

School Districts, Creation of. Apportionment of School Moneys to New District, When:

A new district, when taken out of an existing district, is not entitled to any apportionment of public moneys until school has been maintained for the time required by law. But if the new district is carved out of old districts, the school maintained in the old districts will inure to the benefit of the new district.

Helena, Montana, September 15, 1909.

Hon. W. E. Harmon,
Superintendent of Public Instruction,
Helena, Montana.

Dear Sir:

I am in receipt of a letter addressed to you by the county superintendent of Flathead County, requesting an opinion upon the questions submitted to you in such letter. This letter does not sufficiently state the facts to enable us to determine just what law is applicable. However as this letter should be answered before September 20th, we respectfully submit the following:

It does not appear from the letter whether the new school district at Polson is taken from an existing district, or whether it is established on a reservation from territory which was theretofore not embraced in any school district of Flathead County.

If the new district is not taken out of an existing district it would not be entitled to any apportionment of moneys at this time under section 846, revised codes as amended by chapter 98, laws 1909. On the other hand, if the district is created out of an old district which has maintained school for at least four months during the next preceding school year, the new district would be entitled to apportionment under said section. There is no special regulations for creating a district on an Indian reservation. Of course, a district so created must have the parents or guardians of at least ten children other than Indian children, who are residents of the district, before it could be created.

Indian children, who are wards of the government, cannot be counted in making up the number of children necessary to create a district, nor can they be enumerated in the census, as it is the basis for apportionment.

See Opinion to Phil I. Cole, Opinions Attorney General, 1905-06, p 60.

If there are parents or guardians of at least ten white children resid-

ing in the proposed new district, that would be sufficient as a basis for creating a district, and after its creation they could be enumerated in the census, although the parents or guardians had not actually paid taxes this year. All that is necessary is that they are white people, subject to taxation—if they own property—and bona fide residents of the district.

Very truly yours,
ALBERT J. GALEN,
Attorney General.