

Vacancies, in Office of Trustee, How Filled. County Superintendent, Power of to Fill Vacancy. Trustee Appointed to Fill Vacancy, Must be Confirmed When.

Law relating to appointment and confirmation to fill vacancy in the office of school trustee, construed.

June 17, 1916.

Hon. Frank Hunter,
County Attorney,
Miles City, Montana.

Dear Sir:

I am in receipt of your letter of the 14th instant, submitting the question:

"Is it necessary that an appointment made by the county superintendent to fill a vacancy in the office of school trustee of a district of the third class, be confirmed by the remaining members of the board where such remaining members constitute a majority."

This question arises from the apparent conflict in Subdivision 5 and 6 of Chapter 76 of the Laws of 1913. The provisions of the second paragraph of said subdivision 5 apply indiscriminately to all vacancies, for no attempt is there made to limit the vacancy to any particular case whatever, and the provisions of said subdivision 6, after enumerating about all the ways in which a vacancy can occur, then adds the general phrase "or any other cause". Hence, as both subdivisions relate to all vacancies, they are on their face apparently in direct conflict.

Our Supreme Court never has construed these particular provisions of the school law. The rules of construction announced in the Codes and in the decisions of our Supreme Court, with reference to other matters may be referred to as a guide, but not with absolute certainty as to the proper meaning to be given to this statute.

Section 3553, et seq., contains some general rules of construction.

In Section 3558, is found the provision that where different sections conflict, the last in numerical order must prevail.

Section 7875 lays down the rule that in the construction of a statute, neither addition nor subtraction may be called into requisition, but adds the sentence "where there are several provisions or particulars, such a construction is if possible to be adopted as will give effect to all."

Section 7576 requires the intention of the legislature "to be pursued if possible".

Section 4 requires a liberal construction to be given to the statute "with a view to effect its objects, and to promote justice."

Section 5 contains the provisions that the provisions of the Code so far as substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. The

Supreme Court in the construction of statutes has followed these rules as enacted by the legislature, and has held:

"In construing a statute every word, phrase and term should be considered, and none should be considered meaningless if it is possible to give effect to it."

Stadler v. City of Helena, 46 Mont. 128, 127 Pac. 554.

It is an elementary principle of statutory construction that all sections upon the same subject matter are to be taken as one law, and construed together.

Hardesty v. Largey Lumber Co., 34 Mont. 151, at p. 162.

It will be noticed that this apparent conflict occurs in different parts of the same section, not in different sections, nor in different enactments. It appears that in the codification of the school law, the legislature gathered up various sections of the Code, and reenacted them, as Section 502 of Chapter 76, Laws of 1913, and particularly is this true of Section 862 and Section 1019 of the Codes. Subdivision 6 above referred to is a verbatim copy of Section 1019 of the Code, but that part of said subdivision 5 which relates to the filling of vacancies, does not appear in the Codes. Hence, the legislature in effect reenacted said Section 862, and said Section 1019, with certain changes in said Section 862, and inserted the provision as an innovation relating to the confirmation of appointments by the county superintendent where the remaining members of the board constitute a majority. If, therefore, we were to hold that under the provisions of said subdivision 6, the county superintendent could make appointments in such cases without reference to the remaining majority of the school board, we would be entirely ignoring this new provision which requires such confirmation. But by holding that the superintendent is vested with power to make the appointment, but that such appointment must be submitted to the remaining majority of the board, where a majority remains, we give effect to both parts of this same section relating to the same subject matter, that is the filling of vacancies. I am, therefore of the opinion that where an appointment is made, and the remaining members of the board constitute a majority, that such appointment should be submitted to them for confirmation.

The law as it is expressed, is undoubtedly misleading, and is productive of disagreements, and a county superintendent finding one provision of the statute dealing specifically with the subject matter, would hardly be required to hunt through the Codes to ascertain if there was not some other provisions which modified the meaning of that which on its face purports to be a statement of the entire law on the subject. However, in the absence of a Supreme Court ruling, I am inclined to think that the above is the safe construction.

Yours very truly,

J. B. POINDEXTER,
Attorney General.