

Opinion No. 17.**Schools—School Trustees—Vacancy
in Office.**

HELD: Where a school trustee removes from the district and establishes a residence elsewhere, there is a vacancy in his office and he may not return within sixty days and assume to act as school trustee.

December 28, 1934.

Mr. F. F. Haynes
County Attorney
of Rosebud County
Forsyth, Montana

In your letter to us of recent date you state that "Mr. Clyde Hayden was a duly elected, qualified and acting member of the board of trustees of the Ingomar, Rosebud County, Montana, school district. In the summer of 1934, he moved to Garfield County and established his residence and registered as a voter there and became a candidate, by virtue of party nomination, for the office of county attorney. He was defeated in the general election. He now removes to Ingomar, Rosebud County, and demands his seat upon the board of trustees", and ask us whether or not in our opinion Hayden vacated the office of school trustee when he changed his residence from Rosebud County to Garfield County.

Section 511, Revised Codes 1921, provides: "An office becomes vacant

on the happening of either of the following events before the expiration of the term of the incumbent. * * * 5. His ceasing to be a resident of the state, or, if the office be local, of the district, city, county, town, or township, for which he was chosen or appointed, or within which the duties of his office are required to be discharged * * *." Section 998, Revised Codes 1921, provides, among other things, that "when a vacancy occurs in the office of trustee of any school district by * * * removal from the district * * *, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school district, and the county superintendent shall immediately appoint in writing, some competent person, who shall qualify and serve until the next annual school election."

Assuming that the quoted statement is substantially correct there can hardly be any doubt that a vacancy occurred in the office of school trustee when Mr. Hayden removed from the Ingomar school district and took up his residence in Garfield County. Surely his having qualified as an elector in Garfield County, either through compliance with Sections 554 and 555 or Section 561, Revised Codes 1921, has most convincing force. The courts have repeatedly held under a statute like ours that an office becomes vacant where the facts are similar to those which exist here. (*State v. McDermott*, 17 Pac. (2d) 343; *People ex rel. Tracy v. Brite*, 55 Cal. 79; 46 C. J. 972.)

The fact, if it be a fact, that Mr. Hayden returned, as he claims, to the Ingomar school district, with the intention of residing there, less than sixty days after his departure therefrom does not alter the situation. (*State v. McDermott*, supra.) Absence of a school trustee from the school district for sixty consecutive days, which under Section 998 also constitutes a vacancy in the office, has no connection with the matter of loss of residence, and is separate and distinct therefrom.

It is our view, therefore, that Clyde Hayden vacated the office of school trustee when in the summer of 1934 he ceased to be a resident of the Ingomar school district.