

VOLUME NO. 35**Opinion No. 82**

ELECTIONS—School trustees, appointment constitutionally invalidated; **SCHOOLS AND SCHOOL DISTRICTS**—School trustee elections, county high school district, trustee appointment constitutionally invalidated. Article X, section 8, Constitution of Montana, 1972; sections 75-5917, 75-5920, 75-5921, 75-5924 and 75-5925, R.C.M. 1947.

HELD: 1. The statutory provisions relating to the appointment of county high school district trustees are invalid under Article X, section 8 of the Montana Constitution, 1972, which provides for the election of school district trustees.

2. County high school district trustees should be elected at the next regular school election in compliance with applicable school district trustee election provisions.

May 6, 1974

Mr. Conrad B. Fredricks
Sweet Grass County Attorney
County Courthouse
Big Timber, Montana 59011

Dear Mr. Fredricks:

You have requested my opinion on the following questions:

1. Are the provisions in the Revised Codes of Montana, 1947, relating to the appointment of school trustees by the board of county commissioners, contrary to Article X, section 8, Constitution of Montana, 1972?
2. If the provisions relating to the appointment of school trustees are contrary to the Montana constitution, is there a statutory procedure implementing a change from appointed trustees to elected trustees?

The school board trustees of a high school district operating a county high school are appointed by the board of county commissioners under the provisions of sections 75-5920 and 75-5921, R.C.M. 1947. These sections provide in pertinent part as follows:

75-5920. ... Unless it has been otherwise established under law, the trustees of such a high school district shall be composed of the following:

- (1) the county superintendent; and
- (2) six (6) members **appointed** by the board of county commissioners, ... (Emphasis supplied)

75-5921. When trustees of a high school district operating a county high school are appointed by the board of county commissioners, the commissioners, at their December meeting, **shall appoint** members of the trustees for those terms which are expiring. ... (Emphasis supplied)

The 1972 Montana Constitution now provides at Article X, section 8:

The supervision and control of schools in each school district shall be vested in a board of trustees to be **elected** as provided by law. (Emphasis supplied)

No similar phraseology was contained in the 1889 Montana Constitution. In construing a statute, words are to be given their plain and ordinary meaning. **In re Coleman's Estate**, 132 Mont. 339, 317 P.2d 880 (1957). In **Dunphy v. Anaconda**, 151 Mont. 76, 438 P.2d 660 (1968), the Montana Supreme Court stated:

... The intention of the Legislature must first be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, the courts may not go further and apply any other means of interpretation. ... Where the language of the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe. ... The function of the court is simply to ascertain and declare what in terms or in substance is contained in the statute and not to insert what has been omitted. (See also 93-401-15, R.C.M. 1947.)

The same rules apply to the construction of provisions of the constitution as apply to the construction of statutes. **State v. Stewart**, 57 Mont. 397, 188 P. 904 (1920).

The word "elect" ordinarily refers to a vote by qualified electors, whereas the word "appoint" generally relates to designation by some individual or group. **Black's Law Dictionary**, 4th ed., West Publishing Co. (1951). Article X, section 8, supra, when construed according to the plain, ordinary meaning of the language, thus refers to the selection of school board trustees by a vote of the qualified electors. This constitutional provision is controlling and those statutes, supra, allowing appointment of school district trustees are invalid.

Since the 1972 Montana Constitution has effectively superseded and invalidated the appointment of school board trustees for a high school district operating a county high school, these trustee positions must now be elected. However, if a vacancy occurs under any of the circumstances prescribed by section 75-5917, a trustee may be appointed to fill the vacancy and shall serve until the next regular school election, and his successor is qualified. Section 75-5925, R.C.M. 1947.

Section 75-5923, R.C.M. 1947, which provides for the election of trustees in a county high school district upon petition and vote of the district electors is no longer applicable because election of trustees is now constitutionally mandated. In the absence of specific statutory procedure, the trustees in a county high school district should be elected at the next regular school election in compliance with sections 75-5924 and 75-5925, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

1. The statutory provisions relating to the appointment of county high school district trustees are invalid under Article X, section 8 of the Montana Constitution, 1972, which provides for the election of school district trustees.
2. County high school district trustees should be elected at the next regular school election in compliance with applicable school district trustee election provisions.

Very truly yours,
ROBERT L. WOODAHL
Attorney General