

1035 provides that "Joint districts (districts lying partly in one county and partly in another) may be formed in the same manner as other new districts are formed, except that the petition herein provided for must be made to the county superintendent of each county affected; but in the case of joint districts, all of the provisions herein enumerated for the formation of a new district must be by concurrent action of the superintendent of each county affected." The creation of "other new districts" referred to in 1035 is provided for by Section 1024 R. C. M. 1921, as amended by Chapter 138, Laws of 1927, and Chapter 175, Laws of 1933.

It is our opinion that the logic of the decision in School District No. 28 v. Larson, et al, 80 Mont. 363, impels the conclusion that where it is desired to detach territory from an existing district in one county and have such territory attached to an existing district in another county, thus forming a "joint district" as defined in Section 1035, R. C. M. 1921, that the procedure provided by Chapter 175, Laws of 1933, beginning with the last paragraph on page 382 and including the balance of said chapter is the procedure, coupled with the provision of Section 1035, R. C. M. 1921, to be followed.

The necessary steps are as follows:

1. A petition in writing must be prepared in duplicate, bearing the signatures of a majority of the resident freeholders of the territory which is desired be transferred from one district to another. The petition must be addressed to the county superintendents of the two counties affected. It must describe the territory to be transferred. The territory must be contiguous to the territory of the school district to which it is desired to transfer it. None of the territory lying within three miles of a school district of its home county can be included in the territory transferred. The transfer must not reduce the valuation of the district from which it is proposed to detach it to less than \$75,000.

2. The petition must state the reason for desiring the change and give the number of school children of school

Opinion No. 376

School Districts—Joint Districts—Creation of—Procedure Where Territory Attached From Another County.

HELD: Where it is desired to detach territory from an existing school district in one county and have such territory attached to an existing district in another county, thus forming a "joint district", the procedure provided by Chapter 175, Laws of 1933, coupled with the provisions of Section 1035, R. C. M. 1921, should be followed.

October 27, 1933

You have requested advice as to the procedure in creating a joint school district out of contiguous territory lying partly in one county and partly in another.

In *State v. Meyers*, 65 Mont. 124, and in *State v. Urton*, 76 Mont. 458, the Supreme Court held that Section 1035, R. C. M. 1921, provides for the creation of such school districts. Section

age, if any, residing in the territory to be transferred.

3. The county superintendent must give notice by posting notices at least 10 days prior to the time fixed for considering said petition. One notice shall be posted in a public place in the territory to be transferred, and one on the door of each school house in each district affected, if any, and if there be none, then in some other public place. The number of notices is not otherwise provided for, but there should be at least five posted. The time for considering such petition shall be stated in the notices and such time must be not less than ten nor more than 30 days after the petition is presented to the superintendents. After the hearing, if the superintendents approve the transfer they shall issue a joint order transferring the territory and describe its boundaries. Such order may be appealed from to the Board of County Commissioners within 30 days. The decision of the Board shall be final.

The court said in *School District No. 28 v. Larson*, supra, that the law was uncertain and confusing and that the legislature should so revise the law that it would be clear and specific. It would appear that the legislature attempted to comply with the court's injunction as expressed in that case and added the amendment heretofore referred to beginning at the bottom of page 382 of the Laws of 1933. The expression "if any" where reference is made to children of school age in the 1933 Act, in the second paragraph on page 383, is significant. We interpret the intent of the legislature in using that expression to be that the provisions relative to the petition (where the petition provided for on page 381 of the 1933 Act is required to be signed by the parents and guardians of not less than ten school children of the specified ages) as not to be applied as a requirement in a petition where freeholders petition to be transferred from one district to another. The petition in the latter case must meet the requirements of that part of the 1933 act beginning with the last paragraph on page 382 and including the balance of that Act. This construction renders immaterial the number of school children in the territory to be transferred, so far as the petition is concerned. The

fact that the amendment to the 1933 Act goes on to repeat the other requirements relating to the creation of new districts as provided in the first part of the Act, strengthens the construction we place upon its provisions. A distinct procedure is provided for the two purposes of the Act.

The 1933 Act should have been divided into and numbered by sections. It was made as an amendment to Section 1024 and covers three full pages and parts of two others. We have referred to its separate provisions by paragraph and page as the only means of distinguishing one part from another.