

SCHOOLS:
ELECTIONS:
COUNTY SUPERINTENDENT
OF SCHOOLS:
SCHOOL DISTRICTS:

Procedure for conducting elections for
the office of county superintendent of
public schools including transmitting
the returns thereof to the county clerk.

July 29, 1959

Honorable J. V. Conran
Prosecuting Attorney
New Madrid County
New Madrid, Missouri



Dear Mr. Conran:

We have received the request of April 13, 1959, for an opinion of this office, which request reads as follows:

"Will you please favor us with your opinion as to exactly how the election should be conducted in so far as election a County Superintendent of Public Schools is concerned? Our situation seems to be as follows:

"That in plenty of time prior to the annual school election, this Clerk contacted each school district to ascertain how many precincts would be used in their election and the maximum number of voters that could be expected to vote at each precinct. That during this procedure several of the districts brought up the question as to whether or not they could use our election supplies for recording their own elections for school board members, to which we replied that we had no objections so long as the county election was set out and one set of books and the ballots for this election were returned.

"That in due time prior to the election, this Clerk obtained two poll books, two tally sheets, return envelopes and other supplies. (This office taking the position that the 'tally sheets' mentioned in Section 167.020 would be identical to poll books and tally sheets in other elections). That not having access to the judges appointed, this Clerk had delivered to the clerks of the various school

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districts the supplies to be used in the county election.

"That the elections were duly held on the 7th., day of April, 1959, and returns were made to this office by the Judges and Clerks, or in some instances by the Members of the School Board, with the exception of one district, Reorganized School District R-6 (New Madrid), in which there was a factional row and in which the Board was advised by a local attorney.

"As to this latter mentioned district, the only returns received by this office (there being 4 precincts in the district) was the 'returns to county clerk', being a one sheet affair signed by the Judges and Clerks to the effect that the County Superintendent received so many votes; one unsealed envelope containing the ballots from one precinct; a second envelope containing unsealed ballots from the Kewanee precinct and so designated, the first mentioned one not being designated; the ballots from the large precinct, New Madrid having been declared to be lost or 'unaccounted for.' These open ballots were returned by the Superintendent of Schools and we do not know by what authority he became into custody of same.

"This school district failing to return the 'tally sheets' and the ballots within the 48 hour period, led this official to believe that it was his duty to appoint a messenger to demand the returns, which was issued and delivered to the Sheriff (a copy being hereto attached). This official assuming that it is the Chairman of the Board of Education's duty to see that he received such returns, especially since it provides a fee for him making the returns in Section 167.020. The Sheriff advised orally that he served such Writ but did not receive any returns, but has as yet made no official returns on the Writ.

"On Saturday afternoon, April 11th., 1959, this official, with two duly qualified voters

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proceeded to canvass such returns as were in his custody, declared the results and issued a commission accordingly, making note on the canvass that the R-6 returns had not been made, that demand was made for same, but that they had not been available.

"Officially that is the status of this election.

"Unofficially, the facts, as best I can gather them are that the school board conferred with a member on the staff of the State Board of Education who advised them I was not entitled to the poll books and tally sheets or 'tally sheets' as mentioned in Section 167.020, that the one sheet from the Judges and Clerks was sufficient for my purpose. Their attorney advised them likewise. Further that in the factional fight for membership on the school board, one candidate made demand after the county election was over, of the Clerk of the Board (who had custody of all the election supplies) to see three of the poll books, but was denied the privilege; then demanded to see the poll book the judge retained, and was also denied the privilege.

"The Board maintains that they are entitled to one of the poll books and tally sheets for their own use, that the other must be kept by one of the judges of the election, leaving the County Clerk in the dark, so to speak, even though the supplies were all furnished by the County of New Madrid. This side show, of course, is immaterial to this office, being strictly a district affair.

"Now it appears that the ball was fumbled somewhere along the line, and in order to see that the election of the County Superintendent of Schools is properly conducted in the future, we would like to know:

"First: Has this County Clerk proceeded properly in his duties, under the circumstances.

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"Second: Is the 'tally sheet' mentioned in Section 167.020, the same as a poll book and tally sheet set out in Section 111.510.

"Third: Is the Board of Education entitled to keep one 'tally sheet' and one of the Judges the other 'tally sheet' in this kind of election.

"Fourth: What returns are required to be made to the County Clerk to canvass and cast-up election, if any, and if so, whose responsibility is it to see that such returns are made to him.

"Fifth: If such returns, if any are required, are not made within the specified time, upon whom should the County Clerk make demand, assuming of course that he does not know what Judges and Clerks participated in the election.

"Sixth: Under the above set out circumstances, what violations have been committed and by whom, if any, especially as to making returns of the 'tally sheets', and what is the proper remedy after due demand is made and not complied with.

"Sections 167.020, 165.330, and 111.690 are all we can find on the subject, and the more we study it, the more confused we seem to be. It keeps talking relative to the 'chairman of the annual school meeting' making returns, and we can't decide who this would be, unless they are talking about rural districts, but in the other districts, the same wording appears.

"We would certainly appreciate some enlightenment for future elections, even if you have to spell it out for us."

Section 167.020, RSMo 1949, outlines, as far as it goes, the procedure to be followed in conducting the election of the county superintendent of schools, and enumerates the duties of the county clerk in connection therewith. The pertinent portion of the section applicable to the various issues raised in the request reads as follows:

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"1. * * * At least ten days before the annual school meeting in any year when a county superintendent of public schools is to be elected, the county clerk shall cause to be printed ballots with the names of the candidates who have filed declarations of their candidacy printed thereon in alphabetical order, said ballots to be substantially in the following form:

OFFICIAL BALLOT

Tuesday, April .. 19 ..

For County Superintendent of
Public Schools

(Vote for one by drawing a line through
all names except the one voted for)

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"2. The clerk of the county court shall cause to be delivered to the president or clerk of the board of school directors of the various districts of the county a sufficient number of ballots for the voters of the district and a tally sheet of sufficient size to contain the names of all the qualified voters of such districts, which tally sheets shall so far as practical conform to the form of poll book set out in section 111.510, RSMo 1949, relating to general elections; and in making the returns of such election, the tally sheets shall be certified by the chairman and secretary of such annual school meeting and attested by the members of the board of directors of the district, who may be present. The voting for county superintendent shall be by ballot and all ballots cast shall be counted for the persons for whom cast, and it is hereby made the duty of the members of the board of directors and the chairman and secretary of the annual school meeting to see that each ballot so cast is

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counted for the persons receiving the same, and it is hereby made the duty of the chairman of the annual school meeting, within two days after such meeting, to transmit the tally sheets and all ballots, in person or by registered letter, to the clerk of the county court; such ballots to be in a sealed package, separate and apart from such tally sheets, such package being properly designated. It shall be the duty of the county clerk, within five days after the annual school meeting, to call to his assistance two magistrates or two qualified voters of the county, and cast up the vote and issue a commission to the person receiving the highest number of votes, for which commission he shall receive a fee of one dollar to be paid by the person commissioned. A tie vote shall cause a vacancy in the office of county superintendent, which shall be filled by appointment by the governor, and the person so appointed shall hold such office till the next annual school meeting and until his successor is elected and qualified. In case a school district is divided by a county line, the county clerk shall transmit to the president or clerk of the board of directors of such districts two sets of tally sheets and the voters residing on each side of the line shall vote separately and returns shall be made to each county as herein provided. For transmitting the returns of such election, the chairman of the annual meeting shall receive the sum of one dollar to be paid out of the incidental fund of the district.

"3. The provisions of this chapter shall, so far as practicable, apply to village and city elections so far as affects the election of county superintendent of public schools and so far as not conflicting with existing laws, which are sufficient to safeguard such elections. Any person, upon whom there is imposed an official duty by this chapter, and who shall violate any of the provisions herein, shall be deemed guilty of a misdemeanor and,

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upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment."

We note from the facts as set out in the request, that the county clerk sometime prior to the date of the county superintendent of school's election told officers of various school districts that the election supplies furnished by the county clerk in connection with the county superintendent of school's election could be used to record the results of the district elections. It would appear that this is the underlying reason for the difficulties encountered in obtaining the returns of the county superintendent of public school's election.

Section 167.020, supra, requires the county clerk to furnish to the president or clerk of the school board of the various districts in the county printed ballots and a tally sheet for use in the county superintendent of school's election. This section does not endow the county clerk with authority to grant permission for the supplies furnished by him to be used in the county superintendent of school's election to record the results of the school district election. Likewise, we are unable to find any other statute that confers such authority upon the county clerk.

162,341
162,361
162,371

There is no provision in Section 165.330, RSMo 1949, said section outlines the procedure for conducting elections in city, town, and consolidated school districts, as to who shall be custodian of the poll books used in a district election. However, that section does provide that the secretary of the school board shall make out and furnish the poll books, and further provides that the judges and clerks of the election shall certify the results of the election to the secretary of the school board. Therefore, it would appear that the poll books used in the district election should remain in the possession of the school board after the election is over. In view of the fact that the county clerk authorized the use of the tally sheets in recording the results of the district election, we can see how the secretary of the school board, in this instance, would assert a right to retain possession of the tally sheet.

Section 111.690, RSMo 1949, which applies to elections in general, and which we hold later on in this opinion to be applicable to school elections, provides that the judges of the

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election shall transmit one poll book to the county clerk and retain possession of the other poll book. Inasmuch as the judges of the election used the tally sheets provided by the county clerk to record the results of the district election as well as the results for the voting of the county superintendent of schools, we can understand why the judges would claim a right to retain possession of one of the tally sheets.

(1) The opinion request contains an inquiry as to whether the county clerk proceeded properly in the exercise of his duties with respect to the last county superintendent of school's election.

The duties of the county clerk as set out in Section 167.020, supra, are as follows:

- a. Cause the ballots containing the names of the candidates for county superintendent of schools to be printed at least ten days before the annual school meeting, said ballots to conform substantially to the form set out in the section.
- b. Cause to be delivered to the president or clerk of the board of directors in the various school districts a sufficient number of ballots for the voters of the district and a tally sheet of sufficient size to contain the names of all the qualified voters of such districts, the tally sheet to conform to the form of the poll book set out in Section 111.510, RSMo 1949, relating to general elections.
- c. Receive the tally sheet on which had been certified the results of the voting and the ballots from the chairman of the annual school meeting.
- d. Within five days after the annual school meeting to call to his assistance two magistrates or two qualified voters of the county, and cast up the vote, and issue a commission to the person receiving the highest number of votes.

Based solely upon the information furnished in the request, it would appear that the county clerk carried out all of the duties, expressed and implied, required by Section 167.020, supra, with one exception, which will be discussed hereinafter.

With respect to the issuance of the demand for the tally sheets and ballots, it would appear that the county clerk acted in accordance with the statute requiring same.

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Section 111.010, RSMo 1949, provided as follows:

"The provisions of this chapter which apply to all the election precincts in this state, but shall not apply to township or village elections, to school elections, or to any city elections in cities of the fourth class or of any cities under three thousand inhabitants existing under any special law."
(Emphasis ours).

This department, in interpreting Section 111.010, supra, concluded that by its provisions, Chapter 111, RSMo 1949, in its entirety, was inapplicable to school elections. However, in 1957 Section 111.010, supra, was repealed and Section 111.625, RSMo Cum. Supp. 1957, was enacted by the legislature. Section 111.625 reads as follows:

"The provisions of sections 111.390 to 111.620 apply to all election precincts in this state but do not apply to township or village elections, to school elections, to any city election in a city of the fourth class or to any election in any city of less than three thousand inhabitants existing under any special law."

e.s. 111.621

With the repeal of Section 111.010, supra, it is our opinion that Chapter 111, RSMo 1949, except for the exclusions contained in Section 111.625, supra, now applies to school elections, unless there is some special provision elsewhere which is contrary thereto. As Section 111.690, supra, is not within the exclusions contained in Section 111.625, and is not by its own terms limited to a certain election, it is proper, and the county clerk is required to send the sheriff or another duly authorized messenger for the tally sheets and ballots if they are not returned to him within the two day period specified in Section 167.020, supra, for so doing. The only problem being the determination of the person or persons upon whom demand should be made, since the language used in Section 167.020, supra, clearly refers only to common school districts, and the procedure to be followed in city, town, or consolidated school districts is not set out.

As the question of the procedure to be followed in city, town, or consolidated districts has been raised in inquiries 4 and 5 of the request, we will discuss the matter fully when we consider those inquiries.

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As to the exception noted hereinabove with respect to the county clerk's failure to properly perform the duties of his office, we would like to point out that when the returns and ballots were not received within the two day period, and were not turned over to the sheriff when the county clerk sent him to pick them up, it would appear that it is the duty of the county clerk to notify the prosecuting attorney that the law has not been complied with. It would then be up to the prosecuting attorney to take the proper legal action to obtain the returns and ballots. There is no indication that the county clerk so notified the prosecuting attorney in this instance.

(2) There is an inquiry as to whether the tally sheet, referred to in Section 167.020, supra, is the same as the poll book and tally sheet set out in Section 111.510, supra.

That portion of Section 167.020 which requires a county clerk to provide tally sheets to be used in the election of the county superintendent of schools reads as follows:

"2. The clerk of the county court shall cause to be delivered to the president or clerk of the board of school directors of the various districts of the county, a sufficient number of ballots for the voters of the district and a tally sheet of sufficient size to contain the names of all the qualified voters of such districts, which tally sheets shall so far as practical conform to the form of poll book set out in Section 111.510, RSMo 1949, relating to general elections; * * *"
(Emphasis ours).

From the language used in that portion of Section 167.020, set out directly above, it would appear that the tally sheet mentioned therein need not be identical to the form of the poll book set out in Section 111.510, but should follow that form as nearly as possible.

Therefore, in answer to the inquiry, it is our opinion that the tally sheet mentioned in Section 167.020, supra, is the same as the poll book set out in Section 111.150, supra, except that changes in the wording should be made so as to make it practical to use in the election of the county superintendent of schools.

(3) The request contains an inquiry as to whether the board of education is entitled to keep one tally sheet and one

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of the judges the other tally sheet in this kind of an election.

Section 167.020, supra, requires the county clerk to furnish a tally sheet of sufficient size to contain the names of all the qualified voters of the district. It is further provided in the section that in making the returns, the tally sheet shall be certified by the chairman and secretary of the annual school meeting and attested by the members of the board of directors who may be present, and it is made the duty of the chairman to transmit the tally sheets and ballots to the county clerk.

Section 111.500, RSMo 1949, which relates to elections in general, requires the county clerk to provide poll books for each election precinct in the county, and it specifies that two poll books shall be furnished.

From the language used in Section 167.020, supra, and in comparing that section with Section 111.500, supra, it would appear that for the election of the county superintendent of schools, the county clerk is required to provide only one tally sheet for each voting place, and that tally sheet is to be returned to the county clerk with the results of the voting certified thereon. While Section 167.020 relates only to the procedure to be followed in common school districts, we believe that only one tally sheet should be furnished for each voting place in a city, town, or consolidated school district, and that the judges of the election should transmit the tally sheet, along with the ballots, to the county clerk, as will be discussed more fully hereinafter.

(4) The opinion contains an inquiry as to what returns are required to be made to the county clerk to canvass and cast up the election, and who is responsible to see that the returns are made to the county clerk.

Section 167.020, supra, by making reference to the chairman and secretary of the annual school meeting is, by its very language, applicable only to the common school districts as to the procedure to be followed in electing the county superintendent of schools. The statute specifically provides that the chairman and secretary of the annual school meeting shall certify the returns on the tally sheet furnished by the county clerk, and that the chairman has the further responsibility of seeing that the tally sheet and ballots are returned to the county clerk.

As to the town, city, and consolidated districts, we have been unable to find a statute which specifies how the returns

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in the election of the county superintendent of schools are to be made, and which places the responsibility on any person or office to make such returns. Likewise, we have not found any cases in which the courts have been called upon to consider the problem of how the returns in such districts are to be made and who has the responsibility of transmitting them to the county clerk. Section 167.020, supra, as pointed out above, is applicable only to common school districts with respect to the procedure for making returns and vesting the duties therefor.

The manner in which elections in city, town, and consolidated school districts shall be conducted is governed by Section 165.330, supra. The portion of that section which is pertinent to our discussion herein reads as follows:

"1. The qualified voters of such town, city or consolidated school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place or places within the district as the board may designate, beginning at seven o'clock a.m. and closing at six o'clock p.m. of said day. The board shall appoint three judges of election for each voting place, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers and the result thereof certified by the judges and clerks to the secretary of the board of education, who shall record the same, and, by order of said board, shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records." (Emphasis added).

Nowhere in Section 165.330, supra, has the legislature in any way mentioned how, or by whom, returns of the voting for the office of county superintendent of schools shall be made. The only provision pertaining to the reporting of results of election held in such a district is that portion which requires the judges and clerks to certify the results to the secretary of the board of education, who shall record same and by authority

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of the board issue certificates of election to the persons entitled to receive them. There is no mention of transmitting the results of the voting for the office of the county superintendent of schools to the county clerk.

Section 111.690, supra, which pertains to elections in general provides that:

"At the close of each election the judges shall transmit one of the poll books by one of their clerks or by registered mail by their discretion to the clerk of the county court in which the election was held within two days thereafter; * * * the other poll book shall be retained in the possession of the judges of the election open to the inspection of all persons; * * *"

As we have concluded hereinabove that this section is applicable to school elections, it is our conclusion, until such time as the legislature shall enact legislation filling the void in the law as to who has the duty to make the returns of the election of the county superintendent of public schools to the county clerk, that the judges of the election are responsible for transmitting the returns to the county clerk.

This conclusion is further borne out by the fact that Section 111.255, RSMo Cum. Supp. 1957, provides that all elections held in a subdivision on the same day are to be held at the same polling place with the election officials at that polling place to be charged with the responsibility of conducting all elections. This section reads as follows:

"Notwithstanding any other provisions of law, whenever any primary, general or special elections, or elections held by any school district, fire protection district, sewer district, municipalities, or other political subdivision of the state, are held upon the same day in any political subdivision, one polling place for the several elections in each precinct, consolidated precinct or district in the political subdivision shall whenever feasible be designated by the county clerk, board of election commissioners, or other proper election official, having authority over general elections in the political subdivision and the election officials in the polling places shall be designated by the county

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clerk, board of election commissioners or other proper election official and shall be compensated for one election only. Any person failing or refusing to comply with the provisions of this section is guilty of a misdemeanor."

(5) The request makes inquiry as to whom the county clerk shall make demand upon if the returns are not made within the specified time.

Section 167.020, supra, definitely makes it the duty of the chairman of the annual school meeting to transmit the tally sheet upon which the results of the voting for the office of county superintendent of schools has been certified, together with the ballots, to the county clerk within two days after the meeting. Therefore, where a common school district is involved, the demand should be made upon the chairman of the annual meeting.

As pointed out hereinabove, the legislature has neglected to specifically place the duty upon any person or office in a town, city, or consolidated school district to transmit the tally sheet, upon which the results of the voting have been certified, together with the ballots, to the county clerk. However, as we concluded in inquiry number 4 above, that until the legislature shall enact legislation to provide the procedure to be followed in city, town, and consolidated school districts in electing a county superintendent of public schools, we are of the opinion that Section 111.690, RSMo 1949, is applicable and that it is the duty of the judges of the election to transmit the tally sheet and ballots to the county clerk. Therefore, when a town, city, or consolidated school district is involved, the demand should be made upon the judges of the election. = 111.551

CONCLUSION

Therefore, it is the opinion of this department that:

(1) The county clerk does not have authority to grant permission to school districts to use the tally sheet provided by him for use in the election of the county superintendent of schools to record the results of the school district election.

(2) The duties of the county clerk in connection with the election of the county superintendent of schools are outlined in Section 167.020, RSMo 1949, and Section 111.690, RSMo 1949, and are as follows:

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(a) Cause the ballots to be printed at least ten days before the day of the election.

(b) Cause printed ballots and tally sheets to be delivered to the president or clerk of the board of education of the various school districts.

(c) Receive the election returns from the various school districts.

(d) Within five days after the election cast up the vote and issue a commission to the person receiving the highest number of votes for the county superintendent of schools.

(e) If returns of the election are not received within two days following the election, send the sheriff or another duly authorized messenger for the returns, and if the sheriff or other duly authorized messenger is not able to obtain the returns, then notify the prosecuting attorney that the law has not been complied with.

(3) The tally sheet mentioned in Section 167.020, RSMo 1949, is the same as the poll book set out in Section 111.150, RSMo 1949, except that changes in the wording should be made where necessary to make it practical to use in the election of the county superintendent of public schools.

(4) The county clerk is required to furnish only one tally sheet for each voting place, and this tally sheet must be returned to the county clerk with the results of voting certified thereon.

(5) The returns for the election of the county superintendent of schools are to be made upon the tally sheet furnished by the county clerk. It is the duty of the chairman of the annual school meeting in a common school district to transmit the returns from the county clerk while in a city, town, or consolidated school district the returns are to be transmitted to the county clerk by the judges of the election.

(6) If the results of the voting for the office of the county superintendent of schools are not received by the county clerk within two days following the election, as required by Section 167.020, supra, the county clerk should send the sheriff or another duly authorized messenger for the tally sheets in accordance with Section 111.690, RSMo 1949. In a common school district the sheriff or duly authorized messengers should

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present the demand to the chairman of the annual school meeting, while in a town, city, or consolidated school district the demand should be presented to the judges of the election.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Calvin K. Hamilton.

Yours very truly,

John M. Dalton
Attorney General

CKH/mjb