

Opinion No. 141

**Schools and School Districts—High School Building Districts—Request
For Division of County Into High School Districts.**

Held: The Board of Trustees of a school district maintaining a district high school has the power to request the division of the County into high school building districts under Section 75-4602, Revised Codes of Montana, 1947.

December 21st, 1950.

Mr. Charles B. Sande
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Sande:

You have requested my opinion concerning the right of the Board of Trustees of a school district maintaining a district high school to petition for the formation of high school building districts within your County.

Your problem is the result of the language used in Section 75-4602, Revised Codes of Montana, 1947, which reads in part as follows:

"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." (Emphasis mine.)

It would appear at first blush from the above emphasized portion that the power to request the division of a County into high school districts is limited to the trustees of a County High School as Section 72-4103, Revised Codes of Montana, 1947, provides for an independent Board of Trustees for County High Schools. District High Schools do not have trustees designated "High School Board of Trustees," as school districts maintaining high schools are under the control of trustees for the district which includes elementary schools, Section 75-4101, Revised Codes of Montana, 1947. However, the history of the High School District law throws light on the meaning of Section 75-4602. The first statutory authority for the creation of high school building districts is to be found in Chapter 47 of the Extraordinary Session of 1933-34. Section 2 of this act limited the division of a County into high school districts to those counties having County High Schools. Chapter 16 of the Laws of 1937 amended Section 2 of the original act to permit the establishment of high school districts "in all counties having a high school." The case of Pierson vs. Hendrickson, 98 Mont. 244, 38 Pac. (2d) 991, held that Chapter 47, Extraordinary Sessions 1933-34, was valid as an emergency measure and Chapter 275, Laws of 1947, reenacted the High School Building law to make it a permanent part of our school law, with amendments which are not material here. The Legislature in amending what is now Section 75-4602 by permitting the creation of high school districts in counties which do not have County High Schools must have intended that the initial petition for the division of a County into high school districts could come from the trustees of any district maintaining a high school, otherwise, the amendment would have been a nullity. The majority of the counties in Montana do not have County High Schools.

A rule of construction that is pertinent to the problem presented is found in *Mitchell vs. Banking Corporation*, 95 Mont. 23, 24 Pac. (2d) 124, where the court said:

"It will be presumed that the Legislature in amending an existing law intended to make some change therein, and, therefore, the courts will endeavor to give some effect to the amendment."

Also, it is apparent that the Legislature did not intend to limit the power to request creation of High School Districts to the Boards of Trustees of County High Schools from the use of the phrase in the statute, "**any** High School Board of Trustees in the County." The word "any" is often construed to mean "all" or "every," 3 C. J. 232, and such construction would indicate that trustees who administer a district maintaining a high school could petition because there can be only one County High School and the comprehensive word "any" grants authority to more than one school governing body.

It is, therefore, my opinion that the Board of Trustees of a school district maintaining a district high school has the power to request the division of the County into High School Building Districts under Section 75-4602, Revised Codes of Montana, 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.