

SCHOOLS:  
IMPEACHMENT:  
RECALL:  
QUO WARRANTO:

1. The fact that two directors on the board of a common school district do not send their children to the public schools within the district and are seeking annexation of their district into another district is not sufficient grounds under Section 162.801 RSMo Cum. Supp., 1967, to declare vacancies on the board and consequently the County Superintendent of Schools has no authority to appoint new directors.
2. Members of the Board of Directors of a common school district do not violate any of their statutory duties as enumerated in Section 162.091 RSMo Cum. Supp., 1967, because of their refusal to send their children to the public school within their district or because of their activity favoring annexation of their district into another district.
3. There are no provisions for the recall or impeachment of members of the board of directors of a common school district. Board members may be removed from office by a quo warranto proceeding.

OPINION NO. 347

September 12, 1968

Honorable Zane White  
Prosecuting Attorney  
Phelps County Court House  
Rolla, Missouri 65401



Dear Mr. White:

This is in response to your request for an opinion which was stated as follows:

"The County Superintendent of Schools, J. Leonard Bell, respectfully requests an Attorney General Opinion concerning the Flat Grove School District Number 21, which is a common school district having three members on the Board of Directors. Two members of the Board are actively seeking to have the Flat Grove School District dissolved and annexed into the Rolla School District. They also refuse to send their own children to the Flat Grove School and one sends his children to Luthern Parochial Schools while the other one sends his children to the Rolla School District paying tuition. Because of the adverse and antagonistic attitude and behavior of these two school directors to the school on a Board of which they serve, a

petition calling for the resignation of one has been signed by 74 resident voters of the school district which is more than half of the number of votes cast in the election of said district. Neither of these directors will resign from office.

"Question 1. Can these two directors positions on the Board be declared vacant and filled by the County Superintendent of Schools under Section 165.217?

"Question 2. Are such school directors in violation of 165.160 of the Revised Statutes of Missouri?

"Question 3. May these school directors be impeached, recalled, or otherwise ousted from office?"

This opinion will consider the questions in the same order as in your request.

Section 165.217, RSMo 1959, which is the subject of your first question has been repealed and reenacted and is now found in Section 162.801 RSMo Cum. Supp., 1967, in substantially the same form. Section 162.801 provides as follows:

"If a vacancy occurs in the office of director by death, resignation, refusal to serve, repeated neglect of duty or removal from the district, the remaining directors shall, before transacting any official business, appoint some suitable person to fill the vacancy; but if they are unable to agree or if there is more than one vacancy at any one time the county superintendent of public schools shall, upon notice of the vacancies being filed with him in writing, immediately fill the same by appointment, and notify the persons in writing of their appointment; and the persons appointed under this section shall comply with the requirements of section 162.781, and shall serve until the next annual school meeting."

In order for the county superintendent of schools to have authority to appoint a new director, there must be written notice filed with him stating the existence of a vacancy within the meaning of Section 162.801. Under the facts as stated in the request it does not appear that the directors in question have refused to serve or repeatedly neglected their duties so as to create the requisite vacancy.

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Section 165.160 RSMo 1959, which is the subject of your second question has been repealed and reenacted and is now Section 162.091 RSMo Cum. Supp., 1967, and provides as follows:

"Any county clerk, county superintendent, county treasurer, school board member, officer or employee, or other officer, who willfully neglects or refuses to perform any duty imposed upon him by chapters 160 to 168, 170, 171 and 177 to 179, RSMo, or who willfully violates any provision of these chapters, is guilty of a misdemeanor and on conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail not to exceed one year."

There are no provisions within any of the duties enumerated in Chapters 160 to 168, 170, 171, and 177 to 179 RSMo which require that a director of a common school district (a) send his children to the public school in the district which he represents, or (b) refrain from seeking annexation of the district which he represents. In absence of a violation of his statutory duties a school board member may not be punished under Section 162.091.

There are no provisions in the Missouri Constitution or statutes for recall of school board members.

Impeachment of public officers is provided for in Article VII of the Constitution of Missouri and Chapter 106 RSMo. No provision is found for impeachment of school board directors.

A means by which board members of a common school district can be ousted from office, is a quo warranto action brought under Section 531.010, RSMo 1959. This has previously been established by the Missouri Supreme Court in its decisions that quo warranto is a proper remedy to oust any person whose title to office has been forfeited by misconduct or other cause. State v. Ellis (Mo. 1931), 44 S.W.2d 129; State v. Heath (Mo. 1939), 132 S.W.2d 1001. Of course ouster will be granted by a court in a quo warranto proceeding only when facts are established sufficient to show that title to office has been forfeited.

#### CONCLUSION

Therefore it is the opinion of this office that:

1. The fact that two directors on the board of a common school district do not send their children to the public schools within the district and are seeking annexation of their district into another district is not sufficient grounds under Section 162.801 RSMo Cum. Supp., 1967, to declare vacancies on the board and consequently the County Superintendent of Schools has no authority to appoint new directors.

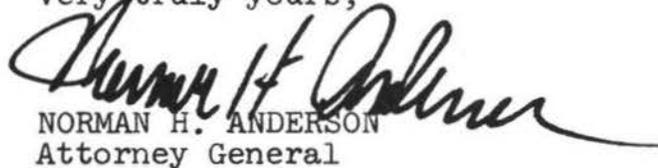
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2. Members of the Board of Directors of a common school district do not violate any of their statutory duties as enumerated in Section 162.091 RSMo Cum. Supp., 1967, because of their refusal to send their children to the public school within their district or because of their activity favoring annexation of their district into another district.

3. There are no provisions for the recall or impeachment of members of the board of directors of a common school district. Board members may be removed from office by a quo warranto proceeding.

The foregoing opinion which I hereby approve was prepared by my assistant, Thomas J. Downey.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman H. Anderson", written in a cursive style.

NORMAN H. ANDERSON  
Attorney General