

Opinion No. 61.**Schools—Elections—School Trustees.**

HELD: Under the rule of State ex rel. Kuhl v. Kaiser, 95 Mont. 550, where the terms of three elected members and of two appointed members of the seven members of the Board of School Trustees expire, it will be necessary to elect three members for complete terms and two members to fill the unexpired terms of the two members who had previously resigned, the provisions of Section 1001, R. C. M. 1921 notwithstanding.

March 16, 1935.

Mr. W. R. Taylor
County Attorney
Anaconda, Montana

This will acknowledge receipt of your letter of March 13, from which the following is quoted:

"At the school election held in this county in the spring of 1934, two members were elected for three year terms to the school board. Shortly after their election they resigned, and in accordance with Sec-

tion 998 of the Revised Codes of Montana of 1921, two members were appointed to succeed them. By this same section of the Revised Codes of Montana of 1921, the trustees so appointed hold office only until the next election.

"The terms of the regularly elected members of the school board expire in April. At the election to be held in April it is necessary to elect five members of the school board, two to hold office for the remainder of the terms that were voted upon at the election of 1934, and three to be elected for terms of three years.

"The school board was in doubt as to the action that should be taken because of Section 1001 of the Revised Codes of Montana of 1921. They requested my opinion, and asked if I would have it confirmed or corrected by you."

You further state that relying upon the case of State ex rel. Kuhl v. Kaiser, 95 Mont. 550, 27 Pac. (2d) 1113, you advised the school board: "That at the election to be held in April it will be necessary to elect two members of the school board to fill the unexpired terms of the two members who resigned, and to elect three members for complete terms."

Section 1001, R. C. M. 1921, provides: "When at any annual school election the terms of a majority of the trustees regularly expire in districts of the first class, three trustees, * * * shall be elected for three years, and the remaining trustee or trustees whose terms expire shall hold over for one or two years as may be necessary to prevent the terms of a majority of the board of trustees expiring in any one year; provided, that it shall be determined by lot what trustees shall hold over, and for what term."

In the Kuhl case the court held that the words, "When * * * the terms of a majority of the trustees regularly expire" used in Section 1001 refers only to the terms of trustees elected for a three year term and not to appointees. Consequently, under the facts before us, only the terms of the three regularly elected trustees and not the terms of a majority (Section 986, R. C. M. 1921) will expire, and Section 1001, R. C.

M. 1921, under the rule of the Kuhl case does not apply.

The situation presented is not without its perplexities. To us the intention of the legislature seems to be unequivocally expressed in Section 1001, supra, "to prevent the terms of a majority of the board of trustees expiring in any one year" in order that "a majority of the school board shall always be composed of persons who have had one or two years experience in the management of its affairs." (Jersey v. Peacock, 70 Mont. 46, 223 Pac. 903.)

Now, under the circumstances which have arisen in your county, the Kuhl case forces us to approve a result which we think the legislature sought to prevent. The voters in your county within a few weeks will elect five out of seven trustees with the possibility that the five elected may be totally ignorant of the business and conduct, and completely inexperienced in the administration of school affairs.

It would be idle for this office to speculate upon the possibility of the Supreme Court abandoning the doctrine of State ex rel. Kuhl v. Kaiser, supra, or holding that the rule adopted therein does not apply to the situation existing in your county, but unless that is done we believe that your opinion to the board of trustees is correct and it is hereby confirmed.