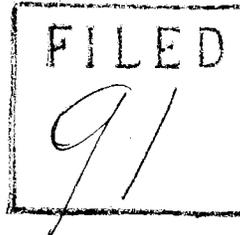


SCHOOL DISTRICTS: Discussion as to who are elected school directors where 6 run for three offices without announcing for which terms they are, and where some receive the same number of votes.

4-28

April 27, 1934.



Mr. Vane C. Thurlo,
Prosecuting Attorney,
Linneus, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I desire the opinion of your department on the following:

The school district of Saint Catherine in this county is a town school with a board of six directors, and governed, we believe, by Article 4, Chapter 57, Revised Statutes for 1929.

On April 3rd last, the annual school meeting and election was held, pursuant to the required notices. Due to a vacancy having occurred on the board of directors last year, which was filled by appointment, there were two directors to be elected for a three year term, and one director to be elected for a one year term. At the election the votes for directors were as follows:

S, 50 votes; R. 42 votes; H, 42 votes; I. H. 23 votes; G. S. 22 votes; G. R. 29 votes.

The persons designated as H, I. H., and G. S. were members of the board prior to the election. A ticket which had been printed by the clerk without the knowledge or authority of the board was used by the voters, additional names being written in on the blank lines on the ballot or ticket. The ticket was substantially as follows:

'School ticket.
Saint Catherine District,
For directors 3 years,
Two for 3 years, One for 1 year,
R. _____
H. _____
S. _____

 _____ (blank line)
 _____ (Blank line).
 For nine months school YES
 For nine months school NO
 25 cents in excess of 20 cents YES
 25 cents in excess of 20 cents NO'

On the evening of April 4, following the election, the Board of Directors met as a result of the president's call, the four persons receiving the highest number of votes at the election also having been asked to attend the meeting. Four of the directors of the old board met, and when S was asked to take the oath and qualify, he refused and left the meeting. The Board then declared his office vacant and N. R. was appointed to fill his vacancy until the next annual election. This appointment was made by the unanimous vote of the board.

The Board took the position that apparently as R and H received the same number of votes neither was elected and could not qualify, and the old members would hold over to the next election.

The Board also took the position that the two persons receiving the highest number of votes was elected for the three year terms, and the one next high was elected for the one year term, that is, to fill out the unexpired term.

The Board now takes the position, I understand, that the Board of Directors consists of the three members whose terms had not expired, H, I H and G S.

In the opinion of your Department, is the Board right, and if not, who constitutes the Board of Directors, and what is the effect of the tie vote?"

We must confess at the outset that this inquiry contains some very interesting and intricate problems, and we have been unable to find any decision which would help us in solving your problem. The whole difficulty seems to have arisen by reason of the fact that the persons seeking to be elected did not announce for which terms they were running. Had they so announced or had the ballot been so prepared as to indicate which directors sought the three year term and which sought

the one year term, then we could have solved your difficulty. However, it appears that these six directors were running at random. Since these directors were not running for any particular term, and since we find no judicial decision which would determine to which term any director should be elected, we assume in our discussion that the logical solution would be that the two receiving the highest number of votes should be elected to the three year term and the one receiving the third highest number of votes should be elected to the one year term.

We shall dispose of Mr. S first. Mr. S received 50 votes, which was the highest number of votes cast for any director, and we assume, therefore, that he was elected to one of the three year terms. However, after being elected he refused to qualify and we conclude that by reason of such fact the Board of Directors would have a right to fill the vacancy. His refusal to qualify, we believe, is of the same effect as if he had qualified and had immediately resigned. The Board then elected a member to fill the vacancy caused by the failure of Mr. S to qualify for the office. This leaves one three-year term and one one-year term to be disposed of.

It appears that Mr. R and Mr. H each received 42 votes. Had Mr. R and Mr. H both been running for the same term, then on account of the tie neither would have been entitled to the office because it could not be said that either was elected thereto. However, it appears that Mr. R and Mr. H were not running for the same office but that there were six people running for three offices and none of the candidates were running for any particular office. Mr. R and Mr. H both received more votes than Mr. I H, Mr. G S and Mr. G R. If you throw out Mr. R and Mr. H because they received the same number of votes and declare that neither were elected to any office, then it appears to us that Mr. G R, who received 29 votes, and Mr. I H, who received 23 votes, would be the persons elected as directors. However, since Mr. R and Mr. H each received 42 votes, which was more than each of the other three directors received, and since they were not running for the same term, if you eliminate Mr. R and Mr. H then it appears to us that the will of the people is not being followed. It is apparent that Mr. R and Mr. H and Mr. S were the choice of the voters of the district for the three positions to be filled. It appears to us that the solution of your difficulty would be to have either Mr. R or Mr. H qualify for the three-year term and the other qualify for the one-year term. They both, of course, cannot qualify for the same term and if it happens that both should demand to qualify for the same term, then by such action they have taken the position that both were aspiring for that particular term; then, because of the tie vote, it could be said that neither

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were elected for that particular term. In such an event the three-year term and the one-year term should go to the persons receiving the next highest number of votes; that is, Mr. G R, having received 29 votes, should be qualified for the three-year term, and Mr. I H, having received 23 votes, should be qualified for the one-year term.

If, however, either Mr. R or Mr. H should qualify and accept the three-year term and the other should accept the one-year term, then we believe that they are entitled to membership on the board because they received more votes than any other director except Mr. S.

It is therefore the opinion of this Department that since Mr. S was elected director and did not qualify, that it was proper for the board to appoint a member for a three-year term to fill the vacancy caused by his failure to accept the office. We further believe that if either Mr. R or Mr. H qualifies for the three-year term and the other qualifies for the one-year term, both are entitled to membership upon the board. We believe that if they refuse to qualify for separate terms and insist on qualifying for the same term, by such action they are in the same position as if they had previously announced that they were both running for the term which they seek to qualify for and since they received the same number of votes neither would be elected. In such an event, then we believe that the two directors receiving the next highest number of votes, to-wit, Mr. G R, who received 29 votes, and Mr. I H, who received 23 votes, would be entitled to membership of the board.

The same formality is not required in school elections as is required in other elections which are strictly governed by Statute. We believe, however, that the candidates should announce the term for which they aspire and that the ballots should be so prepared so that the voters would be advised. Since there seems to be no precedent that would aid us in the solution of your difficulty, we have tried to work it out on the theory that the will of the people who voted to elect the directors should be carried out in so far as possible. We, of course, do not know any of the parties involved and have no personal interest whatever, in reaching the conclusion which we have reached. If these suggestions to not solve your difficulty to the satisfaction of all concerned, then, of course, any one or more may resort to the courts to test out their right to become a member of this board.

Very truly yours,

APPROVED:

FRANK W. HAYES,
Assistant Attorney General.

Attorney General.