Opinion No. 56-6374

January 30, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Charles B. Barker, Assistant District Attorney, First Judicial District, Santa Fe, New Mexico

In your letter of January 23, 1956, you ask whether certain persons may be deemed to "have paid a property tax therein during the preceding year" so as to entitle them to vote upon the question of issuing general obligation bonds by the county.

The persons involved purchased homes from Allen Stamm and Associates during the year 1955. Such persons received deeds to their property, but all of said property was assessed in the name of Allen Stamm individually, because the homes had not been sold by the end of the assessment period. According to the affidavit of Mr. Stamm, attached to your request, it appears that the owner was charged in the total contract price with the amount of taxes attributable to his property, and that all taxes on all of such property have been paid under the assessment made in the name of Mr. Stamm.

The question may be limited to whether payment as it appears on the rolls of the County Assessor and Treasurer is to be the final test or whether an elector may be considered eligible if he actually paid taxes on property owned by him, although the assessment appears in the name of another.

Our search has found no cases squarely in point under language identical to that of the New Mexico Constitution. Cases based upon similar language in other jurisdictions have been found, reaching a variety of results. It appears from them that the construction of such terms is most liberal when the question involved is similar to the one with which we are dealing.

In State v. Moulton, 57 Mont. 414, 189 P. 59, it was held that a person owning and listing personal property for taxation and paying taxes thereon was qualified to verify a petition, though the assessor did not place the property on the tax rolls in his name.

In Hillsman v. Faison, 23 Tex. Civ. App. 398, 57 S.W. 920, determined that the phrase "resident taxpayers in said district, as shown in the last assessment rolls of the county shall be entitled to vote" did not mean only those whose names appear on the last assessment rolls of the county, but means one owning property within the territory subject to taxation.

The Supreme Court of Louisiana held in Peck v. Board of Directors, 68 So. 629, that a "property tax payer" is one who is such when he offers to vote, and not one who is merely ostensibly a taxpayer according to the assessment roll, and one assessed with property in which he has no proprietary interest is not qualified to vote.

The intent of our Constitution is abundantly clear. Those qualified electors who, by virtue of their ownership of taxpaying property, will be required to pay for the proposed improvements are the ones to vote upon the question. As pointed out in the Louisiana case, one who has no proprietary interest in property should not be permitted to vote merely because the property appears in his name upon the rolls. If such a person is not permitted to vote, then certainly the converse should follow, and the person who has the proprietary interest in the property, and who will pay the additional assessment should be entitled to speak by ballot upon the question.

It is, therefore, our opinion that persons purchasing homes and paying taxes during the year 1955 under the method above outlined are entitled to vote in county bond elections. Such persons must, of course, present some evidence to the election officials to show that they fall in this category. The affidavit of Mr. Stamm, above mentioned, is in our opinion sufficient, and if Mr. Stamm will furnish such an affidavit to each such owner for presentation at the polls the problem of evidence to show compliance will be solved.

By: Walter R. Kegel

Assistant Attorney General