

- SCHOOLS & ORGANIZATION OF BOARD -- (1) Law requiring board to be organized within four days not compulsory but merely directory.
(2) Newly elected member can qualify after four days.
(3) When assembled two members may elect a president or select a teacher.

162.791

May 17, 1933. ⁵⁻²²

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Hon. Melvin Englehart
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Mr. Englehart:

Answering your letter of April 19, 1933, in regard to the election of Mr. G., who lives in a rural school district in your County, owns real estate and is a taxpayer, having paid his taxes for last year. You also state that he was away on election day but was elected school director; that after Mr. G. returned to the district and his home he was notified of his election, was sworn in by the clerk and he, together with another director, after the meeting had been called by the clerk, organized by electing him president, there being only one OTHER member of the board present, and the clerk having previously administered the oath, etc.

From the above history of the facts and your statement further down in your letter that Mr. G. did not qualify within four days, it is our opinion that the fact that he did not qualify within the four days but did qualify later, makes the organization of the board complete and legal. In our opinion the fact that the board did not meet within the four days and promptly organize by electing a president etc., is a mere failure to comply with the statute.

They could meet and organize AFTER, JUST AS WELL AS BEFORE, THE END OF THE FIRST FOUR DAYS as there is no penalty for failing to meet and organize within the four days; the law in this particular is merely DIRECTORY, not MANDATORY.

"* * * if a statute merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. (and not mandatory) * * * * *"

State ex inf. Bird, 295 Mo. 344 l. c. 351-352.

It is our opinion that Mr. G. was qualified and is a member of the board under the facts given above. It is also our opinion that the meeting was legal. In common school districts where there are three directors, if only two members meet, it is possible to elect one of the two president of the board, especially so where the third member had been notified, even though he was absent, because two members constitute a quorum and if they both vote for the same person that would constitute a majority of the whole board which would make their action legal, everything else being regular, and make the election of the teacher legal, everything else being regular.

"This court has held, *, in construing the intent and purpose of school laws that they were designed as a workable method to be employed by plain, honest and worthy citizens, not especially learned in the law; and that no strict and technical construction should be given to them."

State ex rel. Carnahan v. Jones, 266 Mo. 191;
State ex inf. Simrall v. Clardy, 267, Mo. 371;
State ex inf. v. Bird, 295 Mo. 1. c. 352.

Very respectfully,



GEO. B. STROTHER
Assistant Attorney-General.

APPROVED: _____

ROY MCKITTRICK
Attorney-General.

GBS:EG