

No. 325

SCHOOLS—MARRIED PERSONS—DIVORCED PERSONS—ATTENDANCE AT PUBLIC SCHOOLS—TRUSTEES, board of—ELIGIBILITY—PUPILS

Held: Board of Trustees cannot prohibit married or divorced persons between the age of six and twenty-one years from attending our free public schools system, which includes high schools, so long as such a person conforms with the reasonable rules and regulations of the board of school trustees, which must be without discrimination.

December 24, 1941.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You have submitted the following question:

“‘A’ is a female child residing within Glacier County and School District Number 15. She finished her junior year of high school in the spring of this year. During the time when she was attending school in her junior year she was married and in September of this year a child was born to her. The husband has now been called to the army and the girl now wishes to re-enter school to make up her Senior year of school work and the trustees wish to know whether or not they can refuse her admission to school on any ground but in particular on the ground that the student seeking admission is married.”

I am assuming the person to whom you refer is between the ages of six and twenty-one years.

The Enabling Act, approved February 22, 1889, in Section 4, provides:

“Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.”

25 State. at Large 676;

Volume 1, p. 59, Revised Codes of Montana, 1935.

I find Section 1, Article XI, Montana Constitution provides:

“It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.”

And in Section 7, Article XI, Montana Constitution, it is provided:

“The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.” (Emphasis mine.)

By Section 1262.1, Revised Codes of Montana, 1935, a high school is defined as a public school as defined in the general school laws and is an integral unit of the public school system.

The term “common school” or “common school system” or the “system of public, free, common schools,” as used in our constitution, include our public high schools.

Our Supreme Court has held:

“ . . . a high school education is a necessary intermediate step between the ordinary grade school and the university courses provided

for, and the term 'common' as applied to our schools, 'bears the broadest and most comprehensive signification, it being equivalent to public, universal, open to all.' It is used in contradistinction to private and denominational schools, colleges and the like, but has no reference to the grade of school or what may be taught therein, nor the method or rule or government thereof."

State ex rel. Henderson v. Dawson County, 87 Mont. 122, 132, 133, 286 Pac. 125;

Roach v. Board of Directors, 7 Mo. App. 567;

Board of Education v. Board of Commissioners, 127 Okl. 132, 260 Pac. 22;

Also see Official Opinion of Attorney General No. 33, Volume 19; and Official Opinion of Attorney General, No. 202, Volume 18.

"The enjoyment of these privileges are enforceable rights vouchsafed to all who have a legal right to attend the public schools. . . .

"The advantage or benefit thereby vouchsafed to each child, of attending a public school is, therefore, one derived and secured to it under the highest sanction of positive law.

"The constitutional guaranties involved in this case are imparative and must be given effect."

Piper et al v. Big Pine School District, 193 Cal. 664, 226 Pac. 926, 927, 930;

Mysinger v. Crookshank, 82 Cal. 588, 23 Pac. 54.

Boards of school trustees may adopt all reasonable rules and regulations in the operation of the schools under their jurisdiction, as **authorized by law**, or that are necessarily implied from such law, but such rules and regulations must not contravene the state constitution or the statutes.

It is therefore my opinion the girl about whom you inquire is eligible and has the same right to attend the high school as any other high school pupil and under the same rules and regulations. I would add it appears very commendable this girl desires to complete her high school course. The very essence of our constitution and state laws dealing with our public schools seeks this result. Every public high school in the state is open and free to any and all children and youth between the ages of six and twenty-one years, residing in the county where such high school is situated. The constitutional and statutory qualifications enumerated relate to age and not to marital status of the person. It necessarily follows married or divorced persons may attend the free public schools of this state without discrimination if they are between the ages of six and twenty-one years and a board of trustees may not refuse such persons admission to attend such schools.

Sincerely yours,

JOHN W. BONNER
Attorney General