

County Superintendent
of Schools:
Ballots:
Elections:

An election must be held in Gasconade County on April 2, 1963 for the office of County Superintendent of Schools and it is the duty of the County Clerk of Gasconade County to cause sufficient ballots to be printed and delivered to the various school districts of the county; and this ballot should contain a place for write-in votes.

March 12, 1963

Opinion No. 115

Honorable Randolph E. Puchta,
Prosecuting Attorney
Gasconade County
Hermann, Missouri



Dear Mr. Puchta:

This is in response to your request for an opinion dated February 25, 1963, which reads in part as follows:

"I would appreciate an opinion concerning the following problem confronting the County Clerks of Gasconade County in preparing for the coming election concerning the office of County Superintendent of Schools.

"All School Districts of Gasconade County have been fully reorganized for more than four years. The office of County Superintendent of Schools has been vacant for several years due to the policy of the Governor not to fill vacancies in Counties where school districts are completely reorganized.

"The County Clerks in preparing the form of Ballots for the April Election and the time for filing for candidates for County Superintendent has expired and no person has filed. Therefore, the problem remains; must the ballot contain the title of this officer and a place for write-in votes and if so must a person receiving a majority of write-in votes be recognized or duly elected if such person meets all qualifications, even though he had not filed for this office and even though no duties remain to be performed by this office in Counties which are completely reorganized."

In answering your questions we first call attention to Article VIII, Section 2 of the 1945 Constitution of Missouri which provides that "All citizens of the United States * * * are entitled to vote at all elections by the people * * *".

Section 167.010, RSMo 1959, provides for the qualifications and election of a county superintendent of schools and the first sentence of that section reads as follows:

"The qualified voters of each and every county in this state shall elect a county superintendent of public schools at the annual district school meeting held on the first Tuesday in April, 1943, and every four years thereafter. * * *"

It is evident from this statute that there must be an election for the office of county superintendent of schools in Gasconade County on Tuesday, April 2, 1963. We are of the opinion that the election must be held regardless of whether any person has filed as a candidate for the office of county superintendent of schools.

Section 167.020, RSMo 1959, prescribes certain duties of the clerk of the county court and sets forth the form of the ballot. Pertinent portions of that section read as follows:

"1. * * At least ten days before the annual school meeting in any year when a county superintendent of public schools is to be elected, the county clerk shall cause to be printed ballots with the names of the candidates who have filed declarations of their candidacy printed thereon in alphabetical order, said ballots to be substantially in the following form:

OFFICIAL BALLOT

Tuesday, April . . .19 . . .

For County Superintendent of Public Schools

(Vote for one by drawing a line through all names except the one voted for)

.....
.....
.....

"2. The clerk of the county court shall cause to be delivered to the president or clerk of the board of school directors of the various districts of the county a sufficient number of ballots for the voters of the district * * *. 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, * * *. It shall be the duty of the county clerk, within five days after the annual school meeting, to call to his assistance two magistrates or two qualified voters of the county, and cast up the vote and issue a commission to the person receiving the highest number of votes, * * *.

"3. * * * Any person, upon whom there is imposed an official duty by this chapter, and who shall violate any of the provisions herein, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment."

Section 165.330, RSMo 1959, deals with elections in school districts and makes similar provisions insofar as that section relates to the election of the county superintendent of schools. Section 165.330 reads in part as follows:

"1. 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, * * *

* * * * *

"3. * * * provided, that in any year in which a county-superintendent of public schools is to be elected that the qualified voters of such town, city or consolidated district where registration of voters is required, must vote in the ward or precinct of which they are residents, * * *."

From the quoted portions of these statutes it is evident that the voters of the various districts are to vote for the office of county superintendent of schools by ballot. Section 167.020, RSMo 1959, makes it the duty of the clerk of the county court to cause the ballots to be printed and delivered to the various districts of the county.

We next deal with the question of whether a place must be provided on the ballot for write-in votes.

The case of Turpin v. Powers, 270 Mo. 338, was an election contest over the office of constable. In the concurring opinion of Graves, C. J., l. c. 349-350, the court said:

"* * * In the instant case these 38 voters had the right to write under the caption 'For Constables, 4th District' the name of any person or persons that they desired to cast their ballot for at such election. This has been consistently ruled since *Bowers v. Smith*, 111 Mo. 1. c. 52, whereat we said:

'By our Constitution general elections are held at certain fixed dates, and the right of suffrage is expressly secured to every citizen possessing the requisite qualifications. The new ballot law cannot properly be construed to abridge the right of voters to name their public servants at such elections, or to limit the range of choice (for constitutional offices) to persons nominated in the modes prescribed by it. Nominations under it entitled the nominees to places upon the official ballots, printed at public expense; but the Missouri voter is still at liberty to write on his ballot other names than those which may be printed there.'

"* * * Each voter had the right to vote for himself for constable, if he so desired. He had the right to write his own name for that office under the caption for that office, * * *."

Ever since the decision in the case of *Bowers v. Smith*, 111 Mo. 45, quoted and relied on in the case of *Turpin v. Powers*, it has been the recognized law in Missouri that a voter has the right to write on his ballot names other than those which may be printed thereon. We believe that this principle is applicable to an election for the county superintendent of schools.

In accordance with these authorities we are of the opinion that the ballot prepared by the county clerk for the election for the office of the county superintendent of schools should contain a place thereon sufficient to enable the voters at the election to enter the name of any person under the caption for that office for whom they desire to cast their ballot at such election.

Since we are of the opinion that write-in votes are proper in the election for the office of county superintendent of schools it follows from the portions of paragraph 2, Section 167.020, RSMo 1959, quoted above, that these votes should be counted and that the

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county clerk must cast up the vote and issue a commission to the qualified person receiving the highest number of votes.

We do not make any ruling herein as to what the result might be if the requirements of the law were not followed in the manner we have pointed out, because that might well depend upon many additional factors which would affect the decision on the validity of the election. We are viewing this matter before the ballots are printed and before the election is held and we are of the opinion that the provisions of the statutes, as set out in this opinion, are mandatory in the sense that compliance with them could be enforced by a writ of mandamus.

CONCLUSION

It is, therefore, the opinion of this office that an election must be held in Gasconade County on April 2, 1963 for the office of County Superintendent of Schools and that it is the duty of the County Clerk of Gasconade County to cause sufficient ballots to be printed and delivered to the various school districts of the county; and that this ballot should contain a place for write-in votes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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