

VOLUME NO. 36**Opinion No. 12**

HOSPITAL DISTRICTS — Election of trustees; HOSPITAL DISTRICTS — Duty of Board to give notice of vacancies; HOSPITAL DISTRICTS — Valuation of bonds; sections 16-4307, 16-4308, 75-5912, 75-6409, 75-7104, Revised Codes of Montana 1947.

- HELD:**
- 1. Under section 16-4307, R.C.M. 1947, an initial board of trustees for a public hospital district must be elected, unless no one files a nomination petition, in which case the county commissioners must appoint the trustees.**
 - 2. The board of trustees of a public hospital district have a legal duty as set forth in section 75-6409, R.C.M. 1947, to inform the public of vacancies on the board, unless they occur in mid-term.**
 - 3. The valuation used in determining the five percent (5%) limitations on the amount of bonds that may be issued under section 16-4308(11), R.C.M. 1947, refers to assessed valuation.**

August 11, 1975

Mr. Charles M. Joslyn
Teton County Attorney
Larson Building
Choteau, Montana 59422

Dear Mr. Joslyn:

I am in receipt of your recent letter wherein you asked for my opinion on the following questions:

1. Under section 16-4307, R.C.M. 1947, is it mandatory that an initial board of trustees be elected or appointed by the county commissioners if no one files for a trustee position?
2. Is there any legal duty on a district board of trustees to notify the public of the possibility for someone to file for a trustee position?

3. What valuation is used, assessed or taxable valuation, in determining the 5% limitation on the amount of bond that may be issued under section 16-4308(11), R.C.M. 1947?

Section 16-4307, R.C.M. 1947, provides in part:

. . . The first board of trustees **shall** be elected at the same election upon the creation of the district . . . and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of a petition signed by any five (5) qualified electors of the district . . . If there is no nomination petition filed, it shall not be necessary to hold an election but the board of county commissioners **shall** appoint a trustee to fill the term, the term to be the same as if the trustee were elected. (Emphasis supplied)

It is clear from the above statute that the initial board of trustees **shall** be elected, or if no one files, the county commissioners **shall** appoint a trustee. The Montana Supreme Court has held that "shall" is mandatory, not permissive. See **Abshire v. School Dist. No. 1 of Silver Bow Co.**, 22 P.2d 1058, 124 Mont. 244; **Phillips Aviation Co. v. Superior Court for Los Angeles County**, 54 Cal. Rptr. 415, 420, 246 Ca.2d 46. Therefore, if a nomination petition is filed, there must be an election; however, if no petitions are filed, the county commissioners must then appoint the trustees.

Section 16-4307, **supra**, further states in part:

All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

There are two possible situations where a position of the board of trustees could become vacant. First, a vacancy could occur in mid-term, due to the resignation or death, etc., of a trustee. This situation is covered by section 16-4307, **supra**, and the remaining members would appoint a trustee to serve until the next election. No public notice would be necessary.

The second possibility involves a vacancy on the board as the result of the expiration of a term. In this situation, section 16-4307, **supra**, refers to the law on elections of school trustees. Chapter 59 of Title 75 deals with school district trustees and officers. With regard to elections, section 75-5912, **supra**, specifically refers to Chapter 64 of Title 75 which deals with school elections.

Section 75-6409, **supra**, which provides for election notices states in part:

The notice of a school election, unless otherwise required by law, shall specify . . . (4) if there are trustees to be elected, the number of positions subject to election and the length of term of each position.

From the foregoing sections, it is evident that when there is a vacancy due to the expiration of a term and an election must be held under section 16-4307, **supra**, the board of trustees must follow the notice requirements of section 75-6409, **supra**.

Section 16-4308(11), **supra**, allows public hospital districts to issue bonds, and states:

. . . the amount of bonds issued for such purposes and outstanding at any time shall not exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds

The pertinent language in this section is “. . . five per cent (5%) of taxable property therein, as ascertained by the last assessment . . .” It should be noted that the legislature did not state, “5% of the taxable value of property.” They did, however, refer to the assessed taxable property. This would indicate that the legislature intended that assessed value rather than taxable value be used.

This view is reinforced by the later reference in 16-4308, **supra**, to the law relating to school district bonds. Section 75-7104, **supra**, the current statute regarding limitations on the amount of school district bonds, clearly states the maximum amount of indebtedness is 5% of the assessed value of taxable property.

THEREFORE, IT IS MY OPINION:

1. Under 16-4307, R.C.M. 1947, an initial board of trustees for a public hospital district must be elected, unless no one files a nomination petition, in which case the county commissioners must appoint the trustee.
2. The board of trustees of a public hospital district have a legal duty as set forth in section 75-6409, R.C.M. 1947, to inform the public of vacancies on the board, unless the vacancy occurs in mid-term, in which case the remaining board members can appoint a trustee pursuant to section 16-4307, R.C.M. 1947.
3. The valuation used in determining the five percent (5%) limitations on the amount of bonds that may be issued under section 16-4308(11), R.C.M. 1947, refers to assessed valuation.

Very truly yours,

ROBERT L. WOODAHL
Attorney General