

ELECTIONS: VILLAGES: Board of trustees may determine qualifications, election and returns of members.

April 13, 1940.

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Mr. A. B. Ideson
Member Board of Trustees
Village of Oakland, Missouri

Dear Sir:

We are in receipt of your letter of April 9th, wherein you state as follows:

"On Tuesday, April 2, there was an election held in the Village of Oakland for five trustees for the governing Board of that Village.

"There were eight names on the election ballot. After the election, it was discovered that one of the five members receiving the largest number of votes was not qualified to hold office, as he had not been a resident of the Village for a year, as required by the statutes.

"Last night at a meeting of the old Board, which was to have ended its term, a petition was presented by citizens asking this man's disqualification. The man admitted that he had lived in the Village less than a year and pleaded complete ignorance of the fact that he was not qualified.

"The question then arose as to whether or not the qualified candidate receiving the next largest number of votes should be seated. An attorney present would not give us an opinion and it occurred to me that you might be kind enough to straighten us out on the legal points involved.

Mr. A. B. Ideson.

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"If you will be good enough to give us your opinion, at your earliest convenience, and straighten us out in this matter, we will appreciate it very much indeed."

Section 7092 R. S. Mo. 1929, provides that the corporate powers of every village are vested in a board of trustees consisting of five members:

"The corporate powers and duties of every village so incorporated shall be vested in a board of trustees, to consist of five members, unless such town shall contain more than twenty-five hundred inhabitants, in which case such board shall consist of nine members; the first board of trustees shall be appointed by the county court at the time of declaring such town incorporated, who shall continue in office until their successors are elected and qualified; and such successors shall be chosen by the qualified electors residing in such town on the first Tuesday of April in every year in the manner hereinafter provided."

Section 7093 R. S. Mo. 1929, provides that no person shall be a trustee who has not resided therein for one whole year next preceding. It is further provided that every trustee holds his office for a term of one year and until a successor is elected and qualified.

"No person shall be a trustee who shall not have attained the age of twenty-one years; who shall not be a male citizen of the United States; who shall not be an inhabitant of the town at the time of his election, and reside therein for one whole year next preceding; who shall not be a householder within the limits of such town; and every trustee shall hold his office for the term of one year, and until a successor is elected and qualified."

Mr. A. B. Ideson.

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You state that after the election it was discovered that one of the five members receiving the largest number of votes was not qualified to hold office as he had not been a resident of the village for one year.

Mechem on Public Officers Section 130, page 65 declares that:

" * * * the failure of the newly elected or appointed officer to qualify by law would not, where by law his predecessor held over until his successor was elected and qualified, create a vacancy * * * "

See also Langston v. Howell County 336 Mo. 444, 79 S. W. (2d) 99 l. c. 102.

There being no vacancy (Section 7135 R. S. MO. 1929) in the board, and the trustees serving until their successors were duly elected and qualified (Section 7093 R. S. Mo. 1929), the question would then arise which of the five trustees was to continue in office; inasmuch as Section 7141 R. S. 1929, provides that the duly qualified persons receiving the highest number of votes shall be declared duly elected trustee:

"The election shall be kept open from seven o'clock in the forenoon until six o'clock in the afternoon. After the election is closed, the judges shall examine the ballots, and the duly qualified persons who shall have received the highest number of votes shall be declared duly elected trustees."

The judges of election could only declare the duly "qualified" persons receiving the highest number of votes as duly elected trustees. Does their mistake, although no fault of their own, control the results of the election?

Mr. A. B. Ideson.

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20 C. J. Section 262 page 204 provides that:

"Inasmuch as the duties of the canvassing boards, except as to determining the genuineness of the returns, are generally regarded as merely ministerial, the omissions or mistakes of such boards can have no controlling influence on the election."

Section 7096 R. S. Mo. 1929, provides that:

"The board of trustees shall judge of the qualifications, elections and returns of their own members, and determine contested elections; * * * "

From the foregoing we are of the opinion that the board of trustees having determined that one of the five members receiving the largest number of votes was not qualified, the board may then select the qualified candidate receiving the next largest number of votes as one of the five duly elected trustees.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General.

APPROVED BY:

COVELL R. HEWITT
(Acting) Attorney General

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