

School Districts—Consolidation—Petitions—County Superintendents—Elections.

The legislature having provided no alternative, where under section 1034 R. C. M. 1921 one district contains no freeholders to sign a petition for consolidation, consolidation cannot be effected.

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

August 4, 1926.

My dear Miss Trumper:

You have submitted to this office the letter of Miss Elsie Mercier, county superintendent of schools of Park county, in which she asks how to proceed to consolidate districts where there are no resident freeholders in one of the districts to sign the petition.

Section 1034 R. C. M. 1921 provides:

“Whenever the county superintendent of schools receives a petition signed and acknowledged by a majority of the resident freeholders of each district affected, qualified to vote at school elections, praying for consolidation, he shall within ten days cause a ten days’ posted notice to be given by the clerk in each district, such notice to be posted in three public places, in each district, of an election in such district at a time and place specified in each notice, to vote on the question of consolidation.”

It then provides:

“If the majority of the votes cast in each district be for consolidation, it carries.”

Under this section, in order to give the county superintendent jurisdiction to make the order for the election, it is necessary for a petition to be received from each district, signed and acknowledged by a majority of the freeholders. If there is any freeholder in the district he must sign the petition; if there is no freeholder in the district, then the county superintendent of schools would acquire no jurisdiction to call the election since the only condition upon which it can be called is absent and the legislature has provided no alternative in such case.

It is, therefore, my opinion that inasmuch as the legislature has provided a method by which an election can be called to vote on consolidation by petition of the freeholders, and has not provided for an election in case no petition can be secured by reason of absence from the district of all freeholders, consolidation under such circumstances may not be accomplished.

Very truly yours,

L. A. FOOT,
Attorney General.