

**Opinion No. 31****SCHOOLS AND SCHOOLS DISTRICTS; High Schools; Districts; limit of indebtedness—Article XIII, Sections 5 and 6, Montana Constitution, Chapter 46, Title 75, Revised Codes of Montana, 1947.**

**Held:** The trustees of a county high school may request the division of the county into high school districts and that the high school district in which the county high school is located may incur bonded indebtedness for building purposes up to the 5 per cent limitation of indebtedness fixed by Section 6, Article XIII of the Montana Constitution without restricting or limiting the issuance of bonds by the county for county high school purposes.

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December 21, 1961

Mr. James P. Lucas  
Custer County Attorney  
Miles City, Montana

Dear Mr. Lucas:

You have requested my opinion concerning the maximum amount of indebtedness that may be incurred by a county high school. You advise me that your county high school is interested in issuing bonds for construction purposes.

Section 5 of Article XIII of the Montana Constitution limits the indebtedness that may be incurred by a county to 5 per centum "of the value of the taxable property therein." A county may issue bonds for high school purposes and the bonds so issued are county bonds as was recognized in *State ex rel., Henderson v. Dawson County*, 87 Mont. 122, 286 Pac. 125. However, a county high school may also be the high school of a high school building district organized under the provisions of Chapter 46, Title 75, RCM, 1947.

The limitations of indebtedness of a high school district is that found in Section 6 of Article XIII, of the Montana Constitution as last amended, in the amount of 5 per cent of the taxable property of the high school district. If there is only one high school in a county, whether it be district or county high school, the provisions of Chapter 46, Title 75, RCM, 1947, and the additional limitation of indebtedness prescribed in Section 6, Article XIII of the Montana Constitution are available. This office, in opinion No. 28, Volume 23, Report and Official Opinions of the Attorney General, held that a high school district comprising a whole county may be established under what is now Chapter 46 of Title 75, RCM, 1947.

There is nothing to preclude the expenditure of funds realized from the sale of bonds by a high school district on the buildings of the coun-

ty high school which is the high school of the high school building district. The case of Pierson v. Hendrickson, 98 Mont. 244, 38 Pac. 2nd 991, so held in the following manner:

"Nor is it of controlling importance that the improvements contemplated are to be made on the county high school building, legal title to which is in the county. The county, in the management of the county high school, is simply the agency of the state for that purpose. The beneficial title of the school property is in the state."

The amendment to Section 6, Article XIII of the Montana Constitution, by granting an independent bonding capacity to high school districts precludes the objection that the indebtedness of a high school district is limited by the underlying indebtedness of each common school district. Prior to the amendment the case of Rankin v. Love, 125 Mont. 184, 232 Pac. 2nd 998, held that overlapping indebtedness limited the amount of bonds which could be issued by both the school district and the high school district. In other words, now, indebtedness may be incurred by a high school district without regard to any indebtedness of any other political subdivision or legal entity.

It is, therefore, my opinion that the trustees of a county high school may request the division of the county into high school districts and that the high school district in which the county high school is located may incur bonded indebtedness for building purposes up to the 5 per cent limitation of indebtedness fixed by Section 6, Article XIII of the Montana Constitution without restricting or limiting the issuance of bonds by the county for county high school purposes.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General