

**Opinion No. 358.****State Examiner—School Districts,  
Examination of—Trustees,  
Powers of.**

**HELD:** 1. It is the duty of the State Examiner to examine the books and accounts of all school districts of the first and second class in like manner as he is required to examine the books and accounts of the state, county and city officers.

2. The trustees of a school district have no power to employ private accountants to examine school district books and accounts or to pay for such services out of school district funds.

September 26, 1936.

Hon. Frank H. Johnson  
State Examiner  
The Capitol

You have submitted the following questions:

"1. Is it the duty of the State Examiner to examine the books and accounts of all school districts of the first and second class in like manner as he is required to examine the books and accounts of the state, county and city officers?"

"2. Can the trustees of a school district legally employ private accountants and pay for such services out of school district funds?"

Section 215 R. C. M. 1935 provides: "The state examiner, in addition to the duties now imposed upon his office, shall have the power and authority, and it shall be his duty, to make at least one examination each year of the books and accounts of all incorporated cities and towns, and the books and accounts of all school districts of the first and second class, in like manner as is now required by law for the examination of the books and accounts of state and county officers."

This section clearly makes it the

duty of the state examiner to examine the books and accounts of all school districts of the first and second class, unless it has been repealed. Said section was enacted in 1913, being Section 2, Chapter 84 of the 1913 Session Laws. Section 217 R. C. M. 1921, which was amended by Chapter 93, Laws of 1923, was expressly repealed by Chapter 89, Laws of 1927. Said Section 217, among other things, provided: "The state examiner shall examine the books and accounts of the school districts of the first and second class upon receiving a request signed by a majority of the board of trustees of such district; said school districts upon making a request for such examination shall pay the state treasurer the following amounts:

"School districts of the first class, one hundred dollars.

"School districts of the second class, twenty-five dollars.

"All moneys collected under the provisions of this act shall be deposited in the general fund."

Said Section 217 was enacted as Section 3 of said Chapter 84, Laws of 1913. Both sections were enacted at the same time and are part of the same chapter. Section 215 placed the duty upon the state examiner to make the examination. Section 217 stated under what circumstances such examination should be made, and provided that the cost should be borne by the school districts. The two sections serve separate functions and are not inconsistent.

Was Section 215 repealed by implication by Section 73 of Chapter 89, Laws of 1927, arranged as Sections 6014.77-6014.84 in the 1935 Code? Repeals by implication are not favored, and courts will not hold a law repealed by implication unless it is clearly repugnant to later enactments. I am of the opinion that Section 215 is not repealed by implication by the enactment of said Section 73, Chapter 89, Laws of 1927. While this chapter expressly repealed Section 217, R. C. M. 1921, thereby abolishing the examination fee to be paid by school districts and the provision that such examination should be made upon the signed request of a majority of the board, the duty of the examiner to make the examination of these school

districts could still consistently remain. The legislature may have felt that such examination should be made regardless of the wishes of the board, and without cost to the district. If there was any intention on the part of the legislature to repeal said Section 215, that intention does not effectively appear. Under the provision of Section 6014.84 special examinations of school districts are discretionary, that is, they shall be made when in the judgment of the state examiner they are necessary. Clearly all examinations cannot be special examinations as a special examination is one in addition to the regular examination. It may be of interest to call attention to Section 1039.7, which provides for the examination of third class school districts at least once each year by the county treasurer. It would seem that there is as much necessity at least for examination of first and second class districts. If Section 215 is not in force there would be no provision for examination of first and second class districts at all. In view of the large number of such districts, the failure to require that they pay the cost of examination is serious but the duty of the state examiner to make the examination nevertheless remains.

Your second question must be answered in the negative. In *Judith Basin County v. Livingston et al.*, 89 Mont. 438, 298 Pac. 356, the Supreme Court held that the board of county commissioners is without power to enter into a contract for services with a private individual, the performance of which is cast upon a public official, and the effect of which is a usurpation of the functions of such official. While the examination of county books and records was there involved, the same reasoning would apply to the books and records of school districts which the state examiner is required by law to examine.