

Indebtedness, of Old School District. Liability, of New School District for Indebtedness of Old District. School Districts, Liability of New.

Where the new school district does not get any of the school property theretofore owned by the old and new districts, it is not liable for any indebtedness outstanding at the time of its creation.

March 10th, 1914.

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

Dear Sir:

I am in receipt of your verbal inquiry relative to
"Whether a new school district is liable for any part of the outstanding indebtedness of the old district when no part of the school property is situate with/n or possess to the new district."

A question has heretofore been considered by this department involving the distribution of indebtedness when a part of the school property remains in the new district.

Opinions of October 29th, 1913, addressed to Hon. D. W. Doyle,
County Attorney, Conrad, Montana.

Sec. 405, Chap. 76, Laws of 1913, gives specific direction for the distribution of indebtedness between the old and the new district, when a portion of the property remains in the new district, and provides that such distribution shall be made "in proportion to the value of the school property remaining in the old district, to the value of the school property remaining in the new district." If the new district gets none of the property, then there can be no proportion, for a proportion cannot exist with only one quantity, and furthermore this section of the law, by its own terms, has reference only to cases where the school property itself is divided between two districts. It cannot, therefore, be looked to in determining the question here presented.

It is fundamental that the creation of school districts is within the jurisdiction of the state legislature and that where the law does not provide that the new district shall assume a portion of the indebtedness, such district cannot be held for any part thereof.

Laramie Co. v. Albany Co., 92 U. S. 307.

Mount Pleasant v. Beckwith, 100 U. S. 514.

Tulare Co. v. King Co., 117 Cal. 195, 49 Pac. 8.

Town of Depere v. Town of Bellevue, 31 Wis. 120.

The rule in such cases is that the old corporation owns all the public property within its limits and is responsible for all debts contracted by it before division.

North Hempstead v. Hemstead, 2 Wend. 134; Dil. on Mun. Corp., Sec. 128; Wade v. Richmond, 18 Gratt. 583; Higginbotham v. Com., 25 Id. 633.

Opinions Attorney General, 1905-06, p. 200.

Sec. 404, Chap. 76, Laws of 1913, relates to the method of procedure to be followed in the division of school districts and to the apportionment of moneys to the new district and to the distribution of district funds and property, but nowhere in that section, nor elsewhere, is there any provision that the new district shall assume or pay any part of the outstanding indebtedness, except as provided in said Sec. 405, which has relation only to cases where a portion of the school property remains in the new district after division. The conclusion, therefore, is that where the new district does not get any of the school property it is not liable for any of the debts outstanding at the time of its creation.

Yours very truly,

D. M. KELLY,
Attorney General.