

SCHOOL ELECTIONS: Persons qualified to vote at annual school elections should possess same qualifications as those voting in county and state elections; Laws of 1933, p. 381 regulate the manner of conducting elections; persons kept in county poorhouse, or asylum at public expense cannot vote.

4-20  
April 6, 1934.



Hon. C.C. Hayward,  
Representative Shelby County,  
Shelbina, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of April 5 wherein you request an opinion regarding three questions pertaining to school elections. Your letter is as follows:

"I would appreciate it very much if you would render an opinion on the following questions:

- (1) Who are regularly qualified voters in an annual school election?
- (2) What are the regulations and conditions under which school elections are held, by whom conducted, how are the judges appointed, place of voting, etc.?
- (3) Can residents who are county indigents, i.e., persons receiving assistance, aid or contributions from the county legally vote?"

I.

The persons qualified to vote at the annual election of school directors and school propositions should possess the same qualifications as the persons permitted to vote in the county and state elections.

We shall proceed to answer your questions in the order presented, the first one being "who are regularly qualified voters in an annual school election?"

Sec. 9287, R.S. Mo. 1929, Art. 3, Chap. 57 under the title of "Laws Applicable To Common Schools", provides as follows:

"The government and control of the district shall be vested in a board of directors composed of three members, who shall be citizens of the United States, resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding his, her or their election, and who shall have resided in this state for one year next preceding his, her or their election or appointment, and shall be at least twenty-one years of age. Said directors shall be chosen by the qualified voters of the district at the time and in the manner prescribed in section 9283 of this article, and shall hold their office for the term of three years, and until their successors are elected or appointed and qualified, except those elected at the first annual meeting held in the district under the provisions of this chapter, whose term of office shall be for one, two and three years, respectively. A qualified voter within the meaning of this chapter shall be any person who, under the general laws of this state, would be allowed to vote in the county for state and county officers, and who shall have resided in the district thirty days next preceding the annual or special meeting at which he offers to vote."

We call your attention to that portion of the statute above quoted which states "a qualified voter within the meaning of this chapter shall be any person who, under the general laws of this state, would be allowed to vote in the county for state and county officers, and who shall have resided in the district thirty days next preceding the annual or special meeting at which he offers to vote." Although the above section is under the laws applicable to common schools, your question deals with the qualifications of a voter in city, town and consolidated school districts, and the fact that the statute uses the expression "within the meaning of this chapter", it is applicable to a qualified voter in a city, town or consolidated school election in as much as Chap. 57 also includes city, town and consolidated school elections. It is further applicable to Secs. 9328 and 9341, Laws of Mo. 1933, which will be set out under your Question #2.

Having determined by Sec. 9287, supra, that a person to be qualified to vote in the annual school elections should have the same qualifications as a voter in the county and state elections, we must look for the qualifications of such voter in the county and state elections. Sec. 10178, R.S. No. 1929 sets out the qualifications and is as follows:

"Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people: First, he shall have resided in the state one year immediately preceding the election at which he offers to vote; second, he shall have resided in the county, city or town where he shall offer to vote at least sixty days immediately preceding the election; and each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides: Provided, however, that no officer, soldier or marine in the regular army or navy of the United States, shall be entitled to vote at any election in this state; and provided further, that no person while kept at any poorhouse or other asylum at public expense, except the soldiers' home at St. James and the confederate home at Higginville, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

CONCLUSION

According to Sec. 10178, supra, a person qualified to vote in an annual school election in city, town and consolidated school districts should possess the following qualifications, and no others:

- (1) He shall reside within the State one year immediately preceding the election;
- (2) He shall reside in the county, city or town sixty days immediately preceding the election;
- (3) He shall vote in the town or city in which he resides;
- (4) If an officer, soldier or marine in the Army or Navy of the U.S. he shall not be entitled to vote;
- (5) He shall not be entitled to vote while kept in any poorhouse or asylum at public expense, except soldiers' homes;
- (6) He shall not be entitled to vote if convicted of felony or other infamous crime.

There seems to be no qualifications as to property or the payment of taxes.

## II.

Laws of Mo. 1933, p. 381, Sec. 9341  
prescribes the manner of conducting  
elections in city, town and con-  
solidated school districts.

Your second question asks "what are the regulations and conditions under which school elections are held, by whom conducted, how judges are appointed and place of voting". Sec. 9341, R.S. Mo. 1929 was repealed and a new section known as Sec. 9341, Laws of Mo. 1933, p. 381 enacted in lieu thereof, which is as follows:

"The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as the board may designate, beginning at 7 o'clock A.M. and closing at 6 o'clock P.M. of said day. The board shall appoint three judges of election for each voting place, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by

order of said board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by the secretary of the board; Provided, that in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand inhabitants, in counties containing not less than two hundred thousand nor more than four hundred thousand inhabitants according to the last national census, said elections may at the option of the board be held at the same time and places as the election for municipal officers and in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand inhabitants in other counties, said elections shall be held at the same time and places as the election for municipal officers, and the judges and clerks of such municipal election shall act as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose. Should such school district embrace territory not included in the limits of such city or town, the qualified voters thereof may vote at such voting precinct as they would be attached to, provided the ward lines thereof were extended and produced through such adjoining territory; Provided, that if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town and said school election shall be conducted within the limits of such other incorporated city or town in the same manner as hereinbefore provided for cities or towns having a population exceeding 2,000 and not exceeding 100,000 inhabitants. All school districts in cities, towns and villages in this state which are now or which may hereafter be under special charter shall hereafter hold their annual school elections on the first Tuesday in April, and the members of the boards of education now serving in such districts shall continue to serve until the first Tuesday in April next following the expiration of the terms for which they were

elected or appointed, and until their successors are elected and qualified."

Section 9328, R.S. Mo. 1929 deals with the election of directors in city, town and consolidated school districts, and provides as follows:

"The qualified voters of the district shall, annually, on the first Tuesday of April, elect two directors, who are citizens of the United States resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding their election or appointment, and who shall have resided in this state for one year next preceding their election or appointment, and shall be at least thirty years of age, who shall hold their office for three years and until their successors are duly elected and qualified; and all vacancies in the board shall be filled for the unexpired term."

The two sections above quoted, namely, 9341 and 9328, supra, by their provisions determine that elections for directors and school questions and propositions shall be held on the same date, i.e., the first Tuesday in April.

The attitude of the Supreme Court on questions relating to the conduct of elections is set out in the decision in the case of Nance v. Kearbey, 251 Mo. 374. The Court said (l.c. 382, 383-384):

"It is right well in setting out to remind ourselves of some fundamentals, viz: While the right to vote is not a vested, natural right in a strict sense, yet it is a constitutional right in those citizens possessed of enumerated constitutional qualifications. (Constitution, art. 8, sec. 2). It may be regulated by statute but not lightly denied or abrogated. (Cass v. Evans, 244 Mo. l.c. 350; Bowers v. Smith, 111 Mo. l.c. 55). 'No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.' (Constitution, art. 2, sec. 9). So jealous is the law in that behalf that voters are privileged from arrest at, or going to or coming from the polls except for treason, felony, or breach of the peace. (Constitution, art 8, sec. 4.)

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"The very taproot and reason for any election at all among a free people, is that the

the majority may rule; hence there are two main settled and uniform rules of interpretation, thus:

First: Election laws must be liberally construed in aid of the right of suffrage. (State ex rel. v. Hough, 193 Mo., l.c. 651; Hale v. Stimson, 198 Mo. 134). The whole tendency of American authority is towards liberality to the end of sustaining the honest choice of electors. (Stackpole v. Hallahan, 16 Mont. 40). The choice of electors must be judicially respected, unless their voice is made to speak a lie, or a result radically vicious, because of a disregard of mandatory statutory safeguards.

Second: The uppermost question in applying statutory regulation to determine the legality of votes cast and counted is whether or not the statute itself makes a specified irregularity fatal. If so, courts enforce it to the letter. If not, courts will not be astute to make it fatal by judicial construction. (Gass v. Evans, 244 Mo. l.c. 353; Hehl v. Guion, 155 Mo. 76). 'Such a construction', (says this court, speaking through Barclay, J., in Bowers v. Smith, 111 Mo. l.c. 55) 'of a law as would permit the disfranchisement of large bodies of voters, because of an error of a single official, should never be adopted where the language in question is fairly susceptible of any other. (Wells v. Stanforth, (1885), 16 Q.B. Div. 245)' Again (pp. 61-2): 'If the law itself declares a specified irregularity to be fatal, the courts will follow that command irrespective of their views of the importance of the requirement. (Ledbetter v. Hall (1876), 62 Mo. 422). In the absence of such declaration, the judiciary endeavor as best they may to discern whether the deviation from the prescribed forms of law had or had not so vital an influence on the proceedings as probably prevented a free and full expression of the popular will. If it had, the irregularity is held to vitiate the entire return; otherwise it is considered immaterial.'

#### CONCLUSION

In view of Sec. 9341, supra, the regulations covering the election shall be as follows:

- (1) The election shall be held the first Tuesday in April of each year;
- (2) The place of holding the election shall be at a convenient place or places within the district to be designated by the board;
- (3) Voting shall be from 7:00 o'clock A.M. until 6:00 o'clock P.M.;
- (4) The board shall appoint three judges of election for each voting place, and the judges shall appoint two clerks;
- (5) In all other respects the election shall be conducted in the same manner as the election for state and county officers, and the results there of certified by the judges and clerks to the Secretary of the Board of Education.

### III.

Persons kept in the county poorhouse, or other institution or asylum at public expense are disqualified to vote at school elections.

We have partially, if not entirely, answered this question under the authorities cited in your Question #1. Referring to Sec. 10178, R.S. Mo. 1929, quoted under Question #1, you will note again the qualifications of a voter. One of the exceptions mentioned in said section, and the only one which might relate to our question here is: "Provided further, that no person while kept at any poorhouse or other asylum at public expense, except the soldiers' home at St. James and the Confederate home at Higginville \*\*\* shall be entitled to vote at any election under the laws of this state."

This portion of the statute is discussed in a decision rendered in the case of Hale v. Stimson, 198 Mo. 134. The Court said (l.c. 159-161):

"In this connection, it will be seen that the person must be kept at a poorhouse or other asylum at public expense. And can it be said, broadly and nobly, that old soldiers are kept at public expense? The determination of this case does not require an answer to this question; but, in leaving it, matters and memories obtrude themselves of no light significance. In the first place, a consideration was paid the State on the part of the Woman's Relief Corps of the Grand Army of the Republic under the act making the St. James Soldiers' Home a state institution.

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The question of 'public expense' must, furthermore, be viewed in the light that the privilege of a home in the evening of their days, of a chimney-corner, of a hearthstone (and the right to vote) was bought and paid for with a great price by the inmates and their comrades in arms. Who at this late day, in a piping time of peace, will measure that price or care to bring it within the precision of a legal formula? Those men and their comrades in arms, stalwart then, marched and counter-marched, mined and countermined, dug, starved, froze, planned, dared and fought through four years of civil war under Lee, Johnson and Stonewall Jackson--under Grant, Sherman and Logan. Some of their comrades perished in battle, on the lone picket, on the long march, of wounds, in prisons, by burning fever, by sickness of soul, or by deadly miasma. The grave since has swallowed up many a gallant survivor, hurried under the sod by privations and exposures of war."

CONCLUSION

In view of Sec. 10178 and the decisions herein quoted, it is the opinion of this department that in order for a person to be disqualified from voting, it will be necessary for such person to be kept in a county poorhouse or other institution or asylum at public expense, but the fact that a person is receiving assistance, aid, charity or dole from the county, city or state would not disqualify that person from voting.

Respectfully submitted,

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APPROVED:

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