

Opinion No. 99**Schools and School Districts—School Trustees—School Elections
in a Consolidated District.**

- Held:**
- 1. The School Trustees appointed to office after the creation of a new school district by consolidation and change of classification of the district hold office until the next school election.**
 - 2. Where the terms of the five trustees of a second class district expire at the next school election due to the fact they were appointees, five trustees should be elected at the election, one of whom shall serve for one year, two for two years and two for three years.**

March 14th, 1950.

Mr. John M. Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have requested my opinion concerning the election of trustees in a school district of your county. You advise me that two third class districts were consolidated and a new district was formed and three trustees were appointed to serve until the next school election. Subsequently, the County Superintendent made an order changing the class of the district to that of a second class district and appointed two additional trustees.

Section 75-1813, Revised Codes of Montana, 1947, authorizes the consolidation of two or more adjacent school districts or the annexation of one or more districts to an existing district.

Only a third class district can be annexed by a second or first class district. Two third class districts can be consolidated under the provisions of Section 75-1813, Revised Codes of Montana, 1947, and a new district is formed. Sub-sections 4 and 5 of Section 75-1813 provide in part:

" . . . If the order be for the formation of a new district, it shall specify the name and number of such district, and the County Superintendent shall appoint three (3) trustees to serve until the first Saturday in April succeeding.

(5) At the regular election succeeding there shall be elected by the regularly qualified electors three (3) trustees, one of whom shall serve for one (1) year, one for two (2) years, and one for three (3) years. The election of trustees and terms shall be the same as for other districts under the general school laws."

Your County Superintendent, in appointing three trustees for the new district created by the consolidation of the two third class districts, followed the above quoted statute. The two trustees appointed by the County Superintendent, after the classification of the district was declared, were appointed in accordance with the provisions of Section 75-1802, Revised Codes of Montana, 1947. This means that there are now five trustees who were all appointed to office.

The terms of office and the number of trustees to be elected are the problems which are presented under your unusual situation. Sub-section 5 of Section 75-1813 quoted above would solve the problem if it were not for the fact the classification of the district has been changed from that of a third to a second class district. The appointment of two additional trustees presents a situation not contemplated in the first sentence of Sub-section 5 of Section 75-1813, Revised Codes of Montana, 1947. However, the second sentence directs that the general school laws shall apply in the election of trustees.

In the case of *State ex rel. Kuhl v. Kaiser, et al.*, 95 Mont. 550, 27 (2d) 1113, the court held that Section 1001, Revised Codes of Montana, 1921, (now Section 75-1617, Revised Codes of Montana, 1947) has no application to the election of trustees who have been appointed to office. Section 75-1617 is as follows:

"When at any annual school election the terms of a majority of the trustees regularly expire in districts of the first class, three trustees, in districts of the second class, two trustees, in districts of the third class, one trustee, 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 trustee shall hold over, and for what term."

Opinion No. 61, Volume 16, Report and Official Opinions of the Attorney General followed the Kuhl case under facts similar to those presented here and held that all trustees who received their office by appointment held office until the next school election at which time their terms expired and successors must be elected.

Sub-section 5 of Section 75-1813 contemplates that in the election of trustees for a district created by consolidation the trustees elected to office shall hold office for terms of 1, 2 and 3 years so that in any one year, there will be a majority of trustees held over with experience so that the business of the school district can go on without interruption. This legislative policy is also expressed in Section 75-1617 and can be given recognition by electing one trustee for a term of one year, two for terms of two years and two for terms of three years. The method of selecting the terms for which candidates will stand for election can be done by the nominating petitions filed with the clerk as provided in Section 75-1604, Revised Codes of Montana, 1947.

It is therefore my opinion that the school trustees appointed to office after the creation of a new school district by consolidation and change of classification of the district hold office until the next school election.

It is also my opinion that where the terms of the five trustees of a second class district expire at the next school election due to the fact they were appointees, five trustees should be elected at the election, one of whom shall serve for one year, two for two years and two for three years.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.