

Opinion No. 136.

Schools and School Districts—Trustees,
School Districts—Election, School—
Nominations, School Trustees.

Held: In school districts of the first class, where but one public meeting is held, and only one candidate be nominated for each term to be filled, then and in that event no election need be held and the clerk of such district shall certify such facts to the board of trustees of the district, acting as a board of canvassers who shall thereupon certify the election of such persons to the county superintendent of schools.

March 16, 1946.

Mr. Horace J. Dwyer
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. Dwyer:

I am in receipt of a copy of the opinion you rendered to Mr. G. A. Peterson, Clerk of School District No. 10, Deer Lodge County, Anaconda, Montana. As I understand it, the facts are as follows:

On February 18, 1946, the board of education called a mass meeting in the junior high school auditorium at 7 o'clock P. M. for the purpose of nominating school trustees to fill two vacancies. Five persons were nominated; then a ballot was cast and the two receiving the highest number of votes were declared the two nominees. You now inquire as to whether all five names should appear on the election ballot or just the names of the two candidates nominated.

Section 1 of Chapter 130, Laws of 1945, governs elections in districts of the first class as to nominations and conducting of elections. Said Section 1, insofar as the same is pertinent here, reads as follows:

"In districts of the first class, no person shall be voted for or elected as trustee unless he has been nominated therefor at a bona-fide public meeting, held in the district not

more than sixty (60) days nor less than forty (40) days before the day of election, and at which at least twenty (20) 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 within 10 days after such public meeting . . . In the event there be held only one (1) such public meeting, and only one (1) candidate be nominated for each term to be filled then and in that event no election need be held and the clerk of such district shall certify such facts to the board of trustees of the district, acting as a board of canvassers who shall thereupon certify the election of such persons to the county superintendent of schools."

As I understand the facts, the public meeting held on February 18th was for the purpose of nominating two candidates for the office of school trustees for two terms to be filled. The names of five candidates were placed in nomination. Thereupon the ballot was cast and the two persons receiving the highest number of votes were declared to be the nominees of that particular public meeting. In this event, the names of the two nominees for the two terms to be filled would ordinarily go upon the election ballot. However, inasmuch as there are but two terms to be filled and but two candidates nominated, and only one public meeting held, there would be no need of holding an election, as the last part of Section 1 of said Chapter 130, supra, provides:

"In the event there be held only one (1) such public meeting, and only one (1) candidate be nominated for each term to be filled then and in that event no election need be held and the clerk of such district shall certify such facts to the board of trustees of the district, acting as a board of canvassers who shall thereupon certify the election of such persons to the county superintendent of schools."

Therefore, it is my opinion that in school districts of the first class, where but one public meeting is held and only one candidate be nominated for each term to be filled (as in this instance), then and in that event no election need be held and the clerk of such district shall certify such facts to the board of trustees of the district, acting as a board of canvassers who shall thereupon certify the election of such persons to the county superintendent of schools.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General