

**Opinion No. 50****School District, Transfer of Territory—School, What Is An Established.**

- Held:**
- 1. Territory in a School District may be transferred to an adjoining School District even though the territory to be transferred is within three miles of a school house in which school has not been held for the last four years.**
  - 2. The prohibition of Chapter 61, Laws of 1943 against transferring territory within three miles of a school refers to an established school and in my opinion a school house wherein school has not been held for the past four years is not an established school.**

September 7, 1949.

Mr. G. C. Schmidt, Jr.,  
County Attorney  
Fort Benton, Montana

Dear Mr. Schmidt:

You have requested my opinion concerning the transfer of territory in one school district to an adjoining school district when the territory to be transferred is within three miles of a school house in which school has not been held for the last four years.

Section 1024, Revised Codes of Montana, 1935, as amended by Chapter 61, Laws of 1943, provides in part:

"A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the County Superintendent of Schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous, provided however, that no territory within three (3) miles of an established school in such district shall be so transferred and provided further that the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property in the district from which territory is taken shall not be reduced to less than seventy-five thousand dollars (\$75,000.00)."

The above quoted section prohibits the transfer of territory from one district to an adjoining district when such territory is within three miles of "an established school." The territory in question may be transferred to the adjoining district if "an established school" means one that is used and in operation as a school rather than an unused school house. The first portion of Section 1024, as amended, provides that the same three mile limitation applies to "any school house . . . in which a school is maintained," upon a petition to create a new district out of one or more existing districts. It is reasonable to assume that the legislature would not impose a different condition upon the creation of a new district than upon transfer of territory from one district to another. Uniformity in applying the limitation would result in carrying out the purpose of the statute. Such a construction of the statute is in accord with the rule found in *State v. Millis*, 81 Mont. 86, 261 Pac. 885, wherein our Supreme Court said "Statutes are to be construed so as best to effectuate the object of the legislature."

It is, therefore, my opinion that under the provision of Section 1024, Revised Codes of Montana 1935, as amended by Chapter 61, Laws of 1943, the territory which is part of an organized school district and within three miles of a school house which has not been used for school purposes in four years may be transferred to an adjoining school district provided that the other conditions of the statute are met.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.