

Opinion No. 15**Schools and School Districts — District Superintendent of Schools, Term of Employment.**

HELD: A district superintendent of schools who has served two successive terms in a district may thereafter be appointed to a three-year term by the board of trustees. Section 75-4140, R.C.M., 1947, does not limit succeeding terms to one year.

May 28, 1955.

Miss Mary M. Condon
State Superintendent of
Public Instruction
State Capitol Building
Helena, Montana

Dear Miss Condon:

You have asked my opinion on the following question:

"If a District Superintendent of Schools has served two successive terms, may he thereafter be appointed for a three-year term, or are succeeding terms limited to one year by Section 75-4140, R.C.M., 1947?"

The section in question, Section 75-4140, supra, provides:

"District Superintendent Of Schools. The board of trustees of any school district may appoint a superintendent of schools for a term not to exceed three years. After his second successive election, his contract shall thereafter be deemed renewed for a further term of one (1) year, and successively thereafter for like terms of one (1) year each, unless the board of trustees shall by majority vote of its members give written notice to such superintendent on or before the first day of February of the last year of his current term that his services will not be required after the expiration of his existing contract."

Your inquiry primarily is whether the provision for successive one-year renewals is a limitation upon the term for which contracts may be granted by the board of trustees or only a tenure provision giving the

superintendent a right to renewal of his contract.

The present form of Section 74-4140, supra, was enacted by Chapter 66, Laws of 1943. Prior to that time, the statute (originally passed as Section 39, Chapter 148, Laws of 1931,) read as follows:

"District Superintendent of Schools. The board of trustees of any school district may appoint a superintendent of schools, his contract shall thereafter be deemed renewed for a further term of one (1) year, and successively thereafter for like terms of one (1) year each, unless the board of trustees shall by a majority vote of its members give written notice to such superintendent on or before the 1st day of February of the last year of his current term that his services will not be required after the expiration of his existing contract."

The 1943 Act made two basic changes:

(1) It extended the permissible term for which contracts could be granted by the board of trustees to three years.

(2) It provided that the superintendent's right to a renewal of his contract should not be effective until he had served two consecutive terms instead of one as had been provided by Chapter 148, Laws of 1931.

In connection with the second point, it should be noted that at the time the 1943 law was passed, the case of *State ex rel. Howard vs. Ireland*, 114 Mont. 488, 138 Pac. (2d) 569, was before the Supreme Court of Montana. The relator in that action contended, and was upheld in his contention by the Court, that the contract renewal provision of Section 75-4140, supra, granted him tenure and that, although it was not specifically so stated in the law, he could not be discharged without formal notice and hearing.

Although the Supreme Court's decision was not handed down until after the legislature had adjourned, it is evident that the law was passed in anticipation of the result. The

change in the contract renewal provision was quite plainly designed to withhold the tenure right until the superintendents had completed two terms in the district instead of the previous one term.

In the light of its history, it is evident that the one-year renewal provision was originally enacted and thereafter continued by the legislature as a right and privilege of the superintendent and not as a limitation on the term of the contract which could be given him by the board of trustees after his second successive contract had expired.

The first sentence of Section 75-4140, supra, is the only limitation on the contracting power of the board of trustees, and provides that the maximum permissible length of the contract shall be three years. The trustees, if they see fit, may grant a three-year contract to any district superintendent regardless of the number of previous terms he has served in the district.

It is therefore my opinion that a district superintendent of schools who has served two successive terms in a district may thereafter be appointed to a three-year term by the board of trustees. Section 75-4140, R.C.M., 1947, does not limit succeeding terms to one year.

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