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ELECTIONS: Date of school election on question of dividing and attaching to operating district.

An election to approve the division of a school district and its attachment to two or more operating districts may be held after 10 days have elapsed from the date of approval by the superintendent of public instruction, provided that the school district to be divided and attached is not bound by the provisions of Chap. 8, Part 2 of Act 269, P.A. 1955.

No. 4151

May 3, 1963.

Dr. Lynn M. Bartlett
Superintendent of Public Instruction
Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Must an election at which the question of dividing a district, under Sec. 447 of the School Code of 1955, be held in accord with the provision of Chap. 8, Part 2 of the School Code?

Act 269, P.A. 1955, as amended, being C.L.S. 1956, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

By means of Act 119, P.A. 1962, effective March 28, 1963, the legislature amended the School Code of 1955 to add four new sections, being Sections 446, 447, 448 and 449, as they provide for the division of a school district without bonded indebtedness and its attachment to two or more operating districts.

Sec. 446 of the School Code of 1955 thus amended, authorizes a county board of education to divide a district and to attach it to two or more operating districts when requested to do so by resolution of the board of education of the district to be divided, or when petitioned by not less than 5% of the registered general electors residing in the district.

Sec. 447 empowers the secretary of the board of education of the district proposed to be divided to call an election at which the question of the division of the district shall be submitted to the qualified school electors for their approval. Before the election is scheduled approval of the proposed division and attachment of the said school district must be secured from the superintendent of public instruction. This portion of the school code provides further:

"The election in the district to be divided shall be held *not less than 10 nor more than 60 days* following the date of approval by the superintendent of public instruction." (Emphasis supplied)

Consideration must also be given to Sec. 531a of the School Code of 1955, as amended, which requires all school districts voting on issues of bonding, annexation and consolidation, to which the consent of the electors is necessary, to hold such election under the provisions of the registration

chapter of the school code, being Sections 531 through 540 of the School Code of 1955.

Sec. 531 of the School Code of 1955 authorizes the board of education of a school district to elect by resolution to come under the provisions of the registration chapter with the exception of primary districts. Thus a school district of the fourth class may become subject to the registration chapter if the board of education so resolves. It should be observed that Sec. 110 of the School Code of 1955 requires all third class school districts to be subject to the registration chapter of the school code. Sec. 150 specifies the registration provisions that shall apply to second class school districts, and Sec. 225(a) provides that first class school district elections shall be held in accord, as near as may be, with the laws governing city elections. This appears to be a reference to the Michigan election law, being Act 116, P.A. 1954, as amended, C.L.S. 1956, § 168.1 et seq.; M.S.A. 1956 Rev. Vol. § 6.1001 et seq.

The registration chapter of the School Code of 1955, being Chap. 8, Part 2 thereof, and Sec. 535 thereof, specifies that school districts, bound by its terms, must provide at least 10 days' notice of the last day of registration, which last day shall be the 30th day next preceding the date of the school election, or if it is a legal holiday, the next succeeding day if it is not a Saturday, Sunday or legal holiday.

In the construction of statutes legislative intent should be determined and given effect. *School District No. 9, Pittsfield Township, Washtenaw County v. Washtenaw County Board of Supervisors*, 341 Mich. 388 (1954).

Where the provisions of the school code are subject to construction, all of the provisions thereof should be given consideration and, if possible, effect. *School District No. 3, Mt. Haley Township v. State Board of Education*, 364 Mich. 160 (1961).

The intent of the legislature as expressed in Sec. 447 of the School Code of 1955 is manifest. Once approval for the division of the school district is secured from the Superintendent of Public Instruction the secretary of the board of education of the district proposed to be divided is commanded by the legislature to call the election to be held not less than 10 days nor more than 60 days following the date of approval by the Superintendent of Public Instruction. Had the legislature intended that the election upon the question of division of the district be held in accordance with the procedures of the registration chapter of the school code by nonregistration school districts as an annexation election as prescribed by Sec. 531 of the School Code, *supra*, the legislature would not have specified in Sec. 447 that the election be held not less than 10 days after the date of the approval by the superintendent of public instruction.

It must be concluded therefore that in school districts subject to the registration chapter of the School Code of 1955, an election at which the question of division of the district is to be submitted to the qualified school electors must be held in accordance with the provisions of the registration chapter. Where a school district is not subject to the provisions of the registration chapter of the School Code of 1955, the election to divide the district may be held on a day certain as determined by the secretary of the

board of education of the district but not less than 10 days following the date of approval of the superintendent of public instruction.

FRANK J. KELLEY,
Attorney General.

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SCHOOLS: Intermediate school districts — Special Education Programs.

An intermediate school district, as successor to a county school district voting to come under Secs. 309 through 327 of the School Code of 1955, to provide special education, is not required to vote on the same question again in order to be subject to Secs. 307a through 324a of the School Code of 1955 as added by Act 190, P.A. 1962.

No. 4165

May 20, 1963.

Dr. Lynn M. Bartlett
Superintendent of Public Instruction
Lansing, Michigan

Act 269, P.A. 1955, as amended, being C.L.S. 1956, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001, et seq., is known as the School Code of 1955.

As originally enacted, the legislature empowered the school electors of a county school district to provide for special education within the county by voting to become subject to the provisions of Secs. 309 through 327 of the School Code of 1955.

By means of Act 190, P.A. 1962, effective March 28, 1963, the legislature supplanted the county school districts with intermediate school districts by adding 45 new sections to stand as Secs. 291a through 328a, and to repeal Secs. 291 through 328 of the School Code of 1955.

You inform us that a number of county school districts have heretofore adopted Secs. 309 through 327 of the School Code of 1955 and have been financing such programs with annual property tax levies.

Based upon these facts you ask the following question:

“Did the legislature intend that the intermediate school districts, as successors of county school districts subject to Secs. 309 through 327 of the School Code of 1955, submit the question of special education programs under Secs. 307a through 324a of the School Code of 1955, as amended by Act 190, P.A. 1962 to the electors of the intermediate school districts?”

The Michigan Supreme Court in *Kent County Board of Education v. Kent County Tax Allocation Board*, 350 Mich. 327 (1957), has held that the action of the school electors in approving Sections 309 to 327 of the School Code of 1955, as originally enacted, served to form a statutory charter for the county school district.

Sec. 292a of the School Code of 1955 was added by Act 190, P.A. 1962, and provides in pertinent part as follows: