

Opinion No. 115**Schools — High School Building
Districts**

Held: The commission which divides the county into high school building districts under the provisions of Chapter 275, Laws of 1947, must divide the whole county without omitting any portion and may create high school building districts which, at the time of the division, do not have high schools.

April 27, 1948

Mr. Denzil R. Young
County Attorney
Fallon County
Baker, Montana

Dear Mr. Young:

You ave requested my opinion as to whether a portion of the county may be left out of the division of the county into high school building districts by the commission which proceeds under the provisions of Chapter 275, Laws of 1947. You advise me that the citizens in a part of your county object to the inclusion of the area in which they live in either of two proposed high school building districts, as the citizens contemplate the re-establishment of a high school in that area.

Section 2 of Chapter 275, Laws of 1947, states in part:

"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, after hearing."

It is to be noted that the above quoted provides that the commission shall "divide the county into high school districts," and the use of such phrase means the whole county without omission must be divided. To permit a portion of the county to be left out of the division would lead to abuses and in many instances, unfair taxation. All of the provisions of Chapter 275 give the commission broad powers and while the initial step for the division of the county is instituted by the trustees of a high school within the county, yet there is no requirement that all of the districts created by the commission have a high school in existence at the time of the division.

In your letter you state that a high school was in existence in the area from which protests arise and that the electors in such portion of your county desire that their community be designated as a high school district with the view that a high school will be established. As was observed in *Pierson v. Hendrickson*, 98 Mont. 244, 38 Pac. (2d) 991, the purpose of the school building district law is to permit consolidation of common school districts for construction purposes. Section 5 of Chapter 275 state specifically that

one of the purposes of the act is to permit construction of high schools. The creation of a high school building district which does not have a high school in existence at the present time would encourage the establishment of a high school in that the construction of the necessary buildings would be made easier. In fact, it appears that a liberal interpretation of this law would encourage the improvement of our school system.

The previously quoted portion of Section 2 of Chapter 275, indicates the legislative intent that an existing high school is not necessary for each high school district. The section reads, in part, that "In all counties having a high school . . . a commission . . . shall . . . divide the county into high school district. . . ." In other words, the language used contemplates that counties having only one high school shall be divided, if the proper request is made, and the fact that there is only one high school would not preclude such division.

In determining the boundaries of a high school building district, since the entire county is being divided, a district may be created wherein no high school at present exists, and no immediate plans to build have been formulated, but which building district is to be utilized when conditions warrant a building program.

The prohibition found in Section 1023, Revised Codes of Montana, 1935, against the creation of school districts between March and July applies to the districts authorized by Chapter 275.

The legislature has given us this law and it is mandatory on the part of the commission. The law as it stands may not be desirable, but the relief is to apply to the legislature to amend or repeal.

It is, therefore, my opinion that the commission which divides the county into high school building districts under the provisions of Chapter 275, Laws of 1947, must divide the whole county without omitting any portion and may create high school building districts which, at the time of the division, do not have high schools.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General