

Schools—Classification.

Section 1046 R. C. M. 1921 does not provide a procedure for changing established school districts but is limited solely to the creation of second-class districts from territory embraced in a rural school district.

Third-class districts cannot be changed to second-class under section 1046 when comprised of territory lying outside of a rural school district.

March 30, 1928.

Seth F. Bohart, Esq.,
County Attorney,
Bozeman, Montana.

My dear Mr. Bohart:

You have submitted to me for an opinion the two following questions:

1. "Does section 1046 R. C. M. 1921 provide the procedure for changing the classification of a school district already established?"
2. "Can a third-class district be changed to a second-class district under section 1046 without any reference to the population?"

You have directed my attention to the provisions of section 1021 R. C. M. 1921 and to a former opinion of this office construing the same.

Section 1021 is a general statute providing for the classification of all school districts and was enacted as a part of chapter 76 of the general school law in 1913. Section 1046 is a special statute relating exclusively to the subject of rural school districts and was enacted in 1919.

Therefore, to the extent of any conflict between these two sections, section 1046, being a later and a special act, must govern.

It is apparent that in enacting section 1046 it was the intention of the legislature to provide a method for the creation of second-class districts "from the territory embraced in any rural school district", and to establish different requirements for the creation of such districts from those specified in section 1021.

Thus, in section 1046 no mention of population is made. The only requirement is that the territory must be within the boundaries of a rural school district and must have an assessed valuation of not less than \$600,000. Apparently, assessed valuation rather than population was the standard adopted by the legislature for the creation of second-class districts out of territory embraced in a rural school district.

Therefore, in answer to your first question, it is my opinion that section 1046 does not provide any general procedure for changing the

classification of established school districts but that it is limited solely to the creation of second-class districts from territory embraced in a rural school district.

As to your second question, if you have reference to the changing of the classification of school districts outside of territory embraced in a rural school district your question must be answered in the negative. If you have reference to the creation of second-class districts out of territory in a rural school district formerly embraced in a third-class district it would seem sufficient to say that any such territory may be embraced in a second-class district created in the manner and from the territory specified in section 1046.

Very truly yours,

L. A. FOOT,
Attorney General.