

Opinion No. 511**Elections—Ballots, Marking of—School Districts—School Trustees, Election of.**

HELD: School district elections in districts of the third class are more or less informal but they must be conducted in a manner that will plainly show the intention of the voters and the ballots must be marked so that the judges of election may determine the name of the person voted for for trustee, and the term, or the ballot is worthless and should not be counted.

April 12, 1934.

You submit the following facts relative to the election of school trustees on April 7, 1934, and request an opinion from this office thereon:

“School district No. 79, a district of the third class in Powder River County, Montana, on April 7th voted for three trustees, none of whom had been nominated by petition. The ballot was prepared in blank for three trustees with the annotation, ‘Vote for three.’ On the bulletin board at the polls were the names of six candidates, Smith and Miller designated for the three year term, Bone and Rumph for the two year term, and Jones and Rue for the one year term as shown by copy of letter to the County Commissioners submitted herewith.

“The judges and clerk of election made return of the votes cast as follows without designating the term to which any of the candidates was elected, to-wit: Miller 95; Smith 93. Rue 92; Rumph 73; Bone 90 and Jones 89.

“In the several instances the term

of the candidate voted for was designated in writing by the elector but the judge of election frequently advised the electors that this was not necessary.

"It is my contention that the certificate of election should show Miller to be elected for the three year term; and that Smith is eliminated; that Bone is elected for the two year term, and that Rue is elected for the one year term."

Section 996, R. C. M., 1921, provides, in part, as follows:

"The clerk shall enter in the tally list the name of every person voted for as trustee, and the term, and tally opposite his name, the number of votes cast for him, and at the end thereof set down in a column provided for that purpose the whole number of votes he received. The judges and clerk shall sign a certificate to said tally list, setting forth the whole number of votes cast for each person or trustee, designating the term, and shall verify the same as being correct, to the best of their knowledge before an officer authorized to administer oaths. * * * Said books and tally lists shall be returned to the board of trustees of the district, who shall canvass the vote and cause the clerk of the district to issue a certificate of election to the person or persons elected, designating their term, a copy of which must be forwarded to the county superintendent of schools."

From the facts submitted the Judges and Clerk of the election did not comply with these provisions of the statutes. School elections in districts of the third class, the class in which the district in question belongs, are more or less informal, but they must be conducted in a manner that will plainly show the intention of the voters. The judges of election must be able to determine from each ballot the name of the person voted for for trustee and the term. If this cannot be done the ballot is worthless and should not be counted.

From all the facts submitted it appears to us that no election was held. The advice of the judges to the voters that it was not necessary for the voter to designate on his ballot the term of the trustee was clearly erroneous. Three

trustees were to be elected. If the voter indicated three persons on his ballot for trustee without any reference to the term of each, it is left purely to speculation as to which he intended to vote for for the three year term, the two year term or the one year term.

The election, from the facts submitted, appears to have been conducted without a great deal of consideration for the statutes. The statutes are plain on the procedure and, with a slight degree of care, an election may be held that will comply in a reasonable degree with the law.

The trustees may be able to reconvene, carefully recheck the ballots and determine what three persons have been elected trustee, but for the reasons stated we decline to give an opinion as to who was or was not elected a trustee.