

**Trustees School District, Election of. School District Trustees, Appointment of. Vacancy, in Office of School Trustee, Term of. Appointee, Holdover Officer de Facto.**

A person appointed to fill a vacancy in the office of school district trustee holds only until the next general election. If he is permitted to hold over, the electors may at the succeeding election elect someone to fill the vacancy for the unexpired term.

A school trustee appointed to fill a vacancy who is permitted to hold over after a general election is an officer de facto.

March 22, 1915.

Miss Mabel R. Williams,  
County Superintendent,  
Terry, Montana.

Dear Madam:

I am in receipt of your letter submitting certain questions relating to the school trustees in a district of your county. It appears from the statement that a vacancy occurred in 1913, and that the term would expire in April, 1914. An appointment was made to fill the vacancy; that the term of another member of the board expired at the same time, and the board eventually, for the purpose of securing or preventing the terms of two members expiring the same year, resorted to the proceedings authorized by Subdivision 9, Section 502, Chapter 76, Laws of 1913, and that the choice fell upon the appointee; that since that time he has been serving and acting as chairman of the Board; that contracts were entered into with teachers; that at least one of these contracts was signed only by the chairman and by the clerk, but that one other member of the board voted for the teacher named in this contract. The questions, therefore, submitted are:

1. May the district now elect someone to fill the vacancy or does the appointee continue to hold over?
2. Are the actions of this appointee who held over legal and binding?

1. Subdivision 5, Section 502, Chapter 76, Laws of 1913, provides that in effect a trustee appointed to office holds only until the next general election, when one shall be elected for the unexpired term. This department has heretofore held that the provisions of Subdivision 9 of said Section and Chapter do not apply to an appointee. (Opinions Atty. Gen., 12-14-471). Hence, this appointee who held over by reason

of casting lots, held without any strict legal title or right to the office, but rather by tolerance, but the fact that the electors of the district have simply permitted him to continue in office for a part of the time does not bar them from electing someone at the coming election for the remainder of the term.

2. While the appointed trustee who held over was not an officer de jure, yet he was one de facto, and his acts and contracts, while serving as an officer de facto, are binding upon the district; especially is this so when it appears that he was indorsed by one other member of the board. Under this state of facts, neither the present board, nor the new board would have the authority to nullify a contract made with the teacher upon that ground.

We are not advised as to the direction of the contract in question, but take it that it was entered into at the beginning of the school year, and continues until the end of the present school year. If the teacher is not discharging his duty, there may be other ways of ousting him, but the contract made by the de facto board, which had been tolerated and permitted to continue in authority by the electors of the district, cannot now be nullified because this member was not elected. We will say, further, while it is not the custom of this office to answer directly inquiries of this character, but refer such matters to the county attorney, in this particular case, time will hardly permit of reference being made, and for that reason we answer the question direct to you, but will transmit to the county attorney a copy of this opinion.

Yours very truly,

D. M. KELLY,

Attorney General.