

Opinion No. 5

SCHOOLS AND SCHOOL DISTRICTS; Districts; transfer of territory—

SCHOOLS AND SCHOOL DISTRICTS; Superintendents; duties, sufficiency of petition for transfer of territory—SCHOOLS AND SCHOOL DISTRICTS; Elections; electors; qualifications, petition for transfer of territory—Article IX, Section 9, Montana Constitution — Section 75 — 1805 (5), Revised Codes of Montana, 1947

- Held: 1. It is the duty of the county superintendent of schools to determine the sufficiency of a petition requesting the transfer of territory from one school district to another and such petition must be signed only by resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll.**
- 2. The names of the signers who are neither taxpayers nor residents cannot be considered and also the names of resident taxpayers who are not registered are not qualified signers of a petition under Sub-section (5) of Section 75-1805, RCM, 1947, as amended.**

February 26, 1959

Mr. Rae V. Kalbfleisch
County Attorney
Toole County
Shelby, Montana

Dear Mr. Kalbfleisch:

You have requested my opinion concerning the qualifications of persons to sign a petition requesting that a portion of one school district be transferred to another school district. You advise me that two of the signers were neither taxpayers or residents and two signers were resident taxpayers but not registered electors. You ask if their names can be considered in determining the sufficiency of the petition.

The statute which applies to your problem is Sub-section (5) of Section 75-1805, RCM, 1947, as amended, which reads in part as follows:

"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 . . ."

From this law, it must be concluded that a petitioner must be (1) a

resident, (2) a taxpayer, (3) a registered elector and (4), his name must be upon the last completed assessment roll for state, county and school district taxes. If a person is a land owner but does not reside in the territory he is not qualified to sign the petition. Also, a person who resides within the territory but who is not a taxpayer and whose name does not appear on the last completed assessment roll may not have his name considered as a proper petitioner. While it is true that registration is not a qualification to vote (State ex rel. Lang vs. Furnish, 48 Mont. 28, 134 Pac. 297) yet it is a means of listing those who are qualified and under the Constitution Section 9, Article IX, registration may be a requisite to vote.

From the facts you submit, it appears that two of the signers were neither residents nor taxpayers and obviously, their names cannot be considered. Two other signers, who were resident taxpayers were not registered and their signatures added nothing to the petition. In State vs. Musburger, 114 Mont. 175, 133 Pac. (2d) 586, our Supreme Court considered the sufficiency of a petition requesting the consolidation of school districts. The Court pointed out that it was the duty of the county superintendent of schools to search the records of the county to ascertain if the persons whose names appear on the petition met the requirements of the law. The opinion also held that a petition signed by a majority qualified to sign the same was jurisdictional.

It is, therefore, my opinion that it is the duty of the county superintendent of schools to determine the sufficiency of a petition requesting the transfer of territory from one school district to another and that such petition must be signed only by resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll.

It is also my opinion that the names of the signers who are neither taxpayers nor residents cannot be considered in determining the sufficiency of the petition and that resident taxpayers who are not registered are not qualified signers of a petition under Sub-section (5) of Section 75-1805, RCM, 1947, as amended.

Very truly yours,
FORREST H. ANDERSON
Attorney General