

Opinion No. 130
Schools and School Districts—State
Board of Education—Accrediting
High Schools—Granting of State Aid
to High Schools With Less Than
Twenty-five Pupils.

Held: A high school which has been declared to be an isolated high school by the Board of Budget Supervisors is not entitled to state aid unless such high school has been accredited by the State Board of Education and designated by the board as a high school which should receive state aid. The fact that state aid is not available to a non-accredited high school does not preclude district from voting an extra levy for the purpose of maintaining a high school under the provisions of Section 75-3801, Revised Codes of Montana, 1947, as last amended by Chapter 210, Laws of 1951.

December 24, 1952.

Mr. Norman R. Barncord
County Attorney
Wheatland County
Harlowton, Montana

Dear Mr. Barncord:

You have requested my opinion concerning the eligibility of a non-accredited high school in your county to receive state aid. You advise me that the high school in question has been approved as an isolated high school by the budget board of your county.

In answering your question it is necessary to consider Section 2 of Chapter 199, Laws of 1949, which provides for state aid to the public schools throughout Montana. Section 1 of Chapter 199 specifies that the state's contribution shall be determined on the basis of need for assistance of the various school districts. This financial aid is allocated on the basis of "average number belonging" which in substance is the attendance for the previous year. Section 2 of Chapter 199, as amended by Chapter 107, Laws of 1951, precludes the inclusion of pupils in a non-accredited school in the computation of the amount of state aid to a school district. The portion of Section 2 of Chapter 199, as amended which prevents state aid to non-accredited schools reads as follows:

"The average number belonging of secondary pupils of a school district does not include the pupils of any

high school which has not been accredited by the State Board of Education."

A high school which has an average number belonging (ANB) of less than twenty-five pupils receives state aid only if the State Board of Education has both accredited the high school and designated it as one which should receive state aid. This is specifically set forth in Section 3, Chapter 199, in the following provision:

"A school having an ANB of less than twenty-five (25) pupils shall not receive any state aid unless it has been accredited by the State Board of Education and is designated by said board as a school which should receive state aid."

While it is true that under Section 16, Chapter 199, Laws of 1949, a high school with an average number belonging of twenty-four pupils or less may be approved as an isolated high school by the County Budget Board yet such a declaration does not itself alter the provision of Section 3, Chapter 199, Laws of 1949, that a high school having an ANB of less than twenty-five pupils must be both accredited and designated by the State Board of Education as being entitled to state aid.

It must be remembered that Section 75-107, Revised Codes of Montana, 1947, as amended by Chapter 92, Laws of 1951, specifically grants to the State Board of Education the power:

"To prescribe standards of promotion to the high school department of all public schools of the state, and to accredit such high school as maintain the standards of work prescribed by the board on all such matters of promotion and accrediting. The board shall act upon recommendation given to it by the State Superintendent of Public Instruction."

If it were held that the Board of Budget Supervisors of a county by designating a high school to be isolated could thus accredit the high school then the above quoted portion of Section 75-107, as amended, would be so modified as to take away the powers of the State Board of Education. Also, such an interpretation would violate the expressed language of Section 3, Chapter 199, which requires that a high school with an ANB of less than

twenty-five pupils be accredited and designated as a school entitled to state aid.

However, the fact that state aid is not available to a non-accredited high school does not preclude a district from voting an extra levy for the purpose of maintaining a high school under the provisions of Section 75-3801, Revised Codes of Montana, 1947, as last amended by Chapter 210, Laws of 1951.

It is therefore my opinion that a high school which has been declared to be an isolated high school by the Board of Budget Supervisors is not entitled to state aid unless such high school has been accredited by the State Board of Education and designated by the Board as a high school which should receive state aid.

It is further my opinion that whenever aid is not available to a non-accredited high school district, this does not preclude the district from voting upon an extra levy for the purpose of maintaining a high school, under the provisions of Section 75-3801, Revised Codes of Montana, 1947, as last amended by Chapter 210, Laws of 1951.

Very truly yours,
ARNOLD H. OLSEN
Attorney General