

SYLLABUS

OPINION NO. 30-378. SCHOOLS (SEE OPINION NO. 383)—TERM OF OFFICE OF PERSONS APPOINTED SCHOOL TRUSTEES.

INQUIRY

Carson City, July 14, 1930.

Your opinion is desired regarding the following statement of facts:

At the last general election J. W. Treat, deceased, was elected for long term member of the Lander County Board of Education. Mr. J. W. Treat died on January 3, 1930, and just recently Walter W. Anderson, Superintendent of Public Instruction, appointed Jasper Vail to the vacancy. I do not know how the appointment was worded, but presume that it was worded as provided for in section 178 of the School Code, that is, for the "unexpired term."

Question: Does Jasper Vail hold his office until January 1, 1933, or will he have to run for election this fall?

From a reading of your Opinion 117 as the same appears in your Biennial Report, 1923-1924, and Opinion 137, it is my own opinion that Mr. Vail holds office until January 1, 1933, but, in view of the fact that the same may be questioned, I desire your official opinion on the above question.

OPINION

When Opinion No. 117 was written, section 64 of the School Code contained different provisions than those contained in the present School Code. Under section 64 as enacted by the Legislature of 1925, Statutes of Nevada, p. 168, the statute specifically provides that "The term of office of any trustee appointed by the Deputy Superintendent shall not extend beyond the first Monday in May following the next regular school election."

It is my opinion, therefore, that Mr. Vail would be governed by these provisions of the law, and that his term would not extend until January, 1933.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Howard E. Browne,
District Attorney,
Austin, Nevada

SYLLABUS

OPINION NO. 30-379. Referendum—Signer's of Petition Withdrawal of Name—Determination of Qualification of Signers—Moot Questions.

- (1) Signers of referendum petition may not withdraw.
- (2) Secretary of State has no authority to pass on qualifications of signers of such petition.
- (3) Moot questions cannot be determined.

INQUIRY

Carson City, July 14, 1930.

Under date of July 5, Mr. L. C. Branson filed with the Secretary of State a referendum petition aimed at the repeal of chapter 99, Statutes of Nevada, 1923, the same being the statute under which this Commission was created and now operates. The filing of this petition has raised several points on which we should appreciate your opinion, as follows:

- (1) Can the signers of this petition withdraw their names?
- (2) Can this petition as a whole be declared invalid on the basis that some of the signers are nonelectors and, in fact, aliens, even though it carries enough other signatures of bona fide electors to supply the number legally required on such a petition?
- (3) If the petition as filed with the Secretary of State is carried at the next general election and chapter 99, Statutes of Nevada, 1923, is repealed by vote of the people, will chapter 155, Statutes of Nevada, 1921, be automatically revived and become effective?
- (4) If the petition in question is successful and chapter 99, Statutes of Nevada, 1923, is repealed at the next general election by vote of the people, can the 1931 Legislature pass a new Act covering the same ground and along the same general lines?

OPINION

(1) Answering question No. 1, the Supreme Court of this State in the case of *State v. Scott*, 285 P. 511, held that, under the provisions of our law, voters who sign petitions cannot legally withdraw their names from such petitions. Quoting from a decision by the Supreme Court of Iowa, our Supreme Court concluded that jurisdiction attached on the day when the legal petition was filed. It further concurred in the ruling that "The power to act having been conferred upon the board by virtue of the legal petition, it could not be impaired or taken away by the protests or demands to withdraw the same of the petitioners."

(2) In answer to your second question, the Supreme Court of this State in the case of *State v. Glass* held that, if the petition had annexed to it the legal number of names, together with the affidavit required by law, the party designated by the statute to receive the petition was but a ministerial officer who had no authority to exercise judicial discretion in determining whether or not the names appearing thereon are aliens or nonelectors.

As to whether or not the sufficiency of the petition may be attacked by court proceedings is not a matter for me to determine.

The Secretary of State, if the petition appears to be in due form, has no discretion but to file the same and, if he is not prevented by court action from placing the same on the official ballot, the matter will be submitted to the voters for decision.

Respecting the questions enumerated under your third and fourth queries, the same are moot questions and are based upon a contingency that may or may not happen. This office, in accordance with its established custom, for the reason that the questions are moot, cannot render a decision upon the matters presented until such time as the matters submitted can be considered existing public questions that must be determined.

Respectfully submitted,

M.A. DISKIN,
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