

School Districts, Indefinite Boundaries of. Same, Indefinite Boundaries to Be Harmonized by County Superintendent. Same, Where Boundary Indefinite Action by County Superintendent to Be Reported to Board of County Commissioners.

A county superintendent has authority and jurisdiction to change the boundary lines of school districts so as to make them conform to sectional or subdivision lines where the boundary between two districts is indefinite, such as a range of hills. This action, when taken by the county superintendent, should be reported to the board of county commissioners, and, if approved by them, should be ratified and incorporated in their minutes. However, where a material change in the territory of a district is contemplated, this can only be done in compliance with the provisions of section 841, revised codes.

Helena, Montana, March 16, 1910.

Hon. S. P. Wilson,
County Attorney,
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your letter of March 9, 1910, wherein you ask my opinion under the following statement of facts:

The oboundary lines between certain school districts in your county are indefinite, one line, for instance, being the summit of the divide between two named valleys, and that the county superintendent, being desirous of more definitely locating the boundaries, made this line conform to the section and subdivision lines of a government survey, maintaining, however, the original boundary as close as possible; that she then reported this action to the board of county commissioners, which board accepted the change and made an order approving the same, which was incorporated in the minutes of the board's proceedings.

Your first question is as to whether or not this procedure and the order of the county commissioners is valid.

In answer to this question, you are advised that the proceeding is, in my opinion, entirely lawful, and the order adopting the modified boundaries entirely valid. This seems to be the plain intent of section 834, revised codes, which makes it the duty of the county superintendent to inquire into and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the board of county commissioners; and, in case the boundaries of districts are conflicting, or are incorrectly described, he shall harmonize and describe them and report such action to the board of county commissioners.

This section does not specifically mention districts whose boundaries are not definite, but it seems to be that it is the intention of the section to cover just that contingency, as well as where the boundaries are conflicting or incorrectly described.

It is true that section 841 prohibits the changing of school district boundaries, except in forming new districts, unless a majority of heads of families residing in the territory which it is proposed to transfer present a petition in writing to the county superintendent, which shall describe the proposed change. This section is found in the article dealing with school districts, and is legislation dealing specifically with that subject, and would therefore, take precedence over section 834 and also over section 2894, which deal, respectively, with the duties of county superintendents and the general and permanent powers of boards of county commissioners.

Your second question is, "Under subdivision 2, section 2894, revised codes, may the board of county commissioners change school district boundaries without action on the part of the county superintendent?"

The county superintendent is not given power or authority to change school district boundaries, except the power conferred by section 834, where the boundaries of school districts in his county are not definitely and plainly described in the records of the board of county commission-

ers; and, even in that event, when the boundaries are definitely and correctly located and described, he must make report to the board of county commissioners, and his action has no legal authority unless, and until, ratified and approved by order of the board of county commissioners.

Subdivision 2, of section 2894, authorize the board of county commissioners to divide the counties into township, school, road, and other districts required by law, change the same and create others, as convenience requires.

In a case such as you have cited, I believe it is within the power of the county commissioners, even without action on the part of the county superintendent, to definitely locate and describe boundary lines of school districts which are indefinitely or insufficiently described. But the general power conferred by the second subdivision of section 2894 is undoubtedly curtailed in so far as the change of school district boundaries is concerned by the enactment dealing specifically with that subject, found in section 841, revised codes.

Your third question, as to whether section 834, or section 841, revised codes, control the manner of making such a change as is indicated in your statement, is sufficiently answered above.

I believe that section 834, and subdivision 2 of section 2894, may only be invoked in those cases where the district boundaries are indefinite and confusing, and that the provisions of section 841 apply to those cases where it is desired to extend or restrict school district boundaries by the inclusion or exclusion of considerable territory, and that section 841 is not intended to cover cases such as you inquire about, where the action taken is merely for the purpose of definitely locating school district boundaries, and where it is desired to maintain the territory of the district intact so far as possible.

Very truly yours,

ALBERT J. GALEN,

Attorney General.