

1949 Ore. AG LEXIS 155

Office of the Attorney General of the State of Oregon

24 Op. Atty Gen. Ore. 347

OR Attorney General Opinions

Reporter

1949 Ore. AG LEXIS 155 *; 24 Op. Atty Gen. Ore. 347 **

No. 1288; INFORMAL OPINION

November 18, 1949

Core Terms

elect, irrigation district, candidate, successor, was, legal status, no provision, no election, tie vote, regular, said, says

Headnotes

[*1]

Because election for director held in Ochoco Irrigation District resulted in a tie vote, there was no election and present incumbent remains in office until his successor is elected at the next regular election and qualifies.

Request By: Mr. Charles E. Stricklin

State Engineer

Opinion By: GEORGE NEUNER, Attorney General; Fred A. Miller, Deputy

Opinion

[**347] On November 17, 1949, you orally requested to be advised upon a question submitted in a letter to you from Mr. Laselle E. Coles, secretary of the Ochoco irrigation district, in which he says that at a regular election held in that district on November 8, 1948, for the purpose of electing a director for the term of 3 years a tie vote was cast. He stated that Mr. Norval H. Powell is the present director and was a candidate to succeed himself against one other candidate. He asked to be advised as to the legal status of the matter.

A careful search of the statutes of this state relating to irrigation districts reveals no provisions for determining a tie vote in elections of this kind.

The rule is held to be that in the absence of statutory authority it is not permissible for the election officials to determine by lot which candidate shall be declared elected, [*2] nor can the candidates by agreement undertake themselves to settle the question by law or otherwise. 18 Am. Jur., Elections, § 249.

It is stated in C. J. S., Elections, § 244, page 354, that:

"* * * where two candidates receive the same number of votes, and there is no provision of law for determining which shall be declared elected, there is no choice or choosing and consequently no election; * * *".

Thus it appears plain that the result of the vote taken at the election held on November 8, 1948, by the Ochoco irrigation district is that so far as the election of a director is concerned, there was no election.

What then, is the legal status of the present director, Norval H. Powell?

Section 125-205, O.C.L.A., as amended by ch. 57, O. L. 1945, which is a part of the statutes relating to irrigation districts, provides that persons elected to the office of director "shall hold the office from the first Tuesday in January next after such election for three years and *until his successor is elected and qualified*; * * *".

The words "until his successor is elected and qualified" necessarily require that the successor to Norval H. Powell must be both elected and qualified before a vacancy [*3] could occur in his office. [State ex rel. Tazwell, 166 Or. 349, 352.](#)

Our supreme court when considering the above quoted language from said section 125-205 (then designated as § 7309, Or. Laws), in the case of [N. P. Ry. Co. vs. John Day Irrigation District, 106 Or. 140, 166, 167](#), said:

"The law is plain and evidently means what it says when it declares that a director of an irrigation district shall serve until his successor shall be elected and qualified. Similar language has been construed by this court: [State v. Colvig, 15 Or. 57 \(13 Pac. 639\)](#); [State v. Compson, 34 Or. 25 \(54 Pac. 349\)](#); [State v. Kellaher, 90 Or. 538 \(177 Pac. 944\)](#). Also see 23 R. C. L. 554; 29 Cyc. 1319."

[**348] Based upon the foregoing it is my conclusion that Norval H. Powell remains in office as a director of the Ochoco irrigation district until the next regular election when a director may be elected to serve out the unexpired term beginning on the first Tuesday in January, 1949.

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