

**School Districts, Distribution of Funds. New School District, Entitled to Funds. Funds of Old District, Divided With New.**

Funds of old district illegally expended just prior to creation of new district, should be accounted for to the new district.

November 27, 1916.

Hon. Braz D. Tull,  
County Attorney,  
Forsythe, Montana,

Dear Sir:

I am in receipt of your letter of the 23rd instant, submitting the question:

“as to the duty of an old district to return money to its treasury illegally expended, and to distribute the same to a newly created district as a part of the ‘funds on hand?’”

It appears that in 1915, District No. 10 of Rosebud County had on hand a surplus of money, and that the same were expended for building purposes without a vote of the qualified electors, as provided in Section 2004, Chapter 76, Laws of 1913; that in February, 1916, a new district, No. 43, was created; that the new district now maintains that this money was expended without authority, and that the same should be treated as cash on hand at the time of the organization of the new district, and that such new district is entitled to its percent of these funds, as provided in Subdivision 4, Section 404, of said Chapter. It appears that this money was expended by the school board for “a purpose authorized by law,” as expressed in said section 2004, but that the same was expended without authority, by reason of no election having been had. The same, however, had been expended months prior to the time of the organization of the new district. The building erected, it appears to be conceded, was actually needed, and it does not appear that any objection had ever been made; hence at the time of the organization of the new district, it appeared from the books of account of the old district, that this money had been expended, and was not then on hand. The question naturally arises as to whether the new district may now claim that errors were made in the accounts of the old district, and if so, how far back in the history of the old district, may the new district push this investigation? If it may go back four months, may it go back a year or two years? I

admit that there is a question here in which the doctrine of estoppel or laches might also appear. However, it is conceded by the statement that the old board did not observe the provisions of law in the expenditure of this money, however laudable may have been their action. By reason of this failure on the part of the board to give to the electors the right to pass upon this question, I am inclined to the belief that taking into account the welfare of both districts, that the old district should now pay over to the new district that percent of this money to which it would have been entitled had the money been in the treasury of the old district at the time of the creation and organization of the new district. This seems to be the conclusion reached by you, and while the technical question of law involved cannot be settled except by the Supreme Court, yet, I am inclined to think your views are correct. It would at least prevent trouble between the districts, but if the old district desires to have the question settled, you can only advise the new district to bring its action.

Yours very truly,

J. B. POINDEXTER,  
Attorney General.