

COUNTY SUP'T. OF SCHOOLS: It is not duty of candidates to furnish the ballots; it is optional with the county court to furnish the ballots and any form that is acceptable to board of directors and chairman and secretary of annual school meeting may be used; would be proper for county court to supply ballots providing same has been anticipated in estimate under County Budget Act; if county court should furnish ballots, members would not be personally liable.

March 23, 1935.

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Hon. Joseph C. Crain,
Prosecuting Attorney,
Christian County,
Ozark, Missouri.

Dear Sir:

This department is in receipt of your letter of March 14 requesting information regarding the coming election of County Superintendent of Schools. Your letter is as follows:

"In the coming school election to be held on April 2, 1935, there is to be elected a Superintendent of Schools for the county. There are two candidates for this office in Christian County and there has developed considerable controversy as to the printing of the ballot and the form thereof.

One of the candidates insists that each candidate is to furnish his own ballots and that each candidate shall have a separate ballot. The other candidate prefers a common ballot with the name of both candidates thereon.

I would like an opinion from your office on the following questions: (a) Is it the duty of the county to furnish ballots for this election of County Superintendent of Schools? If so, is it to be printed at the expense of the candidates for this office, or at the expense of the county? (b) Is there any official form of ballot for this election, or is it the duty of each candidate to furnish his own ballot if the candidates cannot agree on any form?

The office of County Superintendent of Schools is of statutory origin and we must therefore be guided solely by the statutes creating the office in the matter of the election of a person to that office. Section 9454, R.S. Mo. 1929 states in part:

"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; ****"

Section 9455 is the guide for the election returns and the duty of the county clerk in connection therewith, and provides 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 10197, Article 2, Chapter 61, R.S. 1929, 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 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 receiving the highest number of votes, for which commission he shall receive a fee of one dollar to be paid by the person commissioned. ****"

It is to be noted that in Section 9455, supra, it is the duty of the county clerk to mail by registered letter to the clerk of the board of school directors a tally sheet, which should conform to the form used in the poll books. As to the ballots the section states: "The voting *** 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.****"

There is no statement in this section making it the duty of the county court, or the candidates themselves, to furnish the ballots, for the reason that it is made the mandatory duty of the officers in charge of the election to see that each ballot is counted for the person receiving the same; we therefore conclude that there is no special form of ballot required and that the officers in charge of the school district election may permit a voter to use any ballots which the officers in charge may select. The candidates themselves may offer a form of ballot, which, if accepted by the officers in charge of the school district election, might be used.

We cannot read anything in the statute which would prevent the county court, if it so desired, from supplying the ballots for the election, and in order to affect a uniform ballot, we believe it would be proper for the county court to supply the same, providing this has been anticipated in the estimate under the County Budget Act and especially Class 2 relating to costs of elections.

If the county court should furnish the ballots, we do not believe that it would involve them personally or make the members thereof in any wise personally liable. In other words, it is the opinion of this department that the county court may furnish the ballots if it so desires, or it may refuse to do so, the same being merely optional with them.

Under the statute creating the office of county superintendent of schools, there is no primary election, the election of a county superintendent of schools to be conducted along with and as a part of the annual school district meeting held in April, and the person receiving the highest number of votes, regardless of party affiliation, is declared elected to the office.

As stated above, we cannot read into the statute that any particular form of ballot is to be used. The duty of conducting the election in a legal manner is upon the members of the board of directors and the chairman and secretary of the school meeting. In the absence of fraud, it is the opinion of this department that the vote of any school district is legal regardless of the form of ballot, and again we say it is not the duty of the candidates to furnish the ballots. It is optional with the county court, if it desires so to do, to furnish the ballots and any form of ballot may be used so long as the same is acceptable to the members of the board of directors and the chairman and secretary of the annual school meeting.

We are enclosing herewith copy of an opinion recently rendered to the Hon. Mark Wilson, Prosecuting Attorney of Henry County, wherein the question of party platforms and tickets is discussed, and trust the same may be of benefit to you.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General.

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