

**School Elections, Right to Vote Thereat. Penalties in Districts of the Third Class.**

Section 62 of the Penal Code does not apply to school elections and the only way to punish one who unlawfully votes in a district of the third class is to punish by an action charging perjury where the illegal voter has been challenged before voting.

Helena, Montana, April 18, 1907.

Hon. S. P. Wilson,  
County Attorney,  
Deer Lodge, Powell County, Montana.

Dear Sir:—

You have asked for an opinion relative to elections in school districts of the third class, to-wit,

“Does Section 62 of the Penal Code apply to the annual school elections in school districts of the third class; or, does a person who has never been naturalized and is not a citizen of the United States, who fraudulently votes at the regular annual school election in a school district of the third class, thereby become liable for a felony?”

Section 62 of the Penal Code does not specifically include elections in school districts. And in view of the fact that the law relative to general elections, in many instances does not apply to school elections, it is my opinion that in the case you mention a party who wrongfully votes at a school election in a district of the third class, without challenge, should not be prosecuted under Section 62 of the Penal Code.

The Legislative Assembly in passing the law found on page 140 of the Laws of 1897, provided that a person who wrongfully or unlawfully voted in a school district of the first class should be guilty of a misdemeanor, but makes no provision to punish one so voting in a district of the third class. It was evidently the intention of the Legislature to provide a penalty for the wrongful voting at such an election less severe than that provided for a wrongful and unlawful voting at a general election.

It is my belief that the only punishment provided for the unlawful voting of a person in a school district of the third class would be in case they are challenged as provided in Section 1779, page 144, Laws 1897, to-wit: for Perjury. It may be that in view of the fact that in districts of the third class there are so few electors, that the Legislature concluded that this was sufficient safe-guard against unlawful voting.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.