

Opinion No. 50-5278

January 30, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: R. H. Grissom Office of the State Comptroller Santa Fe, New Mexico

{*125} This is in reply to your letter of January 20th requesting an opinion for T. C. Bird, Superintendent of the Santa Fe City Schools on the legality of whether or not a veteran whose tax exemption eliminates him as a real property taxpayer is eligible to sign the above mentioned petition and vote in the special election.

Your request involves two questions: The first question is: Is a veteran whose tax exemption eliminates him as a real property taxpayer eligible to sign the above petition? Section 55-721 of the New Mexico Statutes Annotated, 1941 Compilation, reads as follows:

"To initiate the right to issue bonds hereunder a petition in duplicate, asking for the calling of an election, must be filed between January 15 and May 31, inclusive, (and at no other time) with the county board of education in case of rural districts, and the union high school board in case of union high school board in case of union high school districts, and with the municipal board of education in case of municipal districts, containing the genuine signatures of qualified electors **of the district who shall have paid a property tax therein during the preceding year**, to the number of ten (10) per cent, of the combined vote cast in said district at the last preceding general election for governor. * * *" (Emphasis ours.)

This section specifically states that the petition "must contain the genuine signatures of qualified electors (**who shall have paid a property tax therein during the preceding year**", and the word "shall" is mandatory.

This office in Opinion No. 1881, dated February 10, 1938 and reported on page 211 of the 1937-1938 Opinions of the Attorney General, copy of which is enclosed herewith, held that under § 12, Art. 4 of the New Mexico Constitution, voting at municipal bond elections is restricted to **qualified electors who have paid a property tax during the preceding year**. I concur in this opinion.

Therefore, it is the opinion of this office that a veteran whose tax exemption eliminates him as a real property taxpayer is not eligible to signing the above mentioned petition.

Your second question is as follows: Is a veteran whose tax exemption eliminates him as a real property taxpayer eligible to vote in the special election?

Article 9, Section 11 of our New Mexico Constitution provides as follows:

"No school district shall borrow money, except for the purpose of erecting and furnishing school buildings or purchasing school grounds, and in such cases only when the proposition to create the debt shall have been submitted to a vote of such qualified electors of the district as are owners of real estate within such school district, and a majority of those voting on the question shall have voted in favor of creating such debt. No school district shall ever become indebted in an amount exceeding six percentum on the assessed valuation of the taxable property within such school district, as shown by the preceding general assessment."

{*126} In interpreting this section of Art. 9, Sec. 11, it is mandatory upon the school districts that in borrowing money they cannot borrow it except for the purpose of erecting and furnishing school buildings or purchasing school grounds and in such cases only when the proposition to create the debt shall have been submitted to a vote of such qualified electors of the district **as are owners of real estate within such school district**. The only qualification here is that voters must be owners of real estate within such school district. Nothing is mentioned that voters must pay taxes. This office in Opinion No. 424 dated March 29, 1932 and reported in Attorney General's Opinions 1931-1932, copy of which is enclosed herewith, held that voters who are exempt from taxes because of military service can vote in a school bond election. I concur in this opinion.

Therefore, it is the opinion of this office that a veteran whose tax exemption eliminates him as a real property taxpayer is eligible to vote in the special bond election in the City of Santa Fe.

Trusting that this sufficiently answers your inquiry, I am