

the new or the remainder of the old district, after division, is the owner of a school bus, which was situated within the boundaries of the new district at the time of division. Section 1028 provides: "In case of division, each district shall own, and hold all permanent property, such as sites, school houses, and furniture situated within its boundaries."

While the statute has not expressly included a school bus in its classification as permanent property, yet a school bus has the same general permanent characteristics as furniture, being personal property and subject to loss or deterioration by use. The implication must be that all personal property of a permanent nature, excluding funds which are otherwise provided for in Section 1028, but including a school bus, is owned by the district wherein it was situated at the time of the division. The word "permanent" is defined by Webster's New International Dictionary as: "continuing in same state, or without any change that destroys form or character; remaining unaltered or unremoved; abiding; durable; fixed; stated; lasting; as, a permanent impression."

Section 1028 is a codification of the common law rule, that upon a division of a school district, the property is owned and held by the district where situated or found. 24 R. C. L. 567. *Johnson vs. San Diego*, 42 Pac. 249 (Calif.).

An arbitrary or even equitable apportionment of the property, in accordance with legislative mandate, is not open to the objection that the school district is deprived of its property, without due process of law, for the reason that the state is the beneficial owner of all school property, and the district holds and uses the same as trustee of the state, for the welfare of the children. As long as the property is used to promote the interest of the child, mere change in the trusteeship is immaterial. *Bay View School District vs. Linscott*, 33 Pac. 781. *Pass School District vs. Hollywood School District*, 105 Pac. 122 (Calif.).

Therefore, it is my opinion that the district, where the bus was situated or used at the time of the division of the district, is the owner of the school bus, which in this instance would be the new school district.

Opinion No. 296.

**Schools and School Districts—Division.
Property—Distribution of.**

HELD: A school bus being "permanent property." is owned, after the division of the district, by the district where the bus was situated or used at the time of the division.

June 29, 1938.

Mr. E. L. Murphy
County Attorney
Choteau, Montana

Dear Mr. Murphy:

You have submitted for my opinion the question as to which school district,