

Schools and School Districts, Division of. "School House," Boundaries of New District, Division of Funds and Indebtedness—Teacher's Contract.

A new school district about to be formed largely from an old district and from portions of two others, should be organized in accordance with the provisions of Section 404 of the School Law by a petition to the County Superintendent, signed by the parents or guardians of ten census children.

A rented school building is to be considered a school house within the meaning of the School Law... The boundary line of a new district may be within two miles of an established school.

Unless controlled by other things distance shall be computed on a straight line.

A new district will own all permanent property, such as sites, school houses and furniture within its boundaries.

If a new district receives any property from the old district, it will have to bear its proportionate part of the

bonded indebtedness, but will not be compelled to assume a contract with a teacher.

January 5, 1917.

Miss May Trumper,
State Superintendent of Public Instruction,
Helena, Montana.

My Dear Madam:

You have submitted to me a letter dated January 1, 1917, from the Principal of the Joliet public school, who has been requested by the Trustees of that School District, to obtain from you certain information relative to the organization of a new school district. From this letter it appears that the new district is being formed largely from the Joliet District, but it also includes a part of two other districts. In that portion of the Joliet District, which is proposed to be made part of the new district, there is a school maintained by the Trustees of the Joliet District, who have employed a teacher and have provided seats and supplies, but the school is being held in a one-room house belonging to a rancher who lives near there, which school house is either rented by the Trustees or the use of which has been donated.

The following questions are submitted:

(1) Should the new district be organized in accordance with the provisions of Section 404 of the School Laws, Chapter 76, Laws of 1913, or should the District be divided under Section 405?

(2) Is this building in which the school is being held to be considered a "school house" within the meaning of Sections 404 and 405?

(3) Is there any law prohibiting the boundary line of the new district from being within two miles of an established school?

(4) In Section 404, subdivision 1, providing for a petition for the organization of a new district, signed by the parents or guardians of at least ten census children, residing at a greater distance than two miles from any school house, how shall the distance be computed?

(5) Is the old district entitled to the seats and supplies placed in this rented or donated school building?

(6) Does the new district assume its proportionate part of the bonded indebtedness of the old district?

(7) Does the new district assume the contract with the teacher of that school?

From an examination of Section 404 it will be noted that this section relates to the organization of new districts by making out a petition in writing to the County Superintendent, signed by the parents or guardians of at least ten census children residing within the boundaries of the proposed new district. The Section further provides for the giving of notice by the County Superintendent, by posting, or causing to be posted, notices upon the school house door of such district effected by the change. It will be noted that Section 405 relates to the division of a school district where there is more than one school house. This division is made by a petition to the school electors

residing in any particular portion of said district, in which portion there is a school house and which petition is presented to the board of trustees of said district. There the proposed new district is made up of portions of two or more old districts the petition for the creation of a new district must be signed by the parents or guardians of at least ten census children, and this petition is directed to the County Superintendent. In such case there is a restriction that the signers must reside within the boundaries of the proposed new district, and also at a greater distance than two miles from any school house. There is a further restriction that the district shall contain property of the assessed valuation of at least \$10,000.00, and that there shall be at least ten census children remaining in the original district, and a property valuation of at least \$15,000.00. Where a proposed new district is included within the boundaries of any school district, such petition must be presented to the board of trustees and just be signed by a majority of the school electors in the proposed new school district. Inasmuch as the new district is being formed not only from the Joliet District, but also includes part of two other districts, this new district should be organized in accordance with Section 404 by a petition direct to the county superintendent.

(2) A school house is a house appropriated for the use of schools or for instruction.

35 Cyc., 813.

Vorhees, *The Law of Public Schools*, Sec. 28.

"A school house, according to Webster, is 'a house appropriated to the use of schools, or for instruction;' and according to Worcester, 'a house or building in which a school is kept'."

Luthe v. Fire Ins. Co. 55 Wis. at 546.

Our own Supreme Court in the case *State Ex Rel. Jay v. Marshall*, 13 Mont. 139, uses the following language:

"When the statute provides that the school trustees shall have power to remove 'school-houses' only when directed by a vote of the district so to do, we are of opinion that the term 'school-houses' does not mean simply the house, but refers rather to the plant, including the general equipment, furniture, maps, charts, globes, and pupils and teacher."

This language was quoted with approval in the case *State Ex Rel. Bean v. Lyons*, 37 Mont. at 362.

In view of the foregoing I am of the opinion that the building in which the school is now being held in the Joliet District, and included in the proposed new district, is a school-house within the meaning of Sections 404 and 405.

(3) There is no provision in the school law prohibiting the boundary of a new school district from being within two miles of an established school. Section 404 relates to the residence of guardians or parents and not to the new district.

(4) It is a general proposition that in construing the description of land in a deed, where a line is described as running from one point to another, it is presumed, unless a different line is described in the instrument, to be a straight line. And unless controlled by other

things, a call for distance is to be strictly observed, and the line between two given points must be the shortest distance between them.

5 Cyc. 876 and 878.

Hence in construing the phrase "at a greater distance than two miles from any school-house", the school-house is to be considered the center of a circle, the radius of which is two miles, and the petition must be signed by the parents or guardians of at least ten census children residing outside of the circumference of this circle and within the boundaries of the proposed new school district.

(5) Section 404, subdivision 4, of the school law provides in part as follows:

"In case of division, each district shall own and hold all permanent property, such as sites, school-houses and furniture situated within its boundaries."

From this it would appear that the new district, upon being organized, would become the owner of the furniture and supplies located in the school building within its boundaries. But the value of the furniture would have to be taken into consideration in the distribution of indebtedness between the old and new district.

(6) In connection with the proposition of the new district assuming its proportionate part of the bonded indebtedness of the old district, it is a fundamental rule of law that where a school district is indebted and the district is divided, the old district can have no claim against the new district for a portion of such indebtedness, unless that right is given by statute, and the old district must pay all debts without any claim for contribution, and the new district has no claim to any portion of the school property which remains within the boundaries of the old district. The Supreme Court of the United States in the case of *Laramie County v. Albany Co.* 92 U. S. at 315 states the law upon this matter as follows:

"Regulations upon the subject may be prescribed by the legislature; but, if they omit to make any provision in that regard, the presumption must be that they did not consider that any legislation in the particular case was necessary. Where the legislature does not prescribe any such regulations, the rule is that the old corporation owns all of the public property within her new limits, and is responsible for all debts contracted by her before the act of separation was passed. Old debts she must pay, without any claim for contribution; and the new subdivision has no claim to any portion of the public property except what falls within her boundaries, and to all that the old corporation has no claim. *North Hemstead v. Hemstead*, 2 Wend. 134; *Dil. on Mun. Corp.*, sect. 128; *Wade v. Richmond*, 18 Gratt. 583; *Higginbotham v. Com.*, 25 id. 633."

To the same effect see *Mount Pleasant v. Beckwith*, 100 U. S. 514.

Section 404 (3) and (4) of the school law provides for the apportionment of the district funds between the old and the new districts.

Section 405, (3), (4) and (5) of the school law provides for the distribution of the indebtedness and the way in which the new district shall take care of its part of the indebtedness.

The bonded indebtedness of the Joliet District shall be apportioned between the Joliet and the new district, "by first deducting from said indebtedness the amount of all moneys in the treasury belonging to the sinking fund of said old district, and then apportioning the remainder of the indebtedness between the respective districts in proportion to the value of the school property remaining in the old district to the value of the school property in the new district." It would therefore follow that if the new district did not get any of the school property of the Joliet District, it would not be liable for any of the indebtedness of the Joliet District, as the new district will receive the furniture and supplies in the rented building as above noted, it will have to bear its proportionate part of the bonded indebtedness of the Joliet District, which will be ascertained in accordance with the provisions of subdivision 3 of Section 405.

(7) In considering the seventh question above submitted I will assume that the teacher has been regularly employed by the Trustees of the Joliet District, and has a binding contract in accordance with Section 508 (2) of the school law. It is a general proposition that the rules regulating the construction and operation of contracts generally apply to the construction and operation of contracts of employment of teachers, as in regard to the beginning of the teacher's services, the duration of his employment and the legality and binding force of the contract. 35 Cyc. 1086.

The Joliet District would still be bound by its contract with the teacher, even after the organization of the new district. The mere fact that the old district would receive no benefit from its executory contract to employ the teacher does not relieve it from its liability under the contract.

Jackson School v. Shera, (Ind.) 35 N. E., 842.

Where one employed to teach in a public school for a certain time is able and willing to teach during that time, the fact that the school was necessarily closed part of the time by order of the board of health, because of the prevalence of a contagious disease among the pupils, does not deprive the teacher of the right to compensation for the entire time, since the closing of the schools is not caused by the act of God.

Gear v. Gray, (Ind.) 37, N. E. 1059.

McKay v. Barnett, 21 Utah 239, 60 Pac. 1100.

Libby v. Douglas, 175, Mass. 128, 55 N. E. 808.

Dewey v. Union School District, 43 Mich. 480, 5 N. W. 646.

"In such contracts as they (trustees) are authorized to make, they represent the district in its corporate capacity. When they employ a teacher they do not act as individuals, but for the district. If they violate their contract the school district is liable therefor." Mingo v. Trustees, (Ky.) 68, S. W. at 484.

In the absence of some statutory provision to the contrary, the general rule is that when a part of the territory of a school district is separated from it by annexation to another district, or by the creation of a new district, the old district retaining its organization, such old district retains all its property, powers, rights and privileges,

and continues to be responsible for all its debts and liabilities. 35 Cyc. 850.

There appears to be no provision in our school law requiring a newly organized school district to assume any contracts or obligations of the old district other than its proportionate part of the indebtedness against such old school district, as required by Section 405 (3) above mentioned.

In the case of Board of Education v. State Board of Education (N. J.) 81, Atl. 163, this question was directly in issue. In this case it appeared that the board of education of a township employed a teacher to teach in a certain named school, "under the control of said board of education," and he accepted the employment, and agreed to perform his duty thereunder, and to observe and enforce the rules prescribed for the government of the school by the board of education. Subsequently the portion of the township in which the school was situated became by law a separate school district. It was held that the new school district was not bound by this contract, and that in the absence of legislation imposing on the new school district the obligation of existing contracts of the old district, such old district remains liable for pre-existing obligations, including that of the obligation of a contract with the teacher. This case is affirmed in Glazer v. Borough of Flemington, (N. J.) 91 Atl. 1068.

In view of the foregoing, it would appear that the new district is not bound to assume the contract with the teacher entered into by the Joliet District.

Respectfully,

S. C. FORD,

Attorney General.