

## Opinion No. 17-1973

April 10, 1917

**BY:** HARRY L. PATTON, Attorney General

**TO:** Mr. R. M. Jackson, Aztec, New Mexico.

In a School Election, Where a Vacancy Is to Be Filled, the Ballots Should Specify the Candidates for Such Unexpired Term. A Candidate Who Received a Majority for an Unexpired Term Is Elected Over a Candidate Who Received More Votes For a Full and Unexpired Term Together.

### OPINION

I am in receipt of your letter of April 7, asking an opinion upon the recent election of members of the Board of Education held in your town.

You submit two forms of ticket, numbered "1" and "2", respectively. The ticket marked No. 1, after the heading which designates the same as "Patron's Ticket," has a designation as to the number of the district and the County; after that, the words "Vote for five;" following the words quoted are five blank lines; following the blank lines, the following language appears: "The three candidates receiving the highest number of votes to serve the full term of four years. The two next highest for two years to fill a vacancy."

The ticket marked No. 2, after the heading and the designation of the district and County, the same as the other ticket, contains the following words: "Vote for five;" following this three blank lines; then, across the ticket below the third blank line, a heavy rule; then a blank line under which appears the following: "To fill unexpired term;" then another blank line, under which appears the following: "To fill unexpired term." At the bottom of the ticket appears the following: "Vote for three candidates to serve a full term of four years. Vote for two candidates to fill a vacancy for two years."

Section 4870, Code 1915, prescribes that the Board of Education of an unincorporated town or village shall consist of five members. Section 4871, Code 1915, reads as follows:

"4871. Election. The qualified electors of such town or village, and those residing within any portion of the territory subject to the jurisdiction of said board of education shall, on the first Tuesday of April, 1915, elect two members of the board of education, and on the first Tuesday of April, 1917, three members, and thereafter a regular election for members succeeding those whose terms expire, shall be held on the first Tuesday of April of each odd numbered year. Provided, that in towns incorporated under special acts, said election shall be held on the second Tuesday in April of each odd numbered year."

Section 4880, Code 1915, reads as follows:

"4880. Filling vacancies. The board of education shall have power to fill any vacancy which may occur in their body; Provided, That any vacancy occurring more than ten days previous to the election and having an unexpired term of one year, shall be filled at the first election thereafter; and the ballots and returns of elections shall be designated as follows: To fill unexpired term."

By referring to Section 4871, you may see that the election of three members of the board is provided for at the election held on the first Tuesday of April, 1917. Inasmuch as the board consists of five members, this would leave a vacancy of two members to be filled. Section 4880, as you may observe, provides for the filling of such vacancies by an election having an unexpired term of one year. The term of office of the two vacancies would not expire for two years. It follows that the same should be filled by an election. This section further provides that the ballots shall be designated as follows: "To fill unexpired term." In my opinion, ballot No. 2 substantially complies with the requirements of our statute as pointed out by me.

You call attention to the fact that Mrs. J. M. Thomas received four votes for the four-year term, and twenty-eight votes for the two-year term, aggregating thirty-two votes; that Mrs. Dora Hartman received thirty-eight votes for the four-year term and twenty-two votes for the two-year term, aggregating sixty votes. You say that Mrs. Thomas was declared elected. In my opinion, the decision of the election officers was correct. While it is true that more votes were cast for Mrs. Hartman for the two positions than were cast for Mrs. Thomas for the two positions, yet Mrs. Thomas received a plurality of six votes for the two-year term. I do not think that the votes cast for either candidate for the four-year term could avail them in this election. Neither received enough votes for the four-year term to elect her. Three other candidates received a plurality. I can conceive of how Mrs. Hartman could have been elected, had her supporters cast all of their ballots for her for one position only. It seems, however that they were divided; some preferred her for the four-year term and others for the two-year term, which, in my opinion, was equivalent to voting for her for two separate offices. As I have stated, I am of the opinion that the conclusion reached by the election officers is correct.