

**School Districts, Schools in. Trustees, Authority of Board to Create Subdistricts. Schools in Subdistricts, Authority of Board to Compel Attendance at Certain. Pupils, Authority of School Trustees to Compel Attendance at Certain School.**

In a school district having seven or eight schools the trustees created subdistricts, and by order assigned the pupils to the school located within the particular subdistrict where such pupils resided. A parent desired to send his children to a different school of the same grade than that assigned for his children. Held: The orders of the trustees should not be arbitrary, but reasonably necessary to promote the interests of the district. Held, further: the trustees should consider the instant case on the merits and if good and reasonable grounds exist therefor, the children of this parent should be permitted to attend the school of their parent's choosing.

December 16, 1915.

Hon. James L. Davis,  
County Attorney,  
Billings, Montana.

Dear Sir:

I am in receipt of your recent letter setting forth that in School District No. 24, Yellowstone County, there are seven or eight schools located at different points within the district, and that the school trustees, acting under powers claimed by virtue of the provisions of Subdivision 1 of Section 508, Chapter 76, Laws of 1913, have divided the district into subdivisions based upon area, and the number of school children within such subdivisions, and have ordered that the parents of such children residing within these respective subdivisions to send their children to the school within the particular subdivision where they reside; that the father of certain school children refuses to abide by such order, and is attempting to send his children to school in another subdivision of the district, and the children have been refused admission to such school,—and you request my opinion as to the rights of the parties in the premises.

Subdivision 1 of Section 508, under which the trustees claim to exercise the power to subdivide the district, reads as follows:

"Every school board unless otherwise specially provided by law shall have power and it shall be its duty; 1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the Superintendent of Public Instruction for their own government of schools under their supervision."

The rule of law governing school trustees, is that they have only such power as are expressly conferred, and such implied powers only as are necessary to carry into effect the powers expressly granted. There is not any direct authority of law authorizing the trustees to make the order referred to, but on the contrary, the power to divide school districts having more than one school house is expressly reserved to the school electors residing within the district (Sec. 405). Your attention is directed to Section 604, which reads as follows:

"Every public school not otherwise provided for by law shall be open to the admission of all children between the ages of six and twenty-one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided."

The phrase "every public school," as used in the foregoing section, may well be said to refer to the integral units comprising the system, and not to the system itself. "Every" means each one of all, each as well as every one.

See Words and Phrases, also Webster.

A public school is one that is maintained at the public expense, comprising the elementary grades, and at the option of the board of trustees, there may be added the kindergarten and high school grades (Sec. 600).

In Illinois the powers conferred upon the Boards of Education are somewhat more specific than those contained in our law. The Illinois statute provides that the boards have power

"To establish schools of different grades and make regulations for the admission of pupils into the same."

"To lay off and divide the district into sub-districts."

"They shall have power to apportion the scholars to the several schools."

Star. & Co., Ill. State. 2250.,

Under this statute the appellate court of Illinois held it to be within the power of a Board of Education to lay off and divide a school district into sub-districts establish therein schools of different grades, and apportion pupils to the several schools; that in the exercise of these powers, if the rules and orders made are necessary, and such as will best afford all children of school age within the district the benefits of proper instruction, they will be sustained by the courts.

People v. Board of Education, 26 Ill. App. 476.

From the correspondence on the subject at hand, I gather that the father of these children refuses to abide by the order of the board for a number of reasons, some of which appear to be undisputed. For in-

stance, he claims that while he lives about equal distance from the two schools, yet his children will be compelled to walk back and forth several miles each way if compelled to attend the school in his sub-district; while if allowed to go to the school of his choice, they will have the opportunity of riding to and from such school. He also claims that there is a larger percentage of children of foreign blood attending the former than the latter school, which tends to produce an environment distasteful to him and unwholesome to his children. Further, it seems to be conceded that the trustees have not adhered rigidly to their rules, but they permit children residing within this parent's sub-district to attend the school which he wishes his children to attend.

You will observe that under the Illinois statute, supra, which expressly authorizes the school board to subdivide districts, and to apportion the pupils to the several schools, it is held such power is not arbitrary, but must be exercised in a reasonable manner. If it be held that school trustees in this state have the inherent power, or that our statute is broad enough to confer power upon them, to subdivide school districts, it is manifest this power should be exercised in such manner as will conduce to the welfare of all the children of the district. Whether this may be done by establishing subdistricts through the medium of arbitrary lines to the exclusion of other considerations, presents, of course, a question of fact.

It is my opinion that in the case concerning which you write, the trustees should consider it on the merits, and if good and reasonable grounds appear for permitting the children to attend the school of the parent's choosing, it should be permitted.

Yours very truly,

J. B. POINDEXTER, .

Attorney General.