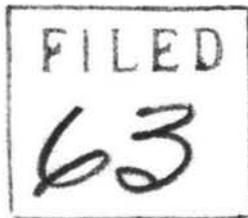


SCHOOLS: Nomination of a member of a board of directors of a
ELECTIONS: school district by principal of high school under
Section 165.657, RSMo 1949, will not invalidate his
election if the election is otherwise properly conducted.



May 28, 1953

Honorable Weldon W. (Whitey) Moore
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Mr. Moore:

This will acknowledge receipt of your request for an opinion, which reads:

"Pursuant to the provisions of Section 165.657, Revised Statutes of Missouri, 1949, a meeting of the Boards of Directors of the various School Districts in this County was held for the purpose of electing two Board Members. One of the members elected, received a majority of the votes cast by the Boards of Directors of the various School Districts, but his nomination did not come from a Member of a Board of Directors of any School District. He was nominated by the Principal of a High School in this County. I should like to know whether or not, in your opinion, the Member so elected is legally elected?"

Section 165.657, RSMo 1949, reads:

"1. There is hereby created in each county of Missouri a 'County Board of Education.' Within sixty days after sections 165.657 to 165.707 take effect each county superintendent shall call a meeting of the members of the boards of education and boards of directors of the various school districts in his county in accordance with the provisions of sections 165.033 and 167.110, RSMo 1949. The meeting shall organize by the election of one of its members as chairman. The county superintendent of schools shall serve as secretary of the meeting. Each member of every school board within the county shall be entitled to one vote.

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"2. When organized as above provided the meeting shall proceed to elect a county board of education of six members. Initially two members shall be elected for a term to expire on the second Tuesday of April, 1952, two for a term to expire on the second Tuesday of April, 1951, and two for a term to expire on the second Tuesday of April, 1950. After the expiration of the initial terms, members elected shall serve for terms of three years. Each person so elected shall be a citizen of the United States and of the state of Missouri, a resident householder of the county, and shall be not less than twenty-four years of age. Not more than three members of such board shall reside in any county court district and not more than one member of said board shall be chosen from the same municipal township or school district, except that if there be less than three municipal townships or school districts in any county court district, such district shall have as many members of the board as it may contain municipal townships or school districts and the remainder of such board shall be elected at large but shall reside in said county court district.

"3. In 1949 and annually thereafter each county superintendent of schools shall call a meeting of the members of the boards of education and boards of directors of the various school districts in his county in accordance with the provisions of sections 165.033 and 167.110, RSMo 1949, to be held at ten o'clock a. m. on the second Tuesday in April, and such meeting shall fill all existing vacancies in the county board of education.

"4. In the election of the first county board, nominations shall first be made from the floor to fill one of the longest terms, and each office to be filled shall be voted upon separately. Election of each board member shall be by majority vote by ballot."

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This meeting was apparently not the first meeting called to elect the members of the first board of directors of said school district since only two members were elected. While the foregoing statute provides for the election of the first county board, in that nominations shall first be made from the floor (see paragraph 4), there is no further guide as to how nominations thereafter shall be made. However, it is apparent that such nominations shall be made by members of the various boards attending said meeting.

You state that the nomination of one member elected and receiving a majority of the votes cast was nominated by a principal of a high school in your county. In the absence of some specific statute designating how you shall nominate members of said board, we doubt if this in itself would prevent said nominee from being elected if said election was otherwise properly conducted.

The general rule as to the validity of elections of public officers in the absence of some particular statutory or constitutional provision providing for nominations is well stated in Section 90, 29 C.J.S. 124, which reads in part:

"In the absence of constitutional or statutory provision to the contrary, prior nomination of a candidate for public office is not essential to the validity of his election, the mere fact that he has not been nominated ordinarily not being regarded as rendering him ineligible to office, or precluding the electors from voting for him, or invalidating votes so cast. This is so notwithstanding the existence of a statute requiring that candidates who wish to have their names placed on the ballots as nominees shall first be nominated. * * *"

In Hunt vs. Mann, 101 So. 369, 136 Miss. 590, the court went so far as to say in the absence of a statute declaring that an act is essential to the validity of an election or the omission of said act will render an election void that such statute will be considered as merely directory and not mandatory. In so holding, the court said at So., l.c.370:

"In determining how far irregularities in party nominations for office will affect the result of the general election, the

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fundamental inquiry is whether or not the irregularity complained of has prevented a full, fair, and free expression of the public will. Unless the statute which has been violated in making the nomination expressly declares that the particular act in question is essential to the validity of the election, or that its omission shall render the election void, the statute will be treated as directory, and not mandatory, provided such act of irregularity is not calculated to affect the integrity of the election. * * *

There are numerous decisions of appellate courts in this and other states holding that certain irregularities and defects in elections should not be ignored prior to the election. However, after the election such irregularities and defects will not as a rule invalidate the election unless they effect the merits thereof. In *State ex rel. Rogersville Reorganized School District vs. Holmes*, 253 SW (2d) 402, 1.c. 404, the court held that the subject and purpose of the law is to effect a general reorganization of school districts in the state and should liberally construe the law. Especially is this true where no public or private right is impaired or injured. In so holding the court said:

"(2) 'As a general rule, a statute which regulates the manner in which public officials shall exercise the power vested in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order, and convenience, and neither public nor private rights will be injured or impaired thereby. If the statute is negative in form, or if nothing is stated regarding the consequence or effect of non-compliance, the indication is all the stronger that it should not be considered mandatory.' Crawford's Statutory Construction, 1st Ed., 1940, § 266, pp. 529, 530. See also *State ex inf. McAllister ex rel. Lincoln v. Bird*, 295 Mo. 344, 351-352, 244 S.W. 938, 939.

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"(4) The object and purpose of the law is to effect a general reorganization of the school districts of this State. It should be liberally construed to the end that its ultimate objective may be attained. State ex rel. Acom v. Hamlet, supra, 250 S.W. 2d loc.cit. 498. And especially should this be done where no contention is made that any public or private right has been impaired or injured by mere tardiness of action."

In State ex rel. Acom et al. vs. Hamlet, 250 S.W. (2d) 495, l.c. 498, the court said:

"* * * In State ex rel. School Dist. No. 34, Lincoln County v. Begeman, 221 Mo. App. 257, 2 S.W. 2d 110, loc. cit. 111 (1, 2), the court stated what has been the rule in considering laws governing our schools as follows: 'In the first place, it is the salutary law that our courts must give a liberal construction to the working of the school laws.' * * *"

Also in State ex inf. Barrett vs. Foxworthy, 256 S.W. 466, l.c. 468, the court held that the election of directors of the school district was valid notwithstanding it did not strictly follow the statute relative to the election of said members.

In view of the foregoing decisions it is quite apparent that notwithstanding the fact the newly elected board member was nominated by a principal of a high school that the election was otherwise properly conducted and that no public or private rights were impaired or injured and, therefore, the election was valid.

CONCLUSION.

Therefore, it is the opinion of this department that the nomination of a member of the board of directors by a principal of a high school, under Section 165.657, RSMo 1949, does not invalidate the election of said board member providing the election was otherwise properly conducted.

Honorable Weldon W. (Whitey) Moore

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

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