

and where a high school is maintained by the district in only one of the two counties, the district may budget only for the attending students of the other county who are residents of the joint district as well as of the county.

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You have submitted the following facts and have requested the opinion of this office upon the following question:

"In the north end of Madison County we have a school district which is joint with a district in Jefferson County, Montana. The joint district maintains and supports a high school, which high school is located in Whitehall, Jefferson County, Montana. There are pupils residing within the joint district in Madison County who attend school in Whitehall. In addition to the twelve Madison County pupils, residents of the joint district, there are an additional twenty-six pupils from Madison County, not residents of the joint district who attend high school in Whitehall.

"In determining who are eligible pupils under Section 5 of Chapter 178, Laws of 1933 (as amended by Chapter 193, Laws of 1935), can a high school located in a joint district include all pupils attending such high school who reside within any county in which a portion of the joint district lies even though such pupils reside without the joint district and not in the county in which a high school itself is located?"

Section 5 of Chapter 178, Laws of 1933, as amended by Chapter 193, Laws of 1935, provides for the adoption of the preliminary budget by the board of trustees. The appropriations contained in such preliminary budget must not "exceed per eligible pupil enrolled and in regular attendance for forty (40) days or more during the then current school year in which the preliminary budget is adopted," the amount per pupil specified in the detailed schedule set forth in the Act. "Eligible" means "fitted or qualified

Opinion No. 299.

Schools—High Schools—Joint Districts—Budgets.

HELD: Where a joint school district maintaining a high school is made up of territory in two counties,

to be chosen or elected, legally or morally suitable," (Webster's New International Dictionary) "capable of being chosen, qualified for selection or election" (Standard Dictionary), legally qualified (Words and Phrases, 1st, 2nd and 3rd Series; 20 C. J. 401.) An "eligible pupil," within the meaning of the above quoted provision is a pupil who is legally qualified or who has the right under the law of Montana, and without compliance with special conditions imposed by law, to attend the high school for which the preliminary budget is being prepared. Attendance at any accredited high school is free to eligible school pupils residing within the county where the school is located (Section 79 and subdivisions 8 and 9 of Section 83, Chapter 148, Laws of 1931). Attendance at a high school outside of the county may be authorized upon proper application (Section 81); provision must be made in the budget of the county superintendent for funds (Section 8, Chapter 178, Laws of 1933, as amended by Chapter 151, Laws of 1935); and such funds must be distributed to the district maintaining the high school which such pupil attends (Section 11, Chapter 178, Laws of 1933). It is therefore apparent that a pupil who does not reside within the county is not, within the meaning of Section 5, supra, "eligible" or legally qualified to attend a high school maintained within the county. There are certain requirements of the high school laws which must be complied with before such pupil is "authorized" to attend a high school outside the county of his residence.

Under the provisions of the High School Code (Chapter 148, Laws of 1931), it was apparently the intention that pupils be considered "eligible" to attend the high school maintained by a joint district if they were residents of any one of the counties in which a portion of the district was located (Section 94) but two years later the legislature enacted the High School Budget Act and repealed said Section 94 (Section 32, Chapter 178, Laws of 1933.)

Sections 79 and 83 were neither repealed nor amended.

A special situation arises,—and the

legislature has specially treated it,—where a high school is maintained by a joint district which is made up of territory in two or more counties. The High School Budget Act (Chapter 178, Laws of 1933) makes special provisions for budgets of such districts. The joint district budget is specially enumerated as one of the budgets which must be filed after approval, and copies of which must be transmitted to the State Superintendent and to the clerk of the district (Section 20). The officials of the county within which the school building is located are responsible for the performance of duties imposed by the Act (Section 24); and the funds of the districts are transmitted to and held by the county treasurer of such county (Sections 28 and 29).

The joint district may have territory in two or more counties. "In apportioning the proceeds of the special high school tax levy * * * that part of the joint district within such county shall be treated as a school district entirely within such county and the eligible pupils residing in such part of the joint district shall be included in apportioning the proceeds of the special high school tax levy." (Section 27.) Section 25 provides in part:

"As soon as the preliminary high school budget for a joint district is filed with a County Superintendent of Schools such Superintendent shall ascertain and determine the total number of high school pupils residing within such district eligible for ascertaining the maximum amount for which such district may budget for high school purposes, as provided in Section 5 of this Act, and the total number of such pupils residing in each county in which any part of the joint district is situated. The County Superintendent shall then apportion the amount which it is estimated will be received by such joint district from the county high school levy, as shown in Part II of such budget, between such counties in proportion to the number of such high school pupils residing in each county, and shall enter on such preliminary high school budget of the joint district a certificate reciting such facts, which shall be substantially as follows:

"APPORTIONMENT OF JOINT
SCHOOL DISTRICT HIGH
SCHOOL FUND.

"Total number high school pupils residing within the joint district regularly enrolled and attending high schools of the district for not less than forty (40) days during the last completed school year....."

"Total number of such pupils residing within county.

"Total number of such pupils residing within county."

There may be varying opinions regarding the meaning of "the total number of high school pupils residing within such district eligible for ascertaining the maximum amount * * * and the total number of such pupils residing in each county in which any part of the joint district is situated." There can, however, be no question as to the meaning of the quoted portions of the certificate which the county superintendent must attach to the preliminary budget. The legislature has interpreted the language. It is required that subdivision 1 show the total number of pupils "residing within the joint district"; that subdivisions 2 and 3 show the "total number of such pupils residing within" each county ("in each county in which any part of the joint district is situated").

The preliminary high school budget of the joint district under consideration must be filed with the county superintendent of schools of Jefferson County (Sections 6 and 24). This preliminary budget must be considered by the board of budget supervisors of Jefferson County (Sections 12, 13, 14, 18 and 24). The final budget must be transmitted to the board of county commissioners of Jefferson County (Sections 19 and 24). The Board of County Commissioners of Jefferson County must apportion the amount to be raised for high school maintenance purposes in the joint district between Jefferson County and Madison County in proportion to the number of eligible high school pupils residing in Jefferson County and in Madison County as shown by the certificate of the County Superintendent required by Section 25. The amount so apportioned are the amounts which must be raised by special high school tax levy by Jefferson County

and by Madison County respectively (Section 26).

It is the meaning and intent of Sections 24, 25 and 26, when read together, that the County Superintendent in making the apportionment of the amount to be raised by the special high school tax levy in Madison County, shall take into account only the attending high school pupils residing in that portion of the joint district which lies within Madison County.

It is therefore my opinion, as it is your opinion, that where a joint school district maintaining a high school is made up of territory in two counties, and where a high school is maintained by the district in only one of the two counties, the district may budget only for the attending students of the other county who are residents of the joint district as well as of the county.