

VOLUME NO. 41

OPINION NO. 71

COUNTY OFFICERS AND EMPLOYEES - County superintendent of schools, contracting with former superintendent for services;

COUNTY OFFICERS AND EMPLOYEES - County superintendent of schools, qualifications for office;

ELECTIONS - County superintendent of schools, qualifications for office;

SCHOOL DISTRICTS - County superintendent of schools, qualifications for office;

MONTANA CODE ANNOTATED - Sections 20-3-201(2), 20-3-201(3), 20-3-210;

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 145 (1978).

- HELD: 1. A candidate for county superintendent of schools may not assume office unless at the time he assumes office he holds a valid teacher certificate.
2. A former superintendent of schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards.

23 June 1986

Arnie A. Hove
McCone County Attorney
McCone County Courthouse
Circle MT 59215

Dear Mr. Hove:

You have asked my opinion on the following questions:

1. May a candidate for county superintendent of schools assume office in January 1987, if his or her teaching certificate expired in June 1986?
2. May a former superintendent of schools with a valid teaching certificate be hired by a county to conduct hearings in regard to teacher and school board disputes, etc.?

Your first question involves an interpretation of section 20-3-201(2), MCA. That section provides the qualifications for county superintendents of schools.

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

- (a) is a qualified elector;
- (b) holds a valid teacher certificate issued by the superintendent of public instruction; and
- (c) has not less than 3 years of successful teaching experience. [Emphasis added.]

The section lists qualifications that a county superintendent of schools must possess in order to assume office. Because the statute addresses qualifications for assuming office, rather than for nomination or election, I conclude that all of the qualifications must be possessed on the date that a person takes over the position of county superintendent. Therefore, a candidate whose teaching certificate has expired in June 1986 would not possess the necessary qualifications to assume the office of county superintendent of schools in January 1987.

This interpretation is consistent with the Montana Supreme Court's opinion in State ex rel. Flynn v. Ellis, 110 Mont. 43, 98 P.2d 879 (1940). In Flynn, the Court noted that where there are no explanatory words indicating that eligibility requirements have reference to the time of the election, then they have reference to the qualifications to hold office, rather than the qualifications to be elected to office. 98 P.2d at 882. See also the discussion of eligibility requirements for a school trustee in 37 Op. Att'y Gen. No. 145 (1978).

Your second question involves an interpretation of section 20-3-201(3), MCA. That section provides, in pertinent part:

The officeholder may contract for the services of another county superintendent to perform other duties required by law of a county superintendent. The superintendent of public instruction shall prescribe a contract form to be used. [Emphasis added.]

One of the duties of a county superintendent is to hear and decide controversies involving the trustees of school districts in the county and employment actions involving teachers. § 20-3-210, MCA. Under section 20-3-201(3), MCA, the superintendent may contract with another county superintendent to hear and decide these disputes. The statute specifically refers to county superintendents and does not mention former superintendents. The language was drafted as a part of Senate Bill 168 (enacted as chapter 550, 1985 Mont. Laws). The minutes of the House Education and Cultural Resources Committee for March 18, 1985, reflect arguments by the proponents of the legislation that the services performed by a county superintendent should be contracted out to "full-time county superintendents." I

conclude from the clear language of the statute as well as the testimony on Senate Bill 168 before the legislative committees, that a former superintendent may not be hired to perform the services of a county superintendent of schools.

THEREFORE, IT IS MY OPINION:

1. A candidate for county superintendent of schools may not assume office unless at the time he assumes office he holds a valid teacher certificate.
2. A former superintendent of schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards.

Very truly yours,

MIKE GREELY
Attorney General