

ARK.] CRAWFORD COUNTY BD. OF EDUCATION *v.* 465
SCHABERG SCHOOL DIST. No. 69.

CRAWFORD COUNTY BOARD OF EDUCATION *v.* SCHABERG
SCHOOL DISTRICT No. 69.

4-2726

Opinion delivered November 7, 1932.

SCHOOLS AND SCHOOL DISTRICTS.—CONSOLIDATION.—Under Acts 1931,
No. 169, § 44, providing that no existing school district shall
be included in a new district unless a majority of the qualified
voters sign a petition or vote for it, *held* that two existing school

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districts may not be consolidated without consent of the electors by merely including in the consolidation territory situated in another county.

Appeal from Crawford Circuit Court; *J. O. Kin-cannon*, Judge; affirmed.

D. H. Howell, for appellant.

Roy Gean, for appellee.

McHANEY, J. The county boards of education of Crawford and Washington counties sought to combine Mountainburg School District No. 16, Schaberg School District No. 69, and Armada School District No. 93 in Crawford County, Arkansas, and two sections of land in Mt. Olive School District No. 30 of Washington County, under § 53 of act 169 of 1931, commonly known as the "school law." This section provides for the formation of school districts embracing territory in two or more counties. The procedure provided for in the second paragraph of that section was resorted to in this instance to effectuate the consolidation. It appears from the record that the two sections of land in Washington County which were sought to be included were wild and unoccupied. No person resided on said sections. The county boards entered an order creating the district, but on a trial *de novo* in the circuit court this order of consolidation was vacated and quashed.

For a reversal of the judgment of the circuit court, it is first contended that the court erred in issuing a writ of mandamus against appellant directing it to send up the record for trial *de novo*. It is contended that no appeal was taken as provided by law. We think appellant is in error, as, in the view we take of the matter, the order of the county board was void and was subject to be quashed, either by appeal or certiorari. The whole proceeding for the consolidation of the three districts was void for failure to comply with the applicable section of the "school law," § 44, and not § 53. We think the procedure prescribed in § 53 was not open to appellants in this case for the reason that in reality it was not sought to form a district embracing territory in two counties. We

think the record clear that a small amount of territory in Washington County was included in the scheme of consolidation in order to avoid the procedure necessary to a consolidation under § 44. The real object of the consolidation was for the Mountainburg District to take in the territory of the Schaberg and Armada districts without the consent of the qualified electors in the latter districts. We do not think a fair construction of the "school law" would permit the Mountainburg District to take over the other two without their consent by including two sections of uninhabited wild land in Washington County. Section 44 provides, in express terms, that "no existing district shall be included in a new district under the provision of this section unless the majority of the qualified electors of the district to be included sign the petition, or, in case of an election, a majority of the voters in the election in the district on the question shall favor it." The effect of this proceeding is for Mountainburg District to take Schaberg and Armada districts without their consent.

The circuit court correctly quashed the proceedings and order of the county board of education, and this judgment is therefore affirmed.
