

OPINION
45-98

March 28, 1945 (OPINION)

ELECTIONS

RE: Township - One Vote Does Not Elect

On the 27th day of March, 1945, you called at the office of the attorney general and requested that you be furnished the opinion of this office as to whether or not a person who wrote in his name for the office of township assessor and received one vote was thereby elected. You stated that the duly elected, qualified, and acting assessor had submitted his resignation to the township board of supervisors prior to the election and that his resignation was accepted by the board; that when notice of the township election was given, such notice stated that an assessor would be elected to fill the vacancy; and that ballots were duly printed permitting any elector of the township to write in the name of the person whom he desired to vote for assessor.

At the township meeting, however, the election of an assessor was informally discussed by the various township electors, approximately twenty in number, and the assessor who had resigned was prevailed upon to reconsider his resignation and to agree to act as assessor during the ensuing assessment period. No action, however, was taken by the township board to reconsider their previous acceptance of his resignation. But it was generally understood by the electors present that the old assessor would withdraw his resignation and that he would continue to act.

One elector, however, wrote his own name on the ballot. His vote was the only vote cast for assessor, because as stated, it was generally understood that the old assessor had agreed to withdraw his resignation and that he would continue to act. The elector who voted for himself insisted that he had been duly and regularly elected in view of the fact that only one vote was cast for the office of assessor and he received that vote, namely, his own. You, as moderator of the township meeting, were then called upon to express your opinion. You stated to the meeting that in your opinion the one vote cast was decisive and that the person receiving same had been elected.

The question that you desire this office to answer is whether or not the elector who thus voted for himself and received only one vote had been elected to the office of assessor.

A township meeting usually is an informal democratic gathering of township electors. And in view of the fact that it was generally understood that the old assessor would withdraw his resignation and continue to function as assessor, all of the electors, with the exception of the one who voted for himself, refrained from voting for this office. They assumed that the matter had been settled and that there was no contest.

It is our opinion that in the light of the circumstances mentioned it

would be inequitable, unjust, and fraudulent, in nature and effect, to hold that one who thus voted for himself had been elected assessor. If this elector had announced his candidacy and had informed the others that he desired the office, he would have met the requirement of open and fair dealing. And in that event it may be that his sole vote would be considered conclusive.

Chapter 13 of the Special Session Laws of 1944 provides:

Each organized civil township in the state shall continue an assessor district and there shall be one township assessor elected for each one of said townships at the time the other township officers are elected; provided, that any vacancy in township assessor may be filled by appointment by the board of supervisors of said township, where such vacancy exists."

It is our opinion that the board of supervisors had the right to permit the township electors to fill the vacancy in the township election. In order, however, that there might be no question concerning the right of the person elected to fill the vacancy, the board should also appoint the person thus chosen.

But in view of the circumstances outlined by you, it is our conclusion that there was no election for assessor at the 1945 township election; that the office is vacant; and that the vacancy should be filled by the township board of supervisors in conformity with chapter 13 of the 1944 Special Session Laws.

NELS G. JOHNSON

Attorney General