

of county commissioners from the decision of the county superintendent under Subsection 7 of Section 75-1805, R. C. M., 1947. You advise me that a petition to transfer territory from one school district to another was presented to the county superintendent who, after a hearing, denied the petition and an appeal was taken to the board of county commissioners by the petitioners.

Subsection 7 of Section 75-1805, R. C. M., 1947, provides that the county superintendent, after receiving a petition to transfer territory, shall:

“ . . . proceed to hear such petition, and if he deem it advisable and for the best interest of the territory proposed to be transferred or included, he shall grant such petition and make an order fixing the boundaries of the district so changed, which order shall be final, unless an appeal be taken to the board of county commissioners of the county wherein such districts are located within thirty (30) days thereafter, and upon hearing thereof the decision of said board shall be final.”

The above-quoted portion of the statute does not state in precise language that an appeal may be had when the petition is denied. However, the statute states that if the petition is granted, the county superintendent must make “an order fixing the boundaries of the district so changed.” Such an order calls for statutory directions, while an order denying the petition need not be defined. To authorize an appeal when the petition is granted and to prohibit an appeal on the denial of the petition would not be justified and would not appear to be the legislative intention. The right of appeal to the board of county commissioners and the powers of the board were broadly construed in the case of *Read v. Stephens*, 121 Mont. 508, 193 Pac. (2d) 626. The court in rendering its opinion did not question the right of appeal from an order of the county superintendent **denying** the petition and recognized the broad powers of both the county superintendent and the board of county commissioners in the following language:

Opinion No. 66.

Schools and School Districts—Appeal to Board of County Commissioners From An Order Denying Transfer of Territory.

HELD: An appeal may be taken to the board of county commissioners from an order of the county superintendent of schools denying the petition requesting the transfer of territory from one school district to another under the provisions of Subsection 7 of Section 75-1805, R. C. M., 1947.

March 29, 1954.

Mr. Russell K. Fillner
County Attorney
Rosebud County
Forsyth, Montana

Dear Mr. Fillner:

You have requested my opinion concerning the right of appeal to the board

“ . . . the legislature has delegated to the county superintendent of schools and to the board of county commissioners a full measure of discretionary power in creating and changing the boundaries of school districts”

* * * *

“When an appeal is taken to the board of county commissioners from the order and decision of the county superintendent of schools, this power and discretion is vested in the board, and upon hearing of the appeal, the statute declares that ‘the decision of said board shall be final.’”

It is, therefore, my opinion that an appeal may be taken to the board of county commissioners from an order of the county superintendent of schools denying a petition requesting the transfer of territory from one school district to another under the provisions of Subsection 7 of Section 75-1805, R. C. M., 1947.