

### **Schools—School Trustees—Elections—Qualifications.**

In case of a tie vote for School Trustees, there is a failure to elect, and the County Superintendent shall make an appointment to fill the vacancy.

The only qualifications for a School Trustee are those of residence which depend upon questions of fact.

Miss May Trumper,  
Superintendent of Public Instruction,  
Helena, Montana.

My dear Miss Trumper:

You have submitted to this office for my opinion the following question:

“When there is a tie in votes when electing a School Trustee, does the old Trustee hold over until there is another election, or should a Trustee be appointed?”

Section 997, Revised Codes of 1921, provides that Trustees shall hold office for a term of three years and until their successors are elected or appointed. Section 998 provides that when any vacancy occurs in the office of Trustee by death, resignation, **failure to elect at the proper time**, removal from the district, or other cause, the fact of such vacancy shall be immediately certified to the County Superintendent of Schools by the Clerk of the District, and the County Superintendent shall immediately appoint in writing some competent person, who shall qualify and serve until the next annual school election, but in districts of the first and second classes such appointment must be confirmed by a majority of the remaining Trustees.

When there is a tie vote there is a failure to elect at the proper time and a vacancy occurs in the office. It is then the duty of the Clerk of the district to so notify the County Superintendent who must then, in writing, appoint some person to serve until the next school election. In a third class district the person so appointed may qualify

immediately, but if in a first or second class district such appointment must be confirmed by a majority of the remaining members, before he can qualify and become a Trustee.

You also submit for my opinion the following:

“The qualifications of two of the men who voted at the school election of School District No. 14, Valley county, were doubted.

“One, Mr. James Butcher, has proved up a homestead in District No. 18, but now lives in District No. 4. Is he qualified to vote or be a Trustee in District No. 18?

“The other, Mr. Lee, has a homestead in District No. 18 and lives on it just enough to hold it. He has other business outside of the said district. Would he be qualified to vote at a school election in District No. 18?”

Section 1002, Revised Codes of 1921, prescribes the qualifications of electors at school elections, as follows:

“Every citizen of the United States who has resided in the State of Montana for one year, and thirty days in the school district next preceding the election, may vote thereon. Women of the age of twenty-one years and upwards, who are citizens of the United States, and who have resided in the State of Montana one year, and in the school district for thirty days next preceding the day of election, may vote thereat.”

It will be seen that ownership of property in the district is not required, the only qualifications being citizenship and residence. Assuming that both Mr. Butcher and Mr. Lee are citizens, their right to vote depends entirely on their residence. Residence is largely a matter of intention and a person does not lose his residence in one place until he has acquired a new residence in another. Whether the parties referred to in your letter were residents of District No. 18 so as to be entitled to vote at the election depends upon questions of fact not in my possession. If Mr. Lee has a homestead in District No. 18 and is living on it a sufficient part of each year to comply with the homestead laws so that he will be qualified to make final proof, then that is his residence and he was entitled to vote at the District No. 18 election.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.