

**Boards of School Trustees, Vacancies in. Vacancies of Board of School Trustees, How Filled.**

In districts of the third class, where only one member of the board remains in office, the county superintendent may appoint two trustees to fill out the unexpired term without confirmation by the remaining member of the board.

October 27th, 1913.

Hon. H. A. Davee,  
Superintendent of Public Instruction,  
Helena, Montana.

Dear Sir:

I am in receipt of an oral request from Dr. H. H. Swain, of your office, as to the proper construction of the provisions of Chap. 76 of the Session Laws of the Thirteenth Legislative Assembly, found on pages 227 and 228, having reference to vacancies on the boards of school trustees, and appointments to fill such vacancies by the county superintendent of schools. The provision found on page 227 provides that:

"A vacancy in the office of school trustee must be filled by appointment by the county superintendent of schools, subject to confirmation by a majority of the remaining members of said board, if those remaining constitute a majority of the total number of the board."

The question arises as to the authority of the county superintendent of schools to appoint trustees in districts of the third class in a case when only one member of the board remains in office.

A school board as such can only act as a body, and then only when a majority of such a board are in favor of any particular proposition. In such case as that stated above there could be no majority or quorum of the board, since the law contemplates a board of three, a majority of which board would necessarily be two. Since there would be no majority in such case as that stated, it follows that there could be no confirmation by a majority, and the superintendent would have the power to appoint trustees without any confirmation.

The provision found on page 248, in regard to vacancy on school board, was taken bodily from the old law, and was Sec. 1019 of the Revised Codes. It directs the appointment of trustees and specifies the manner in which it is to be done, but I think that it is not inconsistent with the former provision.

You are, therefore, advised that in districts of the third class, where only one trustee remains on the board, the county superintendent of schools may appoint two trustees to fill out the unexpired terms, without confirmation of the member remaining on the board.

Yours very truly,

D. M. KELLY,  
Attorney General.