

School Districts, Creation of. New School District, When Created. Appeal, Order Creating District. Board, of County Commissioners, When May Appeal.

An appeal from an order of the county superintendent creating a new district prior to March 1st may be entertained and passed upon by the county board, after March 1st.

March 3rd, 1914.

Hon. T. F. Shea,
County Attorney,
Deer Lodge, Montana.

Dear Sir:

The additional question this day submitted by you over the telephone, to-wit:

"Has the board of county commissioners authority, after March 1st, to entertain and pass upon an appeal taken to it from an order made by the county superintendent prior to March 1st, establishing a new school district?"

The statement of facts appears to be that during the latter part of the month of February, 1914, the county superintendent, after petition filed and notice given as required by law, made an order establishing a new school district, and that an appeal from such order was taken and is now pending for hearing before the county board at its regular March meeting. The question arises as to whether the provisions of Sec. 403, Chap. 76, Laws 1913, prohibiting the creation of school districts between the first day of March and the first day of September following, prohibits the board from passing upon this appeal. In this particular case the new district was created prior to the first of March by order of the county superintendent of schools. The county board is merely acting as an appellate court, and if the order of the superintendent is affirmed, the new district dates its creation from the order made by the county superintendent; hence the board will not be creating a new district, but only affirming an order which did create a new district prior to March 1st, and in such case the board has jurisdiction to entertain and pass upon the appeal. Of course, if the board does not sustain the order, then the whole proceedings fall, and there is no new district.

The law authorizes the creation of new districts between the first day of September and the first day of March following. It also grants to the taxpayer or any three of them the right of appeal at any time within thirty days after the order made by the county superintendent. If then the date of the hearing of the appeal by the county board is the date of the creation of the district, it would be within the power of any three taxpayers to in effect amend the statute by saying that no new district should be created between the first day of September and the twenty-eighth day of January following. I do not understand that this is the meaning of the law, that giving the right of appeal has the effect of shortening the time within which the law prescribes that an act may be done.

Yours very truly,

D. M. KELLY,
Attorney General.