

“(4) Conviction or failure of bail upon three (3) charges of reckless driving, all within the preceding twelve (12) months.

“(5) A conviction of a driver of a motor vehicle involved in any accident upon a charge of failing to stop and disclose his identity at the scene of an accident.

“Such licenses of such persons shall also be suspended when such persons are convicted in any state for any said offenses.

“(c) Such suspensions or revocations shall remain in effect and no new or renewal license shall be issued such person and no motor vehicle shall be registered in the name of such person for a period of not more than one (1) year, and not then, unless and until such person shall give and thereafter maintain for a period of three (3) years proof of his financial responsibility in the future in the manner specified in this Act.
* * *” (My emphasis.)

It is perfectly clear from the foregoing statute that as to the causes enumerated therein it is absolutely mandatory on the Commissioner of the Bureau of Motor Vehicles to suspend or revoke the driving privileges of any person who has been convicted of or shall have pleaded guilty to any of said causes. Accordingly, you have no discretion with reference to the suspension or revocation of driving privileges under Section 5 (b) of Chapter 159 of the Acts of 1947.

OFFICIAL OPINION NO. 76

December 10, 1947.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Governor Gates:

I am in receipt of your letter of November 24th requesting my official opinion as follows:

“The specific question on which we desire an opinion from you is as follows: Does this section make it possible for a county chairman and vice chairman etc., to be elected by a majority of those present, or does it require that the successful candidate receive a majority of votes of all those precinct committeemen and committeewomen in the particular county, regardless of whether they are present at the reorganization meeting or not. The difficulty seems to be caused by the word eligible, and the interpretation which should be placed on it.”

Section 5 of the Election Code (Chapter 205 of the Acts of 1945; Section 29-2902, Burns' 1945 Pocket Supplement, provides the following in regard to the election of the county chairman and vice-chairman.

“* * * A vote shall first be taken for the office of chairman and the first person receiving a majority of the eligible votes shall be declared elected to that office. A vote shall then be taken for the office of vice-chairman and the first person receiving a majority of the eligible votes shall be declared elected to that office. * * *”

It is to be noted first that this provision does not require a majority of the eligible voters, about which there has been extensive litigation.

See: *In re. Todd* (1934), 208 Ind. 168.

It requires instead a majority of the eligible *votes*. A vote is not merely an unexercised right to vote. It is the formally expressed wish, choice, or judgment of the voter.

67 Corpus Juris, p. 277.

Webster's International Dictionary.

“* * * A vote is the formal expression of a will, preference, wish or choice in regard to any measure proposed, * * *”

Sawyer Stores v. Mitchell (1936), 103 Mont. 148, 62 Pac. (2d) 342, 348;

See also: Port of Palm Beach v. State (1945),
156 Fla. 113, 22 So. (2d) 581;
Attorney General v. Bickford (1914), 77 N. H.
433, 92 Atl. 835.

Therefore, a majority of the votes means a majority of the formally expressed choices which are the actual votes cast and not those which might have been cast.

I am, therefore, of the opinion that the candidate for county chairman who receives a majority of the eligible votes actually cast in the county convention for that office is thereupon duly elected, assuming that a quorum is present.

OFFICIAL OPINION NO. 77

December 20, 1947.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Ruston:

Your letter of November 28, 1947, has been received in which you request an official opinion on the following questions:

“1. Can the mayor of a city lawfully appoint an active volunteer fireman as chief of the fire department if such volunteer fireman shall have had at least five years of continuous service as a volunteer fireman with the fire department of the city immediately prior to appointment as chief?

“2. If your answer to question one is in the affirmative, can the chief retain the status of an active volunteer fireman, and if so would his annual compensation be limited to \$300.00 per annum?”

Section 1, Chapter 312, Acts 1947, provides in part as follows: