

SCHOOLS: ELECTIONS:

Five questions in regard to
school elections answered.

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April 3, 1935



Mr. Grover T. Laurance
Secretary Board of Education
Ritchey Consol. School Dist. No. 10
Ritchey, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date, requesting an opinion from this department, which reads as follows:

"As secretary of our local board of education, I would be grateful for your opinion upon following points of school law.

The law says that newly elected school directors must have paid a state and county tax within one year next preceding their election. Are persons qualified, with reference to tax payment, who have paid only one year's state and county tax within the prescribed time and who still have delinquent taxes assessed against them? Just what is meant by the law in this connection, when it speaks of the payment of 'a state and county tax within one year next preceding their election?' Does it mean that these taxes could have paid at any time within the one year period immediately preceding the day of the school election? The foregoing points apply to a consolidated school district.

Is it lawful in the election of a consolidated school district to use two ballots,

one containing the names of the candidates for the office of county school superintendent and one for the names of the local director candidates, and the tax proposition for school purposes?

As a general procedure in our annual consolidated school district election, we have two poll books, one for the use of each of the two election clerks. But this year poll books will be sent us, I understand, from our county seat; on account of this being the year for the election of a county superintendent of schools. If this is true, should the election clerks use just the two poll books that are sent from our county seat? If so, does our local school Board keep one of them for its record and send the other to the county clerk? Kindly outline the proper procedure, if this is not correct.

Again assuring you of my appreciation for this information, I am."

We will answer your questions in the order in which you ask them.

1.

Section 9328 Revised Statutes Missouri 1929, provides what qualifications a school director shall have, and reads 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 above section provides that a director shall have paid a state and county tax within one year next preceding their election or appointment. Said section does not provide that a director shall have paid all state and county taxes assessed against him, and to so hold would be writing something in the statute that is not there. In the case of *State ex rel. Circuit Attorney v. Macklin* 41 Mo. App. 1. c. 342, in construing a similar statute, the court said:

"Nor is there any force in the argument that the taxes must be paid within each calendar year. The law simply requires that it shall be paid for two consecutive years, and not that it shall also be paid within those years. There is no ambiguity in the terms used and we can not read them otherwise than they are written. Our duty is to declare, and not to make the law."

We therefore hold that a director who has paid a state and county tax within one year next preceding his election, although he may still owe other state and county taxes, has complied with the terms of the statute.

2.

You ask if the state and county tax could be paid at any time preceding the election. In *State ex rel. Circuit Attorney v. Macklin*, supra, at l. c. pages 343 and 4, the court said:

"Our conclusion is that the true construction of the phrase employed, 'who shall have paid a school tax within said city for two consecutive years immediately preceding his election,' is, 'who shall have paid, at any time preceding his election, a tax for the benefit of schools within said city for the two consecutive calendar years next preceding the year of his election, assessed on property in which he has an interest subject to taxation, at the date of assessment or date of payment. ' "

In view of the above, it is our opinion that a director who pays a state and county tax, at any time within one year prior to his election, meets the requirements of the statute.

3.

Section 9341 Laws of Missouri 1933, page 381, provides the time and manner and rules of election of a consolidated school district. Said section reads, in part, 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; * * * ."

The above section provides that the qualified voters shall vote by ballot, upon all questions provided by law for submission at the annual school meetings, and that all propositions submitted may be voted for upon one and the same ballot and that the necessary poll books shall be furnished by the secretary of the board.

Section 9454 Revised Statutes Missouri 1929, provides in part:

"There is hereby created the office of county superintendent of public schools in each and every county in the state; the qualified voters of the county shall elect said county superintendent at the annual district school meeting held on the first Tuesday in April, 1923, and every four years thereafter; * * * ."

Section 9455 Revised Statutes Missouri 1929, specifies how the election of county superintendent of public schools shall be conducted and reads, in part as follows:

"At least ten days before the annual school meeting in any year when a county superintendent of public schools is to be elected, the clerk of the county court shall mail by registered letter to the president or clerk of the board of school directors of the various districts of the county a tally sheet of sufficient size to contain the names of all the qualified voters, of such district, which tally sheets shall, so far as practical, conform to the form of poll books set out in section 10197, article 2, chapter 61, R.S. 1929, relating to general elections, and in making the returns of such election, the tally sheets shall be certified by the chairman and secretary of such annual school meeting and attested by the members of the board of directors of the district, who may be present. The voting for county superintendent shall be by ballot and all ballots cast shall be counted for the persons for whom cast, and it is hereby made the duty of the members of the board of directors and the chairman and secretary of the annual school meeting to see that each ballot so cast is counted for the person receiving the same, and it is hereby made the duty of the chairman of the annual school meeting, within two days after such meeting, to transmit the tally sheets and all ballots, in person or by registered letter, to the clerk of the county court; such ballots to be in a sealed package, separate and apart from such tally sheets, such package being properly designated. * * * * "

It will be noted that the above section makes it the duty of the county clerk to provide the various school districts tally sheets, to conform to the form of poll books for general elections. The voting for county superintendent is by ballot, and it is made the duty of the members of the board of directors and the chairman and secretary of the annual school meeting to see that each ballot is counted

for the person receiving the same, and it is made the duty of the chairman of the annual school meeting, within two days' time, to transmit the tally sheets and all ballots to the clerk of the county court.

Section 9341, supra, does not require that all propositions submitted at the annual school meeting shall be voted for upon one and the same ballot, but provides that they may be so voted upon. In our opinion this section does not apply to the election of a county superintendent of schools in any event.

Section 9455, supra, governs the election of a county superintendent, and makes it the duty of the board of directors and the chairman and secretary of the annual meeting to see that all ballots cast shall be counted for the person for whom cast. We are therefore of the opinion that it would be lawful to use one ballot for the purpose of voting for a county superintendent of schools, and another ballot for voting for the local directors and all other propositions submitted at the annual meeting, and in our opinion it would be the better practice.

4.

Section 9341, supra, makes it the duty of the secretary of the school board to make out and furnish the necessary poll books to be used in the annual school election.

Section 9455, supra, makes it the duty of the county clerk to furnish to the school districts tally sheets to conform to poll books used in general elections, when a county superintendent is to be elected.

Mr. Grover T. Laurance

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It is, therefore, our opinion that the secretary of the school board should furnish the necessary poll books used in the annual school election, and that the tally sheets furnished by the county clerk should be used in the election of a county superintendent of schools.

5.

Section 9455, supra, makes it the duty of the chairman of the annual school meeting to transmit the tally sheets and all ballots cast in the election for county school superintendent, in person or by registered mail, to the clerk of the county court. No provision is made for the school board to retain one of the tally sheets.

It is, therefore, our opinion that the tally sheets used in the election of a county superintendent of schools must be transmitted to the county clerk, and the school board cannot retain either of them.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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