

Opinion No. 25

STATE BOARD OF EDUCATION; Powers; state university; must act as Board of Regents of the University of Montana—EDUCATIONAL INSTITUTIONS; State University; duties of executive secretary to serve as secretary of Board of Regents—STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; Duties; to act as secretary for State Board of Education—STATE BOARD OF REGENTS; Powers; to adopt seal—Section 75-107, Revised Codes of Montana, 1947—Chapter 266, Laws of 1959—Article XI, Section 11, Montana Constitution

- Held:** 1. Chapter 266, Laws of 1959, requires that the State Board of Education act in two capacities and at separate meetings. In dealing with all duties imposed by law which do not pertain to the University of Montana, the Board acts under the name "State Board of Education" and the Superintendent of Public Instruction is the secretary for such board.
2. In dealing with matters pertaining to the University of Montana, the State Board of Education must act under the name and style of "State Board of Education, ex-officio Regents of the University of Montana." The executive secretary of the University of Montana must serve as secretary of the Board in this capacity, keep the minutes, prepare the agenda, give notices, and perform all acts which the Board directs be done.
3. A seal may be adopted by the Board of Education to authenticate its acts when it sits as Regents of the University of Montana.

June 12, 1959

Miss Harriet Miller
Secretary, State Board of Education
State Capitol
Helena, Montana

Dear Miss Miller:

You requested my opinion concerning the procedural changes resulting from the amendment of Section 75-107, Revised Codes of Montana, 1947, by Chapter 266, Laws of 1959.

Section 75-107, Revised Codes of Montana, 1947, defines the powers and duties of the State Board of Education. Subsection 1 of Section 75-107 was amended by adding the following:

"The state board of education shall serve ex-officio as regents of the University of Montana and shall use and adopt this style in all its dealings therewith."

Subsection 12 of Section 75-107 was also amended by the following:

"The executive secretary of the University of Montana shall serve as the secretary for the board sitting as the university regents."

These amendments indicate the legislative intent that the State Board of Education will act in two capacities with the implied direction that in discharging duties fixed by law, excluding matters pertaining to the University of Montana, meetings shall be separate and independent from those meetings when matters dealing with the University of Montana are considered.

The State Superintendent of Public Instruction under Section 75-107, Revised Codes of Montana, 1947, is designated as the secretary of the State Board of Education. She must notify the members of all regular and special meetings and keep the records of the proceedings of the State Board of Education. When the State Board of Education acts as regents of the University of Montana, the executive secretary of the University of Montana is to act as the secretary for the board.

Section 11 of Article XI of the Montana Constitution vests the general control and supervision of the State University and of the State Educational institutions in the State Board of Education. The powers and duties of the State Board of Education are prescribed and regulated by law. Chapter 266, Laws of 1959, states that the Board of Education shall serve as regents of the University of Montana and use this style in all its dealings therewith. By so providing, this statute clearly requires that the Board in acting as regents, use the style and name of "State Board of Education, ex-officio Regents of the University of Montana." If the Board in acting on university problems only used the name "Regents of the University of Montana", and if such were

the legislative intent, then Chapter 266, Laws of 1959, would in effect constitute an amendment of the Constitution. In the case of *State ex rel. Hamilton vs. Troy*, 190 Wash. 483, 68 Pac. 2d. 413, it was held that a legislative act which purported to change the name of "prosecuting attorney" to "district attorney" was unconstitutional. The Washington Constitution required the election in the several counties of "prosecuting attorneys and other officers" and the court said:

"The matter before us appears trifling at first sight, and is, in fact, of slight importance, in so far as direct consequences are concerned. But, as suggested by the relator, if the Legislature has the power to change the name of one constitutional office, it has the power to change the name of any and all."

The State Board of Education is authorized by Section 75-107, Revised Codes of Montana, 1947, as amended, to adopt an official seal and it would certainly be within its power to have one seal, when it is acting as a State Board of Education in matters which do not pertain to the University system and a second seal when acting as regents of the University of Montana, *ex-officio*.

It is, therefore, my opinion that Chapter 266, Laws of 1959, requires that the State Board of Education act in two capacities and at separate meetings. In dealing with all duties imposed by law which do not pertain to the University of Montana, the Board acts under the name "State Board of Education" and the Superintendent of Public Instruction is the secretary for such board.

In dealing with matters pertaining to the University of Montana, the State Board of Education must act under the name and style of "State Board of Education, *ex-officio* Regents of the University of Montana." The executive secretary of the University of Montana must serve as secretary of the Board in this capacity, keep the minutes, prepare the agenda, give notices, and perform all acts which the Board directs be done. A seal may be adopted by the Board of Education to authenticate its acts when it sits as Regents of the University of Montana.

Very truly yours,
FORREST H. ANDERSON
Attorney General