

Opinion No. 24
Schools and School Districts—School
Trustees No Authority for
Six-Year High School.

Held: The trustees of a school district do not have the power of authority to establish and budget for a six-year high school.

July 2, 1955

Mr. Chester L. Jones
 County Attorney
 Madison County
 Virginia City, Montana

Dear Mr. Jones:

You have requested my opinion as to whether a school district has the authority to establish and budget for a six-year high school.

In answering your question it is necessary to consider the limited power of the trustees of the school district. In *McNair v. School District No. 1*, 87 Mont. 423, 288 Pac. 188, our Supreme Court said:

“ . . . The board of trustees, therefore, constitutes the board of directors and managing officers of the corporation, and may exercise only those powers expressly conferred. The statute granting power must be regarded both as a grant and a limitation upon the powers of the board . . . ”

From the above quoted it is apparent that the officers of the school district are limited to express statutory provisions in the administration of the schools of the districts.

Section 75-4101, R.C.M., 1947, defines a high school as an integral unit of the public school system which comprises one or more of the grades of school work between the elementary school and the institution of higher education. A junior high school is defined in Section 75-4102, R.C.M., 1947, as a public school which comprises work of the seventh, eighth and ninth grades of the school system. In your question you ask if a school can be established which

will include all of the grades of a high school and in addition the seventh and eighth grades which are elementary grades. As the trustees have limited powers and the statutes authorize high schools, junior high schools and elementary schools, the proposed school does not fit in any one of the three. The High School Budget Act has application to all districts maintaining high schools and all county high schools. When a junior high school is established, the high school budget supports the educational costs of all high school pupils in the junior high school. There is no statutory provision for the adoption by the trustees of an independent budget for the junior high school. Also, the legislature has not authorized a school comprising the last six grades of work and in the absence of a statute authorizing such a new school, the doubt must be resolved against the power to establish such a school with an independent budget.

It is therefore my opinion that the trustees of a school district do not have the power of authority to establish and budget for a six-year high school.

Very truly yours,
 ARNOLD H. OLSEN
 Attorney General