

County Free High School, Abolishment Of. Trustees of  
Free County High School, Duties Of.

A county free high school regularly established in a county cannot be discontinued or abolished by the action of the Board of Trustees in failing or neglecting to certify to the Board of County Commissioners an estimate of the amount of taxes necessary to run such school; nor is there any provision whereby the question of the abolishment of such high school can be submitted to the electors of the county.

It is a mandatory duty of the trustees to certify such estimate of taxation to the County Commissioners, and they may be liable for failure so to do for damages, or could be mandamused and would be guilty of a misdemeanor for wilful omission to perform their duty.

Helena, Montana, March 23, 1907.

Mr. Frank P. Whicher,  
County Attorney,  
Red Lodge, Montana.

Dear Sir:—

Your letter of the 12th inst. received, in which you request an opinion upon the following questions:

“Can a county high school established by a vote of the people in 1905, in Red Lodge, be discontinued and abandoned by the Board neglecting to certify to the County Commissioners the tax for its maintenance, and thus allow the project to fall into desuetude; or can it be discontinued even by submitting the question to a vote of the people?”

“Would the Board of Trustees of such high school be liable on their official bonds for their neglect to certify such tax to the County Commissioners?”

The school in question was established under and by virtue of House Bill No. 69, Laws 1899, as amended by Senate Bill No 37 Laws of 1901. Such schools so established are expressly recognized, and all acts, matters and things done in establishing them are expressly validated by Chap. 29, Laws of 1907, which expressly repeals all former acts on the subject.

By Section 8 of said Chap. 29 Laws of 1907, it is provided:

“Such trustees shall make an estimate of the amount of funds for building purposes, for payment of teachers' wages, and for payment of contingent expenses; and they shall present to the Board of County Commissioners a certified estimate of the rate of tax required to raise the amount desired for such purposes, and the Board of County Commissioners must levy such taxes as other county taxes are levied. But in no case shall the tax levied for such purpose exceed in one year the amount of ten mills on the dollar.” etc.

From the above quotation you will observe that it is mandatory upon the trustees of a high school to make an estimate of the amount of funds needed, and also to certify same to the Board of County Commissioners. It is clearly an official duty imposed upon them by law, which they have no right or authority whatsoever to disregard or neglect to perform.

A county free high school, as stated by you, has been regularly established by a majority vote of the electors of your county, and the trustees of such county cannot, without such question having been again submitted to the electors, determine that a majority of the electors do not still wish said high school to be maintained. The fact that in their opinion a majority of the electors so wish, is not sufficient to justify them in failing and neglecting to perform the plain and mandatory duties of their office.

There is no provision in the high school law or any other law in this State, whereby the question of abolishing a free county high school that has been regularly established can be submitted to the electors of the county. When a county free high school has been once regularly established, in the absence of statutory provisions providing a way for the discontinuance or abolishment of such high school, there is nothing left for the trustees to do but to carry out the provisions of the law enacted for the maintenance and continuance of such school.

Sec. 1057 of the Pol. Code, as amended by the Laws of 1889, page 79, provides that

"The condition of every official bond must be that the principal shall well, truly and faithfully perform all official duties then required of him by law; and also such additional duties as may be imposed on him by any law of the State subsequently enacted."

In our opinion the trustees would be liable on their official bonds for any damage that any taxpayer might be able to show that he had sustained by reason of their failure to faithfully perform their official duties by certifying an estimate of the rate of taxes required to raise the amount necessary to run and maintain such school. A Writ of Mandate might issue upon the application of any party beneficially interested to compel said Board to perform its duty in making said estimate and certifying the same to the Board of County Commissioners.

Section 299 of the Penal Code provides that

"Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment or any neglect of duty, where no special provision has been made for the punishment of such delinquency, is punishable as a misdemeanor."

Under this Section it is perfectly clear that the trustees of such high school would be guilty of a misdemeanor for wilfully omitting to make said estimate of the amount of funds needed for running such school, and certifying the same to the Board of County Commissioners.

Very truly yours,

ALBERT J. GALEN,  
Attorney General.