

**Schools—School Districts—Joint Districts, Discontinuance Of.**

Where joint school districts are discontinued by virtue of the creation of a new county or counties, new districts may be created in accordance with the provisions of the school laws.

Helena, Montana, January 6, 1920.

Mr. J. J. Gunther,  
County Attorney, Sheridan County,  
Plentywood, Montana.

Dear Sir:

I am in receipt of your letter of recent date from which it appears that the joint school districts created by reason of the organization of Roosevelt County have recently been ordered discontinued by the Board of County Commissioners of Sheridan and Roosevelt Counties.

Paragraph 3 of Section 408, as adopted by the 1919 Legislative Assembly, provides for the discontinuation of these districts and for the organization of new districts under the provisions of Sections 404 or 405 as the same may require or for attaching the abandoned territory to adjacent territories under the provisions of Section 406 of the General School Laws.

Your difficulty seems to arise in applying the provisions of these sections, 404 and 405, to the organization of new districts. Whereas stated part of the territory situated in Sheridan County contains the school house belonging to the district, and all the members of the school board reside within Sheridan County, and in instances where the bulk of the territory, with some of the school houses situated therein and part of the board residing in Roosevelt County.

Your first question is: does the discontinuance of a joint district by the joint action of the Superintendents and Boards of County Commissioners of the two counties have the effect of converting the territory embraced in such district into unorganized territory? Second, if so, then in order to organize such territory into a new district, is it necessary that a petition be presented under the provisions of Section 404, either to (a) the County Superintendent, or (b) to the Board of Trustees? If the Board of Trustees, then what board, since the district no longer exists, the Board of Trustees passes out of existence.

You will observe the distinction between Subdivisions 1 and 2 of Section 404 as it now exists, is that in the first case the petition is made to the County Superintendent and the district as such is not called upon

to act. The provisions of this section would seem to require no elucidation. Under Subdivision 2 the petition is presented to the board. It will be observed that the purpose of this petition is to describe the boundaries and give the names of children of school age residing within the proposed new district. Upon the receipt of this petition the board gives notice of the meeting to hear and determine the same, and after consideration it may approve or disapprove of the creation of the proposed district. In case it is approved, the County Superintendent makes an order establishing the district and fixing its boundaries.

In the case of the discontinuance of a joint district as provided in Paragraph 3 of Section 408, all this has been accomplished by the joint action of the County Commissioners. There is nothing left for the school board to do if the petition were presented to them, but to grant the same. This would seem to be an unnecessary and useless act. The petition is, therefore, dispensed with.

Where the majority of the old board reside within the same county, and the portion of the former district contained therein contains one or more school houses, they would constitute a *de facto* board for the purpose of carrying on the affairs of the district until the new district was created, when they, with the additional members, sufficient to make up the full board, would be appointed by the County Superintendent.

As to what is meant by the expression "abandoned territory" is not clear. I should say that it would be the territory insufficient in valuation to create a new district, and which had been cut off from the main portion of the district by an order discontinuing the same. This view, I believe, conforms to your opinion as expressed in the last part of the last paragraph of your letter. You will find the question of organization of new districts further discussed in 17 A. G. on page 8.

Respectfully,

S. C. FORD,

Attorney General.