

SCHOOL: 1. Common school districts, at a special meeting called
SCHOOL DISTRICTS: to vote upon an annexation proposal, cannot vote to annex
ELECTIONS: to either one or the other of two separate consolidated
school districts at the same meeting. 2. Where more than
one petition for annexation is presented to the board of directors of a
common school district, it is their duty to submit the proposition contained
in the first petition received by them to a vote at a special meeting called
for that purpose. 3. When a special meeting for the annexation of an en-
tire common school district to an adjoining consolidated school district,
held under the provisions of Section 165.300, RSMo 1949, as amended, such
district may not hold another special meeting under said section within two
years from the date of such meeting. 4. The board of directors of a common
school district upon receiving an annexation petition are required under the
provisions of Section 165.300, RSMo 1949, as amended, to call a special meet-
ing and submit the proposal to a vote at said meeting. They have no author-
ity under the statute to call a special election. At the special meeting,
the majority of the qualified voters present may not vote to postpone or
delay submission of the annexation proposition to a formal vote. NOTE:
Section 162.441, RSMo, effective 7-1-65 replaces § 165.300, RSMo 1949. Under
subsection (6) nonadjoining districts may annex in certain circumstances.
Under subsection (5) the two year prohibition against subsequent elections
only applies where the first election was defeated by a majority.

April 27, 1959

Honorable Warren E. Hearnes
Majority Floor Leader
House of Representatives
Jefferson City, Missouri



Dear Sir:

This is in response to your request for an opinion dated
April 13, 1959, which reads as follows:

"I am requesting your opinion as to whether a
common school district, which has had submit-
ted to it two valid petitions, one requesting
an election on the question of annexation to
an adjoining consolidated school district, and
the other on the question of annexation to a
different consolidated school district, can
use its discretion as to which question shall
be submitted first; or, if both can be sub-
mitted at the same election or meeting; or,
if the one submitted first must be given con-
sideration or voted on first; or, if both can
not be submitted at the same election or meet-
ing, must the board wait two years to submit
the other should the first one fail; or, if one
is submitted to a meeting rather than an elec-
tion, may the majority present postpone the
question?"

The annexation of a common school district to a consolidated
school district is governed by Section 165.300, RSMo 1949, as
amended. This statute, which is too lengthy to set out here in
full, provides the steps which must be taken in order to effect
an annexation and, among other things, states that:

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"1. 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 seven 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.

* * * * *

"4. The voting at said special school meeting or special election shall be by ballot, as provided for in section 165.267, in the case of common school districts, or as provided for in section 165.330 in the case of town, city or consolidated school districts, and the ballots shall be

For annexation

and

Against annexation

* * * * *

Preliminary to answering the questions raised in your request, we would like to advise that in this opinion we are assuming that both of the consolidated school districts adjoin the common school district.

In your request you state that one of the petitions provides for annexation to an adjoining consolidated school district, and the other petition provides for annexation to a different consolidated school district. If the common school district does not adjoin the consolidated school district described in the latter petition, then there is no question as

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to which proposition must be submitted to the voters at a special meeting or special election, since Section 165.300, supra, provides only for annexation to an adjoining city, town or consolidated school district.

For purposes of clarity we have chosen to treat the issues raised in your request as four separate and distinct questions, and have handled each question separately and independently.

Question 1.

Where two valid petitions have been received by the board of directors of a common school district, each calling for annexation to a different adjoining consolidated school district, may both annexation propositions be submitted to a vote at the same special meeting?

This question was considered quite thoroughly in an opinion prepared by Assistant Attorney General James W. Faris, dated April 12, 1951, and addressed to the Honorable George Henry, Prosecuting Attorney of Newton County. The conclusion was reached in that opinion that a common school district cannot vote to annex to either one or the other of two separate consolidated school districts at the same special meeting. A copy of said opinion is enclosed herewith for your information.

Question 2.

Where two valid petitions have been received by the board of directors of a common school district, each calling for annexation to a different adjoining consolidated school district, is it discretionary with the board as to which petition shall be submitted to a vote or is the board required to submit the proposition contained in the first petition it receives?

We are of the opinion that the board of directors has no discretion as to which proposition is to be submitted to a vote. The wording of the statute makes it mandatory that they submit the first valid petition received by them. The section provides, "* * * 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 election***."

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

"Relators contend that the first jurisdictional act under the statute is the

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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 at 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, on page 503 said:

"State ex rel. v. Young, supra, chiefly relied upon by respondent in support of his contention, was a mandamus proceeding, * * *. 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

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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 Walker Reorganized School District R-4 v. Flint, 303 S.W. 2d 200, the Kansas City Court of Appeals had this to say:

"* * * Thus, the first step of the annexation proceeding as set out in the statute is 'the reception of a petition * * * signed by ten qualified voters of such district * * *'. For upon that act taking place the statute makes it mandatory for the board to call an election as provided therein * * *."

In State ex rel. Gault et al. v. Gill et al., 88 S.W. 628, a petition bearing the names of fifteen qualified voters was presented to the board of directors of a school district, requesting that an election be held for determining whether the district would be organized into a village school district. The board then ordered that an election be held and set the date for same. Some time later, but prior to the date set for the election, two members of the board of directors met and

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ordered that the notices posted announcing the election be withdrawn. Thereafter, on the date set for the election, twenty-six qualified voters and taxpayers met and held an election on the proposition and it was carried. Then the respondents were elected directors of the new district and within four days thereafter organized and began to function as the board of directors of the new school district. The Prosecuting Attorney of Jackson County then instituted quo warranto proceedings, at the relation of the two directors who had ordered that the notices announcing the election be withdrawn, to oust the respondents. The relators appealed from a judgment for defendants. In affirming the judgment the Supreme Court of Missouri, at page 630, said:

"Nor do we think the validity of that organization was at all affected or impaired by the action of Gault and Young on the 13th day of May, in ordering the notice of the election to be withdrawn and causing other notices to that effect to be posted. Upon receiving the petition of the fifteen qualified voters and taxpayers of the district, the law imposed upon the board of directors the purely ministerial duty of ordering an election and giving notice thereof in the manner prescribed by statute; in the performance of which duty they were invested with no discretion * * *."
(Emphasis added.)

Under the rulings in State ex rel. Fry v. Lee, Walker Reorganized School District R-4 v. Flint, and State ex rel. Gault et al. v. Gill et al., cited above, it must be held that jurisdiction attaches when the petition 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.

It is the duty of the school board of a school district, when a petition for annexation is presented to it, to order a special meeting so that a vote may be taken on the annexation proposition. The school board has no choice but to order a special meeting when a proper petition is received. Therefore, in the situation outlined in your request, the school board is required by the provisions of Section 165.300, supra, to submit the first petition received by them to a vote at a special meeting called for that purpose.

Question 3.

Where two valid petitions have been received by the board

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of directors of a common school district, each calling for annexation to different consolidated school districts, and the first petition received by the board is submitted to the voters and defeated, does the board have to wait two years to submit the other proposition to the voters?

In an opinion dated August 2, 1954, written by Assistant Attorney General John W. English, to the Honorable John E. Downs, Prosecuting Attorney for Buchanan County, this department considered this very question. The conclusion was reached that when a special meeting for the annexation of an entire district is held, under the provisions of Section 165.300, RSMo 1949, such district may not hold another election under said section, whether for the annexation of the entire district or a part thereof, within two years from the date of such meeting. For your information we are enclosing herewith a copy of this opinion.

Question 4.

Where two valid petitions have been received by the board of directors of a common school district, each calling for annexation to different adjoining consolidated school districts, if the board submits one of the propositions to a meeting rather than at an election may the majority present vote to suspend or postpone the submission of the proposition for a formal vote?

The portions of Section 165.300, supra, that are pertinent to this question read as follows:

"1. * * * 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; * * *

* * * * *

"4. The voting at said special school meeting or special election shall be by ballot, as provided for in section 165.267, in the case of common school districts, or as provided for in section 165.330 in the case of town, city or consolidated school districts, and the ballots shall be

"For annexation

"and

"Against annexation,

* * * * *

(Emphasis ours.)

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While the words "meeting" and "election" are often used synonymously, it is our opinion that the Legislature did not so intend in the portion of Section 165.300, supra, set out hereinabove. The section provides that the voting shall be by ballot, as provided for in Section 165.267, in the case of common school districts, or as provided for in Section 165.300 in the case of town, city or consolidated school districts.

Section 165.200, RSMo 1949, relates to the annual meeting for common school districts and provides that said meeting shall be held on the first Tuesday in April of each year commencing at two o'clock P.M. Section 165.267 referred to in Section 165.300, supra, also relates to common school districts and reads in part, as follows:

"Whenever it may be desired to organize a common school district or consolidated school district into a town or city school district, with special privileges granted under sections 165.263 to 165.373, the board of directors shall, upon the reception of a petition to that effect, and signed by ten qualified voters who are resident taxpayers of the district, submit the proposition at an annual or special meeting, giving notice of such meeting as provided by section 165.200. The order of business at such meeting shall be as follows:

"(1) To organize as a town or city school district, those voting for the organization shall have written or printed on their ballots 'For organization,' and those voting against the organization shall have written or printed on their ballots 'Against organization;' and each person desiring to vote shall advance to the front of the chairman and deposit his ballot in a box to be used for that purpose. When all present shall have voted, the chairman shall appoint two tellers, who shall call each ballot aloud and the secretary shall keep a tally and report to the chairman, who shall announce the result; and if a majority of the votes cast are for organization, the chairman shall call the next order of business."
(Emphasis ours.)

In view of the foregoing, it would appear that when the board of directors of a common school district receives a

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valid petition for annexation they are not vested with discretion as to whether to call a special meeting or special election for the purpose of submitting the proposition to a vote of the qualified voters living in the district. They are required by reason of the reference to Section 165.267 to call a special meeting and submit the proposition for a vote at the meeting. They have no authority to order the holding of a special election in connection with a petition for annexation.

It is our belief that the authority to call special election is given only to the board of directors of town, city or consolidated school districts since Section 165.330, which is referred to in Section 165.300, supra, provides for the holding of an election.

Therefore, the board of directors of the common school district mentioned in your request can only call a special meeting for the purpose of voting upon the annexation proposition. Thus, there is no possible way of distinguishing between a meeting and an election, as you suggested, by requesting whether the majority present may vote to suspend or postpone the submission of the annexation proposition for a formal vote if the board submits it to a meeting rather than an election. Likewise, as the only purpose for ordering a meeting under Section 165.300, supra, is to vote upon an annexation proposal, the only choice that may be given to the voter is that of voting for or against annexation.

The section provides that the voting shall be by ballot and the form and contents of the ballot are specifically set out. The language used in the statute makes it mandatory that the ballot follow the form prescribed therein. There is no provision whereby the voters may, at a specific meeting called under Section 165.300, supra, vote to suspend or delay submission of an annexation proposition to a formal vote of the qualified voters living in the district.

Therefore, it is our opinion that when a petition is received by the board of directors of a common school district requesting the holding of a special meeting to vote upon an annexation proposition, it is the duty of the board to call a special meeting for that purpose. There is no provision in the statute permitting the board to order a special election rather than a special meeting in that situation. At the special meeting, the annexation proposal contained in the petition must be submitted to a vote and the only choice given the voters is that of voting for or against annexation.

CONCLUSION

Therefore, it is the opinion of this department that:

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1. Common school districts, at a special meeting called to vote upon an annexation proposal, cannot vote to annex to either one or the other of two separate consolidated school districts at the same meeting.

2. Where more than one petition for annexation is presented to the board of directors of a common school district, it is their duty to submit the proposition contained in the first petition received by them to a vote at a special meeting called for that purpose.

3. When a special meeting for the annexation of an entire common school district to an adjoining consolidated school district, has been held under the provisions of Section 165.300, RSMo 1949, as amended, such district may not hold another special meeting under said section within two years from the date of such meeting.

4. The board of directors of a common school district upon receiving an annexation petition are required under the provisions of Section 165.300, RSMo 1949, as amended, to call a special meeting and submit the proposal to a vote at said meeting. They have no authority under the statute to call a special election. At the special meeting the majority of the qualified voters present may not vote to postpone or delay submission of the annexation proposition to a formal vote.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Calvin K. Hamilton.

Yours very truly,

JOHN M. DALTON
Attorney General

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