

School Funds, Apportionment Of. School District, Change of Boundaries. Boundaries of School District, Change Of. School District Taxes, Apportionment Of. Funds of School District, Apportionment Of.

Upon a change of the boundaries of a district the special taxes levied by the district before the change of boundaries belong to the district making such levy but the general school funds are apportioned in accordance with the per capita in the respective districts.

December 15, 1911.

Hon. Charles A. Taylor,  
County Attorney,  
Billings, Montana.

Dear Sir:

I acknowledge receipt of your letter of November 25th, relative to the transfer of funds from school district No. 1 in your county to school district No. 15.

From the statement of facts contained in your letter it appears that on September 24th, 1911, that a portion of school district No. 1 was transferred and made a part of school district No. 15 in accordance with the provisions of Section 841, Revised Codes, and that the trustees of school district No. 15 sought to have the county superintendent transfer to school district No. 15 a portion of the funds of school district No. 1 in accordance with the census enumeration of said district No. 1 prior to the change of boundaries. I also note that you advised the county superintendent of schools of your county that there was no provision of law which warranted a transfer of any of the school funds of district No. 1 to district No. 15, for the reason that the provisions of law in sections 842 and 843, Revised Codes, were applicable only in instances of the creation of a new district. In this conclusion it is my opinion that you are correct. There is no statutory provision for the pro-rating of funds in the treasury of a particular district upon the mere changing of the boundaries of such district. The only statutory provision for, such apportionment being in cases of creation of a new district, and it seems to be the general weight of authority that in the absence of some statutory provision to the contrary when a part of the territory of a school district is separated from it by annexation to another district, the old district retaining its organization, such old district retains all its property, powers, rights and privileges. See 35 CYC 850.

However, with reference to the per capita tax or apportionment it is my opinion that such apportionment should be made to District No. 15. There are three sources from which the school districts under the law obtain their funds; (1) the general school moneys sent to the respective counties from the state and which is apportioned by the respective county superintendents in accordance with the school census; (2) the general school levy made by the county commissioners of each

county annually which is collected for general school purposes and is apportioned quarterly by the county superintendent in accordance with the census; and (3) the special tax levied by the trustees of the respective districts and collected by the county treasurer for such district. As to the last class, upon the change in the boundaries of a district it is my opinion that the entire tax goes to the district making such levy.

In the opinion of this office dated May 3rd, 1906, reported in Vol. 1, Opinions Attorney General, at page 329, we expressed the opinion that:

"Where territory is transferred from one school district to another after trustees of each district have certified to the county commissioners the amount of special tax to be levied, and after the transfer of such territory the county commissioners make levies pursuant to such certificates, the taxes collected on the territory transferred should be credited to the district to which such territory was transferred."

However, there is a distinction between the state of facts involved in that opinion and the facts in the case before us. In this case the transfer of territory or change of boundaries was made after the levy of the county commissioners pursuant to the certificates of the trustees of the respective districts and no opportunity could be afforded the trustees of the district to change the amount of the levy. It is, therefore, my opinion that with reference to the special tax levied by the trustees of district No. 1, there is no provision of law for the transfer of any portion of such tax to school district No. 15.

With reference to the first and second class of revenue above mentioned, these being pro-rated to the respective districts of the county in accordance with the census, the children residing within school district No. 15 will necessarily appear upon the census of such district and such district would then necessarily receive its proportionate share of these funds from any apportionment the county superintendent may make after the transfer of the territory from school district No. 1 to school district No. 15.

Yours very truly,  
ALBERT J. GALEN,