

SCHOOLS:

Vacancy occurring in a town or city school board should be filled at the next annual school election, regardless of when the vacancy occurs.

April 3, 1942



Mr. Jno. Ed. Fuhrman
County Superintendent
of Schools, Linn County
Brookfield, Missouri

Dear Sir:

We have your letter of April 1, which reads as follows:

"Relative to our telephone conversation Tuesday afternoon, March 31, 1942, in regard to the Browning Public School, Browning, Mo.

"Friday night, March 27, 1942, one of their directors resigned whose term was not up this election year.

"As prescribed by law the election notices were already posted, March 23, 1942. The question is: Can they vote for three directors this school year, one to fill the unexpired term or should they appoint a director to fill the vacancy and he in turn would hold office until the annual meeting date in April, 1943?"

Although your letter does not so state, we have learned from other sources that the Browning School District is a six director district.

Section 10468, R. S. Missouri 1939, provides as follows:

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"The government and control of such town or city school district shall be vested in a board of education of six members, who shall hold their office for three years and until their successors are duly elected and qualified, and any vacancy occurring in said board shall be filled in the same manner and with like effect as vacancies occurring in boards of other school districts are required to be filled, and the person appointed shall hold office till the next annual meeting, when a director shall be elected for the unexpired term."

The Supreme Court in the case of State ex rel. vs. Harper, 336 Missouri, 717; 80 S. W. (2) 849, held that directors who were appointed to fill vacancies occurring on a Board of Directors of such a school district serve only until the next school election, and that those appointed to fill the vacancies did not remain members after the date of said election. Therefore, whether or not the vacancy you speak of has been filled, on April 7, 1942 the office of the director who resigned will be vacant, thereby making three vacancies on said Board. Said Section 10468, also provides that at the next annual meeting a director shall be elected for the unexpired term for the director whose office is vacant. It would seem therefore, that when a vacancy occurs on a Board of Directors of such a district the law requires that at the next succeeding election someone should be elected to fill out the unexpired term of the director whose office has been vacated.

We find no statute which requires that in a town or city district notice be published notifying the public that directors will be elected at the coming school election. Neither is there any provision in the law for a candidate for the office of school director in such a district to file his name as candidate. The voters are free at such an election to vote for whomever they care to, and the parties receiving the highest number of votes would be elected. Section 10469, R. S. Missouri 1939, provides that in such a

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district the voters shall annually elect two directors. This provision takes care of two vacancies which occur by expiration of office every year. Section 10468, supra, provides that at the next annual meeting, after a vacancy has occurred in the Board during the interim between elections, a director shall be elected for the unexpired term. It would seem therefore that the law contemplates that at the annual election in such district all vacancies then in the Board of Directors should be filled. In the case you mention there will be the two regular vacancies and the vacancy created by the resignation of the third director.

CONCLUSION

It is, therefore, the opinion of this office that at an annual school election in a town or city school district all vacancies in the Board of Directors at the time of such election should be filled by the voters. In your case, one of those elected would be for the unexpired term of a resigned director and two would be for full terms.

Yours truly

Harry H. Kay
Assistant Attorney Teneral

APPROVED:

ROY McKITTRICK
Attorney General

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