

# MAINE STATE LEGISLATURE

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April 16, 1963

**Hermit S. Nickerson, Deputy Comm'r**

**Education**

**John W. Benoit, Assistant**

**Attorney General**

**Trustee of Flanders Bay Community School District**

Your memorandum of March 19, 1963, is answered below.

**Facts:**

On January 1, 1963, the Town of Steuben became a participating unit of the above-named district by virtue of a vote at a special town meeting. Thereafter, the town's municipal officers appointed three persons to serve as district trustees; one for one year, one for two years and one for three years. At the annual town meeting held in March, 1963, no article appeared in the warrant calling for the election of a trustee and no trustee was elected.

**Questions:**

1. Should a trustee have been elected at the annual town meeting?
2. Was the position held by the "one-year trustee" terminated at the annual town meeting or does such trustee legally hold office until the 1964 annual town meeting?
3. Should a vacancy exist subsequent to the 1963 annual town meeting may the municipal officers appoint someone to fill such vacancy or is a special town meeting required to fill the vacancy?

**Opinion:**

The applicable law is found in section 113 of chapter 41, Revised Statutes of 1954, as amended:

"Sec. 113. Organization; compensation. . . . the municipal officers of each of the towns . . . shall appoint 3 persons, resident in such town, to be incorporators of said proposed school

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district who shall become trustees of said district. Said 3 trustees shall be appointed, one for 1 year, one for 2 years and one for 3 years, and thereafter 1 each year shall be elected for a term of 3 years in each of the participating towns by the inhabitants of the community school district who are voters in their respective towns. Said elections shall take place at the annual town meeting and trustees elected or appointed shall serve until their successors are elected and qualified. Vacancies in the office of trustees shall be temporarily filled by appointment by the municipal officers of the town where the former trustee resided until a successor trustee is elected for the unexpired portion of the term, if any, at the next annual town meeting in said town."

In Loy v. Bean, 217 Ark. 684, 232 S.W. 2d 986--an action to oust Bean from the office of school director--the court had facts before it showing that following the special election of five board members there occurred a drawing of lots to determine the length of their terms; that Bean drew the short term of one year; that two months and twenty-two days after the date of the special election, a regular school election was held and Loy was elected to Bean's post. After Loy's election "the County Board of Education held and ordered that Bean's term of office would continue for a period of one year from his election" and "thereafter until his successor was legally elected." Thereupon, Loy brought his action to oust Bean; the former appealing to the Supreme Court of Arkansas after an adverse determination below. I quote the following material from the cited decision:

"We hold that the trial court correctly interpreted the Statutes and that it was not the intention of the legislature to provide that a director who was first elected

to the one year term should hold office for only two months and 22 days, or until the next annual school election. It is more reasonable to assume from the language used that it was intended that the director first elected should hold office for the term of one year specified in the act, after which time one director should be elected at each annual election for a five-year term. Under this interpretation of the statutes, it follows that Bean's term of office had not expired and there was no vacancy in the office when Loy was elected . . ."

See also Sanley v. Brophy, 207 Ga. 38, 60 S.E. 2d 122-- a case wherein an appointing authority attempted without effect to limit the terms of office of school district trustees. Also note 78 C.J.S., Schools and School Districts, § 114.

I predicate this opinion upon the legislative intention garnered from section 113, chapter 41, Revised Statutes, and upon the holding of the court in Loy v. Bean, supra. Our legislature has seen fit to prescribe the length of the terms of office of the appointed district trustees. The legislature did not intend that an appointment for one year be reduced to a lesser term by an intervening election. Rather, the legislature intended that the terms specified in its mandate be served and thereafter "renewed" at the next annual town meeting.

No vice results from a "holding over" by a district trustee. Note that the legislature has more than sanctioned additional service by a trustee in those instances where a successor has not been elected and qualified, i.e., "trustees elected or appointed shall serve until their successors are elected and qualified." Such directive merely asserts what has been the general rule under common law. See 78 C.J.S., Schools and School Districts, § 114.

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In conclusion, the election of a district trustee at the March, 1963, annual town meeting was not required. The appointed trustees serve their respective statutory terms after which their respective terms are in turn "renewed" for a three year period. The third question presents a hypothetical situation which I respectfully decline to answer for the reason both of its character and because this opinion renders that question moot.

John W. Benoit  
Assistant Attorney General

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