SCHOOLS: Consolidated school district to maintain action against directors of component districts to recover property of such districts.

Mr John

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Hon. G. A. Kamp
Prosecuting Attorney
Montgomery City, Missouri

Dear Sir:

This will acknowledge receipt of your recent request for an opinion which reads as follows:

"I am writing you for an opinion regarding the moneys and property belonging to rural districts which have been heretofore consolidated with a town district. In May, 1946, the Bellflower school district was consolidated with a number of rural districts into what is known as Bellflower Consolidated School District No. 1.

Section 10498 R. S. 1939 provides that the school officers of the former school districts included in the new consolidated district shall, on or before June 30, turn over to the officers of the new district all property, money, books, papers, etc.

A part of the rural districts have by warrants transferred the money belonging to their districts to the new consolidated district. However, some of the districts have refused to do this.

The question on which I would like your opinion is: What procedure should be taken to compel the old districts to transfer the money in the county treasury to the new consolidated district? Also, what procedure for the new consolidated district to obtain possession and control of the school buildings and desks and property therein, which under the above quoted section are the property of the new consolidated district?

Is there any provision under the law for the County Court to order the Treasurer to transfer the money to the consolidated district?"

In answer to the last question you asked, we find no provision of law which would authorize the County Court to order the County Treasurer to transfer the money of the former districts to the consolidated district.

The legislature has power to provide for consolidation of school districts. In State Ex Rel vs. Smith, 343 Mo. 288, 121 S.W. 2d, 160, 161, the Court said:

> "It has long been the rule in this state, and generally throughout the country, that the power of the legislature in the creation of public corporations (which term includes school districts) is absolute except where limited by the constitution. The legislature may also change, divide, consolidate and abolish them as the public welfare demands."

There is no question of the right of the legislature to direct what disposition shall be made of school money and property of the various districts when they are consolidated into one district. School money and property are public property and do not belong to the individual districts. In the case of School District of Oakland vs. School District of Joplin, 340 Mo. 779, 102 S.W. 2d 909, 910, the Supreme Court, in discussing the status of school money and property, said:

> "Section 1 of article 11 of the Constitution of Missouri (15 Mo. St. Ann. p. 810) provides: 'A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years.' The General Assembly, by statutory enactment, has provided for the establishment of units, designated 'school districts,' their organization, and vested said districts with certain powers and duties (chapter 57, R.S. 1929, P. 9194 et seq., Mo. St. Ann. P. 9194 et seq. p. 7066 et seq.) to facilitate its effectual discharge of this constitutional mandate. The school districts are organized as separate legal entities. School Dist. No. 7 v. School Dist. of St. Joseph, 184 Mo. 140, 156, 82 S.W. 1082, 1086. They are public corporations, form an integral part of the state, and constitute that arm or instrumentality thereof discharging the constitutionally intrusted governmental function of

imparting knowledge and intelligence to the youth of the state that the rights and liberties of the people be preserved. * * * * They are supported by revenues derived from taxes collected within their respective territorial jurisdictions and the general revenues of the state collected from all parts of the state. These taxes and such property as they may be converted into occupy the legal status of public property and are not the private property of the school district by which they may be held or in which they may be located."

Since the money and property in the hands of a school district are public property, they are subject to regulation by the legislature for the best interests of the public. School districts and officers are merely trustees charged with handling said funds according to law. The terms of their trust are the statutes of the state.

The state has provided for the consolidation of common school districts by Section 10493 R.S. Mo. 1939, et. seq. and by Section 10498, has provided for the disposition of the moneys and property of the component districts. Said Section 10498 reads as follows:

"Whenever any consolidated district is organized under the provisions of this article, the original districts shall continue until June 30th, following the organization of said consolidated district, and at that time all the property, money on hand, books and papers of the school districts whose schoolhouse sites are included within said consolidated district shall by the officers of aforesaid districts be turned over to the board of directors of the consolidated district, and also all bonds outstanding against the aforesaid districts shall become debts against the consolidated district. The division of property and money on hand in case school districts are divided by the formation of any consolidated district shall be governed by sections 10413 and 10414."

Under the above section it was the plain duty of the directors of the various component districts to transfer and surrender to the consolidated district all of the property, money on hand, books and papers of said component districts, on June 30, 1946. From your letter it appears, however, that some of the districts refused to make such transfer and assignement of property. We, therefore, have a situation where persons charged with a specific duty refuse to perform

that duty. The officers of the component districts you mentioned had the specific duty of transferring all of the money and property in the hands of their respective districts to the consolidated district on June 30, 1946. The consolidated district, under Section 10498 became entitled to all the moneys and property of the former districts. In State ex rel vs. Smith, supra, the Court, in speaking of the right of a consolidated district to such moneys and property, said, 121, S.W. 2d, l.c. 163:

> "Upon consolidation the identities of the component districts fade and disappear completely and in their stead emerges a new entity in the form of the consolidated district. This new entity spontaneously becomes the owner of the properties and liable for the old debts."

The consolidated district would have been entitled to such money and property even without Section 10498. In Cleveland Village School Dist. vs. Zion, 195 Mo. App. 190 S. W. 955, the Court said:

> "It may perhaps very well be that, if the Cleveland Village school district had absorbed all of the Glen Wild district, then the former would be entitled to sue for and recover the property belonging to the latter, as successor to all its rights and liabilities. Abler v. School District of St. Joseph, 141 Mo. App. 189, 197, 124 S.W. 564. As said in District v. District, 18 Mo. App. 272: 'Where a corporation goes entirely out of existence, by annexation to or merger in another corporation, if no arrangement be made respecting the property and liabilities of the defunct corporation, the subsisting corporation succeeds to all the property and liabilities of the former. This rests on the principle of succession of rights and devolution of obligations.'"

So there seems to be no question but that Bellflower Consolidated School District No. 1, mentioned in your letter, is now entitled to maintain legal action to recover the moneys and property formerly in possession of the common school districts of which it was formed. The question is to what the correct legal action is for the consolidated district.

It has been repeatedly held that mandamus is a proper remedy to compel public officers to perform their duties. In the case of Bakersfield News vs. Ozark County, 338 Mo. 519, 92 S.W. 2d 603, 605, the Court said:

"If a public officer fails to perform mandatory ministerial duties, he may be compelled to do so by mandamus."

Of course, only clear ministerial duties of an officer can be enforced by mandamus. In State ex rel vs. Meier, 143 Mo. 439, 446, the Court said:

"That the respondent as president of the council is a person charged with the exercise of legislative power is evident, and that the courts will not interfere with either of the other co-ordinate departments of the government in the exercise of their powers, except to enforce mere ministerial acts required by law to be performed by some officer thereof, as to the performance of which the law leaves the officer no discretion, is the well settled law of the land, universally recognized since the decision in Marbury v. Madison, 1 Cranch, 64, in which MARSHALL, Chief Justice, speaking for the Supreme Court of the United States declared the rule, that whether mandamus would like or not is to be determined 'not by the office of the person to whom the writ is directed, but by the nature of the thing to be done.'"

In the latter case the Court defined ministerial duties as follows; l.c. 447:

"'A ministerial act is one which a public officer is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority, and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed.' Merrill on Mandamus, sec. 30; Marcum v. Com'rs, 42 W. Va. 263, and cases cited."

In the situation presented in your letter the directors of the common school districts are left no discretion by the law with regard to disposing of the money and properties in their charge. The legislature has decreed what shall be done with such money and property under the given circumstances and the directors have nothing to say as to what should be done in the premises. Under the plain wording of the statute they have one ministerial act to perform and that is to turn over to the consolidated district all moneys and property in their charge as directors.

It is also true that mandamus will not usually be issued where there are adequate remedies at law (State ex rel vs. Bourke, 338 Mo. 86, 89 S. W. 2d, 31). However, in the case you mentioned, the consolidated school district does not have an adequate remedy at law to obtain the money which is in the Country Treasury to the credit of the former common school districts. Section 10400, R. S. Mo. 1939, provides in part as follows:

> "The countytreasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, until paid out on warrants duly issued by order of the board of directors or to the treasurer of some town, city or consolidated school district, as authorized by this chapter * * * **

It will be seen that by the foregoing statute, the County Treasurer is obliged to hold said moneys until warrants are duly issued by the directors of the respective districts. No one is given the right to draw warrants on these school district funds except the directors of the respective school districts. For that reason, there is no remedy at law by which the consolidated district can obtain possession of these funds. While it is true that under Section 10498 of the statutes common school districts passed out of existence on June 30, 1946, yet since the directors have not performed their duty, it would seem that they still have a trust to perform and could, therefore, be compelled by mandamus to draw warrants in favor of the consolidated district.

It may be that as to the other personal property and the real estate of the former school districts the consolidated district has adequate remedies at law. It could maintain ejectment to recover possession of the real estate and could maintain replevin to recover possession of other tangible personal property. For that reason, the Courts might refuse to issue mandamus against the directors to compel them to turn over the real estate and tangible personal property. However, under Section 37 of the Civil Code of Missouri (Laws 1943, p. 370) the mandamus action, the replevin action and the ejectment suit could likely all be joined in one action.

Said Section 37 reads as follows:

"The plaintiff in his petition or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims where there are multiple parties if the requirements of sections 15, 16, and 18 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of section 77 and section 20, respectively, are satisfied."

CONCLUSION

It is therefore, the opinion of this office that where common school districts have been legally incorporated into a consolidated district but their officers refuse to turn over to the consolidated district the moneys and property in the hands of said component districts, the consolidated district can maintain a mandamus action against the officers of the former districts to compel them to draw warrants in favor of the consolidated district for the funds in the County Treasury to the credit of their respective common school districts, and can also maintain replevin action to recover tangible personal property of the former common school districts and ejectment action to recover possession of the real estate formerly used by the common school districts. Under Section 37 of the Civil Code of Missouri (Laws 1943, p. 370) all of said actions could be joined in one suit.

Yours very truly,

HARRY H. KAY
ASSISTANT ATTORNEY GENERAL

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL