

SCHOOL DISTRICTS: After the Hart Consolidated School District  
ANNEXATION: conducted a special election for the purpose  
MANDAMUS: of annexing to the City of Anderson Consoli-  
dated School District, and after which the  
Secretary of the Hart Consolidated School  
District failed to certify the results of said  
election to the Anderson Consolidated School District, and subse-  
quently the Anderson Consolidated School District, under the laws  
of Missouri became the Anderson Reorganized School District, a  
writ of mandamus to compel such certification of the results of  
said election should not be issued.

August 1, 1958



Hon. W. J. Collingsworth  
Prosecuting Attorney  
McDonald County  
Pineville, Missouri

Dear Mr. Collingsworth:

Your request for an opinion, May 14, 1958, is quoted as follows:

"I would like an opinion on the following question: Section 165.300 of the Revised Statutes of Missouri '49 provide the manner for annexation of a school district to a common city or consolidated school district. The following situation has arisen in my County.

"In February of 1958 the school board of the Hart Consolidated School District called a special election for the purpose of consolidating with the City of Anderson Consolidated School District. This election was held in March of 1958 and the vote was in favor of annexation. However, the Secretary failed to certify the results of the election to the Anderson Consolidated School District and, therefore, no further action was taken on said consolidation. On May 13, 1958 the Anderson School District was changed from a consolidated district to a reorganized district.

"The question now arises as to whether or not by mandamus the school board of the Reorganized Anderson School District can force the Secretary of the Hart Consolidated District to certify the results of the election for annexation to the Reorganized District. Or the converse of

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the question would be, since the annexation had not been completed while Anderson was a consolidated district, did the reorganization of the district and the dissolving of Anderson Consolidated District also dissolve any action taken toward annexation of Hart Consolidated District to Anderson Consolidated District."

It is the opinion of this office that a writ of mandamus should not be granted to compel the Secretary of the Hart Consolidated School District to certify the results of an election for annexation conducted by the Hart Consolidated School District in March of 1958 to the Anderson Reorganized School District.

We have been reminded as recently as January 16, 1958, in the case of Coffman vs. Crane, 308 S.W. 2d 451, by the Springfield Court of Appeals, that:

"The writ of mandamus being justly regarded as one of the highest writs known to our system of jurisprudence, it issues only where there is a clear and specific right to be enforced, or a duty which ought to be and can be performed, and where there is no other specific and adequate legal remedy. The right which it is sought to protect must therefore be clearly established, and the writ is never granted in doubtful cases."

We assert that in reaching our conclusion it is not necessary to determine whether the Anderson Reorganized School District is a proper party to seek the writ of mandamus, but that even if it were, the writ should not be granted. Not only does the problem confront the rights of the Anderson Reorganized School District, but it confronts the rights of the voters of the Hart Consolidated School District. We might ask ourselves:

For what purpose was the Hart election held?

Upon what issue did the voters of the Hart District vote their ballots?

To what entity did the voters of the Hart School District vote to become annexed?

We see from your letter that it was not the Anderson Reorganized

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School District to which the Hart School District sought to be annexed, but it was to the Anderson Consolidated School District. The voters of the Hart District have not been given the opportunity to vote on the proposition of annexation to the Anderson Reorganized District.

It is not our position that the election as conducted was invalid, but we feel that there has been such a change of circumstance, the reorganization of the Anderson School District subsequent to the election, that to compel the annexation to the new district might inject an unretractable wedge into our long established democratic processes manifested in our elective system. There is no right clearly established for which this writ of mandamus is sought to protect.

Whether the voters of the Hart Consolidated School District still prefer to annex to the Anderson Reorganized School District is not for us to speculate, nor is it for a judge to speculate. In the case of County of San Diego vs. J. G. Perrigo, November 27, 1957, 318 Pac. 2d 542, the court stated in part:

"No one knows how the voters would have reacted under such circumstances. Whether the election would have carried in the light of the facts which could be known only by events which developed subsequent to the election is a question upon which the courts will not speculate."

If the laws relating to annexation are violated to the extent that the true will and purpose of the voters cannot be carried out, or if the voters would be caused to adopt a course different from that which they would otherwise have taken, then it is our opinion that such a violation should preclude the issuance of a writ of mandamus to compel the performance of the act, the failure of which caused the violation. We direct your attention to C.J.S. page 459, Section 244, Volume 55, which states in part:

"The court may \* \* \*, deny an application for mandamus made after an unreasonable delay, especially, or at least, where the delay has resulted, or may result, prejudicially to the rights of respondent or others interested as by misleading them or causing them to adopt a course different from that which they would otherwise have taken, \* \* \* \* \*"

#### CONCLUSION

It is the opinion of this office that after the Hart Consolidated

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School District conducted a special election for the purpose of annexing to the City of Anderson Consolidated School District, and after which the Secretary of the Hart Consolidated School District failed to certify the results of said election to the Anderson Consolidated School District, and subsequently the Anderson Consolidated School District, under the laws of Missouri became the Anderson Reorganized School District, a writ of mandamus to compel such certification of the results of said election should not be issued.

Yours very truly,

John M. Dalton  
Attorney General

JBS:mjb