

SCHOOL BOARDS:  
ELECTIONS:  
"LARGEST NUMBER OF VOTERS:"

The phrases "greatest number of votes" and "largest number of votes" under House Bill No. 425, the 74th General Assembly requires candidate for director of Kansas City Public School District to receive plurality but not majority of votes cast.

November 9, 1967

OPINION NO. 359

Honorable R. D. "Pete" Rodgers  
State Representative - District 9  
Missouri House of Representatives  
333 South Elmwood  
Kansas City, Missouri 64124



Dear Representative Rodgers:

This official opinion is rendered in response to your request of August 6, 1967, for a ruling of this office.

Your inquiry relates to House Committee Substitute for House Bill No. 425 as enacted by the Seventy-fourth General Assembly. This enactment amends the statutes applicable to elections of school districts of the Kansas City Public School District.

Subsection 3 of Section 162.492 of the Bill states in part as follows:

" \* \* \* The six candidates, one from each of the subdistricts who receive the greatest numbers of votes cast at the election shall be elected and the at-large candidate receiving the greatest number of votes shall be elected.  
\* \* \* In those years in which one at-large director is to be elected each voter may vote for one candidate and the candidate receiving the largest number of votes cast shall be elected. In those years in which two at-large directors are to be elected each voter may vote for two candidates and the two receiving the largest number of votes cast shall be elected."

Subsection 4 of Section 162.492 reads in part as follows:

" \* \* \* The six candidates, one from each of the subdistricts, who receive the greatest number of votes cast at the election shall be elected. \* \* \* "

You ask whether the phrases "largest number of votes" and "greatest number of votes" mean a plurality or a majority of the votes cast.

It is a general principle of law, applicable to elections, that in the absence of a statute or constitutional provision expressly requiring more, a plurality of votes is sufficient for a candidate to be elected. 29 C.J.S., Elections, Section 241. House Bill 245 does not expressly require a candidate to receive more than a plurality of the votes cast at the election.

The phrase "greatest number of votes" has been dealt with by courts in other states. In the case of State ex rel. Pray et al. v. Yankee, Wis., 109 N.W. 550, the Supreme Court of Wisconsin had before it the following facts: 46 votes were cast for the office of county treasurer, 22 votes were cast for the relator, other candidates each received fewer votes than the relator. The state statute in question provided "the person receiving the greatest number of votes at a primary as a candidate of a party for an office shall be the candidate of that party for such office..." The court found the relator to have the plurality of the votes cast for county treasurer in the primary and held him to be the lawful candidate. It is to be noted from the facts that although the relator had a plurality of the votes cast, he did not have a majority. In the case of Edward v. Daigle et al., La. 10 So.2d 209, a reading of the opinion of the Supreme Court of Louisiana reveals that the court there also understood the phrase "greatest number of votes" to mean a plurality of the votes.

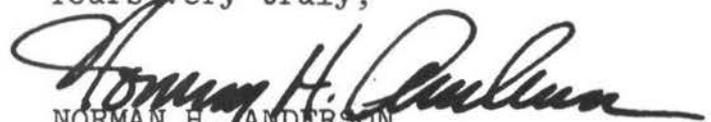
House Bill 425 would permit any number of candidates for each office. If there were more than two candidates, it would be possible that no one candidate would receive a majority of the votes cast. If the phrases "greatest number of votes" and "largest number of votes" were interpreted to require a majority for election, it would be possible for an election to be held and no candidates elected to office. House Bill 425 makes no provision for such a circumstance and it is unreasonable to assume that the legislature intended the election to result in a nullity.

#### CONCLUSION

Therefore, it is the opinion of this office that the phrases "greatest number of votes" and "largest number of votes" as used in Subsections 3 and 4 of Section 162.492 of HCSHB No. 425 of the Seventy-fourth General Assembly require a candidate for director of the Kansas City Public School District to receive a plurality of the votes cast and do not require a candidate to receive a majority of the votes cast in order to be elected.

The foregoing opinion which I hereby approve was prepared by my assistant, Louis C. DeFeo, Jr.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General