

**Trustees, County Free High School. Appointment, County Commissioner as Trustee. County Commissioners, Authority to Appoint Member as Trustee of County Free High School.**

The Board of County Commissioners have no authority to appoint one of its members as a member of the board of trustees of a County Free High School.

December 20th, 1913.

Hon. H. A. Davee,  
State Superintendent of Schools,  
Helena, Montana.

Dear Sir:

I am in receipt of your favor of the 17th instant, submitting for my opinion the following question:

"Is it legal for a board of county commissioners to appoint one of their own members as a member of the board of trustees of a county high school?"

There is no direct prohibition of such action so far as I have been able to ascertain in the laws of this state. However, there is a well defined line of authority based upon the most substantial reasons of public policy which forbids the member of a board having appointive power to use that power to put himself in office.

"It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, so that, even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint."

29 Cyc. 1381.

People v. Thomas, 33 Barb. (N. Y.) 287.

State v. Taylor, 12 Ohio St. 130.

The supreme court of our state has never had occasion to pass upon this subject, but I feel convinced that once the question is presented to them that they will hold with other courts which have passed upon this subject, and say that such an appointment is void, as against public policy.

You are, therefore, advised that in my opinion, such an appointment is void and of no effect.

Yours very truly,

D. M. KELLY,  
Attorney General.