

**County Superintendent—State Superintendent—Appeals—
Schools—School Trustees.**

When an appeal is taken from an order of the school board to the county superintendent of schools it is the duty of the county superintendent to give notice to the school board of a time and place when said appeal will be heard and if witnesses are called to swear them and reduce the testimony to writing and allow cross examination.

Miss Emma Crone,
County Superintendent of Schools,
Plentywood, Montana.

April 27, 1925.

My dear Miss Crone:

You have requested my opinion whether it is your duty to hold a hearing and give the parties interested an opportunity to appear and present their side of the controversy.

The particular question involved is as to your right under the provisions of section 1085, R. C. M. 1921. This section provides as follows:

“In case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees for alleged immorality, unfitness, incompetence or violation of rules, the teacher may appeal to the county superintendent; and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal.”

Under section 943 the state superintendent shall “decide all appeals from the decision of the county superintendent, and may for such decision require affidavits, verified statements or sworn testimony as to the facts in issue. He shall prescribe and cause to be enforced rules of

practice and regulations pertaining to the hearing and determining of appeals, and necessary for carrying into effect the school laws of the state."

An appeal is taken for the purpose of reviewing the decision of some officer, board or department, and may be confined to a review of the proceedings of the tribunal appealed from, as shown by the record, or the question may be presented anew to the appellate tribunal.

The state superintendent has not made any rules or regulations with reference to hearings or appeals. The matter of determining the character of the hearing to be conducted in case of appeal to the county superintendent and from the county superintendent to the state superintendent might appropriately be prescribed by the state superintendent.

While the matter of an appeal from an order of the county superintendent to the state superintendent is subject to such rules as the state superintendent may prescribe, or to such practice as she may approve, section 966 requires the county superintendent to decide all matters in controversy arising in his county in the administration of school affairs, or appealed to him from the decision of the school officers, in which case a full written statement of the facts, together with the testimony and his decision, shall be certified to the state superintendent for his decision. If no hearing is held nothing could be presented on appeal except the order of the county superintendent and this would merely present the conclusions of that officer.

Section 966 clearly contemplates that a hearing will be held by the county superintendent in all matters appealed to him, and this necessarily means that both sides to the controversy will be given an opportunity to be heard and to present testimony, under oath, and to have the same reduced to writing so that the state superintendent, when the matter reaches her on appeal, can base her decision upon the testimony presented. If no opportunity is given to present both sides of the controversy at a hearing open to all the only way in which the school board could present its side on appeal would be by appearing before the state superintendent in person or by filing affidavits or taking depositions. Testimony produced by affidavit is unreliable and the cost of appearing before the state superintendent in person would be prohibited and is not contemplated by section 943.

No controversy involving the right to appeal from the decision of one board or officer to another board or officer should be decided *ex parte* even though the board whose order is appealed from should have decided the matter arbitrarily and without hearing. Before the order is vacated or set aside an opportunity should be given them to show cause why it should not be reversed.

It is, therefore, my opinion that when a controversy is appealed to you from the school board you should set the matter down for hearing on some definite date and give notice to all the parties interested that you will on a certain definite date and time hear the matter. If they do not appear at that time they have at least had an opportunity to do so.

At this hearing if witnesses are presented they should be sworn and an opportunity given to the opposite side to cross examine. The testimony should be taken down in such form that it can be reviewed on appeal.

Very truly yours,

L. A. FOOT,
Attorney General.