TO THE COMMISSIONER OF EDUCATION

STATE OF NEW YORK

In the Matter)
)
of)
)
Petition of Certain Parents)
and Taxpayers of Hillburn, N.Y.)

MEMORANDUM

Counsel was directed to submit a memorandum on the question of the applicability or inapplicability in the above entitled case of section 184 of the Education Law.

Section 184 provides that any existing district maintaining a school at the time of the formation of a central school district, a school shall continue to be maintained for the instruction of pupils therein up to and including the sixth elementary grade until such time as the legal voters of such existing district at a meeting of such voters duly called by the board of education of the central school district shall by majority vote of those present and voting at such meeting determine to discontinue the school in such an existing district.

Both the Main and Brook Schools were part of the same original school district No. 15. If Brook School is "discontinued" with all the pupils assigned to Main School, the requirement of section 184 would be complied with because it would remain true that "a school" would continue to be maintained within the existing district. It should be noted that section 184 used the word "school" and does not provide that where there is more than one school in a district that all of the individual classes must be maintained.

In our case the School Board need not have "discontinued" for all time the Brook School, but could have suspended the attendance of

pupils at that school and have assigned such pupils to the Main School, and by this action the School Board could properly have avoided the requirements of section 184.

A case that closely parallels our case is In the Matter of the Appeal of JAMES V. WELLS and ANNA COVIELLO, Relative to the Closing of the Abraham Lincoln School, case No. 4741, 64 St. Dept. R. 227, decided by the Commissioner of Education on March 24, 1942.

In that case Union Free School District No. 4 of the town of Rye had under its jurisdiction the Abraham Lincoln School and the Lavina Horton School, both elementary schools. Registration of pupils had declined substantially in both schools. The School Board at its annual meeting voted to close the Lincoln School.

Appellants attacked the action of the respondent board in closing said school, contending that it in effect changed the site of the school house without complying with the provisions of section 459 of the Education Law, which, similarly to section 184 provided for action by a majority of the legal voters present and voting at a school district meeting.

The Commissioner, in dismissing the appeal, said:

> "The contention of the appellants that the action of the respondent board creates a change in a school site is untenable. Neither the site of the Lincoln School nor that of the Horton School board was changed by the action of the board. The board simply required the children receiving instruction in the Lincoln School to transfer their attendance to the Horton School and it took the necessary action for assigning the teachers of the Lincoln School to duty elsewhere or abolished unnecessary positions. The appellants rely on section 459 of the Education Law which provides that in order to change the site of a school house, it is necessary for the majority of the legal voters present and voting at a school district meeting to adopt a resolution designating a new site and describing such site by metes and bounds. The very language of the section negatives the argument of the appellants when applied to the existing facts in this case."

The Commissioner also said:

> "Where a school is closed in a residential neighborhood, it may be readily understood why the parents register an objection. It is only natural that a desire should exist to have the school continued in their immediate vicinity. However, this is a matter of educational policy which must be primarily determined by the Board of Education. Since the law vests in the Board, the superintendence, management and control in all respects of the schools

within the school district, it must be presumed that a particular school is no longer needed and that the children may be properly served in other schools until the contrary is established. Having made its determination in accordance with the right vested in it under the law, the action of the Board may not be set aside unless it is of such character as to indicate an ulterior motive, bad faith, prejudice, malice or gross error."

The Commissioner pointed out that each of the two schools accommodated approximately the same number of pupils. While it is true that the children formerly attending the Lincoln School were required to walk approximately four-tenths of a mile further in order to get to the Horton School, the superior additional advantages available through good recreational facilities and a more wholesome environment offset the additional travel.

The Commissioner also pointed out that by closing the Lincoln School, the Board of Education has unquestionably accomplished a saving of $8,000 through decreased operating expenses and for teachers salaries.

The Commissioner concluded his opinion with the following statement:

> "The Board of Education had the right to determine that there should be a consolidation of the Lincoln and Horton Schools. Its decision to close the Lincoln School and give instruction to the pupils formerly attending the same, in the Horton School was discretionary and should be sustained."

As we have said, in our case the School Board need not have discontinued the Brook School altogether--it need not have gone as far as did the School Board in the Rye school case. It could merely have adopted a resolution suspending classes at the Brook School and assigning all pupils to the Main School.

However, the School Board could have proceeded under section 184 and have called a meeting of the legal voters of the district to take action on the question of the continuance or discontinuance of the Brook School. The initiative to call such a meeting of the voters rested not with the taxpayers but "with the board of education of the central school district", as section 184 provides.

Section 275 (1) of the Education Law provides that it shall be the duty of the trustees of a school district to call such meetings of the inhabitants of such district whenever they shall deem it necessary and proper.

The School Board ought to be permitted to take advantage of its own neglect of duty.

We should like also to point out that as appears from "School Board Survey and Program for Rockland County, New York", by Alice Barrows, for the United States Office of Education, Department of the Interior, 1935, there were forty-four school districts under the jurisdiction of the district superintendent of Rockland County, but the schools in five had been "temporarily discontinued" before 1935, (p. 21).

This shows that where the school authorities wish to "temporarily discontinue" a school, they can do so and have done so in the past, and the School Board in Hillburn could achieve this desirable result with respect to the Brook School without encountering legal obstacles.

By way of summary, we wish to point out that the School Board could have done, and still can do, any one of the following things without in any way violating the laws of the State of New York:

I. They could adopt a resolution "temporarily discontinuing" Brook School;

II. They could "close" the Brook School, under the decision of the Commissioner in the Rye school case;

III. They could temporarily suspend attendance at the Brook School and assign all pupils to the Main School;

IV. They could call a meeting of the legal voters of the district to consider the question whether to maintain or to close the Brook School.

Respectfully submitted,

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