

Opinion No. 34

SCHOOLS AND SCHOOL DISTRICTS: High School District: bond issues, may be initiated by board of trustees on own motion—

SCHOOLS AND SCHOOL DISTRICTS; Board of Trustees;

powers of — to hold bond elections — Sections 75-3908,

75-4601, 75-4604, 75-4605, 75-5601 and 75-5603, Revised

Codes of Montana, 1947—Chapter 147, Laws of

1927—Chapter 47, Laws of 1933.

- Held:**
- 1. The board of trustees of a high school district may, by resolution and without having received a petition, call an election to vote on the proposition of issuing high school district bonds.**
 - 2. A bond election in a high school district may be initiated by petition signed by 30 per cent of the qualified electors of the high school district.**

December 29, 1961

Mr. Gene B. Daly
 Cascade County Attorney
 Great Falls, Montana

Dear Mr. Daly:

You requested my opinion as to whether an election for the issuance of bonds of a high school district may be called by a resolution of the board of trustees on their own initiative and without the presentation of a petition signed by the electors praying for the calling of such election.

Section 75-3908, RCM, 1947, provides that a bond election shall not be called "unless there has been presented to the board of trustees a petition asking that such election be held." This statute is one of the sections of Chapter 147, Laws of 1927, which sets out our general school district bond procedure.

The provisions of our code relative to the creation of and method of issuing bonds by high school districts are found in Chapter 46, Title 75, RCM, 1947. The purpose of the act is stated in Section 75-4605, RCM, 1947, in the following language:

"It shall constitute an additional and cumulative method of borrowing money and of carrying out the powers herein authorized."

That bonds may be issued by high school districts is expressly recognized in Section 75-4604, RCM, 1947, which statute by reference incor-

porates the general school bond statutes "in so far as the same are applicable and not in conflict with any other provisions of this act." Also, Section 75-5603, RCM, 1947, states that the trustees of high school districts may issue bonds on the credit of the high school districts.

The board of trustees of a high school district is authorized to undertake a program of public works which, in Section 75-5601, RCM, 1947, includes the construction, improvement, or repair of buildings. That the expenditures for such capital improvements may be financed by bonds was observed above and Section 75-4601, RCM, 1947, specifically provides:

" . . . Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor, such proceedings may also be commenced on petition of thirty per cent (30%) of the qualified electors of the high school district. Upon presentation of this petition to the high school district board of trustees, the latter shall, within sixty (60) days, take steps to present the matter asked for in the petition to a vote of the people of the high school district."

The first high school district act was enacted as Chapter 47, ex. Laws, 1933, and our present law is, in great part, a copy of the original. Section 1 of Chapter 47, ex. Laws of 1933, provided:

"Such proceedings may be commenced upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor."

This is retained in the present law but there has been added, by amendment, an additional method of instituting bond proceedings by a petition signed by 30 per cent of the qualified electors. Our Supreme Court, in *Pierson vs. Hendricksen*, 98 Mont. 244, 38 Pac. 2nd 991, held the original act constitutional and approved bonds issued under the act and of necessity the court must have approved the bond issue which was initiated by a resolution and without a petition. In a recent case, *Habel vs. High School District "C,"* 129 Mont. 588, 292 Pac. 2nd 349, a bond issue was approved by the court which was called by a resolution of the board and not by petition.

It is, therefore, my opinion that the board of trustees of a high school district may, by resolution and without having received a petition, call an election to vote on the proposition of issuing high school district bonds.

It is also my opinion that a bond election in a high school district may be initiated by petition signed by 30 per cent of the qualified electors of the high school district.

Very truly yours,
FORREST H. ANDERSON
Attorney General