CHAPTER 122

SCHOOL DISTRICTS; ORGANIZATION; CONSOLIDATION; DISSOLUTION

122.01 SCHOOL DISTRICTS.

HSTORY. 1861 c. 11 s. 1; 1862 c. 1 s. 1; G.S. 1866 c. 36 s. 1; 1877 c. 74 subc. 1 s. 1; G.S. 1878 c. 36 s. 1; G.S. 1894 s. 3648; R.L. 1905 s. 1280; G.S. 1913 s. 2671; G.S. 1923 s. 2742; M.S. 1927 s. 2742; 1941 c. 169 art. 3 s. 1.

School districts and independent school districts, under the statute, are made part of the educational system of the state. They are corporations with limited powers, organized for public purposes, and the duties of the trustees or boards of education, entrusted with the management and care of the property of such districts, are public and administrative only. Bank v Brainerd School District, 49 M 106, 51 NW 814. See O'Neill v City of St. Paul, 104 M 491, 116 NW 114. See also 7 MLR 597.

School districts and independent school districts are corporations with limited powers, organized for public purposes and the trustees or boards of education are not liable to individuals for mere neglect or nonfeasance in failing to make repairs. Bank v Brainerd School District, 49 M 106, 51 NW 814.

A school district is not liable at common law for injuries to a pupil which result from its negligent operation of a bus used in the transportation of pupils at public expense. Allen v Ind. School District, 173 M 5, 216 NW 533. See Mokovich v Ind. School District, 177 M 446, 225 NW 292; Bang v Ind. School District, 177 M 454, 225 NW 449. OAG 1934 No. 324; 1940 Nos. 59, 60.

Special Laws 1889, Chapter 33, declares that the city attorney of Minneapolis should have charge of all legal matters connected with the city government, and all the several heads and departments thereof, naming the board of education and other boards and provides that none of the boards named should in any case employ, retain, or pay any attorney for legal services. This act precludes the board of education of the city of Mineapolis from hiring and paying an attorney to perform legal services for it. Jackson v Board of Education, 112 M 167, 127 NW 569.

A school board may employ a suitable person to ascertain the physical condition of the pupils in attendance upon the public schools of the district. State ex rel v Brown, 112 M 370, 128 NW 294.

OPINION OF ATTORNEY GENERAL. Aside from its effect as practical construction where a statute is involved and whatever protection it may afford a school officer acting pursuant thereto, the opinion of the attorney general on school district matters does not have the effect of law. Section 120.17 cannot confer upon an executive officer either the legislative duty of making law or the judicial function of finally interpreting it. Lindquist v Abbett, 196 M 233, 265 NW 54.

It is no part of the official duties of the city attorney of Duluth to act for the board of education of the city. Lindquist v Abbett, 196 M 233, 265 NW 54.

The board of education of the city of Duluth has the power to retain an attorney and pay him upon a continuing basis from month to month. Lindquist v Abbett, 196 M 233, 265 NW 54.

The board of education of the city of Duluth has the power to authorize employees to attend conventions, the work of which will be helpful in the performance of their duties. Lindquist v Abbett, 196 M 233, 265 NW 54.

The duties of school districts are defined by the statutes of the state notwithstanding the constitutional mandate to the legislature by Article 8, Sections 1 and 3, to provide a general and uniform system of public schools and to make

such provisions as will secure a thorough and efficient system of public schools in each township of the state. State ex rel v School District, 204 M 279, 283 NW 397.

Section 127.01, relating to the taxation of agricultural lands, is not applicable to special school districts. OAG July 17, 1933.

Municipal bond issues; school districts. 20 MLR 584.

122.02 CERTAIN DISTRICTS DEEMED LEGALLY ORGANIZED.

HISTORY. 1861 c. 11 s. 1; 1862 c. 1 s. 1; G.S. 1866 c. 36 s. 1; 1877 c. 74 subc. 1 s. 1; G.S. 1878 c. 36 s. 1; G.S. 1894 s. 3648; R.L. 1905 s. 1304; G.S. 1913 s. 2707; G.S. 1923 s. 2792; M.S. 1927 s. 2792; 1941 c. 169 art. 3 s. 2.

The provision of this section establishes a conclusive presumption of law in the nature of a statute of limitation. State ex rel v School District, 54 M 213, 55 NW 1122.

The term "organized" relates to the establishment or formation of the district and not merely to the action of the voters in electing school officers. State ex rel v School District, 54 M 213, 55 NW 1122.

Where an independent school district has been dissolved pursuant to statute, no presumption in favor of the continued legal existence of the district under this section arises from the fact that certain inhabitants of the former district have persisted in the usurpation of corporate powers for one year after the dissolution. State ex rel v. Cooley, 65 M 406, 68 NW 66.

More than a year after the county board had detached certain lands from plaintiff district and attached the same to the defendant, under the authority granted by section 122.03, plaintiff brought this action to recover of defendant the school taxes levied against these lands, paid to and expended by defendant. After the expiration of one year, the order should not be open to collateral attack in a suit to recover taxes levied, received and expended by defendant more than a year before the suit was instituted. Common School District v Consolidated School District, 170 M 32 (34), 211 NW 960.

Incompatible offices. 1934 OAG 507, April 20, 1934 (63a-3); 1934 OAG 11, July 26, 1934 (358a-1).

Congressional townships defined. 1936 OAG 437, March 8, 1935 (441g)

122.03 COMPOSITION OF DISTRICTS.

HISTORY. 1899 c. 293; R.L. 1905 s. 1302; G.S. 1913 s. 2705; G.S. 1923 s. 2790; M.S. 1927 s. 2790; 1941 c. 169 art. 3 s. 3.

More than a year after the county board had detached certain lands from plaintiff district and attached the same to the defendant district, under the authority granted by this section, plaintiff brought action to recover of defendant the school taxes levied against said land, paid to and expended by the defendant. The order detaching said land is valid on its face and the proceeding shows jurisdictional facts for detaching the lands. The presumption of validity must be given the order, and the burden of clearly showing absence of facts authorizing it was on the plaintiff. Common School District v Consolidated School District, 170 M 32 (34), 211 NW 960.

The county board cannot detach federal land from a school district, though no taxes are received by the district from such land. OAG Jan. 17, 1938 (180d).

122.04 PLATS AND DESCRIPTION OF DISTRICTS.

HISTORY. 1861 c. 11 s. 4; 1862 c. 1 s. 5; G.S. 1866 c. 36 s. 5; 1877 c. 74 subc. 1 s. 16; G.S. 1878 c. 36 s. 16; 1879 c. 43 s. 1; 1881 c. 41 s. 2; 1885 c. 121; 1891 c. 73 s. 1; G.S. 1894 s. 3674; 1897 c. 251; 1901 c. 371 s. 2; R.L. 1905 s. 1301; G.S. 1913 s. 2706; G.S. 1923 s. 2791; M.S. 1927 s. 2791; 1941 c. 169 art. 3 s. 4.

122.05 FORMATION OF DISTRICTS.

HISTORY. 1861 c. 11 s. 7; 1862 c. 1 s. 5; G.S. 1866 c. 36 s. 5; 1877 c. 74 subc. 1 s. 12; 1878 c. 48 s. 1; G.S. 1878 c. 36 s. 12; 1879 c. 28 s. 1; G.S. 1894 s. 3659;

1903 c. 220; 1903 c. 277; R.L. 1905 s. 1281; G.S. 1913 s. 2672; 1923 c. 71 s. 1; G.S. 1923 s. 2743; M.S. 1927 s. 2743; 1941 c. 169 art. 3 s. 5.

Where, upon a petition for the enlargement of a school district, the county board, in rearranging the districts affected by the change, included in one of the districts land situated in another, under the belief that the same belonged to the former, such land not being mentioned in either the petition or the notice of hearing, and there being no appearance at the hearing in behalf of the district to which the land belonged, the action of the district court, on appeal from the order of the board, in modifying such order by omitting therefrom the land thus erroneously included therein, did not constitute an excess of jurisdiction, as being a usurpation of legislative power or otherwise; the action of the board with reference to such land being a nullity. Oppegard v County Board, 120 M 443, 139 NW 949.

Where an independent school district sells all its school buildings located in a village within such district, freeholders of such village may vote or petition the county board to make the village a school district separate from the independent school district, and no vote of the electors of the independent school district is necessary. OAG Sept. 7, 1934 (166c-3).

The question of when and under what conditions school districts may be organized, or their boundaries changed, is a legislative one which has been qualifiedly delegated to the respective county boards of the state. Irons v Ind. School District, 119 M 119, 137 NW 303.

Indians owning tribal allotment lands are not qualified to petition for the formation of a school district. OAG July 7, 1936 (240w).

122.06 PETITION.

HISTORY. 1891 c. 26 s. 1; 1893 c. 155 s. 1; G.S. 1894 s. 3667; R.L. 1905 s. 1282; 1907 c. 110 s. 1; G.S. 1913 s. 2673; G.S. 1923 s. 2744; M.S. 1927 s. 2744; 1941 c. 169 art. 3 s. 6.

A petition, signed by a majority of the legal voters of an independent school district and also of those residing within the territory proposed to be annexed thereto, such school district having an incorporated village of less than 7,000 inhabitants wholly or partly within its boundaries, is sufficient to give the county board jurisdiction in a proceeding to annex such territory to the independent district. Ind. School District v Ind. School District, 165 M 384, 206 NW 719.

A consolidated school district which is also a joint district may dissolve and become a part of the unorganized territory in the county. OAG June 16, 1932.

122.07 NOTICE OF HEARING.

HISTORY. 1891 c. 26 s. 2; G.S. 1894 s. 3668; 1901 c. 20; R.L. 1905 s. 1283; G.S. 1913 s. 2674; G.S. 1923 s. 2745; M.S. 1927 s. 2745; 1941 c. 169 art. 3 s. 7.

122.08 PROCEEDINGS ON HEARING.

HISTORY. 1891 c. 26 s. 3; G.S. 1894 s. 3669; 1901 c. 125 s. 1; R.L. 1905 s. 1284; G.S. 1913 s. 2675; G.S. 1923 s. 2746; M.S. 1927 s. 2746; 1941 c. 169 art. 3 s. 8.

Jurisdiction is conferred upon the county board to establish a new school district when a proper petition, duly signed by a majority of the resident freeholders of the proposed district, who are entitled to vote at the school meetings, respectively, is presented to the board; and, after the date of hearing thereon has been fixed and notice given, jurisdiction is not lost by reason of the fact that, after the petition was signed, the number of resident freeholders increased to such an extent that at the date of the hearing the signers of the petition constituted less than a majority. Gerber v County Board, 89 M 351, 94 NW 886.

When a county board creates a new school district out of territory taken from existing districts, as authorized by section 122.04, it may make the division of the moneys, funds, and credits to the district affected by the change at a subsequent regular meeting of the board without a notice and hearing thereon. School Dist. No. 131 v School Dist. No. 5, 107 M 442, 120 NW 898.

122.09 CHANGING BOUNDARIES OF DISTRICTS.

HISTORY. 1861 c. 11 ss. 7, 8; 1862 c. 1 ss. 5, 6; G.S. 1866 c. 36 ss. 5, 6; 1868 c. 11 s. 1; 1869 c. 2 s. 1; 1877 c. 74 subc. 1 s. 12; 1878 c. 48 s. 1; G.S. 1878 c. 36 s. 12; 1879 c. 28 s. 1; 1891 c. 26 s. 6; G.S. 1894 ss. 3659, 3672; 1895 c. 110; R.L. 1905 s. 1286; 1907 c. 188 s. 1; 1909 c. 13; 1911 c. 264; 1913 c. 435 s. 1; G.S. 1913 s. 2677; 1923 c. 304; G.S. 1923 s. 2748; M.S. 1927 s. 2748; 1931 c. 81; 1941 c. 169 art. 3 s. 9.

Special Laws 1878, Chapter 155, entitled "An act for the establishment of public schools in the city of Winona," established a school system, not for the territory then within the city limits, but for the city of Winona, whether enlarged or diminished in area by future legislation. That part of the territory of the defendant school district which was annexed to the city by Special Laws 1887, Chapter 5, became a part of the city for school as well as other municipal purposes, and ceased to be a part of the defendant school district. City of Winona v School District, 40 M 13, 41 NW 539. See In re Petition of Norrish, 155 M 415, 193 NW 947.

The interests of the rural districts from which the lands are detached should not be considered independently from the interests of the urban district, so that the change should not be made if not conducive to the interests of the inhabitants of any one of the districts. School Dist. No. 36 v School Dist. No. 31, 134 M 82, 158 NW 729.

Land within the petitioning district is "territory affected" by the change. School Dist. No. 36 v School Dist. No. 31, 134 M 82, 158 NW 729. See 1940 OAG 52.

On an appeal to the district court from an order of the county board changing the boundaries of a school district, the only question presented to the court is whether the order appealed from was fraudulent, arbitrary, unjust, or an unreasonable disregard of the best interests of the territory affected. Farrell v County of Sibley, 135 M 439, 161 NW 152. See In re Enlargement of Ind. School District, 140 M 133, 167 NW 358; Ind. School Dist. v Lincoln County, 155 M 453, 194 NW 8; Sorknes v County Board, 131 M 79, 154 NW 669; Froehling v Ind. School District, 140 M 71, 167 NW 108.

The county board detached certain territory from a school district formed in 1911 by two districts uniting. Upon appeal the order of the county board was reversed. Two members of the board who voted to detach the territory testified that they so voted because of the belief that the union of the two districts in 1911 was void and illegal. This union was an accomplished fact, and the members of the county board and the district judge were bound to consider the same valid, as if all the formalities required by law in the consolidation of school districts had been complied with. The testimony of these two members was admissible and warranted the finding made by the trial court. Ind. School District v Meeker County, 143 M 169, 173 NW 850.

Where the evidence presented on the appeal to the district court from an order of the county board changing the boundaries of a school district leaves in doubt the question whether the best interests of the affected territory justify the proposed change, the decision of the county board should not be disturbed by the court. Farrell v County of Sibley, 135 M 439, 161 NW 152.

The statute providing for the enlargement of a village school district so as to include lands without the village but contiguous to said district merely requires that the acquired lands taken in connection with the original district shall form one contiguous block of land. Severts v County of Yellow Medicine, 148 M 321, 181 NW 919.

The order of the county board enlarging a village school district so as to include lands without the village but contiguous to said district may fix the boundaries of the districts affected in a manner different from that asked for in the petition. Severts v County of Yellow Medicine, 148 M 321, 181 NW 919.

The question on appeal to the courts is whether the determination of the county board was based upon an erroneous theory of law or was arbitrary or in unreasonable disregard of the best interests of the territory affected. Severts v County of Yellow Medicine, 148 M 321, 181 NW 919. See Packard v County of

Otter Tail, 174 M 347, 219 NW 289; School District v County of Yellow Medicine, 174 M 380, 219 NW 456.

The provisions of sections 122.09 to 122.12, authorizing the consolidation or enlargement of school districts through the procedure therein provided, are not repealed or superseded by sections 122.18 to 122.27, authorizing the consolidation of districts through a different procedure. So far as the same cover the same ground, sections 122.18 to 122.27 merely provide additional methods for consolidating such districts as come within their purview. In re Enlargement of School District, 155 M 41, 192 NW 345.

An appeal to the supreme court from an order of the district court approving or disapproving the consolidation order of the county board presents, in the absence of some point of law raised by the record, the single question whether the order of the district court is clearly and manifestly against the evidence. Ind. School District v Lincoln County, 155 M 453, 194 NW 8.

The county board has no authority to grant a petition for the creation of a new common school district from the territory of an existing district so as to leave the latter without a school house. In re Creation of New School District, Traverse County, 179 M 30, 228 NW 168.

The fact that by detaching lands from one school district and attaching them to another a small loss of taxable property will result to one and a small gain of such property to the other is not sufficient ground for reversing the action of the county board. In re Appeal of Consolidated School District, Blue Earth County, 179 M 445, 229 NW 585.

If a part of a territory of a school district is separated from it by annexation to another, or by its erection into a new corporation, the old corporation retains all of its property, including that which happens to fall within the limits of the other corporation. OAG May 31, 1934 (622a).

Where several landowners filed a petition with the county board to have their farms set off from one district and annexed to another, and subsequently the first district and a third district voted for consolidation, the county board would not have legal authority to act on the individual petition, but the detachment petition would not render an election invalid, or prevent a subsequent petition for detachment from the consolidated district. OAG June 27, 1936 (166c-8).

The United States cannot petition as a freeholder for the transfer of land from one school district to another. OAG Feb. 24, 1937 (771b).

In the absence of a special act, a parcel of land within a village may be detached from a school district having a boundary coterminous with the village and attached to an adjoining school district without detaching the land from the village. OAG Aug. 27, 1931.

This section does not refer to unorganized territory or unorganized districts. OAG Dec. 29, 1933.

Property detached from town and joined to a city is taxable for the payment of town bonds. 1942 OAG 35, April 24, 1941 (159a-4).

122.10 LIMITATIONS.

HISTORY. 1861 c. 11 ss. 7, 8; 1862 c. 1 ss. 5, 6; G.S. 1866 c. 36 ss. 5, 6; 1868 c. 11 s. 1; 1869 c. 2, s. 1; 1877 c. 74 subc. 1 s. 12; 1878 c. 48 s. 1; G.S. 1878 c. 36 s. 12; 1879 c. 28 s. 1; 1891 c. 26 s. 6; G.S. 1894 ss. 3659, 3672; 1895 c. 110; R.L. 1905 s. 1286; 1907 c. 188 s. 1; 1909 c. 13; 1911 c. 264; 1913 c. 435 s. 1; G.S. 1913 s. 2677; 1923 c. 304; G.S. 1923 s. 2748; M.S. 1927 s. 2748; 1931 c. 81; 1941 c. 169 art. 3 s. 10.

The limitation as to the territorial extent of a district set off from another district is applicable to an independent district located in a village. OAG Feb. 18, 1930.

A school district may not annex land from an adjoining district where it would leave that district with less than four sections of land, and it is immaterial that land to be annexed is nontaxable state land used for extension purposes by the university. OAG March 20, 1934. See OAG May 9, 1934 (166c-2).

122.11 CLAIMS AGAINST DISTRICTS.

HISTORY. 1861 c. 11 ss. 7, 8; 1862 c. 1 ss. 5, 6; G.S. 1866 c. 36 ss. 5, 6; 1868 c. 11 s. 1; 1869 c. 2 s. 1; 1877 c. 74 subc. 74 s. 12; 1878 c. 48 s. 1; G.S. 1878 c. 36 s. 12; 1879 c. 28 s. 1; 1891 c. 26 s. 6; G.S. 1894 ss. 3659, 3672; 1895 c. 110; R.L. 1905 s. 1286; 1907 c. 188 s. 1; 1909 c. 13; 1911 c. 264; 1913 c. 435 s. 1; G.S. 1913 s. 2677; 1923 c. 304; G.S. 1923 s. 2748; M.S. 1927 s. 2748; 1931 c. 81; 1941 c. 169 art. 3 s. 11.

Lands added in enlarging school districts are not subject to taxation for bonds given to fund floating indebtedness of the original district. OAG June 29, 1933. See OAG Aug. 30, 1939 (166d-3).

122.12 BOUNDARIES OF DISTRICTS ENLARGED IN CERTAIN CASES.

HISTORY. 1861 c. 11 ss. 7, 8; 1862 c. 1 ss. 5, 6; G.S. 1866 c. 36 ss. 5, 6; 1868 c. 11 s. 1; 1869 c. 2 s. 1; 1877 c. 74 subc. 1 s. 12; 1878 c. 48 s. 1; G.S. 1878 c. 36 s. 12; 1879 c. 28 s. 1; 1891 c. 26 s. 6; G.S. 1894 ss. 3659, 3672; 1895 c. 110; R.L. 1905 s. 1286; 1907 c. 188 s. 1; 1909 c. 13; 1911 s. 264; 1913 c. 435 s. 1; G.S. 1913 s. 2677; 1923 c. 304; G.S. 1923 s. 2748; M.S. 1927 s. 2748; 1931 c. 81; 1941 c. 169 art. 3 s. 12.

Under this section, the county board may enlarge a school district, having wholly within its limits an incorporated village of the character specified, by including lands wholly without such village but contiguous to the district. School Dist. No. 36 v School Dist. No. 31, 130 M 25, 153 NW 253.

This section is applicable to an independent district containing an incorporated village. OAG May 10, 1930.

122.13 REHEARINGS.

HISTORY. 1861 c. 11 s. 7; 1862 c. 1 s. 5; G.S. 1866 c. 36 s. 5; 1877 c. 74 subc. 1 s. 16; G.S. 1878 c. 36 s. 16; 1879 c. 43 s. 1; 1881 c. 41 s. 2; 1885 c. 121; 1891 c. 73 s. 1; G.S. 1894 s. 3674; R.L. 1905 s. 1300; G.S. 1913 s. 2703; G.S. 1923 s. 2788; M.S. 1927 s. 2788; 1941 c. 169 art. 3 s. 13.

The county board created district No. 13 out of territory theretofore included in district No. 5, and denied an application for a rehearing. The order denying a rehearing could not be reviewed in an action brought by the new district to recover its share of the funds in the treasury of the old district. School District No. 13 v School District No. 5, 169 M 460, 211 NW 832.

122.14 DISTRICTS IN TWO OR MORE COUNTIES.

HISTORY. 1861 c. 11 s. 7; 1862 c. 1 s. 5; G.S. 1866 c. 36 s. 5; 1891 c. 26 s. 4; 1893 c. 155 s. 2; G.S. 1894 s. 3670; R.L. 1905 s. 1287; G.S. 1913 s. 2682; G.S. 1923 s. 2750; M.S. 1927 s. 2750; 1941 c. 169 art. 3 s. 14.

In section 122.14 the words "territory affected" embrace the whole of the petitioning district to which lands are attached, and the whole of the districts from which lands are detached. Appeal of Common School Districts, Dakota County, 158 M 317, 197 NW 742.

When any part of the "territory affected" is located in different counties, proceedings must be had in each county. Appeal of Common School Districts, Dakota County, 158 M 317, 197 NW 742.

122.15 ANNEXATION OF LAND TO SCHOOL DISTRICTS.

HISTORY. 1877 c. 74 subc. 1 s. 16; G.S. 1878 c. 36 s. 16; 1879 c. 43 s. 1; 1881 c. 41 s. 2; 1885 c. 121; 1891 c. 73 s. 1; G.S. 1894 s. 3674; R.L. 1905 s. 1301; G.S. 1913 s. 2704; G.S. 1923 s. 2789; M.S. 1927 s. 2789; 1941 c. 169 art. 3 s. 15.

The county board had no jurisdiction of a petition of a landowner asking that his land be set out from the Albert Lea school district. OAG July 8, 1931.

A landowner in one school district in order to have his land detached from said district and attached to another school district adjoining his land must make application under this section. OAG Dec. 11, 1934 (166c).

122.16 DISTRICTS MAY UNITE IN CERTAIN CASES.

HISTORY. 1917 c. 453 ss. 1 to 5; 1921 c. 441 ss. 13; G.S. 1923 ss. 2776 to 2780; M.S. 1927 ss. 2776 to 2780; 1941 c. 169 art. 3 s. 16.

This section is not unconstitutional as special legislation. The fact that there is only one city now in the class is not decisive. If the statute is so framed as to apply automatically to other cities as they may acquire the characteristics of the class, then the statute is general. State ex rel v Ind. School District, 148 M 433, 174 NW 414.

Under this section, the requirement that the petition be signed by a specified number of freeholders is jurisdictional. School District v McConnell, 150 M 57, 184 NW 369.

In the absence of a right of appeal given by statute and of any other effective remedy, aggrieved parties may enjoin the making and filing of an order setting forth the result of the election held on the matter of the consolidation of school districts, as required by the statute, the election being invalid because of an insufficient number of petitioners. School District v McConnell, 150 M 57, 184 NW 369.

An appeal from an order consolidating school districts suspends the operation of the order while the appeal is pending. School District v Consolidated School District, 151 M 52, 185 NW 961.

122.17 DIVISION OF FUNDS ON CHANGE OF DISTRICT.

HISTORY. 1907 c. 109 ss. 1, 2; G.S. 1913 ss. 2696, 2697; G.S. 1923 ss. 2774, 2775; M.S. 1927 ss. 2774, 2775; 1941 c. 169 art. 3 s. 17.

This section vests in the new district a legal right to a proportionate share of such funds and the action of the county board in making the division may be reviewed on certiorari. State ex rel v County Board, 126 M 209, 148 NW 52.

This section applies to all money in the treasury at the time of the organization of the new district, including a building fund raised by the sale of bonds for the construction of a new school house in the old district. State ex rel v County Board, 126 M 209, 148 NW 52.

The division of the funds, as provided in this section, is the act of the legislature and not that of the officers charged with the duty of making the division and there is no unlawful diversion of the funds from the purposes for which raised. State ex rel v County Board, 126 M 209, 148 NW 52.

The legislature has the power to direct the distribution of a building fund raised by the sale of bonds for the construction of a new school house in the old district in a situation of this kind. State ex rel v County Board, 126 M 209, 148 NW 52.

The courts will not interfere with the exercise of the discretion vested in the county board by this section, providing that when a new district is formed from part of an existing district the funds of the old district shall be divided equally between the two districts, where it does not appear that such discretion has been arbitrarily exercised or abused. State ex rel v County Board, 126 M 209, 148 NW 52.

The determination of the amount of state aid funds in defendant's treasury made by the county auditor and acquiesced in by the parties and approved by the trial court will not be disturbed on the ground that the use of more complete data as the basis of computation would have made a slight difference in the final result. School District No. 13 y School District No. 5, 169 M 460, 211 NW 832.

The word "credits" does not include buildings and equipment. OAG Aug. 3, 1929.

The division of money and property under section 122.17 applies to consolidation made under section 122.21. OAG Dec. 10, 1937 (166f-2).

122.18 SCHOOL DISTRICTS.

HISTORY. 1915 c. 238 s. 1; G.S. 1923 s. 2754; M.S. 1927 s. 2754; 1941 c. 169 art. 3 s. 18.

Under section 122.16 (Laws 1917, Chapter 453) the requirement that the petition be signed by the requisite number of legal voters is jurisdictional. School District v McConnell, 150 M 57, 184 NW 369.

Where the facts are such that Laws 1915, Chapter 238, Section 5 (122.21) is applicable, proceedings to consolidate school districts must be initiated under that section and not under the first section of the act (122.18). School District v Consolidated School District, 151 M 52, 185 NW 961.

To authorize a county superintendent of schools to call an election to consolidate school districts, the petitions for consolidation must state the location of the districts in the customary way, by naming the county and state wherein they are situated. Peiper v County Superintendent, 130 M 54, 153 NW 112.

122.19 APPROVAL OF PLAT BY STATE COMMISSIONER OF EDUCATION.

HISTORY. 1915 c. 238 ss. 1, 2; 1921 c. 230; G.S. 1923 ss. 2754, 2755; M.S. 1927 ss. 2754, 2755; 1941 c. 169 art. 3 s. 19; 1943 c. 422 s. 1; 1945 c. 80 s. 1.

122.20 PETITION FOR CONSOLIDATION.

HISTORY. 1915 c. 238 s. 3; 1917 c. 470 s. 1; G.S. 1923 s. 2756; M.S. 1927 s. 2756; 1941 c. 169 art. 3 s. 20.

A vendor in an executory contract for sale of land is a freeholder, within the meaning of the statute which requires that a petition for the consolidation of school districts shall be signed by a certain number of resident freeholders. In re Consolidation of School Districts, 146 M 403, 178 NW 892.

Under the statutes relating to the consolidation of school districts, the requirement that the petition be signed by a specified number of freeholders is jurisdictional. School District v McConnell, 150 M 57, 184 NW 369.

The election having been called off because of snow cannot be held later unless a new petition is filed. OAG March 25, 1937 (187a-6).

122.21 NOTICE OF CONSOLIDATION; ELECTION BALLOT.

HISTORY. 1915 c. 238 ss. 3 to 6; 1917 c. 410 ss. 1, 2; 1917 c. 470 s. 1; 1919 c. 342 s. 1; G.S. 1923 ss. 2756 to 2759; M.S. 1927 ss. 2756 to 2759; 1941 c. 169 art. 3 s. 21.

Where the facts are such that Laws 1915, Chapter 238, Section 5 (122.21) is applicable, proceedings to consolidate school districts must be initiated under that section and not under the first section of the act (122.18). School District v Consolidated School District, 151 M 52, 185 NW 961.

Where a proposition to form a consolidated school district which includes parts of existing districts has been defeated at the election, if new petitions are thereafter filed for another election, such petitions must also be approved by the school boards of the districts a part of which are to be included in the proposed district. Consolidation of School Districts, Isanti County, 151 M 399, 186 NW 802.

The bonded indebtedness of individual common school districts consolidated into one district is not transferred to the whole territory. OAG Jan. 17, 1933.

This section and not sections 122.09 to 122.12 governs the procedure in the case of annexation of unorganized territory to a school district. OAG Dec. 29, 1933.

122.22 ORDER OF CONSOLIDATION.

HISTORY. 1915 c. 238 s. 4; 1917 c. 410 s. 1; 1919 c. 342 s. 1; G.S. 1923 s. 2757; M.S. 1927 s. 2757; 1941 c. 169 art. 3 s. 22.

122.23 CONSOLIDATED INDEPENDENT DISTRICTS.

HISTORY. 1915 c. 238 ss. 4, 5; 1917 c. 387 ss. 3, 7; 1917 c. 410 ss. 1, 2; 1919 c. 342 s. 1; G.S. 1923 ss. 2757, 2758, 2760; M.S. 1927 ss. 2757, 2758, 2760; 1941 c. 169 art. 3 s. 23.

The provisions of sections 122.09 to 122.12, authorizing the consolidation or enlargement of school districts through the procedure therein provided, are not

repealed or superseded by sections 122.18 to 122.26, authorizing the consolidation of districts through a different procedure. So far as the two cover the same ground, the latter merely provides additional methods for consolidating such districts as come within its purview. In re Enlargement of School District, 155 M 41, 192 NW 345.

122.24 EXISTING DISTRICT MAY BECOME CONSOLIDATED.

HISTORY. 1915 c. 238 s. 2; 1921 c. 230; G.S. 1923 s. 2755; M.S. 1927 s. 2755; 1941 c. 169 art. 3 s. 24.

122.25 DIVISION OF ASSETS.

HISTORY. 1941 c. 169 art. 3 s. 25.

The word "funds" is limited to cash and the school board cannot sell a school house located on leased land. The school house belongs to the district to which the territory containing it is assigned. OAG Jan. 14, 1929.

122.26 BONDED INDEBTEDNESS; TRANSFER OF LIABILITY.

HISTORY. 1915 c. 238 s. 4; 1917 c. 387 s. 4; 1917 s. 410 s. 1; 1919 c. 342 s. 1; G.S. 1923 s. 2757; M.S. 1927 s. 2757; 1941 c. 169 art. 3 s. 26.

The bonded indebtedness of individual common school districts consolidated into one district is not transferred to the whole territory. OAG Jan. 17, 1933.

122.27 INDEBTEDNESS OF OLD DISTRICT.

HISTORY. 1917 c. 432 ss. 1, 2; G.S. 1923 ss. 2781, 2782; M.S. 1927 ss. 2781, 2782; 1941 c. 169 art. 3 s. 27.

122.28 DISSOLUTION OF DISTRICTS.

HISTORY. 1877 c. 74 subc. 1 s. 17; G.S. 1878 c. 36 s. 17; 1881 c. 51 s. 1; G.S. 1894 s. 3675; 1897 c. 252; R.L. 1905 s. 1288; G.S. 1913 s. 2685; G.S. 1923 s. 2753; M.S. 1927 s. 2753; 1941 c. 169 art. 3 s. 28.

The notice contemplated is the one set forth in section 122.07. OAG June 16, 1932.

A consolidated school district which is also a joint district may dissolve and become a part of the unorganized territory in the county. OAG June 16, 1932.

122.29 DISSOLUTION OF DISTRICTS.

HISTORY. 1933 c. 240 ss. 1, 2; M. Supp. ss. 2768-3, 2768-4; 1941 c. 169 art. 3 s. 29.

122.30 COMMON OR SPECIAL TO INDEPENDENT DISTRICT.

HISTORY. 1865 c. 13 ss. 2 to 4; G.S. 1866 c. 36 ss. 55 to 57; 1877 c. 74 subc. 7 ss. 2, 3; G.S. 1878 c. 36 ss. 95 to 97; 1881 c. 41 s. 10; 1885 c. 57 s. 2; G.S. 1894 ss. 3792 to 3794; 1895 c. 18; 1897 c. 300; R.L. 1905 ss. 1295 to 1298; 1913 c. 356 s. 1; G.S. 1913 ss. 2698 to 2701; G.S. 1923 ss. 2783 to 2786; M.S. 1927 ss. 2783 to 2786; 1941 c. 169 art. 3 s. 30.

122.31 CHANGING INDEPENDENT DISTRICTS.

HISTORY. 1877 c. 74 subc. 7 s. 22; G.S. 1878 c. 36 s. 115; G.S. 1894 s. 3812; 1897 c. 69; R.L. 1905 s. 1299; G.S. 1913 s. 2702; G.S. 1923 s. 2787; M.S. 1927 s. 2787; 1941 c. 169 art. 3 s. 31.

122.32 APPEAL FROM ORDER.

HISTORY. G.S. 1866 c. 36 s. 5; 1868 c. 11 s. 1; 1869 c. 2 s. 1; 1877 c. 74 subc. 1 s. 12; 1878 c. 48 s. 1; G.S. 1878 c. 36 s. 12; 1879 c. 28 s. 1; 1891 c. 26 ss. 3, 6; G.S. 1894 ss. 3659, 3669, 3672; 1895 c. 110; 1901 c. 125 s. 1; R.L. 1905 ss. 1285, 1286; 1907 c. 88; 1909 c. 13; 1911 c. 264; 1913 c. 435 s. 1; G.S. 1913 ss. 2676, 2677; 1923 c. 304; G.S. 1923 ss. 2747, 2748; M.S. 1927 ss. 2747, 2748; 1941 c. 169 art. 3 s. 32.

When county boards have acted upon a petition to organize a new school district out of parts of other districts lying in different counties, an appeal may be taken by any qualified person residing in any part of the proposed new district to the district court of any county in which is located any part of the new territory; and, when an appeal is thus perfected, that court acquires jurisdiction of the subject matter, and the county boards of other counties have no interest therein. Bloomquist v County of Washington, 101 M 163, 112 NW 253.

Upon a statutory appeal to the district court from an order of the county board detaching land from one school district and attaching it to another, the petition to the county board need not be drawn with the formality of a pleading; and, if sufficient to put before the board facts upon which it can base an investigation and determination as to the propriety of the detachment, it is sufficient. Sorkness v County Board, 131 M 79, 154 NW 669.

On an appeal from an order of the county board refusing to enlarge a school district, the evidence sustains a finding of the jury, approved by the trial court, that the act of the county board was arbitrary and without due regard to the public interests. Sartell v County of Benton, 149 M 233, 183 NW 148.

In the absence of a right of appeal given by statute and of any other effective remedy aggrieved parties may enjoin the making and filing of an order setting forth the result of an election, as required by the statute, the election being invalid because of an insufficient number of petitioners. School District v McConnell, 150 M 57, 184 NW 369.

The determination by the county board of questions involved in granting or rejecting a petition for the establishment of a new school district will be disturbed by the courts only when such determination is based upon an erroneous theory of the law or when it clearly appears that the decision is arbitrary, oppressive, fraudulent, or in unreasonable disregard of the best interests of the territory affected, or such as to work manifest injustice. Packard v County of Otter Tail, 174 M 347, 219 NW 289.

The action of a county board in detaching territory from one school district and attaching it to another must stand unless it conclusively appears that it was arbitrary, unreasonable, or unjust or against the best interests of the public. School District v County of Yellow Medicine, 174 M 380, 219 NW 456.

The school board may employ attorneys to prosecute an appeal and these attorneys are entitled to fees notwithstanding the new board decides to dismiss the appeal. OAG March 25, 1935 (166c-1).

In an appeal, the issues of fact are to be tried as in a civil action. OAG March 25, 1935 (166c-1).

An appeal should be taken by the members of the school board acting as school officials. OAG March 25, 1935 (166c-1).