

SCHOOLS: School district may vote to annex to city district when city has extended limits, even
ELECTIONS: though district within period of two years had previously voted to annex to said city school district.

June 28, 1951

7-2-51

Honorable Joe Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"Upon Wednesday, May 9, 1951 a special election was held in Clintonville School District No. 9 to vote upon the proposition of annexing the district to the El Dorado Springs Consolidated School District No. 3, and the proposition carried.

"Previous to said election on April 25, 1950 an election was held in said district for the same purpose and resulted in a tie vote.

"Before the last election was held a portion of the territory of Clintonville School District No. 9 adjacent to El Dorado Springs, Missouri was incorporated in the El Dorado Springs, Consolidated School District No. 3.

"Section 10484, page 83, of the School Laws of Missouri 1947 contains a proviso that 'after the holding of any such special election, no other such special election shall be called within a period of 2 years thereafter.'

"Section 10486 provides for annexation to school districts when corporate limits are extended. Would you please let me know your

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opinion on whether or not the last election although held within a period of 2 years after the first election was legal and authorized under Sec. 10486 and under the law."

At our request for additional information you have further stated that after the first election held on April 25, 1950, which resulted in a tie vote, the city of El Dorado Springs, Missouri, by a vote of the people extended its territorial limits, resulting in a portion of the Clintonville School District being incorporated in the El Dorado Springs District. Thereafter, the election on May 9, 1951, to which you refer in your letter, was held. Your inquiry is directed at the legality of this last election which was held within a period of two years from the date of the first election of April 25, 1950.

Unless otherwise indicated, the section numbers of the Missouri Statutes referred to in this opinion will refer to the Revised Statutes of 1949.

From your letter it appears that the first election held on April 25, 1950, was held under the authority of Section 165.300, which, in part, reads:

"Whenever an entire school district, or a part of a district, whether in either case it be a common school district, or a city, town or consolidated school district, which adjoins any city, town, consolidated or village school district, including districts in cities of seventy-five thousand to five hundred thousand inhabitants, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting or special election for said purpose by giving notice as required by section 165.200; provided, however, that after the holding of any such special election, no other such special election shall be called within a period of two years thereafter."

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Inasmuch as this election resulted in a tie vote, the proposition for annexation did not carry and the annexation of the Clintonville School District to the El Dorado Springs District was not accomplished.

After this election no other special election could be held under the authority and provisions of the above statute within a period of two years either for the annexation of the whole district or for the release and annexation of only a part thereof. It was so held in the case of State ex inf. Rice ex rel. Allman et al. v. Hawk, 228 S.W. (2d) 785, where the Supreme Court of Missouri said, l.c. 787, 788, 789:

"Appellants assert that the special election of March 31, 1949, was valid because Sec. 10484, supra, authorizes more than one kind of an election; that is, either for the annexation of an entire school district to another school district or for the release and annexation of only a part of a school district. It is argued that the election of March 31, 1949, for the annexation of the entire district, involved a substantially different proposition than the one submitted at the prior election so that the second election was not affected by the proviso that 'no other such special election shall be called within a period of two years thereafter.' * * *

" * * * By its very terms, the statute recognizes only one purpose, which is to permit the annexation of territory of one school district to another, whether the proposal be to annex all or only a part of the school district.

"The language of the proviso is 'provided, however, that after the holding of any such special election, no other such special election shall be called within a period of two years thereafter.' It has been held that the word 'any', when used in such a context, is 'all-comprehensive and the equivalent of "every."' State ex rel. Randolph County v. Walden, 357 Mo. 167, 206 S.W. 2d 979, 983;

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Wormington v. City of Monett, 356 Mo. 875, 204 S.W. 2d 264. If we substitute synonyms for the words 'any' and 'such', the proviso would read: 'provided, however, that after the holding of every special election of the kind previously indicated, no other special election of the kind previously indicated shall be called within a period of two years thereafter.'

"We think it is clearly the intent of the statute that when a special election has been held under its provisions no other special election may be held thereunder within a period of two years thereafter. The language of the statute is clear and unambiguous, and we have no right to read into it an intent which is contrary to the legislative intent made evident by the phraseology employed. State ex rel. Jacobsmeyer v. Thatcher, 338 Mo. 622, 92 S.W. 2d 640; St. Louis Amusement Co. v. St. Louis County, 347 Mo. 456, 147 S.W. 2d 667. Accordingly, we hold that the special election held at the special meeting on March 31, 1949, was invalid and of no force and effect."

However, it appears from reading your letter that the last election of May 9, 1951, was purportedly conducted under the authority of Section 165.307, inasmuch as there was an intervening extension of the city limits of El Dorado Springs which resulted in a portion of the Clintonville School District being incorporated in the El Dorado Springs District. This latter section, in part, provides:

"Whenever, by reason of the limits of any city, town or village being extended, a portion of the territory of any school district adjacent thereto has been incorporated in the town or city school districts, the inhabitants of such remaining parts of districts shall have the right to be annexed to such town or city school district; provided, that when such part of a school district desires to be so annexed, an election shall be held at a special meeting, as provided in section 165.300, and should a majority of the

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votes cast favor annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said town or city school district; whereupon the board of such town or city school district shall meet and confirm such annexation by a proper resolution of record; and provided, that when such part of a school district has no organization, any ten qualified voters may call a meeting of the district and proceed as provided in section 165.293; and the secretary of such meeting shall certify, if the majority vote for annexation, to the board of directors of the town or city school district, and the same action shall be taken as provided above."

It is our thought that the above-quoted statute confers upon the voters of a school district a new and separate right to conduct an annexation election where there has been an extension of the territorial limits of a city which has resulted in a portion of the district voting to annex being incorporated within the city school district whose limits have extended co-extensively with the limits of the city.

While the voters of a particular school district who have conducted an annexation election under the authority of Section 165.300, supra, would be precluded from conducting another such election under that statute within a period of two years, we do not believe that they would be precluded from conducting an annexation election under the separate and distinct authority and provisions of Section 165.307, supra, even though within a period of two years from the holding of an annexation election under authority of the other statute. In other words, Section 165.307 provides for holding an annexation election when a matter has arisen which has resulted in a change of circumstances, conditions and territorial boundaries of a particular school district, that is, the extension of the limits of a city which has resulted in the consuming of a portion of the school district.

Although your letter styles the El Dorado Springs District as the El Dorado Springs Consolidated School District No. 3, we believe that Section 165.307 would still be applicable inasmuch as Section 165.277 provides:

"The qualified voters of any community in Missouri may organize a consolidated school

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district for the purpose of maintaining both elementary schools and high school as hereafter provided. When such new district is formed it shall be known as 'Consolidated District No. _____ of _____ County,' and all the laws applicable to the organization and government of town and city school districts as provided in sections 165.263 to 165.373, shall be applicable to districts organized under the provisions of sections 165.277 to 165.290."

Consequently, it is our view of the matter that even though the election of May 9, 1951, was held within a two-year period of the election of April 25, 1950, it is not invalidated in view of the prohibition contained in Section 165.300 that "no other such special election shall be called within a period of two years thereafter."

CONCLUSION

In the premises, it is the opinion of this department that a portion of a school district remaining after a part of it has been incorporated within a school district located within a city or town which has extended its territorial limits may vote to become annexed to said school district within the city or town, even though such election is held within a period of two years after the entire district had voted to annex to the school district located within the city, the first annexation election being prior to the extension of the city limits.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney General

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