

Opinion No. 89.**Schools and School Districts, abandoned, when—Abandonment of School Districts—Limitation, Time.**

Held: The order of the county superintendent in the instant case, ordering abandonment of the school district on April 16th, is contrary to the provisions of Section 1023, Revised Codes of Montana, 1935, providing no boundaries of school districts shall be changed between March 1st and July 1st of any calendar year, and is therefore void as having been made out of time.

July 12, 1943.

Miss Elizabeth Ireland
State Superintendent of
Public Instruction
State Capitol
Helena, Montana

Dear Miss Ireland:

You have requested my opinion on the following facts:

The county superintendent of a school district ordered the district abandoned on April 16th on the grounds there is an insufficient number of residents of the district who could qualify in sufficient numbers as trustees of the district. The question arises whether abandonment may be ordered as of such date under the provisions of Section 970, Revised Codes of Montana, 1935, as amended by Chapter 168, Laws of 1943, in view of Section 1023, Revised Codes of Montana, 1935, which provides boundaries of school districts shall not be changed between March 1st and July 1st of any calendar year.

Section 970, as amended, declares the county superintendent has the power to declare a school district abandoned where there is an insufficient number of residents in the district who could qualify in sufficient numbers as trustees, so that no legal board can be formed or quorum obtained so that meetings of a board of trustees can be held. It is also provided that whenever a school district is ordered abandoned upon order of the county superintendent in such case, the county superintendent shall attach said school district to a contiguous district or districts as therein

provided in the act. Section 970 as amended, contains the customary repealing clause that "all acts and parts of acts in conflict herewith are hereby repealed."

Section 1023, Revised Codes of Montana, 1935, provides as follows:

"No school district shall be created nor boundaries changed between March 1st and July 1st of any calendar year, and no school district nor any portion of any school district shall be included in the petition for the consolidation of school districts or for the changing of boundaries of school districts more than once during the calendar year."

The question is whether Section 1023 is a limitation upon the power of the county superintendent to order an abandonment of a school district under the provisions of Section 970, as amended, and, whether Section 970, as amended, repealed Section 1023 so as to allow the order of abandonment in question.

The two questions have been considered by our Supreme Court in *Box et al., v. Duncan*, 98 Mont. 216, 38 Pac. (2nd) 986. In that case the court had under consideration the question of the action of the board of county commissioners, ordering the consolidation of the high schools in two towns in a county in March of 1934. The court held the order of the board "in effect" created a new district, and thus was contrary to the express limitation of Section 1023. On page 221 of the Montana Report, the court said:

"If the order of the board in its ordinary and reasonable effect would result in an invasion of the territorial integrity of the existing districts, or in the creation of a new district, within the meaning of the above statute (Section 1023), it was clearly void as having been made out of time . . ."

Section 970, as amended, expressly provides that whenever a school district is ordered abandoned, the county superintendent shall attach said district to a contiguous district or districts. When the abandoned territory is attached to a contiguous district or districts, the boundaries of the contiguous district or districts are, at least "in effect," if not actually changed to include the territory abandoned. The order of abandonment

resulting in the attaching of the territory to a contiguous district or districts, is in direct conflict with Section 1023, unless it can be found that Section 1023 was repealed by Section 970, as amended.

If repeal of Section 1023 was accomplished by Chapter 168, Laws of 1943, it could have been done only through the general repealing clause, "all acts and parts of acts in conflict herewith are hereby repealed." Repeal of a statute by implication is not favored by the courts. (*State ex rel. Metcalf v. Wileman*, 49 Mont. 436, 143 Pac. 565.)

To make tenable the claim that an earlier statute was repealed by a later one, the two acts must be plainly and irreconcilably repugnant to, or in conflict with, each other; must relate to the same subject; and must have the same object in view. (*State ex rel. Metcalf v. Wileman*, *supra*; *Box et al. v. Duncan*, *supra*.)

Under the well established rule of construing statutes, every statute must be given effect, when possible. (*State v. Callow*, 78 Mont. 308, 254 Pac. 187.)

Consideration need only be brief to determine that Chapter 168, Laws of 1943, did not repeal by implication Section 1023. Each statute must be given effect, and by so doing, Section 1023 becomes a direct limitation upon the power of the county superintendent to abandon school districts under the provisions of Section 970, as amended by Chapter 168, Laws of 1943.

It is my opinion the order of the county superintendent in the instant case, ordering abandonment of the school district on April 16th, is contrary to the provisions of Section 1023, providing no boundaries of school districts shall be changed between March 1st and July 1st of any calendar year, and is therefore void as having been made out of time.

Sincerely yours,
R. V. BOTTOMLY
Attorney General