

## Opinion No. 132.

Schools and School Districts—Board of School Trustees—Elections, School—Superintendent of Schools. Election of—Principal of High Schools, Election of—County School Districts.

**Held:** At a joint meeting of a board of trustees of a county high school and a district high school which acts upon the question of the employment of a district superintendent and county high school principal, the board of trustees of the county high school shall have the number of votes at said meeting equal to the number of votes of the board of trustees of the school district.

March 6, 1946.

Mr. Seth G. Manning  
County Attorney  
Wibaux County  
Wibaux, Montana

Dear Mr. Manning:

You requested my opinion concerning the following facts:

The seven trustees of the Wibaux County High School met with the five trustees of the School District No. 6 as a joint board on the 16th day of January, 1946. The county superintendent of schools was also in attendance at the meeting. All of the trustees present voted on the question of rehiring the incumbent of the combined office of superintendent of school district No. 6 and principal of the county high school. The vote cast was nine votes not to rehire and three votes to rehire the present incumbent. The chairman of the board gave notice to the

incumbent that his contract would not be renewed. You asked what the effect is of the action taken.

Section 1262.61, Revised Codes of Montana, 1935, provides for the organization of a joint meeting of the two boards and states in part as follows:

“For the purpose of voting upon any question relative to the employment of a district superintendent and county high school principal, or to the employment of joint teachers, or of determining any question of joint administrative policy, or of apportioning any item of joint expense, the board of trustees of the school district and the board of trustees of the county high school shall each be entitled to the same number of votes at any meeting of the joint board. To this end the board of trustees of the county high school shall choose a number of its members equal to the number of members of the school district which comprise its board. The county superintendent of schools shall not be one of the trustees so selected by the county high school board. The names of the trustees, so chosen by the county high school board, shall be given to the secretary of the joint board as the designated representatives of the board of trustees of the county high school who are entitled to vote at all meetings of the joint board.” (Emphasis mine.)

It is to be noted in the foregoing quoted provision of our law the Board of Trustees of the County High School shall have the same number of votes as the Board of Trustees of the School District. In this case it would mean the Board of Trustees of the County High School would have five votes. From the facts you gave me it is apparent all of the trustees of the County High School voted at the meeting and thus violated the above section of our code.

In 14 American Jurisprudence 323 the text states:

“If the statute requires a particular procedure in elections of administrative officers by a school board, it must be strictly adhered to, and the mere unanimity of the choice will not validate an election in which the statutory requirements were ig-

nored . . .”

In 56 Corpus Juris 334 it is stated:

“A board of education, or of directors, trustees, or the like, of a school district or other local school organization can exercise its powers in no other mode than that prescribed or authorized by statute . . .”

The foregoing authorities make it the duty of the boards to conform to the statutory procedure, which obviously was not done.

In *McNair v. School District No. 1*, 87 Mont. 423, 288 Pac. 188, our Supreme Court said:

“The board of trustees, therefore, constitutes the board of directors and managing officers of the corporation, and may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied in the exercise of those expressly conferred. The statute granting power must be regarded both as a grant and a limitation upon the powers of the board.”

A school board must act in conformity with the statute granting the power which in this instance was not done. Since the legislature has prescribed a specific and mandatory procedure to be followed, that procedure—and no other—will meet the legislature’s requirements.

It is therefore my opinion that, at a joint meeting of a board of trustees of a county high school and a district high school which acts upon the question of the employment of a district superintendent and county high school principal, the board of trustees of the county high school shall have the number of votes at said meeting equal to the number of votes of the board of trustees of the school district; and in the event all the members of the board of trustees of the county high school are permitted to vote, then said meeting and the action taken thereat is of no effect and not in conformity with Section 1262.61, Revised Codes of Montana, 1935.

Sincerely yours,

R. V. BOTTOMLY,  
Attorney General