

SCHOOLS: (1) School boards in common school districts  
*Elections:* cannot set up two voting places for the elec-  
tion of county superintendent; (2) School  
boards in city, town and consolidated districts  
may designate more than one voting place; (3)  
Counties are not required to provide ballots  
for election of county superintendent; (4) No  
special kind of ballot is required, and no one  
is charged specifically with the duty of fur-  
nishing ballots; and (5) School boards should  
provide blank ballots for use of the voters.

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March 5, 1943

Mr. Edward J. Berry  
Superintendent of Schools  
Iron County  
Ironton, Missouri



Dear Mr. Berry:

We have your letter of recent date which reads  
as follows:

"I have two questions that I would like to ask  
your opinion on. First, does a school board  
have the authority to set up two voting places  
for school elections within a district? Se-  
cond, does the county have the responsibility  
of providing ballots for the election of coun-  
ty superintendent? If it isn't mandatory  
that they provide ballots is there any special  
kind that has to be provided and who must fur-  
nish same?"

We will answer the questions in the order set out in  
your letter.

I

Does a school board have the authority to set  
up two voting places for school elections within a district?

You do not state what type of district you inquire about. The law is different as to different types of districts. In a common school district the law provides that the annual meeting of the voters of the district shall be held at the schoolhouse of the district. That law is Section 10418 R. S. Mo., 1939, which 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. If no schoolhouse is located within the district, the place of meeting shall be designated by notices, posted in five public places within the district fifteen days previous to such annual meeting, or by notice for same length of time in all the newspapers published in the district, giving the time, place and purposes of such meeting."

The above statute is plain and specific and requires that the meeting be held at the schoolhouse. No discretion is left to the directors as to changing the place of meeting, except where there is no schoolhouse in the district.

As to city, town and consolidated districts, Section 10483 R. S. Mo., 1939, controls. That section reads 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 Tues-

day 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. \* \* \* \* \* Provided, that in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand inhabitants, in counties containing not less than two hundred thousand nor more than four hundred thousand inhabitants according to the last national census, said elections may at the option of the board be held at the same time and places as the election for municipal officers and in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand inhabitants in other counties, said elections shall be held at the same time and places as the election for municipal officers, and the judges and clerks of such municipal election shall act as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot box kept for that purpose. Should such school district embrace territory not included in the limits of such city or town, the qualified voters thereof may vote at such voting precinct as they would be attached to, provided the ward lines thereof were extended and produced through such adjoining territory: Provided, that if there shall be any other incorporated city or town included in such school district, there shall be at least one polling place within such other incorporated city or town and said school election shall be conducted within the limits of such other incorporated city or town in the same manner as hereinbefore provided for cities or towns having a population exceeding 2,000 and not exceeding 100,000 inhabitants. All

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school districts in cities, towns and villages in this state which are now or which may hereafter be under special charter shall hereafter hold their annual school elections on the first Tuesday in April, and the members of the boards of education now serving in such districts shall continue to serve until the first Tuesday in April next following the expiration of the terms for which they were elected or appointed, and until their successors are elected and qualified."

By the foregoing section it will be seen that in city, town and consolidated districts the directors have the power to designate more than one place for voting; except that in certain cities and towns set out in the section the voting places are required to be the same as those whereat municipal officers are voted for.

#### CONCLUSION

It is, therefore, the opinion of this office that in common school districts the school board does not have authority to set up two voting places for school elections; but that in city, town and consolidated districts the school board does have authority to set up more than one place for voting, except in certain cities and towns wherein the law required that the places of voting be those used by the municipality in its election for municipal officers.

II

Does the county have the responsibility of providing ballots for the election of county superintendent; and if the county is not required to furnish such ballots, is there any special kind of ballot that has to be provided and who must furnish it?

There is no provision in the statute whereby a person can file a declaration as a candidate for the office of county superintendent. Section 10419 R. S. Mo., 1939, provides that in common school districts "The qualified voters assembled at the annual meeting, \* \* \* shall have power by a majority of the votes cast: \* \* \* \* \* Eighth—To designate their choice, by ballot, for a person to fill the office of county superintendent of public schools."

Section 10610 R. S. Mo., 1939, provides in part as follows:

"At least ten days before the annual school meeting in any year when a county superintendent of public schools is to be elected, the clerk of the county court shall mail by registered letter to the president or clerk of the board of school directors of the various districts of the county a tally sheet of sufficient size to contain the names of all the qualified voters of such districts, which tally sheets shall, so far as practical, conform to the form of poll books set out in section 11490, article 2, chapter 76, R. S. 1939, relating to general elections, and in making the returns of such election, the tally sheets shall be certified by the chairman and secre-

tary of such annual school meeting and attested by the members of the board of directors of the district, who may be present. 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, and it is hereby made the duty of the chairman of the annual school meeting, within two days after such meeting, to transmit the tally sheets and all ballots, in person or by registered letter, to the clerk of the county court; such ballots to be in a sealed package, separate and apart from such tally sheets, such package being properly designated. \* \* \* \* \*

From the foregoing sections it will be seen that votes cast for the county superintendent must be by ballot. There is nothing said in either of said statutes as to who shall furnish such ballots. Since there is no provision for a candidate for county superintendent filing his declaration as a candidate, there would be no way to know whose name to put on a ballot if the ballots were prepared. In other words, on the day of election the voters have the right to designate by ballot any person whom they desire to be county superintendent. It would seem, therefore, that only blank pieces of paper should be furnished voters whereon they can designate their choice for that office. Section 10610, supra, provides that the county clerk shall furnish to the districts tally sheets upon which to make returns of the votes cast, but nothing is said as to that officer furnishing ballots. We think this omission of any reference to ballots was because the county clerk would have no way of knowing who was a candidate for the office and for the further reason that the voters would have a right to vote for people who had not declared their

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candidacy for the office of county superintendent.

As a practical proposition, we think that the directors in school districts should prepare blank slips of paper to be passed out to the voters at the annual meeting, so that they could vote on the office of county superintendent, and that in school districts where ballots are printed for voting upon propositions such as the annual levy, blank spaces should be left on the ballots so that the voters could write in the names of their choice for county superintendent.

#### CONCLUSION

It is, therefore, the opinion of this office that the county is not required to furnish ballots for the election of county superintendent, and that there is no provision in the law for any special kind of ballot to be used in voting for said office, and that the law does not place the responsibility directly upon anyone to furnish ballots for voting for county superintendent. As a practical proposition, we think the school boards should furnish blanks to be used as ballots by the voters of the school district.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney-General

APPROVED:

ROY McKITTRICK  
Attorney-General

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