

October 26, 1937.

Mr. J. W. Lynch  
County Attorney  
Fort Benton, Montana

My Dear Mr. Lynch:

You have submitted to this office the question as to whether or not high school districts can be organized under the provisions of Chapter 16, Laws of the Twenty-fifth Legislative Assembly, where there is no county high school within the county, for the purpose of raising funds under the provisions of Chapter 115, Laws of the Twenty-fifth Legislative Assembly.

Section 1301.1 provides that:

“High School trustees may undertake public works program—petition not necessary. In counties having a county high school the board of trustees of the county high school and the boards of trustees of any school districts maintaining high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement, repair of buildings and equipment for the same for the use of any or all high schools in such high school district. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor.”

Section 1301.2 provides that:

“Commission may divide county into high school districts—creation of commission. In all counties having county high schools, in which there are maintained two (2) or more high schools, a commission consisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county, divide the county into high school districts for the purpose of this act, provided that the boundaries established by said commission shall be subject to the approval of the superintendent of public instruction.

**Opinion No. 184.**

**Schools and School Districts—Public Works.**

HELD: School Districts maintaining one or more high schools may organize under the provisions of Chapter 16, Laws 1937, to undertake public works, whether or not there is maintained in the county a county high school.

In creating such districts the commission shall give first consideration to the factor of convenience of the patrons of the several schools. Common school districts may be grouped for the purpose of this act and when practicable high school districts shall be made up of contiguous and adjacent common school districts, but the commission must take into consideration the existence or non-existence of obstacles to travel, such as mountains and rivers and existence or non-existence of highways and distance to high school. No common school districts shall be divided for the purposes of this act but must be made a part of a high school district in its entirety."

Said sections have been amended by Chapter 16, supra; and Section 1 of said chapter provides that: "in any county having a high school the board of trustees of the county high school, **if there be one**, and the boards of trustees of any school districts maintaining high school, are hereby designated as the boards of trustees of the respective high school districts established under this act."

Section 2 of said chapter provides that "in all counties having a high school, or high schools, a commission consisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county divide the county, into high school districts for the purpose of this act, provided that the boundaries established by said commission would be subject to the approval of the superintendent of public instruction."

Section 1 of Chapter 16 by the use of the words "if there be one," denotes and contemplates that there may be no county high school in the county; and in the event that there is no county high school in the county, the boards of trustees of any school districts maintaining high schools are authorized to undertake a program of public works, etc. It may be urged that the law, prior to the amendment, required as a condition precedent to the creation of such school districts, the existence of a county high school; but we do not feel that it is necessary or material for us to render any conclusion as to whether or not Chapter 47, supra, required the existence of a county high

school before such a district could be created. Chapter 16 entirely omits the language found in Chapter 47 relating to a county high school, and makes no requirement that a county high school exist as a condition to the creation of high school districts.