

OPINION
56-175

October 3, 1956 (OPINION)

SCHOOL DISTRICTS

RE: Sale of Building - Elector For

Under date of September 28, 1956, you request an opinion regarding the removal of a schoolhouse to another site and refer to section 15-2602.

Sections 15-2601 and 15-2602 have been amended by the 1951 Legislature. They are found as Chapter 130 of the 1951 Session Laws. Section 15-2601 provides two methods of bringing it to a vote. The first method is where the school board on its own motion finds it necessary to have the election. The second method is where a petition for such an election is presented to the board by one-third of the electors of the district. Whenever the school board of a common school district, consisting of less than one congressional township, is petitioned to remove a schoolhouse in such district by at least eighty percent of the parents of the children attending school in such schoolhouse, the board shall call an election.

Since there was an election, I take it that section 15-2603 is not involved, the case where the petition is made by the majority of the school district for the removal. If that was the case there would not need to be any election. *Hagstrom v. Estherville School District* No. 43, 67 N.D. 56, 269 N.W. 93. but since you had an election, that question would not be involved. The peculiar part of this session law is found in section 15-2602, Chapter 130, Laws of 1951. It provides, as you notice, that if the majority of votes cast at the election called under the provisions of section 15-2601 favored the election of a specified schoolhouse site or are in favor of the purchase, exchange, or sale of a schoolhouse, the school board shall proceed to carry out the decision of the electors. Then comes the next part of the statute which reads as follows: "It shall require the affirmative vote of not less than two-thirds of the electors present and voting at the meeting to order the removal of a schoolhouse."

It is therefore my opinion that if an election is held for the purpose of the purchase of a schoolhouse or the exchange of a schoolhouse or of the sale of a schoolhouse, it requires a majority vote cast at the election. On the other hand, if a vote on the question of removal of a schoolhouse from one site to another is held, it requires a vote of two-thirds of the electors present and voting. The difference seems to be the question of what they are voting for, if they are voting for purchase, exchange or sale of a schoolhouse, it requires a majority of votes cast at the election. If the election is for removal of a schoolhouse to another site, it requires two-thirds of the electors present and voting. We can find no other reason for the difference in the requirement in the number of voters.

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