

**School Districts, Consolidation of. Consolidation, School Districts. Joint Districts, Addition to. Torts, School Districts Not Liable for.**

In the consolidation of school districts, though lying in different counties, the provisions of Section 407 of the codified school laws apply. Joint action of the officers of both counties being necessary to carry same into effect.

School districts are not liable in tort, but their officers may be answerable for negligence.

August 7th, 1916.

Honorable Charles P. Cotter,  
County Attorney, Broadwater County,  
Townsend, Montana.

Dear Sir:—

I am in receipt of your letter of the first instant, setting forth that it is contemplated to consolidate school district No. 25 of Broadwater county, with joint district No. 24 of Gallatin and Broadwater counties, and you request my opinion upon the following propositions:

“Do the provisions of Section 407 of Chapter  
76, Session Laws of 1913, cover consolidation of

districts lying in different counties? If so, must petitions be presented to the Superintendent of each county from each district, and must the Superintendents proceed concurrently?

"If Section 408 of said chapter is the authority, is the enclosed petition sufficient, or must the petition comply with the provisions of Chapter 112 of Session Laws of 1915?"

Section 408 of the School Laws relates to the formation of "districts lying partly in one county and partly in another" and can have no application in the proceedings outlined in your letter, for the reason that Joint District 24 is already created, and it is not intended to create a new one. Neither can the provisions of Section 406 as amended by Chapter 112, Laws of 1915, be held to apply, because that Section relates to the changing of the boundaries of the existing districts by adding to or eliminating territory.

In my opinion, the question presented is one relating purely to the consolidation of the districts, and the procedure to be followed is found in Section 407 of the Act. In as much, however, as it is sought to consolidate District 25 with a Joint District, it is necessary that the officials of both Counties act upon the matter, because both are interested, each lending its financial support in proportion to the school census children residing within its borders and each is charged with the general welfare of the district as a whole. A petition for such consolidation should be signed and acknowledged by a majority of the resident free-holders of each district affected, qualified to vote at school elections, and should be executed in duplicate and transmitted to the Superintendents of each county for action. These officials must thereupon agree upon the sufficiency of the petition and upon a date for the election to be held. In all other respects, the provisions of Section 407 will govern.

You also submit the following:

"The Trustees of the Broadwater County High School, at their last meeting, issued an order for a warrant to be drawn for \$70.00 in favor of one of the students, for a doctor bill necessitated by an injury which said student received in an electric saw in the Manual Training Department. The injury was due to the defective arrangement of the machinery."

I am of the opinion there is no authority of law for using any part of the school moneys for the purposes indicated, and the payment of this Warrant would constitute an unwarranted diversion of the public school fund. A school district is not liable in tort and its officers have no jurisdiction to compromise or pay any claim such as you describe. It is my opinion the doctrine announced by our Supreme Court in *Smith versus Zimmer*, 45 Montana, 282, 48 Montana 332, with respect to non-liability of counties for tort and individual liability of County Officers for neglect, applies with equal force to

school districts and the officers thereof. The Warrant should be recalled, or cancelled, or, if already paid, the Trustees should make good the loss to the District.

Yours very truly,

J. B. POINDEXTER,

Attorney General.