121.09 COUNTY SUPERINTENDENT OF SCHOOLS, SALARY

HISTORY. 1861 c 11 s 25; 1862 c 1 s 9; 1864 c 20 s 9; 1877 c 74 t 4 s 4; 1881 c 41 s 8; 1895 c 65; 1911 c 216 s 1; 1915 c 141 s 1; 1941 c 169 art 2 s 9; 1941 c 471; 1945 c 336 s 1; 1947 c 515 s 1; 1949 c 477 s 1; 1951 c 351 s 1, 2; 1953 c 469 s 1.

The action of the county board taken on June 4 fixing the salary of the county superintendent may legally be made effective beginning June 1, the time for review having passed. OAG Aug. 26, 1947 (399-H).

Specifies the minimum salary of the county superintendent, but the board should fix the salary. OAG Nov. 12, 1947 (399-A).

The salary of the county superintendent of schools is determined by the number of school buildings in the district and to that there is added the number of districts from which pupils are transported to another district. OAG June 3, 1949 (399-H).

121.10 EXPENSES, HOW PAID

HISTORY. 1877 c 74 t 4 s 4; 1881 c 41 s 8; 1895 c 65; 1907 c 33; 1911 c 216 s 2; 1919 c 473 s 1; 1941 c 169 art 2 s 10.

121.11 CLERK HIRE

HISTORY. 1877 c 74 subc 4 s 15; 1885 c 12 s 1; 1911 c 216 s 3; 1927 c 342 s 1; 1935 c 22 s 1; 1935 c 353 s 1; 1941 c 22 s 1; 1941 c 169 art 2 s 11; 1943 c 513 s 1, 2; 1945 c 552 s 1; 1945 c 573 s 1, 2; 1947 c 339 s 1; 1949 c 444 s 1.

Where the number of schools in a county is less than 25 due to loss of schools through dissolution or annexation, the county is not entitled to an assistant superintendent of schools. OAG April 24, 1952 (399-A).

121.15 CERTAIN DISTRICTS MAY EMPLOY HIGH SCHOOL SUPERINTENDENT

HISTORY. 1864 c 3 s 5; 1865 c 13 s 6; 1877 c 74 t 7 s 10; 1941 c 169 art 2 s 15.

In independent school district obliged to rent space in another district, may employ the superintendent of said other district. There is no prohibition against two districts employing the same superintendent. OAG Aug. 5, 1947 (768-K).

CHAPTER 122

SCHOOL DISTRICTS; ORGANIZATION; CONSOLIDATION; DISSOLUTION

122.01 SCHOOL DISTRICTS

HISTORY. 1862 c 1 s 1-6; 1877 c 74 subc 151; 1941 c 169 art 3 s 1; 1947 c 150 s 1; 1947 c 538 s 2.

Reorganization of school districts are within title of 1951 act stating "Act relates to school districts and the organization, reorganization, consolidation and dissolution thereof" and the Act is not vitiated by the statement at the end of the title that the Act amends certain sections of Minnesota Statutes 1949, relating to school district consolidation proceedings, nor is the Act invalid because it amends 1947 and 1949 laws relating to surveys for reorganization of school districts. State v Common School District No. 65, 237 M 150, 54 NW(2d) 130.

A school district is a separate legal entity; and a consolidated school is a legal entity separate and distinct from its component parts. Huffman v School Board, 230 M 289, 41 NW(2d) 455.

Section 125.07, subdivision 2, authorizes a common school district to provide a dwelling for teachers and section 125.09, subdivision 2, requires a consolidated school district to provide a dwelling for teachers or other employees; but there is no provision giving like authority to an independent school district. OAG May 15, 1947 (622-K).

When independent school district levies taxes for a building fund, there being no restrictions in the law preventing it from using the money thus realized for other purposes, such money may be spent for other purposes. OAG Aug. 7, 1947 (159-B-2).

Bonds may not be issued to finance and plan for combined recreational council for village and school district. Funds for that purpose must come from contributions and tax levy. OAG Aug. 11, 1947 (159-B-1).

An independent school district may enter into a long term contract not to be performed within the term of the members of the board at the time the contract is made. Section 125.07 applies to common schools but not to independent school districts. OAG Aug. 18, 1947 (161-A-8).

The provisions of section 122.01, subdivision 6, mean that in joint school district tax rate for school maintenance, imposed on agricultural land must be the same in both counties; and where the average rate in common school districts in the two counties is not the same, the higher rate applies. Where terms of section 127.05, subdivisions 2 and 3 both apply to the facts, the limitations of subdivision 3 controls over subdivision 2. OAG Nov. 18, 1947 (519-M).

Where the city of Hastings and the special school district No. 26 desire to participate in the maintenance of a recreational program, the school district may not join in such an agreement unless authorized by a majority vote cast in an annual school election. OAG June 4, 1948 (159-B-1).

If at the annual meeting a tax was levied for a school lunch program and a revenue has been raised thereunder and if the regulations adopted by the state board of education prescribes rules therefor, a common school district may use the funds so raised to sponsor a school lunch program. OAG Dec. 3, 1948 (159-B-11).

Where several districts have been consolidated into a reorganized school district and a six-member board elected, the reorganized district becomes an independent school district. In an independent school district the school board levies the taxes. It is the duty of the board to provide by levy of tax the necessary funds for the conduct of the schools of the district, the payment of indebtedness, and all proper expenses. *It follows that if the money now in the treasury of the new district plus* the taxes levied by the former component districts is not sufficient to provide the necessary funds for the conduct of the schools of the new district, the payment of indebtedness and all proper expenses of the district, then it is the duty of the board to provide additional funds by tax levy. The board merely adopts a resolution levying the necessary tax and is not concerned with the question as to how the tax is spread. That is the duty of the county auditor. OAG Oct. 17, 1949 (519-M).

Where the county board of Hennepin County dissolved common school district No. 94 and by order attached same to school district No. 200, the levy for a bond issue, approved by the voters of district No. 200 prior to the time of the attachment but not consummated by delivery of the bonds until after the attachment, should be made against the entire property owners of the new district which will include the property owners of district No. 94 and No. 200. OAG Nov. 8, 1949 (519-M).

A person residing in a house on a line between two school districts may elect which district shall furnish education to his children. Having elected to send them to a school of one district does not preclude him from changing his mind and sending them to another. OAG Dec. 27, 1949 (252-1918 report).

In educational matters the unorganized territory of any county is governed by a county board of education, consisting of the superintendent of schools, chairman of the county board and the county treasurer, each acting as ex officio member of the board. The general powers of the board are set forth in section 125.06. If the chairman of the board is not present his absence does not create a vacancy. The

other two members of the board may transact business. The statute does not provide any method of supplying a temporary chairman if the chairman of the board is temporarily absent. Section 123.35 does not apply. OAG Dec. 28, 1950 (169-A-9).

Lands acquired by a school district should be in the name of the school district, and conveyances should be made in the name of the school district and executed by the chairman and clerk of the school board after being authorized to do so by the electors. OAG Sept. 25, 1951 (622-I-15).

When constituent districts have failed to levy taxes sufficient to maintain schools until July 1 next following reorganization, such constituent districts may levy taxes for the purpose and issue tax anticipation certificates. OAG Jan. 7, 1952 (519-M).

Where several districts are organized into one new district the consolidated district cannot use one of the old numbers, but the new district should be given the next number higher than the highest number of any school district in the county. OAG May 11, 1950 (166-E-4).

Special state aid for board and lodging of a pupil residing at a remote distance from the school cannot be paid where the child and his mother move to town and live together temporarily while the child attends school. OAG Oct. 10, 1952 (168-E).

After a school district is dissolved and before the territory embraced within the dissolved district is attached to another district, it is unorganized territory. May 16, 1952 (166-E-3).

The annexing district is under no obligation to pay any part of the bonded indebtedness with which the annexed territory was encumbered at the time of annexation and the annexed territory is not burdened with the bonded indebtedness of the annexing territory which existed at the time of the annexation. OAG Jan. 10, 1950 (519-M).

If an independent school district was organized as a consolidated school district and contained at least 12 sections of land, it was a consolidated school district, and the school board had the powers enumerated in section 125.09. OAG June 14, 1950 (166-F).

Where taxes have been levied for school district purposes in an excessive amount, and certified to the county auditor to spread accordingly, and the tax roll has been transmitted to the county treasurer for collection, no remedy exists for the reduction of such tax levy. OAG Jan. 22, 1953 (519-M).

Boards of constituent districts, absorbed in a reorganized district, are without power to contract with reference to the school year following that in which the reorganization is accomplished. OAG March 24, 1953 (172-C).

A common school district is one organized as such with a board of three members in which the electors determine the length of the school term and the amount of the tax levied. If the electors at their annual meeting or a special meeting called for a certain purpose, provide for a summer school session, their action is legal and the expense may be paid out of the taxes levied. OAG June 5, 1953 (160).

A school district when organized becomes a public corporation and continues as such until it is either dissolved or its boundaries are changed by statutory procedure. The mere fact that it might not own property might not change its status as a public corporation. Under the provisions of section 465.035 it may sell its real estate or buildings if they no longer serve a useful purpose. OAG July 21, 1953 (622-I-8).

Several school districts having been reorganized into one district, and before the reorganization the several districts having levied taxes, such taxes should be spread and collected. Where the reorganized district assumed bonded indebtedness of several former districts, taxes should be levied by the new district to pay bonds assumed. OAG Oct. 7, 1953 (519-M).

122.02 CERTAIN DISTRICTS DEEMED LEGALLY ORGANIZED

HISTORY. 1862 c 1 s 1; 1877 c 74 subc 1 s 1; 1941 c 169 art 3 s 2.

This section establishes a conclusive presumption of law in the nature of a statute of limitations. Bricelyn School District v County Board, ... M ....., 55 NW(2d) 602.

When the new common school district began to operate it was merely a de facto school district but it did business, levied taxes, and to all intents and purposes acted as a de jure district. Having operated in that manner for more than two years its acts cannot be questioned in a collateral proceeding. OAG June 17, 1952 (166-D-1-A).

Where an error has been made in organizing the school district or changing its boundaries even though the error be one of jurisdiction, if the action taken has been allowed to stand without dispute for a number of years, the action cannot now be questioned. OAG Oct. 3, 1952 (166-C).

122.03 COMPOSITION

HISTORY. 1899 c 293 s 1; 1941 c 169 art 3 s 3; 1953 c 744 s 1.

Where a school district is dissolved and the territory attached to other districts, the board has the right, under section 122.28, as amended by Laws 1951, Chapter 706, Section 6, to attach the territory of the dissolved district to one or more existing districts, or to unorganized territory as in its judgment shall seem most equitable, having regard to the convenience of the inhabitants. This right is subject to the provisions of section 122.03 which provides that all districts shall be composed of adjoining territory. OAG July 25, 1951 (166-E-3).

Where a petition requests that territory be detached from a reorganized school district subsequent to the election or reorganization, approval by the board of the reorganized district is required before the petition may be presented to the county commissioners. OAG Aug. 14, 1951 (166-C-8).

A district which adjoins a district containing a secondary school cannot be assigned to another district which contains a secondary school but which does not adjoin the district being assigned. OAG Aug. 11, 1953 (166-C-2).

122.04 PLATS AND DESCRIPTION OF DISTRICTS

HISTORY. 1861 c 11 s 4; 1862 c 1 s 4; 1877 c 74 subc 1 s 3; 1897 c 251; 1901 c 371 s 2; 1941 c 169 art 3 s 4.

122.05 FORMATION OF DISTRICTS

HISTORY. 1861 c 11 s 7; 1862 c 1 s 5; 1869 c 251; 1877 c 74 subc 1 s 12; 1878 c 48 s 1; 1879 c 28 s 1; 1903 c 220; 1903 c 277; 1923 c 71 s 1; 1941 c 169 art 3 s 5.

The powers conferred upon a county board to form a new common or independent school district from territory "in whole or in part included in any existing common, independent, or special school district" is not applicable to a reorganized school district established pursuant to the provisions of sections 122.40 to 122.57. Bricelyn School District v County Board, ... M ....., 55 NW(2d) 602.

Powers conferred upon boards of county commissioners by sections 122.05 to 122.08, to form new common or independent school districts from territory "in whole or in part included in any existing common, independent, or special school district" is not applicable to a reorganized school district established pursuant to the provisions of sections 122.40, 122.57. The county board is without jurisdiction to form a new school district from lands located within a reorganized district. Bricelyn School District v County Commissioners, ... M ....., 55 NW(2d) 597; Frost Independent School District v County Board, ... M ....., 55 NW(2d) 602.

The court will consider the attachment of a district suffering from inadequate facilities to another district. This does not conflict with the school board reorganization act. Re Abraham Lincoln School District, ... M ....., 60 NW(2d) 617.

Where a school district is authorized under the provisions of section 122.05, which includes an incorporated village, it is not necessary that the district contain four sections of land. OAG March 26, 1947 (166-C).

Upon a petition described in section 122.06 and proceedings described in sections 122.07 and 122.08, a proceeding to organize a new school district to embrace part of the territory of an existing district is authorized by section 122.05. OAG Aug. 18, 1950 (166-E-4).

Operation of an order of the county commissioners granting a petition to form a new school district must be suspended pending an appeal to the supreme court from such order. OAG Aug. 21, 1952 (166-D-3).

A majority of freeholders, qualified to vote at school meetings or elections, residing upon any territory not less than four sections in extent, and in which 20 or more school age children live, may petition the county board in the county they reside to make the territory a common or independent school district. The fact that the area is unorganized territory is immaterial. OAG March 25, 1953 (166-D-1-C).

122.07 NOTICE OF HEARING

Where a common school district passed a resolution for dissolution of the district and annexation to a joint school district located partly in the county where the common school district was located and partly in adjacent county, notice must be posted in the common school district and in the joint school district in both counties. OAG June 15, 1949 (166-E-1).

If a special meeting is properly called under section 122.07 and votes in favor of a resolution for dissolution of the school district, its action is valid. If the meeting is not properly called the proceedings taken at the meeting are without force. OAG Sept. 27, 1949 (166-E-3).

122.08 PROCEEDINGS ON HEARING

On dissolution of the school district and the annexation of the territory thereof to an adjoining district, the time for the appealing of the order having expired, the county may not on its own motion reopen the proceeding and annex such land in a manner different from such order. OAG May 1, 1953 (166-E-3).

122.09 CHANGING BOUNDARIES; ANNEXATION; MERGER

HISTORY. 1862 c 1 s 5, 6; 1868 c 11 s 1; 1869 c 2 s 1; 1877 c 74 subc 1 s 12; 1878 c 48 s 1; 1879 c 28 s 1; 1891 c 26 s 6; 1895 c 110 s 1; 1907 c 88 s 1; 1909 c 13 s 1; 1911 c 264 s 1; 1913 c 435 s 1; 1941 c 169 art 3 s 9; 1947 c 249 s 1; 1953 c 591 s 1.

The statutory provision for dissolution by the county board of any functioning school district upon presentation of a petition signed by a majority of resident freeholders of such district entitled to vote in school elections therein provides, in itself, a complete statutory proceeding to accomplish the dissolution of any school district, and the statutory provisions governing changes of boundaries come into play only after dissolution has been ordered. A hearing is necessary on the proposed attachment of territory of a dissolved school district. There can be no valid attachment of territory of a dissolved school district to another existing district which lies partly or entirely in another county unless a petition for such attachment has been properly presented to, and favorably acted upon by, the county board of each county in which the annexing district lies. Anderson v Common School District, ... M ....., 60 NW(2d) 60.

When a sufficient number of freeholders qualify to vote at school district meetings and elections, action of the county board is invoked to change school district boundaries. OAG Nov. 27, 1946 (166-C-9).

When a common school district is annexed to an independent school district, the proceedings should be under section 122.09. OAG Jan. 30, 1947 (166-C-9).

Where four sections of territory now contained within the Mountain Iron school district apply for transfer to the adjoining Virginia school district, the proper law to be applied and complied with is section 122.09. As no consolidation is contemplated, sections 122.18 to 122.27 have no application. OAG April 6, 1948 (166-D-1-C).

A consolidated school district may annex an adjacent common school district. OAG May 12, 1948 (166-F-6).

Change of boundaries of a school district to absorb adjoining district does not affect a tax levy in the district absorbed but not certified to the county auditor. The levy may still be certified by the clerk in the present district. OAG Aug. 30, 1948 (519-M).

Where a special school district included a city but the boundaries of the city and district were not coterminous, the action of the city in annexing territory did not extend the boundaries of the school district. OAG Oct. 15, 1948 (166-D-1).

The boundaries of the city of Winona include a new subdivision which formerly constituted a part of School District No. 120. The residents of the subdivision wish to remain in district No. 120 instead of being included in the special school district of the city of Winona. This new subdivision by operation of law is now a part of the special school district of the city of Winona. Upon petition of not less than 20 percent of the freeholders of each district affected and otherwise proceeding in the manner prescribed for the formation of districts under the provisions of section 122.09, the boundaries of any existing district may be changed. Any school district whose boundaries are coterminous with, or are wholly within the boundary of any city, may detach any part of its territory and under the provisions of section 122.111 may with the consent of an adjoining school district, transfer to such adjoining district. OAG Oct. 18, 1949 (166-D-1-D).

Where by reason of reorganization of school district, certain school sites and buildings thereon become useless and are no longer used for public purposes, if the original deed conveying those tracts to the school district contained a condition subsequent, the title to the property reverts to the original owner or his assigns according to the conditions of the original grant. If the title has reverted to the original grantor, or to his heirs, or his assigns, the building passes with the real estate, and the school board is without power to sell the building. OAG July 24, 1950 (166-E-4).

Even if the owner consents, the change of boundary when property is taken from one district and included in another, under the provisions of section 122.09, cannot provide that said owner will pay taxes on the then outstanding bonds of the district to which the land is attached. OAG July 7, 1953 (166-C-5).

Laws 1953, Chapter 591, is a law of general application and under section 122.10 the change in boundary shall not be made so as to leave the old district without at least one schoolhouse and at least four sections of land in certain districts. In districts containing less than four sections the land may be merged or consolidated with another district. OAG Aug. 20, 1953 (166-C-8).

122.10 LIMITATIONS

A change of boundaries of a school district cannot be permitted if the result of such detachment leaves the district without at least four sections of land. OAG Apr. 18, 1950 (166-C).

Lands detached from a school district having a bonded debt remain liable for taxation for the purpose of paying that debt. Lands attached to a school district having a bonded debt do not become subject to taxation for such indebtedness. OAG June 26, 1950 (166-C-5).

This section provides that no change of school district shall in any way affect the liability of the territory so changed upon any bonded indebtedness; but any such real estate shall be taxed for outstanding liability and interest as if no change had been made. Section 122.11, which relates to union of districts, annexation of territory to districts, and change of boundaries of districts, provides that if there are any debts or obligations chargeable against the discontinued district, any funds collected in behalf of the discontinued district shall be applied on such debts or obligations. OAG Oct. 4, 1951 (519-M).

A school district need not be dissolved by the county board, either upon its own motion or upon the petition. The dissolution provided for in section 122.28 is permissive and not mandatory. The only time that the county board may dissolve a school district upon its own motion is when for two years no school has been held and no provision made by it for the education of its pupils. OAG March 30, 1951 (166-C) (166-E-3).

The provision forbidding detachment of land on petition of owners or otherwise, from a school district, when the result will leave the school district without at least four sections, is absolute, and the fact that other land at the same time is attached to the district is immaterial. OAG March 10, 1953 (166-C-8).

122.11 CLAIMS AGAINST DISTRICTS

When during proceedings for the consolidation of several school districts certain of the school districts employed counsel, the contracts between the lawyers and the school districts were valid contracts. Upon completion of the consolidation the old districts ceased to function and the obligations lawfully created by the component districts before consolidation, and the new consolidated district, would be liable for payment thereof. OAG May 4, 1950 (166-E-2).

122.111 DETACHMENT OF TERRITORY

HISTORY. 1947 c 217 s 1-6; 1949 c 613 s 1.

Any school district whose boundaries are coterminous with, or are wholly within the boundaries of any city may detach any part of its territory and with the consent of an adjoining school district, transfer to such adjoining district. OAG Oct. 18, 1949 (166-D-1-D).

The boundaries of the city of Winona include a new subdivision which formerly constituted a part of school district No. 120. The residents of the subdivision wish to remain in district No. 120 instead of being included in the special school district of the city of Winona. This new subdivision by operation of law is now a part of the special school district of the city of Winona. Upon petition of not less than 20 percent of the freeholders of each district affected and otherwise proceeding in the manner prescribed for the formation of districts under the provisions of section 122.09, the boundaries of any existing district may be changed. Any school district whose boundaries are coterminous with, or are wholly within the boundary of any city, may detach any part of its territory and under the provisions of section 122.111 may with the consent of an adjoining school district, transfer to such adjoining district. OAG Oct. 18, 1949 (166-D-1-D).

122.12 BOUNDARIES OF DISTRICTS ENLARGED IN CERTAIN CASES

In considering the annexation of territory by a school district of the territory of an adjoining district it should be kept in mind that the beneficial owner of the fee of school property is the state itself. The various public agencies are essentially but trustees of the state holding the property and devoting it to the uses which the state itself directs. In making an alleged division of property between two school districts upon the annexation of one by the other, the county board is without authority to award the property to one district upon condition that the annexing district paid the sum of money to the district from which the property is annexed. Two districts are, however, capable of contracting between themselves upon such terms as they may be able to agree. OAG Feb. 3, 1949 (166-C-3).

122.13 REHEARINGS

Section 122.13 does not apply where a school district is dissolved. It applies only to a situation where boundaries are changed. OAG Aug. 30, 1949 (166-E-3).

122.14 DISTRICTS IN TWO OR MORE COUNTIES

School districts adjoining but in separate counties may be consolidated pursuant to the provisions of section 122.09. OAG April 18, 1949 (166-C-6).

School district No. 70 of Hubbard County having passed the necessary resolution was properly dissolved and must be attached to some other school district. As school district No. 6 is partly in Hubbard County and partly in Beltrami County, in order that district No. 70 be annexed by district No. 6, a resolution must first be adopted by the county board of Hubbard County and reported to the county board of Beltrami for action. If the action in Beltrami County is favorable district No. 70 stands annexed to district No. 6. If the vote is unfavorable it is the duty of the county board of Hubbard County to annex district No. 70 to some other Hubbard County district. OAG June 15, 1949 (166-E-1).

In proceedings to detach territory from a joint school district and attach it to another district, the land to be detached must be properly described and if the school districts lie within two counties, procedure must be made in both counties. OAG Dec. 20, 1950 (166-C-6).

Procedure for set-off of land located in one county attached to a school district located in two counties and to have the land set-off annexed to an adjoining school district located in one county is governed by section 122.15, and petition need only be filed in that county in which the land and the district to which it is proposed that the land be annexed are located. OAG March 20, 1951 (166-C-6).

In order to divide a joint school district into two parts with one part in each county composing a complete school district, two proceedings, one before the county board of each county, would be required. OAG Aug. 18, 1950 (166-E-4).

122.15 ANNEXATION OF LAND

HISTORY. 1877 c 74 subc 1 s 16; 1879 c 43 s 1; 1881 c 41 s 2; 1885 c 121; 1891 c 73 s 1; 1901 c 371 s 2; 1915 c 113 s 1; 1931 c 189; 1941 c 169 art 3 s 15; 1951 c 31 s 1; 1953 c 744 s 2.

The remedy provided in section 122.15 is available to an individual provided his petition conforms to the forms of the statute; but it is not available to him merely because no other remedy is available, or specifically when section 122.09 or section 122.12 is not available. OAG Nov. 27, 1946 (166-C-9).

The application to detach 160 acres of land from a school district and annex it to the independent and consolidated district of Clarkfield was in proper form, but disclosed that 80 acres of cultivated but otherwise unoccupied land separated the proposed addition from the Clarkfield district. The 80 acres cannot be held to be "unoccupied," and the application for annexation must be denied. OAG Feb. 6, 1948 (166-C).

The petitioner owns a tract of land which adjoins a lake. The school district in which the land is situated is bounded on the east by a line which forms the west boundary of an adjoining school district. The boundary line between the two districts intersects the lake which is oval in shape, the line passing through the lake at about its middle. Petitioner desires to have his property annexed to the school district on the other side of the lake. Abutting owners take to the center of a nonnavigable lake; the boundary lines of each abutting tract being fixed by extending, from the meander line on each side of the tract, lines converging to a point in the center of the lake. The question as to whether or not petitioner's land is contiguous to the boundary of the district on the east is one of fact to be determined by proper measurement and extension and must be determined and established by a court. If it is determined that the boundaries of petitioner's land adjoins the boundary of the school district on the east, he is eligible to make this petition under the provisions of section 122.15. If there is land between his boundary and the boundary of the eastern district, then though the land is unoccupied and is small in extent, that would deter him from petitioning on the ground that there is a land contact. OAG Jan. 20, 1950 (166-C-2).

Land separated from a school district by the Mississippi River is not adjoining land within the meaning of section 122.15. OAG Aug. 3, 1950 (166-C).

A corporation owning fee simple title to real estate is a freeholder and qualified as a petitioner on a petition authorized by section 122.15. OAG Oct. 6, 1950 (771-B).

A school district need not be dissolved by the county board, either upon its own motion or upon the petition. The dissolution provided for in section 122.28 is permissive and not mandatory. The only time that the county board may dissolve a school district upon its own motion is when for two years no school has been held and no provision made by it for the education of its pupils. OAG March 30, 1951 (166-C) (166-E-3).

When a school district is reorganized and various school districts are incorporated therein, the old district ceases to exist, having been absorbed into the new. The old district no longer has any entity. It has no existence as such so there is no way by which one of the old districts could apply for detachment from the consolidated district. Under section 122.15 an individual or a group of individuals may by petition seek separation of his or their land for any existing school district and annexation thereof to an adjoining district. OAG May 7, 1951 (166-C-9).

Separate petitions to set off land from one district to another are required for each parcel to be set off. Owners of several different tracts may not join in one petition. OAG May 28, 1951 (166-C-8).

Under section 122.15, as amended by Laws 1951, Chapter 31, when petition for attachment requires approval of a reorganized district from which it would be detached, approval may be secured either before or after filing the petition with the commissioners. If the land lies in only one county but the district from which it would be detached lies in two counties, action is required only by the commissioners in the county in which the land lies. OAG Aug. 10, 1951 (166-C-8).

When land is annexed to another district it is not subject to the bonded indebtedness of a former district if such bonds were not issued and delivered at the time of the annexation. OAG Nov. 15, 1951 (166-C-5).

Where the petitioner desires to attach his property to a school district the county board has authority to grant or deny the petition. OAG Sept. 21, 1951 (166-E-3).

Where the district lies in two counties in case of a petition to detach the commissioners in the county where the land to be detached lies have full power to act. OAG Aug. 10, 1951 (166-C-8).

This section is for the use of freeholder but not of the district. OAG Oct. 24, 1951 (166-E-4).

If a county board grants a petition to annex land to the school district before the bonds of the school district are marketed and before the tax levy, said annexed land being part of the district at the time the bonds were sold and the tax levy was made, is subject to taxation for purposes of raising money to pay the bonds. OAG Feb. 5, 1952 (166-C-10).

Detachment of land from one school district and annexation to another does not authorize burdening the land thus detached and attached with any part of the bonded debt of the district to which attached. OAG Sept. 5, 1952 (166-C-10).

A tax levy to collect is impressed upon all taxable property of the district at the time of the delivery of the bonds. Proceedings to detach land from the district after the lands are so impressed do not alter the situation. OAG Oct. 29, 1952 (166-C-5).

In proceedings to detach land from the school district, such school district having been reorganized under authority of sections 122.40 to 122.57, and the land to be detached having been included in school districts after reorganization proceedings were completed by virtue of sections 122.18 to 122.27, the proviso in section 122.15 requiring approval of petition for detachment before consolidation by the county board, does not apply. OAG Jan. 2, 1953 (166-C-8).

Proceedings before a county board to detach land from school district No. 1 in "A" county and attach it to an adjoining county in school district No. 2 in "B" county, must be had before the county board in each county with like result. OAG Feb. 16, 1953 (166-C-6).

A petition for the taxing of land from a reorganized school district must be approved by the board of the reorganized district. Arbitrary action of refusing to approve may be reviewed by certiorari. OAG Feb. 25, 1953 (166-C-8).

Where land detached was in a school district which consisted of territory in counties, A, B, or C, and the land itself lay wholly in county A and was attached to another district lying wholly in county A, the approval of county boards in counties B and C is not required. Where land lies in county A and is attached to a district lying in counties A and B, approval of the county board in county B is required. OAG March 31, 1953 (166-C-6).

Under the provisions of section 122.15 as amended consolidated districts are in the same category as the reorganized districts in proceedings intended to detach territory therefrom. OAG May 13, 1953 (166-C-8).

Detachment of land from one school district and annexation to an adjoining district upon the petition of a freeholder filed before election for consolidation of the district need not be approved by the school board in a consolidated district after the enactment of Laws 1953, Chapter 744. Where a petition for such detachment was filed before the enactment of Laws 1953, Chapter 744, the law requiring approval did not apply to consolidated districts. OAG June 26, 1953 (166-C-8).

Sheriff's services in Pine county in posting a notice in proceedings for the annexation of land to a school district under section 122.15 contstitutes services to the county and are covered by a salary payable to him under the provisions of section 387.18. OAG July 14, 1953 (390-C-8).

Where land has been joined to a reorganized district through consolidation proceedings, consent of that district to detach land is not necessary where the action was taken prior to Laws 1953, Chapter 744, Section 2. OAG July 21, 1953 (166-C-8).

Where land is detached from a school district on petition of a landowner, under the provisions of section 122.15 the provisions of section 122.17 relating to division of property do not apply. OAG July 31, 1953 (166-C-3).

When land is detached from one district under the provisions of section 122.15, as amended, and attached to another district, the land is subject to taxation for bonded indebtedness in both districts. OAG Sept. 3, 1953 (166-C-5).

The tax burden imposed by section 475.61, subdivision 1, remains unaffected by detachment proceedings under section 122.15; but the land attached to another district after enactment of section 122.15, subdivision 2, takes on a new burden for payment of the bonds of the district to which the land is attached. OAG Nov. 10, 1953 (66-C-5).

The requirement that a petition for detachment of land be presented to the county board is met when the petitioner places his petition in the hands of the clerk of the board. OAG Nov. 13, 1953 (166-C-8).

122.16 DISTRICTS MAY UNITE IN CERTAIN CASES

NOTE: See, as to joint exercise of powers, section 471.59.

A district is consolidated whether or not independent and whether or not joint. OAG Nov. 15, 1951 (519-M).

122.17 DIVISION OF FUNDS, CHANGE OF DISTRICT

HISTORY. 1907 c 109 s 1; 1941 c 169 art 3 s 17; 1947 c 506 s 1; 1953 c 115 s 1.

Upon the consolidation of two school districts the law takes care of financial adjustment. When the consolidation has been effected the county board will apportion the outstanding obligations, other than bonded indebtedness, as the board deems just and equitable. The board will make a division of the money, funds, credits, and property belonging to the consolidated district and will award such money, funds, credits, and property to the district affected by the change and the

auditor is required to make the division pursuant to the resolution of the county board. OAG June 17, 1948 (166-F-4).

In considering the annexation of territory by a school district of the territory of an adjoining district it should be kept in mind that the beneficial owner of the fee of school property is the state itself. The various public agencies are essentially but trustees of the state holding the property and devoting it to the use which the state itself directs. In making an alleged division of property between two school districts upon the annexation of one by the other, the county board is without authority to award the property to one district upon condition that the annexing district paid a sum of money to the district from which the property is annexed. Two districts are, however, capable of contracting between themselves upon such terms as they may be able to agree. OAG Feb. 3, 1949 (166-C-3).

Where a school district is dissolved and is attached to one or more school districts the county board divides all money, funds, credits, and property using their discretion as to proper apportionment. An existing school district about to be dissolved may anticipate the costs by issuing bonds for the payment before dissolution and any expenses left unpaid are a charge against a newly created district. OAG Sept. 26, 1949 (166-D-4).

State aid received by the county auditor after dissolution of a school district should be distributed in accordance with the order for the division of property made by the county board as required under section 122.17. OAG Feb. 24, 1950 (168).

The use of funds belonging to a dissolved school district for the payment of bonded indebtedness is controlled by order of the county board relating to the division of funds. Section 122.17 authorizes an order controlling the division of assets and obligations of the dissolved districts. OAG May 4, 1950 (166-E-3).

Section 122.17 is authority to the county board to make a division of property of school district affected by changes, such as annexation, enlargement, or otherwise. After the division is made, an award is made to the school district which becomes entitled to receive the property so divided. This does not authorize a sale of the property. OAG Aug. 18, 1950 (166-C-3).

When the auditor has transferred funds belonging to annexed district to the district to which same was annexed, and it later found that there are outstanding orders of the annexing district unpaid, but the board of commissioners has failed to make the order for the division of funds, the board of county commissioners may now make such order. OAG Jan. 8, 1951 (166-C-3).

Upon the reorganization of the district and including the land involved in the reorganized district, it is the duty of the county board to make a division of the property. Taxes levied at the time, and uncollected, are property of the district. If the county board has not made the division and has not performed its duty, that duty remains to be performed, and the county board should direct the county auditor to make the proper division. OAG Feb. 28, 1951 (166-C-3).

Where entire school districts are absorbed by the newly organized district, the new district merely merges the several component units, and where one of these units is an entire school district, whatever property it owned is, after reorganization, the property of the reorganized district; and where the reorganized district includes only a part of a former school district and a part of the former school district remains outside the borders of the newly organized district, sections 122.17 and 122.53 apply. OAG Nov. 21, 1951 (166-E-4).

When component school districts have been completely absorbed by reorganization and no portion thereof remains outside the newly organized district, all property of the component districts is transferred to the new district by operation of law. OAG Nov. 30, 1951 (166-E-4).

The award by the county board relating to the property of one school district transferred to another, upon change of boundaries and annexation of territory, under section 122.17, must be fair, just, and equitable. OAG May 28, 1952 (166-C-3).

Where land is detached from a school district on petition of a landowner, under the provisions of section 122.15 the provisions of section 122.17 relating to division of property do not apply. OAG July 31, 1953 (166-C-3).

Upon reorganization of any school district, the division of assets and the procedure for payment of nonbonded indebtedness of the school district must be as provided in sections 122.17 and 122.27. OAG Sept. 10, 1953 (166-E-4).

122.18 SCHOOL DISTRICTS

Under the statute providing for consolidation of school districts, indebtedness of old school district does not become indebtedness of newly consolidated district, in the absence of an election on part of the majority of electors of the new district to assume it. Huffman v School Board, 230 M 289 41 NW(2d) 455.

In an appeal to the supreme court under sections 122.18 to 122.27 neither the county in which the proceeding is pending nor the county superintendent of schools is a necessary party to the appeal. Appeals to the district court are governed by section 122.32 and notice must be served upon the county auditor of the county wherein the proceeding is pending and such service gives the district court complete jurisdiction of the proceedings and of the parties. Peterson v Joint Independent Consolidated School District, ... M ....., 58 NW(2d) 465.

An unauthorized school election has no legal effect. Consolidation of two districts is effected by an election held pursuant to statute. OAG March 4, 1949 (166-F-3).

An agreement to detach certain lands from a school district after consolidation is an unauthorized, unenforcible arrangement which the law will not recognize. Taxes levied to pay a bond issue are irrevocable. OAG April 18, 1951 (166-C-5).

Detachment of territory from a district consolidated under sections 122.18 through 122.27 does not require the approval of the school board as provided for in section 122.15. OAG July 30, 1952 (166-C-8).

Section 122.18 permits consolidation of districts or parts of districts. Nothing in the law requires that one or more of the districts conduct a graded elementary or secondary school. School districts are divided into certain classes specified in section 122.01 for organization purposes. For purposes of administration public schools are classified under the heads specified in section 131.01. OAG June 18, 1953 (166-F-6).

Pending the expiration of time for appeal from the judgment of the district court determining the consolidation of school districts, the county superintendent during the 60 days permitted for appeal should hold all matters concerning consolidation in abatement and until after the 60 days has expired should not certify to the commissioner of education a plat looking toward the consolidation of school districts involved in the area determined in the judgment. OAG Aug. 17, 1953 (166-F-1).

122.19 APPROVAL OF PLAT

HISTORY. 1915 c 238 s 1; 1941 c 169 art 3 s 19; 1943 c 422 s 1; 1945 c 80 s 1; 1951 c 706 s 1.

In a proceeding for a consolidation of 15 school districts under sections 122.18 to 122.22, where a certain plat of the proposed district was not in conformity with the requirement of the statute, the defects were held to be merely irregularities not going to the jurisdiction of the proceedings. Common School District v Barstad, 231 M 40, 42 NW(2d) 393.

Reorganization of school districts are within title of 1951 Act stating "Act relates to school districts and the organization, reorganization, consolidation and dissolution thereof" and the Act is not vitiated by the statement at the end of the title that the Act amends certain sections of Minnesota Statutes 1949, relating to school district consolidation proceedings, nor is the Act invalid because it amends 1947

and 1949 laws relating to surveys for reorganization of school districts. State v Common School District No. 65, 237 M 150, 54 NW(2d) 130.

The steps to organize and consolidate school districts are: (1) the filing of the petition required by section 122.20; (2) the giving of the notice required by section 122.21; (3) the holding of the special meeting or election at which the people vote on the question of consolidation; and (4) the making of the order of consolidation specified in section 122.22 and the filing thereof. Before these things are done the superintendent of schools of the county in which the major portion of the territory is situated shall cause a plat to be made and forwarded to the commissioner of education to be approved by the commissioner.

While it may have been intended by the law that the plat should be approved before the petition is signed the provision is directory rather than mandatory, and no prejudice results from signing and acknowledging the petition before the council as proof of plat. Section 645.16 indicates that since the object to be obtained is accomplished, the mere order under the facts related are unimportant. OAG April 12, 1949 (166-F-6).

The county superintendent of schools in the county where the greater part of the territory to a consolidated district lies must cause a plat to be prepared and filed. He may do the work himself or see to it that someone else does it. OAG April 16, 1952 (166-F-6).

The statute requires that a plat come to the hands of the commissioner of education. He examines the same. He may require further information. If he approves the plat as proposed he certifies his conclusions to the county superintendent of schools from whom he received the plat. He may reject the plan and certify accordingly. He has authority to modify the plat and so certify. OAG June 19, 1952 (166-F-6).

Where the petition for school district consolidation was completed prior to the signing of the plat by the superintendent and before the approval by the commissioner, the petition will be held insufficient and a new petition should be secured. The actual making of the plat must be completed before the other steps are taken. OAG July 21, 1952 (166-F-6).

122.20 PETITION FOR CONSOLIDATION

HISTORY. 1915 c 238 s 2; 1917 c 470 s 1; 1941 c 169 art 3 s 20; 1951 c 706 s 2.

In proceedings to consolidate 11 common school districts, and part of a twelfth, with an independent school district where the proceedings were regular in every way except as to acknowledgment of the petition, the county superintendent is not authorized to act upon the petition until it is signed and acknowledged. Where the persons who signed the petition did not personally appear before the notary and acknowledge the signing, the petition is not in accordance with the statute and the action of the county superintendent is unauthorized. An election cannot be held until a proper petition was made and, if the election was based upon an improper petition, the election is ineffectual. OAG July 28, 1948 (166-F-5).

Where at an election on the question of consolidation of school districts, 109 ballots were cast in favor of consolidation and 109 ballots were cast against it, the matter is at an end. The election has been held and the petition was not granted by a majority vote. A second election on the same petition may not be had. OAG May 24, 1950 (187-B-2).

The county superintendent may not call an election to vote on the consolidation involving territory maintaining a graded elementary or secondary school until the board in such district or districts has adopted a resolution favoring consolidation. OAG Sept. 17, 1951 (166-F-3).

A consolidated district is a consolidated district whether or not independent and whether or not joint. OAG Nov. 15, 1951 (519-M).

A person signing a petition proposing consolidation must be a resident freeholder, qualified to vote at a school election, and the determination of his qualifica-

tions is a fact question to be determined by those who pass on the petition. OAG July 2, 1952 (166-F-5).

After consolidation, the new district cannot apply funds of the former district on payment of bonds of such former district when there has been no assumption of such debt by the new consolidated district. OAG July 16, 1953 (166-F-4).

122.21 CONSOLIDATION; NOTICE, ELECTION

HISTORY. 1915 c 238 s 3-6; 1917 c 410 s 1, 2; 1917 c 470 s 1; 1919 c 342 s 1; 1937 c 303 s 1; 1941 c 169 art 3 s 23; 1951 c 706 s 3.

The statute providing that the county superintendent of schools should cause notice of an election of the proposed school district consolidation to be held "within the proposed district" is not violative of the constitutional provisions requiring 30 days residence in an election district. Common School District v Barstad, 231 M 40, 42 NW(2d) 393.

In proceedings under sections 122.18 to 122.27, in appeals to the supreme court, adverse parties are the petitioners who petitioned for consolidation and appeals are taken under provisions of section 122.32. Neither the county nor the superintendent of schools is a party. In appeals to the district court and to the supreme court service is made on the county auditor of the county within which the appeal is pending. Such service constitutes service on all adverse parties. Peterson v Joint Independent Consolidated School District, ... M ....., 58 NW(2d) 465.

Upon appeal from the order of the county superintendent relating to consolidation of schools under authority of section 122.22, the procedure of appeal is that prescribed and followed under section 122.32. OAG Nov. 15, 1948 (166-F-1).

Reorganization and consolidation of several common school districts is effected when and if a canvass of the certificates from the precincts by the county superintendent shows such results. The reorganized district comes into being at the time when the county superintendent ascertains the results of the consolidation and the former districts which make up the reorganized district continue to exist until the reorganized district comes into being. OAG Dec. 1, 1948 (166-E-4).

There may be some doubt as to whether a school district may be consolidated from territory lying in two counties in one of which counties the territory is unorganized. The project may be more easily accomplished under the provisions of sections 123.48 to 123.51. OAG March 17, 1949 (622-K).

Where district "A" is an urban school district maintaining a high school and district "B" is also urban maintaining a graded elementary school and district "C" and "D" are rural school districts in voting on consolidation requires that each of the urban districts vote and their vote is counted separately while the two rural districts vote as one unit and their votes are so counted. OAG Nov. 10, 1949 (166-E-4).

Where proposed new territory contains five ungraded and three graded school districts, petition of 25 percent of the freeholders must be secured in all eight districts. A consolidated district formed under Laws 1915, Chapter 238, may not provide for assumption of debt under procedure authorized by section 122.53 and under facts stated, bonded indebtedness could not be assumed under any of the provisions of section 122.26; if consolidated district contains more than one graded elementary or high school, provision of section 122.23, providing that the board of the graded school shall continue to govern until next election, is not applicable and a special election should be called. OAG March 16, 1950 (166-E-4).

When an appeal is taken from an order of consolidation of a school district the appeal suspends the operation of the order while the appeal is pending. OAG March 24, 1952 (166-F-1).

A soldier in military service absent from the district of his residence, may vote by mail in a school consolidation election. OAG Sept. 18, 1951 (639-K).

In the matter of the consolidation of a school district and after an election has been held the county superintendent cannot call another election after the first for the purpose of submitting the identical question to the people for a vote upon which they have already expressed their choice. The proposition must be resubmitted to the commissioner of education and there must be a new approval by the commissioner. OAG April 28, 1953 (166-F-3).

122.22 ORDER OF CONSOLIDATION

HISTORY. 1915 c 238 s 4; 1917 c 410 s 1; 1919 c 342 s 1; 1937 c 303 s 1; 1941 c 169 art 3 s 22; 1951 c 706 s 4.

The steps to organize and consolidate school districts are: (1) the filing of the petition required by section 122.20; (2) the giving of the notice required by section 122.21; (3) the holding of the special meeting or election at which the people vote on the question of consolidation; and (4) the making of the order of consolidation specified in section 122.22 and the filing thereof. Before these things are done the superintendent of schools of the county in which the major portion of the territory is situated shall cause a plat to be made and forwarded to the commissioner of education to be approved by the commissioner.

While it may have been intended by the law that the plat should be approved before the petition is signed the provision is directory rather than mandatory, and no prejudice results from signing and acknowledging the petition before the council as proof of plat. Section 645.16 indicates that since the object to be obtained is accomplished, the mere order under the facts related are unimportant. OAG April 12, 1949 (166-F-6).

Where a school district, which maintains a high school, is consolidated with common school districts, the school board in the district which maintains the high school governs the consolidated district until the next election. OAG Aug. 23, 1951 (166-F-7).

Where the county superintendent issued an order consolidating a common school district with an independent district, a petition by landowners whose property adjoined the new district, to attach their land to the new district, may be considered by the county board. OAG Aug. 31, 1951 (166-F-5).

After a consultation of school districts the board in one of the constituent former districts is without power to govern the district except only to maintain the school until July 1 following the consolidation. OAG March 18, 1953 (166-F).

Boards of constituent districts absorbed in a reorganized district are without power to contract with reference to a school year following that in which reorganization is accomplished. OAG March 24, 1953 (172-C).

122.23 CONSOLIDATED INDEPENDENT DISTRICTS

In the event that a village of over 500 population contains more than one school district, the vote must be taken in accordance with the provisions of section 122.52, and the law says that one or more voting precincts shall be established within the corporate limit of the village, but when the votes are counted the votes cast in the village are counted separately from those cast outside the village. With two districts each of which contains a high and grade school or a graded elementary school are to be consolidated the benefits are regulated by section 122.23. The vote cast outside the city limits will be counted separate from the vote cast within the city. The consolidation or reorganization will not be effected unless the majority of the votes cast in each of the two separate towns favor the reorganization. OAG March 2, 1948 (166-E-4).

Where a consolidation of several school districts into one is effected under sections 122.18 to 122.27, it is the duty of the officers of the school districts so consolidated, within ten days, to turn over all records, funds, credits, buildings, and property to the consolidated district. Before the consolidation took effect the several school districts were separate public corporations. By the consolidation they be-

come one corporation. If the officers of the several districts fail to perform the duty the individuals owing that duty still have it to perform even though they are no longer officers. The ten-day provision is directory and if the duty is not performed within the ten-day period, if may be performed later. If the title to the property upon which any school building stands returns to the original owner, the consolidated school district, while still in process, may dispose of the school building and remove it. OAG March 9, 1951 (166-E-4).

Where a landowner offered a small tract of land for use as a school site and there had been no deed of conveyance or any agreement that would spell out a leasehold but merely an oral offer and acceptance for the use of the tract, the school district had a mere license to use the property and upon consolidation of such school district and abandonment of the school site, the building could be removed by the newly organized school district. OAG July 24, 1951 (622-J-20).

Where a school district maintaining a high school is consolidated with common school districts, the school board in the district maintaining the high school governs the consolidated district until the next election. OAG Aug. 23, 1951 (166-F-7).

122.26 BONDED INDEBTEDNESS; TRANSFER OF LIABILITY

HISTORY. 1915 c 238 s 4; 1917 c 410 s 1; 1919 c 342 s 1; 1937 c 303 s 1; 1941 c 169 art 3 s 26; 1951 c 706 s 5.

Where school districts are consolidated, the existing bonded indebtedness remains the liability of the territory against which it was originally incurred, unless such indebtedness is assumed by the consolidated district after a majority vote of the voters of such district. After consolidation, notwithstanding the 50 percent debt limit of section 475.53 a consolidated school district may incur a net debt equal to 50 percent of the assessed value of the property in such district without regard to the existing debts of component school districts at the time of consolidation. Huffman v School Board, 230 M 289, 41 NW(2d) 456.

When a school district consolidates with an independent district the electors may assume the bonded indebtedness of the independent district upon following the procedure set out in section 122.26. OAG Feb. 23, 1950 (166-C-5).

In a reorganized school district where the component former districts in some cases levied taxes and in other cases did not, the present reorganized district is the successor of each former component district; and in order that the levy be uniform, the present board of the reorganized district should adopt a resolution revoking each of the tax levies therefor made and notify the county auditor and the board of the reorganized district and then levy its taxes just as though the district had existed as it now exists and that levy must then be certified to the county auditor. OAG Nov. 29, 1950 (519-M).

122.27 INDEBTEDNESS OF OLD DISTRICT

HISTORY. 1917 c 432 s 1, 2; 1941 c 169 art 3 s 27; 1949 c 464 s 1.

Indebtedness of the old districts does not become the indebtedness of the new consolidated district in the absence of an election on the part of a majority of the voters of the new district to assume it. Huffman v School Board, 230 M 289, 41 NW(2d) 455.

Where the county board of Hennepin County dissolved common school district No. 94 and by order attached same to school district No. 200, the levy for a bond issue, approved by the voters of district No. 200 prior to the time of the attachment but not consummated by delivery of the bonds until after the attachment, should be made against the entire property owners of the new district which will include the property owners of district No. 94 and No. 200. OAG Nov. 8, 1949 (519-M).

When the provisions of section 122.27, subdivision 3, are applicable, the auditor and the board of the school district must follow the procedure set out therein, including section 122.53, as amended by Laws 1949, Chapter 666, Section 9. It is not mandatory on the board to approve claims filed in view of the provisions of section 122.27, subdivision 6. OAG Jan. 27, 1950 (166-E-4).

When during proceedings for the consolidation of several school districts certain of the school districts employed counsel, the contracts between the lawyers and the school districts were valid contracts. Upon completion of the consolidation the old districts ceased to function and the obligations lawfully created by the component districts before consolidation, and the new consolidated district, would be liable for payment thereof. OAG May 4, 1950 (166-E-2).

Where a consolidated school district maintaining a graded elementary or high school is enlarged to include several additional districts, the bonded indebtedness of the old districts must be paid in accordance with the provisions of sections 122.26 and 122.27, and the county auditor is directed to turn over funds which may be levied as provided in section 122.27 to the treasurer of the consolidated district, and also the taxes already levied by the individual districts but not yet collected, must also be turned over to the treasurer of the new district. OAG March 5, 1951 (166-E-9).

122.28 DISSOLUTION

HISTORY. 1877 c 74 subc 1 s 17; 1881 c 51 s 1; 1897 c 252; 1931 c 367; 1941 c 169 art 3 s 28; 1951 c 706 s 6.

The electors of a common school district may, by a resolution passed by a majority vote at a duly held special meeting, revoke a resolution requesting dissolution which had been passed at a prior meeting, but which had not been considered by the board of county commissioners at the time of the second vote, the effect of such revocation is to deprive the county board of jurisdiction to pass upon the original resolution under section 122.28. A common school district special election which specifies all minimum statutory requirements is a valid election where the form of the ballot sufficiently informs the voters of the issue at hand, and where the evidence supports a finding that the requested notice was given. Paetzel v Clift, 234 M 498, 48 NW(2d) 731.

Powers conferred upon boards of county commissioners to form new common or independent school districts from territory in whole or in part included in any existing common independent or special school district did not apply to reorganized school district established pursuant to provisions of the School District Reorganization Act providing a new method for reorganization of school districts within the state, and hence county board had no jurisdiction to form new school district from lands located within reorganized school district. Bricelyn School District No. 132 v Board of County Commissioners of Faribault County, ... M ....., 55 NW(2d) 597.

The statutory provision for dissolution by the county board of any functioning school district upon presentation of a petition signed by a majority of resident freeholders of such district entitled to vote in school elections therein provides, in itself, a complete statutory proceeding to accomplish the dissolution of any school district, and the statutory provisions governing changes of boundaries come into play only after dissolution has been ordered. A hearing is necessary on the proposed attachment of territory of a dissolved school district. There can be no valid attachment of territory of a dissolved school district to another existing district which lies partly or entirely in another county unless a petition for such attachment has been properly presented to, and favorably acted upon by, the county board of each county in which the annexing district lies. Anderson v Common School District, ... M ....., 60 NW(2d) 60.

The bold faced headnote preceding each section in the printed session laws is inserted by the revisor of statutes and consequently has no value as to aid to statutory construction for the determination of legislative intent. Anderson v Common School District, ... M ....., 60 NW(2d) 60.

A fast growing district which is unable to provide necessary educational facilities to persons of school age may be dissolved and attached to district with ample facilities. The action taken in the instant case was entirely within the discretion vested in the county board. Re Abraham Lincoln School District, ... M ....., 60 NW(2d) 617.

On appeal from an order of the county board dissolving a school district or attaching it to another district, the court is limited to the consideration of whether the action taken was arbitrary, oppressive, unreasonable or fraudulent or based on an erroneous theory of the law. In dissolving a district the component parts must be attached to an existing district or districts. Re Abraham Lincoln School District, ... M ....., 60 NW(2d) 617.

Under the statute authorizing the county board to dissolve a school district, notice of a hearing of a proposed attachment of territory of a dissolved school district could be given either before or after the county board had acted upon the petition for dissolution. Lindahl v Fitzsimmons, ... M ....., 61 NW(2d) 236.

School district No. 70 of Hubbard county having passed the necessary resolution was properly dissolved and must be attached to some other school district. As school district No. 6 is partly in Hubbard County and partly in Beltrami County, in order that district No. 70 be annexed by district No. 6, a resolution must first be adopted by the county board of Hubbard County and reported to the county board of Beltrami for action. If the action in Beltrami County is favorable, district No. 70 stands annexed to district No. 6. If the vote is unfavorable it is the duty of the county board of Hubbard County to annex district No. 70 to some other Hubbard County district. OAG June 15, 1949 (166-E-1).

Where no school is being held in a district and provision has been made for taking pupils in another district, dissolution may be had under the provisions of section 122.28. OAG Jan. 30, 1950 (166-E).

State aid received by the county auditor after dissolution of a school district should be distributed in accordance with the order for the division of property made by the county board as required under section 122.17. OAG Feb. 24, 1950 (168).

The use of funds belonging to a dissolved school district for the payment of bonded indebtedness is controlled by order of the county board relating to the division of funds. Section 122.17 authorizes an order controlling the division of assets and obligations of the dissolved districts. OAG May 4, 1950 (166-E-3).

Where a common school district was dissolved by a vote of the people, and by action of the county board the territory of the dissolved district was attached to another district, and the dissolved district before its dissolution having levied a tax which it failed to certify, the proper certificate should be made by the county auditor. OAG Oct. 13, 1950 (519-M).

Where a school district is dissolved and the territory attached to other districts, the board has the right, under section 122.28, as amended by Laws 1951, Chapter 706, Section 6, to attach the territory of the dissolved district to one or more existing districts, or to unorganized territory as in its judgment shall seem most equitable, having regard to the convenience of the inhabitants. This right is subject to the provisions of section 122.03 which provides that all districts shall be composed of adjoining territory. OAG July 25, 1951 (166-E-3).

Upon the dissolution of a school district the county board has no authority to sell the school site or school buildings but in a county where there is no unorganized territory the school house and the site should be attached to another district. OAG Aug. 16, 1948 (166-E).

Where the school district is dissolved and through reorganization and admittance into a larger district, where the school building was built upon land with the owner's consent, the school district did not acquire title by adverse possession because the possession was not hostile. In such case the right to remove the school building depends upon the question of fact as to the contract, oral or written, between the owner of the land and the school district at the time of the building of the schoolhouse thereon. If the school district has the right to sell or remove the building, the removal should be without damage to the owner of the fee and the district should remove any foundation for the building if the leaving of the foundation upon the removal of the building constitute an obstruction to the use of the land. OAG Aug. 30, 1951 (622-I-14).

Where a school district has authorized the building of a schoolhouse and provided funds therefor, and subsequently and before the construction of the building the voters adopt a resolution to dissolve the district, the power of the school board to erect the building is not affected. OAG May 13, 1952 (622-J-5).

Proceedings for the dissolution of a school district has no reference to proceedings for consolidation. After a school district is dissolved and before the territory is attached to another district it is unorganized territory under the definition of section 122.01, subdivision 9. OAG May 16, 1952 (166-E-3).

Special school meetings of voters should be held within the boundary of the school district. OAG Jan. 2, 1953 (187-A-6).

Unorganized territory in one county cannot be attached for school purposes to unorganized territory in another county. OAG Feb. 26, 1953 (166-C-6).

Before final action is taken by the county board on a petition under section 122.28, a petitioner may withdraw his name from the petition by filing a writing to that effect. OAG April 15, 1953 (166-E-3).

Section 122.28, relating to dissolution of school districts, relates to all school districts and a petition for dissolution may be signed by a freeholder before the county board acts thereon, irrespective of the fact that the signer previously signed and then withdrew his name. OAG May 12, 1953 (166-E-3).

The signer of a petition to dissolve a school district cannot withdraw his signature after the county board has exercised action in reliance of the jurisdiction conferred by the petition. OAG July 21, 1953 (166-E-3).

Where an order has been made dissolving a school district and an appeal is taken from the order of the county commissioners, the operation of the order is suspended and the status quo is preserved during the pendency of the appeal. OAG July 31, 1953 (166-C-5).

Pupils are entitled to education in the district wherein they reside; and voters to vote in the school district of their residence. The status of each pupil or voter is determined by facts relating particularly to him. OAG Nov. 13, 1953 (166-E-3).

122.30 COMMON OR SPECIAL TO INDEPENDENT DISTRICT

On consolidation of several districts including two or more maintaining graded elementary high schools, a special election must be held for officers of the new consolidated district. OAG Oct. 6, 1948 (166-E-4).

Where the board of education of a special school district contemplates changing the school district to an independent school district, the voters must assemble at a place in the district named in the posted notice of such meeting, and then and there vote by ballot upon the question. The voting may not be done over a period of hours as at an ordinary election. OAG Nov. 20, 1953 (166-D-1-D).

122.32 APPEAL FROM ORDER

In proceedings under section 122.18 to 122.27, in appeals to the supreme court, adverse parties are the petitioners who petitioned for consolidation and appeals are taken under provisions of section 122.32. Neither the county nor the superintendent of schools is a party. In appeals to the district court and to the supreme court service is made on the county auditor of the county within which the appeal is pending. Such service constitutes service on all adverse parties. Peterson v Joint Independent Consolidated School District, ... M ....., 58 NW(2d) 465.

In considering the annexation of territory by a school district of the territory of an adjoining district it should be kept in mind that the beneficial owner of the fee of school property is the state itself. The various public agencies are essentially but trustees of the state holding the property and devoting it to the use which the state itself directs. In making an alleged division of property between two school districts upon the annexation of one by the other, the county board is without au-

thority to award the property to one district upon condition that the annexing district paid a sum of money to the district from which the property is annexed. Two districts are, however, capable of contracting between themselves upon such terms as they may be able to agree. OAG Feb. 3, 1949 (166-C-3).

The commissioner of education is not a necessary party to an appeal from the action taken by county superintendent with reference to the consolidation of the school districts. OAG Nov. 15, 1948 (166-F-1).

Upon appeal from the order of the county superintendent relating to consolidation of schools under authority of section 122.22, the procedure of appeal is that prescribed and followed under section 122.32. OAG Nov. 15, 1948 (166-F-1).

When an appeal is taken from an order of consolidation of a school district the appeal suspends the operation of the order while the appeal is pending. OAG March 24, 1952 (166-F-1).

Where an appeal is taken from an action of the county board detaching land from one school district and attaching it to another, and an appeal is taken from such action by a school district officer, the school board has power when in the best interest of the district to authorize and pay the expense of such appeal. OAG Sept. 22, 1952 (161-C-1).

An order of the county board dissolving a school district under the provisions of section 122.28 is appealable as authorized under section 122.32. Such appeal is the exclusive remedy of the party aggrieved. Appeal by the aggrieved party to the district court from an order of the county superintendent consolidating school districts suspends the operation of the county superintendent's order until the district court decides the appeal. OAG Oct. 17, 1952 (166-F-1).

Pending the expiration of time for appeal from the judgment of the district court determining the consolidation of school districts, the county superintendent during the 60 days permitted for appeal should hold all matters concerning consolidation in abatement and until after the 60 days has expired should not certify to the commissioner of education a plat looking toward the consolidation of school districts involved in the area determined in the judgment. OAG Aug. 17, 1953 (166-F-1).

122.40 SURVEY FOR REORGANIZATION OF SCHOOL DISTRICTS

HISTORY. 1947 c 431 s 1; 1949 c 666 s 1.

The action or decision of a board of appeal created under the provisions of the School Reorganization Act, now sections 122.40 to 122.57, being legislative and not judicial, cannot be reviewed by certiorari. In the instant case the board only modified a recommendation plan and did not attempt to organize the school district. State ex rel v Schweickhard, 232 M 342, 45 NW(2d) 657.

Where the only interest of a county board claimed or shown to be affected was its interest in the proper exercise of its official functions as to reorganization of school districts and no question of general public interest was involved, the board is not entitled to question the constitutionality of Laws 1947, Chapter 421, as amended by Laws 1949, Chapter 666. Bricelyn School District v County Board, ... M ....., 55 NW(2d) 602.

Public officials having no personal or property interest which is being infringed by a statute may not question its constitutionality. An exception to this rule is frequently made when the public interest is involved. Where the only interest of the respondent county board claimed or shown to be effective was its interest in the proper exercise of its official functions, and no question of general public interest was involved, the county board was not entitled to question the constitutionality of the reorganization provisions of Laws 1947, Chapter 421, as amended by Laws 1949, Chapter 666. Bricelyn School District v County Commissioners, ... M ....., 55 NW (2d) 597.

Where it is proposed in proceedings for reorganization of existing school districts that a new district be created from territory embraced in existing districts,

the question should be submitted to all of the people of every district then existing which would in any manner be affected. OAG July 12, 1948 (166-E-4).

Where several school districts are reorganized under the provisions of sections 122.40 et seq., and a former component district has failed to levy taxes, such tax levy may be made by the board of the reorganized district in behalf of the former component district as the performance of a duty devolving upon the former component district before the reorganization became effective. OAG Sept. 2, 1949 (519-M).

Where district "A" is an urban school district maintaining a high school and district "B" is also urban maintaining a graded elementary school and district "C" and "D" are rural school districts in voting on consolidation requires that each of the urban districts vote and their vote is counted separately while the two rural districts vote as one unit and their votes are so counted. OAG Nov. 10, 1949 (166-E-4).

Sections 122.40 to 122.57 are supplementary to and do not repeal or supersede the provisions of sections 122.01 to 122.32. OAG June 7, 1950 (166-E-4).

When an existing school district is included in part of a reorganized district newly created and the remainder of such district consists of an area less than four sections of land, section 122.53 requires that such remaining area be attached to one or more adjoining districts. It is the duty of the county board to assign the residue of the land to the proper district. Until the board acts the old school district continues to exist de facto. In the division of the assets the remaining part of the district or the district to which it is assigned is assigned its proportionate part of the assets of the original corporation. OAG Aug. 16, 1950 (166-C-3).

The new, reorganized school district must perform contracts made by component districts. OAG Dec. 19, 1950 (166-E-4).

Reorganization of school districts under section 122.40 et seq., embracing territory in two counties in which each county has its school survey committee, requires identical action in the matter of final report by the committee in each county in order that the people in each county may vote upon the identical question to form a joint reorganized district. OAG May 17, 1951 (166-E-4).

Sections 122.40 to 122.57 relate to school reorganization law, and sections 122.18 to 122.27 contain the consolidation school law. There seems to be no provision for an appeal from an order of the county superintendent of schools made under the provisions of section 122.52, paragraph 4. Certiorari is the only method of review. OAG July 2, 1951 (166-E-4).

Where an independent school district had voted a bond issue for the acquisition of two new elementary school buildings, such money could not be used for a contemplated building in the reorganized district. OAG Dec. 6, 1951 (167-E-4).

A reorganized school district must obtain authority from the voters before disposing of a school house site or a school building no longer needed. OAG Dec. 21, 1953 (622-I-8).

Territory annexed to the city of St. Paul becomes part of the special St. Paul school district and consent of reorganized district from which the territory was detached is not required. The annexed territory continues to be subject to payment of the bonds of the former district. OAG Dec. 22, 1953 (166-E-4).

122.41 SCHOOL SURVEY COMMITTEE

HISTORY. 1947 c 421 s 2; 1949 c 666 s 2; 1953 c 744 s 3.

The duties of the county commissioner are incompatible with the duties of the member of county school survey committee. OAG Dec. 8, 1947 (358-A-3).

Where in the reorganization of school districts two counties are involved, the survey committee in each county should organize subcommittees from each county and those subcommittees may corporate and prepare the necessary recommendation for the improvement of the school districts. OAG June 29, 1949 (166-E-4).

122.43 ELECTION OF COMMITTEE

HISTORY. 1947 c 421 s 3; 1949 c 666 s 3.

The action or decision of a board of appeal created under the provisions of the School Reorganization Act, now sections 122.40 to 122.57, being legislative and not judicial, cannot be reviewed by certiorari. In the instant case the board only modified a recommendation plan and did not attempt to organize the school district. State ex rel v Schweickhard, 232 M 342, 45 NW(2d) 657.

122.45 ORGANIZATION OF COMMITTEE

HISTORY. 1947 c 421 s 6; 1949 c 666 s 4.

122.46 POWERS, DUTIES

HISTORY. 1947 c 421 s 7; 1953 c 744 s 4.

The necessary expenses of a county survey committee when audited must be paid by the county board. No authority is given for the employment of consultants to make the survey. OAG Nov. 20, 1952 (170-J) (166-E-4).

122.47 TENTATIVE REPORTS

HISTORY. 1947 c 421 s 8; 1949 c 666 s 5; 1953 c 744 s 5.

The county survey committee is required to hold hearings after the tentative report has been filed but the final report may be amended at any time not later than 90 days before the notice of election is given. There is no requirement for additional hearings. OAG Feb. 10, 1950 (170-J).

122.48 FINAL REPORT

HISTORY. 1947 c 421 s 9; 1949 c 666 s 6; 1953 c 744 s 6.

The action or decision of a board of appeal, created under the provisions of sections 122.40 to 122.57, being legislative and not judicial, cannot be reviewed by certiorari. State ex rel v Schweickhard, 232 M 342, 45 NW(2d) 657.

In a school district consolidation proceeding the statute gives the right of appeal to the district court. In re Consolidated District 18 of Goodhue County, 236 M 330, 52 NW(2d) 762.

When county survey committee report and recommendation misdescribes territory to be included in reorganized district, omits lands intended to be described and includes lands not intended to be included, proceedings should be initiated to obtain declaratory judgment determining the status of all districts involved, including the new district. OAG June 13, 1949 (166-E-4).

The county survey committee is required to hold hearings after the tentative report has been filed but the final report may be amended at any time not later than 90 days before the notice of election is given. There is no requirement for additional hearings. OAG Feb. 10, 1950 (170-J).

122.49 STATE ADVISORY COMMITTEE ON SCHOOL REORGANIZATION

HISTORY. 1947 c 421 s 10; 1953 c 744 s 7.

122.51 DUTIES OF COMMISSIONER OF EDUCATION; TERRITORY IN MORE THAN ONE COUNTY

HISTORY. 1947 c 421 s 12; 1949 c 666 s 7.

122.52 PROCEDURE FOR REORGANIZATION

HISTORY. 1947 c 421 s 13; 1949 c 666 s 8; 1951 c 305 s 1; 1951 c 706 s 7; 1953 c 744 s 8.

An order issued by the county superintendent of schools reorganizing various school districts into one, as provided in section 152.52 (4), is not an appealable order. Haugen v County Commissioners, 236 M 330, 52 NW(2d) 762.

In quo warranto proceedings attacking a school district reorganization election in which the county superintendent appointed school board members as election judges requesting them to appoint an alternate if they were unable to attend, where nothing appeared that the county survey committee did not approve the selection or that appointees exercised attempted delegation of authority, it is presumed that the superintendent's selection was approved and that the appointees served. Where mere minor technical irregularities do not prevent an election otherwise shown to be fair, such irregularity can have no effect on the jurisdiction of a school district organization proceeding. State v Common School District No. 65, 237 M 150, 54 NW(2d) 130.

The statute providing for election in reorganization of school districts but not providing a time at which it was to take effect, takes effect as of the day following its enactment. State v Common School District No. 65, 237 M 150, 54 NW(2d) 130.

In the event that a village of over 500 population contains more than one school district, the vote must be taken in accordance with the provisions of section 122.52, and the law says that one or more voting precinct shall be established within the corporate limit of the village, but when the votes are counted the votes cast in the village are counted separately from those cast outside the village. With two districts each of which contains a high and grade school or a graded elementary school are to be consolidated the benefits are regulated by section 122.23. The vote cast outside the city limits will be counted separate from the vote cast within the city. The consolidation or reorganization will not be effected unless the majority of the votes cast in each of the two separate towns favor the reorganization. OAG March 2, 1948 (166-E-4).

In construing the words "incorporated town" found in Laws 1947, Chapter 421, the word "incorporated" may be disregarded as each town in Minnesota is "incorporated." The word "township" designates a geographical subdivision. OAG May 7, 1948 (166-E-4).

Reorganization and consolidation of several common school districts is effected when and if a canvass of the certificates from the precincts by the county superintendent shows such results. The reorganized district comes into being at the time when the county superintendent ascertains the results of the consolidation and the former districts which make up the reorganized district continue to exist until the reorganized district comes into being. OAG Dec. 1, 1948 (166-E-4).

A public hearing means the right to appear and give evidence and hear and examine witnesses whose testimony is presented by opposing parties. Any person who presents himself and seeks admission at a public hearing is entitled to admission and to participate, make statements, present evidence and question others. Should such applicant be excluded the proceedings are in jeopardy of being reviewed by a court. OAG Sept. 19, 1949 (166-E-4).

Where district "A" is an urban school district maintaining a high school and district "B" is also urban maintaining a graded elementary school and district "C" and "D" are rural school districts in voting on consolidation requires that each of the urban districts vote and their vote is counted separately while the two rural districts vote as one unit and their votes are so counted. OAG Nov. 10, 1949 (166-E-4).

A notice of election on the question of adoption of the county school survey committee's final report must specify the location of the polling place, which must be in the existing district though not necessarily within that part included in the proposed reorganized district. OAG Nov. 22, 1949 (166-E-4).

If teachers in a certain school devote their entire time to elementary school work, such school is an urban district within the meaning of section 122.40, and will be treated as such in the administration of section 122.52. OAG May 29, 1950 (166-E-4).

Neither the county superintendent nor the county advisory committee may determine the legality or illegality of a reorganized election. This is a matter for the courts. OAG Feb. 28, 1952 (166-E-4).

Only voters residing in territory proposed to be included in a reorganized district are entitled to vote at an election on reorganization. OAG March 2, 1951 (166-E-4).

In school districts reorganized by election during the school year, the newly elected and organized school board in the reorganized district has the power to call and hold an election before July 1, following the reorganization, for the purpose of submitting to the voters of the district the question whether bonds shall be issued for school building purposes. OAG April 30, 1952 (166-E-4).

Where a proposed reorganization of school districts includes a joint school district, a part of which lies in an adjoining county, which adjoining county has no school survey committee, the entire joint school district is included in the reorganized district. OAG March 13, 1953 (166-E-4).

A provision authorizing "another" election means one more election after that in which reorganization was defeated. OAG March 18, 1953 (166-E-4).

122.53 ASSETS, LIABILITIES

HISTORY. 1947 c 421 s 14; 1949 c 666 s 9; 1953 c 744 s 9.

Where school districts are consolidated, the existing bonded indebtedness remains the liability of the territory against which it was originally incurred, unless such indebtedness is assumed by the consolidated district after a majority vote of the voters of such district. After consolidation, notwithstanding the 50 percent debt limit of section 475.53 a consolidated school district may incur a net debt equal to 50 percent of the assessed value of the property in such district without regard to the existing debts of component school districts at the time of consolidation. Huffman v School Board, 230 M 289, 41 NW(2d) 456.

Under the statute providing for consolidation of school districts, indebtedness of old district does not become indebtedness of newly consolidated district, in the absence of an election on part of the majority of electors of the new district to assume it. Huffman v School Board, 230 M 289, 41 NW(2d) 455.

Where several districts have been consolidated into a reorganized school district and a six-member board elected, the reorganized district becomes an independent school district. In an independent school district the school board levies the taxes. It is the duty of the board to provide by levy of tax the necessary funds for the conduct of the schools of the district, the payment of indebtedness, and all proper expenses. It follows that if the money now in the treasury of the new district plus the taxes levied by the former component districts is not sufficient to provide the necessary funds for the conduct of the schools of the new district, the payment of indebtedness and all proper expenses of the district, then it is the duty of the board to provide additional funds by tax levy. The board merely adopts a resolution levying the necessary tax and is not concerned with the question as to how the tax is spread. That is the duty of the county auditor. OAG Oct. 17, 1949 (519-M).

When an existing school district is included in part of a reorganized district newly created and the remainder of such district consists of an area less than four sections of land, section 122.53 requires that such remaining area be attached to one or more adjoining districts. It is the duty of the county board to assign the residue of the land to the proper district. Until the board acts the old school district continues to exist de facto. In the division of the assets the remaining part of the district or the district to which it is assigned is assigned its proportionate part of the assets of the original corporation. OAG Aug. 16, 1950 (166-C-3).

When constituent districts have failed to levy taxes sufficient to maintain schools until July 1 next following reorganization, such constituent districts may levy taxes for the purpose and issue tax anticipation certificates. OAG Jan. 7, 1952 (519-M).

A new reorganized school district is liable for the payment of the obligations and the discharge of the contracts of its component districts. OAG Dec. 19, 1950 (166-E-4).

A reorganized independent school district may not be converted to a common school district. OAG Dec. 22, 1953 (166-E-4).

122.54 APPROPRIATIONS FOR STATE COMMISSION; COUNTY BOARD TO DEFRAY EXPENSE OF COMMITTEE

Laws 1947, Chapter 421, provides for a survey for the reorganization of school districts. Where a school survey committee is to furnish such, the committee may nevertheless proceed to expend the necessary funds. It is the duty of the county board to levy taxes in an amount sufficient to defray the necessary expenses. Approval of the county board is not required before the committee may incur such expense but the committee and the county superintendent must be careful that the money is not unnecessarily spent. The question of necessity is in the first instance for the county superintendent and the committee. The county board must approve such conclusion before it levies a tax to pay it. The question of the amount of levy is for the county board. OAG Dec. 19, 1947 (170-J).

The expense incurred in a school survey must be allowed and audited as any other claim against the county; and in levying a tax to cover such expense, such tax may be in excess of the statutory limitation. OAG Jan. 14, 1948 (170-J).

A school survey committee is not authorized to employ legal counsel to represent it before the appeal board; and it is not the legal duty of the county attorney to represent the survey committee upon appeal. OAG July 29, 1949 (170-J).

While the publication of a questionnaire in the newspapers might serve a useful purpose, the survey committee in a matter of school reorganization is not authorized to expend any money for that purpose. Nor may they incur any expense for the purpose of a question and answer program. OAG Feb. 17, 1950 (170-J).

The county must pay the expenses of a school reorganization election and where the school district lies within two counties, each should pay the expense incurred within its county. OAG Feb. 17, 1950 (166-E-4).

The necessary expenses of a county survey committee when audited must be paid by the county board. No authority is given for the employment of consultants to make the survey. OAG Nov. 20, 1952 (170-J) (166-E-4).

122.55 SCHOOL BOARD

HISTORY. 1947 c 421 s 16; 1949 c 666 s 10; 1951 c 706 s 8; 1953 c 744 s 10.

Where four school districts in Marshall County and six school districts in Beltrami County joined to create joint school district No. 79 under the provisions of sections 122.40 to 122.56, if new district No. 79 has elected a superintendent no duty devolves on the county superintendent to visit or administer schools for district No. 79, but if it has no superintendent, then the superintendent's duties are defined in section 121.01 and must be performed in the county in which he was elected. He has no authority beyond the borders of the county. OAG Oct. 28, 1949 (399).

In the election of officers after the reorganization of a school district is complete there is no choice of methods of nominations. If nominations are made the rules laid down in section 124.05 as modified by section 122.55, subdivision 1, must be followed. OAG Jan. 13, 1950 (166-E-4).

Where several school districts are reorganized and an election is held resulting in a tie vote between two candidates for the short term of director there would be no election. The result was a vacancy which neither the county superintendent nor the county survey committee could determine. OAG Sept. 1, 1950 (161-A-11).

Under the 1951 amendment, where the election is held on June 15, warranting the county superintendent in making an order declaring that a reorganization has been effected, if election of school board is promptly held and the board for the newly organized district is promptly elected, the new board may manage the affairs of the newly organized district for the following school year to the exclusion of former boards in the several component districts. OAG May 17, 1951 (166-E-4).

When constituent districts have failed to levy taxes sufficient to maintain schools until July 1 next following reorganization, such constituent districts may levy taxes for the purpose and issue tax anticipation certificates. OAG Jan. 7, 1952 (519-M).

The school board of a reorganized district may not set aside levies that have been made by the districts at their annual meeting. OAG Feb. 15, 1952 (519-M).

In school districts reorganized by an election during a school year, the newly elected and organized school board in the reorganized district has power to call and hold an election before July 1 following the reorganization for the purpose of submitting to the voters of the district the question whether bonds shall be issued for a school building. OAG April 30, 1952 (166-E-4).

After reorganization of several school districts, one of the districts included within the reorganized district is without power to convey real estate, since its only power is to maintain a school until July 1 following. OAG May 13, 1953 (622-I-15).

122.553 PETITION FOR COUNTY SCHOOL SURVEY COMMITTEE

HISTORY. 1953 c 744 s 11.

122.56 Repealed, 1953 c 744 s 12.

122.57 STATE ADVISORY COMMITTEE; TERM OF OFFICE

HISTORY. 1947 c 421 s 18; 1949 c 666 s 12.

Where several school districts are reorganized under the provisions of sections 122.40 et seq., and a former component district has failed to levy taxes, such tax levy may be made by the board of the reorganized district in behalf of the former component district as the performance of a duty devolving upon the former component district before the reorganization became effective. OAG Sept. 2, 1949 (519-M).

122.58 CLASSIFICATION OF SPECIAL SCHOOL DISTRICTS; CONVERSION INTO INDEPENDENT DISTRICTS

Under Laws 1949, Chapter 716, Section 1, Subdivision 3, in the reorganization of a special school district into an independent school district, when the board reserves that the act shall not apply to the particular special school district the resolution should be adopted within 45 days after the effective date of Laws 1949, Chapter 716, which would be June 10. But adoption of a resolution by the board does not prevent the voters from holding an election and making a decision. OAG May 10, 1949 (166-E-4).

Laws 1949, Chapter 716, converting special school districts into independent school districts applies to the school district in Winona, created by Special Laws 1878, Chapter 155, notwithstanding the provision therein that the act cannot be repealed nor attacked unless specifically named or mentioned in the subsequent act. OAG May 16, 1949 (166-D-1-D).

Where by reason of reorganization of school district, certain school sites and buildings thereon become useless and are no longer used for public purposes, if the original deed conveying those tracts to the school district contained a condition subsequent, the title to the property reverts to the original owner or his assigns according to the conditions of the original grant. If the title has reverted to the original grantor, or to his heirs, or his assigns, the building passes with the real estate, and the school board is without power to sell the building. OAG July 24, 1950 (166-E-4).

122.59 RIGHTS AND POWERS OF CONVERTED DISTRICTS

HISTORY. 1949 c 716 s 2.

Where a district builds a schoolhouse under a mere license from the owner of the property, the building may be removed upon termination of the license. OAG July 24, 1951 (622-J-20).

122.60 GOVERNMENT OF CONVERTED DISTRICT

HISTORY. 1949 c 716 s 3.

Where a special school district holds an election on July 9, 1949, to determine whether or not to convert into an independent district, the election of officers on July 9, will be disregarded if the conversion is approved. If the district continues special, the officers will hold office according to the tenure of the election. OAG May 10, 1949 (166-D-1-D).

Where an independent school district is authorized to sell certain land which was sold to a housing and redevelopment authority for cash and where it was found that the sale was illegal and void, the school district should return the money to the housing administration and receive in return a deed to the property, putting each of the parties in status quo. OAG May 8, 1953 (430).

122.61 ELECTION OF DIRECTORS

HISTORY. 1949 c 716 s 4.

122.62 NUMBER OF DIRECTORS

HISTORY. 1949 c 716 s 5.

In reorganized school districts terms of directors should first be fixed so that ultimately two directors will be elected each year for three year terms. If the electors authorize a seven member board, the seventh member is first elected at the next election of the directors and for a three year term. OAG Feb. 17, 1950 (161-A-23).

122.63 TIME OF HOLDING ELECTIONS

HISTORY. 1949 c 716 s 7.

122.64 EXISTING PENSION LAWS CONTINUED

HISTORY. 1949 c 716 s 8.

122.65 CIVIL SERVICE PROVISIONS

HISTORY. 1949 c 716 s 9.

122.66 TAX LEVY

HISTORY. 1949 c 716 s 10.

Laws 1949, Chapter 716, Section 10, establishes an over all tax limitation upon an independent school district converted from a class one special school district and certain school districts may not levy an annual tax for the purpose stated in section 125.08 in excess of $18.50 per capita of people resident of the district, Laws 1917, Chapter 166 and Laws 1947, Chapter 241 to the contrary notwithstanding. OAG June 3, 1949 (519-M).

122.67 BONDING PROVISIONS

HISTORY. 1949 c 716 s 11.