

Opinion No. 69

**Schools and School Districts—Liability for Indebtedness of Territory
Transferred From One School District to Another**

Held: Territory which is detached from an existing school district and made a part of another school district under the provisions of Section 75-1805 (5), RCM, 1947, as amended, continues to be liable for its share of the bonded indebtedness of the district from which it is detached. The change of boundaries does not relieve any of the original territory from the indebtedness against which bonds were issued.

August 1, 1958

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

You have requested my opinion concerning the liability for bonded indebtedness of territory transferred from one school district to another. Specifically, you ask whether territory so transferred remains liable for its share of the outstanding bonded indebtedness of the district from which it has been detached.

Section 75-1810, RCM, 1947, is the section of our statutes which deals with the continuation of indebtedness of detached territory. That section provides:

"INDEBTEDNESS TO REMAIN AGAINST ORIGINAL TERRITORY UPON CREATION OF NEW SCHOOL DISTRICT. When a new school district shall be formed as provided in sections 75-1805 and 75-1813, the bonded indebtedness of any school district or portion of school district affected by such consolidation or change of boundaries, shall remain the indebtedness against the original territory against which such bonds were issued and shall be paid for out of levies made against said original territory."

A question appears to be presented by the language of this statute whether the rule there laid down applies only to "new" school districts (i.e. districts newly created and having had no previous existence), or to any district affected by a "consolidation or change of boundaries".

By its terms, section 75-1810, *supra*, applies "When a new school district shall be formed as provided in sections 75-1805 and 75-1813." Section 75-1805, RCM, 1947, provides in sub-paragraph (1), for creation of a wholly new school district out of portions of one or more existing school districts. In sub-paragraph (5) of that same statute provision is made for transfer of territory from one existing school district to another. The present transfer falls under sub-paragraph (5) of section 75-1805, *supra*, and the question is whether this kind of transfer is meant to be within the rule of section 75-1810, *supra*, since that section appears to provide on the one hand that it is applicable only to the formation of **new** school districts and on the other that it applies to **any** school district or portion of a district "affected by such consolidation or change of boundaries . . ."

The apparent ambiguity in the statutory language may be resolved by examining its history. In *State ex rel. Normile vs. Cooney*, 100 Mont. 391, 47 Pac. (2d) 637, our Supreme Court said, "To determine the intention of the legislature the history of the legislation may be resorted to."

Section 75-1810, *supra*, was originally enacted as section 1, Chapter 163, Laws of 1933, and provided:

"When a new school district shall be formed as provided in Section 1024 of the Revised Codes of Montana of 1921, as amended by Chapter 128 of the Session Laws of the Twentieth Legislative Assembly of Montana, and Sections 1033 and 1034 of the Revised Codes of Montana of 1921, the bonded indebtedness of any school district or portion of school district affected by such consolidation or change of boundaries, shall remain the indebtedness against the original territory against which such bonds were issued and shall be paid for out of levies made against said original territory."

Section 1024 of the Revised Codes of 1921 is now, in amended form, sub-section (1) of Section 75-1805, *supra*. Section 1033 of the Revised Codes of 1921 is now sub-sections (5), (6), (7) and (8) of section 75-1805, *supra*.

The same legislative session which enacted Chapter 163, Laws of 1933 also passed Chapter 175, Laws of 1933 which included in Section 1024, RCM, 1921, all of Section 1033, RCM, 1921. These sections were enacted on the same day, March 16, 1933, and were both made effective on passage and approval. All of what is now Section 75-1805 (5) was thus contained in **both** Sections 1024 and 1033, RCM, 1921. Section 1033 was later repealed (Chapter 163, Laws of 1935).

By the specific inclusion of both Sections 1024 and 1033 of the Revised Codes of 1921, the legislature in enacting Chapter 163, Laws of 1933, left no doubt that transfer of territory between districts, as well as creation of wholly new districts, was bound by the rule that the territory transferred remained liable for its portion of the bonded indebtedness of the district from which it had been detached.

This conclusion is in harmony with the language of section 75-1810, RCM, 1947, which refers to ". . . any school district or portion of school district affected by such consolidation or change of boundaries . . ."

It is, therefore, my opinion that territory which is detached from an existing school district and made a part of another school district under the provisions of Section 75-1805 (5) RCM, 1947, as amended, continues to be liable for its share of the bonded indebtedness of the district from which it is detached. The change of boundaries does not relieve any of the original territory from the indebtedness against which bonds were issued.

Very truly yours,
FORREST H. ANDERSON
Attorney General