

Elections—School Elections.

When there is a school house in the district the statutory provision requiring the election to be held thereat is mandatory.

May 7, 1928.

W. E. MacDonald, Esq.,
County Attorney,
Fort Benton, Montana.

My dear Mr. MacDonald:

Your letter relative to a school election recently held in district number 92 of your county was received.

This election, you state, was held at a private residence and you wish to know whether the election was legal in view of the provisions of section 987, R. C. M. 1921, which in part states:

“An annual election of school trustees shall be held in each school district in the state on the first Saturday in April of each year at the district schoolhouse, if there be one, and if there be none, at a place designated by the board of trustees.”

There was a schoolhouse in the district, but, as before stated, the election was held at a private residence. The question is whether the provisions of the above-quoted section are mandatory, or whether such provisions are merely directory, and permit the holding of an election at a private residence or place other than the district schoolhouse.

The rule in 15 Cyc. 343-4 is as follows:

“The place of holding an election must either be fixed by law or appointed by legally authorized officials, and votes cast at a different place will avail nothing; for it is essential to the validity of an election that it be held in the place fixed by law, but it does not follow that the polls must be opened and the election conducted in the very building designated in the notice, and a slight change in the voting place ought not to render an election void, especially when it appears that no one was prevented from voting at such election on account of the change in the polling place.”

There must be one certain fixed place at which the electors must vote. This is as important as the qualifications of the voters. (State ex rel. Wanamaker v. Alder, 87 Wis. 561, 58 N. W. 1045.)

In *Goree v. Cahill*, 128 Pac. 125 the court said:

“The requirements of the law relative to the place of holding an election are generally mandatory and an election held at any other place than the one designated is void.”

See the case of *Heyfron v. Mahoney*, 9 Mont. 497, 24 Pac. 93; where an election held at a precinct more than three miles distant from

the place designated by the commissioners of the county, was declared void.

It is my opinion that the provisions of the statute relative to holding an election at the schoolhouse is mandatory.

Very truly yours,

L. A. FOOT,
Attorney General.