

Opinion No. 36**Schools and School Districts —
Original Territory Liable for High
School District Bonds — Impair-
ment of Rights of Bond Holders**

HELD: 1. Territory of one high school district may be transferred to another high school district, notwithstanding that there is outstanding bonded indebtedness as the territory transferred may be taxed for the payment of the bonds.

2. The legislature may provide a method for the change of boundaries of high school districts, as there is no constitutional restriction limiting the legislative power to enact a statute.

August 26, 1955

Mr. Leo H. Murphy
County Attorney
Teton County
Chouteau, Montana
Dear Mr. Murphy:

You have requested my opinion as to the legality of the transfer of territory of a high school district to another high school district when the high school district from which the land is taken has outstanding bonded indebtedness. You have also asked if the transfer of territory is a violation of the corporate rights of a high school district.

In answering your first question the provisions of Section 75-4607, R.C.M., 1947, must be observed. This section permits the re-division of a county into high school districts including the alteration of the boundaries of existing districts. The authority of the legislature to make such statutory provisions was recognized in *State ex rel Redman vs. Meyers*, 65 Mont. 124, 210 Pac. 1064, where the court stated:

“A school district is merely a political subdivision of the state,

created for the convenient dispatch of public business. In the absence of constitutional limitations, the legislature may create or abolish a district, or change or rearrange the boundaries of an existing district, and by the same token it may create joint districts from territory lying in adjacent counties . . .”

The above quoted principle has been recognized by our court in many subsequent cases.

Your second question is answered by the case of *Fitzpatrick vs. State Board of Examiners*, 150 Mont. 234, 70 Pac. (2d) 285, where it was held that counties and school districts can not rely on constitutional provisions available to private corporations in the following language:

“These political subdivisions of the state may not claim the constitutional protection of the due process clause, or the provisions prohibiting the impairment of the obligation of existing contracts by legislative Act found in the federal and state Constitutions . . .”
(Cases cited)

However, where there are outstanding bonds of a high school district, the change of boundaries of the high school district will not relieve the territory which was within the high school district at the time of the issuance of bonds, from being taxed to retire the bonds. Section 11 of Article III of the Montana Constitution precludes the impairment of contracts of individuals. The contracts of bond holders would be impaired if all of the area included in the district at the time of the issuance of the bonds would not be subject to tax for the payment of the bonds. The larger valuation and taxing area gives greater protection for the payment of the bonds. See *Pass School District vs. Hollywood City School District*, 146 Cal. 416, 105 Pac. 122, and *Geweke vs. Niles*, 368 Ill. 463, 14 N.E. (2d) 482. Express statutes may change this rule, providing adequate protection is given for the payment of bonds, but there is no statute covering the indebtedness of high school districts when boundaries are changed.

The fact that the original area of a high school district will be subject to tax for payment of bonds does not preclude the change of boundaries of a high school district as provided in Section 75-4607, R.C.M., 1947. Obviously, the change of boundaries does not impair the contractual rights of bond holders if all of the area which was in the high school district at the time of the issuance of bonds remains liable for the payment of the bonds.

It is therefore my opinion that territory of one high school district may be transferred to another high school district, notwithstanding that there is outstanding bonded indebtedness as the territory transferred may be taxed for the payment of the bonds.

It is also my opinion that the legislature may provide a method for the change of boundaries of high school districts, as there is no constitutional restriction limiting the legislative power to enact such a statute.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General