

High Schools—Apportionment—Interest and Income— School Fund.

A county high school is not entitled to an apportionment of the interest and income from the permanent school fund.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have submitted to this office for my opinion the question of whether county high schools are entitled to share in the distribution of the interest and incomes from the permanent school funds.

Section 5 of Article XI of the Constitution provides, in part, as follows:

“Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school **districts** of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein respectively, but no **district** shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made.” * * *

Section 6 of Article XI provides as follows:

“It shall be the duty of the Legislative Assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized **district** in the state, for at least three months in each year.”

Section 10 of the Enabling Act grants to the state sections 16 and 36 in each township for the support of common schools, while Section 11 of the Enabling Act provides that the lands herein granted for educational purposes shall be disposed of, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools.

While a county high school is no doubt a common school within the meaning of the Enabling Act, yet the Constitution distinctly specifies that these funds shall be distributed to school districts, and, as the county high school is not a school district, it is my opinion that it is not entitled to share in the distribution of these funds under the provisions of Section 5 of Article IX of our Constitution.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.