

No. 396

SCHOOL DISTRICTS—JOINT SCHOOL DISTRICTS

Held: Where it becomes desirable to create a school district where part thereof lies in one county and part in another county, thus forming a joint district, Section 1035, Revised Codes of Montana, 1935, and the last three paragraphs of Section 1024, Revised Codes of Montana, 1935, govern. No school district shall be created nor may the boundaries of any school district be changed between March 1st and July 1st of any calendar year.

April 14, 1942.

Mr. Maurice J. MacCormick
County Attorney
Powell County
Deer Lodge, Montana

Dear Mr. MacCormick:

You have submitted the following questions for my opinion:

Where it is proposed to consolidate school districts—where one or more districts are located in one county and one or more districts are located in another county—to form a joint school district, what procedure should be followed?

May the election to form such a joint school district be held at the same time as the regular school trustees' election, with the effective date of the consolidation postponed, to be effective after July 1st of the year of election?

In answering your first question, it is well to note Section 1035, Revised Codes of Montana, 1935, provides:

"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 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." (Emphasis mine.)

Our Supreme Court had under discussion the above section in School District No. 28 v. Larson, 80 Mont. 363, 260 Pac. 1042, 1046, wherein it was stated:

"As is seen section 1035 is very brief, and, in itself, is incomplete. Differing from the other sections mentioned, it does not, in itself, provide a complete plan of procedure. It refers to the 'same manner as other new districts are formed.' By that expression evidently it refers to some provision of either section 1024 or section 1025 . . ." (Section 1025 has been repealed since the above decision was rendered.)

Again our Supreme Court held:

"A new school district can only be 'created' by a county superintendent of school on compliance with the provisions of section 1024, Revised Codes of Montana, 1921, as amended by Chapter 138 of the Laws of 1927 (Section 1) . . ."

Weasel Head v. Armstrong, 99 Mont. 364, 43 Pac. (2nd) 243, 245.

Our Supreme Court in discussing school districts also stated:

"A school district is merely a political subdivision of the state, created for the convenient dispatch of public business. In the absence of constitutional limitations, the legislature may create or abolish a district or change or rearrange the boundaries of an existing district, and by the same token it may create joint districts from territory lying in adjacent counties."

State ex rel. Rodman v. Meyers, 65 Mont. 124, 210 Pac. 1064, 1065.

The creation of a school district such as here considered—where it will be composed of a district or districts or parts thereof situated in one county and a part in an adjacent county—is controlled by Section 1035, Revised Codes of Montana, 1935, and the last three paragraphs of Section 1024, Revised Codes of Montana, 1935. Such districts are denominated joint districts.

State v. Meyers, *supra*;

State v. Urton, 76 Mont. 458, 248 Pac. 369;

Attorney General's Official Opinion No. 376, Vol. 15, p. 260.

"The legislature has by section 1024 provided that upon meeting of the requirements of that section, districts may be created by the county superintendent with the right of appeal to the board of county commissioners, whose action is final. By this Act certain discretion is lodged in these officers after the provisions of the statute are satisfied. The statute has been complied with here insofar as the necessary jurisdictional facts are concerned. The discretion of these

officers was invoked and the discretion has been exercised. The legislature might have required these officers to be guided by any fixed rules which it saw fit to provide, but it has left all of these questions to the good judgment of these officers. This was within the power of the legislature."

State v. Lensman, 108 Mont. 118, 126, 88 Pac. (2nd) 63.

It will be noted that, in the case of State v. Lensman, supra, the Court had under consideration the creation of a school district where part of the lands of the district were situated in Missoula County and a part in Lake County. The procedure followed by the county superintendents there is substantially as set forth below.

It, therefore, is apparent Section 1034, Revised Codes of Montana, 1935, has no application to the creation of a school district as here considered, where part of the proposed district lies in one county and part in another county, but Section 1034, supra, applies only where all of the lands affected lie wholly in one county.

It further follows that, in the creation of joint districts (districts lying partly in one county and partly in another), there is no election therefor, as no election is provided by the statutes providing for the formation of such a district.

The procedure to be followed in the formation of such a district is 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 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 superintendent. 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.

It will further be noted that, after the court's decision in the case of School District No. 28 v. Larson, supra, the legislature attempted to comply with the Court's injunction, and added to Section 1024, by amendment, the last three paragraphs by Chapter 175, Laws of 1933.

Section 1023, Revised Codes of Montana, 1935, provides:

"No school district shall be created nor boundaries changed between March 1st and July 1st of any calendar year, and no school district nor any portion of any school district shall be included in the

petition for the consolidation of school districts or for the changing of boundaries of school districts more than once during one calendar year.”

The foregoing Section 1023 is a special act applying directly to the formation or creation of school districts and the changing of boundaries of school districts and is mandatory. It commands—in no uncertain language—no school district shall be created nor the boundaries changed between March 1st and July 1st of any calendar year, and no school district nor any portion of any school district shall be included in the petition for the consolidation of school districts or for the changing of boundaries of school districts more than once during one calendar year. This section needs no interpretation.

Box et al v. Duncan, 98 Mont. 216, 220, 38 Pac. (2nd) 986.

It is therefore further my opinion no change may be made in the boundary lines of a school district, nor a district created, between the first day of March and the first day of July in any calendar year.

Sincerely yours,

JOHN W. BONNER
Attorney General