

**Opinion No. 69.****Schools and School Districts, abandonment of—Abandoned School Districts.**

Held: Chapter 168, Laws of 1943, providing for schools in abandoned territories under certain conditions, applies only to territories which have been or will be abandoned after the effective date, March 3, 1943, and does not apply to territories theretofore abandoned.

June 17, 1943.

Mr. H. O. Vralsted  
County Attorney  
Judith Basin County  
Stanford, Montana

Dear Mr. Vralsted:

You have requested my opinion in regard to the amendment to Section 970, Revised Codes of Montana, 1935, as made by the Twenty-Eighth Legislative Assembly of 1943. Section 970, relating to the abandonment of school districts, was amended by Chapter 168, Laws of 1943, to provide for schools in abandoned territories under certain conditions. The pertinent amendment provides as follows:

"Whenever there are five or more children in abandoned territory eligible for attendance in elementary school as determined by the county superintendent and residing more than three (3) miles from an established school in the district to which the abandoned territory is attached, the school trustees shall provide a school in such abandoned territory when requested so to do by the parents of at least three of such children. In determining whether such children reside more than three (3) miles from an established school in the district, the measurement must be by the shortest regularly travelled route . . ."

You ask whether or not the above quoted provision applies to territories heretofore abandoned, or if it applies only to territories which will be abandoned in the future.

Applying the cardinal rule of construction, that the intention of the legislature must be ascertained and given effect (*State v. Board of Commissioners of Cascade County*, 89 Mont. 37, 261 Pac. 1) and the provisions of Section 3, Revised Codes of Montana, 1935, declaring "no law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared," it is my opinion the amendment to Section 970, *supra*, operates and applies only to those territories which will be abandoned after the effective date of Chapter 168, Laws of 1943, which is March 3, 1943.

Our Supreme Court has consistently held that where it becomes necessary to determine whether the legislature, in enacting a statute "expressly declared" it to be retroactive within the provision of Section 3, Revised Codes of Montana, 1935, its intent in that behalf must be gathered from the act itself, and from no other source. (*State ex rel. Rankin v. District Court*, 70 Mont. 322, 225 Pac. 804; *Mills v. State Board of Equalization et al.*, 97 Mont. 13, 33 Pac. (2nd) 563.) Every reasonable doubt is resolved against a retroactive operation of a statute. (*Educational Bonds Case*, 68 Mont. 526, 219 Pac. 637.)

Chapter 168, Laws of 1943, relating to provisions for schools in abandoned territories, is not expressly declared to be retroactive, so as to include territories heretofore abandoned. The

legislature might easily have included such a retroactive clause, but did not. As the legislative intent must be gathered from the act itself, it is my opinion the provision in question applies only to territories which will be abandoned in the future—that is, after the effective date of Chapter 168, Laws of 1943, March 3, 1943.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General