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Repository Citation

Waldemar C. Wehe, *What Is the Legal Status of the Various School Bodies in the State of Wisconsin?*, 13 Marq. L. Rev. 161 (1929).
Available at: <http://scholarship.law.marquette.edu/mulr/vol13/iss3/3>

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WHAT IS THE LEGAL STATUS OF THE VARIOUS SCHOOL BODIES IN THE STATE OF WISCONSIN?

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THERE has been considerable discussion as to the legal standing of various school bodies in the state of Wisconsin, especially with reference to the legal status of the school board in the city of Milwaukee, and the rights and powers of the respective school bodies which are in charge of the schools of the state of Wisconsin. There have been some who have challenged the independence of the various school bodies, claiming that they are but departments of the various municipalities in which they exist.

In determining the question above stated, it is well to examine our state constitution to ascertain under what authority they exist.

Article 10 of our state constitution is devoted entirely to the question of education. Section 1 of said article refers to duties and compensation of the state superintendent. Section 2 refers to the school fund. Section 3 refers to district schools and reads as follows: "The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and said schools shall be free and without charge for tuition to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed therein."

The remaining sections of said article refer to school taxes, income, support of the university, etc. It is by virtue of Section 3 above quoted that the various school bodies who are in charge of the district schools of the state of Wisconsin exist.

Article 11 of the constitution refers only to municipal corporations and there is a distinct line of demarcation between the two articles, so that we may state as a positive fact that school bodies and municipal bodies are separate and distinct and have no affiliations, one with the other.

Our state legislature has passed various laws to carry out the provisions of Article 10 as above quoted.

Chapter 14 of our statutes is a law with reference to constitutional state officers, which includes the state superintendent of schools.

Chapter 25 is with reference to trust funds and their management.

Chapter 30 is with reference to school administration.

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Chapter 40 is with reference to school districts.

Chapter 41 is with reference to special schools.

Chapter 42 is with reference to teachers retirement act.

Chapter 43 is with reference to libraries, amusements, civic and community centers, and special use of municipal buildings, and

Chapter 67 is with reference to municipal borrowing and municipal bonds.

In this discussion we will only refer you to chapters 40 and 67.

Under the first section of Chapter 40, we have the various words defined. "Board" means school district board or other body having charge of the schools of any district; "district" means school district; "district schools" means the kind of schools which the legislature is commanded by Section 3, Article 10 of the constitution to establish and make as nearly uniform as practicable; "grade teacher" means a person who teaches in grades below the ninth; "joint school district" means a school district, whose territory is not wholly within one municipality; "municipality" includes town, city, and village; "public schools" means the common schools and the high schools supported by public taxation. "Parents" include guardians and other persons who take the place of parents; "rural schools" and "rural district" means the school or school district which is wholly outside the villages and cities.

Under and pursuant to Chapter 40, there are these three classifications of districts: common school districts, high school districts, and city school districts.

Common school districts are created under Section 40.30 of the statutes.

Section 40.40 refers to high school districts.

Section 40.52 refers to city school boards.

In none of the chapters above quoted has any reference been made with reference to attorneys who shall represent respective school bodies.

The Milwaukee School Board is created by Chapter 459 of the Laws of 1907 and the acts amendatory thereof and supplementary thereto.

In chapter 67 above referred to, which relates to municipal borrowing and municipal bonds, "municipality" is defined as follows: Municipality includes a county, city, village, town, common school district, consolidated district, state graded school district, free high school district, union free high school district, whether any such district is joined or otherwise, and board of education, a board of park commissioners and any other public body empowered to borrow money and issue written obligations to repay the same out of public funds or revenues. Said chapter also provides the method to be applied to borrow money and also places the limitation upon the borrowing power.

Having set forth the laws applicable to school bodies, a few cases

will now be considered, to show how the said school laws have been construed.

Our Supreme Court in the case of *Macy v. Oshkosh*, 144, Wis. 238, on page 260 holds: "That the ward schools of the city of Oshkosh are district schools within the meaning of Section 3, Article 10 of the constitution, does not admit a doubt. Further than this it is unnecessary to go. That the testatrix intending that the pupils in the ward schools of the city should have the benefit of municipal training schools seems equally clear. The provisions of the constitution above referred to requires the legislature to provide for the establishment of district schools, and that such schools shall be free and without charge for tuition to all children between the ages of four and twenty years."

The Supreme Court in the case of *H. Schmidt & Son v. Milwaukee*, 185 Wis. 119, in referring to the distinction between the School Board and the Common Council, on page 121, holds: "The lines between the two are clearly marked and definite and within their respective provinces, neither can be controlled by the other. To hold otherwise and to sustain respective contentions would logically and necessarily permit the common council to dictate to the school board as to any other, and all conditions of contracts for school buildings and would thereby permit the common council to do indirectly the very thing that the legislature has expressly directed shall be done by the school board."

Our Supreme Court, in construing Articles 10 and 11 of the Constitution in the case of *State ex rel Harbach v. The Mayor and Common Council of the City of Milwaukee* in 189 Wis. 84, on page 87 says: "Turning to the provisions of the constitution as they existed at the time of the adoption of the so-called home rule amendment, we find that by Section 3, Article 11, it was made the duty of the legislature 'to provide for the organization of cities and incorporated villages' and that by Section 3 of Article 10, it was provided that the 'legislature shall provide by law, for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years; and no sectarian instructions shall be allowed therein.' Here we have two distinct subjects deemed of sufficient importance for constitutional consideration. That they were considered distinct subjects by the framers of the constitution seems quite plain. One deals with cities and villages and the other deals in express terms with district schools, but, in an implied, broader aspect, also with the general subject of education. While other provisions of Article 10 clearly indicate that it was contemplated that district schools should exist not only in cities, and villages, but in towns of the state, it by no means follows that management of the schools should be any part of municipal gov-

ernment, and so far as our observation goes, the legislature has never placed the management of the schools with the common council, which constitutes the original governing body of the city, but in all city charters, whether general or special, the schools have been placed under the control and management of a body commonly called, or known as the board of education. Thus the management of the schools has been kept separate and distinct from the management of the ordinary municipal affairs." Further, on page 90 the opinion continues: These considerations lead irresistibly to the conclusion that although the boundaries of a school district may be coterminous with the boundaries of a city, there is no merger of the school district affairs with the city affairs. They remain separate and distinct units of government for the purpose of exercising separate and distinct powers and for the accomplishment of separate and distinct purposes. It follows that the so-called home rule amendment imposes no limitation upon the power of the legislature to deal with the subject of education, and this applies to every agency created or provided, and to every policy adopted by the legislature, having for its object the promotion of the cause of education throughout the state.

We therefore conclude that school governing bodies and municipal bodies are absolutely separate and distinct. You will not find any provisions in any of the laws above stated, or any law, to the effect that the attorney for any municipality shall be the attorney for any of the school governing bodies.

We will now consider Chapter 459 of the Laws of 1907, under which the school board of the city of Milwaukee is organized. As stated above, the school board is an absolute and distinct body from the city of Milwaukee. In said law you will find no provision whatsoever that the city attorney of the city of Milwaukee shall in fact be the attorney for the school board of the city of Milwaukee. There is only one provision in said law where the city attorney is required to perform any duty for the school board and that is with reference to school contracts. Said provision is as follows: "Said contract shall run in the name of said city and shall be executed and signed by the president and secretary of the board of school directors, countersigned by the comptroller of said city and *shall be approved by the city attorney of said city as to form and execution.*" That is the only duty that the city attorney of the city of Milwaukee is required to perform for and in behalf of the school board.

The Milwaukee School District is governed by the board of education of said district, and is a municipality, as defined in the laws above quoted. It is a creature of the legislature. Who can deny that it has not the inherent right to engage the services of an attorney to look after its legal affairs?

Section 16 of Chapter 459 of the Laws of 1907 provides in part as follows: "The said tax and the entire school fund of the city shall not be used or appropriated directly or indirectly for any other purpose than the payment of salaries of the superintendent of schools, and his legal authorized assistants, the secretary of the school board and legally qualified teachers, whose appointment is confirmed by said board, *and such employees as the board may deem necessary, etc.*" In view of the law above quoted, and of the inherent rights which the board has, the school board has absolute power to engage an attorney to handle its legal affairs and to represent it at the legislature.

The school board is elected to look after the educational affairs of the school district which it represents. If the school board from its experience in past years, has reason to believe or is informed that bills are being introduced in the legislature which may effect said school district which it represents, it certainly has the right and authority to engage the services of an attorney to represent it at the legislature and to advise the board of the various bills which have been introduced in said legislature and to keep it informed when said bills shall come up for hearing before the respective committees.

It is also fair to assume that the members of our legislature cannot be expected to know what laws are favorable and what laws are detrimental to the various school bodies in the state of Wisconsin. It therefore seems logical to me that the school board of the city of Milwaukee or any other school body in the state of Wisconsin, has the inherent right to engage the services of some competent person to represent it at the legislature and to keep it advised with reference to bills that are being introduced and with reference to committee hearings and also to furnish such information to the various members of the legislature which is essential for the legislature to pass proper judgment upon the bills introduced.

I therefore conclude that the school board of the city of Milwaukee and any other school governing body in the state of Wisconsin has the absolute right, power, and authority to engage the services of an attorney to take care of its legal affairs, to bring suit when it is deemed necessary, to defend actions when sued, and to perform such other services as may be directed by the governing school body.