Trustees of Joint School District—Contracts of—Whether Binding on High School Board.

Chapter 105 of the Laws of 1921 held to repeal Section 1271 of the Revised Codes of 1921 in so far as the employment of a superintendent and instructors is concerned.

The appointment of a superintendent by a Board of Trustees of a joint school district is binding upon the County High School Board.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have submitted to this office the question of whether Chapter 105 of the Session Laws of 1921 is binding on the High School and District Boards in localities having less than 900 enrollment in both the county and district school.

This is not the specific question you asked, but all the questions contained in your letter hinge upon the proposition of whether the Boards are bound by the provisions of this Act. Those parts of Chapter 105 which are pertinent are as follows:

"Section 1. Whenever, after the passage and approval of this Act, the total number of school children enrolled in any county high school and in the city schools located in the same city or town with said county high school shall be fewer than nine hundred, the Board of Trustees of the school district in which such city schools are located, and the Board of Trustees of such county high school (said boards being hereinafter designated as 'the joint boards'), shall jointly appoint a person to be known as the superintendent of city and high schools, who shall supervise the operation of both the high school and city schools in such district.

"Section 2. In the cases mentioned in Section one of this Act, no superintendent of city schools and no principal of the county high school shall be appointed, but the duties of both said officers shall be performed by a superintendent of city and high schools. Said superintendent shall possess the qualifications required by law for principals of county high schools and shall be employed by the said joint boards hereinbefore mentioned for not to exceed three years, and shall receive a compensation fixed by such joint boards.

"Section 3. Nothing herein contained shall affect any existing contracts for the employment of high school principals or city superintendents, but wherever in the cases mentioned in Section one of this Act the contract of either a high school principal or a city superintendent shall expire, no new contract shall be entered into with either of such officers, or with any other person, except for such period of time as may be necessary to continue the services of one such officer until the expiration of the term of office of the other."

"Section 5. The salary of the superintendent of city and high schools, and the salaries of the teachers employed to teach jointly in both schools shall be borne by the county high school and the school district in which is located such city schools; the salaries of the superintendent of city and high schools shall be apportioned between the two school systems in proportion to the number of teachers employed in each school system for the proper administration thereof; the salaries of all teachers employed to teach jointly in both schools shall be apportioned between the two school systems in accordance with the number of class-room hours of work expended by said teachers in each school system."

"Section 7. For purposes of voting for the employment of a superintendent of city and high schools, or for the employment of teachers, or for the purpose of determining any administrative policy relating to both schools, the joint boards shall be entitled to the same number of votes. The county hign school board shall select, as its representatives for pur-

poses of voting, the same number of its members as the membership of the board of the school district in which the city school is located; provided, however, that the county superintendent of schools shall not be one of those so selected, and further provided, that said county superintendent of schools shall be permitted to vote only in case of a tie vote continuing after at least three ballots."

Before proceeding to discuss these various sections, I desire to call to your attention the law governing the legislative power over school districts. The Legislature may from time to time, in its discretion, abolish school districts, or enlarge or diminish their boundaries, or increase, modify or abrogate their powers.

Atty. Gen. v. Lowry, 199 U. S. 233, 50 Law Ed. 167;
Pass School Dist. v. Hollywood City School Dist., 105 Pac. 122.

Voorhees, in his recent work on School Law, at Section 100, has the following to say with reference to this matter:

"Essentially and intrinsically, the schools in which are educated and trained the children who are to become the rulers of the Commonwealth are matters of State, and not of local jurisdiction. In such matters the State is a unit and the legislature the source of power. The authority over schools and school affairs is not necessarily a distributive one to be exercised by local instrumentalities, but, on the contrary, it is a central power residing in the legislature of the State. It is for the law-making power to determine whether the authority shall be exercised by a State Board of Education, or distributed to county, township or city organizations throughout the State. With that determination the judiciary can no more rightfully interfere than can the legislature with a decree or judgment pronounced by a judicial tribunal. The decision is as conslusive and inviolable in the one case as in the other, and an interference with the legislative judgment would be a breach of the Constitution which no principle would justify nor any precedent excuse.

"As the power over schools is a legislative one, it is not exhausted by exercise. The legislature, having tried one plan, is not precluded from trying another. It has a choice of methods and may change its plans as often as it deems necessary or expedient, and for mistakes or abuses it is answerable to the people, but not to the courts. It is clear, therefore, that even if it were true that the legislature had uniformly intrusted the management of school affairs to local organizations, it would not authorize the conclusion that it might not change the system. To deny the power to change is to affirm that progress is impossible and that we must move forever 'in the dim footsteps of antiquity.' But the legislative power moves in a constant stream and is not exhausted by its exercises in any number of instances, however great."

The foregoing is sufficient to show that the Legislature had the power to consolidate district and county high schools in places where the enrollment was less than 900. Any conflict between the provisions of Chapter 105 and any other section of the Code must be resolved in favor of Chapter 105, as that is the later Act and would necessarily repeal any former Act in conflict therewith. This is true with regard to the provisions of Section 1271 of the Revised Codes of 1921, as that section, in so far as the employment of a superintendent is concerned, and in so far as the employment of other special instructors mentioned in Section 4 of Chapter 105 is concerned, would be repealed and the provisions of Chapter 105 would control in districts of this kind. The consolidated Board is the only Board that has authority to employ a superintendent, and as the power is divided equally between the two Boards, it would necessarily follow that any member of either Board joining with the members of the other Board would constitute a majority of the whole Board, and that whoever was elected by this Board would be the person selected as superintendent to supervise the operation of both the High School and District School. It would also necessarily follow that the County High School Board would be without power to employ a superintendent in localities of this kind.

While the High School Board has full power to employ other teachers than the superintendent and those mentioned in Section 4 of Chapter 105, including a High School principal, yet these teachers and principal would, when employed, necessarily be subject to the supervision of the superintendent employed by the joint Board.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.