



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Sam L. Harrison  
Criminal District Attorney  
Robertson County  
Franklin, Texas

Dear Sir:

Opinion No. O-3094

Re: The election of a school trustee under the stated facts.

We are pleased to comply with your letter of July 2, 1941, pertaining to a school trustee election. We quote as follows therefrom for the factual background to your request:

"There was one name on the official ballot, that I'll designate by using the letter 'A', who held a poll tax receipt.

"The name of 'A' was scratched off and the name of 'B' written on. 'B' did not have a poll tax receipt.

"A poll tax list was not furnished the election judges:

"'A' received 2 votes:

"'B' received 8 votes:

"When 'B' attempted to be sworn in, the Co. Supt. would not swear him in.

"'A' was sworn in by the Co. Supt.

"Please give information on the above."

You seek our opinion upon the status of this election. We assume that the election was one for trustee of a

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common school district. We also assume that candidate "B" was not exempt from the payment of a poll tax.

Under Article 2745, Revised Civil Statutes of Texas, a person is disqualified from serving as a trustee of a common school district if he is not a qualified voter in the district. Opinions No. O-425 and No. O-3554 by this department.

Candidate "B" was not a qualified voter and was ineligible for the office. However, he received a majority of the votes cast at the election. Candidate "A" therefore was not elected to the office. Opinion No. O-2632-A and Opinion No. O-3024 by this department.

Votes cast for an ineligible candidate must be taken into account in determining whether or not his opponent received a majority of the votes cast. Allen v. Fisher, 118 Texas 38, 9 S. W. (2d) 731.

Since candidate "B" was elected but is not eligible, and candidate "A" was not elected although eligible, it is our opinion that there is a vacancy in the office. See Opinion No. O-3024. Pertaining thereto, Article 2745, supra, provides:

" . . . All vacancies shall be filled by the County Board of Trustees for the remainder of the term in which the vacancy occurs. . . ."

Each of the opinions by this department mentioned above contain a more exhaustive discussion of these questions. They are enclosed herewith for your further information.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

*Zollie C. Steakley*  
Zollie C. Steakley  
Assistant

APPROVED JUL 25, 1941

*Frank Miller*  
FIRST ASSISTANT  
ATTORNEY GENERAL

ZCS:lh.

ENCLOSURES

