

TOWNSHIP ORGANIZATION:
TRUSTEES:

1. Upon refusal and failure to qualify after being elected, the old board shall call another election
2. Old trustees shall continue to perform all duties until new trustees are elected and qualified.

June 6, 1942

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Hon. O. D. Algermissen
Mayor-Elect
St. Peters, Missouri

Dear Mr. Algermissen:

This is to acknowledge receipt of your letter of recent date wherein you request an opinion from this department based on the following statement of facts:

"May I beg to present a problem of ours in the Town of St. Peters, Missouri? The regular town election was held on April 7, 1942, and five new members were elected to the Board of Trustees. None of them appeared for qualification prior to twenty days following their election, although they were duly notified of same by U. S. Mail.

"Please advise what is to be done. Shall a new election be held? If so, what procedure shall be followed? Is the old Board of Trustees privileged to act in accordance with the duties of their offices until the newly elected officers are qualified and sworn into office? Could the same present board (that elected in April 1941) remain in office and act legally until time of the next annual election (April 1943) without endangering the forfeiting of the corporate charter?"

Section 7294, R. S. Mo. 1939, provides as follows:

"In case of the failure of any election of trustees or other officers, a majority of the trustees then in office, or any justice of the peace of the township in which said town or village is situated, may cause the election to be held on any other day."

It will be noted from the above section that the section contains the words "any election" and the words "the majority of the trustees then in office." From this wording, we are of the view that it is clearly the intent of the Legislature that where persons fail or refuse to qualify, as is indicated in the opinion request, having been duly elected at a regular annual election for that purpose, it is incumbent upon the trustees holding over in office to call another election. Further, if the trustees do not call an election, any justice of the peace of the township in which said town or village is situated may call the election.

It will be noted that Section 7296, R. S. Mo. 1939, provides in part as follows:

"* * * * or if the qualified electors of such village shall fail for one year to elect such trustees, then such village shall be disincorporated by the county court of the county where the village is located, upon the petition of any citizen residing in such village, after the publication of notice * * * *"

The above section is clear in its meaning as to the procedure that may be followed by the county court should a village fail to elect persons who will act as trustees.

From a review of the foregoing sections, we are of the opinion that the trustees who have held over shall call another election for the purpose of electing suitable persons who will qualify and act as trustees, or any justice of the peace in the township in which the village is situated may call the election, but it is our opinion the primary duty is upon the holdover trustees, for it will be noted the section uses the word "may" after the provision providing that a justice may act whereas the portion of the section referring to the trustees then in office is explicit in its meaning and directions to the trustees.

In giving notice for the election, Section 7288, R. S. Mo. 1939, provides as follows:

"The judges of election shall give public notice of the time and place of holding each election, by advertisement published in some newspaper published in their town, or by handbills put up in six public places in such town, not less than ten nor more than twenty days previous to the election."

The above section should be followed in giving notice for the election.

Now turning to the question, "Is the old Board of Trustees privileged to act in accordance with the duties of their office until the newly elected officers are qualified and sworn into office?"

Section 7244, R. S. Mo. 1939, provides as follows:

"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."

It will be noted that the above section clearly provides that a trustee who has been duly elected and has qualified shall hold office for the term of one year, and until a successor is elected and qualified. Therefore, the trustees that are now holding over in office shall perform each and every duty until a new board of trustees are elected and qualified and succeed them.

CONCLUSION

1. It is the opinion of this department that where newly elected members of a board of trustees of a village

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fail and refuse to qualify, it is incumbent upon the trustees of the old board to call another election, giving the notice as is provided in Section 7238, R. S. Mo. 1939, for the purpose of electing persons who will qualify and act as trustees for the ensuing year.

2. It is the opinion of this department that where persons are elected to a board of trustees, but who refuse and fail to qualify, the members of the old board of trustees shall continue to perform each and every duty until a new board is duly elected and qualified.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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