

**SCHOOLS: Intermediate board of education – Qualifications of board members.**

No more than two members of an intermediate board of education may be from the same local school district under Sec. 294a of the School Code of 1955 as added by Act 190, P.A. 1962, except where there are fewer districts than there are positions to be filled. If a local school district has two members on the intermediate board of education and subsequently annexation of another local school district to it takes place so that three members of the intermediate board of education are from the same local school district, the third member is no longer qualified to serve on the intermediate board of education and his office is vacant.

No. 4194

February 10, 1964.

Mr. Martin B. Legatz  
Prosecuting Attorney  
Court House  
Bay City, Michigan

You have requested my opinion on the following question:

“A school district in Bay County is represented by a member of that district on the intermediate school board under Act 190 of Public Acts of 1962. This district became annexed to Bay City [School District] which already has its maximum two members on the intermediate board under said act. Does the annexation terminate the unexpired term of the member of the annexed district?”

Act 269, P.A. 1955, as amended, being C.L.S. 1961 § 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As originally enacted the School Code of 1955 provided for a county school district in each county in the state, in accordance with Sec. 291 thereof, as found in Part 1, Chapter 8, and in this chapter the legislature set forth some 37 sections applicable to county school districts. The government of the county school district was entrusted in a county board of education composed of 5 members as specified in Sec. 292. As thus originally enacted, the legislature mandated in Sec. 294 that “Not more than two members of the county board of education shall be *elected* from any one township or city.” (Emphasis supplied)

By the provisions of Act 190, P.A. 1962, the legislature added 45 new sections to the School Code of 1955 to stand as sections 291a through 328a of Part 1, Chapter 8 of the School Code of 1955, and also repealed sections 291 through 328 of the School Code of 1955.<sup>1</sup> In effect the legislature

<sup>1</sup> Part 1, Chapter 8 was subsequently amended by Act 77, P.A. 1963, as it relates to compulsory reorganization of intermediate school districts with a school membership of less than 5,000, and Act 191, P.A. 1963, as it relates to tax limitation increases for intermediate school districts operating special education programs under Secs. 307a to 324a of the School Code of 1955, as amended.

supplanted the county school district with an intermediate school district as a successor to county school district.<sup>2</sup>

Section 294a of the School Code of 1955, as added by Act 190, P.A. 1962, provides in pertinent part as follows:

"Not more than 2 members of the board shall be from the same school district unless there are fewer districts than there are positions to be filled."

Your question is premised upon the factual circumstances that the Bay-Arenac Intermediate School District is composed of more than 20 constituent local school districts. The intermediate board of education of said school district is composed of seven members in accordance with Section 293a of the School Code of 1955, as amended. You indicate that serving on its present intermediate board of education are three members from the Bay City School District. Two of the three members of the intermediate board of education were elected to the board of education from the Bay City School District. The third member was a resident of another school district which, since his election to the intermediate board of education, has become annexed to the Bay City School District.

In the construction of statutes the primary purpose is to ascertain and carry out the intent of the legislature. *Klug v. Auditor General*, 194 Mich. 41 (1916). Consideration must not only be given to the statute, but the amendments to the statute as well. *Dennison v. Allen*, 106 Mich. 295 (1895).

The law is well settled that the legislature is authorized to prescribe the qualification of members of a board of education of a school district. *Tedrow v. McNary*, 270 Mich. 332 (1935).

As originally enacted, Section 294 of the School Code of 1955 shows a clear intent on the part of the legislature to prohibit the election of more than two members of the county board of education from any one township or city.

When the legislature amended Part 1, Chapter 8 of the School Code of 1955 to supplant the county board of education with an intermediate board of education, it saw fit to adopt more restrictive language as to the qualification for office of member of the intermediate board of education in that qualification is prescribed not only for election to the office but the statute required the continuing qualification of the member during the term of his office. In clear and unambiguous language the legislature proscribed more than two members of the intermediate board of education to be from the same local school district unless there are fewer districts than there are positions to be filled.

This study of the legislative history is persuasive of the conclusion that where a school district has two of its residents serving as members of an intermediate board of education and subsequently a school district is annexed to it with a resident already serving on the same intermediate board of education, such member of the intermediate board of education, by virtue of such annexation, is no longer qualified to serve as a member

<sup>2</sup> O.A.G. No. 4165, dated May 20, 1963.

of the intermediate board of education, since the statute limits the qualification of the membership of the intermediate board of education.

A public office is vacant in the eyes of the law whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some future event. *Baxter v. Latimer*, 116 Mich. 356 (1898).

Therefore, it is the opinion of the Attorney General that under Sec. 294a of the School Code of 1955, as added by Act 190, P.A. 1962, not more than two members of an intermediate board of education shall be from the same local school district unless there are fewer districts than there are positions to be filled, and should an annexation to a local school district take place so that there would be three members of the intermediate board of education to be from the same school district, the third member is not lawfully qualified to occupy the office of member of the intermediate board of education by virtue of the fact that he is from the same local school district and his office is vacant. The vacancy shall be filled by the remaining members of the board in accordance with Sec. 294a of the School Code of 1955, as added by Act 190, P.A. 1962.

FRANK J. KELLEY,  
*Attorney General.*

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**CONSTITUTIONAL LAW:**

Duties of appointive auditor general.

**AUDITOR GENERAL:**

Powers and duties of elected auditor general continued.

**LEGISLATURE:**

Transfer of powers of elected auditor general.

Michigan Constitution of 1963 bars the legislature from conferring additional duties upon the appointive auditor general provided for by the people in Sec. 53, Art. IV, thereof. The appointive auditor general shall not exercise the duties imposed upon him by the Constitution until January 1, 1965. The powers and duties of the elected auditor general, other than post audit and performance post audit of state agencies and state institutions, may be transferred by the legislature to other state officers or agencies as the legislature shall determine under the executive reorganization authorized in Sections 2 and 3 of Article V of the Michigan Constitution of 1963, or by the enactment of appropriate legislation, provided that such transfer shall not become effective sooner than January 1, 1965.

No. 4284

February 18, 1964.

Honorable Allison Green, Speaker  
House of Representatives  
The Capitol  
Lansing, Michigan

You have requested my opinion as to what duties of the present elected Auditor General can be transferred to the Auditor General to be appointed