

Opinion No. 32

SCHOOLS AND SCHOOL DISTRICTS; County High School; trustees, elections, Article XVI, Section 4, Montana Constitution—Sections 11-709, 23-513, 23-530, 75-1607 through 75-1613, 75-4103 and Chapter 46, Title 75, Revised Codes of Montana, 1947—Chapter 278, Laws of 1959.

Held: 1. A board of county commissioners must call an election in not less than 30 nor more than 60 days after receiving a petition requesting the call for an election submitting the proposition as to whether the board of trustees of the county high school shall be elected.

2. **Registration is not a requirement for eligibility to vote on the question of the election of county trustees held pursuant to Section 75-4103, RCM, 1947, as amended.**
3. **The election of the first board of trustees of a county high school must be held on the first Saturday in April subsequent to the election approving the elective manner of selecting trustees of a county high school.**
4. **Only resident qualified electors of the school district in which the county high school is located may vote for the county high school trustees to be elected from the school district. And only resident qualified electors of a trustee district may vote for the trustee to be elected from the trustee districts.**

December 22, 1961

Mr. Robert E. Purcell
Garfield County Attorney
Jordan, Montana

Dear Mr. Purcell:

You requested my opinion concerning the procedure for holding an election in your county, submitting the question as to whether or not the trustees of the county high school should be elected. You ask specifically the following questions:

1. Must the date for the election be fixed on a day not less than 30 nor more than 60 days after the commissioners receive a proper petition?
2. Must the electors be registered?
3. If the voters approve the proposition that the trustees of the county high school be elected, may the election for the first board of trustees be held on the first Saturday in April, the date of the annual election of school trustees?
4. In the election of trustees are votes to be cast by the electors for only the candidates from the trustee district or elementary district of the voter's residence or for all the candidates to be elected?

In answering your first question it is also necessary to consider your second question as they both involve the time element. Section 75-4103, RCM, 1947, as amended by Chapter 278, Laws of 1959, states that whenever the county commissioners receive a proper petition requesting the election "the county commissioners of the county shall, within not less than thirty days nor more than sixty days thereafter,

submit to the electors" the question as to whether the trustee of the county high school should be elected rather than appointed. The use of the phrase "submit to the electors" is language that needs no interpretation and expresses the intent that the voters must have an opportunity to vote on the proposition within the period fixed. Thus, an election must be called and held within sixty days after the commissioners have received the petition. It is true that Section 75-4103, RCM, 1947, as amended, states "the procedure for calling and holding elections and for assumption of office, for first-class districts, set forth in RCM, 1947, Section 75-1607 through 75-1613, shall govern the elections provided for in this act, . . ." This provision incorporates a portion of the statutes relating to trustee elections in school districts of the first class. Registration is not required in the statutes incorporated by reference. The election here under consideration is not an election held in a district of the first class. This office concluded in Opinion No. 63, Volume 26, Report and Official Opinions of the Attorney General, that only registered electors may vote at elections held in districts of the first class. This conclusion was reached in the opinion because of the definition found in Section 23-530, RCM, 1947, which is a portion of the chapter on registration and reads:

"The word 'election,' as used in this law, where not otherwise qualified, shall be taken to apply to general, special, primary nominating and municipal elections, and to elections in school districts of the first class."

Also, Section 23-513, RCM, 1947, makes it the duty of the clerk to close registration 45 days prior to the election and to give a 30 day notice before closing registration. Thus, 75 days must elapse after the call and before the date of the election and, as a consequence, it is not possible to hold the election considered here within 60 days after the commissioners receive the petition as 75 days must elapse for registration of electors. To require registration would make the amendment to Section 75-4103 unworkable.

In your third question you ask when the first election of trustees should be held. This question is based on the premise that the voters of your high school district, which includes all the area of your county, have approved the proposition that the board of trustees of the county high school be elected.

Your question is answered by the following quoted paragraph of Section 75-4103, RCM, 1947, as amended:

"The election of seven school trustees of the county high school shall be held on the first Saturday in April of every year to fill the expired terms of trustees, and the term of office of trustees after the first election of the county high school board shall be for three years. However, at the first election, four of the trustees elected

shall be residents of the elementary school district where the high school is situated and three of the trustees elected shall be residents of the respective trustee districts set up by the board of county commissioners and the county superintendent of schools."

The first sentence of the above quoted contemplates that seven trustees be elected on the first Saturday in April, and it also provides the term of office of trustees after the first election shall be for three years. The following paragraph requires that the first trustees elected determine by lot their terms of office so that in subsequent elections the whole seven will not be elected each year. By specifying that the election of seven trustees shall be held on the first Saturday in April of every year, to assure a full seven member board, it is a reasonable conclusion to fix the date of the first election as the first Saturday in April subsequent to an approving election of this manner of designating county high school trustees.

In your fourth question you ask if each qualified elector may cast his ballot for each trustee to be elected in the election, or will be limited to voting for the trustee or trustees to be elected in the elementary district where the high school is located or the trustee in his trustee district.

There is no doubt that there is an uncertainty regarding the answer to this question in Section 75-4103, RCM, 1947, as amended. The statute provides in part as follows:

"Every citizen of the United States of the age of twenty-one years or over who has resided in the State of Montana for one year, and thirty days in the elementary school district or the trustee district as designated above, next preceding the election, shall be eligible for the office of school trustee and entitled to vote thereat."

This provision limits the candidates to residents of the trustee districts. It also implies that qualified electors shall be entitled to vote at the election held in the elementary school district or the trustee district of residence and not otherwise. However, any 25 electors in the county have the right to nominate "as many persons as are to be elected to the county high school board at the elections herein provided for" without any restriction as to trustee district residence.

An analogous election is found in Section 4, Article XVI, of the Montana Constitution where it is provided each county shall be divided into three county commissioner districts and a commissioner elected for each district. This section of the Constitution, however, states that "the election of such member or members of the board shall be submitted to the entire electorate of the county." No such direction is to be found in Section 75-4103 as amended. In the aldermanic form of city government aldermen are elected from each ward and Section 11-709, RCM, 1947, requires the candidates to be voted for by the elec-

tors in the wards they respectively represent. The contrast in allowing the whole electorate to vote for candidates from county commissioner districts and limiting the election of aldermen to the residents of the wards rather than the entire city does not throw any light on the public policy on elections of representatives from prescribed areas.

A reading of Chapter 278, Laws of 1959, and, in particular, the new matter inserted by the amendment, leads to the conclusion that the reason for dividing the county or high school district into trustee districts is to give representation to outlying areas where the population might be small in contrast to the number in the elementary district where the high school is situate. If a qualified elector were permitted to vote for trustees in districts other than that of residence, it might result in the more populous elementary school district controlling all the elections. It is specifically stated in Section 75-4103, as amended, that "each district shall be entitled to one member on the county high school board." The statute should not be construed to defeat its obvious purpose and, therefore, it must be concluded that in the election of trustees the voters must be limited to casting their ballots for the candidates from the trustee districts or the elementary district in which they reside.

It is to be noted that the amendments to Section 75-4103, RCM, 1947, by Chapter 278, Laws of 1959, authorized the election of trustees of a county high school by "the electors in the county high school district." There are counties which have county high schools but which have not been divided into high school districts as authorized in Chapter 46, Title 75, RCM, 1947. The fact that such a legal entity has not been established in such counties should not preclude the submission of the question as to whether the trustees of a county high school should be elected. The purpose of the amendment to Section 75-4103 is to avoid an appointed board and permit voters of a county to select their own trustees. To construe the amendment as limited to counties which have been previously divided into high school districts would be an unnecessary and restrictive interpretation of the law and would avoid the will of our legislature. In the case of *In re Wilson's Estate*, 102 Mont. 178, 196, 56 Pac. 2d 733, our Supreme Court said:

"The general design and purpose of the law is to be kept in view and the statute given a fair and reasonable construction with a view to effecting its purpose and object, even if it be necessary, in doing so, to restrict somewhat the force of subsidiary provisions that otherwise would conflict with the paramount intent."

It is, therefore, my opinion that:

1. A board of county commissioners must call an election in not less than 30 nor more than 60 days after receiving a petition requesting the call for an election submitting the proposition as to whether the board of trustees of the county high school shall be elected.

2. Registration is not a requirement for eligibility to vote on the question of the election of county trustees held pursuant to Section 75-4103, RCM, 1947, as amended.
3. The election of the first board of trustees of a county high school must be held on the first Saturday in April subsequent to the election approving the elective manner of selecting trustees of a county high school.
4. Only resident qualified electors of the school district in which the county high school is located may vote for the county high school trustees to be elected from the school district. And only resident qualified electors of a trustee district may vote for the trustee to be elected from the trustee districts.

Very truly yours,
FORREST H. ANDERSON
Attorney General