

**State Board of Education, Powers of. Powers, of State Board of Education to Prescribe Rules for Promotion. County High Schools, Trustees of. Trustees, of County High Schools, Powers of to Prescribe Rules and Regulations.**

Promotions from the elementary grades to high school grades in district schools are subject to the rules of the state board of education. Boards of trustees of county high schools have exclusive jurisdiction over the entrance requirements of county high schools. Trustees of county high schools may require additional attainments to those required by the state board of education for promotion from the elementary grades to the high school. Boards of trustees of county high schools are not compelled to accept certificates issued in accordance with Sec. 106, Subdiv. 4 of Chap. 76, Session Laws of the Thirteenth Legislative Assembly.

March 30th, 1914.

Hon. H. A. Davee,  
Superintendent Public Instruction,  
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date of the 11th instant, submitting for my consideration the powers of boards of trustees of county high schools in the matter of establishing rules and regulations for the admission of pupils to the institutions under their control. The first question put by you is as follows:

"1. Does Sec. 106 imply that when the state board of education establishes standards of promotion, and provides for the holding of examinations and for determining that certain persons conform to these standards, high school boards and principals are obliged to admit such persons to the high schools, or are the high school boards empowered by Sec. 2104 to require additional attainments and to determine by themselves whether pupils have these attainments before admitting them to their high schools?"

The second question is as follows:

"2. Are high school boards compelled to accept certificates issued in accordance with Sec. 106-4 as conclusive evidence that the holders have satisfactorily completed the work of the elementary grades, or can the board themselves, or their principals, inquire further into this matter?"

Under Chap. 76, Session Laws of the Thirteenth Legislative Assembly, two sorts of high schools are provided for: (1) District high schools, that is high schools maintained by school districts and under the control of the trustees of such districts; and (2) county high schools, maintained by the county at large and under the jurisdiction of the board of county high school trustees, appointed by the

county commissioners of the several counties. The first class of high schools are part and parcel of the district school system. The second class are creatures of the county. Thus it is seen that the two classes of high schools in this state spring from two different sources and distinct political divisions of the state. Their revenues are derived in a different manner. Not alone in these particulars, but in others, the legislature has differentiated between county high schools and district schools.

Sec. 106 of Chap. 76, Laws of the Thirteenth Legislative Assembly, provides that the state board of education shall prescribe standards of promotion to the high school department of all public schools. Examining this act further, we find that Sec. 600 thereof defines a public school as follows:

"A public school is hereby defined to be one that is maintained at the public expense in each school district, and under the supervision of the board of trustees, and shall comprise the elementary grades and may comprise in addition at option of the board the kindergarten and high school grades."

Under this definition a public school is a district school and by the express terms of the law (Sec. 106) the board of education may make rules for promotion thereof. Sec. 2104 7 f is as follows:

"To admit pupils without tuition under such rules and regulations as they may deem proper in regard to age and grade of attainments essential to entitle pupils to admission to such school. Provided, that no person shall be admitted to such high school who shall not have satisfactorily completed the work of the elementary grades. All eligible pupils in the county are entitled to attend the county high school, and it shall be the duty of the board to provide accommodations for such pupils."

This portion of the act expressly provides that the board of trustees of county high schools may make requirements for admission to the institutions under their jurisdiction. It makes the boards of county high school trustees supreme in the matter of admission.

These provisions of the law clearly show that the legislature intended that the county high schools should be under the jurisdiction of the boards of trustees, and the fact that the legislature has expressly placed these matters within the jurisdiction of the boards of trustees, excludes the idea that they are to be governed by the rules of the state board of education in the matter of admission. The conclusions following from this state of the law, are as follows:

- (1). Promotions from the elementary grades to the high school grades in district schools doing high school work, are governed by the rules and requirements laid down by the state board of education;
- (2) The boards of trustees of the various county high schools have exclusive jurisdiction over the entrance requirements of the institutions which they govern;
- (3) They are not obliged to admit students who have fulfilled the requirements of the state board of education for promotion in district schools, though the requirements fixed by the

board of trustees must be equal to the requirements of the Board of Education for promotion from the elementary grades to the high school department of district schools; and they may prescribe additional requirements if they see fit; (4) The boards of trustees of county high schools are not compelled under the law to accept certificates issued in accordance with Sec. 106, Sub. Div. 4 of Chap. 76, Session Laws of the Thirteenth Legislative Assembly, but may determine according to their own standards whether or not pupils from elementary schools shall be admitted to high schools under their jurisdiction.

Yours very truly,

D. M. KELLY,  
Attorney General.