

Formation of a New School District from a Joint District—Distribution of Funds.

A school district may not be created out of a joint district, and no distribution of funds can be made.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have submitted to me the question of what funds, if any, shall be transferred from Dawson to McCone County by reason of what is termed "a division of a joint district."

From the letter and plat of the County Superintendent of Dawson County attached to your letter, it appears that what was attempted was to create a new district from that portion of the joint district situated in McCone County.

This question presents some difficulties for the reason that it assumes authority to divide a joint district in the manner indicated. A joint district is an ordinary school district with joint control. Owing to the fact that parts of it lie in adjoining counties, it cannot be dissolved except by joint action of the County Superintendent and the County Commissioners of the two or more counties in which it lies. (See Subd. 3 of Sec. 10, Chap. 196, Laws of 1919.)

The provisions of Subdivision 2 of Section 404, as amended by Chapter 196, Laws of 1919, cannot be applied to the division of a joint district for the reason that if a portion of the district lying wholly in one county could be cut off and a new district formed, the whole of that portion could be cut off in like manner, and the district thus dissolved in violation of the provisions of law authorizing a discontinuance of a joint district.

The action of the Board cannot be final in granting a petition to create a new district under the provisions of Subdivision 2 of Section 404, for the reason that the County Superintendent of any one county affected has no authority to order a distribution of funds or division of indebtedness without the joint action of the County Superintendent and the County Commissioners of any other county in which any part of the district may lie. Where the Commissioners refuse to make a transfer of the funds, it is evident that they did not consent to the proceedings in the first instance, and there is no provision of statute requiring them to make the distribution under the circumstances.

I am, therefore, of the opinion that a district cannot be created out of a joint district in the manner indicated, and that, therefore, no distribution of funds can be made.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.