention, was a mandamus proceeding, instituted by the directors of a school district in Cole County against the county commissioner of schools, to vacate an order or decision made by him relative to the formation of a new school district and a change of boundary lines of an existing district. The statute then in force, relating to the formation of new school districts, made it the duty of the directors of the districts affected, upon the filing of a petition signed by ten qualified voters residing in either of the districts affected, requesting a change in boundary lines or the formation of a new district, to post a notice thereof in each district interested twenty days prior to the time of the annual meeting. If a part of the districts affected voted in favor of, and a part against, such change, the matter was referable to the county school commissioner for decision, which decision was final and conclusive when transmitted to, and entered upon the records of, the various districts. It was alleged that the county school commissioner had no jurisdiction to make a decision in the matter for the reason that the petition, upon which the directors of the respective districts acted in posting notices of the proposed change to the voters, was not signed by ten qualified voters, as the statute required; that, therefore, the elections held in pursuance of such notices were void. In ruling the question then before this court, the learned writer of that opinion, speaking for

the court, said: 'I am inclined to think that the relators are wrong in respect to the supposed jurisdictional fact. The section makes it the duty of the directors to act, when ten qualified voters request them to do so, but it does not assume to prohibit them from acting of their own motion when the interests of the district, in their judgment, call for action. Their action terminates by posting a proposition for a change. The proposition so posted by them is the warrant of authority for the vote at the annual meeting, and not the preliminary request of the ten voters to submit the matter to a vote. If the preliminary request should be regarded in the nature of a jurisdictional fact, it is a fact which seems to be left to the directors to decide. It is for them to say that the petitioners are qualified voters; and when they have practically so declared by posting the proposition, I do not perceive how their decision can be successfully attacked in any collateral proceeding or by mandamus of the courts.' (Italics ours.)

"As we read the last-mentioned case, while this court therein ruled that the statute involved did not assume to prohibit the school directors from acting of their own motion, without the filing, by ten qualified voters of the district, of a petition requesting such action, nevertheless, the court in substance recognized the fact that the statute made it the duty of the school directors to act in the premises upon the filing of a proper petition calling for such action upon their part; in other words, this court inferentially, at least, considered and viewed the filing of a proper petition as a jurisdictional act calling for the judgment and decision of the directors upon the sufficiency of the petition so filed. Consequently, in our opinion, the cases cited by respondent in no sense negative the contention of relators herein."

In the case of State ex inf. Gentry v. Vickers et al., 320 Mo. 383, l. e. 385, the court said:

" * * * Under our ruling in State ex rel. Fry v. Lee, 284 S. W. 129, we held that the filing of a petition with a county superintendent of schools for the formation of a consolidated district gave the superintendent of the county wherein the petition was filed jurisdiction over the territory embraced in the proposed district, although a portion of it was situated in an adjoining county."

Under the rulings in State ex rel. Fry v. Lee and State ex inf. Gentry v. Vickers, cited above, it must be held that jurisdiction attaches when the petition for consolidation or for annexation is filed, and when jurisdiction attaches, it is retained until the voters take action at the election held pursuant to the petition and decide what action shall be taken.

All acts relating to the same subject, or having the same general purpose, should be read in connection with the statute or provision thereof being construed, as together constituting one law. State ex rel. Columbia National Bank of Kansas City v. Davis, 284 S. W. 464, 314 Mo. 373.

A guiding and certainly correct rule for construction of statutes is set forth in State ex rel. v. Gordon, 261 Mo. 1. c. 649, quoting from Bishop on Written Laws, secs. 113a, 86, as follows:

"The completed doctrine resulting from a bringing together of its parts is, that all laws, written and unwritten, of whatever sorts and at whatever different dates established, are to be construed together, contracting, expanding, limiting and extending one another into one system of jurisprudence as nearly harmonious and rounded as it can be made without violating unyielding written or unwritten terms."

Under these rules, it is apparent that the statute for annexation, Section 10484, R. S. 1939, and the statutes regarding consolidation of school districts, Sections 10493 and 10495, R. S. 1939, all found in Article 5, Chapter 72, R. S. 1939, provide ways in which school districts may be annexed or consolidated. Both methods, when followed as set out in the statutory provisions, result in the formation of school districts. Since both methods are provided for, under the holding in State ex rel. Fry v. Lee, cited above, it is clear that when

jurisdiction attaches for one method of procedure, it obtains until the question has been decided, and jurisdiction cannot be obtained by the filing of a petition for either consolidation or annexation until the first petition has been voted upon.

It is the duty of the school board of a school district, when a petition for annexation is presented to it, to order an election held for a vote to be taken on the annexation. It is also the duty of the superintendent of schools, upon receipt of a proper petition for consolidation, to lay out the boundary lines of the proposed consolidated district and to see that an election is held. Neither the superintendent nor the school board has any choice but to call an election when a proper petition is received. Even though the superintendent of schools has the power to lay out the boundary lines of the district, he has the positive duty of calling an election when he receives a proper petition.

The second matter to be decided is whether or not a proposed consolidated school district can include in its territory part of another consolidated district.

In the case of *Gross et al. v. Moreland*, 190 S. W. 961, the Kansas City Court of Appeals decided an injunction suit involving a consolidated school district. In that case there was a proceeding in equity to enjoin the defendant, as county superintendent of schools, from performing certain acts preliminary to the formation of a consolidated school district. The petition alleged that the plaintiffs were residing in a consolidated school district which was duly organized, and that the defendant, who had received a petition to lay out the boundaries of a proposed consolidated school district, in laying out these boundaries, included part of the territory that was in the consolidated school district in which the plaintiffs lived. The Kansas City Court of Appeals held that there was no unauthorized action taken by the superintendent of schools and that no injunction should issue. This case was decided in 1916.

However, in the case of *State ex rel. Fry v. Lee*, cited above, the court held that a jurisdictional matter was involved and did not go into the matter of including part of one consolidated district in a new consolidated district. The only question before the court was one of jurisdiction, and it was held that when one superintendent obtained jurisdiction, it was held until the voters had approved or rejected it. The question of part of the territory of an existing consolidated district being included in a proposed consolidated district was not directly before the court.

The Supreme Court of Missouri in the case of State ex inf. Gentry v. Vickers, cited above, said:

" * * * Other contentions aside, this conclusion finds force in the fact that the petition by the voters to the County Superintendent of Schools of Camden County in the Sullivan case was filed long before a like petition was filed in the Vickers case with the County Superintendent of Schools of Laclede County. In attempting to form the consolidated district in the Vickers case common school districts theretofore designated in the consolidated district in the Sullivan case were included. This was unauthorized and was in effect an attempt to destroy the autonomy of the consolidated district already formed in Camden County.
* * * "

When these two cases are considered together, it is clear that the holdings therein overrule the holding of the Kansas City Court of Appeals in the case of Gross et al. v. Moreland, cited above, although not expressly overruled in the opinions of the court.

The statutes provide methods for changing the boundary lines of consolidated districts. A consolidated district can be dissolved by a vote of two-thirds of the voters of the consolidated district, by the provisions of Section 10472, R. S. 1939, or by changing the boundary lines, under the provisions of Section 10410, R. S. 1939, or by the extension of the boundary lines of a city, town or village, under the provisions of Section 10466, R. S. 1939, and cannot have its boundary lines changed by attempted annexation of part of its territory by a proposed new consolidated school district.

Since the territory of one consolidated school district cannot be included in a proposed new consolidated district, it follows that if the petition for annexation of School District No. 57 to the Willard Consolidated District was filed before the petition for consolidation of the eight common school districts, and School District No. 57 was annexed to the Willard Consolidated School District and became a part thereof, the vote to form a new consolidated school district of the eight common school districts was invalid, void and of no effect, since jurisdiction had previously been obtained by the School Board of School District No. 57. If the petition for consoli-

dation of the eight common school districts was filed before the petition for annexation was filed, then the consolidation is a valid and existing one and the attempted annexation of School District No. 57 by the Willard Consolidated District is invalid, void and of no effect.

From the facts that have been given in your letters and the letter of Mrs. Coward, the procedure followed in both the annexation attempt and the consolidation attempt was correct, that is, the requisite of the statute in annexation or consolidation proceedings was carried out in each case. If it be established, as a matter of fact, that the petition for annexation was filed before the petition for consolidation, the consolidated school district could not in any way be held to have any existence, as it is agreed in the statement of facts by both you and Mrs. Coward that in the seven school districts other than Common School District No. 57, there are only 191 children and less than 50 square miles, and, of course, this is less than the statutory requirements in forming a consolidated district.

CONCLUSION

The question of whether or not there is a Consolidated School District No. 10 now existing in Greene County, or whether Common School District No. 57 is now a part of the Willard Consolidated School District, depends upon when, as a fact, the petition for consolidation was filed with the County Superintendent of Schools and the petition for annexation was filed with the School Board of School District No. 57. If the petition for annexation was filed before the petition for consolidation, School District No. 57 is now a part of the Willard Consolidated District, and the attempted consolidation of the eight common school districts to form Consolidated District No. 10 is void, invalid and of no effect. If the consolidation petition was filed with the County Superintendent before the petition for annexation was filed with the Board of Directors of School District No. 57, then Consolidated District No. 10 is a validly organized and existing consolidated school district, and includes as part of that school district the territory formerly in Common School District No. 57.

Respectfully submitted,

APPROVED:

C. D. BURNS, Jr.
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Attorney General

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