

School Districts—Organization of.

Sections 404 and 405 of the School Law relating to the organization of new School Districts construed.

March 29, 1917.

Mr. J. E. Kelly,
County Attorney.
Boulder, Montana.

I have your letter of recent date, requesting my interpretation of the two different procedures given for the formation of a new school district, as provided in Section 404-5 of the school law. Although these two sections provide for two different methods in connection with the formation of a new school district, yet I am of the opinion that they should be read together and made to harmonize.

Section 404 (1) was formerly Section 840 of the Revised Codes of 1907, as amended by Chapter 82 of the 1911 Session Laws. Section 404 (3) was formerly Section 842 of the Revised Codes of 1907, and Paragraph 4 was formerly Section 843. A great many of the sections in the present school law, Chapter 76 of the 1913 Session Laws, are reenactments or slight amendments of the different sections of the Code, but all of Section 405 appears to be new.

Reading these two sections together, it would appear to me that when it is proposed to form a new district wholly from one old district, having more than one school house, and in which proposed new district, there is a school house, such new district shall be formed by a petition in writing to the Board of trustees, such petition to be signed by a majority of the electors of the proposed new districts, as provided by Sec. 405. But in the organization of a new district in all other cases, that is when the proposed new district is taken from two or more old districts, or in case the proposed new district is wholly formed from an old district, and does not have a school house within its boundaries, the provisions of Sec. 404 must be followed and the petition should be signed by the parents or guardians of at least ten census children residing within the boundaries of the proposed new district, and at a greater distance than two miles from any school house, which petition is made to the County Superintendent.

In case the new district is proposed to be organized under Section 405, the board of trustees of the old district act upon the petition and if they grant the petition, and no appeal is taken, it is the duty of the County Superintendent to thereupon establish the new district and define its boundaries. In case the procedure is under Section 405,

any three resident taxpayers of either the old or the new district may appeal from the decision of the school trustees to the board of county commissioners, whose decision shall be final. In case the procedure is under Section 404, an appeal may be had from the decision of the County Superintendent to the board of county commissioners by three resident taxpayers of the proposed new district or by three resident taxpayers of the remaining portion of the old district, in case the county superintendent makes an order establishing the new district. And in case the county superintendent refuses to make an order establishing the new district, an appeal may be taken by three resident taxpayers of the proposed new district. In all cases the decision of the board of county commissioners is final.

I am of the opinion also that the restriction contained in Section 404 (1), that no school district shall be established which does not contain property of the assessed valuation of at least \$10,000, and that there shall be at least ten census children left in the remaining portion of the original district, and property of an assessed valuation of \$15,000, applies to districts organized under either Section 404 or Section 405. And that the appeals taken from the decision of the County Superintendent to the board of county commissioners should be the same in all cases.

It is noted that the selection of trustees is provided for in Section 404 (2), and that the same method is followed by Section 405 (2).

I am also of the opinion that Paragraphs 3 and 4 of Section 404 apply also to school districts organized under Section 405, and that Paragraphs 3, 4, 5, 6, and 7 of Section 405 apply also to school districts organized under Section 404. That is, the apportionment of moneys to the new district, and the division of district funds and property is provided for by Section 404 (3) and (4), and the procedure for the distribution of indebtedness and the method of taking care of such indebtedness by the new district in all cases is to be found in Paragraphs 3 and 6 of Section 405.

Respectfully,

S. C. FORD,

Attorney General.