

School Boards—Meetings — Notice of Waiver — Section 1006, R.C.M. 1921.

Forty-eight hour notice of special meetings of school board not necessary when all members are present and consent to meeting. Board may fix date of special meetings by resolution entered upon minutes.

Mr. H. O. Vralsted,
County Attorney,
Stanford, Montana.

April 15, 1932.

My dear Mr. Vralsted:

I have your request for an opinion in regard to calling and holding a meeting of the board of trustees of a school district; your questions relate to a district of the third class.

It appears that at one of the meetings of the school trustees, at which all of the members were present, a resolution was unanimously adopted to the effect that the trustees should meet on the last Friday of each and every month. Three monthly meetings have since been held as provided for in the resolution at none of which a Mr. "Z" was present. At the next following monthly meeting, not a quarterly meeting provided for by statute, Mr. "Z" was absent again. Thereupon, the two remaining members passed a resolution declaring his office vacant. He was not served with any written notice of such meetings; neither was he given a notice to show cause why his office should not be declared vacant. Such vacancy was thereupon certified to the county superintendent who thereupon appointed another member.

Mr. "Z" now contends that the action of the board of trustees declaring his office vacant was not legal and is contrary to law for the following reasons:

1st: He had not been served with a written notice of such monthly meetings, declaring all meetings, except the quarterly meetings provided for by the statute, to be special meetings, and

2nd: Because he was not given an opportunity to show good excuse for his absence.

Your questions are:

1. In a third class district are all meetings except the four quarterly meetings provided for by section 1006, R.C.M. 1921, special meetings so as to require a written notice to each member of the board of trustees?

2. Where all members of the board unanimously passed a resolution providing for monthly meetings does that constitute a waiver of such notice?

3. Before the office of a member can be declared vacant when the member fails to attend three consecutive meetings without good excuse must such trustee be given an opportunity to show cause before the board before the vacancy can be declared?

Section 1006 provides:

"The board shall hold, in districts of the first class, at least

one and not more than five meetings each month for the transaction of its business; and in all districts at least four meetings each year shall be held, to-wit: On the third Saturdays of April, July, October and January, at such places and hours as shall be fixed by the board. A special meeting of the board may be held upon the call of the chairman, or any two members of the board; at least forty-eight hours' written notice shall be given to each member of the board of any special meetings, and no business transacted by the board shall be valid unless transacted at a regular or special meeting thereof."

The forty-eight hour notice provided for by this section is notice to the individual members of the board and is not addressed to or of interest to the public; consequently, the member can waive notice by being present at a meeting (56 C. J. 337, note 77) or, in my opinion, he could waive the necessity of a notice by a resolution such as the one which was adopted by the school board in this case which resolution was consented to by all the members and of which he is required to take notice as of a regular meeting (56 C. J. 337, Board of Education vs. Carolam, 55 N. E. 58).

Section 998 provides for a vacancy when a member fails to attend three consecutive meetings without good excuse. In my opinion, the member should be given an opportunity to present his excuse, if he desires to do so, but as to whether the excuse is acceptable, of course, must be determined by the other two members of the board as he, himself, is not in a position to vote on the sufficiency of his excuse.

Very truly yours,

L. A. FOOT,

Attorney General.