

VOLUME NO. 35**Opinion No. 47**

CORPORATIONS — School board, incorporation of, not permitted; SCHOOLS AND SCHOOL DISTRICTS — School board incorporation, not permitted. Article X, section 8, Constitution of Montana; sections 75-5933 and 75-5934, R.C.M. 1947.

HELD: A district school board may not incorporate under the Montana Nonprofit Corporation Act.

December 19, 1973

Mr. Robert J. Brooks
Powder River County Attorney
Office of the County Attorney
Broadus, Montana 59317

Dear Mr. Brooks:

You have requested my opinion as to whether a district school board may incorporate under the Montana Nonprofit Corporation Act, section 15-2301, et seq., R.C.M. 1947.

The Montana Constitution, Article X, section 8, provides:

The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

A school district is a political subdivision and instrumentality of the state. **Teamsters, Chauffeurs, Warehousemen and Helpers, Local #45 v. Cascade County School Dist. #1**, 30 St. Rptr. 630. Montana law at section 75-5901, Revised Codes of Montana, 1947, defines trustees as the governing board of a school district. However, school board trustees have only those powers expressed or implied by law. **McNair v. School Dist. No. 1 of Cascade County**, 87 Mont. 423, 288 P. 188.

The general powers and duties of school board trustees are set out in sections 75-5932, 75-5933 and 75-5934, R.C.M. 1947. These statutes neither expressly nor impliedly give school trustees the authority to incorporate.

THEREFORE, IT IS MY OPINION:

A district school board may not incorporate under the Montana Non-profit Corporation Act.

Very truly yours,

ROBERT L. WOODAHL
Attorney General