

meet the Constitutional requirements for an office holder, have a teaching certificate, and three years experience. A deputy superintendent of schools may be appointed under the authority of Section 75-1528, but this statute does not fix any specific qualifications for the deputy. However, this has not always been true as in 1947 the legislature in chapter 194 amended what is now Section 75-1528, by eliminating the requirement that "Such deputy shall hold a Montana certificate not less in value than a professional grade certificate." The fact that the legislature struck from the statute the requirement that the deputy hold a teaching certificate, is very persuasive that a certificate is not now a qualification for a deputy superintendent of schools. Such a principle was recognized in *State ex. rel. Federal Land Bank v. Hays*, 86 Mont. 58, 282 Pac. 32, where in the court said,

Opinion No. 51

Schools and School Districts—County Superintendent of Schools—Deputy County Superintendent of Schools, Qualifications of.

Held: A deputy county superintendent of schools is not required to have the same qualifications as those required by law for the county superintendent of schools.

"It will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the court will endeavor to give some effect to the amendment."

There is no express statutory authority requiring all deputies to have the same qualifications as those of the public officer by who they are appointed. In 43 Am. Jur. 219, the text states:

"But when the law provides that a ministerial officer may appoint a deputy, for whose acts he and his sureties are responsible, and does not limit or restrict him as to whom he appoints, he has authority to appoint whomsoever he pleases."

As the primary responsibility of the faithful performance of the duties of the office falls upon the county superintendent, it will be to the best interest of the superintendent to appoint a capable person which is a safeguard to the public.

It is therefore my opinion that a deputy county superintendent of schools is not required to have the same qualifications as those required by law for the county superintendent of schools.

December 21, 1951.

Mr. Robert Hurly
County Attorney
Valley County
Glasgow, Montana

Dear Mr. Hurly:

You have requested my opinion concerning the qualifications of the deputy county superintendent of schools. You ask in particular if the deputy must have the same qualifications as the county superintendent.

Section 75-1502, R. C. M., 1947, defines the qualifications for county superintendents of schools, which are in substance that the superintendent must

Very truly yours,
ARNOLD H. OLSEN
Attorney General