

## Opinion No. 58-128

June 16, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Honorable Donald A. Martinez, District Attorney, Las Vegas, New Mexico

### QUESTION

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1. Must ballots used in a county school district bond election be numbered?
2. Must voters in said election be residents of the district?
3. Must voters in said election own real estate in the district?
4. If question No. 3 is answered in the affirmative, must taxes be paid on said real estate?

#### CONCLUSIONS

1. No.
2. Yes.
3. Yes.
4. No.

### OPINION

#### ANALYSIS

§ 73-8-26, N.M.S.A., 1953 Compilation appears to answer the first question. It reads:

"The form of the ballots to be used at such elections shall be substantially as follows:

BOND ELECTION FOR DISTRICT NO. \_\_\_\_ County of \_\_\_\_, New Mexico For the issuance of bonds of the district in the total sum of \$ \_\_\_\_, for \_\_\_\_ [] purpose

Against the issuance of bonds of the district in the total sum of \$ \_\_\_\_, for \_\_\_\_ [] purpose

Only such ballots as are substantially in conformity to the form herein specified shall be cast, counted or canvassed and no ballot containing any identification mark or qualifying words or statements shall be counted. The provisions of sections 2015 to 2020, both inclusive, and 2027 and 2028, Code 1915, shall have application to elections held hereunder."

We find nothing therein which would require numbering. The statute appears to fully cover the subject of form of ballots to be used in the elections in question, except as it refers to the Codification of 1915.

Careful examination by us of the referred to sections of the Code 1915 shows nothing pro or con on your question.

However, in Laws 1927, Ch. 41. Section 722, those provisions of the 1915 Code referred to in Section 73-8-26, supra, were repealed to the extent of conflict with Laws 1927, Ch. 41. Without going into the question of the effect of said repealing clause, we do observe Laws 1927, Ch. 41, Section 306 (7), p. 80 does provide the ballots shall be consecutively numbered, but reading the section in its entirety discloses the ballots contemplated to be general election ballots; hence our conclusion Sec. 73-8-26 governs the form of ballots. It does not call for numbering. We cannot supply such requirement.

The answers to your second, third, and fourth questions are set out in Constitution of New Mexico Article IX, Section 11, providing:

"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 per centum on the assessed valuation of the taxable property within such school district, as shown by the preceding general assessment." (Emphasis ours)

In Opinion of the Attorney General No. 5513, dated March 12, 1952, the Honorable Joe L. Martinez held that this provision meant that a voter in a school bond election must be a resident of the district, an owner of real estate within the same, but that it is not necessary to have paid taxes on said real estate in order to vote in the school bond election. We concur. Other opinions of this office to the same effect could be cited, but such would serve no useful purpose.