

School Funds, Apportionment of—School Districts Cut by Formation of New County—New County, Line of, Cutting School District.

Where a school district is divided by the creation of a new county, the district does not become joint, but each division constitutes a separate and distinct district by itself, and entitled to an apportionment of funds.

August 11, 1920.

Mr. Ernest L. Walton,
County Attorney,
Mondak, Montana.

Dear Sir:

You have requested my opinion regarding a controversy over certain school districts which, prior to the creation of Roosevelt County out of a portion of Sheridan County, by Chapter 23, Sessions Laws 1919, were situated wholly within Sheridan County, but which after the creation of Roosevelt County, by reason of the line dividing the two counties running through such school districts, were left partly within Sheridan County and partly within Roosevelt County.

As I understand the situation a number of school districts had been created in Sheridan County, and when the legislature created Roosevelt County the southerly boundary line of Sheridan County, and being the northerly boundary line of Roosevelt County, was so fixed that it passed through these school districts leaving a portion of each in Sheridan County and the remaining portion of each in Roosevelt County, such districts became joint school districts, or whether the territory within each such district was segregated and divided so that those portions left in Sheridan County became separate and distinct districts, either organized or unorganized, of that county, while those portions falling within Roosevelt County became separate and distinct districts, either organized or unorganized, of the latter county.

Lincoln County was created out of a portion of Flathead County by legislative enactment (Chap. 133, Sess. Laws 1909), and there the same conditions prevailed, the line dividing the two counties running

through certain school districts. In an opinion rendered by Attorney General Galen to Hon. J. H. Stevens, County Attorney of Flathead County, on June 3, 1909, (3 Op. Atty. Gen., page 124), it was held that upon the creation of Lincoln County these school districts became joint school districts, and this opinion, while not directly approved, has been impliedly approved by subsequent opinions. (6 Op. Atty. Gen. 241, and Opinion to Miss May Trumper, Superintendent of Public Instruction, May 17, 1919, not yet published.)

While the opinion with reference to the Flathead and Lincoln County Districts fails to cite any authorities supporting such decisions and gives no reasons in support thereof, and I would be somewhat inclined to overrule the same, if necessary to arrive at a decision regarding the question here presented, I do not deem it necessary to do so for the reason that even tho it be correct it has no application here owing to certain provisions contained in the act creating Roosevelt County, and which appear to me to be decisive of the question.

Section 9 of Chap. 23, Sess. Laws 1919, (the act creating Roosevelt County), contains certain provisions which have reference only to school districts, no similar section or similar provisions being found in the act creating Lincoln County. The first part of said Section 9 is as follows:

“It is hereby made the duty of the County Treasurer of the County of Sheridan to transfer and pay over on or before the first day of August, 1919, all moneys in said County of Sheridan, to the credit of school districts embraced within the limits of said County of Roosevelt as may have been hereby taken from said County of Sheridan, which money so transferred shall be held by the County of Roosevelt to the credit and for the use of the same school districts as they formerly existed.”

This provision, of course, has reference only to those school districts which fall wholly and entirely within Roosevelt County, and no portions of which were left in Sheridan County, the intention being that all money belonging to any such school district should be paid over to the treasurer of Roosevelt County. However, immediately following this provision, and in the same section, we find the following:

“ * * * and it is further provided hereby that all moneys belonging to school districts which may be divided by the creation of the County of Roosevelt shall be divided between the portions of such districts remaining in each Sheridan and Roosevelt Counties in the proportion which the percentage of the assessed valuation within said whole district bears to the portion remaining in each of said counties, and which said share shall be deposited with the respective treasurers of said counties to be turned over to the district or districts of which said divided school district may become a part.”

This last provision has reference only to those districts through which the line dividing the two counties might run, and makes provision for apportioning the money belonging to the old district so that

each part falling in each county will receive its proper portion thereof. From this provision it is clear that it was not the intention that any school district through which such county dividing line should run, should thereafter continue to be a joint district, but that it was the intention of the legislature that there should be a segregation of the territory embraced within the boundaries of each such district and a division of each district, and that the portion of such a district left in Sheridan County should be, by the proper officers and procedure in that county, either created into a new district, or attached to and made a part of some other district in that county, while that portion of such a district falling in Roosevelt County should be, by the proper officers and procedure either created into a school district of Roosevelt County, or attached to and made a part of some existing school district lying wholly within Roosevelt County. The language used in such provision will permit of no other construction.

It is, therefore, my opinion, that none of the old school districts through which the county division line runs, became, on the creation of Roosevelt County, joint school districts, but that the creation of Roosevelt County divided such districts and segregated the territory embraced therein into two separate and distinct parts, and that after the creation of Roosevelt County it became the duty of the proper officers of Sheridan County to organize the portions of such districts left in Sheridan County into separate school districts, or to attach the same to some district or districts left wholly within Sheridan County, while it became the duty of the proper officers of Roosevelt County to organize the portions of such districts falling within Roosevelt County into separate school districts, or to attach the same to some district or districts falling wholly within Roosevelt County. The County Treasurer of Sheridan County should, therefore, ascertain the amount of money in the school fund of each such district on the date when Roosevelt County came into existence, February 14, 1919, should apportion the same in the manner provided by Sec. 9 of Chap. 23, Sess. Laws 1919, and after such apportionment has been made, should pay over to the County Treasurer of Roosevelt County the amounts apportioned to those portions of the districts falling within Roosevelt County.

Respectfully,

S. C. FORD,

Attorney General.