

**School Districts, Organizations Must Conform to Petition.  
Same, County Superintendent, No Power to Change Boundaries.  
Same, Improperly Organized, Expense In.**

Where a school district is improperly organized on account of a change in the boundaries described in the petition, the entire proceedings is invalid, and expenses incurred by the trustees of such a district should be assumed by the district when properly organized.

Helena, Montana, November 30, 1910.

Mr. W. E. Harmon,  
State Superintendent of Public Instruction,  
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of November 29, 1910, wherein you

submit for my consideration and official opinion certain questions contained in letters which you enclose from Mr. H. K. White, of Victor.

His letter of November 16, 1910, seems to state the questions for consideration clearly and I set them out as therein contained.

1. Can the county superintendent establish a district with boundaries different from those named in the petition and the notices of hearing thereon?
2. Can the county superintendent answer anything but "Yes" or "No" to a petition?
3. If he can what is the limit to his power to change the boundaries of districts?
4. If this district was not properly established what is the personal liability of its trustees?
5. Would the bonds be valid?
6. What would be our responsibility for issuing them?
7. What would be the proper course to pursue under all the facts?

You are advised that on February 28, 1910, I addressed a letter to Geo. A. Horkan, county attorney, Forsyth, Montana, wherein I held that the taxpayers of the proposed new district would seem to be the best judges of its proposed boundaries and that the county superintendent has no power to alter the boundaries set out in the petition. It is further held there that the county superintendent must grant or reject the petition according to the boundaries therein described. That opinion also was authority for the proposition that the county commissioners on appeal are limited to granting or rejecting the petition according to the boundaries set out therein.

The answer to this question as given above practically answers all the questions submitted, but to take them up in their order briefly you are further advised:

2. The county superintendent must grant or reject the petition according to the boundaries set out therein.
3. He has no power to alter the petition by changing the boundaries of the proposed district.
4. If the district is hereafter properly established, in view of the fact that the trustees acted in good faith and under the advice and counsel of the county superintendent of schools, as well as the county attorney, necessary expenses heretofore incurred would be a proper charge against the newly created district.
5. If bonds are issued by this district, there being no properly constituted municipal corporation against whom they are a charge, the bonds would of course be void, and new bonds issued by the properly constituted school district could be exchanged for them in the event that they have been delivered.

6 and 7. The proper course to be pursued by the trustees in my opinion is this: Let the petitioners file with the county superintendent of schools a new petition with boundaries designated as the district was organized after hearing the original petition.

This it seems would meet with no objection from the old districts

and trustees could be appointed who would proceed with the organization of schools as in other districts. As before pointed out, I believe that any necessary expenses bona fide incurred in the attempted organization of an invalid school district would properly be charged against the funds of the new district.

Yours very truly,

ALBERT J. GALEN,

Attorney General.