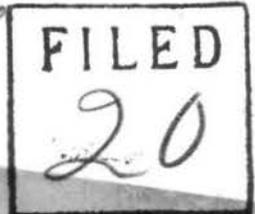


SCHOOLS: Four questions regarding elections under
Section 10484, R. S. Mo. 1939.

September 22, 1942

9-26



Mr. Lieu Cunningham, Jr.
Prosecuting Attorney
Camdenton, Missouri

Dear Sir:

We have your request for an opinion, which request
reads as follows:

"We have a Common School District in this County which has been trying for several years to annex to an adjoining Town School District, they hold special meetings or elections regularly, and each one is hard fought and they sometimes almost reach the violence stage. I have been requested to obtain an opinion from your office as to the conducting of such special meetings.

"First: There is no provision for judges of election, the meeting elects a temporary Chairman and a Secretary who preside over the meeting and certify the vote, however do they have the power to refuse the right to vote to voters who are not qualified voters or cast out improperly cast ballots?

"Second: They desire your opinion as to just who is a qualified voter at such a meeting.

"Third: They desire to know whether the filing of the petition provided for in Section 10,484, with the Clerk of the Board of Directors makes the calling of

the Special Meeting mandatory upon the Board.

"Fourth: Do the Statutes providing for the criminal prosecution of persons who make false statements to vote or vote knowing they are illegal voters of the District apply to such meetings and the persons attending?"

"I will greatly appreciate your opinion upon these matters in the near future, as the residents of the district are filing another petition for a Special meeting, and the election will no doubt be held in the next three weeks."

I

Section 10484, R. S. Mo. 1939, provides that the proposition of proposed annexation to a city or town district shall be submitted at a special meeting. Section 10361, R. S. Mo. 1939, provides how special meetings shall be organized in the following language:

"* * * and when assembled, the meeting shall be organized by the election of a chairman and a secretary, who shall keep a correct record of the transactions of the meeting, said record to be signed by the secretary, attested by the chairman, and filed with the district clerk, who shall enter the same upon the records of the district; * * * * *"

Section 10484, R. S. Mo. 1939, after providing for the calling of a special meeting, provides as follows:

"The voting at said special school meeting shall be by ballot, as provided for in section 10467, and the ballots shall

be 'for annexation' and 'against annexation,' when the whole district is to be annexed, but if only a part is to be annexed, the ballots shall read 'for release' and 'against release.'"

Turning to Section 10467, R. S. Mo. 1939, we find that the method of voting is prescribed as follows:

"* * * and each person desiring to vote shall advance to the front of the chairman and deposit his ballot in a box to be used for that purpose. When all present shall have voted, the chairman shall appoint two tellers, who shall call each ballot aloud and the secretary shall keep a tally and report to the chairman, who shall announce the result; and if a majority of the votes cast are 'for organization,' the chairman shall call the next order of business."

Section 10420, R. S. Mo. 1939, defines who are qualified voters at school elections on propositions presented at meetings (there are special qualifications on certain propositions which are not material to the question here), in the following manner:

"A qualified voter within the meaning of this chapter shall be any person who, under the general laws of this state, would be allowed to vote in the county for state and county officers, and who shall have resided in the district thirty days next preceding the annual or special meeting at which he offers to vote."

From the foregoing statutes we conclude that in order for a person to vote at school meetings he must possess the qualifications set forth in Section 10420. It must follow, that at such school meetings someone must determine who pos-

sesses those qualifications. If only qualified voters are permitted to vote, then there must be some way to determine who those qualified voters are. It will appear from the foregoing sections of the statutes that special meetings are organized by the election of a chairman and a secretary. No further provisions are made as to how the meetings shall be conducted thereafter, except that the chairman and secretary shall sign and attest the record of the proceedings. The school meeting is provided for by law, but the details of how it conducts itself are not set forth in the statute. The school meeting as thus assembled is a deliberative assembly and should proceed as any other similar body.

In the case of *Petrie v. Common School Dist. No. 5*, 255 Pac. 318 (Idaho), the court was considering the nature of a district school meeting which was provided for under statutes very similar to those quoted above. The court, l. c. 322, said:

"A reading of these sections of the statute leads to the conclusion that the annual school meeting was empowered by the Legislature to exercise the functions of a deliberative assembly, at which the qualified electors of the common school district might discuss and dispose of general questions pertaining to the school and its interests.
 * * * * *

We think the statutes contemplate that the school meeting shall be conducted under the supervision of the chairman. The natural procedure would be for the chairman to determine in the first instance who were the qualified voters at the meeting. If he found that someone offered to vote who, in his judgment, did not possess the legal qualifications, it would be his duty to refuse to allow such person to vote. If that person was dissatisfied with the ruling of the chairman, he could appeal to the meeting and obtain a vote of the members present as to whether he was entitled to vote. Of course, the decision of the meeting would prevail and ultimately determine whether the particular person was entitled to vote.

CONCLUSION

It is, therefore, the opinion of this office that at a meeting of the voters of a common school district, the chairman would have the right in the first instance to pass upon the qualifications of those offering to vote, but that his ruling would be subject to a majority vote of the entire assembly.

II

Under the answer to question one, we pointed out that the qualifications of a voter at a school meeting were set out in Section 10420 of the statutes. That section prescribes that voters at the school meetings must have the same qualifications as persons who are authorized under the general laws to vote in the county and state for county officers and who have resided in the district thirty days next preceding the annual or special meeting at which he offers to vote. The qualifications of voters under the general laws are found in Section 11469, which reads as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall be entitled to vote at all elections by the people: Provided, each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides: Provided further, no idiot, no insane person, and no person while kept in any poorhouse at public expense, except the Soldiers' Home at

St. James and the Confederate Home at Higginsville, or while confined in any public prison shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of a felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

CONCLUSION

It is, therefore, the opinion of this office that a qualified voter at a school district meeting is a voter who possesses the qualifications prescribed by Section 11469, R. S. Mo. 1939, and, in addition, has resided in the district thirty days next preceding the meeting at which he offers to vote.

III

Section 10484, supra, provides in part as follows:

"Whenever an entire school district, or a part of a district adjoining any city, town or village school district, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting for said pur-

pose by giving notice as required
by section 10418. * * * * *

It will be noted by the foregoing section that the calling of a special meeting to vote upon the proposition of annexing the district or a part of the district to a town or city school originates with the voters of the district desiring to be annexed. The board does not seem to have the authority to call a special election unless a petition is filed by the required number of qualified voters of such district. It therefore seems clear that when the required number of qualified voters present a petition to the board of directors it is mandatory upon the directors to call the special meeting. While we do not find any case in which our courts have passed directly upon whether the school board is required to call the special meeting upon receipt of the proper petition, yet we find that in the case of Farber Consolidated School District v. Vandalia School District, 280 S. W. 69, 71, the court, in passing upon the sufficiency of a certain annexation proceeding, said:

"It is provided in section 11252, Revised Statutes Missouri 1919, that city districts--and such are the Vandalia and Laddonia districts--may acquire the whole or a part of the adjoining districts on a successful vote. This election could be called for by ten or more citizens of the adjoining district, such as the Farber district here, which is to be attached. * * * * *"

We think the court clearly recognized that ten or more of the qualified voters of the district could call for the election.

CONCLUSION

It is, therefore, the opinion of this office that upon receipt of a proper petition provided for by Section 10484,

it is mandatory upon the board of directors to call a special meeting to consider the proposition of the proposed annexation mentioned in said petition.

IV

The next question is as to whether the statutes providing for criminal prosecution for illegal voting apply to illegal voting at special meetings of school districts under Section 10484.

No particular statutes are referred to, but we presume you have reference to Sections 4355 and 4356, R. S. Mo. 1939. Said sections read as follows:

"Sec. 4355. Fraudulent voting.--Every person who shall, at any election held in pursuance of the laws of this state, or of any city or other municipality thereof, vote more than once, either at the same or a different place, or shall knowingly cast more than one ballot, or shall vote at any such election knowing that he is not a qualified voter and is not entitled to vote, and every person who shall knowingly advise or procure any person to vote who is not entitled to vote, or shall knowingly advise or procure any illegal vote to be cast at any such election, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine of not less than fifty dollars, or by both such fine and imprisonment."

"Sec. 4356. Attempt to cast illegal vote.--Every person who shall attempt to vote at any election held in pursuance

of the laws of this state, or in any city or other municipality thereof, knowing that he is not entitled to vote at such election, shall be deemed guilty of a misdemeanor."

It will be observed that in Sections 4355 and 4356, supra, voting "at any election held in pursuance of the laws of this state" is referred to and covered. There is no question but what the school meetings and elections provided for by Section 10484 are elections held in pursuance of the laws of this state. Such elections are provided for by statute and could not be held without such statutory provisions. It would seem clear, therefore, that persons who vote knowing that they are not legal voters, or who attempt to vote knowing that they are not entitled to vote at such elections, would be guilty under these sections.

In the case of State v. Hingley, 52 Pac. 89 (Ore.) the court had before it the question of whether a defendant could be prosecuted for unlawfully voting at a legally authorized election when he was charged with voting illegally at a school election. The defendant was making the contention that a district school meeting was not such an election as was contemplated by the criminal statute against illegal voting. In passing on this contention the court said:

"The second question involves a construction and application of section 1846. 1 Hill's Ann. Laws, under which the indictment was drawn. It reads as follows: 'If any person shall vote, or offer to vote, at any legally authorized election in this state, knowing himself not entitled by law to vote thereat, or shall vote, or offer to vote, at any poll or in any precinct at any such election, knowing himself not entitled to vote at such poll or in such precinct, such person, upon conviction thereof, shall be punished,' etc. Is this statute broad enough to comprehend a school meeting held for the purpose of electing a

director and a clerk of the district in which such meeting is held? Section 2599, 2 Hill's Ann. Laws Or., authorizes the election of the officers named at such a meeting. They are to be selected by the electors qualified to vote thereat, as prescribed by section 2609, supra. This, within the authorities, constitutes an election. Bouv. Law Dict. tit. 'Elections'; Lathen v. Campbell (Kan. App.) 51 Pac. 931; 6 Am. & Eng. Enc. Law, 260. Section 1846, supra, which defines the crime and affixes the penalty, is found in the Code of Criminal Procedure, and was not enacted as a part of the election laws which govern general and special elections within the state, and is not restricted to such elections. It is a general statute, constituting it an offense for any person to vote at any legally authorized election, knowing himself not entitled by law to vote at such election. The election in question was legally authorized, and is therefore within the purview of the statute. * * *

We think the reasoning of the court in the foregoing case would apply equally to school meetings called under Section 10484.

CONCLUSION

It is, therefore, the opinion of this office that Sections 4355 and 4356, R. S. Mo. 1939, apply to special meetings of qualified voters called by virtue of Section 10484, R. S. Mo. 1939.

Respectfully submitted,

APPROVED:

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HHK:CP