

School Trustees—Resignation to Whom Made.

Subdivision 6 of Section 419 of the Revised Codes of 1907, as amended by Chapter 8 of the Laws of 1921, construed not to apply to the resignation of a Trustee of a school district, and that the resignation of a School Trustee should be filed with the Clerk of the School Board. The Clerk should immediately notify the County Superintendent that a vacancy exists by reason of the resignation.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have submitted to me the question "to whom a resignation of a School Trustee should be made," it being contended that Subdivision 6 of Section 419 of the Revised Codes of 1907, as amended by Chapter 8 of the Laws of 1921, required it to be filed with the Secretary of State.

When the Codes were revised in 1907, through some error, Subdivision 6 of Section 420 was substituted for Subdivision 6 of Section 419. Subdivision 6 of Section 419, as amended by Chapter 8, Laws of 1921, was formerly Subdivision 6 of Section 1100 of the Political Code of 1895. Chapter 8 merely corrected the error and restored the provision as it appeared in the Code of 1895, so that this subdivi-

sion as now amended was the law of this State from 1895 to 1907, provided the mere clerical omission had the effect of repealing the provision from that date.

This provision has never heretofore been construed to apply to school district officers. The remaining provisions of this section all apply to State, county and township officers, and it would seem that Subdivision 6 was merely a general provision for closing up any omission not provided for in State offices, or county and township offices, not commissioned by the Governor. This conclusion is borne out by the fact that there are a great many officers elected by municipal or quasi-municipal corporations under the State who would have to file a resignation with the Secretary of State under this provision if there was no other provision of the statute covering the matter; as, for instance, officers of cities and towns, school districts, irrigation, drainage and road districts. To require these officers to file their resignation with the Secretary of State would, in each case, amount to an absurdity, as they are all purely local organizations, and furthermore there is no provision of law directing the Secretary of State to notify the person or board, authorized to fill the vacancy, that a resignation has been filed in his office.

Take for instance the provision, Subdivision 8 of Section 502 of Chapter 76 of the Laws of 1913, relating to the filling of a vacancy in the office of the Clerk of the School District, which provides that if the office should become vacant, the Board of Trustees shall immediately fill the vacancy by appointment,* and the Chairman of the Board immediately notify the County Superintendent of such appointment.

There is no positive provision here, nor have I been able to find any in any other provision of the statute, specifically designating to whom a clerk should address his resignation should he wish to resign his office. However, the inference is clear that it should be addressed to the Board or to the Chairman of the Board, rather than to the Secretary of State. .

Subdivision 6 of Section 502 above referred to provides that:

"When any vacancy occurs in the office of trustee of any school district by death, resignation, failure to elect at the proper time, removal from the district, or other cause, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school district, and the county superintendent shall immediately appoint in writing some competent person who shall qualify and serve until the next annual school election."

The foregoing was formerly a part of Section 1980 of the Political Code of 1895, so that if Subdivision 6 of Section 419, as amended, shall require the filing of a resignation with the Secretary of State, this has been true ever since the adoption of the Code of 1895.

In the absence of statutory provision designating the person to whom a resignation should be made, it should be made to the office or body which is authorized to act upon it by appointing a successor.

Edwards v. U. S., 103 U. S. 471;

Mechem Public Officers, Sec. 413.

The vacancy occurs on filing the resignation.

Subdivision 6 of Sec. 502, supra;

Subdivision 3 of Section 420 of the Revised Codes of 1907;
State v. Page, 20 Mont., at page 248.

From these sections clearly all that is necessary in this State is to file the resignation, and the office immediately becomes vacant.

While Subdivision 6 of Section 502 does not expressly provide to whom a resignation should be made, the inference clearly is that it should be made to the Clerk of the School Board, since he is required to immediately certify the fact to the County Superintendent, who fills the vacancy.

The provisions of Subdivision 6 of Section 419 become absurd when we attempt to apply them to the case of a Trustee who wishes to resign. If the Trustee is required to file his resignation with the Secretary of State, the Secretary of State would in turn, though not required to, notify the School District Clerk, who is directed, by Section 502, to notify the County Superintendent, who would fill the vacancy. However, the Secretary of State has no means of knowing either the name or the address of the School District Clerk.

I am, therefore, of the opinion that the provisions of Subdivision 6 of Section 419, above referred to, do not apply to the resignation of a Trustee of a school district, and that he is required to file his resignation with the Clerk of the School Board whose duty it is to immediately notify the County Superintendent that a vacancy exists by reason of the resignation.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.