

School Election to Fill Vacancies. Trustees, Term Of, First Class Districts. Trustees Appointed, Term Of. Nomination of Trustees, First Class Districts. Notice of School Election, Amendment Of.

Where a trustee fails to qualify there is a vacancy and the superintendent must appoint until the next annual election. At the next annual election the trustees must be elected for the balance of the term for which the person was elected who failed to qualify.

A public meeting of electors who name more than one candidate for the same office, is invalid. Another public meeting may be held provided it is ten days before the election for the purpose of correcting prior nomination, or of making new nominations in accordance with the law.

A defective notice of election may be amended and reposted provided the reposting is at least 15 days before the election.

Helena Montana, March 21, 1908.

Mr. John W. James,
County Attorney,
Anaconda, Montana.

Dear Sir:—

Your letter of the 19th inst., requesting opinion upon the following statement of facts, received:

By Chapter 69, Laws 1907, amending Section 1770, Political Code, Anaconda School District No. 10 was made a school district of the first class. Prior to this amendment said district had five school trustees, two of whom retired in April, 1907. Therefore it became necessary under said amendment to elect four trustees at the election in April, 1907, namely, two to succeed the two retiring members, and two to bring the total membership of the board up to seven. Four trustees were elected at said election, but failed to qualify within the time required by Section 1782, Political Code, as amended by the laws of 1897. Whereupon the county superintendent of schools, pursuant to said section, and to Section 1980, appointed four trustees. This spring the term of one of the old trustees expired. The county clerk, pursuant to Section 1774, as amended by the laws of 1897, posted a notice of school election, and stated therein that three trustees would be elected for a term of three years, and two for the term of two years. On March 18th a public meeting of electors was held pursuant to Section 1778, as amended by the laws of 1897, at which five persons were nominated as candidates for school trustees for the term of three years each.

Upon the above statement of facts you submit the following questions:

First: For how long should the four trustees be elected who suc-

ceed the four trustees appointed by the county school superintendent?

Second: What action should be taken by the board of county commissioners in relation to the five trustees nominated at such public meeting for three year terms each, as to the placing of their names, or any of their names, on the official ballot?

Third: If the notice of the county clerk was erroneous in stating the terms for which the trustees were to be elected, has he authority to post an amended notice conforming to the law?

Section 1980, Political Code, provides that where there is a vacancy the county superintendent shall appoint, in writing, some competent person, who shall qualify and serve until the next annual school election. Section 1770, as amended by Chapter 69, Laws 1907, provides that "an annual election for the election of school trustees shall be held at each school district in the state on the first Saturday in April of each year," etc. The general policy of our law in cases of boards of membership of three or more is that the term of all members shall not expire at the same time.

Section 1782, quoted above, provides that the school trustees should be elected annually, and the form of ballot set out in Section 1773 shows that it was not the intention that whenever there was an election of school trustees that it should be for the full term of three years, and in carrying out this general policy our constitution was amended a few years ago so as to prevent all members of boards of county commissioners from going out of office at the same time. It is also the general rule, in the absence of an express provision to the contrary, that where an appointment is made to fill an unexpired term that the appointee holds for the balance of the term of the person he was appointed to succeed. However, in the case of school trustees the law modifies this general rule by stating that the appointment made by the county superintendent shall only be until the next annual school election.

Therefore, in our opinion, the person elected at the next annual school election is elected only for the balance of the term of the person who was originally elected for the full term. Under any other construction it would be possible by a series of resignations, followed by elections for full terms of three years, to eventually have all the school trustees get out of office at the same time and thereby have a new board come in wholly unfamiliar with the affairs and conditions in such school district. You are therefore advised that four of the trustees to be elected on the first Saturday in April next, should be for the term of two years each, that is the balance of the term of the four trustees who were elected in April, 1907, and who failed to qualify. The fifth trustee to be elected this year to succeed a person whose term of office has expired, would, of course, be elected for the full term of three years, as your school district is a first class district of less than twenty thousand population. As stated to you over the telephone yesterday afternoon, it is within the authority of the county clerk to file an amended notice of election, provided such amended notice is posted in the manner required by law at least fifteen days before the

election. Therefore, if the county clerk posts an amended notice on March 20th, stating that four trustees were to be elected for a term of two years each, and one for a term of three years, in our opinion such notice is sufficient and cures any defects that may have existed in the notice posted prior thereto.

Under Section 1778 a public meeting for the purpose of nominating school trustees may be held at any time within ten days before the election. Therefore, the electors may hold a public meeting on or before the 25th day of March and nominate four trustees for the two year term and one for the three year term, and the certificate of such nominations should be filed on or before March 27th.

As to the five men heretofore nominated for the term of three years each, in our opinion such nomination is invalid for the reason that there was only one man to be elected for a term of three years, and the same nominating body would have no authority to nominate five different candidates for one office. It is possible that the chairman and secretary of the meeting which nominated these five men might call another public meeting and by proper motions, or consent of the candidates nominated, change their terms so that four of them would be for two years and one for three. In our opinion the commissioners, in the absence of any further action on the part of the electors who nominated the five men for the term of three years each, would have no authority to alter or amend the certificate of nomination filed by the chairman and secretary of the public meeting so naming them. The only thing they could do with it would be to refuse to consider it at all, upon the ground of uncertainty, and that more than one man was nominated for the same office, at one public meeting.

Pursuant to your request we herewith enclose you copy of opinion given to County Attorney Wilson regarding sheriff's fees.

Very truly yours,

ALBERT J. GALEN,

Attorney General.