

School Trustees, Election of. School Districts, Raised from Third to Second Class. Appointment, School Trustee to Fill Vacancy. Appointee, to Fill Vacancy, Term of.

A person appointed to fill a vacancy in the office of school trustee holds only until the next general election, and cannot legally hold over except by tolerance of the electors.

Where a district is raised from third to second class, the electors may elect to fill all vacancies occurring in the office of school trustee whether such vacancies are occasioned by expiration of the regular term or of the term of one appointed to fill a vacancy.

March 15, 1915.

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

Dear Sir:

I acknowledge from your correspondence relating to election of school trustees in the school district at Columbia Falls, Montana. This question it appears was submitted to the Hon. County Attorney of that county, but as we gather from his opinion, the facts before him were not the same as presented here. The facts as we understand them here

are briefly, that the school district in question was originally one of the third class but at some time heretofore and since the last annual school election, it was raised to a district of the second class; that the county superintendent appointed two additional trustees, and the three of those who were serving as trustees of the third class district continued to hold office as trustees of the district, when it became one of the second class. Of these original three trustees, it appears that the term of one does not expire at the coming election; that one resigned and an appointment was made to fill the vacancy, and that the term of one regularly expires this coming spring. It appears, therefore, that there are now in said district three trustees who have been appointed, one whose term regularly expires, and one who holds over. Under the provisions of Subdivision 5, Section 502, Chapter 76, Laws of 1913, an appointee to fill a vacancy in the office of school trustee holds

“office until the next annual election, at which election there shall be elected a trustee for the unexpired term.”

Subdivision 9 of this Section provides a method by which the terms of trustees may be so arranged that they will not all expire at the same time. This method provides that the trustees whose terms expire shall hold over for one or two years, and that lots shall be cast to determine which one holds over for the two year and which one for the one year period. It has been heretofore held by this department that the provisions of Subdivision 9 do not apply to appointees to fill vacancies, and this construction of the law seems to be well sustained by the analysis the Supreme Court has given of Section 5, Article XVI of the State Constitution.

State ex rel McKowen vs. Sedgwick, 46 Mont. 187.

It therefore, appears that there are three trustees appointed to whom this Subdivision 9 would not apply, and it further appears from the state of facts that the trustee whose term regularly expires refuses to hold over under the provisions of this Subdivision 9, and it further appears from the state of facts that the term of office of the original trustee whose office became vacant, expires at the coming annual election. Hence, we have the statement, three appointees, one hold-over, and one who refuses to accept the provisions of the law relating to holdovers. This we understand too, is the first election in this district since it has reached the degree of second class district. In an opinion heretofore rendered by this department, it was held that in districts of the third class, for the purpose of securing the proper rotation in office,

“in case of a new district at the first election of trustees, one trustee should be elected for one year, one for two years and one for three years.”

Opinions Att. Gen. 1912-14, 471.

In view of the facts of this case that there is not any trustee to hold over, I know of no reason why this principle should not apply, and that the electors of the district may elect their trustees for such terms as will thereafter prevent the terms of any more than two expiring in any one year. If the whole four trustees were elected for three years, there would be no law compelling them to cast lots as to whether they should hold for a less period, for their terms would be fixed by their

election at three years. Two of the trustees should be elected for three years; the remaining two should be elected for one or two years, as may be necessary to prevent the terms of more than two expiring in any one year.

It is useless to look for specific direction in the statute for a complication of this kind, for there is no such direction there given, but the object to be attained is very clear, and we believe that the electors of the district have the right to choose their officials for such terms as will enable them to accomplish that purpose.

The correspondence is herewith returned.

Yours very truly,

D. M. KELLY,

Attorney General.