



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
*Attorney General*

June 9, 1978

ATTORNEY GENERAL OPINION NO. 78-201

Mr. Glen L. Tongier  
Attorney at Law  
809 Maple Street  
Coffeyville, Kansas 67337

Re: Schools--Boards of Education--Closing Schools

Synopsis: Those entitled to vote in an election under K.S.A. 72-8213 include those resident electors in the re-organized unified school district who reside in the geographical area of the district owning the school prior to unification.

\* \* \*

Dear Mr. Tongier:

You inquire which electors would be entitled to vote in an election regarding the closing of a school and conducted pursuant to K.S.A. 72-8213.

K.S.A. 72-8213 in pertinent part provides as follows:

"(a) The board shall not close any attendance facility that was being operated at the time the unified district was organized if at least three-fourths (3/4) of the territory and at least three-fourths (3/4) of the taxable tangible valuation of the district which formerly owned such building is included in such unified district

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unless and until a majority of the resident electors within the attendance center of such attendance facility shall give their consent thereto. Such consent may be given in writing in the form of a petition, or the board may submit the question to a vote of such resident electors in the attendance center at an election which shall be conducted in the same manner as for approval of bonds of the unified district. If a majority of those voting on the question vote in favor thereof, the same shall constitute consent for the purpose of this section. The board may close any attendance facility at any time except as is otherwise provided in this act. For the purpose of this section the following terms shall have the following meanings: The term 'attendance facility' means a school building which has been property of school district disorganized pursuant to this act, but which, at the time under consideration, is owned by the unified district. The term 'attendance center' means the area around an attendance facility consisting of the territory in such unified district of the disorganized district which formerly owned such attendance facility.

Notwithstanding the other provisions of this act, the board of education of any unified school district may close any attendance facility which has failed to receive accreditation by the state superintendent of public instruction until that office is abolished or the state board of education thereafter, and in any such case no petition, election or other procedures shall be necessary as a condition to such closing." [Emphasis supplied]

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In the case of Welsh v. Board of Education 212 Kan 697, at page 704, the Kansas Supreme Court held as follows:

"The restrictions placed in that which is now 72-8213 against closing an attendance facility were for the purpose of retaining some vestige of local control in connection with school reorganization and unification (*Hand v. Board of Education*, supra). This local control is reserved in that major portion of the disorganized district which *formerly owned* the building sought to be closed, namely, those electors resident within the *attendance center* of such building or facility. It is these persons whose assent is necessary to closure of an attendance facility. Thus it is rights of former ownership which are the focal point of protection by the statute."

Thus, since the Supreme Court has held the rights of former ownership are the focal point of protection of this statute, those electors within the territory of the school district as it existed before unification, which electors are now residents of the unified school district, are those entitled to vote in such an election. I sincerely hope that this is an adequate response to your question. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

  
CURT T. SCHNEIDER  
Attorney General

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