

School Districts, Site for School Houses. Elections, To Change Site of School Houses. School Houses. Site of. Telephone Companies, License Fees for.

A special election to change a school house site may be held at any time and as often as a proper petition is presented therefor.

A telephone company doing business in a town of more than one thousand and less than five thousand population is subject to pay an annual license fee of \$100.

August 6, 1915.

Hon. George W. Ruffcorn,
County Attorney,
Glasgow, Montana.

Dear Sir:

I am in receipt of your recent letter requesting an opinion upon the following proposition:

At the last annual school election, a school district of the third class in your county voted to build a new school house on what is termed to be "the present site", and at the same time it was voted to reject "the site offered in the new town site." It is set forth that a petition has been presented to the trustees of the district for a special election to change the school from its present site to the site rejected at said election."

The tone of your letter indicates that you are doubtful as to the legality of such a course, by reason of the provisions of Section 1600, Chapter 76, Laws of 1913. To quote from your letter:

"To hold to the contrary would enable a minority of the voters to vote on the question of a change of a school house site continually. * * * This would seem was not the intention of the legislature in making the law."

So much of the section referred to, as is pertinent reads as follows:

"Whenever, in the judgment of the Board of trustees of any school district of the third class, it is desirable to select, purchase, exchange or sell a school house site, or whenever petitioned so as to do by one-third of the voters of such district, the district board, shall without delay call a meeting at some convenient time and place fixed by the board, to vote upon such question of selection, purchase, exchange or sale of school house site. * * * If a majority of the voters present at such meeting shall by vote decide to select, purchase, exchange or sell the school house site, the board shall carry out the will of the voters thus expressed; Provided, that it shall require the concurrence of a majority of the voters of the district to order the change of a school house site, and any sites so changed cannot again be changed within three years from the date of such action."

The rule generally adopted by the courts is that the mere fact that the certain construction of a statute will cause inconvenience, will not affect the judicial determination of the case involving such a con-

struction (36 Cyc, 1111), the reason being that it is only when all other means of ascertaining the legislative intention fail, that a court may look to the effect of a law, and then their interpretation becomes a sort of judicial legislation.

Dudley v. Reynolds, 1 Kan. 285; see also note 67, 36 Cyc, 1111.

In the statement of facts submitted to you, it is apparent that at the election referred to the school site was not changed. The electors voted affirmatively to reject any proposed change at that time. You will note that the proviso contained in Section 1600 supra, prohibiting the holding of elections regarding school sites, refers only to changes of the site, and when once a change has been made, none can again occur within three years thereafter. It is the office of a proviso to limit the body of the Act by restraining or modifying its general terms, and the general doctrine is that provisos are strictly construed, and will not be permitted to control the principal part of the statute to any greater extent than the plain meaning of the terms employed will warrant (36 Cyc. 1111).

Referring now to the main body of the Act, it will be noted that when a proper petition is presented praying for the change of a school site the trustees "shall without delay call a meeting at some convenient time and place fixed by the Board to vote upon such question," and this they must do unless there has been an actual change of the site within three years.

There may be abundant reasons for holding frequent elections for the changing of school sites in third class districts. The Supreme Court, in *State ex rel Been, vs. Lyons*, 37 Mont. p. 362, thus expressed itself upon the subject:

"The rural school districts are large geographically, and small in population. The school should naturally be located to best serve the greatest number. Its location can in no way be so satisfactorily determined as by a vote of the electors of the district. Such determination is in accordance with the American principle of majority rule. * * * Changes in the centers of population frequently occur in rapidly developing communities. When they occur the trustees are likely to be elected from such new center. The people of such new center are likely to want the school near to them. But the trustees must not change the place of the school without the vote of the district. At such election all elements express themselves. Matters of convenience to the majority, questions of expense to the district, suitability of site, and scores of opinions and influences which sway a rural school district are sifted down through the ballots, and the result demonstrates the will of the people as to the site of their school."

I am, therefore, of the opinion that a special election at this time to change the school site of said district is legal.

You also propound the question—as to whether a telephone company doing business in a town of more than a thousand and less than five thousand population is subject to the payment of a county license of one hundred dollars per year? Paragraph 2 of Section 2773, as amended by Chapter 61, Laws of 1911, provides for such a fee from tele-

phone companies doing business in cities of the third class. A city having the population you mention is a city of the third class (Sec. 3206, Revised Codes, 1907), and hence, is subject to the license fee.

Yours very truly,

J. B. POINDEXTER,

Attorney General.