

**County Superintendent, Appeals From Decision of. Appeal,
From County Superintendent, Sufficiency of.**

A notice of an appeal from the decision of a county superintendent dividing a school district, held sufficient to give the county commissioners jurisdiction.

Helena, Montana, April 7, 1910.

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

Dear Sir:

I am in receipt of your letter of April 5, requesting an opinion upon the following proposition:

On February 28, 1910, the county superintendent made an order granting a petition to form a new school district. Within 30 days thereafter three residents and freeholders of one of the districts from which the new district was formed, filed with the clerk of the board of county commissioners an instrument, signed by them, and addressed to the board of county commissioners, which reads, in part, as follows:

"We the trustees of District No. 4, protest and pray for relief from your Honorable Board against the division of said District No. 4, for the reason," etc.

You request an opinion as to whether this instrument, filed with the board of county commissioners, is sufficient to constitute an appeal from the order of the county superintendent establishing the new district, and to give the board jurisdiction to review such order.

Section 841 provides for the establishment of new districts, and says that the county superintendent shall grant the petition and make an order fixing the boundaries,

"unless an appeal be taken to the board of county commissioners within thirty days."

There is no statute defining just how this appeal shall be perfected, or that service of the same should be made upon any particular person or official.

Sections 840 and 828 also gives the right of an appeal to the board of county commissioners. But neither of these sections provide the procedure to be followed.

Therefore, in the absence of any statutory provision as to whom the notice of appeal shall be served upon, I am of the opinion that all that is necessary is for the parties desiring to appeal to in some manner bring the matter before the board of county commissioners within thirty days after the making of the order from which they desire to appeal.

The notice of appeal filed with the clerk does not use the word "appeal," but the words, "protest and pray for relief from your honorable board," are sufficient to show the intention of the parties in filing this notice ;namely, that they appeal from the order of the county superintendent.

Therefore, in my opinion, the county commissioners have authority

to proceed to review the action of the county superintendent, and the county clerk should notify the county superintendent to certify to the board of county commissioners all the papers, documents and records in the case.

While the better practice, no doubt, would be to file the notice of appeal with the county superintendent, and serve a copy upon the parties who petition for the new district, still, in the absence of any statutory provision governing the matter, we cannot hold that such procedure is absolutely necessary.

By holding the notice of appeal to be sufficient, and giving all the parties an opportunity to be heard before the board of county commissioners, can certainly work no injustice upon any one.

Very truly yours,

ALBERT J. GALEN,

Attorney General.