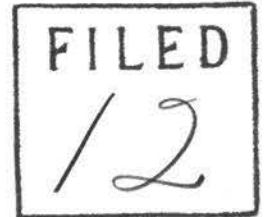


: Judges and Clerks of School elections
SCHOOLS.: not criminally liable for opening bal-
: lot boxes after school election, provided
there is no violation of Sec. 4357, R.S.
R.S. Mo., 1939.

April 28, 1944



Mr. Tom B. Brown
Prosecuting Attorney
Knox County
Edina, Missouri

Dear Mr. Brown:

This will acknowledge the receipt of your letter in which you request an opinion from this office. The text of such letter is as follows:

"A school election was held at Baring, Missouri, on Tuesday April, 4th to elect two directors for a three year term and one director for a two year unexpired term. The district is a town district. The count of the votes resulted in more votes for the total directors that could be possible from the number of voters.

"The following day at the suggestion of the superintendent of the school or of the board of directors the judges and clerks of the election opened the ballot box and recounted the ballots. Complaint has been made to me that the reopening and recounting of the ballots is a felony. Please advise me if the act is a violation of law and if so what section.

"In addition to the above one old director and one elected at this election is not a taxpayer. Does this disqualify them to serve? Would the fact that the wife of one director was a taxpayer and had paid taxes on real estate qualify the husband? If the director held an interest in real estate that was assessed in the name of another and the tax paid by another could he qualify?

"I wish to thank you for your opinion in this matter and for former opinions given me. I also wish to compliment you on your 'report and digest of opinions.' "

Section 10483 R. S. Mo., 1939, provides:

"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, * * *"

Under this section the general election law relative to the opening of ballot boxes must be examined to find whether the judges and clerks here violated any law.

Sec. 11608, R. S. Mo., 1939, provides:

"The judge to whom any ticket shall be delivered shall, upon receipt thereof, pronounce in an audible voice the name of the voter; and if the judges shall be satisfied that the person offering to vote is a legal voter, his ticket shall be numbered and placed in the ballot box without inspecting the names written or printed thereon, or permitting any other person or persons to do so; and the clerks of election shall enter the names of voters and the numbers of the ballots, in the order in which they were received, in the poll books, in conformity with the form printed in section 11490, and, in addition, whenever a registration is required by law, place on such ballot the number corresponding with the number opposite the name of the person voting, found on the registration list; and no ballot not so numbered shall be counted and the ballots, after being counted, shall be sealed up in a package and delivered to the clerk of the county court or corresponding officer in any city not within a county, who shall

deposit them in his office, where they shall be safely preserved for twelve months; and the said officer shall not allow the same to be inspected, unless in case of contested elections, or the same become necessary to be used in evidence, and then only on the order of the proper court, or a judge thereof in vacation, under such restrictions for their safekeeping and return as the court or judge making the same may deem necessary; and at the end of twelve months, said officer shall publicly destroy the same by burning, without inspection; and no judge or clerk of an election shall disclose the names of the candidates voted for by any voter, and any judge or clerk violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of one hundred dollars."

This is the general law relative to the opening of ballot boxes after election. However, see Sec. 11629, R. S. Mo., 1939, specifically provides:

"This article shall not apply to elections for public offices determined otherwise than by ballot, to township or village elections, to school elections, or elections of county commissioners of public schools, or elections for road overseers, or to any city election in cities of the fourth class, or city of under 3,000 inhabitants existing under any special law. "

Thus we see that Sec. 11608 aforementioned does not apply to school elections.

CONCLUSION.

It is therefore, the opinion of this office that there is no criminal provision extant in our law rela-

Mr. Tom Brown

-4-

4-28-44

tive to the opening of ballots after a school election, provided, of course, there has been no changing of the ballots or election returns in violation of Sec. 4357 R. S. Mo., 1939.

With regard to the question as to qualifications of director, I wish to refer you to Sec. 10420, R. S. 1939, which provides:

"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 10418 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."

You will note that under this section the director must be a taxpayer and must have paid a state or county tax within one year next preceding election. With regard to your other question relative to qualifications, I enclose an opinion of this office on April 6, 1940, to Stephen Cornish, Superintendent of Schools of Pike County, which I feel answers your question.

Respectfully submitted

APPROVED:

ROY McKITTRICK
Attorney General

ROBERT J. FLANAGAN
Assistant Attorney General

Encl.
RJF:LeC