

**School Trustees, Nomination Of. Candidate, Failure of Clerk to Post Name Of. Election of School Trustee, Name as Candidate Not Posted.**

Under Section 1772, Political Code, as amended, the failure of the clerk of a school district to post the name of a candidate for school trustee at least five days before the election, where such candidate has presented a certificate duly signed by the required number of electors, does not invalidate the election of such candidate where he receives the highest number of votes cast.

The facts in this case are clearly distinguishable from the facts in the opinion given to County Attorney Lentz on April 12, 1907, to which reference is hereby made.

Helena, Montana, June 1, 1907.

Hon. Phil Cole,  
County Attorney,  
Choteau, Montana.

Dear Sir:—

Your letter of the 20th ult., requesting an opinion of this office, received, in which you submit the following facts:

Under the provisions of Section 1772 of the Political Code, as amended by the laws of 1899, page 56, a candidate for school trustee delivered to the clerk of said school district, five days next preceding the election, a certificate signed by five or more qualified electors of his district, nominating him as a candidate for the office of school trustee. The clerk of the district failed to post his name as a candidate until the next morning, which was only four days before the election. Another candidate for such office filed his certificate of nomination, duly signed, and his name as a candidate was posted at least five days before the election. At the election the candidate whose name was not posted by the clerk until four days before the election received the highest number of votes.

Upon the above facts you ask the following question:

“Is the election of the person receiving the highest number of votes to be declared illegal because of the failure of the clerk to do as required by law?”

The part of Section 1772 which is material to the above question reads as follows:

“In the districts of the second and third classes, having fifty or more children of school age, the names of all the candidates for membership on the School Board must be received and filed by the clerk and posted at each polling place at least five days next preceding the election.

Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the School Board at the ensuing election.”

From your statement of facts it appears that the candidate fully complied with the law so far as it was within his power, and that it was through no fault of his that his name was not posted at least five days before the election. We assume that his name was on the ballot used at the election, but whether this was so or not, so long as he had complied with the law, and had filed a certificate with the clerk, signed by the required number of electors, within the time provided by law, and at the ensuing election received the highest number of votes cast for any candidate, he is undoubtedly the duly elected trustee of such district. If the clerk of the school district by omitting to post the names of the candidates whose nominations had been duly filed with him at the time the law designates that he should do so could deprive such person of the right of being a candidate at such election, it would be within the power of the school clerk to decide any election of trustees by simply omitting to post the names of all candidates save the one who might be his choice.

The above facts are clearly distinguishable from the case in which a person desiring to be a candidate in a district of the second or third class filed no certificate of nomination whatsoever, and then merely announced his candidacy on the day of election.

You are therefore advised that the person receiving the highest number of votes is entitled to receive a certificate of election as trustee of such district.

Yours truly,

ALBERT J. GALEN,

Attorney General.