

SYLLABUS

OPINION NO. 31-42. SCHOOLS—RECALL OF SCHOOL TRUSTEES—SUFFICIENCY OF RECALL BALLOT.

1. Ballot should contain a statement of the officer who is being subjected to recall election in justification in his course of action (section 9, article 2, Constitution of Nevada).
2. Where the officer is misled as to his rights concerning the statement, the election is illegal.

INQUIRY

Carson City, July 14, 1931.

Ballot used in recall election recalling School Trustees, failed to have printed thereon such Trustee's justification of his course in office as is provided by section 9, article II, Constitution of Nevada, notwithstanding that the ballot contained the recall petition verbatim, setting forth the reasons for the recall of the Trustee. The School Trustee in question was advised by the Clerk of the Board of Trustees, in writing, of the fact that a recall petition had been filed and that "the law provides that, if you do not offer your resignation within five days from the filing of this petition, a special election shall be ordered." Later, and before the printing of the ballot, the said Clerk advised the Trustee that nothing but the names of Trustee sought to be recalled and the candidates for such office would appear on the ballot, thereby misleading the Trustee in question relative to his justification. A recall election was held, using the ballot aforesaid, and resulted in a recall.

1. Were the constitutional rights of the Trustees in question, with respect to his right to have printed on the ballot his justification of his course in office, invaded?
2. Was the recall of the School Trustee in the recall election above stated a legal recall?

OPINION

Answering query No. 1. From a reading of the foregoing statement, it is apparent that the School Trustee in question was not properly advised concerning his right to have printed on the ballot used in the school district recall election a statement justifying his course in office. Of course, it may be said that ignorance of the law excuses no one; but, where it appears that such officer was not advised as to his right to set forth to the electorate his reasons for his course of conduct in office in opposition to the reasons set forth for his recall, even though the person advising such officer or rather, failing to advise such officer of his rights did not do so intentionally, still sufficient appears in the statement to indicate that the School Trustee was undoubtedly misled and thereby deprived of a constitutional right to set before the people directly interested reasons which might have changed the result of the election.

Section 9, article II, Constitution of Nevada, provides for the recall of public officers in the State of Nevada, including members of the Boards of School Trustees, and, in this section, is contained a mandatory provision, to wit: "On the ballot at said election shall be printed verbatim, as set forth in the recall petition, the reasons for demanding the recall of said officer, *and in not more than two hundred words, the officer's justification of his course in office.*"

It seems to us, providing the above-mentioned statement is correct, that the Clerk of the Board of School Trustees in this matter signally failed to fully apprise the Trustee of this constitutional provision. Whether such failure was intentional is beside the question, if it did result in the Trustee in question being misled as to what would really appear on the ballot; and, if such Trustee was misled by the statement of the Clerk and by reason thereof failed to have incorporated on the ballot used at the election his reasons for the conduct in office complained of, then, unquestionably, the ballot used at such election was an illegal ballot and did invade the constitutional right of the Trustee in question.

In this connection, we desire to call attention to section 4867, Nevada Compiled Laws 1929, which is section 4 of "An Act to provide for the recall of public officers in the State of Nevada,"

and particularly to the last four words of such section, the same being as follows: "if furnished by him." I may be that this particular statute was consulted in the proceedings leading up to the recall election in question, and the particular words quoted relating to the officer, subject of the recall election, may have influenced the Clerk of the Board of Trustees and caused him to believe that it was incumbent upon said Trustee to furnish a statement to be placed upon the ballot. We do not believe that this last matter would be a justification for the failure to include the recalled officer's statement on the ballot, for the reason that the constitutional provision mentioned above is self-executing and does not contain the qualification mentioned in the statute. The constitutional provision in this particular matter, being self-executing, must control.

Answering query No. 2. For the reasons contained in the opinion rendered in answer to question No. 1, above set out, it is our opinion that the recall of the School Trustee in question was not a legal recall.

Respectfully submitted,

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SYLLABUS

OPINION NO. 31-43. LABOR LAWS AND ALL CIVIL LAWS OF THE STATE OF NEVADA—THEIR FORCE AND EFFECT WITHIN THE SO-CALLED "BOULDER CANYON PROJECT FEDERAL RESERVATION."

1. The Nevada labor laws, tax and revenue laws, Industrial Insurance Act, State Mine Inspector's Act, Public Contractors' Action, and all other civil laws of the State of Nevada still apply and should be enforced within the so-called "Boulder Canyon Project Federal Reservation."

2. Criminal laws of the State of Nevada should also be enforced, inasmuch as the reservation was not legally created and established.

INQUIRY

Carson City, July 21, 1931.

We have your letter of July 16, 1931, as follows:

"We would appreciate your opinion as to whether or not the labor laws of this State are in full force and effect on work in connection with the construction of Hoover Dam and appurtenant works since the filing of a map in May, 1931, by the Interior Department."

We understand by the foregoing that you desire the opinion of this office as to whether the labor laws of this State should be enforced within the so-called "Boulder Canyon Project Federal Reservation" since the filing of the map and affidavit of Honorable Ray Lyman Wilbur, Secretary of the Interior of the United States, in the office of the Governor of this State on May 26, 1931, purporting to comply with Chapter 23 of the 1921 Statutes of Nevada, page 27, being Nevada Compiled Laws 1929, sections 2895-2898.