

Opinion No. 55

FIRE DISTRICTS; Board of County Commissioners; power to enter into contracts on behalf of fire districts—Section 11-2010, Revised Codes of Montana, 1947.

- Held:**
- 1. If a majority of the board of trustees of a fire district originally appointed are still qualified to act as trustees, and no successors elected and qualified then such board may enter into contracts on behalf of a fire district.**
 - 2. The board of county commissioners may enter into contracts for fire protection for and on behalf of a fire district if the fire district does not have at least three qualified trustees to conduct the business of the fire district.**

December 31, 1962

Mr. Gene B. Daly
Cascade County Attorney
Great Falls, Montana

Dear Mr. Daly:

You requested my opinion as to whether the board of county commissioners of Cascade County may enter into contracts with the City of Great Falls to furnish fire protection for property within fire districts, which were established fifteen to twenty years ago. You ad-

vise me that at the time of the establishment of the fire districts trustees were appointed for each district and that since the first appointments, elections have not been held for the selection of successors to the appointed trustees.

Prior to 1959, the affairs of fire districts were under the control of the board of trustees of the fire districts, which boards could enter into contracts on behalf of the fire districts. Chapter 77, Laws of 1959, amended Section 11-2010, RCM, 1947, to permit the board of county commissioners to contract with the city or a private fire company to furnish fire protection. The pertinent part of Section 11-2010, RCM, 1947, as amended, provides as follows:

Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town, or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided."

From the above quoted, it appears that the board of county commissioners may contract for fire protection or the trustees of a fire district may govern affairs of the district, but there is no implication that both boards may act for the district. By the use of the disjunctive "or" it must be assumed that if there are trustees of the fire district, then they must act for the district to the exclusion of the board of county commissioners. Confusion would result if both boards had the power to enter into contracts for a fire district and by the use of the word, "or," the legislative intent must be construed as furnishing alternative methods of making contracts. (State ex rel. Normile v. Cooney, 100 Mont. 391, 47 Pac. 2nd 637.)

In your letter you stated that trustees for the fire districts were appointed many years ago and elections have not been held for the selection of successors. In Section 11-2010, RCM, 1947, it is provided that the trustees appointed "shall hold office until their successors are elected and qualified." From this it follows that the appointed trustees still hold office because no subsequent elections have been held. Section 11-2010, RCM, 1947, as amended, incorporates by reference provisions of the school law as to fire district elections and trustees in the following provision:

"Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall as far as possible, be the same as provided in the school election laws for school districts of the second class; . . ."

This portion of the statute necessitates an examination of cases construing our school law which would apply to the facts you submitted. In the case of *Jersey v. Peacock*, 70 Mont. 46, 223 Pac. 903, our Supreme Court held that if a board of trustees is once elected, the trustees

continue to function as the board, notwithstanding the fact that elections were not held in subsequent years because their successors had to be elected and qualified. Under the facts of the case it appears that the trustees held office for eighteen years and managed the affairs of the school district. In the application of the rule of this case to the facts submitted by you, it must be concluded that if the appointed trustees of a fire district are still available to perform the duties of their offices, they have the power to do so. However, vacancies might well have occurred during the period which has elapsed since the appointment due to death, resignation, removal from the district or some other cause.

If there is only two or one of the members left of the original board, which was appointed, then in effect the district cannot transact the business as Section 75-1623 states that there must be a majority of the board to constitute a quorum for the transaction of business. This was recognized in the case of *State v. School District No. 13*, 116 Mont. 294, 151 Pac. 2nd 168.

It is therefore my opinion:

1. If a majority of the board of trustees of a fire district originally appointed are still qualified to act as trustees, and no successors are elected and qualified then such board may enter into contracts on behalf of a fire district.
2. The board of county commissioners may enter into contracts for fire protection for and on behalf of a fire district if the fire district does not have at least three qualified trustees to conduct the business of the fire district.

Very truly yours,
FORREST H. ANDERSON
Attorney General