

SCHOOLS:
SCHOOL BOARDS:
SPECIAL ELECTIONS:

School Board may not call meeting for special election without petition being presented signed by a majority of qualified voters of the District

December 15, 1937

12-16



Mr. Edw. T. Eversole
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Sir:

This office acknowledges your request dated December 8, 1937, which is as follows:

"I would appreciate your opinion of the law on the following statement of facts:

"In April 1937, one of our local School Districts held its Annual Meeting and conducted its regular business. There was a total vote of 75 votes cast at the meeting.

"At the meeting, it was decided that the School House could be used for meetings of various kinds, including the meeting of the Parent Teachers Association of the District.

"In November of this year, a special election and meeting was called by the Board for the purpose of voting on the question of the use of the School House for meetings of the Parent Teachers Association.

"The Board claims to have called the meeting in compliance with a petition handed them under the authority of Section 9228, R. S. Mo. 1929. The Petition was signed by 40 persons.

"Complaining Parents maintain and undoubtedly correctly so, that there is 102 qualified voters in the School District.

"QUERY: Can the Board call a meeting without a petition being presented to them signed by a majority of the qualified voters of the District?

"Can the Board take the total number of votes cast at the last School election as the number of qualified voters in the District or must the Board ascertain the exact number of qualified voters in the District by a census to determine what constitutes a majority.

"If the meeting in November prohibiting the use of the School House to the Parent Teachers Association is not legal, because of failure to have a petition signed by a majority of the qualified voters. What is the proper steps for them to take to obtain the use of the School House for their meetings? "

In answer to the first paragraph of your query will say that school boards are created by the Legislature and their powers are limited by statute. Consolidated School Dist. No. 6 v. Shawhan, 273 S. W. 182, 184:

"Under our state law the government of a school district, as well as the handling of the finances thereof, is vested in a board of directors duly elected

by vote. Their powers and duties are prescribed by statute."

Section 9228, Revised Statutes Missouri 1929, authorizes a school board to call a special meeting when a petition is signed by a majority of the qualified voters of the District and is presented to them. This is the only authority the school board has to call a special meeting and if the petition is not signed by a majority of the legal voters of the district the Board does not acquire jurisdiction to call the meeting, and the election is null and void. School District, etc., v. Pace, et al. 113 Mo. App. 134, 140:

"There can be no election where there is no warrant for holding it. The authority to issue the warrant for the election (notices posted in the district) is conferred on the clerk of the district. They are not to be issued at his discretion or on his whim; but only on the presentation of a proper petition, signed by at least ten legally qualified voters of a district to be affected and containing a certain definite proposition to be submitted to the voters of the district to be voted upon by them."

CONCLUSION

It is, therefore, the opinion of this Department that the school board cannot call a special meeting of the electors of the district without a petition being presented to them which is signed by a

majority of the qualified voters of the district.

The second paragraph of your query goes to the question of how shall the board determine whether or not the petition for the special election is signed by a majority of the qualified voters of the district.

Section 9228, Revised Statutes Missouri 1929, does not provide how the board of directors shall determine as to whether the petitions are signed by the required number of qualified voters, and we find no Missouri case just in point upon this question. We find somewhat of a similar situation in the case of State ex rel. v. Carter, 257 Mo. 52, 85, where the Court was discussing how the city council would get the information as to how many voters were in the district at the time of presenting a petition for a local option election. In discussing Section 7239, Revised Statutes Missouri 1909, which pertained to local option elections, the Court, in the Carter case, supra, at l. c. 85, said:

"The latter section does not prescribe from what source the city council shall obtain official information as to the number of qualified voters in such city and therefore as to the requisite number of petitioners required to sign the petition for an election. In the absence of a statutory prescription as to the source of this information, it would seem either that they guess at it (city council) and thus act at

their peril, in guessing a sufficient number when the matter is tested in the courts, or that they use in their discretion the best and latest official data obtainable. * * * * *

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The record shows that they used the very last official vote obtainable by them, * * * * *

In the Absence of a statute in this behalf all that can be required of the city council is that in determining the number of votes as a basis of computation of the requisite number of petitioners they should use the latest official sources of information * * * * *."

The board of directors of the school districts have no authority to take a census to determine how many qualified voters there are in the district, and the statute has made no provision for the board to obtain this information. It would seem that the school board, in its discretion, may use the number of votes cast at the last school district election prior to the time of the presenting of the petition as a basis for its determination of whether or not fifty per cent of the voters have signed the petition.

CONCLUSION

In the absence of a showing by a proper proceeding that the board erred in its determination that the petition had sufficient signers or that the board had no jurisdiction to call a special election, it is

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the opinion of this Department that the special election referred to in your letter, which was called by the board upon a petition presented to them containing the signatures of fifty per cent of the legal voters who voted at the last election prior to the presentation of such petition, is a valid election.

The third paragraph of your query assumes that the election was invalid. In as much as the answer to the second paragraph of your inquiry holds that the election was valid the necessity of going into the third paragraph is obviated and this office does not deem it necessary to pass upon that subject.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED

J. E. TAYLOR
(Acting) Attorney General

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