

Opinion No. 88**County High School, Abolition Of—
Sale of High School Buildings**

HELD: 1. Under the present state of the law, the moneys realized from the sale of the county high school on its abolishment must be allocated to all district high schools including the new one established in the district of the county high school on the basis of the previous year's attendance.

2. Legislation should be submitted to the next legislature which will provide for distribution of the funds realized from the sale of a county high school built in part with funds from the high school district so that there will not be an inequitable distribution. The high school established after the abolishment of the county high school should receive that portion of the funds which were contributed by the high school district under the new statute.

3. A petition may be circulated prior to July 1 and filed after July 1, calling an election to abolish the county high school and the questions should be submitted at the next general election. The sale of the property may be delayed until after appropriate legislation providing for

the distribution of the funds has been considered by the legislative assembly. Such procedure makes the proper distribution of the sale price of the county high school subject to the good will and discretion of the legislature and is a risk that must be considered by those interested in instituting the proceedings.

November 5, 1956

Mr. Harold L. Allen
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Allen:

You have requested my opinion concerning the legal procedure to be followed in abolishing the county high school. You have also requested my opinion as to the disposition of the funds realized from the sale of the present high school buildings. You advise me that a great portion of the present buildings was constructed with funds realized from the high school district. You also state that there was an area in the Gallatin County High School District when a part of the high school buildings were constructed with high school district funds and which is now an independent high school district.

In answering your questions, it is important to consider Section 75-4120 through Section 75-4134, Laws of 1947, which statutes designate the procedure for the abolishment of county high school districts. It is to be observed that these statutes were enacted as Chapter 148, Laws of 1931. The first high school building district law was passed by the legislature in Chapter 47, Extra-ordinary Laws of 1933. This law was held constitutional in the case of Pierson vs. Hendricksen, 98 Mont. 244, 38 Pac. (2d) 991, where the court approved a bond issue for an addition on the county high school. The court said of this expenditure:

"Nor is it of controlling importance that the improvements contemplated are to be made on the county high school building, legal title to which is in the county.

The county, in the management of the county high school, is simply the agency of the state for that purpose. * * * The beneficial title of the school property is in the state."

The above quoted statute recognized the broad powers of the legislature to provide by appropriate statutes the use and disposition of school property as the beneficial title is in the State of Montana. Also, this expression of our Supreme Court recognized that high school district money may be expended on the county high school. However, the opinion did not state whether the new addition became county property or the title remained in the high school district. As the procedure for the abolishment of county high schools was enacted by the legislature prior to the authorization for high school building districts, no provision was made for the distribution of the proceeds of sale of the high school buildings when part of the funds had come from the high school building district. It would be inequitable for high schools outside of the Gallatin County High School District to participate in the proceeds of the sale of the buildings which were constructed from funds created by taxpayers of the high school district. In *State vs. Brandenburg*, 107 Mont. 199, 82 Pac. (2d) 593, it was held that the proceeds of sale of a building constructed with funds realized from a county-wide high school levy and from moneys received from the sale of real property owned by the Gallatin County High School, should be deposited to the credit of the Gallatin County High School and not distributed to all of the districts maintaining high schools in Gallatin County. The court in substance recognized that the funds realized from the sale of property should be distributed to the taxing unit which raised the purchase price of the property. This opinion, however, is not so clear cut or decisive as to overcome the specific provisions of Sections 75-4120 through Section 75-4134, Laws of 1947. The provisions of Section 75-4127, R.C.M., 1947, are specific and not susceptible to interpretation. This statute provides for the dispo-

sition of unexpended funds of county high schools after abolishment, and allocates all such funds, first to the payment of outstanding warrants and bonds and then to all the high schools in the county on the basis of school attendance for the previous year, with the provisions that if a district high school is established in the district where the county high school was situated, then, such district high school will participate in the distribution of the funds. Recognition is not given to high school districts as a source of the funds as this statute was enacted prior to the passage of the high school district law. It is a reasonable conclusion that until there is new legislation on the distribution of the funds, uncertainty and inequities will result if a county high school is abolished which was constructed in a large part from high school district funds.

The method of conducting the election for the abolishment of a county high school is clearly set forth in the statutes. A petition signed by more than twenty per cent of the qualified electors whose names appear on the assessment books of the county for real or personal property may be filed. This petition may be circulated prior to July 1 of an election year but it must not be filed until after July 1. All registered voters are eligible to vote at the election held the same time as the general election.

I realize that the foregoing is not a complete answer to your problem. However, the failure of the legislature to anticipate the situation where much of the county high school was constructed with high school district funds is the cause of the difficulty.

It is therefore my opinion:

1. That under the present state of the law, the moneys realized from the sale of the county high school on its abolishment must be allocated to all district high schools including the new one established in the district of the county high school on the basis of the previous year's attendance.

2. That legislation should be submitted to the next legislature which

will provide for distribution of the funds realized from the sale of a county high school built in part with funds from the high school district so that there will not be an inequitable distribution. The high school established after the abolishment of the county high school should receive that portion of the funds which were contributed by the high school district under the new statute.

3. That a petition may be circulated prior to July 1 and filed after July 1, calling an election to abolish the county high school and the questions should be submitted at the next general election. The sale of the property may be delayed until after appropriate legislation providing for the distribution of the funds has been considered by the legislative assembly. Such procedure makes the proper distribution of the sale price of the county high school subject to the good will and discretion of the legislature and is a risk that must be considered by those interested in instituting the proceedings.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.