

Term of Office—Schools—Trustees—School Elections—Election.

The term of office of a School Trustee is three years. Where more than one term regularly expires, drawing should be had to determine which of the Trustees holds over.

Election must be held to fill a vacancy occurring before expiration of a regular term.

Howard A. Johnson, Esq.,
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Boulder, Montana.

My dear Mr. Johnson:

You have requested an opinion from this office on the number of Trustees to be elected in the Cardwell joint district, a district of the third class, where a three year term expires and there are two members of the board holding by appointment.

In the recent case of Jersey et al. v. Peacock et al., 223 Pac. 903, the Supreme Court construed Section 1001 in a case where there had been no election of a Trustee since 1905, the Trustees simply holding over from year to year. The Court said:

“Since the term of office of School Trustees is three years, and they hold over until their successors are elected and qualified (Sec. 997, Revised Codes 1921), the **full terms of office of all three** of these Trustees regularly expired long prior to April 7, 1923,”

and that this was a case where the provisions of Section 1001 applied.

It has been previously held by this department that the provisions of Section 1001 do not apply to elections to fill a vacancy in a regular term, Vol. 7, Opinions of Attorney General, p. 60; that is, a term does not regularly expire except at the expiration of three years. In case of failure to elect a Trustee, or in case of a tie, there would be two regularly expiring terms at the succeeding election and the provisions of Section 1001 would apply.

The answer to your question, therefore, depends upon whether more than one term regularly expires; that is, whether the term being filled by either appointee regularly expires. If so, the two retiring Trustees must draw to see who retires and who holds over. If only one term expires, then there should be an election to fill this term and also to fill out the vacancies for one or two years, as the case may be.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.