

Vacancy, School Trustee. Appointment, Vacancy School Trustee, Tenure of. School Trustee, Tenure of Appointee.

In determining the tenure of an appointee to fill a vacancy in the office of school trustee of district of the third class, Subdivision 5, Chapter 76, appearing on page 227, Session Laws of 1913, should be construed with Subdivision 5, appearing on page 228 thereof.

October 5, 1915.

Hon. Herbert H. Hoar,
County Attorney,
Sidney, Montana.

Dear Sir:

I am in receipt of your two letters of October 1st, transmitting to this department copy of information filed by you against Mr. Horner, charging him with causing and contributing to the incorrigibility and delinquency of one Nellie McFarland; and also submitting the question as to whether the provisions of Subdivision 5 of Section 502, Chapter 76, Laws of 1913, appearing on page 227, should govern in case of an appointment to fill a vacancy in the office of a school trustee, or whether the provisions of Subdivision 6 thereof, appearing on page 228 of the Session Laws of 1913, should govern?

I believe your conclusion that these two subdivisions should be read together is the correct conclusion. In other words, where a majority of the old board remains, the appointment made by the superintendent is subject to such confirmation of such remaining majority, as provided in said subdivision 5; but where a majority of the old board does not remain, then the provisions of Subdivision 6 apply.

We have examined the copy of the information submitted, and presume that it is drafted under the provisions of Section 18, Chapter 122, Laws of 1911, known as the "Juvenile Act." The offense named therein is statutory and ordinarily in pleading a statutory offense the language of the statute is sufficient. The mere statement, however, in the information that he contributed to incorrigibility and delinquency is very general, and if the facts are such as to render it advisable, it would perhaps be safer to detail in some general manner in what way he contributed to the incorrigibility and delinquency, or at least in what the said incorrigibility and delinquency consisted. The Juvenile Act, as you are aware only applies to children of seventeen years and under. If this child was at the time even a day over seventeen years of age,

that would probably be fatal. You have charged that she was seventeen. If, as a matter of fact, she was not yet quite seventeen at the time of the commission of the offense, it would perhaps be safer to allege that she was then and there under the age of seventeen. There being no positive declaration by our own court on these matters, it must rest largely in the sound judgment and discretion of the pleader until such time as the questions are presented for determination. It is a very good policy, however, to keep as far away from technicalities as the facts and conditions will permit.

I return herewith copy of the information submitted.

Yours very truly,

J. B. POINDEXTER,

Attorney General.