

Opinion No. 13**Schools—High Schools—Principal,
Employment of.**

HELD: The board of trustees of a public high school cannot employ a principal of said school for a term to commence six months after the term of the board expires, and its attempt so to do is null and void.

January 9, 1933.

You have requested an opinion from this office on the following matter: The board of trustees of the high school of Lincoln County met on December 30, 1932, and employed Mr. G. W. Day, and entered into a contract with him as principal of the county high school for a two year term beginning July 1, 1933. The terms of office of two members of the board of high school trustees expired on December 31, 1932, a day after the board entered into the contract above referred to.

Section 6 of Chapter 148, Laws of 1931, relating to high school boards, provides that they shall have four regular meetings in April, July, October, and January of each year. A provision is also made for certain special meetings.

You do not state whether this special meeting was regularly called and held or not, and we are not giving any advice on that but it might be well for you to look the matter up and see if the meeting was regular according to statute, as that might settle the question without further controversy if it develops that the meeting was not regularly called and held. On the merits of the proposition, we have to advise that there is no specific statute in Montana controlling such a situation as you pre-

sent but there are a great many decisions in the various states relative to similar actions by boards of county commissioners and by school trustees, but there is a great deal of conflict in the conclusions arrived at by such decisions.

We find no case in which a board of county commissioners, or a board of school trustees has been upheld in an action where such contracts were not performed or such materials furnished until after the expiration of the life of the board. We find a great many decisions where the actions of such boards have been upheld where such employment or purchases have simply lapped over into the term of the new board.

What we regard as the most reasonable conclusion is indicated in the following cases: "The board of county commissioners has not the power to employ an attorney for a period of three years. The term to commence in the future, after the retirement of one member of the board as such contract is unreasonable, imposing as it does upon the three subsequent members, an attorney not of their hiring." *Jay County v. Taylor*, 123 Ind. 148, Note 7 L. R. A. 160.

"In the absence of some necessity or special circumstance showing that the public good required it, a contract by a board of county commissioners made just prior to the expiration of their term of office, employing a janitor for the court house for a period of time extending into the term of their successors in office and which has the effect to forestall the action of such successors for a year, is calculated to be prejudicial to the public interest, and hence is against public policy and void." *Franklin Co. v. Ranch*, 9 Ohio Circuit Court, 301.

"The authority of a prudential committee to contract with teachers is to have a reasonable limitation measured by the obvious purpose and object of their election. To say that they shall make no contract which shall be operative beyond their official term is too narrow; to say that they can contract for services which shall be rendered during the official term of their successors is too wide a view of their authority." *Chittenden v. School District No. 1*, 56 Vt. 551.

"The board of trustees of a public school cannot employ a superintendent for a term to commence after the term of the board expires." *Fitch v. Smith*, 57 N. J. L. 526, 34 Atl. 1058, Note L. R. A. 688.

The views expressed in the foregoing citations, we regard as fair and equitable. Undoubtedly the public good requires that one board composed of a membership different from a new board that is about to come into power, shall have the right and power to make certain contracts and employ certain people to lap over into the term of the new board, this from the necessity of caring for the continuity of government; but when the old board undertakes to employ anyone for a term of two years or even less, where such term does not begin to run until the new board takes office, the old board is arrogating to itself a power that it has no right to exercise.

In the case that you submit, the term of the old board expired on December 31, 1932. The new board assumed its duties on January 1, 1933, and one of its regular quarterly meetings must be held in January of each year. The principal, Mr. G. W. Day, was employed as principal for a term of two years, which term was to begin on July 1, 1933, a little more than six month after the new board takes office, and such new board assumed its duties in ample time to make any provision that it might desire for the employment of a principal of the high school of Lincoln County. It is the conclusion of this office that the action of the old board in assuming to enter into such contract was an unwarranted abridgment of the rights and privileges of the new board and that the action of the old board is null and void.