

Opinion No. 35**Schools and School Districts—Rules of Employment of Teachers and Principals—Powers of Boards of Trustees.**

HELD: 1. That the Board of Trustees of School District No. 1 of Silver Bow County in appointing a teacher who is not a teaching principal to the position of supervisory principal, violated Section 3 of Rule 4 when there were teaching principals qualified and willing to accept the position.

2. That it is the duty of the Board of Trustees, when there is a vacancy in the position of supervisory principal, to give sufficient and adequate notice to all teaching principals of such vacancy, which notice should request applications to be filed with the board on or before a fixed date.

3. That the Board of Trustees has the power and authority to transfer supervisory principals from one school to another, and after such transfer any vacancy in the position of supervisory principal must be filled from the ranks of the teaching principals.

August 22, 1955.

Mr. N. A. Rotering
County Attorney
Silver Bow County
Butte, Montana
Dear Mr. Rotering:

You have requested my opinion concerning the employment of a su-

perisory principal for a school in your county. You have submitted for my consideration a copy of the rules relating to the employment of teachers in School District No. 1 of your county which are a result of an agreement between the Board of Trustees and the Butte Teacher's Union. You state that the trustees appointed a teacher to the position of supervisory principal and this resulted in a controversy as to whether there had been a violation of one of the rules of employment in the school system.

Section 3 of Rule 4, which is pertinent to the controversy here, reads as follows:

"Section 3. Beginning principals will be considered for assignment to teaching principalships, and the teaching principals with the greatest seniority will be considered for advancement to supervisory principalships. All teaching principals must indicate their desire and file requests with the Board to become supervisory principals; however, if any teaching principal with seniority does not wish to accept a supervisory principalship, the principal next in line of seniority will be considered for the position."

The first sentence of the above quoted rule in stating "Beginning principals will be considered for assignment to teaching principalships, . . ." clearly indicates that teachers who are appointed principals must first start as teaching principals. An apprenticeship as a teaching principal is contemplated before an advancement is made to a supervisory principalship. This conclusion becomes apparent when the second part of the first sentence of Rule 4 is considered, which reads: ". . . and the teaching principals with the greatest seniority will be considered for advancement to supervisory principalship."

The word "consider" as used in the rule might be interpreted to mean that teaching principals, together with all other persons having the necessary qualifications other than the position of teaching principal, will constitute a group from which the Board has the power to

pick a supervisory principal. Such an interpretation would render Section 3 of Rule 4 meaningless and of no effect. However, if the word "consider" as used in the rule is limited in meaning and the Board must pick from the teaching principals the supervisory principals, then the rule will accomplish its purpose.

The selection of a supervisory principal from a group of teaching principals is analogous to a civil service system wherein the appointing power may select an employee from a number of names which are certified as eligible by the civil service commission to an appointing officer in reference to the making of a particular appointment.

In *State vs. Frear*, 146 Wis. 302, 131 N.W. 832, it was held that a Civil Service Law which provided that upon notice by an appointing officer of a vacancy, the Civil Service Commission shall certify three names of eligible persons for appointment is a valid law. The court said concerning the discretionary appointing power that:

"The opinion doubtless also prevailed in the Legislature that a selection from three candidates on the certified eligible list would provide a sufficient scope for the exercise of a reasonable discretion by the appointing officer in making appointments of persons found to be qualified to perform services under the appointing officer."

The Board of Trustees has the appointing power. Section 3 of Rule 4, means that supervisory principals must be selected from teaching principals. Thus, Section 3 of Rule 4 regulates the selection of supervisory principals, but does not deprive the trustees of the appointing power.

The second portion of Section 3, Rule 4, provides: "All teaching principals must indicate their desire and file request with the Board to become supervisory principals, . . ." While this provision does not specifically state that notice must be given to each teaching principal that there is a vacancy to be filled for a supervisory principalship, yet, if such notice is not given, then an in-

justice might result. In the absence of a specified form of giving notice, a reasonable method which gives adequate time for preparation would satisfy this requirement. It is my opinion that a written notice, or letter, directed to each of the teaching principals stating that a vacancy is to be filled in the position of supervisory principal should be mailed to each teaching principal and such notice should state the time in which applications should be filed with the Board. As the Board has the power to transfer a supervisory principal from one school to another, it would be the better policy first to make any transfer considered desirable and then state in the notice the school for which a supervisory principal is to be appointed.

Under Section 75-2517, R.C.M., 1947, it is provided in Subsection 4, that a person, in order to be a principal or supervisor, must not only be qualified to teach in such school, but in addition shall have such other qualifications as the State Board of Education may from time to time prescribe. The applicant must have a certificate from the State Board of Education stating that he or she is qualified, before a contract may be entered into with the Board of Trustees of the school district.

It is therefore my opinion:

1. That the Board of Trustees of School District No. 1 of Silver Bow County in appointing a teacher who is not a teaching principal to the position of supervisory principal, violated Section 3 of Rule 4 when there were teaching principals qualified and willing to accept the position.

2. That it is the duty of the Board of Trustees, when there is a vacancy in the position of supervisory principal, to give sufficient and adequate notice to all teaching principals of such vacancy, which notice should request applications to be filed with the Board on or before a fixed date.

3. That the Board of Trustees has the power and authority to transfer supervisory principals from one school to another, and after such transfer any vacancy in the position

of supervisory principal must be filled from the ranks of the teaching principals.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General