

Opinion No. 131**Schools—Contracts—Superintendents of Schools—High School Principals—Teachers—School Boards—Power of Retiring Board—Nepotism—School Districts.**

HELD: District superintendents of schools may be employed for a period not to exceed three years; a high school principal for a period not to exceed two years unless the office of superintendent and high school principal is held by the same person and in that event employment may be for term not to exceed three years; a teacher may be employed for one school year.

In absence of some necessity or special circumstance, all contracts and commitments should be left to new board if new board can attend to its duties in ample time to protect interests of district.

The Nepotism Act applies to school districts and district officials.

March 24, 1933.

You have requested an opinion from this office on the following questions:

"1. For what length of time can a district superintendent be elected? For what length of time can a high school principal be elected? For what length of time can a teacher be elected?"

"2. Can the board of trustees that is now in office select a city superintendent; a high school principal; and teachers for next year?"

"3. The nepotism bill as it applies to school districts."

Replying to question 1, there are a number of provisions in the statutes relating to district high school superintendents, district superintendent and high school principal and superintendent and principal.

Section 39 of Chapter 148, Laws of 1931, provides that a district school superintendent may be appointed by the board of trustees. His contract thereafter shall be deemed renewed for a further term of one year and successively each year thereafter for like terms of one year unless the board, in writing, gives him notice to the contrary.

Sections 62 and 63 of Chapter 148, Laws of 1931, provide that every joint board where there is a joint district and high school combined, shall employ some qualified person to supervise the administration of the county high schools and public schools for a term not to exceed two years.

Subsections 3, 4, and 5 of Section 83, Chapter 148, Laws of 1931, appear to modify Sections 62 and 63 heretofore referred to and it would appear that one person might be appointed superintendent and principal or in the discretion of the board that there might be a superintendent and a principal, such offices in the latter case being occupied by two persons. You will note the provision in subsection 3 that the principal may be employed for not to exceed two years and the superintendent for not to exceed three years.

There is no particular term designated for teachers. Section 1075, R. C. M., 1921, as amended by Section 1, Chapter 87, Laws of 1927, provides that any teacher or principal, after being employed for the third consecutive year, shall be deemed re-elected from year to year at the same salary unless advised to the contrary by the board of trustees on or before May 1 of any year.

By a review of these general provisions, you will readily see that there is something of a conflict relative to the employment of principal but as Subsection 3 of Section 83 of Chapter 148, Laws of 1931, referred to above, authorizes the employment of a superintendent or a principal for periods of three years and two years respectively, and as that is the last expression of the legislature on the subject, this office is of the opinion that your district superintendents may be employed for a period not to exceed three years and your high school principals for a period not to exceed two years unless the office of superintendent and high school principal is held by the same person and in that event employment may be for a term not to exceed three years.

While there is no express provision in the statute, it is the impression of this office that a teacher may be employed for one school year. Employment for a greater period than one year is not expressly prohibited but

superintendents and principals are limited to three or two year terms, respectively. They hold the most important positions in the corps of teachers and the apparent intent of the law is to give them a little more consideration than the ordinary instructor. In addition, the only reference to a teacher's term refers to a term of one year.

Answer to question 2: In the absence of some necessity or special circumstance, all contracts and commitments should be left to the new board. It frequently occurs that new boards are elected for the specific purpose of getting rid of an objectionable instructor and when the electors desire to accomplish that purpose themselves by the election of a new board, the old board should not be permitted to defeat such purpose.

The powers of a new board and an old board are quite fully discussed in an opinion rendered by this office under date of January 9, 1933, and addressed to your office and we think the authorities referred to in that opinion fairly establish the rule that an old board should not assume to perform the duties of a new incoming board, if the new board can attend to its duties in ample time to protect the interests of the district. (Op. No. 13.)

Answer to question 3: A school district is a political subdivision of the state. (State v. Meyers, 65 Mont. 124). Therefore, the recent act on nepotism, Chapter 12, Laws of 1933, applies to school districts and school district officials.