

**Opinion No. 240.****Schools and School Districts—Joint  
Districts Dissolution.**

HELD: Joint School Districts must be dissolved in accordance with procedure set forth in Section 1037.1, R. C. M., 1935.

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February 3, 1938.

Viola Martin  
County Superintendent of Schools  
Stanford, Montana

My Dear Madam:

You have submitted the question as to whether a joint school district in Judith Basin County and Fergus County should be dissolved under the provisions of Section 970 or Section 1037.1.

Section 970, 1037.1 and 1037.2 provide:

Section 970. "Abandonment of school districts. He shall attach to contiguous districts territory not a part of any district and he shall have power to declare school districts abandoned when no school has been actually held within such district for two (2) consecutive years, if in his judgment there is no immediate prospect of the need of a school, and he must declare a school district abandoned when terms of school aggregating at least twelve (12) months have not been actually held in a district during a period of three (3) consecutive years. The county superintendent in determining the question of abandoning any school district under this act must include any period of time that may have elapsed before the approval of this act; provided, 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 term of at least six (6) months during each of such three (3) years, such transportation to be by means of a safe and proper omnibus, or omnibuses, driven or operated by a 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 bonds, such transportation shall be deemed equivalent to the actual holding of school in such district for a term of six (6) months in each year, and such district shall not be ordered abandoned. The abandoned territory shall be attached to a contiguous district or districts. 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. If the territory of an abandoned district is divided and part attached to two (2) or more districts, the funds of the abandoned district, after all its debts have been paid, shall be apportioned by the county superintendent between the districts to which such territory is attached in proportion to the assessed value of the property attached to each thereof."

Section 1037.1. "Dissolution of joint school districts. A joint school district may be dissolved in the following manner:

"Whenever the majority of the qualified electors residing in that portion of a joint district situated in one county presents a petition to the county superintendent of schools of the same county praying for a dissolution of the district and setting forth briefly the reason therefor, such county superintendent shall immediately give notice thereof to all other county superintendents of counties contributing territory to the joint district, and shall within twenty (20) days from the date of the receipt of such petition call an election and fix a date for the holding of same, and shall notify the clerk of the district to post three notices in the territory of each county composing the district. Notices must be posted in the most conspicuous places in the territory and must be posted at least fifteen days preceding the election. Such notices must specify the purpose and the date and hour when the polls will be opened and the place at which the election will be held. Separate elections must be held in each portion of the district lying in different counties on the same date and hour and be conducted in the same manner as general elections. Each county superintendent of schools must appoint three judges of election for the territory in his or her county and result of the election must be certified by the judges to their respective county superintendents. The county superintendents shall meet within five days after the elec-

tion and determine the total vote cast throughout the district. If a majority of all votes cast in the district are for dissolution, the district must be dissolved; or in the event that two-thirds ( $\frac{2}{3}$ ) of the votes cast in the territory of any county favor dissolution the district may be dissolved as to such territory; provided both superintendents of the counties affected are agreed that such dissolution will not entail an undue hardship to either part of such joint district, and that there is no good and sufficient reason why such dissolution should not be made. In case of the failure of a two-thirds ( $\frac{2}{3}$ ) majority in any portion of the district, as herein provided, or a failure of the majority of the entire district to vote for dissolution, the district shall not be dissolved and no election thereon can be held within three (3) years thereafter. If dissolution carries it shall take effect at the end of the current school year."

Section 1037.2. "Declaration of validity of school districts created out of joint districts. Any school district heretofore created out of a joint district without the concurrent action of the various county superintendents and boards of county commissioners of the various counties having territory within the district, or where all the requirements of the statutes have not been fully complied with and such district has functioned for a period of two (2) or more years is hereby declared to be a valid subsisting school district."

Section 970 has application to a school district where school has not been held therein for two or three years and located entirely within the county, as distinguished from a joint district located in two or more counties. Under the authority of Section 970 no provision is found for the dissolution of a joint school district situated in two counties. Under that section the county superintendents of two counties have no authority to execute a single order of dissolution of the joint district.

Prior to the enactment of Section 1037.1 the law was wholly inadequate in its application to the dissolution of joint districts. Section 1037.1, by express language, has application to joint school districts, and supplies the neces-

sary machinery and procedure lacking prior to its enactment in the year 1927. Section 1037.1 authorizes the dissolution of joint school districts because school has been abandoned therein. The statute provides that the petition praying for a dissolution of the district shall briefly set forth the reasons therefor. No specific reason is given, and therefore the reason that school has not been held for a period would constitute sufficient reason. Section 1037.1 provides, and is authority for a joint order of the two county superintendents as distinguished from Section 970.

By the enactment of Section 1037.2 it was recognized that many joint districts, prior to the enactment of Section 1037.1, had been illegally dissolved, and such statute (1037.2) acts as a curative statute to legalize those districts formerly dissolved.

Therefore, it is my opinion that in dissolving a joint school district situated in Judith Basin and Fergus Counties, you should proceed under the provisions of Section 1037.1, as your county attorney advised you.