

**Opinion No. 7**

**Schools and School Districts—Trustees,  
Vacancy In Office Of—Terms of  
Trustees**

**Held:** That a majority of the board of trustees of a school district may be elected at the annual election when one of the trustees so elected will fill the unexpired term resulting from a vacancy in the office.

March 20, 1951.

Mr. Frank T. Hooks  
County Attorney  
Broadwater County  
Townsend, Montana

Dear Mr. Hooks:

You have requested my opinion concerning the filling of a vacancy in the board of trustees of a school in your county. You advise me that the district is a second class district with five trustees and that a vacancy has occurred due to the death of a member whose term would not expire in the year 1951.

Section 75-1614, Revised Codes of Montana, 1947, provides in part:

“A vacancy in the office shall be filled by appointment by the county superintendent of schools; provided, that in districts of the first and second class, such appointment shall be subject to confirmation by a majority of the remaining members of said board, if those remaining constitute a majority of the total number of the board. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a school trustee for the unexpired term.”

The above quoted would apparently conflict with Section 75-1617 which reads:

“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."

As there are five trustees in your district, two of whose terms will expire in 1951, the election of a candidate to fill the unexpired term resulting from the vacancy would then result in a majority of the trustees being elected at the next school election. Section 75-1617 contemplates that the terms of trustees be arranged to prevent the terms of a majority expiring in any one year. In the case of *Kuhl v. Kaiser*, 95 Mont. 550, 27 Pac. (2d) 1113, the court considered the above code sections and held that there is no conflict between the sections and that the word "term" applies to the office and not to the persons and under section 75-1614 a person appointed to fill a vacancy holds until the next annual election at which time a trustee is elected for the unexpired term. The fact that a majority of trustees will be elected is not violative of Section 75-1617. What is prohibited by the Section is the expiration of the terms of a majority of the trustees at the same time. The election of a trustee for the **unexpired term** will in no way change the expiration of the terms with the result that at some future date the terms of a majority will expire at the same time.

This will mean in the next election in your county two trustees will be elected each for a three year term and one trustee elected to fill the vacancy and who shall hold office for the unexpired term of the person originally elected.

It is therefore my opinion that a majority of the board of trustees of a school district may be elected at the annual election when one of the trustees so elected will fill the unexpired term resulting from a vacancy in the office.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General