

No. 33

**SCHOOLS—HIGH SCHOOL TRUSTEES—BUDGETS, In-  
clusion of Students Under Twenty-one Who Have Graduated  
from High School in—POST GRADUATE HIGH SCHOOL  
STUDENTS**

**Held:** Board of High School Trustees may make reasonable rules and regulations not inconsistent with the Constitution and statutes. Said Board may not exclude youths under twenty-one years of age, on ground they have completed a prescribed four-year course, may not charge tuition of such a youth if he resides in the county where high school is located, and may not include such a student for budget purposes.

February 21, 1941.

Mr. R. F. Hibbs  
County Attorney  
Yellowstone County  
Billings, Montana

Dear Mr. Hibbs:

You have inquired:

(1) Whether students who are under the age of twenty-one years and who have graduated from a four-year accredited high school must be permitted to attend public high school as post graduates; and

(2) Whether the trustees of the school district may charge tuition of such students or include such students within their budgets.

In answering your inquiry, we call your attention to Section 7 of Article XI of the Constitution of Montana, which is as follows:

"The public free schools of the State shall be open to all children and youth between the ages of six and twenty-one years."

By Section 1268.1, Revised Codes of Montana, 1935, it is declared a high school is a public school as defined in the general school laws.

The term "common" school, as used in the Constitution, includes high school, as set forth by our Supreme Court in the following language:

"However, 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 of rule or government thereof." (Emphasis mine.)

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

In considering the question as to the authority of the Board of Trustees of a high school to charge tuition, we turn to Section 1262.79, Revised Codes of Montana, 1935, which is as follows:

"1262.79. **High school attendance—what pupils entitled to attend.** Attendance at any accredited high school shall be free to all eligible high school pupils residing in the county wherein such accredited high school is located except for such fees as the Board of Trustees are otherwise specially authorized by law to exact."

The including students who are under twenty-one years and who have graduated from a four-year accredited high school for budget purposes is expressly precluded by Section 1263.5, Revised Codes of Montana, 1935, as amended by Chapter 166 of the Laws of 1939, the pertinent part thereof being as follows:

"For the purpose of ascertaining and determining the number of pupils enrolled and in regular attendance for forty (40) days or more, for all the purposes of this Act, there shall be excluded all pupils over the age of twenty-one (21) years, all pupils who have been graduated from a four (4) year accredited high school, and all pupils enrolled in the school who are not resident of the county in which the high school is located."

Boards of School Trustees may adopt all reasonable rules and regulations in the operation of the school under their jurisdiction, as authorized by law, or which would be necessarily implied from such law.

It is therefore my opinion that, under the above mentioned Constitutional provision and the statutes cited, boards of high school trustees may not exclude any youth under twenty-one years of age on the ground that such youth has completed or graduated from a four-year accredited high school; and further such high school board of trustees may not collect any tuition from such youth residing in the county where said high school is located, and such trustees may not include such student for budget purposes.

Sincerely yours,

JOHN W. BONNER  
Attorney General