

Held: 1. The board of trustees of a county high school has not the authority or power to establish a branch of the high school in another town in the county, other than the town selected at the election creating the county high school.
 2. Sections 1301.1 to 1301.6, Revised Codes of Montana, 1935, inclusive, as amended, were enacted as an emergency measure in aid of a work relief program and are limited to such a situation.

January 9, 1945.

Mr. E. W. Popham
 County Attorney
 Dawson County
 Glendive, Montana

Dear Mr. Popham:

You have requested my opinion concerning the following:

A district high school building was destroyed by wind and hail. It has been proposed to consolidate the district high school with the county high school and to locate a branch of the county high school at the location of the former district high school.

County high schools were created under the provisions of Chapter 76, Laws of 1913. That chapter appeared in the Revised Codes of 1921 as Sections 1263, 1264 and 1265. It is to be noted that, under these sections, an election was held for the establishment and location of county high schools. Chapter 148, Laws of 1931, repealed the above sections, but Chapter 148 validated the establishment and location of county high schools which had already been created. It would thus appear the county high school in question, by a vote of the public, has a fixed location and there is no provision in the law for its removal to another town or the establishment of a branch of the county high school.

It should also be kept in mind the board of trustees of a county high school is limited in its authority, which limitation was stated in the case of *McNair v. School District No. 1*, 87 Mont. 423, 288 Pac. 188, in the following language:

Opinion No. 6.

Schools and School Districts—High Schools—County High Schools—Consolidation of Schools—Board of Trustees—District High Schools—Buildings, High School.

"A school district is a political subdivision of the state, created for the convenient dispatch of public business. . . . The Board of Trustees, therefore, constitutes the Board of Directors and Managing Officers of the corporation, and may exercise only those powers expressly conferred upon them by statute, and such as are necessarily implied in the exercise of those expressly conferred. The statute granting power must be regarded both as a grant and a limitation upon the powers of the Board."

The same principle is stated in 47 Am. Jur. 324, in the following manner:

"It has been generally stated that it is the duty of school officers to administer the affairs of the corporation as directed by statute in the exercise of such powers and authority as are vested in them. As in the case of school districts, such officers have no powers other than those conferred by legislative act, either expressly or by necessary implication, and doubtful claims of power are resolved against them."

From the foregoing it must necessarily be concluded there is no express authority for the creation of a branch of the county high school in another town in the county. I reach this conclusion because of the history referred to above and the fact the board of trustees of a school district or of a county high school must be able to point to express statutes which authorize its actions or which impliedly grant the power which it wishes to exercise.

In your letter you suggested it might be possible, under the provisions of Sections 1301.1 to 1301.6, Revised Codes of Montana, 1935, inclusive, as amended, to divide the county into two high school districts, which would result in an enlargement of the district maintaining the high school which was destroyed. The above sections were first enacted as Chapter 47, Extraordinary Laws of 1933, and were considered in *Pierson v. Hendricksen*, 98 Mont. 244, 38 Pac. (2d) 991, which case recognized the authority of the legislature to pass the act and observed that it was passed as an emergency measure in aid of a work relief program. Because of the limited purpose of the act and the fact that the creation of the new district would not be done for the purpose of

receiving federal aid, a division of the county into two high school districts cannot be made under the provisions of Chapter 47.

In view of the fact the legislature is now in session, it might be well to seek legislative relief because of your unusual situation, as the burden of the bonds for the erection of a new high school building must fall on the district where the building will be erected. Of course the district high school may be consolidated with the county high school under the provisions of Section 1262.85, Revised Codes of Montana, 1935, but the county high school will have to continue in its present location as I have heretofore indicated. In other words, a consolidation will afford no relief.

It is therefore my opinion the board of trustees of a county high school has not the authority or power to establish a branch of the high school in another town in the county, other than the town selected at the election creating the county high school.

It is also my opinion Sections 1301.1 to 1301.6, inclusive, Revised Codes of Montana, 1935, as amended, were enacted as an emergency measure and in aid of a work relief program and are limited to such a situation.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General