

Opinion No. 61**County Commissioners—Schools—Trustees—Incompatible Offices.**

HELD: The offices of County Commissioner and member of the Board of Trustees of a County High School are incompatible and cannot be held by the same person.

February 4, 1933.

You submitted to this office the question of whether a member of the Board of County Commissioners can be appointed and qualified and act as a member of the Board of Trustees of the County High School, in view of the fact that he sits as one of the trustees in the making of the budget for the County High School and later sits as

a County Commissioner and a member of the budget supervisors.

The question of whether a person can hold two offices at the same time depends upon whether the offices are incompatible. Offices are held incompatible when one has the power of removal over the other and when one is in any way subordinate to the other, when one has powers of supervision over the other, or when the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both. *State ex rel. Klick v. Wittmer*, 50 Mont. 22, at 25.

A glance at the statutes will show that the two offices of County Commissioner and member of the Board of Trustees of a County High School are clearly incompatible under the above rule.

Section 3 of Chapter 148, Laws of 1931, provides that six of the members of the County High School Board shall be appointed by the Board of County Commissioners. The County Superintendent is the other member of the Board.

Section 5 provides that whenever a vacancy occurs in any Board of County High School Trustees from any cause whatever the Secretary of the Board shall immediately certify such vacancy to the Board of County Commissioners which will fill such vacancy by appointment for the remainder of the term.

Under section 8 a member of the board of trustees is entitled to mileage for necessary travel from his place of residence to the place where the high school is located and return.

Under section 21 of the same chapter, providing for the abolishment of county high schools, the board of county commissioners are, upon the filing of the petition, required to direct the submission of the question to the registered voters of the county at a called election for that purpose. They are also required to canvass the vote under section 24 and pass a resolution abolishing the high school where the election carries.

Under section 89 it is made the duty of the county superintendent to submit

to the board of county commissioners a budget which shall be equal to \$90.00 for each student whose attendance outside of his county has been authorized by her. This money is required to be put in a separate fund and accounts allowed and paid by the board of county commissioners as in other claims against the county.

Under section 90 the Board of County Commissioners are required to approve or reject budgets, presented by the various high schools of the county, including the county high school budget.

It is therefore my opinion that the office of County Commissioner and the office of member of the Board of Trustees of a County High School are incompatible and cannot be held by the same person.