

### Night Schools—Pupils Entitled to Attend.

Trustees may provide for night schools, but gratuitous instructions from public school fund confined to persons between 6 and 21 years of age.

October 20th, 1917.

Mr. Joseph R. Jackson,  
County Attorney,  
Butte, Montana.

Dear Sir:

I have your letter of October 10th, enclosing a copy of your opinion to the board of school trustees of school district No. 1 of Silver Bow County, in relation to the power of such board to establish a night school. Section 507 (4) of the school law, Chapter 76 of the 1913 Session Laws, authorizes the board of trustees to establish night schools, such schools to be free to all eligible schools of the district and the expense of maintainences shall be paid out of the general funds of the district.

Article XI, Section 1, of the Constitution makes it the duty of the legislative assembly to establish and maintain a general, uniform, and thorough system of public, free, common schools. By Section 5 the interest on all invested school funds and all rents accruing from the leasing of school lands is apportioned to the several school districts of the state in proportion to the number of children and youths between the ages of 6 and 21 years. By Section 6 it is made the duty of the legislative assembly to provide by taxation sufficient means, in connection with the amount received from the general school fund, to maintain a school in each district. Section 7 of this same article is as follows: "The public free schools of the state shall be open to all children and youth between the ages of 6 and 21 years."

By Section 202 (12) it is made the duty of the Superintendent of Public Instruction to apportion the state school funds among the several counties of the state in proportion to the number of children of *school age*. By Section 512 (3) it is made the duty of the district clerk to make an exact census of all children between the age of 6 and 21 years residing in the district. The legislative assembly in accordance with provisions of Article XI, Section 6 of the Constitution above mentioned, has provided for a common school levy of four mills upon all of the property within the county, Section 2001, and by Section 2003

the County Superintendent apportions these funds to the several districts in proportion to the number of school census children between 6 and 21 years of age; but, Section 2004 provides that county school moneys may be used for the various purposes as authorized and provided in the act, and *for no other purposes*.

Although by Article XI, Section 7, of the Constitution the power of the legislature is not limited to providing school facilities for only children between 6 and 21 years of age, (In Re Newark School Board, (N. J.) 70 Atl. 881) yet under our statutes children of legal school age are those between 6 and 21 (See Needham vs. Wellesley, 139 Mass. at 374), and there is no provision authorizing the expenditure of school moneys for furnishing school facilities to those outside of such age limits, and I am therefore of the opinion, that gratuitous instruction from the public school funds of this state is prohibited for persons not between the ages of 6 and 21. See Section 2004 Supra, Draper vs. Cambridge, 20 Ind. 268, and Roach vs. Board 7 Mo. 484.

I am of the same opinion as yourself, that while the trustees may conduct special sessions of the public schools outside of the regular school hours, persons attending the said special session must be between the ages of 6 and 21 years.

I am returning herewith the correspondence which you submitted.

Respectfully,

S. C. FORD,

Attorney General