

Revised Codes Montana, 1935, and related sections.

July 19, 1937.

Mr. John J. Cavan
County Attorney
Jordan, Montana

My Dear Mr. Cavan:

You have submitted the following statement of facts and inquiry:

"Garfield County has two high school districts, the Garfield County high school district, and the Cohagen high school district. A petition was recently filed with the board of county commissioners asking that the Cohagen high school be consolidated with the Garfield County high school." The inquiry is, "if a consolidation is ordered and the same is approved by the State Superintendent of Public Instruction, would the property of the Cohagen High School District belong to the Garfield County district and would the latter have to assume the bonds of the Cohagen District, or would the consolidation be merely the closing of the high school in Cohagen and sending the pupils to the one at Jordan, where the county high school is situated?"

We believe the reasoning of the case of *Box et al. v. Duncan et al.*, 98 Mont. 216, is determinative and conclusive upon the inquiry and matter involved. In that case, of course, the decree of the court was determined and based upon the fact that the county commissioners had made an order creating a district between March 1 and July 1—the creation of a district being prohibited during said time. However, the reasoning of the decision was that a new district was created. The court said on page 233: "* * * In effect, the order did create a new school district, in so far as high school activities are concerned. The practical result of the order is that the elementary school at Pony is retained under the jurisdiction of the Pony school board. The elementary school at Harrison is likewise continued under the jurisdiction of the Harrison school board. A new high school district was in effect created to take in both the Pony and Harrison school districts." In other words, the court held that the order of the board of county commissioners did actually create a new district, and we desire to point out to you that the court was dissatisfied with such a conclusion. The

Opinion No. 121.

**Schools—School Districts.
Consolidation of.**

HELD: The only method provided by law for consolidation of school districts is that authorized by Section 1034,

court said, on page 223: “* * * It is not likely that any such situation was ever contemplated by the lawmakers * * *.” Chief Justice Calloway, writing a concurring opinion, felt that it was not the intention of the legislature in the enactment of Section 1262.85 to consolidate high schools. (See page 226 of opinion).

Under the majority rule laid down in the Box case it is our opinion that an order made by your board of county commissioners has the effect of consolidating not only the schools referred to, but the districts as well. In other words, any order made by your board of county commissioners would be not only a consolidation of the schools, but a consolidation of the districts as well, and we believe that such would be the court's decision. Such being a fact, it is our opinion that even though you avoided the time element, and the commissioners made the order creating the district after July 1, the court would not uphold your board in any order it made, because such an order of the board would in effect be a creation of a district. We believe that if the validity of the Act were directed to the court's attention it would declare the Act invalid, and that the board of county commissioners could not consolidate the district. Pursuant to the language of Chief Justice Calloway, it would appear that the proper procedure to consolidate a district is under Section 1034. Section 1262.85, in itself, is not sufficient, and any directions in reference to the consolidation of districts are provided in Section 1034. We believe that under the due process clause of our constitution and the language of the majority decision, the court would declare the order of your board void, as being without jurisdiction.

Our conclusion is that any order of the board, made under Section 1262.85, could only be an order to consolidate the districts, and such order would be a nullity. The only method of procedure to consolidate these districts is pointed out in the Box case under Section 1034 and other related statutes.