

Teacher, Employed by Incoming Board of Trustees. Board of Trustees of School District, Incoming Board Employ Teachers for Current Year. Out-Going Board, have no Authority to Employ Teacher for Succeeding Year. County Superintendent of Schools, has Power to Revoke Teachers' Certificate. Teachers' Certificate, May be Revoked by County Superintendent of Schools Without Hearing for Incompetency. Election, School Districts Having Less Than Fifty Pupils. Elections, no Nominations Required Prior to Election. Elections, Ballots Must Specify Length of Term. Election, Where Length of Term is Not Designated Votes Cannot be Counted. Elections, Persons Receiving Highest Number of Votes for Particular Term Should be Declared Elected. School Districts, Divided by County Division Line Become Joint Districts. No Apportionment of School Funds Made, as District Continues as at Present Formed. Joint School Districts, Funds to be Held Jointly by the Treasurer of Each County. Road Districts, Divided by County Line.

1. The Board of School Trustees elected in April have charge of the employment of teachers for the year beginning September following, and are bound by action of out-going board.
2. A County Superintendent of Schools may revoke a teacher's

certificate without a hearing, when satisfied that the teacher is incompetent, or that any reason exists which would have been sufficient for refusing to issue a certificate.

3. In school districts of the third class, having less than fifty pupils, no nominations of trustees need be made prior to election. Voting for any qualified persons serves to nominate said person for the particular term for which the vote is cast.

4. a. Where a county division line intersects a district, the district becomes a joint district, and the funds are jointly held by both county treasurers.

4. b. Road districts divided by county division lines are not apportioned in proportion to the amount of road fund, but the district in each county becomes a road district of that county and is entitled to have work done under the direction of the County Commissioners.

Helena, Montana, June 3, 1909.

Hon. J. H. Stevens,  
County Attorney,  
Kalispell, Montana.

Dear Sir:

I am in receipt of your letter of May 18, wherein you submit for my official opinion the following questions:

"1. A teacher was employed by out-going school board, and the new board is opposed to the teacher so employed. Is the action of the old board in this matter binding upon the new board and the district?"

"2. The County Superintendent of Schools desires to revoke a certain teacher's certificate, and wants to know the procedure she should take. In this instance, the superintendent is fully satisfied of the incompetency of the teacher, and yet it has occurred to me that perhaps she should issue an order requiring the teacher to show cause why her certificate should not be revoked, although it would be more or less of a farce to do so. I do not question, nor do I find any procedure prescribed in the Codes. We would like to know what procedure the Superintendent should take to revoke it?"

"3. In a school district of the third class, having less than fifty pupils, a canvass of the votes of the recent election for trustees shows that some of the voters voted for A and specified a three year term and for B and specified a one year term, and for C for the one year term, while others voted for B and D without specifying the terms for which they were to be elected. If only those specifying the terms for which they were to be elected, A and B will be elected, although A received a less number of votes at the election than did D. If all of the votes

cast should be counted, regardless of whether the terms were specified on the ballot or not, B and D would be elected. If B and D were elected, which was elected for the three year term (D receiving more votes than any other candidate but none of his ballots specifying the term of office)?"

"4. When Lincoln County is created, or comes into existence, some of our school districts will be partly in Flathead. In making the apportionment of school funds and indebtedness, should the basis of the apportionment that will be in the respective counties and in such district, or what should be the basis of the apportionment? Also, what should be the basis of apportionment in road districts similarly situated?"

The question submitted in query number one is the same as that submitted by Hon. Phil Cole, county attorney of Teton county, which was answered under date of May 14, 1906, and which is reported in the official opinions of attorney general of 1905-06, at page 334. However, the Supreme Court in the case of Pickett Publishing Company v. County Commissioners, 36 Mont., 188, passed on a question so similar that it seemed to me to be a reversal of the opinion last above cited. However, after a review of the authorities cited in the opinion of May 14, 1906, I am inclined to reaffirm that opinion. The Pickett Publishing Company case was one in which the outgoing Board of County Commissioners, none of whom had been re-elected to office, contracted with the publishing company for the public printing of the county for two years, beginning upon the day of the expiration of their term, and this contract was executed by them in the interim between the election of the incoming board and the expiration of the term of the outgoing board. However, a distinction which suggests itself to me between the case and the question submitted by you, is that the Board of County Commissioners is given authority to contract for the public printing, and the conditions remain the same no matter whether the business of the county increases or diminishes; no matter whether there is a division of the county, or whether its boundaries remain the same, for the contract is based upon a fixed charge for certain specific items, both in furnishing supplies and publishing notices for the county.

Under the provisions of our constitution and statutes, and the cases considered in the opinion of May 14, 1906, the law seems to be established that the incoming board of school trustees shall manage and direct the affairs of the school district for the following year. These trustees take office in April, and it is but a short time following their induction into office that the current school year expires. The next school year begins in September following their election, and it seems to be the clear expression of the statutes and reported cases that the trustees elected the preceding April should conduct the affairs and business of the district during that school year, and in the interim from April to September during which the long vacation occurs, conditions might arise which the out-going board would, at the time of the employ-

ment of teachers, have no cognizance; and, while in making contracts with teachers for the year beginning in September after their expiration of office, these trustees, acting perhaps in the best of faith, would not in any effective manner meet the changed conditions, if such should arise. The assessed valuation of the district, the school levy for taxes and the apportionment of moneys available for school purposes, are all conditions which are necessarily within their knowledge, and, so far as the levy at least is concerned, subject to the control of the new board and entirely without the knowledge of the out-going board; and these matters are of prime importance in determining the number of teachers to be employed and the salary to be paid them, which is necessarily measured by their ability and the duties imposed upon them.

In the event of the removal from the district of, say, fifty per cent of the students, which in small districts might well occur, or in the event of the division of the district, the incoming board would, of course, have exclusive knowledge of, and be the only board, able to take advantage of changed conditions, for the reasons herein set out I reaffirm my opinion of May 14, 1906.

The second query, while not expressly covered by the statute, is easily determined in the light of Section 953 of the Revised Codes, and following sections. Section 953 provides that the County Superintendent shall, at stated times, hold public examinations for teachers, and shall issue certificates to the successful applicants. The following sections provide for a County Board of Educational Examiners, whose duty is to assist the Superintendent of Schools in the work of these examinations. Section 959, Revised Codes, provides the qualifications of teachers and causes for revocation of certificate. Section 961, Revised Codes, is in part as follows :

"The County Superintendent is authorized and required to revoke and annul at any time a certificate granted by him or his predecessor for any cause which would have authorized or required him to refuse to grant it if known at the time it was granted, and for incompetency," etc.

The last quoted section of the code seems to me to determine your second inquiry, and you are advised that the County Superintendent of Schools, being, as you say, "fully satisfied of the incompetence of the teacher," she may revoke the license without issuing any preliminary order requiring the teacher to show cause why her certificate should not be revoked.

Your third inquiry presents an involved condition in the canvass of election returns, but Section 852, Revised Codes, takes care of the situation fully. By this section the boards of school trustees are given supervision over the election of school trustees in districts of the second and third classes. The clerk must give notice of the same and the trustees appoint judges.

"In districts of the second and third classes, having fifty or more children of school age," the names of the candidates must be filed with the clerk and posted. In districts having less than fifty children of

school age no requirement for filing or posting the names of candidates is made. Section 858, Revised Codes, provides that the voting must be by ballot, without reference to the general election laws with regard to nominations, form of ballot or manner of voting in districts of the second and third classes. This last section is, however, modified in regard to nominations in districts of the second and third classes having fifty or more children of school age. So, reading Sections 852 and 853 together, it is my opinion that when an elector voted for a person and designated the term, that he nominated that person for that term as well as casting his vote for him. Therefore, A would be entitled to all the votes which were cast for him and specified thereon a three year term, and the ballots cast for B and specifying the one year term should be counted for B. You say that if only those ballots specifying the terms should be counted A and B will be elected. In that event it is my opinion that A and B were elected, and the only question which might remain in doubt under your statement of facts is as to the term of each, as both A and B received votes on which the three year term was specified. A, however, could be elected to no other than the three year term, as he received no votes for any other term.

The fourth question submitted by you is as to the division of the school funds in districts intersected by the county line dividing Flathead county from the newly created county of Lincoln.

The districts severed by this county division line would be joint districts, and the division of the funds would be governed entirely by the provisions of Section 844, Revised Codes, and the procedure, in a general way, is that the trustees and teachers make to the superintendent of each county in which the district is located, the reports which trustees and teachers are required to make, and also the number of pupils attending the school from each county. The County Superintendent in each county must apportion to such district such proportion of the school money to which such district is entitled as the number of school census children residing in that portion of the district situate in his county bears to the whole number of school children in the whole district. There would, therefore, be no division of funds belonging to these districts, as by the county division they are made joint districts and covered by the provisions of the section last cited.

The second portion of your question number four, as to the basis of apportionment of road districts similarly situated, is determined by Section 4, Chapter 133, Laws of 1909, being the act creating the county of Lincoln. The road districts of the new Lincoln County, upon its establishment, will have no money to their credit, nor will the road districts of old Flathead County, any more than they have at the present time. The road law does not provide for the apportionment of road funds of the county to the various road districts, and the only claim that the separate road districts have upon the road fund of the county is the right of the districts to have the road work, which is done in the district by the County Commissioners, paid for by the County Treasurer from the road fund of the county. So, as the separate road districts

have no debts, no funds and no property, there seems to be nothing to apportion.

I have been somewhat delayed in replying to your request for an opinion in these matters owing to an unusual stress of original proceedings in the Supreme Court, together with brief work and heavy mails.

Very truly yours,

ALBERT J. GALEN.

Attorney General.

**School Trustees, Authority to Erect Buildings. School Building, Authority of Trustees to Build. Taxes of School District, Authority to Use for Building.**

School Trustees have no authority to use the money of their district for the purpose of erecting a school building, or additional school room, without first being authorized so to do by a vote of the district.

Helena, Montana, June 7, 1909.

Hon. R. Lee McCulloch,  
County Attorney,  
Hamilton, Mont.

Dear Sir:

I am in receipt of your letter of June 3, 1909, in which you request an opinion upon the following proposition:

Where a school district has a school house that is practically unfit for use, and is entirely inadequate for the purpose for which it is attempted to be used, is the tearing down of the old building, or the removal of it, and the building of a new one the "furnishing of additional school facilities" within the meaning of such term, as used in Section 995, Revised Codes; in other words, could the board of school trustees under said Section 995 certify a ten mill levy for their district and use such money, or any part thereof, for the purpose of building a new school house, or additional rooms to an existing school house without first submitting the question of the erection of such building to the electors of the district, as provided in Subdivision 6 of Section 875, Revised Codes.

The supreme court in this state in *State v. Lyons*, 96 Pac. 923, had occasion to construe said subdivision 6 of section 875, and in their opinion, after quoting said subdivision 6, the court said:

"No other provision has been called to our attention, nor have we been able to find any, which enlarges the powers conferred by this section or modifies the duty enjoined. It must therefore, be regarded, not only as a grant of power to such boards, but also as a limitation upon their power, both as to its extent and as to the mode of its exercise. This is the rule of construction applicable to all statutes granting and defining the powers of such municipal or quasi municipal bodies."