

Opinion No. 67**Schools and School Districts—
Requisite Vote of Trustees to Expel
A Student.**

HELD: 1. A majority vote of the trustees of a county high school is sufficient to expel a student who has violated rules and regulations made by the principal and approved by the board of trustees which rules relate to the general administration of the high school.

2. A two-thirds vote of the board of trustees of a county high school is necessary to expel a student who has violated rules and regulations adopted by the trustees relating to secret societies.

March 17, 1956

Miss Mary M. Condon
State Superintendent of
Public Instruction
State Capitol Building
Helena, Montana

Dear Miss Condon:

You have requested my opinion concerning the required vote of the board of trustees of a county high school to expel a student for wilfully refusing to obey rules and regulations made by the principal of the county high school and approved by the board of trustees.

There are three code sections which deals with expulsion of high school students. The first in point of time is Section 75-2801, R.C.M., 1947, which was first enacted in 1871. This statute states in part that "Continued and wilful disobedience and open defiance of the authority of the teacher shall constitute good cause for expulsion from school." No mention is made of the requisite vote of the trustees to expel a student and as

a result, it must be presumed that a majority vote would be sufficient. Also, the foregoing statute does not specifically deal with rules and regulations made by a principal of a school and approved by the trustees and is of dubious assistance to the problems here considered.

In 1931 the legislative assembly adopted a uniform code of laws relative to high schools which was enacted as Chapter 148, Laws of 1931. Chapter 148, Laws of 1931, appears in our code as Section 75-4101 to Section 75-4248, R.C.M., 1947. What is now Section 75-4111, R.C.M., 1947, was first enacted as Section 11, Chapter 148, Laws of 1931. An examination of Section 11 in Chapter 148, Laws of 1931, reveals that it is a part of Chapter 2, which was entitled "School Administration." Section 75-4110 was Section 10 of Chapter 148 and was also included under the heading "School Administration." The authority of the principal of a county high school with the consent and approval of the board of trustees to make rules and regulations for the government of the pupils attending the county high school is found in Section 75-4110. The manner of enforcing rules and regulations is set out in Section 75-4111, R.C.M., 1947, and this section reads as follows:

"Any pupil wilfully refusing to obey any such rule or regulation, or persistently failing to conform thereto, may be suspended by the principal forthwith, and, after reasonable notice and an opportunity to appear and be heard, expelled by the board of trustees from the county high school."

It is to be noted that the above quoted statute does not specify the vote of the trustees required to expel a student and as a consequence, it must be assumed that a majority vote of the trustees is sufficient.

A cursory reading of Section 75-4225, R.C.M., 1947, might indicate a conflict with Section 75-4111 in the required vote of the trustees to expel a student. Section 75-4225 reads as follows:

"Every board of trustees of a school district or county high school is hereby further fully authorized and empowered pursuant

to rules and regulations, so made and adopted by it, to suspend or dismiss any pupil attending any high school within its jurisdiction, or to deny to any such pupil the honors of graduation or of participating in school activities when after investigation the board of trustees having jurisdiction by at least two-thirds (2/3) vote of its members shall first have adjudged any such high school pupil guilty of a violation of any of the provisions relating to secret societies, or of any of the rules or regulations, adopted and in force as provided herein."

By referring again to Chapter 148, Laws of 1931, as the Chapter appears as originally passed by the legislature, the real meaning of Section 75-4225 is quickly ascertained. Chapter 2 of Title 5 of Chapter 148, Laws of 1931, has at its head "Secret Societies." What are now Sections 75-4223 to 75-4227, R.C.M., 1947, comprise that portion of the uniform high school code dealing with secret societies. Section 75-4224, R.C.M., 1947, authorizes the trustees of a county high school to adopt rules and regulations which are necessary to "effect the intent and purpose of this chapter." As Section 75-4225 is a part of the chapter dealing with "Secret Societies," the rules and regulations referred to in this section pertain to the rules and regulations which may be adopted under Section 75-4224 relative to secret societies and not to those adopted by the board of trustees for the administration of the school. The conclusion follows that a two-thirds vote of the trustees to expel a student is limited to violations of rules and regulations adopted by the trustees relative to secret societies in the high school.

The use of, and reference to the chapter headings and titles found in Chapter 148, Laws of 1931, have received judicial approval in *McLaughlin vs. Bardsen*, 50 Mont. 177, 145 Pac. 954, where our Supreme Court said:

"The arrangement and classification of statutes, their title and headnotes, are all proper and available means from which to determine legislative intent . . ."

Also, statutes which apparently conflict should be reconciled if possible to make them both operative. This was held in the case of *Ex parte Naegele*, 70 Mont. 129, 224 Pac. 269. As Section 75-4111 and Section 75-4225, R.C.M., 1947, were passed by the legislature at the same time and as a part of Chapter 148, Laws of 1931, they should both be given meaning if possible which will not make them conflict.

It is therefore my opinion that a majority vote of the trustees of a county high school is sufficient to expel a student who has violated rules and regulations made by the principal and approved by the board of trustees which rules relate to the general administration of the high school.

It is also my opinion that a two-thirds vote of the board of trustees of a county high school is necessary to expel a student who has violated rules and regulations adopted by the trustees relating to secret societies.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.