

**School Districts—Election of Trustees.**

Amendment to Section 502 (1) of the School Law requiring trustees must be elected from outlying portions of school district of the third class, held unconstitutional.

May 4, 1917.

Mr. Wade R. Parks,  
County Attorney,  
Thompson Falls, Montana.

Dear Sir:

I have your letter of recent date from which it appears that there are several school districts in your county having more than one school house in which all of the present Board of Trustees reside in a town within the district; that at the recent school election there were either candidates residing in the outlying sections or persons in the outlying sections were duly voted for; and that in every case at the recent school election a majority of the votes cast were in favor of the person residing in the town.

House Bill No. 230, Chapter 81 of the 1917 Session Laws, amended paragraph 1 of Section 502 of the school law by adding the following sentence:

“In districts of the third class having more than one school house where school is held, one trustee must be elected from persons residing where such outside schools are located.”

You have submitted to me the question as to whether or not a person residing in the outlying sections should not be declared elected so that there will be at least one member of the Board of Trustees in the outlying sections.

You have called my attention to 9 R. C. L., pages 1125 and 1126, Section 125 to 127, inclusive, but you will notice that these Sections

deal with the general subject of eligibility of candidates. But Article IX, Section 13 of the Constitution of Montana provides: "In all elections held by the people under this Constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected.

A school election is an election held under the Constitution. See Article XI, Section 10.

To accomplish the result desired by this amendment, provision should have been made for a division of the several school districts of the third class by some competent authority, such as the county superintendent or county commissioners, into precincts and then there should have been a provision requiring that the board of trustees in districts of the third class should consist of three members, one to be elected from residents of each of such districts. In other words, there should have been a provision making residence in a particular precinct a qualification to hold the office of trustee from such precinct. Then the person residing in a particular precinct receiving the highest number of votes would be declared elected. But the present amendment simply declares that one trustee must be elected from persons residing where such outside schools are located, and it would appear to me that this amendment conflicts with the above provisions of the Constitution, and therefore the person receiving the highest number of votes in any district should be declared elected regardless of the place of his residence.

Respectfully,

S. C. FORD,

Attorney General.