

School House, Distance From Boundaries of New School District. New School District, Boundary of. Boundary of New School District, Distance From to Old School House.

There is nothing in the law requiring the boundaries of a new school district to be distant two miles or more from an established school house.

December 13th, 1913.

Hon. Charles J. Marshall,  
County Attorney,  
Lewistown, Montana.

Dear Sir:

I am in receipt of your communication of the 6th instant, asking for my opinion upon the following question:

"Is there any provision in our statute, and if not what is your opinion concerning the distance which must intervene between the outlying boundaries of a proposed new school district, and the school house in the district already established?"

"A somewhat similar question was propounded to this office by Hon. H. A. Davee, superintendent of public instruction, under date of August 2, 1913, a copy of our opinion upon that occasion being enclosed herewith.

In addition to what was said in that opinion, I will say that I find no provision prescribing the distance between an established school house and the outlying boundaries of a new district. Sec. 404 of Chap. 76 of the Laws of 1913, has to do with the distance of the residence of the parents or guardians, who make the petition, from the established school house. This does not necessarily mean that the boundaries must be at a distance of two miles or more from the established school house. Furthermore, we find that Sec. 1600, Chap. 76, of the Laws of 1913, in treating of the subject of school house sites, specifically provides for a change in the site of school houses upon a vote of the residents of the district. This is an indication that the legislature intended that the location of school houses should to some extent at least be left to the desires of the patrons of the school, and this provision would allow them to change it by the method indicated in said Sec. 1600, even though upon the formation of the new district it was placed at a distance of two miles or more from the established site of the old district.

You are, therefore, advised that in my opinion there is nothing in the law requiring the boundaries of a new school district to be at a distance of two miles or more from an already established school house, and the provision of the two-mile requirement refers to the residence of the petitioner on the formation of a new school district, and not to the boundaries of such new district.

Yours very truly,

D. M. KELLY,  
Attorney General.