

**Organization New School District. Petition for. Distance From School House, Computation of. Parents or Guardians, Residence of.**

In computing the distance which parents or guardians of census school children petitioning for formation of new school district live, the school house must be regarded as one point and the residence of such parent or guardian the other point. The school house is the center of a circle whose radius is two miles.

August 2nd, 1913.

Hon. H. A. Davee,  
Superintendent Public Instruction,  
Helena, Montana.

Dear Sir:

I am in receipt of your inquiry calling for a construction of that part of Sec. 404 of Chap. 76 of the Laws of 1913, which provides that in the organization of new districts a petition shall be signed by the parents or guardians of at least ten census children \* \* \* residing at a greater distance than two miles from any school house, etc., the question being, How shall this distance be computed? In the absence of qualified words in the act itself for computing distance, "a line between given points or monuments must be the shortest distance between them."

5 Cyc. 878.

Wright v. Hurst, 122 Tenn. 656; 127 S. W. 701.

And again:

"Where a line is described as running from one point to another, it is presumed, unless a different line is described in the instrument, to be a straight line."

5 Cyc. 876.

Haskill v. Friend, 196 Mass. 198; 81 N. E. 962.

Davis v. Lyon, etc., Co., 141 Fed 711

Reddy v Strople, 44 Can. S. Ct. 246 (R. 44 Nova Scotia 332).

There are no qualifying words in said Sec. 404 or in said Chap. 76 of the Laws of 1913 which would give any different meaning than that contained in the phrase itself, to-wit: "a greater distance than two miles, etc." Hence, in computing this distance, the school house mentioned in the act must be regarded as one point or monument and the residence of the parent or guardian as the other point or monument. In other words, the school house is the center of a circle whose radius is two miles.

It may be proper to note, however, that the distance named in the section has reference only to the residence of the parent or guardians, and does not refer to the boundary lines of the district, nor to the location of the school house, with reference to such boundary lines, and if the petition is signed by the parents or guardians of ten census children, who reside at a greater distance than two miles in a direct line from the school house, such petition is not vitiated by being signed by any number of those who reside at a lesser distance.

Yours very truly,

D. M. KELLY,  
Attorney General.