

Opinion No. 2

**Schools and School Districts—Re-Division of County Into High School
Districts—Elections By School Districts**

Held: 1. If a commission is called to re-divide a county into high school districts and reaches the conclusion not to change the previously established boundaries the voters of common school

districts do not have the right to petition for an election to determine in which high school district the common school district shall be included.

2. An equally divided vote of a commission called to re-divide a county into high school districts results in affirming the previously established divisions and an election cannot be held for the voters of a common school district to designate the high school district of which it should be a part.

3. There may be more than one operating, accredited high school in a high school district and the board of trustees of each high school has concurrent jurisdiction with any other board of trustees of a high school in the affairs of the high school district.

February 11, 1957

Mr. Paul J. Murphy
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Murphy:

You have requested my opinion concerning the procedure to be followed in re-districting your county into high school districts. You advise me that there was a re-districting in 1954 and that it is now proposed to alter the boundaries again. You ask in particular:

1. If no change is made in the boundaries by the commission, will any common school district have the right to request an election to determine the high school district of which it should be a part?
2. If the vote by the commission is equally divided and results in a tie vote, would a common school district have the right to an election to specify the high school district of which it would be a part?
3. If the commission creates a new high school district which will have within its boundaries two accredited high schools, which of the two will have the control of the high school district?

In answering your first question it is necessary to consider Section 75-4602 R.C.M., 1947, as amended by Chapter 236, Laws of 1955. This statute defines the principles which shall guide the commission in designating the school districts which shall form each high school district. The 1955 amendment gave to each common school district the right to hold an election determining to which high school district the common school should be annexed. The opportunity for such an election would arise under two different situations. The first of these occurs when an operating high school ceases to exist within the boun-

daries of the high school district and the county superintendent consolidates or annexes the high school district or component common school districts to one or more operating high school districts. This provision is not applicable under the facts of your problem.

The second right to an election occurs when the voters of a common school district are dissatisfied "with the proposed action of said commission" in dividing into and establishing high school districts. As this election is dependent on action by the commission which results in dissatisfaction, the failure to establish high school districts would preclude an election. There would be nothing to complain about. Section 75-4607 R.C.M., 1947, authorizes an alteration of boundaries or a re-division of a county which had previously been divided into high school districts. The procedure to be followed is the same as that for an original division. The election after a re-division is also dependent on dissatisfaction "with the proposed action of said commission". If the commission makes no change, then there is no "proposed action" and there can be no election.

Your second question is answered by the case of *State ex rel. School District No. 8 vs. Lensman*, 108 Mont. 118, 88 Pac. (2d) 63, where it was held that an order of two county superintendents establish a joint school district was affirmed on appeal to the boards of county commissioners as the vote of the boards resulted in a tie vote. This opinion held that an equally divided vote effects no change in a former order.

Your third question offers a perplexing problem. It can best be answered by considering the history of what is now Chapter 46 of Title 75, Revised Codes of Montana, 1947, the high school building district act. The first act was enacted as Chapter 47, Ex. Laws of 1933, for the purpose of supplying "an additional and cumulative method of borrowing money". The legal entities created under the statute were not operating school units, but were organized "for construction, repair, improvement and equipment purposes only", Section 75-4605, R.C.M., 1947. Subsequent legislatures have, by their enactments, authorized levies to be imposed on high school districts for the operation of the high school, such as Section 75-4609 R.C.M., 1947, and additional trustees may be elected as authorized in the amendment to Section 75-4601 R.C.M., 1947, by Chapter 188, Laws of 1951, yet the limited purpose of such districts for borrowing money as originally expressed has not been altered. This leaves the exact status of high school districts in an uncertain position. There is no express statement that there cannot be more than one high school in each high school district, and in fact Section 75-4602 R.C.M., 1947, provides "that each high school district so formed must have one or more operating, accredited high schools within its boundaries". As it is legally possible to have two or more high schools within one district there is no statutory directive as to the method of designating which board of trustees shall have the exclusive control. Section 75-4601 R.C.M., 1947, makes the trustees of the county high school or

the trustees of a district high school the trustees of the high school district and if there are two such boards they would have concurrent control and jurisdiction.

It is therefore my opinion that:

1. If a commission is called to re-divide a county into high school districts and reaches the conclusion not to change the previously established boundaries the voters of common school districts do not have the right to petition for an election to determine in which high school district the common school district shall be included.

2. An equally divided vote of a commission called to re-divide a county into high school districts results in affirming the previously established divisions and an election cannot be held for the voters of a common school district to designate the high school district of which it should be a part.

3. There may be more than one operating, accredited high school in a high school district and the board of trustees of each high school has concurrent jurisdiction with any other board of trustees of a high school in the affairs of the high school district.

Yours very truly,
FORREST H. ANDERSON
Attorney General