

August 2, 2010

Mr. Mitchell A. Young
Lake County Attorney
106 Fourth Avenue East
Polson, MT 59860-2183

Re: Compatibility of Offices

Dear Mr. Young:

This office has reviewed your letter of July 15, 2010, raising the question whether the offices of county superintendent of schools and high school cross country coach are incompatible under the incompatibility of offices rules announced in State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 P. 648 (1914). Since the answer to this question is clear from the applications of the controlling rules, a letter of advice rather than a formal opinion has been determined to be the appropriate response.

Under Klick, offices are incompatible “when one has power of removal over the other, when one is in any way subordinate to the other, when one has power of supervision over the other, or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both.” 55 Mont. at 24-25 (citations omitted). The high school coach is an employee of the school district, not Lake County. Generally, the coach reports to the building administrator, and ultimately is responsible to the school district superintendent and its board of trustees. See, e.g., Mont. Code Ann. § 20-4-402(1) (District Superintendent has “general supervision of . . . personnel employed by the district). The county superintendent does not have the power to remove the coach, Mont. Code Ann. § 20-4-207 (trustees may terminate contracted teacher for cause), and the coach is not in any meaningful way subordinate to the county superintendent.¹

¹ I note that a county superintendent may recommend the removal of a tenured teacher if there is no district superintendent or principal, Mont. Code Ann. § 20-4-204(1)(a)(iii), but the situation in which a school has neither a superintendent nor a principal and the coach is a tenured teacher is too attenuated to be of any significance in this analysis.

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You note that the duties of the county superintendent include the resolution of disputes over decisions of local boards of trustees, and that such disputes might theoretically include matters involving the high school cross country coach. Mont. Code Ann. § 20-3-210. You also note, however, that the statutes specifically contemplate the possibility that a county superintendent might be disabled from acting on a particular controversy by a conflict of interest, and provide for the securing of a replacement for the county superintendent in such cases. Mont. Code Ann. § 20-3-212. Since the legislature has made specific provision for resolution of a county superintendent's personal conflicts of interest, it does not appear that public policy would be offended because of the remote possibility that a dispute might arise involving the office-holders duties as a coach that would compromise the duties of a county superintendent.

For the foregoing reasons, it is my opinion that the offices of high school cross country coach and county superintendent of schools are not incompatible. I note that a coaching contract involves limited extra-curricular duties. It is not analogous to a full-time teaching position, and nothing in this letter should be construed to express an opinion regarding a situation in which the county superintendent sought to serve as a classroom teacher. This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym