

Opinion No. 4.**Schools and School Districts—High
School Districts—Powers of Addi-
tional Trustees of High
School Districts.**

HELD: The additional members elected to the board of trustees of districts maintaining high schools, which high schools are also district high schools, shall participate on an equal basis with other members in all business transacted pertaining to the high school.

January 30, 1953.

Mr. Leo H. Murphy
County Attorney
Teton County
Choteau, Montana

Dear Mr. Murphy:

You have requested my opinion concerning the powers of the additional trustees elected to the board of trustees of districts maintaining high schools.

Chapter 188, Laws of 1951, amended Section 75-4601, R. C. M., 1947, to allow the election of additional trustees to boards of trustees of school districts maintaining high schools which are also district high schools. The amendment provided in part:

“The additional members elected to the board of trustees of districts maintaining high schools, shall take office immediately after qualifying and shall participate on an equal basis with other members in all business transacted by the board of trustees pertaining to the high school maintained by said districts.”

The above quoted portion of the statute is unambiguous and standing alone would not require interpretation. However, there is another statutory provision in the high school district

law that is in apparent conflict. I refer to Section 75-4605, R. C. M., 1947, as amended by Chapter 188, Laws of 1951, which reads in part as follows:

"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."

The amendment to Section 75-4605 did not affect or alter this part of the statute which has been the law since its enactment as Chapter 275, Laws of 1947. In *State ex rel. Henderson vs. Dawson County*, 87 Mont. 122, 286 Pac. 125, our Supreme Court said:

"* * * where a section or a part of a section is amended, it is not to be considered as having been repealed and re-enacted in its amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted."

The limited purposes of high school districts were designated in Section 75-4605 prior to the amendment of Section 75-4601, which latter section was amended so as to provide additional trustees and thus make high school districts administrative units for high schools. If we were to ignore the express declaration that "the additional members * * * shall participate * * * in all business * * * pertaining to the high school" then the amendment would be a nullity. In *Nichols vs. School District*, 87 Mont. 181, 287 Pac. 624, the court said:

"In the construction of an amendatory Act it will be presumed that the legislature, in adopting it, intended to make some change in the existing law, and the courts will endeavor to give some effect to the amendment."

It is therefore my opinion that the additional members elected to the board of trustees of districts maintaining high schools, which high schools are also district high schools,

shall participate on an equal basis with other members in all business transacted pertaining to the high school.