

Opinion No. 15**STATE EXAMINER, Duties; Audits; School Districts—SCHOOLS
AND SCHOOL DISTRICTS; Finances; Funds; Audit of—Sec-
tion 82-1008, R.C.M., 1947.**

HELD: From and after July 1, 1963, the state examiner must make at least one examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, and examination by a qualified public accountant is no longer permitted.

August 29, 1963

Mr. Albert W. Leuthold
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Leuthold:

You have presented a question growing out of the interpretation to be given the amendment of Section 82-1008, R.C.M., 1947, by Chapter 141, Laws of 1963, as the same applies to examination by your office of the books and accounts of first and second class school districts and third class districts maintaining a high school. You ask whether or not your office must examine said books and accounts after July 1, 1963, or whether they may be examined by a qualified public accountant at the option of the school district.

Said Section 82-1008, *supra*, in the form of its original enactment in 1913, was construed by this office and subsequently amended in 1937, 1955 and 1963. A brief resume of this evolutionary process gives an insight to the intent of the legislature in enacting said Chapter 141.

The original text of this section read as follows:

“The state examiner, in addition to the duties now imposed upon his office, shall have the power and authority, and it shall be his duty, to make at least one examination each year of the books and accounts of * * * all school districts of the first and second class * * *.”

This was construed, with other sections of our law, in Opinion No. 358, Volume 16, Opinions of the Attorney General (1937) to hold that the State Examiner must examine said books and accounts, whether the trustees of the district wished such examination or not, and without cost to the district.

In 1937, our legislature amended this section to require the State Examiner to examine such books and accounts should the trustees of the district so request, or the trustees could have the books examined by a qualified accountant should they deem it advisable. Either type of examination or neither was contemplated by this 1937 amendment and an examination fee for the State Examiner, should he be requested to make an examination, was provided.

In 1955, our legislature again amended this section to provide that the State Examiner should make an examination during each fiscal year of the subject books and accounts, that the trustees might provide for examination of the books by a qualified public accountant and his report filed for review by the public, and that the trustees should notify the State Examiner in June of each calendar year **if examination were required**. Thus, for the first time since 1937, examination of the books was made mandatory and it could be done, at the option of the trustees, by either the State Examiner or a qualified public accountant.

In 1963, the legislature deleted the proviso providing for notice

to the State Examiner of the necessity for examination and the option of the trustees to have a qualified public accountant examine the books.

Where phraseology of statute is changed, it is generally presumed that the Legislature, in adopting amendment, intended to change existing law. *American Surety Co. v. Mulendore*, 85 Mont. 532.

Amendatory act should be construed to repress evils under old law and advance remedy provided by amendment. *State v. Hays*, 86 Mont. 58.

In its present form Section 82-1008, *supra*, reads in pertinent part:

“* * * *”

“The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers.”

The effective date of the amendment was July 1, 1963.

I am led to conclude by the history of legislative change and executive construction of this statute that the intent of the 1963 legislature was to require examination of the books and accounts of first and second class school districts and third class districts maintaining high schools by the State Examiner from and after July 1, 1963, and to eliminate examination by qualified public accountants other than the State Examiner. I so hold.

Very truly yours,

FORREST H. ANDERSON
Attorney General