

County Board of Examiners, Quorum of. County Superintendent, Right to Conduct Examinations. County Superintendent, Right to Appoint One Person to Conduct Examination.

Two members of the County Board of Examiners constitute a quorum for holding examinations or transacting other business. The County Superintendent of Schools may conduct examinations alone. The County Superintendent of Schools may appoint any competent person to conduct an examination.

Helena, Montana, August 5, 1909.

Hon. W. E. Harmon,
Superintendent of Public Instruction,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of August 3, enclosing request for opinion from you by Maggie V. Smith, superintendent of schools of Lewis and Clark county.

The first question is as follows:

"Would the superintendent and one of the appointed examiners, or two appointed examiners, constitute, a legal board for conducting an examination under section 954 of the revised codes of Montana?"

"Does section 957 of the revised codes nullify the first part of section 953, revised codes, which gives the county superintendent the right to conduct examinations?"

"Does section 957, revised codes, have any effect on section 959, revised codes, which gives the county superintendent the right to appoint one person to conduct the examination alone?"

"Can one person conduct an examination legally?"

In reply to the first question, you are informed that, in my opinion, the county superintendent and one of the appointed examiners, or the two appointed examiners, under section 954, revised codes, may conduct an examination, as section 954 provides that "two members of this board shall constitute a quorum for the transaction of business." In my opinion conducting an examination is the "transaction of business."

2. Section 957, revised codes, repeals and supersedes section 953, revised codes, in so far as they are in conflict. Section 953 is a part of an act approved March 4, 1901, and section 957 a part of an act approved February 27, 1907, at which time the examination board for conducting examinations was created by the legislature, and author-

ized the board of county commissioners to appoint two persons to act with, and assist, the county superintendent in conducting these examinations. The latter part of section 957, however, in no way conflicts with section 953, simply providing that the board of examiners, when requested to do so by the state board of education, shall conduct eighth-grade examinations and grant diplomas or common school certificates.

3. While section 957 is a later enactment than section 959, and would therefore supercede section 959, if the two sections could not be reconciled, it is my opinion that there is no conflict between the provisions of section 957 and the provisions of section 959, which empowers the county superintendent, upon application of the state superintendent, to appoint some suitable person to conduct an examination, when it appears that attendance upon the teachers' examination at the county seat "would work a great hardship on one or more teachers in the county." This latter provision of section 959 is made simply for the convenience of teachers living in remote parts of the county, and is entirely in accord with the provisions of section 957, and is not repealed by implication, or otherwise, by the passage of the latter section.

4. My opinion, given in answer to the third question, answers the fourth as well.

Yours very truly,

ALBERT J. GALEN,

Attorney General.