

October 15, 1948

Mr. John F. McGough  
 County Attorney  
 Jefferson County  
 Boulder, Montana

Dear Mr. McGough:

You have submitted for my opinion the following:

"Where a school district has been abandoned and annexed to another district and where there are five or more children in such abandoned territory eligible for attendance in an elementary school, as determined by the County Superintendent, and such children reside more than three miles from an established school in the district to which the abandoned territory is attached, are the trustees of such district, to which the abandoned territory is attached, are the trustees of such district, to which the abandoned territory has been attached, required to furnish a school for such children."

The answer to your inquiry is found in Section 970 R.C.M., 1935, as amended by Chapter 168, Laws of 1943.

Prior to the amendment, there was no relief for such situated school children. A protest from all over the State arose because of the harsh results of abandoning a district and annexing the territory to another district without providing for the elementary school children that might be residing in such abandoned territory.

The legislature, to correct the situation, amended Section 970 R.C.M. 1935, by Chapter 168, Laws of 1943, by providing the same method of abandoning a school district and then made provision for a school in such abandoned territory under the following condition.

1. Whenever there are five or more children in such abandoned territory eligible for attendance in an elementary school.

2. Such eligibility to be determined by the County Superintendent.

3. Said children residing more than three miles from an established school in the district to which the abandoned territory is attached.

#### Opinion No. 144

##### Schools—Abandoned School Districts.

**Held:** The legislature has provided where a district has been abandoned and the territory annexed to another district and the requirements, as amended have been ascertained and determined it is mandatory on the Board of Trustees of the district to which the abandoned territory is attached to provide a school for such children when requested to do so by the parents of at least three of such children.

4. That after the foregoing requirements have been ascertained, then:

5. The School Trustees shall provide a school in abandoned territory when requested so to do by the parents of at least three of such children.

Therefore, it is my opinion the legislature has provided that where a district has been abandoned and the territory annexed to another district and when the requirements, Nos. 1, 2 and 3, set forth above have been ascertained and determined to be correct, then the legislature, by the above mentioned amendment, has made it mandatory on the Board of Trustees of the district to which the abandoned territory is attached, to provide a school for such children when requested to do so by the parents of at least three of the children.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General