

Nominations—Elections—School Trustees—First Class Districts—Section 990, R.C.M. 1921.

Section 990, R.C.M. 1921, does not require the public meeting of twenty or more persons to make more than one nomination for each office to be filled. Any number of public meetings may be called to make nominations.

Mr. J. Scott Harrison,
Chairman, Board of Trustees,
Helena, Montana.

March 16, 1932.

My dear Mr. Harrison:

You have requested an opinion as to the number of persons to be nominated by a public meeting held as provided for in section 990, R.C.M. 1921. This section provides:

“In districts of the first class no person shall be voted for or elected as trustee unless he has been nominated therefor by

a bona fide public meeting, held in the district at least ten days before the day of election, and at which at least twenty qualified electors were present, and a chairman and secretary were elected, and a certificate of such nomination setting forth the place where the meeting was held, giving the names of the candidates in full, and if there are different terms to be filled, the term for which such candidate was nominated, duly certified by the chairman and secretary of such meeting, shall be filed with the district clerk at least eight days before the day of election.
* * *

This provision of our statute (section 990) was first enacted into law by the fifth legislative session and is found in the session laws of that year at page 141, chapter 139. At that time elections of trustees in first class districts were under the supervision of the board of county commissioners. The act provided that only one ballot should be received by the electors from the judges. This act, which is found in the codes of 1907 as section 858, also provides the form of ballot and provides:

“But in districts of the first class the ballot shall show the name or names of the candidates and the length of time for which they are to be elected.”

The manifest intent of the act as originally passed was that there should be but one ballot given out upon which all nominees' names should appear under the term of office for which nominated. The act does not provide now, and did not originally provide, for but one public meeting. Was it intended to permit such meeting to make more than one nomination for each office to be filled? If so, is it limited to two nominations or many nominations?

The statute does not specifically limit the nominations to be made by the public meeting to one for each office to be filled. Does this manifest a legislative intent that more than one can be made or did the legislature presume that since only one person can be elected to fill each vacant office the majority of the meeting would not be interested in selecting more than one person to be voted on at the school election. Furthermore, if this majority were forced to make a second choice for each office so that there would be two candidates for the electors of the district to choose from it is unlikely that the second choice would be any more acceptable to the minority at the public meeting than was the majority's first selection.

If section 990 does not specifically state that only one candidate shall be nominated for each office by the public meeting it is equally true that it does not directly or by any inference state that two or more nominations are to be made for each office by such meeting. By failing to require the meeting to nominate two or more candidates for each vacancy to be filled at the election the legislature must have intended one of two things—either to require but one nomination for each vacancy to be filled or to leave the entire matter to the discretion of the meeting. A public meeting can only act by ascertaining the will of the majority and then carrying it into effect as the act of the meeting. If the majority

of those at the meeting are not interested in making more than one nomination for each office there is no way of compelling them to do so.

As manifesting legislative intent section 988, R.C.M. 1921, is worthy of consideration. It provides for nominations in districts of the second and third classes and provides:

“Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the school board at the ensuing election.”

The language here is such as to clearly limit the number to be nominated by any five persons to one for each office. It is reasonable to assume that the legislature intended that the public meeting as provided by section 990 should also be limited to one candidate for each office and the language of the section also seems to clearly indicate such intent as follows:

“A certificate of such nomination * * * giving the names of the candidates in full, and if there are different terms to be filled, the term for which **such candidate** was nominated * * * shall be filed with the district clerk.”

If the legislature had intended more than one candidate for each office under different terms it would have used the plural and not the singular.

It is therefore my opinion that section 990, R.C.M. 1921, does not require a public meeting of twenty or more persons to make more than one nomination for each office to be filled at the school election, and that the number of such public meetings is not limited and if other electors desire to do so they can hold another meeting and make other nominations.

Very truly yours,

L. A. FOOT,

Attorney General.