

Schools—County Unit System—Consolidation With Second Class District.

A district which is part of a county unit may be consolidated with a second class district.

Helena, Montana, January 7, 1920.

Miss May Trumper,
State Superintendent of Schools.

My Dear Miss Trumper:

You have requested an opinion of this office as to whether a district which is part of the county unit may be consolidated with a second class district. Subdivision "a" of Section 1, Chapter 211, Session Laws of 1919, is as follows:

"'Rural School District' shall mean the territory obtained by the uniting of all the third class districts and parts of first or second class districts as are not contiguous to the main body of such district."

Subdivision "b":

"'Sub-district' shall mean the local third class districts as constituted by Chapter 75 of the Session Laws of 1913."

You wish to know whether a sub-district of a rural school district can consolidate with another district which would necessarily be a first or second class district since all others are included in the rural district. The question, therefore, involves the determination of whether a "sub-district" of a rural district is a school district within the meaning of Section 407 of the General School Laws.

Section 2 of Chapter 211 provides:

"All school districts and parts of school districts of the third * * * class shall *for the purposes set forth in this act*, together constitute a single district to be known as the 'rural school district,' which shall be a unit for the purposes of taxation and issuance of bonds and such other purposes as are herein provided. They shall be divided into five subdivisions for election of trustees, and into sub-districts for the purposes of local management, local control, and custody of property."

A sub-district is defined:

"Local third class district as constituted by Chapter 76, Session Laws of 1913."

Chapter 211, Section 5, provides:

"The Board of Trustees of every rural school district shall have only the powers and shall perform only the duties enumerated in this Act. The Board of Trustees of each sub-district of the rural district shall have all the powers and perform all the duties imposed upon trustees of school districts according to the provisions of Chapter 76 of the Session Laws of 1913 and acts amendatory thereof and supplementary thereto except as modified by the terms of this Act."

Here we have an express delegation of certain powers with a reservation of all others to the local board. The term "school district" as used in this title is declared to mean: "the territory under the jurisdiction of a single board designated as Board of Trustees." Section 400, General School Laws. The school district is further defined to be "a political or civil subdivision of the state formed for the purpose of aiding in the exercise of that governmental function which relates to the education of children." 35 Cyc. 813. School districts are corporations created for a special purpose and have only the powers expressly granted to them and those which are necessary to accomplish the object for which they are created.

Dennann vs. Webster, 139 Cal. 452, 73 Pac. 139; 35 Cyc. 833.

A sub-district consists of the original territory over which its board had complete jurisdiction before the adoption of the rural district and over which it still has all the jurisdiction it formerly had except insofar as delegated to the over district and this relates only to the necessary functions connected with taxation and bonding. These powers might have been retained by the State or delegated to any county board, as to the Board of County Commissioners, and the subdivision would still be a school district. Section 407 provides that two or more school districts may be consolidated, either by forming a new district or by the annexation

of one or more districts to an existing district. This section is not repealed, nor am I able to see that it is modified by or in conflict with the provisions of Chapter 211. If it is not, it must be given effect.

It might be contended that if a sub-district is allowed to consolidate with a second class district that the process might be repeated until the rural school district was entirely abolished, but this might also be accomplished by the organization of second class districts out of the rural school district, which is expressly authorized by the provisions of Section 7 of Chapter 211, or it might be accomplished under the provisions of Section 406 of the General School Laws, allowing boundaries of districts to be changed. These are all questions of local self-government, which unless expressly prohibited must be left to the judgment of those most immediately concerned.

I must, therefore, answer your question in the affirmative.

Respectfully,

S. C. FORD,

Attorney General.