

SCHOOLS: Meaning of the word "majority" in elect-
ing School Directors or voting on
propositions

May 12, 1938

5/18



Honorable Paul N. Chitwood
Prosecuting Attorney
Reynolds County
Centerville, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Section 9278 R. S. 1929, refers to the election of School Directors, and their qualifications. The time of their election is contained in sections 9283-4. The latter section provides that, (among other propositions to be voted upon at the annual school meeting) 'The qualified voters assembled at the annual school meeting, when not otherwise provided, shall have power by a majority of the votes cast:'

" 'Second- To choose by ballot, one director, who shall hold his office for the term of three years and until his successor is elected and qualified.'

"It will be noted that this law provided in most cases that the proposition voted upon must be carried by a majority of the votes cast at such election; and I believe this has been the opinion of your office in the past; but the question arises as to what

will be the result in the event no one candidate, or the proposition voted on does not receive such majority of the votes cast. Apparently the law does not define the word majority, and turning to Webster, we find that majority means more than half. If no one then receives more than half the votes, will it be necessary to keep voting at the same or subsequent elections, until the candidates, or propositions voted upon do receive such a majority of the votes cast?

"To hold this to be true as literally stated would probably work a hardship in many instances, and yet to hold otherwise might be without sanction of the law, I can find no decisions on this proposition here, and would like your opinion if you care to give same, on a matter which, technically at least, may not be directly in line with either yours or any official duties. Yet there is a situation existing in this county which is of public interest, and I have been consulted in the matter, and in turn have consulted you, in the emergency. If you care to give your opinion in this matter, it will be appreciated very much."

Section 9287, Revised Statutes Missouri 1929, vests the control of a district in a board of directors consisting of three members. Said section provides, in

part, as follows:

"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,"

It will be noted from a reading of Section 9287, that directors hold office for a term of three years, except the first board of directors, and until their successors are elected or appointed and qualified. Therefore, it follows that once a person is elected to the board of directors that he holds his office until a successor is elected or appointed and qualified.

Section 9283 provides for the annual meeting, and, in part, reads as follows: "The annual meeting of each school district shall be held on the first Tuesday in April of each year, at the district schoolhouse, commencing at 2 o'clock p. m. " Provision is further made that in the event there is no schoolhouse, that then the place of meeting is designated by notice.

Therefore, the time and place of the annual meeting of the voters of the school district is fixed at a definite time and place. The matters and things which the voters pass upon is found in Section 9284, Revised Statutes Missouri 1929. Section 9284, supra, as pertinent to your inquiry, reads, in part, as follows:

"The qualified voters assembled at the annual meeting, when not otherwise provided, shall have power by a majority of the votes cast:

"Second- - To choose, by ballot, one director, who shall hold his office for the term of three years and until his successor is elected and qualified."

The above statute is unambiguous and provides merely that the voters, when assembled at the annual meeting, may vote by ballot to choose a director, and when a majority of the voters thus assembled choose by ballot the director, such director will hold office for a term of three years, or until his successor is elected and qualified. As hereinbefore shown, at the first meeting in a newly organized district, the directors are elected for a term of one, two and three years, so that the next annual meeting would mean that the voters would have to elect a director to a three year term, occasioned by the expiration of the term of the person holding office for one year, and thereafter each year a director would be elected. The question presents itself, however, that if the voters failed and refused to elect a director to succeed the person whose term has expired, what would be the effect thereof? Section 9287, and Section 9284, in no uncertain terms provide that a director holds office until his successor is elected and qualified, and failure of the voters to elect a successor at an annual meeting by a majority vote leaves said director a hold over in office until his successor is elected and qualified. No provision is found for the election of a person to a directorship other than at the annual meeting unless there be a vacancy, and in the event of a vacancy Section 9290, Revised Statutes Missouri 1929,

provides how such is filled. The failure of the qualified voters to elect a successor would not create a vacancy, in our opinion. State ex rel Thurlo v. Harper, 336 Mo. 717, 80 S.W. (2) 849, 852. Having concluded that no vacancy exists by failure of the qualified voters at the annual meeting to elect a successor for the director whose term had expired by operation of law, the question arises as to how long the "hold over" remains a director. In other words, does the "hold over" director remain in office for a term of three years unless a vacancy occurs, as contemplated by Section 9290, Revised Statutes Missouri 1929? There is no question but what Section 9284, supra, provides for the choosing by ballot of only one director for a term of three years, and provision is made to fill a vacancy at the annual meeting if such vacancy is "caused by death, resignation, refusal to serve, repeated neglect of duty or removal from the district." However, there is no provision by statute to elect at the annual meeting a director to fill out an unexpired term unless such unexpired term is occasioned by a vacancy. Having held that no vacancy exists because of failure to elect a director whose term had expired, it follows that the director would enter upon a new term for three years, because of the failure of the electorate to provide a successor for him. As reasoning for our conclusion we quote from an opinion rendered by this department on March 1, 1937, to the prosecuting attorney of Chariton County, Keytesville, Missouri, wherein it is said (pages 5-8):

"An election to any office can only be held when provided for by law. As was said in the case of State ex rel. McHenry v. Jenkins 43 Mo. l. c. 265:

"Or if not, who is the present clerk? By the terms of the act creating the Kansas City Common Pleas, as well as by the constitutional provision, the clerk shall hold his term until the election and qualification of his

successor. Thus there is no vacancy, and Mr. Vincent holds over.

"In relation to relator's second claim, that the omission to hold an election in 1866 can be supplied by one in 1868, we can only say that it is a valid one if the law provides for any such election. But he has failed to show us any such provision, and it would be difficult to give legal validity to a volunteer election. No election can be had unless provided for by law. As the law makes no provision for the election of clerks in 1868, such election is wholly void and of no effect. This position has never been questioned. In the State v. Robinson, 1 Kansas, 17, a question was raised as to the validity of an election for governor and it was held that the election under consideration was not provided for by law, that the person elected could not take the chair, and that the previous governor should hold over until the next general election. No case has been known where a volunteer election has been held valid, even though the term of the incumbent had expired."

"Also, in the decision of State ex inf. v. Dabbs, 182 Mo. 1. c. 367:

"The act of March 25, 1901 (Laws 1901, p. 120), providing for an additional judge of the circuit court of Jasper county, under which defendant was appointed

and commissioned, provides, that 'he shall continue in office until the first Monday of January, 1903, and until his successor is elected and qualified.' His successor was elected at the general election held in November, 1902, but died before qualifying and it must follow that defendant is 'entitled to hold over until the next regular term for holding an election for that office.' "

"The legislature having provided for the election of treasurer, in the event that there is no vacancy had in mind uniformity as to time. As was said in the case of State ex inf. v. Smith, 152 Mo. 1. c. 521:

"In the case at bar Haughton was appointed under section 7 of the Act of 1891, to fill the unexpired term of Sheehan, which ended at the regular election in 1898, and until his successor was duly elected and qualified. The attempted election of his successor in 1898 failed by reason of a tie vote. No successor was then elected and hence none qualified. Therefore no vacancy existed or occurred in the office. The effect was the same as if no election for a successor had been held in 1898. There being no vacancy there was no power in the judges named to appoint defendant to the office, either by virtue of the Act of 1891 or of any other statute, and hence their action was a nullity and defendant had no title to the office. Inasmuch as the Act of

1891 provided that there should be an election for justice of the peace, in St. Louis, at the regular election in 1894 'and every four years thereafter,' and inasmuch as there was in legal intendment no election held in the fourth district in St. Louis for justice of the peace in 1898, there has been no successor yet elected for Haughton, and as the purpose of the law-makers in that there shall be uniformity in the time of electing all justices of the peace, and as there is no special statute covering cases like this, it follows that there can be no legal election held to elect a successor for Haughton until the regular election in the year 1902, and that he has a right to continue to hold the office of justice of the peace for the fourth district, in the city of St. Louis, until a successor is elected at that time, and thereafter duly qualifies, by virtue of his appointment until his successor is duly elected and qualified."

From the above and foregoing, it is our opinion:

1. That the director holds office until his successor is elected and qualified.
2. That the failure of a person to receive a majority of the votes cast at an annual meeting for director would continue in office the old director.
3. That no vacancy exists in a directorship merely because the assembled voters neglect by a

Honorable Paul N. Chitwood

-9-

May 12, 1938

majority vote to elect a successor.

4. That no hardship is visited upon the district by the failure of the assembled voters by a majority vote to elect a successor, because the business transacted for the district by the "hold over" director does not inure to the detriment of the district because the acts of such director would be valid in all respects. *Eaker v. Common School District No. 73, of Butler County (Mo. App.) 62 S. W. (2) 778, 783.*

5. That such "hold over" director would continue in office for a regular term of three years.

Yours very truly

HARRY H. KAY
Assistant Attorney General

APPROVED

J. E. TAYLOR
(Acting) Attorney General

JLH LC