

Opinion No. 74**Schools and School Districts —
Transfer of Territory of School
Districts and High School Districts**

HELD: 1. The boundaries of a high school district may be changed or altered under the provisions of Section 75-4607, R.C.M., 1947, and that the method there provided is exclusive.

2. The inclusion in a petition for the transfer of territory of a common school district of a request for the transfer of the territory of a high school district does not affect the validity of the petition for the transfer of territory of the common school district.

May 18, 1956

Mr. John F. Bayuk
County Attorney
Roosevelt County
Wolf Point, Montana

Dear Mr. Bayuk:

You requested my opinion concerning the legality of a petition of a majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll, which petition requests that the territory in which they reside be transferred to another organized school district in the county and also attached to another high school district. You specifically ask if the fact that a transfer of common school district territory and high school district territory is included in one petition invalidates the petition. You also ask if a portion of a high school district can be transferred by this method.

It is necessary to consider sub-section 5 of Section 75-1805, R.C.M., 1947, which reads in part as follows:

“A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent of schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous. . . .”

The above quoted portion of our law certainly permits the transfer of territory of a common school district to another if other conditions are met which are not necessary to be considered here. By the use of the phrase “any organized school district” it would appear that such procedure would be available for the transfer of a portion of a high school district. However, an examination of the history of this act shows that the above quoted was enacted in 1933 and at a time prior to the adoption of the first high school district law. The legislature at the extraordinary session held in the years 1933-34 provided a method for the first time for the creation of high school districts in Chapter 47, Ex. Laws of 1933. As there were no high school districts to which the pertinent portion of Section 75-1805, R.C.M., 1947, could apply at the time of its adoption, the legislature could not have intended that it would apply to high school districts. This alone does not preclude its application. Chapter 46 of Title 75, R.C.M., 1947, covers in detail the creation, purpose, and government of high school districts. It is important to observe that the qualified electors of school districts are not consulted in the creation of high school districts. Under Section 75-4602, R.C.M., 1947, the board of trustees of a school district maintaining a high school may request that the county be divided into high school districts. The request is addressed to a commission consisting of the board of county commissioners and the county superintendent of schools. While Section 75-4602, as amended by Chapter 236, Laws of 1955, provides for an election if a common school district is

divided, yet the division of the county when common school districts are not divided is made by the commission and not by the qualified electors participating in an election. The alteration of boundaries of the high school district is controlled by Section 75-4607, R.C.M., 1947, which specifically grants the authority to the commission to redivide the county into high school districts in the same manner and under the same procedure as was followed in the initial division. This statute specifically limits such alteration or redivision to a time three years subsequent to the original division or last alteration. If it were held that boundaries of a high school district could be altered under the provision of Section 75-1805, R.C.M., 1947, then the three year limitation of Section 75-4607 would be violated. Section 75-4607 was first enacted in Chapter 130, Laws of 1949, and prior to that time there was no statute which by its terms dealt with the alteration of boundaries of high school districts. As Section 75-4607 is a special statute dealing with the alteration of boundaries of high school districts and was enacted later in time than Section 75-1805, the rule announced in *State v. Millis*, 81 Mont. 86, 261 Pac. 885, would apply. In this case the court said, "Where the special statute is later, it will be regarded as an exception to or qualification of the prior general one." The method of altering or changing boundaries specified in Section 75-4607 places the duty on the same officers who originally divided the county into high school districts. The proceedings for the change of boundaries is likewise initiated by the trustees of the high school district. In contrast, the request for transfer of territory of an elementary district is under Section 75-1805, initiated by a majority of the taxpayers in the area who direct their petition to the county superintendent of schools. An additional limitation on the transfer of territory of a common school district which would not apply to the alteration of boundaries of a high school district is that "No territory within three (3) miles of an established school in such district shall be so transferred," with a restriction of

not reducing the remaining territory of the district to a value of less than \$75,000. In 78 C.J.S. 695, the text states the rule which would apply here:

" . . . Where a statute prescribing the procedure in particular circumstances or with respect to districts of a particular kind or nature exists concurrently with a general statute which in terms is applicable to all cases, the procedure prescribed by the former must be followed in a case falling within its terms; . . . "

Other jurisdictions have interpreted statutes similar to ours pertaining to two types of school districts and have held that the statutory procedure prescribed for one type of school district is exclusive in its application. (*Peter v. Board of Sup'rs.*, 78 Cal. App. (2d) 515, 178 Pac. (2d) 73, *Perkins v. Lenora Joint District*, 171 Kan. 727, 237 Pac. (2d) 228, *Wall v. McConnell*, 187 Okl. 497, 103 Pac. (2d) 925.) A case which apparently conflicts with the above cited authorities is *Boyd v. Bell*, 68 Ariz. 166, 203 Pac. (2d) 618, where it was held that a general statute and a special statute were both available for transferring territory from one union high school district to another. However, there did not appear to be any special limitations or restrictions found in the general statute which differentiated it from the specific statute. Also, the court in the *Boyd* case pointed out that all the school officers who had power to act on the transfer were either parties or had notice of the proceedings. This is a marked distinction from the facts you submitted in that only the county superintendent was requested to act in the alteration of the boundaries of the high school district and the county commissioners were not consulted in any way.

Chaos would result if the boundaries of high school districts could be altered by adding or subtracting territory by petition to the county superintendent of schools and bonds issued by high school districts would not be marketable. The legislature could not have intended such a re-

sult as it would defeat the purpose of high school districts which is to issue bonds for construction.

The fact that the petition submitted contained dual purposes, that is, to transfer territory of a common school district and also territory of the high school district, should not mitigate against its effectiveness for the transfer of property of a common school district. *Camp Crook School District v. Shevling*, 65 S.D. 14, 270 N.W. 518, *State v. Lensman*, 108 Mont. 118, 88 Pac. (2d) 63.

It is therefore my opinion that the boundaries of a high school district may be changed or altered under the provisions of Section 75-4607, R.C.M., 1947, and that the method there provided is exclusive.

It is also my opinion that the inclusion in a petition for the transfer of territory of a common school district of a request for the transfer of the territory of a high school district does not affect the validity of the petition for the transfer of territory of the common school district.

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