

**VOLUME NO.35****Opinion No. 31**

**COUNTIES — Consolidation of offices; county treasurer and county superintendent of schools; COUNTY SUPERINTENDENT OF SCHOOLS — Consolidation of offices; with county treasurer; COUNTY TREASURER — Consolidation of offices; with county superintendent of schools; OFFICES AND OFFICERS — Consolidation of offices, county treasurer and county superintendent of schools. Article XI, section 3, Constitution of Montana; sections 16-2406 and 16-2501, R.C.M. 1947.**

- HELD:**
- 1. The offices of county treasurer and county superintendent of schools may be consolidated into one office.**
  - 2. An officeholder of the consolidated offices of county treasurer and county superintendent of schools must meet the minimum qualifications of both offices.**

October 4, 1973

Mr. Paul C. Bunn  
Liberty County Attorney  
County Attorney's Office  
Chester, Montana 59522

Dear Mr. Bunn:

You have requested my opinion on the following question:

May the offices of county superintendent of schools and county treasurer be consolidated and, if so, what qualifications must the officeholder meet?

The Constitution of Montana, 1972, Article XI, section 3, provides in pertinent part at subsection (2):

One optional form of county government includes, but is not limited to, the election of ... a treasurer, ... a county superintendent of schools, ... The terms, **qualifications**, duties, and compensation of those offices shall be provided by law. **The Board of county commissioners may consolidate two or more such offices.** The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties. (Emphasis supplied)

Statutory provisions and requirements for consolidation of county offices are found in section 16-2406, Revised Codes of Montana, 1947, and in section 16-2501, et seq., as amended by the 1973 legislative session. Section 16-2406 allows the board of county commissioners to consolidate county offices and combine the powers and duties of said offices. Consolidation may also be accomplished under section 16-2501, et seq., by a petition submitted to the county commissioners containing signatures of 15 per cent of the qualified electors of the county. The offices of county superintendent of schools and county treasurer can be consolidated pursuant to these constitutional and statutory provisions.

General qualifications for a county office are found in section 16-2401, R.C.M. 1947:

No person is eligible to a county office who at the time of his election is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

The county treasurer and county superintendent of schools are listed in section 16-2403, R.C.M. 1947, as county officers and must meet these general qualifications.

Further, in order to hold the elected office of county superintendent of schools an individual must meet certain minimum statutory requirements.

Section 75-5802, R.C.M. 1947, as amended by Chapter 100, Laws of 1973, provides:

A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of the county superintendent who:

- (1) is a qualified elector;
- (2) holds a valid teacher certificate issued by the superintendent of public instruction; and
- (3) has not less than three (3) years of successful teaching experience.

A county is a political subdivision of the state and is subject to legislative regulation and control. **Yellowstone County v. First Trust & Savings Bank of Billings**, 46 M. 439, 128 P. 596. As the legislature has specifically set the qualifications for holding a county office, consolidation of county offices carries with it the minimum qualification for each office as prescribed by statute. An individual must meet the minimum qualification for each office to be eligible for the consolidated county office.

**THEREFORE, IT IS MY OPINION:**

1. The offices of county treasurer and county superintendent of schools may be consolidated into one county office pursuant to Montana constitutional and statutory provisions; and
2. An officeholder of the consolidated offices of county superintendent and county treasurer must meet the minimum qualifications of both county offices.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General