

**New Counties—School Districts — School Funds — Indebtedness—Adjustment.**

Upon a division of a school district by the creation of a new county, the indebtedness should be adjusted by the Boards of Trustees of the two school districts affected and, when adjusted, a warrant should be drawn on the County Treasurer for the amount found due to the parent district.

W. S. Towner, Esq.,  
County Attorney,  
Fort Benton, Montana.

My dear Mr. Towner:

You have submitted to this office the following statement of facts and asked for the opinion of this office thereon:

The Legislative Assembly of 1921 enacted Chapter 174, by the provisions of which certain territory was cut off from Chouteau county and given to Teton county. School District No. 19 of Chouteau county as it existed prior to the enactment of this Act was, by virtue of the Act, divided so that one-half thereof went to Teton county and the remaining one-half to Chouteau county. This district had two schoolhouses built at equal cost during the year 1916 and for the cost of which the district had issued bonds. By the new county line established by Chapter 174, above referred to, one of these schoolhouses was included in the territory of the district attached to Teton county, while the other remained in the portion of the district in Chouteau county. An attempt was made by the County Superintendent of Chouteau county to get an adjustment of the indebtedness of the portion of the district in Teton county. The County Superintendent of Teton county referred the matter to the County Attorney of that county who held that, as there was no provision for distribution of indebtedness in the Act, it must be presumed that the Legislature intended the old school district should assume it.

The only provision for transferring school funds contained in the Act is Section 4 (now Section 4365, R. C. M. 1921), which provides:

"It is hereby made the duty of the County Treasurer of Chouteau county to transfer and pay over to the County of Teton, on or before the first day of July, 1921, all moneys in said County of Chouteau to the credit of school districts embraced within the limits of said territory hereby taken from said County of Chouteau, which said moneys so transferred shall be held by the said County of Teton to the credit and for the use of the same school districts as they formerly existed."

This section refers only to school districts embraced within the territory transferred and has no application to parts of districts cut off from the remaining portion.

It was at one time held by this office that where a school district was cut by a county line on a division of a county a joint school district was created. (See Vol. 3, Opinions Attorney General, p. 135.)

This is not, however, the division of a school district by the creation of a new county, but is a division thereof by reason of a change in the county line, whereby territory is taken from one county and added to another.

The power to organize, establish, or lay off new school districts, or to divide, change the boundaries, or otherwise alter existing districts is vested primarily in the Legislature, which may act without the assent of the inhabitants of the affected territory.

35 Cyc. 833.

It may do this indirectly as in the present case by a change in the county line.

Section 1028, Revised Codes of 1921, provides in part as follows:

"When a new district is formed from one or more old ones, the school funds remaining to the credit of the old district, after providing for all outstanding debts, except debts incurred for building and furnishing schoolhouses, shall be divided as follows:" \* \* \*

While Section 1029 provides for distribution of indebtedness as follows:

"If, at the time such new district is created, there is any indebtedness against such old school district, then the County Superintendent of the county in which such districts are located shall apportion such indebtedness between said districts, 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 in the new district."

Section 1030 provides for the issuance of warrants by the new district to the old district in adjustment of the indebtedness and for the registration of these warrants with the County Treasurer.

There is no reason why these general provisions of the statute should not apply to a case where a new district has been created by operation of law, as well as to one where a district has been created under a general statutory provision. It was clearly the intent of the Legislature to require an adjustment of indebtedness upon a division of a district. To hold that no liability attached to a new district or to a portion of the district cut off while permitting it to retain practically a new school building for which the old portion of the district with greatly reduced territory for taxation purposes is compelled to pay would be inequitable and unjust.

Livingston v. School Dist. No. 7 (S. Dak.), 68 N. W. 167;  
State v. Schriener (Wis.), 138 N. W. 633.

In this latter case, the court, in discussing the liability of a portion of a district cut off and joined to another district, said:

"The claim of the relators that Section 944 does not apply to the case at bar because the portion annexed to the city did not continue as a separate school district or municipal entity, and that it applies only to cases where each part of the divided political division remains a distinct municipal entity, is not well taken. There is nothing in the statute to warrant such a construction. On the other hand, it clearly by its language applies to a case where territory of one municipality is annexed to another, and it contemplates a division of property and adjustment of credits and liabilities in such a case as well as in a case where one municipal entity is divided into two distinct municipal entities."

You have also asked my opinion on the following question:

"The Board of County Commissioners appointed by the Governor having completed their duties under said appointment is the time now past within which an adjustment may be had?"

I do not believe the school district is guilty of laches in this case for the reason that no provision was made in the Act for adjusting the indebtedness of this school district, but there is a provision in the general statutes for adjusting indebtedness upon a division of a school district which I believe applies in this case.

It is, therefore, my opinion that the indebtedness should be adjusted by the Boards of Trustees of the two school districts, and that, when adjusted, a warrant should be drawn on the County Treasurer for the amount found due the parent district.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.