

**School Elections. Candidates for Trustees, Nomination Of.**

In school districts of the second and third class having fifty or more children of school age the names of candidates must be filed and posted five days before the election. and votes cast for persons not so nominated should not be considered by the trustees in canvassing the election returns.

Helena, Montana, April 13, 1907.

Hon. Theodore Lentz,  
County Attorney,  
Glendive, Montana.

Dear Sir:—

Your letter of the 8th inst. requesting opinion of this office, received. The question submitted being as follows:

Should the trustees of a second class school district having fifty or more children of school age canvass votes cast at a school election for a candidate who is not nominated in the manner provided in Section 1772 of the Political Code, as amended by Laws of 1899, p. 56?

Sections 1770 to 1787, inclusive, of the Political Code, were amended by the Laws of 1897 at page 136. Section 1778, as amended by such Act, provided that:

"The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting in districts of the second and third class. \* \* \*

In districts of the first class no person shall be voted for or elected as trustee unless he or she has been nominated therefor by bona fide public meeting held in the district at least ten days before the election \* \* \* and the certificate of such nomination \* \* \* filed with the county clerk at least eight days before the date of election."

And such section further provides that the County Commissioners shall not count any votes cast for any person unless he or she has been so nominated and a certificate thereof filed as required by such section.

It will be noticed that by this amendment of Section 1778 no nominations were required of trustees in districts of the second and third class, and that therefore any elector of the district could on election day vote for any resident of such district possessing the necessary qualifications to hold the office, as Section 1772, as amended by that Act, contained no provision for the nomination of candidates in second and third class districts. But, as stated above, two years later, by the laws of 1899, page 56; Section 1772 was again amended by adding the following provisions:

"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 districts may file with the clerk the nominations of as many persons as are to be elected to the School Board at the ensuing election."

This amendment to Section 1772 is in conflict with the provisions of Section 1778 in so far as they relate to second and third class districts. And the purpose of such amendment of Section 1772 was to compel all persons desiring to be candidates for the office of trustee in second and third class districts having fifty or more children of school age to have their names as such candidates filed with the clerk and posted at least five days next preceding the election, and that any five qualified electors could so nominate them.

The plain attempt and purpose of this amendment was to compel all candidates to have their names go before the electors of the district at least five days before the election in order that the electors of the district would know on election day just who the candidates would be from whom they could make their choice in voting.

To hold that in the face of this amendment the electors of the district on election day could go to the polls and vote for any resident

of the district, regardless of whether his name had been placed in nomination or not, would completely destroy the force and effect of such amendment, and leave the matter in exactly the same position as it was prior to the amendment of 1899 of said Section 1772.

Under the facts stated in your letter it appears that two men were duly nominated, but that on election day thirty-one votes were cast for a third person whose name had not been placed in nomination. The fact that this third person received the same number of votes as one of the persons who had been regularly nominated shows concerted action and that he was a candidate, while the last amendment to said Section 1772 provides that "the names of all the candidates for membership on the school board must be received and filed by the clerk and posted," etc.

In our opinion the word "must," as therein used, makes such provision mandatory, and that therefore the electors have no right to vote for a person whose name has not been filed and posted as a candidate, and that any votes cast for such person should be disregarded by the trustees in canvassing the results.

You are therefore advised that the trustees should disregard the thirty-one votes cast for the person who was not nominated, and issue certificates of election to the two persons who were regularly nominated, inasmuch as there were only two persons to be elected, and only two persons nominated.

Yours very truly,

ALBERT J. GALEN,

Attorney General.