

**Abandonment—School Districts—Conflicting Statutes —  
Attendance—Consolidation—Transportation.**

Residents of territory to which it is proposed to attach abandoned districts under section 970, R.C.M. 1921, as amended, cannot object to such order being made by county superintendent of schools.

Paying transportation to parents where less than five pupils on route does not excuse requirement that district be abandoned that has not actually conducted school therein for three years.

Mr. Bert I. Packer,  
County Attorney,  
Choteau, Montana.

July 2, 1931.

My dear Mr. Packer:

You have requested an opinion on the provisions of chapter 84, laws of 1931, amending section 970, R.C.M. 1921.

This section relates to abandonment of school districts where they have not actually provided school. Your question is whether the territory

of a district declared abandoned must be transferred to a neighboring district where the residents of such other district object to its being attached.

There have been several questions asked with respect to this act, particularly with respect to the feature that permits an exception to abandonment where the district has provided transportation by certain means and there is a particularly designated method for determining attendance at least six months in each of the three preceding years.

Another question that has been asked with respect to this matter is whether the provisions of section 1010, as amended, which authorized special arrangements to be made with the individual patrons of the district where there were five pupils or less would exempt such district from abandonment.

In my opinion, the provisions of section 1010 relative to transportation where there are five pupils or less would not prevent abandonment for the reason that it was clearly the intention of section 970, after its amendment by chapter 65 of the twenty-first legislative assembly, to require all districts to be abandoned that had not actually conducted school therein. The word "actually" was added solely for the purpose of preventing the district from conducting schools by means of transporting its pupils to another district. This language remains in the section after amendment by chapter 84 and is conclusive evidence that the legislature intended that all districts that had not transported pupils in the particular method designated should be abandoned and the territory attached to contiguous districts. There is no provision made for the residents of adjoining districts to object to the annexation of the territories the county superintendent is required to declare abandoned.

I note what you say with respect to this chapter being in conflict with section 1034. Section 1034 relates to the consolidation of districts and requires the assent of the local inhabitants of each district to the consolidation; it recognizes the right of self-determination of the residents of each district. It is a well known rule of statutory construction that where acts are in conflict, and repeal by implication takes place, that the later act must be given effect in so far as it is in direct conflict with any former act; therefore, in so far as section 970, as amended, conflicts with section 1034 the amendment to 970 being a later act, controls.

It is therefore my opinion that chapter 84 requires the county superintendent to declare certain districts that have transported their pupils to another district by means other than are provided therein, as excusing actual conduct of school, abandoned and the territory attached to another district or districts and that the residents of the other districts cannot prevent such order taking effect.

It is further my opinion that the provisions of section 1010, as amended, with respect to allowing patrons of the district to furnish their own transportation, where there are less than five children upon a route, does not prevent such district from being abandoned.

Very truly yours,

L. A. FOOT,

Attorney General.