

SCHOOLS: Board of Education need not print the names of candidates for directors on the ballot, but if names are printed all known candidates should have their names on the ballots

March 18, 1938

3-25-

FILED
49

Honorable N. A. King
Representative
Iron County
Des Arc, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of March 14th, wherein you make the following inquiry:

"We have a condition here with our school board that is embarrassing to the citizens of this district, and they have asked me to have your office render opinion on same.

"This is an approved high school having six directors, and prior to each annual election, they have a ballot printed carrying only two names on the ballot for directors. They have for the past few years deliberately refused, after having any other names on the ballot, thereby causing the inconvenience of having to write other names on the ballot other than the ones on the ballot.

"They wish to know this, that if a ballot is printed, can the board be compelled to place on the ballot any name who desires to become a candidate for director."

By virtue of the terms of Section 9341, Laws of Missouri, 1933, page 381, directors shall be elected by ballot. Said section provides 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 quoted section appears to provide for regulations governing the elections at annual meetings. The annual

meeting in a city, town or consolidated district is evidently referred to, as provided by Section 9328, R. S. Mo. 1929, which is 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."

Under the decision of State ex inf. Attorney-General v. Foxworthy, 301 Mo. l. c. 382, it is definitely decided, in view of Section 3, Article VIII, of the Constitution, that the election must be by the people and by ballot. The court said the following:

"The meeting December 24, 1920, was regularly and legally called; the vote on the question of organization was submitted and returned as the first order of business, in strict accordance with the statute. It is claimed, however, that the election of six directors, required by the statute, as the second order of business, was illegal, because all of said alleged directors were 'elected

unanimously by acclamation' instead of by ballot. Section 3, Article VIII, of the Constitution requires that all elections 'by the people' shall be by ballot. In the case of State ex rel. O'Connell v. Board of St. Louis Public Schools, 112 Mo. 213, l. c. 218, it is held that an election for school directors was an election 'by the people,' and came within the requirement of the Constitution. It is a well considered opinion, written by Judge Gantt."

There is no provision in the statutes providing for the ballot to be printed in any particular form or for the ballot to contain the names of candidates for directors, but it is clear that the statute contemplates that some kind of a printed ballot shall be furnished at the election because Section 9341, supra, provides for a vote by ballot and the last sentence of the quoted section states that "all propositions submitted in said annual meeting may be voted for upon one and the same ballot." There is no provision for a primary or selective method of choosing school board directors, no party affiliations, and, in fact, directors are selected without regard to political affiliations.

In view of these statements, in preparing the ballot, how is the Board to ascertain who are candidates for director except by rumor or statement of the candidates themselves? Assuming that no one is a candidate, or at least no one is an avowed candidate for director, then, in that event, the directors of the school would not print any names but should leave blank spaces for the voters to place the names of any person such voters may desire to be a director.

We can arrive at only one conclusion, and that is to the effect that the Board should print the names of any and all candidates who make a request to the Board to have their names printed, provided that the person or persons have duly notified the Board of their candidacies prior to

Hon. N. A. King

-5-

March 18, 1938

the printing of the ballots; that the printing of the ballots should be withheld until it becomes necessary to have them printed in sufficient time for the election,

Yours very truly

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

OWN:EG