

March 30, 1935.

Mr. John J. Cavan  
County Attorney  
Jordan, Montana

We have received your letter of March 26, requesting the opinion of this office concerning Section 970, Revised Codes of Montana, 1921, as amended.

Section 970, as amended by Chapter 84, Laws of Montana, 1931, provides for the abandonment of school districts under certain circumstances upon order of the county superintendent of schools. A district so abandoned is then attached to a contiguous district or districts.

According to your letter a school district which has been abandoned as provided above, prior to abandonment entered into certain transportation contracts, presumably pursuant to Section 1010, R. C. M. 1921, as amended, and the question arises if such contracts are now a binding obligation of the district to which the abandoned district has been attached.

Chapter 84, *supra*, provides: "Whenever a school district is ordered abandoned and there is any indebtedness outstanding against the district represented either by registered warrants, or bonds, or both, and there is not sufficient money in the funds of the district to pay the same, all money in the funds of the district shall be set aside and applied in payment of such indebtedness, and there shall be levied annually, in the manner provided by law, a tax against all property within the boundaries of such district, as the same existed when such indebtedness was incurred, sufficient to pay such indebtedness as it matures, with all interest becoming due thereon.

"All funds of an abandoned district, after all the debts of the district have been paid, shall be placed in the general fund of the district or districts to which its territory is attached on order of the county superintendent \* \* \*."

The unexecuted portion of a contract is not a debt of the abandoned district "represented either by registered warrants, or bonds" under the above provision. (*Barrington v. Powell et al.*, 230 N. Y. 37, 128 N. E.

**Opinion No. 74.**

**Schools—Abandoned School Districts  
—Contracts—Transportation.**

**HELD:** Where a school district is ordered abandoned and is attached to one or more contiguous districts, the contiguous district, or districts, is or are not liable to perform the executory contracts for transportation entered into by an abandoned district which has been attached to its, or their, territory by the county superintendent of schools.

910.) And although title to the school property may pass to the district to which the territory is attached (Vol. 14, Report and Official Opinions of Attorney General, p. 129), we do not think that the unexecuted portions of such contracts are a binding obligation of such contiguous district.

Offer, acceptance and mutuality of assent are essential elements of every contract. (Sections 7473, 7488, R. C. M. 1921; *J. Neils Lumber Co. v. Farmers Lumber Co.*, 88 Mont. 392, 293 Pac. 288.) And while it is true that the legislature may exercise plenary power over school districts, we find the following rule of law to be applicable: "Where a district is dissolved, abolished, or destroyed, and one or more new districts are created from the territory thereof, or its territory is annexed to one or more existing districts, the new or other district or districts, in the absence of contrary statute become and are entitled to all the property and rights of the old district, and liable for all its existing debts and obligations, **except where, by statute, the dissolved district is continued in existence for the purpose of paying its indebtedness, in which case the new district does not become liable therefor. \* \* \***" (Underscoring ours) (56 C. J. 271-272.)

We admit that the question is not free from some little doubt in our mind. (See *Curtis v. Haynes Special School District*, 193 S. W. 523; *Barringer v. Powell*, supra; *Abler v. School District of St. Joseph*, 124 S. W. 564; *Walker v. Bennett*, 118 S. E. 779; *Wilson v. School District No. 4*, 207 N. W. 810; 1 *McQuillin on Municipal Corporations*, 2d ed., Section 330, and notes; 3 *Williston on Contracts*, Section 1960.) But none of these authorities are directly in point and all can be distinguished from the case before us. For the most part they involve bonded indebtednesses or contracts employing teachers, janitors, or other employees.

Here we do not have the voluntary merger or consolidation of school districts, such as is provided for in Sections 1020 to 1039, inclusive, R. C. M. 1921. Rather, under Chapter 84, supra, the county superintendent simply orders the district abandoned and parcels out its territory to one or more contiguous districts and the or-

der is effective regardless of the wishes of such contiguous districts.

Now suppose that District A enters into a contract with X to transport all its pupils to a school in District B which is contiguous to the western boundary of District A. Then, suppose that thereafter the county superintendent orders District A to be abandoned and its territory attached to District C, contiguous to the eastern boundary of District A, or to District D, contiguous to the northern boundary, or to District E, contiguous to the southern boundary, or part of its territory attached to Districts C, D and E. Obviously X could not be required to transport pupils to all three districts in opposite directions under his contract to transport them west to B. Clearly the statute does not provide that Districts C, D and E, or any of them, must provide for the education of pupils residing in A territory and then pay X for transporting pupils to District B's school house,—services that are not rendered.

For these reasons, then, it is our opinion that a contiguous district, or districts, is or are not liable to perform the executory contracts for transportation entered into by an abandoned district which has been attached to its, or their, territory by the county superintendent of schools pursuant to Chapter 84, supra, and your opinion to the county superintendent is hereby confirmed.

This construction of the statute does not render it invalid as an impairment of contracts "especially since persons contracting with a school district must be deemed to know that it may be altered or dissolved." (56 C. J. 272.) (But see *Fuller v. Consolidated Rural High School District No. 1*, 28 Pac. (2d) 750, and *Special School District No. 60 v. Special School District No. 2*, 25 W. (2d) 443.)