

**Opinion No. 38****Schools and School Districts—High School Building Districts—County High Schools—Sales of County High School Property**

**Held:** Upon the abolishment of a county high school the property of the county high school should be conveyed to the school district which establishes a high school rather than to the high school building district. The conveyance of the property should be to the board of trustees and to their successors in office.

August 29th, 1951.

Mr. Howard W. Heman  
County Attorney  
Teton County  
Choteau, Montana

Dear Mr. Heman:

You have requested my opinion concerning the title to school property. You advise that the county high school in your county was abolished and a district high school established. You also advise me that the district high school is located within a high school building district which latter legal entity by means of a bond issue furnished a large portion of the funds to purchase the property of the county high school. Your specific question is whether or not the conveyance of the property

should be made to the high school district or to the school district.

In answering your question it is necessary to consider the statutory procedure for the creation of a high school. Section 75-4183, Revised Codes of Montana, 1947, provides that the trustees of the district may establish a high school with the approval of the Superintendent of Public Instruction. Section 75-4139 states what should be included in the petition of the trustees to the Superintendent of Public Instruction and defines the necessary steps in the initial stages of establishing a high school. There is no statutory authority for the establishment of a high school by a high school building district. In fact, the high school building districts were first established for a limited purpose and this is stated in Section 75-4605, Revised Codes of Montana, 1947, which reads in part as follows:

"This act shall not prevent the exercise of powers as elsewhere in the statutes of this state provided. It shall constitute an additional and cumulative method of borrowing money and of carrying out the powers herein authorized. The high school districts created under the provisions of this act are for construction, repair, improvement and equipment purposes only, and it shall not be construed so as to interfere with or repeal any existing laws relating to the maintenance or operation of high schools within the county."

Also, it is to be observed that Section 75-4601 provides 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."

As is made apparent by the above quoted portions of our statutes high school districts were originally created for "construction, repair, improvement and equipment purposes only." A condition precedent to the incurring of any indebtedness or the expenditure of any money by a high school dis-

trict is the existence of a high school. When a high school is in operation in a high school district the trustees who govern the school district in which the high school is located or the trustees of the county high school, by virtue of their official position, become the trustees of the high school district. To convey property to a high school district would be inconsistent with the limited powers granted to such districts by our legislature. In *Finley vs. School District No. 1*, 51 Mont. 411, 153 Pac. 1010, the court said:

"A school district is a public corporation, but with very limited powers. It may, through its board, exercise only such authority as is conferred by law, either expressly or by necessary implication."

There is no express grant of authority for a high school district to hold property in its corporate name. Section 75-4605, Revised Codes of Montana, 1947, previously quoted in part, designates the purposes for the creation of high school districts, however, this enumeration does not include the ownership of property. In fact a presumption is raised against such power by the omission.

Chapters 130 and 199, Laws of 1949, and Chapters 208 and 210, Laws of 1951, use high school districts for levies for the maintenance and operation of the high school located within high school districts which is a variance from and an implied amendment to Section 75-4605, Revised Codes of Montana, 1947, but not such an increase in the powers that it might be concluded a high school district may be the grantee of real property.

Section 75-1624, Revised Codes of Montana, 1947, grants to the board of trustees of each school district board powers over property of the district. This section states, "all conveyances of real estate made to the district or to the board of trustees thereof shall be made to the board of trustees of the district and to their successors in office."

It is not of material importance which district holds school property as the case of *Pierson vs. Hendricksen*, 98 Mont. 244, 38 Pac. (2d) 991, held:

"The beneficial title of the school property is in the state."

It is, therefore, my opinion that upon the abolishment of a county high school the property of the county high school should be conveyed to the school district which establishes a high school rather than to the high school building district. The conveyance of the property should be to the board of trustees and to their successors in office.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General