

**School Districts—Consolidation—School Trustees—Election.**

In a new consolidated district where consolidation has occurred by reason of annexation of one district to another only the officers whose terms expire at the next election are required to be filled.

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

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My dear Mr. Johnson:

Your letter was received relative to the creation of a consolidated joint district by the annexation of one district to another.

You state that the books and papers of the district annexed were turned over to the officers of the old district and the old officers have continued to exercise their duties. The question now arises: Do all of the trustees now retire from office and are their places to be filled by the election of five new trustees, or do the provisions of section 1001 R. C. M. 1921 apply so that a drawing should now be held and only two trustees be elected for a three-year term?

Under the provisions of section 1034 R. C. M. 1921:

“Two or more school districts may be consolidated either by the formation of a new district, or by the annexation of one or more districts to an existing district, as hereinafter provided.”

This section further provides:

“If the order be for the formation of a new district it shall specify the name and number of each district, and he (county superintendent of schools) shall appoint three trustees to serve until the first Saturday in April succeeding.

“At the regular election succeeding there shall be elected by the regularly qualified electors three trustees, one of whom shall serve for one year, one for two years, and one for three years. The election of trustees and terms shall be the same as for other districts under the general school laws.”

The section further provides:

“In case of consolidation of districts by annexation the title to schoolhouses and sites of the separate districts shall vest in the new consolidated district and the officers of the old district shall continue to exercise their duties until the officers of the new consolidated district have been elected and have qualified.”

It appears that in this case consolidation was affected by annexing one district to another. The question is whether an entire new board should be elected at this time, or whether the old board should continue to function until it has been replaced by new trustees elected in the regular way.

It would seem that had the legislature contemplated the election of an entire new board in the case of consolidation by annexation, it would have provided for election at the next general school election of an entire new board of trustees in the same manner that it did where consolidation is effected by the creation of a new district. Not having done so, it must be presumed that the legislature contemplated that the board of the old district would continue to function for the district until new trustees were elected in the regular order of their retirement.

The corporate existence of the old district is not affected by enlarging its boundaries and taking over title to the district that has been annexed, and there is no apparent reason why consolidation by annexation should require the election of an entire new board. Had the people desired this they were at liberty to have effected consolidation by creating an entire new district in which case it would be necessary to elect an entire new board at the succeeding election.

It is, therefore, my opinion that where consolidation of districts is effected by annexing one district to another, the terms of office of the old board are not affected and that they continue to hold their offices until the expiration of their terms and the election of their successors in the regular order and as though no consolidation had occurred.

Very truly yours,

L. A. FOOT,  
Attorney General.