

Richmond, Va.  
May 10, 1926.

Hon. Cecil Connor,  
Commonwealth's Attorney,  
Leesburg, Virginia.

My dear Sir:

Due to the necessary absence of the Attorney & General from the office today, he referred your letter of May 6, 1926 to me ~~xxx~~ with the request that I answer the same as you desire a reply on or before tomorrow.

It appears from the facts stated in your letter that about seventeen or eighteen years ago a dispute arose in your county as to whether a new high school should be established in the village of Lincoln or the town of Purcellville, and that the board finally selected a site at Lincoln on which the school was later erected. You further state that in March, 1926, the building was destroyed by fire; that on April 10, 1926, the county school board at its regular session considered the matter of erecting a new ~~school~~ building at which time certain persons requested that the site be changed, but, after due consideration, the county board unanimously decided to erect the new building on the old site at the village of Lincoln, and that within the statutory period, under authority of section 666 of the Code, as amended, more than five heads of families filed their complaint in writing with the division superintendent of schools who, being unable within ten days after the receipt of the same to satisfactorily adjust the matter, granted an appeal to the school trustee electoral board. The last mentioned board met to consider the matter on April 26, 1926. That board decided that it was without authority to entertain the appeal because the superintendent of schools had not approved the site, location, plans and specifications therefor as required by section 673 of the Code. Thereupon on April 27, 1926, the division superintendent of schools attempted to "officially express" his "disapproval of the location for a new school to be erected in Mt. Gilead district at Lincoln on the former site as decided by your board at its meeting on April 10, 1926. This decision is made in accordance with the Code of Virginia, section 673."

You then ask the following questions:

"Does there now arise the right of appeal from this action of the Division Superintendent? If so, to what body does the appeal lie-- to the electoral board or to the court or to the superintendent of public instruction? And who has the right of appeal? Can the county board appeal from the veto-- that is, action of the division superintendent in disapproving decision of the county board?"

You will recall that section 673 of the Code, so far as is applicable to the question here under consideration, reads as follows:

"No school house shall be contracted for or erected until the site, location, plans and specifications therefor shall have been submitted to and approved in writing by the division superintendent of schools, whose action in each case shall be reported by him to the State Board of Education; *\*\*\**" (Italics supplied).

In the case before us for consideration on the facts stated in your letter the site of the high school was selected seventeen or eighteen years ago. Therefore, when the county school board decided to rebuild on the old site they did not relocate a new site, or select a new location, and the only power conferred upon the division superintendent of schools, under section 673 of the Code, is to approve or disapprove the plans and specifications therefor.

It is my opinion that in this case he is without jurisdiction to ~~xxx~~ disapprove the old site or location, as that was selected and approved seventeen or eighteen years ago, and, being without authority to disapprove the action of the county school board in this particular, his approval likewise is not necessary as the school board has not selected a new site or location. This being true, when the division superintendent of schools could not satisfactorily adjust the complaint of the more than five heads of families referred to in your letter, he followed the proper procedure in granting an appeal to the school trustee electoral board, and that board now has jurisdiction of that appeal under section 666 of the Code of Virginia, 1919, as amended. It is my opinion that the board was in error when it decided that it was without jurisdiction.

I would, therefore, suggest that the school trustee electoral board now proceed to consider the appeal under section 666 of the Code, as amended.

Trusting that this gives you the desired information, I am,

Very truly yours,

(Signed) Leon M. Bazile

Assistant Attorney General.

BKR

Copy to -

Hon. Wilbur C. Hall  
Leesburg, Va.

Hon. O. L. Emerick,  
Purcellville, Virginia.

Hon. Harris Hart,  
Richmond, Virginia.