

Boundaries—School Districts—Schools—School Houses—Title.

Where a school house belonging to one district is included in another by reason of change of boundaries the title remains in the first district and it may remove the building within its own boundaries.

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

July 6, 1925.

My dear Miss Trumper:

You have referred to this office the letter of Alice D. Knapp, county superintendent of schools of Daniels county, from which it appears that a portion of school district No. 9 of that county was transferred to school district No. 1, and that in this territory there was a schoolhouse belonging to district No. 9. District No. 9 would like to know whether it has a right to move this schoolhouse.

The only reason for permitting territory to be transferred from one district to another district is for the convenience of the school patrons of the territory to be transferred.

It was never contemplated by the legislature that territory including a schoolhouse should be transferred from one district to another for the legislature has made no provision for the adjustment of indebtedness or transfer of the title to the property where it has been transferred.

In *City of Winona vs. School District No. 82*, 40 Minn. 13, 41 N. W. 539, the court had before it the question of which district held title to the schoolhouse. In that case the court said:

"The authorities on the question, so far as there are any, are therefore all against the contention of plaintiff; and upon reason and principle we cannot see why any distinction should be made as to property which, on change of boundaries, falls within the limits of another municipality, or why the title should not, like that of all other property, remain unaffected by the change. A municipal corporation is an artificial person, and not mere territory. The annexation of territory to it merely gives it municipal control over it, and not title to the land. In this case the plaintiff and defendant are the identical corporate entities they were before,—the one with enlarged, and the other with diminished, area. *The schoolhouse was at the time of the change of boundaries the property of defendant. It could not be transferred to the plaintiff, except by grant. There has been no express grant, and we can see no ground upon which it can be held that there was an implied one.*

"It being settled law that upon a change of boundaries (not abolishing the corporation) the old corporation is, upon the ground that it is the same legal entity as before, liable for all corporate debts without any claim for contribution against the corporation to which the territory is annexed, or into which it

is erected, it would seem to follow, as the complement of this and upon the same ground, that the old corporation retains all the corporate property regardless of situation. No general rule will work equitably in all cases. In each case the legislature ought to inquire into the facts, and make what would be an equitable division of property and apportionment of debts, in view of the particular facts of the case. But where this has not been done, and the courts are compelled to adopt some general rule, we think the one we have suggested is most in accordance with legal principles, and will work approximate justice in more cases than any other."

It is, therefore, my opinion that title to the school house still remains in district No. 9, and it follows that it has a right to remove the schoolhouse within its present corporate limits.

Very truly yours,
L. A. FOOT,
Attorney General.