

Opinion No. 60**Schools—High Schools—Post Graduate
Courses—School Census.**

HELD: The taking of the school census has little or no bearing upon the question of the right of the pupils who have completed regular high school courses to attend the high school in subsequent years until they reach the age of 21 years. The high school board may adopt rules excluding post-graduates where the reason is that there is not sufficient room or instructors to take care of those who are entering and taking regular courses prescribed for the regular course of study in any year.

February 4, 1933.

This office has been requested for an opinion as to whether the high school board has power to exclude post-graduates from school courses.

This office recently answered this same question, which was asked by Mr. Scott Fries, Principal of the Butte High School, as follows:

"I have your letter relative to the provisions of the Constitution requiring admission of all youths and children to the public free schools between the ages of six and twenty-one years. (Sec. 7, Art. XI of the Constitution). I do not believe that this provision of the Constitution was intended to permit high school students who have finished the regular high school course to return to take post-graduate work, particularly where by doing so they would displace others who are taking

the regular high school work. The purpose of the Constitutional provision was something entirely different."

The question is asked whether the taking of the school census every year by the clerk of the district of all children and youths between the ages of six and twenty-one years residing in the district does not authorize all such to attend the high school. The taking of the school census has little or no bearing upon the question of the right of the pupils, who have completed regular high school courses, to attend the high school in subsequent years until they reach the age of twenty-one years.

The primary purpose of the taking of the school census was to determine the number of pupils in each district entitled to attend school in order that certain school funds could be distributed to the various school districts of the state on the basis of the school needs. All pupils residing in the district within the ages prescribed are included in the school census, without regard to the fact of whether they attend the public school or attend a private school in the district. The omission of any pupil's name from the census would not, of course, exclude the child from attending the school of the district in which he was a resident.

Moneys distributed on the census basis do not go to the support of the high school. (Sec. 92, Chap. 148, Laws of 1931.) The high school is supported solely from the general county-wide levy for high school purposes, and for this reason the taking of the census and the distribution of certain school funds on the census basis could not in any way have any bearing upon the right of any census child to attend high school.

A high school is defined as an integral unit of the public school system which comprises some one or more of the grades of school work intermedial between the elementary schools and the institutions of high education. (Sec. 1, Chap. 148, Laws of 1931).

School boards have power to make rules and regulations for the administration of the schools and the conduct of the affairs of the district when not in conflict with or contravening any statutory or constitutional provisions.

We must construe Sec. 7 of Article XI of the Constitution requiring admission of all youths and children between the ages of six and twenty-one to the public free schools in the light of the intention of the framers of the Constitution. The purpose of this provision was to prohibit any discrimination in the matter of attendance at the public schools. It was not intended as a mandate to compel the opening of the schools, either grade or high, to those who have completed the prescribed course.

A school board, within certain limitations, is authorized to prescribe such courses of study as will adequately and properly fit the graduates of the high school for admission to any of the state institutions of higher education; it could limit the work to such courses as actually required to complete a grade or grades for advancement to the higher institutions of learning, thus leaving no subjects not covered by a student completing the course.

It is therefore my opinion that the school board may adopt rules excluding pupils who have finished the regular course of study at the high school from further attendance on the high school where the reason for doing so is that there is not sufficient room or instructors to take care of those who are entering and taking the regular courses prescribed for the regular course of study in any year.