

Opinion No. 12**Schools And School Districts—Six-Year High Schools—Junior High Schools—Foundation Program**

- Held:** 1. That the per pupil rate, average number belonging (ANB), computation under the foundation program of junior high school students is to be determined under the high school foundation program schedule, and that part of the total computation resulting from seventh and eighth grade pupils shall be included in and raised in the elementary budget for the district. The total computation for ninth grade pupils shall be included with the amount to be raised in the high school budget.
2. That the establishment of a six year high school in a school district will not alter the status of students of the seventh and eighth grades and under the foundation program such students must be included in the elementary budget and computed at the rate for elementary students as found in Section 75-3612, Revised Codes of Montana, 1947, as amended.

April 15, 1957

Miss Harriet Miller
State Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Miller:

You requested my opinion concerning the amendment to Sec. 75-4101, R.C.M., 1947, by Chapter 250, Laws of 1957, which defines public high schools. You ask in particular what effect the amendment will have on budgets for high schools in the next fiscal year.

Prior to the amendment, Sec. 75-4101, R.C.M., 1947, defined a high school as comprising "some one or more of the grades of school work intermediate between the elementary schools and the institutions of higher learning". The new legislation places high schools in four categories. A junior high school comprises the seventh, eighth, and ninth grades. A senior high school is defined as comprising the work of the tenth, eleventh, and twelfth grades. A six-year high school includes all grades between the seventh and twelfth and a four-year school includes the grades nine through twelve.

Previously there had been no specific definition of a senior high school although by implication such definition would have to be given to a high school which did not include the ninth grade, as a junior high school was defined by Sec. 75-4102, R.C.M., 1947, as set out in the first category found in Chapter 250, Laws of 1957. The innovation in our school system which results from the enactment of Chapter 250, Laws of 1957, is the six-year high school, which combines a junior high school and a senior high school into one unit.

In determining the effect of Chapter 250, Laws of 1957, on high school budgets and in particular the amount to be paid for each pupil under the foundation program the provisions of Section 2 of Chapter 250, Laws of 1957, must be first considered. This portion of Chapter 250 reads as follows:

"It is hereby provided that nothing in this act shall be construed to change or amend the budgeting powers of school district granted under any existing statutes."

There is no need to construe or interpret the above quoted portion of Chapter 250 as the language is clear. In *Smith vs. Iron Mountain Tunnel Company*, 46 Mont. 13, 125 Pac. 649, our Supreme Court quoted with approval the following:

"Statutes should be their own interpreter. Courts must look at the language used, and the whole of it, and derive therefrom the intention of the legislature. Where this intention is obvious, there is no room for construction. When the language is plain, simple, direct, and without ambiguity, the Act construes itself, and courts must presume the legislature intended what it plainly says. It is only in the case of ambiguous, doubtful, and uncertain enactments that the rules and principles of interpretation can be brought into requisition. It is not allowable to interpret what has no need of interpretation."

As the intention of the Legislature was not to grant any new or different budgeting powers or to alter the financing of both elementary schools and high schools under the foundation program an examination of our laws pertaining to budgets reveals that the only change really caused by Chapter 250, Laws of 1957, is in administration of the newly designated high schools.

Under the definitions found in Sec. 75-3611, R.C.M., 1947, it is provided:

"Pupils of a junior high school which has been duly approved and accredited as such by the state board of education are to be deemed secondary school pupils for the purpose of computing average number belonging of the district in which the junior high school is situated."

This provision permits the inclusion of all students in the junior high school to be classified at the per capita rate for high school students under Sec. 75-3612, R.C.M., 1947, as amended. The fact that such rate is applied to all students in the junior high school does not in any way change the budgets of a school district, other than the rate, as all students below the ninth grade are included in the elementary budget and those above the eighth grade in the high school budget. If it were concluded that all students in a six-year high school, as defined in Chapter 250, Laws of 1957, were to be included in the high school budget, then there would be a change in the

budgeting powers of the school district as a result of this new legislation which would be contrary to the intent of Sec. 2, Chapter 250, Laws of 1957, which was quoted above.

It is therefore my opinion: (1) That the per pupil rate, average number belonging (ANB), computation under the foundation program of junior high school students is to be determined under the high school foundation program schedule, and that part of the total computation resulting from seventh and eighth grade pupils shall be included in and raised in the elementary budget for the district. The total computation for ninth grade pupils shall be included with the amount to be raised in the high school budget.

(2) That the establishment of a six-year high school in a school district will not alter the status of students of the seventh and eighth grades and under the foundation program such students must be included in the elementary budget and computed at the rate for elementary students as found in Sec. 75-3612, R.C.M., 1947, as amended.

Very truly yours,
FORREST H. ANDERSON
Attorney General