

Opinion No. 124-A**Schools— Trustees— Elections—Candidates.**

HELD: The selection of a school trustee may not be restricted to candidates from a particular division of the district to the exclusion of other candidates from other parts of the same district.

March 25, 1933.

You state that a question has arisen in regard to the election of trustees in one of your rural school districts, and you desire to know whether the selection of a trustee may be restricted to a particular division of the district to the exclusion of other candidates in other parts of the same district.

This particular question has not been decided by the Supreme Court of Montana but a similar provision in the laws of Colorado has been passed on by the Supreme Court of that state in the case of *Littlejohn v. People*, 121 Pac. 159. In that case the Supreme Court of Colorado was passing on the constitutionality of the following statutory provision of the laws of that state:

“That in districts of the first and second class, any person who may desire to be a candidate for the office of school director, shall file a written

notice of such intention with the secretary of the school district in which he resides at least eight days prior to the day of the holding of the annual election for school directors, and the secretary of said school district shall for five consecutive days preceding the day of said election, publish in some daily paper * * * or by posting printed or written notices in not less than five public places in such district, the names of all candidates who shall have so filed * * *, and no person other than those whose names appear upon the ballots, so prepared, shall be voted for”.

The court in its decision made use of the following language:

“The language under consideration must be construed as constituting a restriction upon the right to vote, and in no sense as affecting the eligibility of one to hold the office”.

Section 5 of Article 2 of the constitution of Colorado, provides:

“That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of suffrage’. This means that every qualified elector shall have an equal right to cast a ballot for the person of his own selection, and that no act shall be done by any power, civil or military, to prevent it. Such is the mandate and spirit of the constitution, and it thereby vests in the elector a constitutional right of which he cannot lawfully be deprived by any governmental power.

* * * such restrictions must be in the nature of regulations and cannot extend to the denial of the franchise itself.”

There are similar provisions in the Constitution of Montana, as follows:

“Article IX, Section 11. Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as may be prescribed by the legislative assembly for city offices and offices hereafter created”.

“Article IX, Section 13. In all elections held by the people under this

constitution, the person or persons who shall receive the highest number of regular votes shall be declared elected”.

It is the opinion of this office that if one is qualified to hold an office and receives the highest number of votes cast at any election, whether it be state, county, city or school district, he is entitled to be declared elected, whether any previous provision has been made for his nomination or not, and if there has been a practice of selecting candidates for school trustee from any particular division of the district to the exclusion of anyone who might desire to be a candidate and who resides in any other division of the district, we believe that such practice is in violation of the provision of our constitution quoted above and that the interpretation of the Supreme Court of Colorado on a similar provision of the constitution of that state would be held to be the law governing in this state. For general principal, see *State v. Cocking*, 66 Mont. 169.