

**County Free High School, Discontinuance of. School,
County Free High Discontinuance of. County Commis-
sioners, Power to Discontinue High School.**

The statute does not express any direct authority for the holding of election to discontinue a county free high school once established. If such power exists, it is by implication.

February 14, 1916.

Hon. John J. Greene,
County Attorney,
Chouteau, Montana.

Dear Sir:

I am in receipt of your letter relating to the authority of a county having once established a county free high school to discontinue the same. The opinion given by you is undoubtedly the logical conclusion to be drawn from the present state of our law. It is fundamental that where a power is conferred upon a Board to do a certain thing, all incidental powers necessary to the accomplishment of that purpose are included. Here, however, the power given is to the establishment of a county free high school, and legally a power to establish a thing does not include an incidental power the authority to destroy the thing which has been established by authority of law. With reference to school matters the policy of the law seems to be progression rather than retrogression, and still it would seem that where a county, after trial, finds that a high school is not of any practical benefit, but rather a bill of expense without satisfactory results, it should be vested with the power to discontinue the same. But this power is not given by statute and we would look in vain in the legislative acts for such authority. The cases cited by you have a direct bearing upon the general powers and limitation of powers of county boards. In *Reid v. Lincoln County*, 46 Montana, 31, at page 57 the court seems to rather enlarge upon the power of the electors of the county, but the question there involved was with reference to the making of improvements in the county, and not to the right to discontinue schools once established. A county election involves some expense, and in view of the uncertain and unsettled condition of the law, and in view of the further fact that an opinion from this department has no controlling effect whatsoever upon any court, we can do nothing more than to call attention to this unsettled condition, and to say further that if the matter is deferred that it is possible that legislative action may be obtained, but that if the people of the county desire to hold the election, and it finds its way into the courts, this department will endeavor to sustain the validity of the election. But from the strict legal standpoint and logic of the law, your conclusion is correct.

Yours very truly,
J. B. POINDEXTER,
Attorney General.