

Opinion No. 146

**Elections—Schools—Candidates—Idem
Sonans—Ballots—Names, Spelling of.**

HELD: The doctrine of "Idem Sonans" applies to names "written in" on the ballots in a school election, and when a majority of the judges are satisfied as to the intent of an elector to vote for a particular candidate such irregularities as mis-spelling are immaterial.

April 10, 1933.

You have requested an opinion from this office on the following question. "Frank Gotchell is a candidate for school trustee. His name does not appear upon the ballot but is written in by some of the electors. On one ballot his name is written as 'Fruk Gocha', on another as 'Frank Gosel', on another 'Frank Galch' and on another as 'Frank Golchel,' on another as 'Gutotch', on another as 'Gotchel', and on several others only the last name appears. There is only one person in the town and county by the name of Gotchell."

We are of the opinion that the rule of 'idem sonans' would apply. "Where two names are spelled differently, but sound alike in their pronunciation, they are regarded as the same, under the doctrine of 'idem sonans'." Bloomer v. Crisler, 123 Pac. 966. "In indictments and pleadings when a name which it is material to state is wrongfully spelled yet if it be idem sonans with that proved, it is sufficient." Bouviers' Law Dictionary.

The following have been held idem sonans: "Hutson for Hudson," Cato v. Hudson 7 Mo. 142; "Coonrod for Conrad," Carpenter v. State, 8 Mo. 291; "Gibney for Giboney," Fleming v. Giboney, 17 S. W. 13; "Emerly for Emley," Galveston H. & S. A. R. Co. v. Daniels, 20 S. W. 955; "Usrey for Usury," Grisham v. Walker, 10 Ala. 370; "Bobb for Bupp," Meyer v. Figaly, 39 Pa. 429; "Faust for Foust," Faust v. U. S., 163 U. S. 452; "Penryn for Pennyrrne," Elliott v. Knott, 14 Md. 121; "Barbra for Barbara," State v. Haist, 34 Pac. 453; "Julia for July," Dickson v. State, 28 S. W. 815; "Ellet for Elliott," Robinson v. Winchester, 85 Tenn. 171; "Koe-liher, Kelliher, Kellier, Koelhier and Kelhier are held sufficient for Keolihher," Millett v. Blake, 81 Me. 531. "Luckenbough for Luckenbach," Schee v. LaGrange, 78 Io. 101; "Rooks for Rux" Rookes v. State, 83 Ala. 79; "Tasso for Dasso," Napa State Hospital v. Dasso, 153 Calif. 698.

"The rule seems to be that if names may be sounded alike without doing violence to the power of letters found

in the various orthography, the variance is immaterial." Wilkes v. State, 27 Tex. App. 381.

The rigid formality provided in the general election laws does not apply to school elections, (Sec. S98, R. C. M. 1921.) but the statute, of course, must be followed so far as specific regulations are provided.

It is our opinion that in elections of school trustees that when a majority of the judges are satisfied as to the intent of an elector to vote for a particular party such irregularities as you mention are immaterial.