

**School Election—Validity of—Time of Closing the Polls.**

A school election is not rendered invalid by reason of the fact that the polls were closed at 5:20 o'clock P. M. rather than at 6:00 o'clock P. M., it appearing that only two voters were denied the privilege of voting, and it further appearing that the result of the election would not have been changed had they been given the right to vote.

J. R. Wine, Jr., Esq.,  
County Attorney,  
Helena, Montana.

My dear Mr. Wine:

You have submitted the following question:

"A school election was held on the first Saturday in April in accordance with law, at the Middle Fork schoolhouse in this county. In order to hurry things along the judges set the clock ahead forty minutes and closed the polls at 5:20. Between 5:20 and 6 o'clock P. M. two voters appeared and demanded the right to vote, but they were advised by the judges that they were too late. These two voters would have voted, had they been permitted to do so, against the candidate who was elected, but their two votes would not change the result of the election."

The question is: Does this invalidate the election? The rule, as stated in 9 Ruling Case Law, page 1107, is as follows:

"The particular hour of the day in the case of an election is not of the essence of the thing required to be done, and where the law fixes the opening and closing of the polls at sunrise and sunset the election should not be invalidated because the polls were closed a few minutes before or were kept open a few minutes after sundown. But this rule applies only to unsubstantial departures from the law. There

may be such radical omissions to comply with the provisions of a directory statute as will lead to the conclusive presumption that injury must have followed."

The following authorities are cited in support of the text:

People v. Cook, 8 N. Y. 67, 59 Am. Dec. 451;

Goree v. Cahill, 35 Okla. 42, 128 Pac. 124;

Tebbe v. Smith, 108 Cal. 101, 41 Pac. 454.

"The principle underlying all these decisions is that the rights of the voters should not be prejudiced by the errors or wrongful acts of the election officers, unless it be made to appear that a fair election was prevented by reason of the alleged irregularities. It is said in Moyer v. Van De Vanter (12 Wash. 377, 41 Pac. 60) that there is 'a clear distinction between those things required of the individual voter and those imposed upon election officers, \* \* \* where there has been a substantial compliance with the law on the part of the individual voter and it is made to appear that there has been an honest expression of the popular will. There is a well-defined tendency to sustain the same, although there may have been a failure to comply with some of the specific provisions of the law upon the part of the election officers or some of them.'"

Murphy v. City of Spokane (Wash.) 117 Pac. 476.

See, also:

Harrington v. Crichton, 53 Mont. 388.

From the statement of facts presented it appears that the result would not have been changed by the two additional votes, and it is assumed that these persons were the only ones deprived of a vote by reason of the closing of the polls before 6 o'clock.

While any doubt as to what the result of an election would have been (where the voters have been denied the right to vote before the time for closing the polls) ought to be resolved against the validity of an election, I am of the opinion in the instant case that the election was not invalidated by reason of the premature closing of the polls.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.