

Opinion No. 62**Schools and School Districts—Opening School in Abandoned Territory—Closing School—Transportation**

Held: 1. If the requirements found in Section 75-1522, RCM, 1947, as amended, are met for the opening of a school in abandoned territory of a school district which is attached to an operating school district, it is the duty of the board of trustees to open the school.

2. A school which is opened under the provision of Section 75-1522, RCM, 1947, as amended, must be opened in good faith by the trustees and operated as a school at least for such period of time as will determine the necessity and advantages of the school.

June 24, 1958

Mr. Charles E. Marshall
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. Marshall:

You have requested my opinion as to the authority and power of a board of trustees of a school district to open a school in territory of an abandoned school district which has been attached to a contiguous school district.

Section 75-1522, RCM, 1947, as last amended by Chapter 242, Laws of 1955, provides in part as follows:

“Whenever there are five (5) or more children in abandoned territory eligible for attendance in an 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 (3) of such children.”

You advised me that all the requirements for the opening of a school in the abandoned territory have been met, but you advised me that the board of trustees might desire to avoid the expense of opening the school and provide transportation for the children under the provisions of Section 75-3404, RCM, 1947. This statute grants to the board of trustees the power "to close any elementary school within the district, and transport the pupils to another elementary school or schools within the district, * * *"

These statutes are in apparent conflict as under Section 75-1522, RCM, 1947, as amended, the language used makes it the duty of the trustees, if there are the requisite number of children in the abandoned territory and a proper request is made, to open a school in such territory. Section 75-3404, RCM, 1947, is a general statute authorizing school trustees to close any elementary school in the school district. Because of the conflict it is necessary to determine which statute shall control. Section 75-1522, RCM, 1947, as amended, while enacted prior to Section 75-3404, RCM, 1947, is a specific statute dealing with the opening of a school in abandoned territory attached to a school district. It is limited in scope and not available to all areas in school districts. Our Supreme Court in the case of *In re Stevenson*, 87 Mont. 486, 289 Pac. 566, said:

"Where one statute deals with a subject in general and comprehensive terms and another deals with a part of the same subject in a more minute and definite way, to the extent of any necessary repugnancy between them the special will prevail over the general statute."

Section 75-3611, RCM, 1947, which is a part of the chapter on the Foundation Financial Programs for schools, fixes the manner of obtaining State aid for a reopened school, but it does not deal with the power or authority of a board of trustees to open or close a school and the above cited statutes are those which are pertinent to the question you submit.

It is therefore my opinion that if the requirements found in Section 75-1522, RCM, 1947, as amended, are met for the opening of a school in abandoned territory of a school district which is attached to an operating school district, it is the duty of the board of trustees to open the school.

It is also my opinion that a school which is opened under the provisions of Section 75-1522, RCM, 1947, as amended, must be opened in good faith by the trustees and operated as a school at least for such period of time as will determine the necessity and advantages of the school.

Yours very truly,
FORREST H. ANDERSON
Attorney General