



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. M. Allen
County Auditor
Hunt County
Greenville, Texas

Dear Sir:

Opinion No. 0-2196

Re: If a school trustee is elected who is disqualified, is the man who received the next highest vote elected, or should the county board appoint a trustee?

We have given our careful consideration to the question stated above as requested in your recent letter.

We presume your question has reference to a trustee of a common school district. The election of such a trustee is provided for by Article 2745, Revised Civil Statutes, as amended by the Acts of 1929, 2nd Called Session, Chapter 2 (Vernon's Annotated Civil Statutes, Article 2745). Said article further provides:

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

In addition, provision is made by the terms of Article 2747, Revised Statutes, for the removal of a trustee who may be elected or appointed, who does not possess the qualifications prescribed by law. In the event of such disqualification and removal, the statute directs the county board of education to fill the vacancy in such office by "appointing a suitable person qualified by law to act as trustee until the next regular election of school trustees for such district." See State ex rel. Nevills v. Sanderson (Tex. Civ. App.), 88 S. W. (2d) 1069.

With reference to the right of the candidate polling the next highest vote in the election wherein an ineligible person received the first choice of the electors, we quote the following from 20 Corpus Juris, § 267, p. 207:

Honorable J. M. Allen, Page 2

"It is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried, unless he or it receives a majority or a plurality of the legal votes cast in the election. The fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving the next highest number of votes to be declared elected; in such case the electors have failed to make a choice and the election is a nullity."

Therefore, you are respectfully advised that the county board of education should appoint a suitable person to fill the office of school trustee, and that in an election wherein the first choice of the voters is a disqualified person, the second choice is not to be deemed as elected.

It may be that your question had reference to a member of the county board of trustees. If so, our answer is the same as above stated, by virtue of the language of Article 2676, Revised Civil Statutes, as amended, Acts 1934, 2nd Called Session, Chapter 48, to the effect that all vacancies on the county board shall be filled by the remaining trustees.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Benjamin Woodall

By

Benjamin Woodall
Assistant

APPROVED APR 29, 1940

BW:RS

Gene E. Mann
ATTORNEY GENERAL OF TEXAS

