

Elections—School Districts—School Elections.

An election where only one judge acted is invalid when properly attacked. The right is waived where no action is taken or objection made until after the votes are counted.

J. H. Forster, Esq.,
County Attorney,
Malta, Montana.

May 6, 1927.

My dear Mr. Forster:

You have requested my opinion as to a school election where only

one judge appeared at the time of opening the polls and where no other judges were appointed by the electors present, the election being conducted by the one judge.

You state that a protest has been filed against the validity of the election on this ground but that it is not contended that the votes were improperly counted or that there was anything wrong or improper about the conduct of the election outside of the fact that the regular number of judges did not officiate.

Section 989 R. C. M. 1921 provides:

“The trustees must appoint, by an order entered in their records, three qualified electors of said district to act as judges at such election * * *. If the judges named are not present at the time for the opening of the polls, the electors present may appoint judges, and the judges so appointed shall designate one of their number to act as clerk.”

It is my opinion that “may” should read “must” and that a court would hold such an election invalid were the matter properly presented to it. A considerable amount of latitude should be permitted with these district elections and they should be upheld, particularly in cases where no fraud is claimed and where it is not claimed that a different result would have obtained had the required number of judges been selected.

It is my opinion that a party who makes no objection to the irregularities at the time, but who waits until after the votes have been counted, should not be heard to complain when he or his candidate find that they have failed of election. If the candidate who was declared elected has qualified, he would at least be a trustee de facto and could only be removed in a proceeding brought for that purpose.

Very truly yours,

L. A. FOOT,
Attorney General.