

**School District, Transfer of Territory to another County.  
Funds of School District, Transfer of Where Territory of is  
Attached to Another County.**

Where territory including a school district is attached to another county, the school moneys in the county treasury belonging to the district should be transferred to the treasury to which the territory is attached and placed to the credit of such school district.

April 3, 1915.

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

Dear Sir:

I acknowledge your verbal inquiry, submitting the question:

"Is a school district situate within territory transferred from one county to another entitled to the moneys standing to its credit in the county treasury of the county from which the territory was transferred, and if so, what procedure is necessary to enable the district to obtain the money?"

The statute does not appear to contain any specific provision relating to a question of this kind. However, we believe that the various provisions of the statute relating to school districts when construed together, can leave no reasonable doubt as to the rights of the district, or the methods of procedure. The school laws of the State of Montana are included, so far as necessary to be considered in determining this question, in Chapter 76, Session Laws of 1913. A school is a body corporate, and under its own proper name or number may sue and be sued, contract and be contracted with, and is empowered to do all things necessary for the maintenance of the purpose for which it is incorporated.

Section 402, Chapter 76.

The County Treasurer of the County is in effect the treasurer of the school district, and it is his duty, among other things,

"to receive and hold all school moneys as special deposit and keep a separate account of their disbursements to the several districts which shall be entitled to receive them, etc."

Sec. 2010, Chapter 76.

The sources whence school money is received, are named in Section 2000 to 2003, Chapter 76. Compulsory attendance of children upon public schools or their equivalent is commanded by Section 1100, Chapter 76. The school year begins September 1st, and ends August 31st of the following year, and it is made the duty of the district to maintain school at least four months in each year. The Boards of School Trustees are authorized, empowered and commanded, among other things, to employ teachers and such employment may extend for the entire school year, and it is provided that all such contracts

"Shall be in writing and executed in duplicate by the chairman and clerk of the Board for the district and by the teacher."

The number of school months which a district may maintain and

the salaries paid the teacher, etc., are all dependent upon the revenue of the district. Taxes are all levied prior to September 1st, and this, together with the apportionment and other sources of income, constitute the revenue of the district. The contract for the teacher is usually made for the school year. If then, an act of the legislature transferring territory containing a school district, has the effect of depriving that district of the use of its revenue, then on deposit with the treasurer of the district, to-wit: the county treasurer, the effect would be to absolutely prohibit the maintenance of school in that district for that year. In other words, the State law would compel the attendance of children upon schools, and then the State law would render it impossible to maintain school, although it is the policy of the law that all children shall attend school, and the district had levied the tax, and the taxpayers had paid the same for the special purpose of maintaining the school, the money would be thus taken away from it, and their children left without school facilities. We are not prepared to say that any such result was intended.

A school district being a corporate entity, is the owner of the moneys credited to it in the office of the county treasurer, and that money is held as a special deposit for the special use of that district. The county treasurer acts ex officio as the treasurer of the school district. When the territory containing the district is transferred to another county by operation of law, the treasurer of such other county becomes the treasurer of the school district. In other words, the school district has by operation of law changed treasurers, and we believe it is the duty of the outgoing treasurer to account to the incoming treasurer for the funds in his hands belonging to said district.

Senate Bill No. 150, enacted by the Fourteenth Legislative Assembly, transferred certain territory from Powell County to Missoula County, and provides that Missoula County shall pay to Powell County a certain sum therein named for "the value of the property in roads, bridges and other improvements owned by said Powell county" within the limits of the territory transmitted. This school district is situate within this territory so transferred. We believe it is the duty of the treasurer of Powell County to transfer to the treasurer of Missoula County, the funds in his hands belonging to such school district.

Yours very truly,

D. M. KELLY,

Attorney General.