

School Trustees, Nomination Necessary. Election of School Trustees, Nomination Necessary. Nomination of School Trustees. School Trustees, Mandamus Of.

Candidates for the office of school trustees in districts of the second and third class, with more than fifty children of school age, must be nominated as provided by law, in order to have votes cast for them counted.

Trustees cannot be compelled to vote in favor of submitting to the electors the question of moving a school house.

Helena, Montana, April 10, 1908.

Hon. S. V. Stewart,
County Attorney,
Virginia City, Montana.

Dear Sir:—

Your letter of the 30th ult., in which you request opinion of this office upon the following questions, has been received.

1. At the regular annual school election held in a district of the third class, a party not previously nominated received a majority of the votes cast at the election; other candidates receiving votes were regularly nominated. Can the party so receiving a majority demand a certificate of election if he is otherwise qualified?

2. Is there any way to force a board of school trustees to submit to the electors of the district the question of moving the school house?

In answer to your first question, we herewith enclose an opinion to Hon. Theodore Lentz, County Attorney, Glendive, dated April 13, 1907, in which it was held that in districts of the second and third classes, having fifty or more children of school age, that the names of candidates for school trustee must be received and filed by the clerk and posted at each polling place at least five days next preceding the election, and that votes cast for a candidate who did not have his name so filed and posted should not be counted. That opinion applies with equal force to the facts stated in your question.

In answer to your second question you are advised that a board of school trustees has a large discretion in controlling the affairs of the district and while it may be possible in many instances to institute mandamus proceedings to compel them to act, still, by mandamus proceedings you cannot control the manner of action, as this is a matter resting in their sound discretion; therefore, we know of no way of compelling the majority of a board to vote in favor of submitting to a vote of the electors the question of moving the schoolhouse

Of course, the electors desiring to have such question submitted could petition the trustees therefor, and if the trustees refuse to act favorable upon their petition it would appear that their only redress would be by changing the personnel of the board at ensuing elections.

Very truly yours,

ALBERT J. GALEN,
Attorney General.