

1902.

SCHOOLS—WHERE MEETING OF DISTRICT PRESIDENTS HELD TO ELECT MEMBER OF COUNTY BOARD OF EDUCATION—MORE SECRET BALLOTS THAN DISTRICTS ENTITLED TO VOTE—NO LEGAL ELECTION—HOW MEMBER ELECTED.

*On the statement of facts appearing in this case, at a meeting of the district presidents held to elect a member of the county board of education, where more secret ballots were cast than the number to which the districts were entitled, there would be no legal election and the district presidents should be called together again to elect a member of the county board of education.*

COLUMBUS, OHIO, March 9, 1921.

HON. J. F. VANDENBROEK, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion of this department upon the following statement of facts:

“In the election of members of the county board of education, as per section 4728-1, 104 O L., p. 136, the president of the board of education met to elect one of their number for member of the county board. There were present fifteen qualified electors. It developed two votes were cast by a school district other than village and city school districts within a civil township which, as per above section, entitled him to but one vote. At this election there were three candidates for board members, of which A. received eight votes, B. received five votes, and C. received three votes on the first four ballots cast. On the fifth ballot B. received nine votes which was a majority. Now then, as stated above, on school districts, if the township voting had cast its single instead of double separate ballots, A. would have been chosen, as both votes cast in the township were cast for B. Would the fact that affidavits were procured subsequent to the election, as to those voting in favor of A., have any bearing as to the proof of A's election, and if so what effect would it have on same?

1. Is B. a legal or de facto board member?
2. Is election void as to all candidates?
3. Can B. be ousted by quo warranto?
4. If election is null and void what procedure must be had to qualify on the board to fill the vacancy?
5. Is A. qualified to act as board member from the fact that both illegal votes were cast against him and if thrown out would leave A. with a majority on the first four ballots?”

In response to our request you submit the following additional facts:

“ \* \* \* there were present fourteen presidents and vice presidents of the boards of education, either qualified to act for their district or selected to act for the same, as set forth in section 4728-1, not considering the civil township casting the two ballots. There had been no meeting of the presidents of the boards of education in the latter district to decide who was to cast the vote for their district for county board of education. However, the president of the board having the largest tax valuation appeared and voted; also the president of another board of the same civil township.

The ballots cast were secret, but subsequent to the election affidavits were procured showing, as per the affidavits, the results which we think is of little or no value."

Pertinent sections of the statutes bearing upon this question are as follows:

"*Section 4728.* Each county school district shall be under the supervision and control of a county board of education composed of five members who shall be elected by the presidents of the various village and rural boards of education in such county school district. Each district shall have one vote in the election of members of the county board of education except as is provided in section 4720-1. At least one member of the county board of education shall be a resident of a village school district if such district is located in the county school district and at least three members of such board shall be residents of rural school districts, but not more than one member of the county board of education shall reside in any one village or rural school district within the county school district."

"*Section 4728-1.* All school districts other than village and city school districts within a civil township shall be jointly entitled to one vote in the election of members of the county board of education. The presidents of the board of education of all such districts in a civil township shall meet for the purpose of choosing one from their number to cast the vote for members of the county board of education. If no such meeting is held in any year for the purpose of choosing one from their number to cast the vote of such boards, the president of the board having the largest tax valuation shall represent all such districts of the civil township at the election of the county board members. A board of education of a rural district having territory in two or more civil townships shall vote with the boards of education of the districts of the civil township in which the greater part of its taxable property is located."

"*Section 4729.* On the second Saturday after the first Monday in January, 1920, and each year thereafter, the presidents of the various village and rural school districts in each county school district shall meet and elect one member of the county board of education for a term of five years, such term to begin on the third Saturday of January of the year of such election. \* \* \*"

"*Section 4730.* The call for the meeting provided for in section 4729 shall be issued by the county superintendent. The meeting shall organize by electing a chairman and clerk. The vote of a majority of the members present shall be necessary to elect a member of the county board. The member of the county board so elected, may or may not be a member or officer of any village or rural board of education. The result of the election of the member of the county board of education shall be certified to the county auditor by the chairman and clerk of the meeting, and a certificate of election signed by such chairman and clerk shall be mailed to the member so elected on the same day the meeting is held."

Reference to section 4728 shows that these presidents, representing the various districts entitled to vote, "shall elect" a member of the county board of education and the section does not provide as to whether this election shall be by roll call or by ballot. At the election in this instance, upon roll call of those qualified to vote instead of by secret ballot, this question would more than likely not have been raised because any illegal votes cast by roll call are easily discovered and their

individual legality questioned. But where the election is by secret ballot, the votes of all who are permitted to act are commingled together and in most instances thereafter there would be little opportunity to discover for whom any illegal vote might have been cast. It is true that this gathering of presidents from the various districts is not a school board but it would appear to be only proper that this gathering would take notice of the provisions of section 4752, governing their conduct in their own board of education, where officers are to be elected or appointed.

“Section 4752. Upon a motion \* \* \* to elect or appoint an officer \* \* \* the clerk of the board shall publicly call the roll of the members composing the board and enter on the record the names of those voting ‘aye’ and those voting ‘no.’ \* \* \*”

“A distinction in respect to secrecy is drawn between voting by ballot at general elections as opposed to voting *viva voce* in legislative bodies. In the latter case it is regarded as desirable that the individual’s vote should become a matter of public knowledge, while in the former the contrary result is preferred.” (Ruling Case Law—Elections, par. 64.)

In the election provided for in section 4728 G. C. for member of the county board of education, it must be remembered that it is the district which is voting through its representative and not the president or vice-president, who appears voting in his own individual capacity.

“It seems to me it was not the intention of the legislature to designate a particular person to act upon a particular matter, but rather, using the language of section 4728 G. C., that ‘each district shall have one vote’; that is, provided the district composing approximately an entire civil township, and if there was more than one board of education in a civil township, then the word ‘district’ seems to have included not only the individual school district, but the entire township, as a district entitled to one vote. (Opinion No. 173, Opinions of the Attorney-General, Vol. 1, p. 456, 1917.)”

The question really before us is whether an election would be legal where secret ballots were cast and on all ballots taken there appeared a number in excess of the legal votes that should be cast.

From your statement of facts it appears that there were fifteen qualified persons present to cast the vote of fifteen school districts entitled to one vote each. A majority of fifteen presidents qualified to vote would be eight votes. There appears to be no question about the right of fourteen of these presidents to cast fourteen of the votes, but there was a question as to the fifteenth vote representing the fifteenth district, because two persons appeared in behalf of that district, both being presidents in that district. In this particular township district the presidents of the board of education of such district did not call the meeting provided for in section 4728-1 for the purpose of choosing one from their number to cast the vote of that district. When no meeting of this kind is held for that purpose, section 4728-1 provides that the president of the district having the largest tax valuation shall cast the vote of such district. In your statement of facts you indicate that from this district there came the president of the board of education of the district, having the largest tax valuation. As no meeting had been held in that district to cast the vote of that district for member of the county board of education, then this president who came from the district having the largest tax valuation was the person qualified to cast the vote of that district, and the other president who appeared from such district had no right to cast any vote for member of the county board of education, and the

vote cast by this latter president is an illegal vote not representing any district at all under the law. But he was allowed to vote one of the secret ballots on all ballots taken, thus throwing the entire proceeding open to question.

In your statement of facts you indicate that A., on the first four ballots, received eight votes, B. received five votes and C. received three votes, making a total of sixteen votes cast, including the illegal vote appearing from the district under consideration. Beginning with the first ballot and continuing thereafter a false personnel in its total was allowed to mingle their secret ballots on every ballot taken. A. received eight votes, but if the illegal vote was cast for A. in order to give him these eight votes instead of seven, then A. did not receive eight legal votes participating in the election. In your statement of facts you say:

“If the township (district) voting had cast its single instead of double separate ballots, A. would have been chosen, as both votes cast in the township (district) were cast for B.”

However, there is little evidence to show this in a strict sense because the ballots would not show (if available) who cast any particular ballot in the sixteen permitted to vote. As long as the illegal vote appeared, no candidate had a true unquestioned total. The illegal vote might be here, it might be there.

It must be held, therefore, that there was no legal election for member of the county board of education in your county when more secret ballots were tabulated than there were districts legally represented, and the district presidents should be called together again to elect a member of the county board of education, as set forth in an opinion of the Attorney-General, appearing on page 696, Vol. 1, Opinions of the Attorney-General, 1916.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

1903.

TOWNSHIP TRUSTEES, NORWALK TOWNSHIP, HURON COUNTY,  
OHIO—CANNOT DISPOSE OF CERTAIN LANDS EXCEPT BY PRO-  
VISIONS OF SECTION 3281 G. C. OR BY SPECIAL ACT OF LEGIS-  
LATURE.

*The township trustees of Norwalk township, Huron county, Ohio, holding the title to lands by virtue of a special act of the legislature (72 Ohio Laws, p. 245), cannot dispose of same except under the provisions of section 3281 G. C., unless granted special authority by an act of the legislature.*

COLUMBUS, OHIO, March 9, 1921.

HON. ALLAN G. AIGLER, *Prosecuting Attorney, Norwalk, Ohio.*

DEAR SIR:—Your recent communication is as follows:

“We desire your opinion concerning the title to a certain parcel of land in Norwalk township, Huron county, which is to be used for county fair purposes by our newly organized agricultural society.

On the 30th day of March, 1875, a special act was passed by the legislature of Ohio, entitled ‘An act for the relief of Norwalk township, Huron county,’ and found in Vol. 72, page 245, Ohio Laws, which reads as follows: