

**Schools—School Districts—County Superintendent—Abandonment.**

A county superintendent may declare abandoned a school district which has not maintained a public school for more than two years, even though a private school has been maintained during that time. .

Miss May Trumper.

March 2, 1926.

Superintendent of Public Instruction,

Helena, Montana.

My dear Miss Trumper :

You have submitted to this office the question whether, under the provisions of section 970 R. C. M. 1921, a district may be declared abandoned by the county superintendent by reason of the fact that no public school has been maintained therein for more than two years, although a private school has been maintained within the boundaries of the district for several years.

Section 970 R. C. M. 1921, provides :

“He (county superintendent of schools) shall attach to contiguous districts territory not a part of any district, and shall have power to declare school districts abandoned when no school

has been held in such districts for two consecutive years, if in his judgment there is no immediate prospect of the need of a school. All funds of such abandoned districts shall be placed in the general school funds of the county upon the order of the county superintendent after all debts of the district have been paid. The abandoned territory shall be attached to contiguous districts by the county superintendent."

This section deals exclusively with public schools and makes no exception in cases where private schools are maintained. The only seeming exception to the right of the county superintendent to abandon the district is where there is immediate prospect for the need of a school.

This provision, which leaves to the judgment of the county superintendent of schools the immediate need of schools, also applies to public schools, and where the need of public schools is and has been supplied by private schools for a number of years and there is no immediate need of a public school by reason thereof, it is my opinion that the county superintendent is authorized to declare the district abandoned and attach the territory to contiguous districts, if, in his judgment, there is no immediate prospect of the need of a school.

Very truly yours,

L. A. FOOT,  
Attorney General.