

School Districts, Change of Boundaries. Same, Petition for Binding as to Boundaries. Same, Power of County Superintendent With Regard to. County Superintendent, No Change of Boundaries Called for by Petition. Same, Appeal From the Board of County Commissioners.

The taxpayers of a proposed new district are the best judges of its boundaries, and the county superintendent has no power to alter the boundaries set out in the petition. The county superintendent may grant or reject the petition according to the boundaries therein described. Upon appeal from the action of the county superintendent, the board of county commissioners is limited to rejecting or granting the petition according to the boundaries set out therein. The right of appeal is given only to residents of the proposed new district, and in the event that residents of the original district, not included within the boundaries of the new district, should desire an appeal, they could not proceed under Section 840, but must invoke the aid of the courts.

Helena, Montana, February 28, 1910.

Hon. George A. Horkan,
County Attorney,
Forsyth, Montana.

Dear Sir:—

I am in receipt of your letter of February 25, wherein you submit for

my official opinion three questions, concerning the establishment of school districts:

"1. Can the county superintendent create a new district with the boundaries other than those described in the petition, if she believes, from the evidence taken at the hearing, that it will be to the best interest of the school so to do? Or is her power limited to granting or rejecting the petition as the boundaries are there described?"

"2. On an appeal to the board of county commissioners, from the county superintendent, under said section, is the power of the board limited to sustaining or reversing the decision of the county superintendent or can the board, in its discretion, under said section, provided it deems it advisable, in a case where the superintendent refuses or grants the petition, under said statute, reverse the decision of the superintendent and establish a school district with the boundary lines modified or changed from what said lines were, in the petition filed with the superintendent?"

"3. Under said section is the right of appeal, from the decision of the county superintendent, limited to taxpayers, residing within the limits of the proposed new district; in other words, if a superintendent should establish a school district and a large number of taxpayers, residents of the district from which the new district was created out of but not residing within the limits of the new district, can such taxpayers, under said section, appeal to the board of county commissioners, from the decision of the superintendent?"

1. Section 840, revised codes, provides that when the parents or guardians of at least ten census children, between the ages of six and twenty-one years, residing within the boundaries of a proposed new district, shall file their petition with the county superintendent, asking for the establishment of a new district and describing its boundaries, that the county superintendent, after notice given, must determine whether or not the district shall be created.

You will notice that the theory of this section seems to be that the taxpayers of the district are the best judges of the proposed boundaries of the district, for the reason that the petition must set out those boundaries, and that fact itself seems to take away from the county superintendent the matter of determining the boundaries.

Then, again, if the boundaries were changed by the county superintendent, and if any material difference is shown from those boundaries described in the petition, there would be no way of determining whether or not the parents or guardians of ten census children, residing within the proposed district, had affixed their signatures to the petition.

So you are advised that the power of the county superintendent is limited to granting or rejecting the petition according to the boundaries therein described.

2. The same section provides that if the county superintendent deems it advisable to grant the petition, he shall make an order estab-

lishing the said district, and describing the boundaries thereof, from which an appeal may be taken by three resident taxpayers of said new district to the board of county commisisoners within thirty days, and their decision shall be final. A like appeal is accorded in the event that the county superintendent rejects the petition and refuses to establish the district. But, on appeal, I think the power of the board of county commissioners is no greater than that of the county superintendent, in the first instance, and that the petition must be granted or rejected upon the boundaries set out by the petition, for if different boundaries were given to the school district, than what seems to me to be a pre-requisite for its establishment; that is, the filing of a petition by the parents and guardians of the district, would be absent, and therefore, the establishment of such district would be invalid.

3. The only provision for an appeal from an order of the county superintendent, either granting or denying a petition for the establishment of a district, is given to residents of the proposed new district, and, in the event that some taxpayers and residents of the original district, but not included within the boundaries of the new district, should desire an appeal, they could not, in my judgment, proceed under the provisions of section 840, but would be compelled to invoke the aid of the courts.

Very truly yours,

ALBERT J. GALEN,

Attorney General.