

County High School—Computing Attendance for Purpose of Distributing Tax—Counting of Students Taking Post-Graduate Work.

Persons under the age of 21 years taking post-graduate work in accredited High School classes are to be counted in computing the attendance for the purpose of ascertaining the pro rata share of such High School to the High School tax.

Miss May Trumper.

Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have inquired whether High School students who return to take post-graduate work in an accredited High School may be counted in computing the attendance of such accredited High School for the purpose of procuring such accredited High School's proportion of the County High School tax.

Section 604, page 429, of the Laws of 1919, reads as follows:

"Every Public School not otherwise provided for by law shall be open to the admission of all children between the ages of six and twenty-one years residing in the school district, and the Board of Trustees shall have the power to admit children not residing in the district as hereinbefore provided. Provided, however, that trustees may establish continuation schools, part time and night schools for persons over twenty-one years of age; provided, that none of the funds apportioned under Section 202, subdivision 12, of this Act shall be expended for such purposes."

Paragraphs 1, 2, and 3 of Section 2112, as amended by Chapter 119, pages 161 and 162, of the Laws of 1915, read as follows:

"1. In any county where a county high school has been established, any school district which maintains high school classes duly accredited by the State superintendent of Public Instruction shall be entitled on such accrediting to share in all county high school moneys levied and collected for maintenance, and the money derived from such levy shall be apportioned by the

county superintendent of schools to the several accredited high schools in the county according to the average daily attendance in accredited high school classes for the school year next preceding, as determined by the said county superintendent.

"2. In any county where no county high school has been established, but in which one or more districts maintain high school classes duly accredited by the State Superintendent of Public Instruction, a special tax levy not exceeding three mills on each dollar of taxable property in the district may be made for the benefit of such high schools. When such levy is to be made, the chairman of the board of trustees of each school district maintaining a high school shall, on or before the first day of August in each year, severally recommend and advise the board of county commissioners as to how many mills the tax levy should be on each dollar of taxable property, and the board of county commissioners shall thereupon fix the levy not exceeding three mills according to their own judgment at a rate which will raise sufficient money to meet the reasonable expenditures of such accredited high schools for maintenance during the ensuing school year, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several districts, in which such tax is levied, according to the average daily attendance in accredited high school classes for the school year next preceding, as determined by said county superintendent.

"3. Attendance at any high school to whose support such money is apportioned in accordance with the provisions of this Act shall be free to all eligible pupils residing within the district in the county in which such accredited high school is situated."

From Section 604, supra, it appears that any child between the ages of six and twenty-one years is entitled to admission to the public schools.

Section 2112 provides that the tax shall be distributed "according to the average daily attendance in accredited high school classes." A pupil entitled to admission to the school, and attending in accredited High School classes, is within the terms of the above statute, and the fact that such student has already completed the work of certain accredited High School classes does not terminate his right to attend the school if otherwise qualified, or change the fact that the work later being done is in the accredited High School classes specified in the statute. If the pupil is entitled to attend and receive the instruction specified, the school is entitled to share in the fund provided for such instruction.

It is, therefore, my opinion that students under the age of twenty-one taking post-graduate work in accredited High School classes are to be counted in computing the attendance of an accredited High School for the purpose of ascertaining the pro rata share of such High School to the High School tax.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.