

Opinion No. 28**Trustees—Trustees of High School Building District—Election of
Trustees—Election of Trustees By Electors of
Common School District.**

Held: The Trustees of the District in which a high school is located are the trustees for the high school building district, and such trustees are to be elected by the electors of the common school district.

High school building district, comprising a whole County, may be established under the provisions of Chapter 275, Montana Session Laws of 1947.

June 27th, 1949.

Mr. Lawrence Persson
County Attorney
Broadus, Montana.

Dear Mr. Persson:

You have requested my opinion concerning the method of selection of trustees of a high school building district. You advised me that

your County has only one high school which is a district high school, and that the County was divided into one high school building district.

The first problem which arises in your question is the power of the commission authorized under the provisions of Chapter 275, Laws of 1947, to designate the whole County as one high school building district. Section 2 of Chapter 275 states that the commission "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." The use of the word "divide" suggests that at least two high school districts must be established in the County in accordance with the meaning ordinarily given to the word. However, it is important to remember the original districting law, Chapter 47, Laws of Extraordinary Session 1933-34, was enacted in part for the purpose of overcoming some of the inequalities arising under prior laws authorizing the issuance of bonds for high school purposes. This was recognized in *Pierson v. Hendricksen*, 98 Mont. 244, 32 Pac. (2d) 991, wherein the court upheld the constitutionality of the high school districting law. In other words, the court recognized that the purpose of the new law was to provide a new legal entity to issue bonds for construction purposes and place the obligation for the bonds on the area served. If your County, there is only one high school and it is logical that the high school district include all the County for the reason that the high school supplies the needs of such a school for the County. To give such a meaning to the word "divide" is in accord with the construction placed upon it by the Supreme Court of Washington in the case of *Spokane, P. S. Ry. Co. v. Franklin County* 106 Wash. 21, 179 Pac. 113, wherein the Court considered a statute which authorized the division of a County into road districts and said:

"It is true that the primary meaning of "divide" is to separate into parts, and it can be argued that a thing is not divided if it is left to exist as a whole. But it is evident that the word is here used in the sense of "create" rather than in its primary sense of "divide." It is therefore as much a compliance with the statute to say that a County shall consist of one road district as it is to say that it shall consist of two or more."

The Board of Trustees of the high school district will be composed of the members of the Board of Trustees of the district in which your high school is located. This is apparent from the express words of Section 1, Chapter 275, Laws of 1947, which reads in part:

"In any County having a high school the Board of Trustees of the County high school, if there be one, and the Boards of Trustees of any school districts maintaining high schools, are hereby designated as the Boards of Trustees of the respective high school districts established under this act."

The trustees, elected by the qualified voters of the district, are ex-officio the trustees of the high school building district and no provision is made for participation in their selection by electors of the school

districts outside of the district where the high school is located. However, it is important to note that in submitting the question for an extra levy for the maintenance and operation of a high school under the provisions of Section 3, Chapter 130, Laws of 1949, that the chairmen of the Boards of Trustees of all common school districts must be notified and participate with the trustees of the high school building district in considering the calling of an election to vote upon the question. This means that the Boards of Trustees of the common school districts are represented at the meeting and of course, the extra levy must meet the approval of the majority of the qualified electors, of the whole County voting at the election.

It is, therefore, my opinion that the trustees of the district, in which a high school is located, are the trustees for the high school building district and that such trustees will be elected by the electors of the common school district.

It is also my opinion that a high school building district, comprising a whole County may be established under the provisions of Chapter 275, Laws of 1947.

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