

## Opinion No. 226.

Elections—School Districts—  
Trustees—Ballots.

HELD: In an election for school trustees in a district of the second or third class, ballots on which a name is written in must be counted for the written-in candidate even though the voter failed to make a cross in the square provided.

April 18, 1940.

Mr. Phil G. Greenan  
County Attorney  
Great Falls, Montana

My dear Mr. Greenan:

At a school election in District No. 8, a school district of the third class, of Cascade county, the printed ballot contained the name of one candidate and a blank space in which the name of any other person could be written in. Both the printed name and the blank space were preceded by a square in which the voter could make his cross for the purpose of designating the candidate for whom he cast his vote. On many ballots the name of a candidate for trustee was written in, but the voter failed to mark a cross in the square provided, nor was a cross placed in the square preceding the printed name. The question is whether the voter by writing in the name of the candidate has sufficiently indicated his intention to vote for that candidate so that his ballot may be counted.

The general rule is that the voter must make a cross on the ballot to indicate his choice, and a ballot containing no cross mark cannot be counted even though the voter writes a name in the blank space. (20 C. J. 156.) That is the rule in this state by statute. Section 696, R. C. M., 1935;

Peterson v. Billings, 109 Mont. 390, 96 Pac. 2d. 922.) However, Section 989, which governs the conduct of elections for school trustees, in school districts of the second or third class provides, "The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting \* \* \*." (Emphasis ours.)

The rule laid down in Peterson v. Billings, supra, is: Where there are no express statutory provisions as to marking the ballot but one test is to be applied: "Does the ballot without question from its markings show the elector's intention to vote for the particular candidate? If it does, it must be counted." (96 Pac. 2d. 927.) In writing in a candidate's name the elector evinces an intention to vote for that person. Nothing else appearing on the ballot to indicate that the voter changed his mind after writing in the name of the candidate it is my opinion that in school districts of the second or third class ballots marked as heretofore described must be counted for the candidate whose name is written in.