

SCHOOLS: Tally sheets and ballots for the election
ELECTION OF COUNTY for county superintendent of schools.
SUPERINTENDENT OF
SCHOOLS:

January 22, 1943

Mr. Chester R. Lyle
County Clerk
Nodaway County
Maryville, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit the following:

"Will you kindly advise us on the following: should the poll books for the County School Superintendent's election be numbered and should this number be written on the back of the ballots and the black sticker placed over the number on the back of the ballot?"

The procedure for the election of a county superintendent of schools is prescribed by statute. Under Section 10609, R. S. Mo. 1939, which applies to this subject, it is provided as follows:

"There is hereby created the office of county superintendent of public schools in each and every county in the state; the qualified voters of the county shall elect said county superintendent at the annual district school meeting held on the first Tuesday in April, 1923, and every four years thereafter; * * * * *"

It will be noted that this section provides that the superintendent of schools shall be elected at the annual district school meetings.

Section 10610, R. S. Mo. 1939, also applicable to this subject, 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 secretary 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. It shall be the duty of the county clerk, within five days after the annual school meeting, to call to his assistance two justices of the peace or two qualified voters of the county, and cast up the vote and issue a commission to the person re-

ceiving the highest number of votes, for which commission he shall receive a fee of one dollar to be paid by the person commissioned. A tie vote shall cause a vacancy in the office of county superintendent, which shall be filled by appointment by the governor, and the person so appointed shall hold such office till the next annual school meeting and until his successor is elected and qualified. In case a school district is divided by a county line, the county clerk shall transmit to the president or clerk of the board of directors of such districts two sets of tally sheets, and the voters residing on each side of the line shall vote separately and returns shall be made to each county as herein provided. For transmitting the returns of such election, the chairman of the annual meeting shall receive the sum of one dollar to be paid out of the incidental fund of the district. The provisions of this article shall, so far as practicable, apply to village and city elections so far as affects the election of county superintendent of public schools and so far as not conflicting with existing laws, which are sufficient to safeguard such elections. * * * *

It will be noted that this section provides only for tally sheets and nothing is said about poll books. It will also be noted that this section provides that these tally sheets in so far as practicable shall conform to the form of poll books set out in Section 11490. Section 11490, R. S. Mo. 1939, describes the poll books and prescribes for numbering and naming of the voters who are listed in the poll book. By using this form the tally sheets used in Section 10610 should contain the number and name of the voter. In the last sentence quoted above as a part of Section 10610, supra, it will be noted that this language is used: "The provisions of this article shall, so far as practicable, apply to village and city elections so far as affects the election of county superintendent of public schools and so far as not conflicting with existing laws,

which are sufficient to safeguard such elections."

Section 10483, R. S. Mo. 1939, which applies to elections in towns, cities and consolidated school districts, is 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 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, who shall record the same, and, by order of said board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and necessary poll books shall be made out and furnished by the secretary of the board: 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. * * * * *

In so far as the election officials and the conduct of the election is concerned, we think this section applies to the election of county superintendent of schools in cities, towns or consolidated school districts. In other words, the election is conducted in the same manner as the election for state and county officers.

Under the provisions of Section 10610, supra, which section is especially applicable to the county superintendent of schools, as stated above, it will be noted that the lawmakers intended that the article applicable to the election of county superintendent of schools should apply to city and village elections so far as affects the election of county superintendent of schools, and so far as not conflicting with existing laws which are sufficient to safeguard such elections. So, it seems from this statement that the lawmakers did not intend to change the procedure for elections in cities, towns and consolidated school districts, if such elections are sufficient to safeguard the elections of county superintendents of public schools. It seems that it would be practical for the provisions of Section 10610, which requires the use of tally sheets, to apply to village and city elections in so far as the election of county superintendent of schools is concerned. This section makes it the duty of the members of the board of directors and chairman and secretary of the annual school meeting, to see that each ballot so cast is counted for the person receiving same.

Under said Section 10483, supra, three judges of election and two clerks for each voting precinct are the officials who conduct the election in cities, towns and consolidated school districts. The provisions of Section 10610 seem to conflict with the provisions of Section 10483. However, the provisions of Section 10483 are sufficient to safeguard the election of county school superintendent. Under Section 10483, R. S. Mo. 1939, the school election in cities, towns and consolidated school districts, is conducted in the same manner as elections for state and county officers. In elections for state and county officers ballots are numbered. Under Section 11499, R. S. Mo. 1939, the ballot is numbered before it is placed in the ballot box. In our research we do not find the law so definite as to the numbering of a ballot in precincts other than those in cities, towns and consolidated school districts. However, under Section 10610 the tally sheets must conform to the poll book provided in Section 11490, R. S. Mo. 1939, which provides for a number to be placed before the name of each person listed on the tally sheet. This number on the tally sheet would serve for no purpose if the ballot cast by such voter did not have the same number upon it. We must assume that the lawmakers did not enact a useless law when they required the tally sheets to be numbered.

In order for the board of directors and the chairman and secretary of the annual meeting to see that each ballot shall be counted for the person for whom it is cast under Section 10610, it would be practical and almost essential to place the voter's number on the ballot which he casts. While the statute is silent in definitely stating that the ballot should be numbered, yet when we consider the provisions that the tally sheet shall have a number before the name of such voter, the general law applicable to cities, towns and villages, and consolidated school districts, and the provisions that the officials at the annual school meetings shall see that the ballots cast are counted for the person for whom they are voted, then we think that all ballots should be numbered with the same number which is placed before the voter's name on the tally sheet.

It is, therefore, the opinion of this department that the tally sheets used for the election of county school superintendents should be numbered and the number of the voter

Mr. Chester R. Lyle

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listed on the tally sheet should be written on the back of the ballot voted by the voter.

On the question of the use of the black stickers in such an election, we are enclosing copy of an opinion written by this department to Hon. H. Tiffin Teters, under date of March 6, 1942.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

TWB:CP