

◦ Election Law. School Trustees, Election Of. Judges of Election, Appointment Of. Nomination Papers, School Trustees.

Under the facts stated, the court would probably uphold the election, provided all other things were regular and no element of fraud entered into the matter.

Helena, Mont., April 23, 1907.

Hon. John A. Matthews,  
County Attorney,  
Townsend, Montana.

Dear Sir:—

I am in receipt of your favor of April 20th, relative to the regularity of a school election held in District No. 7, Broadwater County, Montana. It appears from your statement of facts that the school board did not appoint any judges; that the citizens met at the polling place and elected two citizens to act as judges; that no nominations had been filed, but that three men were voted for and a total of twenty-two votes cast, although twenty-three votes appear to have been counted. One candidate received thirteen votes, one received nine, and one received one vote.

Under the provisions of Section 1772 of the Political Code, as amended, it is the duty of the Board of School Trustees in districts of the second and third classes to appoint three qualified electors to act as judges. If these judges are not present at the time for opening the polls the electors present may appoint judges who shall designate one of their number to act as clerk. The law does not specifically say that the electors must elect three judges, but that is most probably its meaning. This section also provides that nominations must be made and posted at the polling place preceding the election; but this latter clause does not apply unless there are fifty or more children of school age residing in the district.

It is impossible to say what view a court would take of these irregularities in the election, but if the election was otherwise regular and fairly conducted without semblance of fraud, the court would probably uphold the election. At least, if the man who was elected qualifies and takes office he will be a de-facto officer, and if the superintendent were then to appoint him it would save any possible doubt. But if there is a contest on hand, then, of course, it would have to go into court to be determined.

I can only say that I do not see anything in your statement of facts necessarily fatal to the election, though it is safe to assert that the said facts have never been passed upon by any court, and courts are very liberal in construing a law so as to uphold an election where no element of fraud enters into consideration.

Very truly yours,

ALBERT J. GALEN,  
Attorney General.