

School Districts, Creation of New. Districts, Creation of New School. New Districts. Right of Appeal. County Superintendent, Appeal From in Creating New Districts.

By the provisions of Section 840 of the Revised Codes an appeal will lie by the residents of the proposed new district from the decision of the county superintendent to the board of county commissioners.

Section 840, Revised Codes, applies exclusively to the creation of a new district, whereas Section 841 applies exclusively

to changing boundaries of old districts. Upon the creation of a new district the county superintendent or the board of county commissioners are bound by the boundaries described in the petition as originally presented.

February 6, 1911.

Mr. R. Lee McCulloch,
County Attorney,
Hamilton, Montana.

Dear Sir:

I am in receipt of your letter of the 1st inst., submitting to me, for an opinion, a communication from your county superintendent of schools addressed to you as county attorney, in which she submits:

"When the formation of a new school district is proposed, and portions of districts already established are according to the petition to be included within the territory of the new district, the right to appeal to the county commissioners from the decision of the county superintendent * * * * seems to be restricted to residents of the proposed new district. Is this correct?"

Section 840 of the Revised Codes of 1907 is very plain in itself on this question and provides explicitly that the appeal may be taken by residents of the proposed new district. In this connection I would further respectfully refer you to the opinion heretofore rendered by me on February 8th, 1910, addressed to Honorable A. J. Horken, county attorney, Forsyth, Montana, found in volume 3, Opinions Attorney General, page 315.

She further submits:

"I presume that the incidental reference to an appeal to the board of county commissioners mentioned in Section 841, is to be understood and governed by the specific statements of Section 840. Am I right?"

Upon examination of the Chapter which includes Section 840 and Section 841, it will be observed that Section 840 applies and refers exclusively to the creation of a new district, whereas, Section 841 applies and refers exclusively to the changing of boundaries of an old district without necessarily creating a new district. The provisions of each section must be taken in connection with a case within the meaning of the section.

Your county superintendent further makes some comments with reference to the injustice of this act claiming that it might be possible for an old district in losing certain territory for the benefit of a proposed new district to thus be compelled to lower its standard of schools. It is to be presumed that the county superintendent or the board of county commissioners in case an appeal is taken to them from the decision of the county superintendent, will act with due judgment and discretion in the granting or refusal to grant any proposed new district. The object in leaving the creation of the district to a county superintendent who is conversant with the school needs and requirements of the county is that the interest of all persons con-

cerned and the interest of the school districts and school children will be best served. In the opinion above referred to, heretofore rendered by me, is discussed the remedy of the residents of the old district not included within the proposed new district and I have no reason at this time to change the view expressed in that opinion.

With reference to the last question submitted by your county superintendent, to-wit:

“Questions of boundary lines are not recognized as proper grounds of appeal.”

I do not understand exactly what information is desired under that question, unless it be that the dissatisfied residents of a proposed new district may not object in their appeal to the lines as established by the county superintendent. In this regard also, I again respectfully direct your attention to the opinion above referred to, wherein I stated that the boundaries described in the petition as presented to the county superintendent are binding upon her and also binding upon the county commissioners if an appeal be taken, the county superintendent having no authority to change the boundaries as specified in the petition.

Yours very truly,

ALBERT J. GALEN,

Attorney General.