

Abandonment—School Districts—Schools.

In order to prevent an order of abandonment of a school district by the county superintendent of schools under section

970, as amended, school must have been actually conducted therein for three years preceding or transportation must have been made in the manner excusing actual holding of school.

Mr. Frank P. Gault,
County Attorney,
Great Falls, Montana.

July 21, 1931.

My dear Mr. Gault:

You have requested an opinion relative to abandoning school district No. 58 of your county. It appears that school district No. 58 has not had any school for the last three years. During 1928 there was only one child of school age in that district. This child was sent to the schools at Belt and the district allowed \$20.00 per month to the child. In 1929 there were no children at all of school age in the district. Consequently, no school was held during that year. In 1930 there were two children of school age who were allowed \$20.00 per month each while outside of the district in another school. At the beginning of the term in September of this year there will be only one child of school age in the district. The question is whether the school district must be abandoned under existing law.

In arriving at legislative intent, amendments that have been made are significant when taken in connection with construction given the act previous to amendment. Section 970, before amendment by chapter 65, laws of 1929, provided that "He (county superintendent of schools) shall have power to declare school districts abandoned when no school has been held in such districts for two consecutive years."

Chapter 65 changed the language by inserting the words "actually" immediately before the word "held" and changing "in" to "within." It also added the following: "and he must declare school districts abandoned when no school has been actually held within the district for three consecutive years."

This section, before amended, had been construed by this office so as to permit a district to transport its pupils to another district without subjecting it to abandonment. See volume 11, Opinions of Attorney General, page 315, and volume 13, Opinions of Attorney General, page 125. The amendment made by chapter 65, laws of 1929, was, therefore, clearly made for the purpose of changing the construction given this section by the attorney general before amendment, and to require the actual holding of school in order to prevent the district's being abandoned.

This office also held in the opinion in volume 13, above referred to, that the act was not intended to be retroactive and that, therefore, time which had elapsed before the act took effect could not be considered in computing the time within which school must be conducted without subjecting the district to an order of abandonment. Chapter 84, laws of 1931, further amended section 970 so as to require the county superintendent of schools in determining the question of abandoning any school district, to include any period of time that may have elapsed before the approval of this act and added the following proviso:

“Providing, however, that if any such district has provided transportation for all children of school age living within the district to another district for the purpose of attending school therein for a period of at least six months during a period of such three years, such transportation to be by means of a safe and proper omnibus or omnibuses, driven or operated by competent driver, or drivers, under contract let by the Board of Trustees of the district, and which driver, or drivers, shall be under proper and sufficient bond, such transportation shall be deemed equivalent to the actual holding of school in such district for a term of six months in each year, and such districts shall not be ordered abandoned.”

In making this exception to the law as it formerly existed the legislative intent is clear to the effect that other means of transportation, board, room and rent than that mentioned in the exception are not to be counted. The legislature is presumed to have known of the provisions of section 1010 which authorized trustees to pay transportation where there are five pupils or less without letting a contract and which also authorized them to pay board or rent. If the amendment made by chapter 84, laws of 1931, had intended to make any manner of transportation an exception it would not have gone into detail as it did in the quoted proviso.

It is a well known rule of law that the legislature can make and unmake school districts as it sees fit. The last act of the legislature clearly intended to permit districts which were large enough to transport their children by means of omnibuses driven by competent drivers under bond, an exception to the rule requiring districts to be abandoned where school had not been actually conducted therein.

It is therefore my opinion that district No. 58 constitutes no exception to the rule requiring districts to be abandoned which have not actually conducted school for a period of twelve months out of the preceding three school years, or that have not transported their children in the manner required by the exception which permits transportation when so made to be equivalent to actually conducting a school for six months in each year within the district.

Very truly yours,
L. A. FOOT,
Attorney General.