

contained in Article II of the Insurance Code, which provides that the directors are each severally liable for the debts or liabilities of the company arising from any violation of Section 73 of the Insurance Code.

3. In response to the third inquiry, permit me to state that neither the Insurance Commissioner nor any employee of the Insurance Department would be liable to any person who purchased stock in the proposed insurance company prior to the date upon which it received its permit for the completion of organization, nor for that matter, at any time subsequent to the issuance of such permit. Section 8 of Article I of the Insurance Code provides :

“Neither the Insurance Commissioner nor the several officers and employees of the Department shall be liable, in their individual capacities, except to the State of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this act.”

From all that appears in your inquiry, it would seem that the Insurance Commissioner may accept the \$10,000.00 which has been tendered as surety and upon the incorporators making proper application therefor, issue the permit to complete the organization of the said insurance company.

PUBLIC INSTRUCTION: County Superintendent, method of election of.

May 22, 1941.

Hon. Clement T. Malan,
State Supt. of Public Instruction,
State House,
Indianapolis Indiana.

Dear Mr. Malan :

I have before me your letter requesting an official opinion in answer to the following questions :

“1. Does the law require that the vote for county superintendent of schools be by secret ballot?

“2. How many of thirteen trustees are necessary for a quorum? Can the auditor be counted?

“3. If the auditor merely acts as clerk, who presides over the meeting? Can the auditor permit a deputy to serve in his place? What procedure is followed in distributing, collecting and counting the vote?”

Answering your first question, the statute expressly provides that the vote for county superintendent shall be by ballot. I do not think there is anything in the statute which prohibits a person from disclosing what his vote is. However, no one can be required to disclose how he intends to vote or how he has voted.

As to your question No. 2, it will be observed that there are two questions involved. As to the first of the two, the statute does not expressly state as to how many constitutes a quorum. Under such conditions I think the ordinary parliamentary rule would apply, and that in order to constitute a quorum of thirteen, seven would have to be present.

Answering the second of that group of questions, the auditor cannot be counted in determining the presence of a quorum. (See *State ex rel. Laughlin v. Porter*, 113 Ind. 79; *State ex rel. Drummond v. Dillon*, 125 Ind. 65.)

Replying to your question No. 3, it will be observed that three questions are involved. Answering the first of the three questions, it is the duty of the trustees to organize their meeting by electing a chairman from their own number. In answer to the second question of the group, I think it is doubtful whether a deputy can serve in place of the auditor, especially in the matter of casting a deciding vote. In answering your third question of the group, I think the ordinary procedure would require the appointment of tellers to collect and count the votes in the presence of the auditor, who is required to keep a record of the election in a book kept for that purpose. (See *Burns' Indiana Statutes Annotated 1933*, Sec. 28-702).