

**Opinion No. 29****High School Building District—Common School Districts—  
Boundaries, Alteration of.**

**Held:** The boundaries of a high school building district are not altered by the merger of two common school districts and the boundaries of an established high school building district can be altered only in the manner provided in Section 1, Chapter 130, Laws of 1949.

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June 27, 1949.

Mr. Charles L. O'Donnell  
County Attorney  
Chinook, Montana

Dear Mr. O'Donnell:

You have requested my opinion concerning the boundaries of high school building districts within your County. You advise me that several common school districts were consolidated subsequent to the division of your County into high school building districts with the result that the two common districts are in two high school building districts.

As your County was divided into high school building districts by an order of the commission made on the 18th day of July, 1938, the

statutes which were applicable at that time were Section 1301.1 to 1301.6, Revised Codes of Montana, 1935, as amended by Chapter 16, Laws of 1937. Section 1301.2, as amended, provided in part:

"No common school districts shall be divided for the purposes of this act but must be made a part of a high school district in its entirety."

The above quoted prohibition of the statute was not violated at the time of the creation of the high school building districts. The subsequent consolidation of two common school districts or the annexation of one common school district to another might well result in one common school district being located in two high school building districts. Chapter 275, Laws of 1947, by providing that common school districts shall not be divided, does not preclude the subsequent merger of districts and the chapter does not provide for the change of the boundaries of the high school building district once it is established.

In *McNair v. School District No. 1*, 87 Mont., 423, 288 Pac. 188, our court held that the Board of Trustees of a school district may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied. The court said:

"The statute granting a power must be regarded both as a grant and a limitation upon the powers of the Board."

The quoted rule applies with equal force to the commission which acts under the provisions of Chapter 275, Laws of 1947. No provision was made for the redivision of a county and the alteration of high school district boundaries until the enactment of Chapter 130, Laws of 1949, which authorizes the commission to meet in accordance with the procedure found in Chapter 275 and alter the boundaries previously established.

It is thus apparent from this legislative history that the boundaries of high school districts, once having been established, can be altered only by the commission acting under Chapter 130, Laws of 1949, and that the merger of common school districts will not result in a change in the boundaries of established high school building districts.

In your letter you call attention to Section 3, Chapter 130, Laws of 1949, which provides that the trustees of a school district within which a high school is located may call a meeting composed of the Board of Trustees of the high school district and the chairmen of the boards of all common school districts included within the high school district for the purpose of considering the calling of an election to vote upon the question of an extra levy for the maintenance and operation of the high school. It would appear that the chairman of a common school district, located in two high school building districts, might be asked to attend two of such meetings. Such a situation would not invalidate either of the elections and there is nothing to prevent a chairman of such a district from acting in two of such meetings on the extra levy problem as he would represent an area affected by each of the two meetings.

The preparation of an assessment roll for a high school district which shares a common school district with another high school building district will be complicated and require additional work on the part of the assessor. However, it will be necessary to prepare such an assessment roll so that a proper computation can be made for the purpose of voting on the question of an extra levy as the records on hand would not give this information, also the valuation of the high school district must be ascertained for the determination of the levies on the area and the assessment roll will give the valuation.

It is therefore, my opinion that the boundaries of a high school building district are not altered by the merger of two common school districts and that the boundaries of an established high school building district can be altered only in the manner provided in Section 1, Chapter 130, Laws of 1949.

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