

Opinion No. 36.**Schools and School Districts—Joint School Districts as High School Districts—Limitations on Powers of Commission to Create Joint School Districts Into High School Districts.**

HELD: The act of a commission in establishing as a high school district the area of a joint district in one county does not result in creating as a high school district the area of the joint school district in the adjoining county. A high school district in the latter county can be established only by a commission acting in the latter county.

July 3, 1953.

Mr. Walter T. Murphy
County Attorney
Mineral County
Superior, Montana

Dear Mr. Murphy:

You have requested my opinion concerning a joint school district which maintains a high school within your county. You advised me that Mineral County has been divided into high school building districts and one of such districts is composed of a common school district and that portion of a joint district lying in Mineral County. You asked specifically the effect of Chapter 237, Laws of 1953, which is the last amendment to Section 75-4602, R. C. M., 1947, and whether it is self executing so as to incorporate the area in the adjoining county into a high school district.

Section 75-4602 as amended, defines the method of dividing a county into high school districts. The amendment to the section by Chapter 237, Laws of 1953, reads as follows:

“ . . . provided, further, that both parts of a joint district maintaining a high school may be considered as maintaining an operating high school, and as such each part of the joint district may, together with one or more adjacent common school districts whose pupils attend the high school in the joint district, be set aside as a

high school district. Provided, that, such resulting high school district in the county where the joint district high school is not located, shall be responsible for its share of the joint district high school budgets as is arrived at by following the procedure outlined in Section 17, Chapter 199, Laws of 1949 (75-3618), and shall also be considered as a single high school district with the high school district of the joint district, wherein the high school is located for purposes of bonding as provided in Sections 75-4601-4605, R. C. M., 1947, as amended by Chapter 188, Laws of 1951, and also for purposes of selecting additional trustees as provided for in Section 75-4601, R.C.M., 1947, as amended by Chapter 188, Laws of 1951 . . . ”

This new statute in substance authorizes the commission which divides a county into high school districts to establish as one of the high school districts the area of a joint school district in the county together with adjacent school districts.

As your county has been divided into high school districts, one of which is the joint school district with an operating high school, there is no problem within the county. However, the adjacent county in which the other part of the joint district is located has not been divided into high school districts and the amendment does not affect this area by establishing a high school district without the action of a commission dividing the county. The pertinent portion of Section 75-4602, as amended states:

“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 entire county into and establish one (1) or more high school districts for the purpose of this Act, after hearing; provided, that each high school district so formed must have one (1) or more operating, accredited high schools within its boundaries; . . . ”

It is to be noted that there must be one or more operating high schools in each high school district. The amendment which we have under consideration makes an exception to this requirement for the area in each county of a joint school district. This statutory provision which permits the part of a joint school district in each county to be created into a high school district is not self executing so that if one county does establish such a high school district such act will result in the area of the joint district in the adjoining county being formed into a high school district. Such a conclusion would violate the express language of the Act that ". . . each part of the joint district may, together with one or more adjacent common school districts whose pupils attend the high school in the joint district, be set aside as a high school district . . ." Permission, not a mandate, is granted to the commission in each county to establish as a high school district the county's portion of a joint district whether or not a high school is in such area.

It is therefore my opinion that the act of a commission in establishing as a high school district the area of a joint district in one county does not result in creating as a high school district the area of the joint school district in the adjoining county. A high school district in the latter county can be established only by a commission acting in the latter county.