

Opinion No. 17-1976

April 13, 1917

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Hon. J. H. Wagner, State Supt. of Public Instruction, Santa Fe, New Mexico.

In a School Election, Ballots Must Designate Candidates for the Full Term and for Any Unexpired Term, and Ballots Which Contain No Such Designation Are Invalid and Cannot Be Counted.

OPINION

You have today asked for the opinion of this office respecting the result and validity of the recent election held in the village of Deming for members of the municipal board of education. You state that there were two tickets voted on at such election, and you furnish us with a sample ballot of each ticket. It appears from your statement that in addition to the three regular terms to be filled there was also an unexpired term. The sample ballots are as follows:

ELECTION TICKET CITIZENS TICKET
For Board of Education School
School District No. 1 District No. 1 and County
Four to Elect High School Board

J. G. Cooper FULL TERM
A. C. Raithel J. N. Cobb
Sam Watkins J. V. Schurtz
J. A. Mahoney Mrs. R. C. Hoffman

TO FILL UNEXPIRED TERM
W. A. McCreary

It will be observed that the "Election Ticket" contains four names without any designation of the three candidates for the regular term or for the one candidate for the unexpired term. On the other hand the ballot of the "Citizens Ticket" shows three names designated for the "full term," and one name designated "to fill unexpired term." You state that the "Election Ticket" received more votes than the "Citizens Ticket," but that the clerk of the school board is of the opinion that the "Citizens Ticket" must be declared elected. I think the opinion of the clerk is correct. Section 4880 requires that in the filling of a vacancy in the board of education by election, the ballot shall be designated "to fill unexpired term." There is nothing on the ballot of the "Election Ticket" to show which three of the four names were candidates for the full terms, or to show which one of the four was a candidate for the unexpired term and I know of no way in which their terms can be designated after the election. No one can say which three would be entitled to

the full terms, or which one is entitled to the unexpired term. It is a familiar rule of law that at elections where offices for different lengths of terms are to be voted on, ballots which do not designate the terms are void for uncertainty. The above rule was applied by the Supreme Court of Illinois in a case which was identical to the one we are considering. In that case there were two school directors to be chosen, one for a long term and one for a short term. A number of ballots contained nothing but two names without any designation of long or short terms. The court held such ballots insufficient to express the intention of the voter. The court said:

"Appellant contends that, as the only office to be filled at this election was school director, it was not necessary that the office should be designated on the ballot, to make the intention of the voter clear. It is plain, however, that if this contention were conceded, notwithstanding the statute requires such designation, it is still wholly uncertain which of the two persons whose names are on the ballot the elector intended to vote for, for the long term, and which for the short term. This choice could be determined only by the voter himself, as expressed by his ballot; and, when the ballot wholly fails to express the choice, it is void, and cannot be counted."

To the same effect is the case of Milligan's Appeal, 96 Pa. St. Rep. 222.

Applying this rule it appears that the "Citizens Ticket" was the only ticket which presented specified candidates for the positions to be filled at the election and, consequently, the only candidates who can be said to have received votes for positions to be filled are those which appear on the "Citizens Ticket."

The above is rendered on the assumption that the election was valid, but in your statement you indicate that you have some doubt as to the validity of the election because no notice of the election was ever published and only a scanty proclamation was posted by the clerk of the board. You further state that the only action for the conduct of the election was taken by the trustees in the village of Deming the night before the election, at which time they designated the polling places and appointed the judges. In spite of all the formal defects in the calling of the election, it is my opinion that the election was valid. In the first place it was a regular election, held at the time prescribed by statute. The filling of the vacancy was not a special election, but under the statute, also occurred at the time of the regular election. The general rule of law supported by the great weight of authority in this country is to the effect that when the time and place of holding regular elections are prescribed by statute, an omission to give the prescribed statutory notice will not vitiate an election held at the time and place appointed by law. In such case the provision for notice is considered as directory and not mandatory. The time and place being appointed by law, the electors are bound to take notice of the same and, therefore, derive notice from the statute. The purpose of the notice is merely to give greater publicity to the election, but the authority to hold it comes directly from the statute; if it were otherwise any public election might be defeated by the ignorance, carelessness or design of the officers whose duty it is to give the notice. This same rule applies to the filling of vacancies where the law directs, as in this case, that a vacancy should be filled at the next general election.

You also indicate that the judges were appointed by the trustees of the village. Our statute seems to indicate that judges in villages are to be appointed by the county commissioners. However, it is my opinion that the election would not be vitiated by the mere fact that the judges were named by the wrong appointing body. The rule of law applicable to this condition is that the election returns should not be rejected for any irregularity in the appointment of the officers of election, when it does not appear that any injurious result accrued therefrom, either by the reception of the illegal votes, or by the rejection of the legal votes, or that any of the candidates lost or gained votes thereby.

In view of the foregoing, it is my opinion that under the facts stated by you, the election was a valid one and the so-called "Citizens Ticket" was elected.