

Opinion No. 59
Schools and School Districts—
Election of Trustees
Number of Trustees To Be Elected

HELD: In a school district of the first class where an election is to be held to elect trustees and the terms of two of the trustees regularly expire and the terms of three of the trustees expired two years prior to the election and the incumbents of the offices are hold-over trustees, three trustees should be elected and it should be determined by lot which hold-over trustee should hold over so that a majority of the board will not be elected in any one year.

February 10, 1956

Mr. J. J. Cavan, Jr.
County Attorney,
Yellowstone County
Billings, Montana

Dear Mr. Cavan:

You have requested my opinion concerning the number of trustees who should be elected in the coming election to be held in April. You advise me that the school district is one of the first class and as a consequence, seven trustees comprise the board. You also state that the 1954 election was prohibited by the district court and subsequently, the Supreme Court of Montana reversed the decision. The three incumbent trustees whose terms should have been filled by the election in 1954 were reinstated in 1955 as hold-over trustees. Your letter states that the terms of two other trustees expire this year which means that the terms of five trustees will have expired.

Section 75-1613, R.C.M., 1947, provides in part as follows:

"Trustees elected shall take office immediately after qualifying, and shall hold office for the term

of three years except as elsewhere expressly provided herein, and until their successors are elected or appointed and qualified."

Under this section, the hold-over trustees continued as trustees for the reason that there was neither a valid election nor appointments for the unexpired terms.

The public policy of the state preventing the election of a majority of the trustees at one election is expressed in Section 75-1617, R.C.M., 1947:

"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 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."

The above quoted statutes have been construed in two Montana cases. In *Jersey v. Peacock*, 70 Mont. 46, 223 Pac. 903, it was held that Section 75-1617, applied to a trustee election where the terms of the incumbents had expired many years prior to the election. The opinion stated that only one trustee should be elected and that it should be determined by lot which trustee should hold over.

A case that is in apparent conflict with the *Peacock* case in *State ex rel. Kuhl v. Kaiser*, 95 Mont. 550, 27 Pac. (2d) 1113, where it was held that an election should be called to fill the unexpired terms of two trustees who had resigned. The author of the majority opinion construed the word "term" as referring to the office and not to the person holding it and stated Section 75-1617, did not apply for the reason that the terms to be filled would not expire for one and two

years after the date of the election. The court ordered that the write-in candidates elected for the unexpired terms were entitled to the offices. However, the majority opinion expressly distinguished the facts under which *Jersey v. Peacock*, supra, was decided from those before the court in the *Kuhl* case by stating that the *Peacock* case "is not controlling here, for all three terms had regularly expired long before the election therein involved." It would thus appear that Section 75-1617 applies to the facts considered here for the reason that the terms of three of the trustees expired approximately two years ago. Also, the terms of two trustees will expire soon after the election. If all five were elected at the next election, then a majority of the board would be elected and violate the public policy expressed in Section 75-1617 and in *Jersey v. Peacock*.

It is therefore my opinion that in a school district of the first class where an election is to be held to elect trustees and the terms of two of the trustees regularly expire and the terms of three of the trustees expired two years prior to the election and the incumbents of the offices are hold-over trustees, three trustees should be elected and it should be determined by lot which hold-over trustees should hold over so that a majority of the board will not be elected in any one year.

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