

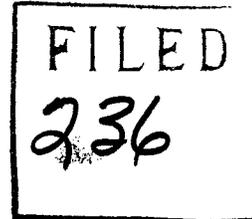
SCHOOLS:
ELECTIONS:

A board of directors of a six-director school district has no authority to prescribe rules governing the selection of candidates for election to membership on such board.

OPINION NO. 236

October 21, 1971

Honorable Carrol J. McCubbin
State Representative, District 123
Rural Route 3
Eldon, Missouri 65026



Dear Representative McCubbin:

This letter is in response to your request for an opinion of this office in which you ask the following:

"May political parties select the candidates for nomination for the board of education in a six-director school district and, if the opinion in reference to the above question is affirmative, does such selection preclude the filing of candidacy by any other person?"

"The above questions arise from a situation in which the Board of Education in a school district has set up in their rules and regulations a procedure whereby they permit the major political parties to select a nominee of their party as a candidate for each position on the Board of Education. These selections are made at a mass meeting held by each party. The names are placed on the ballot with no party designation; the aim being to provide one candidate from each party for each position on the Board of Education.

"In following this procedure only those who appear at the mass meeting have a voice in selecting the nominee and a candidate who desires to run who is not selected by the group at the mass meeting could be eliminated without a vote of the people of the district."

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We have examined the Missouri statutes and find no statute prescribing the procedure for nomination of candidates in elections of directors of such six-director school districts.

We further understand that the question centers upon whether the school board under its rule-making power can prescribe a mass meeting procedure whereby the two major parties at such a mass meeting each select their nominee or nominees. The procedure also allows for independent nominations by petition signed by the number of qualified voters in the district equal to eight percent of the largest number of votes received by any candidate in the last preceding regular school board election.

Section 171.011, RSMo 1969, with respect to the authority of the school boards to make rules and regulations states:

"The school board of each school district in the state may make all needful rules and regulations for the organization, grading and government in the school district. The rules shall take effect when a copy of the rules, duly signed by order of the board, is deposited with the district clerk. The district clerk shall transmit forthwith a copy of the rules to the teachers employed in the schools. . . ."

We find no Missouri or other case authority precisely in point on the question that you ask. However, the Missouri Supreme Court noted with respect to rules promulgated by such boards in Wright v. Board of Education of St. Louis, 246 S.W.43 (1922) 1.c. 45:

". . . Aside from other considerations which may properly regulate this discretion, is the fact that the public school system owes its existence and perpetuity to taxes drawn from the people; in a sense therefore the citizen may be said to have a proprietary interest in the system.

"This is true not only in a pecuniary sense in that he contributes annually to its support but on account of the advantages extended to his children, who, within the contemplation of the law, are entitled, without stint or distinction, to whatever rights and benefits the system affords.

"[2] The power of the board to make the rule in this case is to be considered prior to a

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determination of its reasonableness. The power delegated by the Legislature is purely derivative. Under a well-recognized canon of construction, such powers, however remedial in their purpose, can only be exercised as are clearly comprehended within the words of the statute or that may be derived therefrom by necessary implication; regard always being had for the object to be attained. Any doubt or ambiguity arising out of the terms of the grant must be resolved in favor of the people. . . ."

While we do not doubt the board's authority to regulate certain aspects of the conduct of such elections, not in question here, the procedure prescribed by the board in this instance vastly limits the selection of the voters at the election held pursuant to Section 162.371, RSMo 1969 to a limited few candidates who have already been chosen by a mass meeting of partisan groups or by petition.

It is our view that such a rule prescribing the method for the selection of candidates is not within the rule making power of the board and that this is so for the reason that the legislature has neither expressly nor impliedly authorized such a rule.

By comparison we note that statutes not applicable here such as Section 162.271, RSMo 1969 which deal with similar elections prescribe the method of nomination and selection of candidates.

In this instance the legislature has not seen fit to prescribe a method of nomination or selection of candidates and it is our view that the board of education has no power to do so. As a consequence, any person who is otherwise eligible should have the right to be a candidate and to have his name placed upon the ballot to be voted on in accordance with the provisions of Section 162.371.

CONCLUSION

It is the opinion of this office that a board of directors of a six-director school district has no authority to prescribe rules governing the selection of candidates for election to membership on such board.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General