

**Night School, Authority For. School Board, Whether Right to Maintain Night School. Common School, at Night. District, Right to Maintain Night School.**

A school board has no authority to institute and maintain from the school fund a free public night common school.

October 30, 1911.

Hon. W. E. Harmon,  
Superintendent of Public Instruction,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 26th Inst., requesting my opinion upon the following questions:

“First: Has a board of education authority to institute a night school for students under twenty-one years of age?

Second: If they have such authority, from what fund can such night school be maintained?

Third: Have adults a right to attend such night school free of charge?

Fourth: Is there any restriction as to the subjects which may be taught at such night school?

I take it from the questions above submitted that you have reference to the right of the state board of education to install a free public night common school. A common school is defined by Sec. 911 of the Revised Codes to be one that is maintained at the public expense in each school district and is under the supervision of a board of trustees and is open to the admission of all children between the ages of six and twenty-one years residing in the district. The course of study is then prescribed by Sec. 912 of the Revised Codes, and Sec. 913 provides that a school day shall be six hours in length, exclusive of any intermission at noon.

The school funds are provided in the manner prescribed by Secs. 993-45 of the Revised Codes; and Sec. 997 provides that such school funds shall be used for no other purpose than as authorized and provided in the title having reference to the conduct of public schools.

There is no direct provision in the codes prohibiting the opening and conducting by the district or county of a free public night school, but the provisions of the statutes with reference to conducting com-

mon schools all have reference to the regular day school, and the funds of the district are provided for this purpose.

The assessment for school purposes contemplates the necessary cost of maintaining a day school, as provided by the statute, and it is my opinion that these funds could not be used for maintaining a free public night school.

You are therefore advised that in my opinion your board has no authority to institute, or cause to be conducted, a free public night common school.

Very truly yours,

ALBERT J. GALEN,

Attorney General.