

Opinion No. 39

**COUNTY SUPERINTENDENT OF SCHOOLS; Qualifications—
SCHOOLS AND SCHOOL DISTRICTS; Superintendents; qualifi-
cations—SECTION 75-1502, REVISED CODES OF MONTANA,
1947.**

Held: A county superintendent of schools whose teaching certificate expiring during her incumbency could be disqualified from continuing to hold her office.

April 11, 1962

Miss Harriet Miller
State Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Miller:

You have advised me that the holder of an Elementary Standard Teaching Certificate which is due to expire July 1, 1963, wishes to seek the office of County Superintendent of Schools for the term beginning January 7, 1963, and ending the first Monday of January, 1967. This person has not taken the college courses required in order to qualify for a renewal of her teaching certificate.

Assuming that this person is elected, you wish to know if she can hold the office of County Superintendent for the entire term even though her teaching certificate expires beforehand.

Section 75-1502, RCM, 1947, provides:

"No person shall be eligible to the office of county superintendent of schools in any county of Montana, who, in addition to the qualifications required by the Constitution of the State of Montana, is not the holder of a state certificate offered by the State of Montana, granted by endorsement upon graduation from a standard normal school, or college, or university; or who is not the holder of a certificate offered by the State of Montana, designated as a state certificate granted by examination in accordance with the rules and regulations as prescribed by the state Board of educational examiners; and who has not had at least three years successful experience as a teacher, principal or superintendent of public schools. The above qualifications shall not prohibit the re-election of present incumbents."

The qualifications required by this statute must be met in order to **hold** the office of county superintendent and do not refer to the qualifications necessary to run for the office. **State ex rel Flynn v. Ellis**, 110 Mont. 43, 98 P. 2d. 879 (1940). This being the case, the required qualifications must be maintained throughout the term of office. The general rule is well stated in 42 Am. Jur., **Public Offices**, § 41, as follows:

"Eligibility to public office is of a continuing nature and must exist at the commencement of the term and during the occupancy of the office. The fact that the candidate may have been qualified at the time of his election is not sufficient to enable him to hold the office, if at the time of the commencement of the term or during the continuance of the incumbency he ceases to be qualified."

Under a Wisconsin statute providing that no person shall be eligible to the office of judge who, at the time of his election or appointment, is not an attorney of a court of record, the Supreme Court of that state held that a judge whose certificate of admission to the Wisconsin bar was revoked during his term of office was thereby disqualified from the office of Judge. **State ex rel Fugina v. Pierce**, 191 Wis. 1, 209 N.W. 693 (1926). For further authorities to the same effect, see 88 A.L.R. 828-831.

In view of the above cited authorities, it is my opinion that a county superintendent of schools whose teaching certificate expires during her incumbency could be disqualified from continuing to hold her office. Of course, if the person in question is able to take the college courses required by the board of education before July 1, 1963, she will be entitled to a renewal of her teaching certificate and will thereby remain qualified to hold the office of county superintendent of schools.

Very truly yours,
FORREST H. ANDERSON
Attorney General