

School Trustees—Authority to Open the Ballot-Box and Count the Ballots After a School Election.

The Trustees of a school district in second and third class districts have authority to canvass the returns of the judges of election, but have no authority to open the ballot-box to count the ballots.

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My dear Mr. Husband:

You have submitted to this office the question of whether the School Board in second and third class districts may open the ballot-box and count the ballots after a school election.

Section 989 of the Revised Codes of 1921 provides, in part, as follows:

"In districts of the second and third classes, the election of school trustees shall be held and conducted under the supervision of the board of school trustees. * * *

while section 996 of the Revised Codes of 1921 provides:

"At every election held under this act, a poll-list shall be kept by the judges and clerk at each polling-place, and immediately after the close of the polls the judges shall count the ballots, and if there be more ballots than votes cast the judges must draw by lot from the ballots, without seeing them, sufficient number of ballots to make the ballots remaining correspond with the number of votes cast. The clerk shall write down in alphabetical order in a poll-book provided for that purpose the name of every person voting at the time he deposits his ballot. There shall also be provided a tally-list for each polling-place; after the ballots have been counted and made to agree with the poll-list the judges shall proceed to count them. The clerk shall enter in the tallylist the name of every person voted for as trustee, and the term, and tally opposite his name the number of votes cast for him, and at the end thereof set down in a column provided for that purpose the whole number of votes he received. The judges and clerk shall sign a certificate to said tally-list, setting forth the whole number of votes cast for each person or trustee, designating the term, and they shall verify the same as being

correct to the best of their knowledge, before an officer authorized to administer oaths. No informality in such certificate shall vitiate the election, if the number of votes received for each person can reasonably be ascertained from said tally-list. Said books and tally-lists shall be returned to the board of trustees of the district, who shall canvass the vote and cause the clerk of the district to issue a certificate of election to the person or persons elected, designating their term, a copy of which must be forwarded to the county superintendent of schools. School trustees are hereby authorized to administer oaths to judges of election."

The powers of canvassing boards are defined in 20 C. J., page 200, Section 255, as follows:

"It is a common error for a canvassing board to overestimate its powers. Where there is no question as to the genuineness of the returns or that all the returns are before them, the powers and duties of canvassers are limited to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the return before them, and then declaring or certifying the result so ascertained. They have no power to go behind the returns and ascertain the qualifications of the voters or otherwise inquire into the regularity of the election." Sec, also:

State v. Choteau County, 13 Mont. 23.

In the absence of statute conferring it, a board of canvassers has neither express nor implied power to recount the ballots.

People ex rel. Beasley v. Town of Sausalito, 106 Cal. 500, 39 Pac. 937;

Attorney General v. Genesee County, 166 Mich. 61, 131 N. W. 165.

It will be observed that our statutes seem to make a distinction between canvassing votes and canvassing returns. (See Secs. 638, 654, 749, 754, 790, 792 and 793, Rev. Codes of 1921.)

Wherever the statute speaks of canvassing returns, it is apparent that it uses the expression in connection with the duties of a canvassing board; and wherever it speaks of canvassing the vote, it uses the expression in connection with the duties of election judges. However, it will be observed that in Section 996, supra, it is the books and tally-lists that are returned to the Trustees to be canvassed. The statute says nothing about what shall be done with the votes.

It is, therefore, my opinion that, while the statute here appears to direct the Board to canvass the vote, what is intended is that they shall canvass the returns of the judges of election.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.