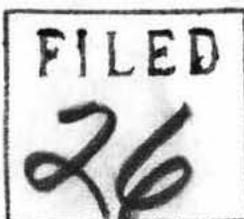


SCHOOLS: County board of education, in making study of school districts and advising with school officials, may evaluate teacher personnel. Said board has no authority to employ a school nurse and assess school's percentage of costs.



April 28, 1952

5/13/52

Honorable J. R. Eiser
Prosecuting Attorney
Holt County
Oregon, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which, in part, reads:

"1. Under the law relating to the duties of County School Boards is such School Board authorized or privileged to visit the various High Schools for the purpose evaluating the teachers as to their ability and to judge the status of the School by what they hear and observe in the classes they visit?

"2. Under the law may the County School Board employ a school nurse and assess each school using the services of such nurse a percentage of the cost thereof based on the valuation of the various districts?"

In your opinion request you refer to "County School Boards." We assume that you have reference to "County Boards of Education" in each county as set up by the new school re-organization law, and specifically provided for in Section 165.657, RSMo 1949.

The county board of education, like a board of directors of a school district, is a creature of statute, and as such can only exercise such authority as may be expressly conferred by statute or which arises by necessary implication. Thus, in Cape Girardeau School Dist. No. 63 v. Frye, 225 S.W. (2d) 484, 488, the rule is stated as follows:

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" * * * A board of directors is but a creature of statute, and its members can exercise no authority unless the same is either expressly conferred or else arises by necessary implication from the powers that are conferred. * * *"

The appellate courts of Missouri have many times followed the above rule in determining the powers of a board of directors of a school district.

Consequently it becomes necessary to examine the statutes relating to the powers and duties of the county board of education.

Section 165.657, RSMo 1949, et seq., generally provide for the formation of reorganized or enlarged school districts within the counties of the State of Missouri, and among other things provide for the powers and duties to be exercised by the county board of education in connection with the formation of said districts.

Relative to the duties of the county board of education, Section 165.673, RSMo 1949, provides as follows:

"The county board of education, as provided for in sections 165.657 to 165.670 shall:

(1) Within six months after its organization, make or cause to be made and completed a comprehensive study of each school district of the county and prepare a plan of reorganization. Such study shall include:

(a) The assessed tax valuation of each existing district and the differences in such valuation under the proposed reorganization plan;

(b) The size, geographical features and the boundaries of the proposed enlarged districts;

(c) The number of pupils attending school, average daily attendance, and the population of the proposed enlarged districts;

(d) The location and conditions of school buildings and their accessibility to the pupils;

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(e) The location and condition of roads, highways and natural barriers within the county;

(f) The high school facilities of the county and recommendations for improvement of same;

(g) The conditions affecting the welfare of the teachers and pupils;

(h) Any other factors concerning adequate facilities for the pupils.

(2) Upon completion of the comprehensive study, but not later than May 1, 1949, submit to the state board of education, a specific plan for the reorganization of the school districts of the county. Such plan shall be in writing and shall include such charts, maps and statistical information as are necessary to properly document the plan for the proposed reorganized districts.

(3) Continue to study the school system of the county and propose subsequent reorganization plans as conditions warrant.

(4) Cooperate with boards of adjoining counties in the solution of common organization problems, and submit to the state board of education for final decision any and all organization questions on which the cooperating boards fail to agree.

(5) Approve the budget prepared by the county superintendent of schools in cooperation with the clerks of the boards of the several districts and approve the audit, made by the county superintendent, of the expenditures report prepared by the district clerk and submitted for the approval of the state board of education.

(6) Continue to advise with the county superintendent of schools, school patrons, and school officials on all matters pertaining to the improvement of the schools in the county."

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We believe that under subparagraphs f, g, h and 6 of the above section the county board of education, if not expressly so, has the implied power, in making a comprehensive study of each school district of the county and in continuing to advise with school officials relative to matters pertaining to improvement of the schools, to visit the various high schools within the county and make its investigation and study of school facilities, which would include teacher personnel.

Therefore, under the powers conferred by statute, we believe that the county board of education would be authorized to visit the various high schools and make the study of the schools in the manner set out in paragraph 1 of your request.

As we read the statutes relating to the duties of the county board of education, they primarily provide for action to be taken by the board in the formation of reorganized or enlarged school districts but do not bestow any supervising control over said districts when formed or over other districts in the county currently in existence. This power is vested in the board of directors of the various districts.

Nowhere in said statutes do we find where the county board of education has the express or implied power to employ a school nurse and assess the schools using the services of such nurse a percentage of the costs to pay for her employment. Inasmuch as we have heretofore pointed out that the county board of education can only exercise such power as is expressly conferred by statute or necessarily arising by implication, we must conclude that it lacks the authority to employ a school nurse in the manner as set out in paragraph 2 of your request.

CONCLUSION

It is therefore the opinion of this department that the county board of education, in making its comprehensive study of each school district and in advising with county school officials on matters pertaining to the improvement of the schools, would be authorized to visit the various high schools within the county and in connection with its study evaluate the teacher personnel of said schools.

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Further, it is our opinion that the county board of education is not authorized by law to employ a school nurse and assess each school using the services of such nurse a percentage of the costs to pay for her employment.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

A handwritten signature in dark ink, appearing to read 'J. E. Taylor', written over a horizontal line.

J. E. TAYLOR
Attorney General

RFT:ml