

**School Districts—Joint. Division of. Joint School Districts, How Divided. Funds of Joint School District, How Divided. Division of Joint School Districts and the Property Thereof.**

A joint school district can only be divided by the joint action of the authorities of both counties in which it lies.

The division of the school funds in case a joint school district is divided, must be apportioned and divided in accordance with the provisions of the law outlining the method of procedure of such division. Sections 404 and 405, Chapter 76, Laws of 1913.

January 4, 1915.

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

Dear Sir:

I am in receipt of your letter submitting certain questions relating to the construction of Chapter 76, Laws of 1913, relating to:

1. The manner of dividing a joint school district, lying partly in one county, and partly in another;
2. As to the method of division of school fund moneys,  
etc.

1. Section 408, of said Chapter, contains specific provisions for the organization of joint districts, but the law is silent as to any method

of procedure to be followed in the division of such districts. However, in the absence of specific statutory direction, we can follow the provisions of said Section 408 in this, to-wit: that, as the district can only be formed by joint action of the authorities of both counties, it can only be divided by such joint action. Hence, the proposal for division must be acted upon by each county superintendent to the same extent as though the part of the district lying within her county, constituted the entire district, and if the different county authorities cannot agree, then the division cannot be made.

2. There seems to be two methods provided in the law for the division of school district, each one providing for the distribution of indebtedness or property. Section 404 of said Chapter provides for the creation of new districts, and also for the apportionment of moneys and the division of district funds and property. Under this section, the petition must be addressed by the requisite number of parents or guardians, to the county superintendent, who after giving the required notice, acts thereon. The district as such cannot act in such matters, the county superintendent being alone the deciding tribunal, unless an appeal is taken to the Board of County Commissioners. Section 405 of said Chapter provides a distinct method for the division of school districts, having more than one school house, and under the method therein provided, the district itself, through its Board of Trustees, is the deciding tribunal. This Section also contains specific provisions for the distribution of indebtedness, etc. The distinction between the two methods provided by Section 404 and 405 is that in the one case, the district as such is not called upon to act, and in the other case, the district itself must act, and it is not presumed that the Board of Trustees of the District will give consent to the division of the district unless such division is upon equitable lines. Hence if the second method of procedure is followed, that provided in Section 405, the rights and responsibilities indicated by the various subdivisions of that section must govern in the distribution of indebtedness, etc., and if the division is made under the provisions of Section 404, then the provisions contained in that section relating to distribution of moneys, division of property, etc., must govern.

Yours very truly,  
D. M. KELLY,  
Attorney General.