

School Districts—Abandonment—Sinking Funds—Income and Interest—Apportionment.

A school district is "maintaining" school when it makes provision for schooling its pupils with another district and is not subject to abandonment by the county superintendent for failure to maintain school within the district.

Income and interest from the general school fund should be apportioned by the state superintendent on the basis of census children in districts maintaining six months school or more.

Frank Woody, Esq.,
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July 13, 1926.

My dear Mr. Woody:

You have requested an opinion upon the following questions:

"1. Is a school district which does not maintain a term of school during the year, but which enters into an arrangement with an adjoining district whereby the children in such district are transported to and attend school in such adjoining district, entitled to share in the apportionment of the state school fund under section 5 of article XI of the constitution?"

Section 5 of article XI contains the following provisions:

"Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein respectively, but no district shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made."

You state that it has been the "practice in quite a large number of school districts scattered throughout the several counties of the state not to maintain any term of school whatever, but to enter into an arrangement with some adjoining district whereby the children in such

districts attend the schools maintained in the adjoining district, the districts not maintaining terms of school providing means for transporting the children living therein, and who desire to attend school, to and from the schools in the adjoining district."

I am unable to agree with your conclusion that a district, under such circumstances, is not maintaining school within the meaning of the constitutional provision above referred to.

I do not believe that it is necessary for a school to be actually maintained in the district where the district has made provision for schooling its children in an adjoining district. The purpose of the constitutional provisions was to provide schooling for the children, and not merely to maintain a school within the district boundaries, although at the time this section was originally written there was no provision of law for maintaining school jointly with another district such as is found in section 1010 R. C. M. 1921, as amended by chapter 76 laws of 1925 which provides:

"When a district is relieved of the necessity of supporting any school by the fact that all or a part of the children residing in the district are being provided with schooling in another district, it shall be the duty of the trustees in the district holding no school to assist in the support of the school which the children of their district are attending, in proportion to the relation the number of children from their district attending school in another district bears to the total number of children enrolled in the school in the other district. No district shall be entitled to share in the county apportionment if trustees refuse to comply with the above requirement when they are thus relieved of the necessity of providing any school."

Under this section the district which does not maintain school is required to contribute to the other district in proportion that the number of children in its district attending the school bears to the total number in the other district. It is, therefore, required to contribute on the same basis of expenditure as the district within which the school is located, although it may not require a levy of the same amount as made in the other district. The legislature has a right to substitute this method of maintaining school without violating the constitutional provision.

Your second question is:

"When no school has been maintained by a school district for two consecutive years, but such district has afforded an opportunity to the children living therein to attend school by arrangement with an adjoining district whereby such children may attend school in such adjoining district, means for transporting such children to and from the school in such adjoining district being provided by the district in which they live, may the county superintendent, under section 970 R. C. M. 1921, declare such district abandoned and attach its territory to the district to which the children are transported and in which they actually attend school?"

My answer to the first question also disposes of this question because it necessarily follows that if the district (which is providing for the schooling of its children in an adjoining district) is maintaining school, then the county superintendent has no right to declare the district abandoned by reason of failure to maintain school.

There are a number of provisions of the statute relative to changing the boundaries of school districts, such as sections 1024, 1025, 1033, 1034 and 1035, and all of these sections give to the inhabitants of the district a voice in the proceedings. The proceedings in each case must be initiated upon a petition of the people living in the district. If the local inhabitants desire to change the boundaries of a district they can do so under the provisions of these sections. If they wish to consolidate with other districts there is also provision made for that purpose. Occasions often arise where people do not wish to give up their school district by reason of decreased attendance which may not be permanent. Better methods of transportation make arrangements of this kind desirable, from the standpoint of better schools and economy, which districts will refuse to take advantage of if there is a possibility of losing their district organization by so doing.

It is, therefore, my opinion that a county superintendent is not authorized to annex a district to an adjoining district that has made provision for the schooling of its children in an adjoining district, and that such districts are entitled to share in the distribution of the school fund where schooling has been provided in this manner for six months or more.

You have also asked in what manner the state school fund should be apportioned in order to comply with the provisions of section 5 of article XI of the constitution. You have stated two methods of distribution. I am advised, however, by the state superintendent that the method which you designate as "b" has been employed by the state superintendent of public instruction in making the distribution for the last year. This method is on the basis of census children in districts maintaining school for six months or more. By this method every district in the state which maintains a term of school for six months or more receives exactly the same amount per child.

You have further asked whether, when bonds and interest coupons issued by a school district have been redeemed and paid, the county treasurer can transfer to the general fund of the district any money remaining in the district bond sinking and interest fund, and any money which may thereafter come into such fund from the payment of delinquent taxes.

Section 1229 R. C. M. 1921, as amended by chapter 153, laws of 1923, provides for the levying of special taxes in school districts to provide funds for the payment of school district bonds and interest thereon, and contains the following:

"All moneys so levied, when collected, must be paid into the county treasury and deposited to the credit of a fund to be known as the bond sinking and interest fund, and shall be used for the payment of bonds and interest coupons and for no other purpose whatever."

In a number of districts bonds have been issued and tax levies made for sinking and interest funds and the proceeds of such levies used in payment of bonds and interest, and at the present time all of the bonds and interest have been paid and redeemed. However, on account of the fact that delinquent taxes were not paid while the bonds were outstanding but have since been paid, there has accumulated in the interest and sinking funds considerable amounts of money, and these amounts will be increased as further payments of delinquent taxes are made.

The provisions prohibiting the use of money in such funds for any other purpose are all intended primarily for the protection of the holders of such bonds and to insure the payment of the same with interest thereon as they severally become due. When all bonds and interest have been paid and redeemed then the person who held such bonds has no further interest in such funds and the necessity for maintaining the integrity of the funds ceases.

Furthermore, section 1240 R. C. M. 1921 provides:

"The county treasurer shall pay out of any moneys belonging to the school district the interest upon any bonds issued by authority of this chapter, by such district, when the same shall become due: upon the presentation at his office of the proper coupon, which shall show the amount due and the number of the bond to which it belongs."

While this section was repealed by section 2 of chapter 153, session laws of 1923, yet this section contains the following:

"provided, however, that any and all outstanding bonds issued by school district under the provisions of such sections, the proceedings for the issuance of which fully conform to and comply with the provisions and requirements thereof, shall be deemed and held to be valid and subsisting bonds in such districts, and shall be paid and redeemed in the manner provided by said sections before the repeal thereof, by this act."

It has frequently happened that treasurers have paid out of the school fund the interest on its bonds under the provisions of section 1240, supra, and it is only fair that the moneys, when collected, should be returned to the general fund of the district.

It is, therefore, my opinion that all interest and sinking funds should be transferred to the general fund where the bonds (for which said funds were raised) and the interest coupons have been paid.

Very truly yours,

L. A. FOOT,

Attorney General.