

School Districts—Schools—Abandonment.

Section 970 R. C. M. 1921, as amended by chapter 65, laws of 1929, is not retroactive. School districts that have maintained school by providing for schooling their pupils in an adjoining district for two or more years are not subject to abandonment under chapter 65, laws of 1929.

Miss Jennie Houghton,
County Superintendent of Schools,
Boulder, Montana.

June 25, 1929.

My dear Miss Houghton:

You state that you have a number of districts in your county that have not actually conducted school for two, three, and even six years. These districts have been sending their children to other districts and seem to be satisfied to continue doing so.

The question you have asked with respect to the above facts is whether Section 970 R.C.M., 1921, as amended by Chapter 65, Laws of 1929, require you to enter an order abandoning said districts and attaching the territory to other districts; otherwise stated, is Chapter 65 prospective or retroactive in its operation?

Section 970 before amendment provided that "he (the county superintendent of schools) shall have power to declare school districts abandoned when no school has been held in such district for two consecutive years." Chapter 65 changed the language by inserting the word "actually" immediately before the word "have" and by changing "in" to "within." It also added the following "and he must declare school districts abandoned when no school has been actually held within the district for three consecutive years."

In construing Section 970, before amendment, this office held a district was maintaining school when it transported its pupils to another district and made provision for their schooling in such district, and consequently was not subject to abandonment under said section. (See Volume 11, Opinions of Attorney General, p. 315). That the legislature intended to change this ruling by the amendment is clear so that hereafter failure to actually conduct school within a district, if continued for two years, authorizes the county superintendent to declare the district abandoned, and after three years compels him to declare it abandoned.

While the legislature may create, alter and abolish school districts at will, it has not heretofore been the legislative policy of this state to take out of the hands of the local inhabitants the creation, change or consolidation of school districts. (See Sections 1024, 1042, 1033, 1041 and 1034 R.C.M., 1921).

If this act was intended to be retroactive school districts which have under existing authority of law made provision for schooling their pupils in other districts for the past two or more years are subject to abandonment without regard to their intention to subject it to such order. However, Chapter 65 was not intended to be retroactive for it does not expressly so declare. (Section 3 R.C.M., 1921). There is always a presumption "that statutes are intended to operate prospectively only and words ought not to have a retroactive operation unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute." (25 R.C.L. 787, quoted with approval in the case of State ex

rel. *Mills vs. Dixon, et al*, 68 Mont. 526, 219 Pac. 637; *Sullivan vs. City of Butte*, 65 Mont. 495-498).

It is therefore my opinion that school districts which have made provision for schooling their pupils in other districts for two or more years past are not subject to abandonment under Chapter 65. Failure to actually hold school in the district for two or more years, hereafter, will subject the district to an order of abandonment.

Very truly yours,

L. A. FOOT,
Attorney General.