

Opinion No. 104.**Schools—Transfers of Territory.**

HELD: Chapter 175, Laws of 1933, forbids the transfer of any school district territory as long as there is an established school within three miles of it, including any school that may be situated within the territory proposed to be transferred.

May 16, 1935.

Mr. Eric Moum
County Attorney
Wolf Point, Montana

You have asked us to advise you concerning Chapter 175, Laws of 1933, relating to the manner of changing the boundaries of a school district. In said Chapter 175 it is provided:

"A majority of the resident freeholders residing in territory which is a part of any organized school district may present a petition in writing to the County Superintendent of Schools asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous, provided however, that no territory within three (3) miles of an established school in such district shall be so transferred."

You wish to know if the proviso means that no territory shall be transferred which contains an established school within it, or if it means that no territory shall be detached from a district as long as it is within three miles of an established school in such district exclusive of any school which may be maintained within such territory.

The statute which repeals Section 1033, R. C. M. 1921, is not skillfully phrased, but it forbids without qualification the transfer of any territory as long as there is an established school within three miles of it including any school that may be situated within the territory proposed to be transferred.

In other words, if Districts "A" and "B" are contiguous and District "B" maintains an established school five miles west of the western boundary of

District "A" all of the territory in District "B," which is three miles east of said established school, may be transferred to District "A." But, if District "B" maintains an established school at a point two miles west of the western boundary of District "A" there is no territory in District "B" which may be transferred to District "A."

Your attention is also directed to Section 1023, R. C. M. 1921, as amended by Chapter 37, Laws of Montana of 1933.