

Answer by letter-Wood

OPINION LETTER NO. 16

Honorable Peter H. Rea
Prosecuting Attorney
Taney County Court House
Forsyth, Missouri 65653



Dear Mr. Rea:

You have inquired as to the validity of the composition of a board of arbitration established pursuant to Section 162.431, RSMo, to consider adjustment of school district boundaries. The portion of this statute about which your question revolves states:

" . . . If the districts affected are in two counties, the presidents of the county boards of education concerned together with one member appointed by the state board of education not a resident of the counties affected constitute a board of arbitration. . . ." (Section 162.431(3), RSMo)

We understand from the State Department of Education that your question arises from a petition submitted by certain voters of the Nixa Reorganized School District R-2 to alter the boundary between Nixa Reorganized School District R-2 (Christian and a small portion of Stone Counties) and Ozark Reorganized School District R-6 (Christian County), both six-director school districts. At the April 7, 1970, election on the question, the voters of the Nixa District voted against the boundary change, and the voters of the Ozark District voted in favor of the change. Accordingly, pursuant to Section 162.431, RSMo a board of arbitration convened, and on July 6, 1970, ruled against the boundary change. This board of arbitration consisted of Freeman Glen, President of the Christian County Board of Education, and Laurence Meiner of Jasper County, designee of the State Board of Education. Christian and Stone Counties have not conducted annual elections to the county board of education for

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the past several years. Freeman Glen is the last President of the Christian County Board of Education selected pursuant to Sections 162.111 and 162.121, RSMo. Stone County's last such selected President died prior to the convening of the board of arbitration in question, but at the time, you advise us that Stone County had a "Vice-President" of the county board of education. Hence your question:

Was the "Vice-President" of the Stone County Board of Education eligible for, and an indispensable member of the board of arbitration appointed pursuant to Section 162.431(3), RSMo, to act on the petition for altering the boundaries of the Nixa R-2 and Ozark R-6 School Districts?

Six member county boards of education are authorized to be elected at annual April school elections with three members from each county court district, and the members serving staggered three year terms (Section 162.111, RSMo). The board is to organize within four days of the election by selecting a President from among its members (Section 162.121, RSMo). Four members constitute a quorum for board meetings (Section 162.131, RSMo). Section 162.131, RSMo, requires that the county board of education meet at least once each quarter of each calendar year and as often otherwise as is necessary to discharge its duties. One or two vacancies may be filled by the board and more than two by the county court, pending the next annual school election (Section 162.141, RSMo).

Quite obviously, the statutes make no provision for a "Vice-President" of a county board of education. It is our view that upon the demise of the member who had been selected as the President of the Stone County Board of Education, the board was required to fill the vacancy by appointment of a new member and was also required to reorganize by selecting a new President (Section 162.121 and Section 162.141, RSMo). A "Vice-President" selected by the board in advance of the vacancy or the President's demise would not constitute an adequate reorganization entitling this "Vice-President" to have been recognized as a member of the board of arbitration convened pursuant to Section 162.431(3), RSMo.

Therefore, at the time the board of arbitration convened to consider the question of the boundary change, there was a vacancy on the three-man board contemplated by law (Section 162.431 (3), RSMo, as above-quoted). Could the two properly qualified members make the final decision on the boundary question? We think they could in view of Section 1.050, RSMo, which provides:

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"Words importing joint authority to three or more persons shall be construed as authority to a majority of the persons, unless otherwise declared in the law giving the authority."

This statute was applied by the Missouri Supreme Court in ruling that two of the three commissioners appointed by the county court to appraise damages in connection with a road change could qualify and validly make the required appraisal.

"It is true the statute (Acts 1893, p. 223, § 3) requires the county court to appoint three disinterested freeholders to act as a board of commissioners, to assess the damages resulting to the owner by reason of the location of a new road, or the change of a road, upon his land. The legislature, however, has laid down certain rules for the construction of statutes. Section 6570, Rev. St. 1889, declares that 'the construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or the context of the same statute: * * * Second, words imparting joint authority to three or more persons shall be construed as authority to a majority of such persons, unless otherwise declared in the law giving such authority.' There is nothing in the road law, under which the county court was acting, indicating an intent that all the commissioners must qualify and act. Upon the contrary, it is declared that 'the report of said board of commissioners, when signed by a majority of them, shall be taken and considered as the report of all.' Acts 1893, p. 223, § 3. This court said in *Quayle v. Railroad Co.*, 63 Mo. 465: 'What is the joint authority conferred upon the three commissioners? It is to view the land, assess the damages, and make report. It is not expressed in the statute that all three shall join in the view of the land, the assessment of the damages, or in making the report, and therefore, according to the rule of construction laid down by the legislature, any two of them might act, and perform all of these duties, unless such a construction would not only be repugnant, but plainly repugnant, to the intention of the legislature in requiring them

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to be appointed.' See, also, Moore v. Wingate, 53 Mo. 398. It is plainly apparent that the legislature intended that, if a majority of the commissioners should qualify and make the assessment, their acts should be valid. . . ." (Thurlow v. Ross, 45 S.W. 1125, 1126 (Mo. 1898))

Under a statute substantially identical to Section 1.050, RSMo, the Supreme Court of Kansas ruled that a parole revocation by two members of the state parole board, required by statute to have three members, was valid where there was a vacancy in the board's third membership (Murray v. State, 394 P.2d 88 (Kan. 1964)).

Accordingly, we are of the opinion that the action taken by Freeman Glen and Laurence Meiner, as the board of arbitration convened pursuant to Section 162.431, RSMo, was valid.

Yours very truly,

JOHN C. DANFORTH
Attorney General