

Opinion No. 65-95

June 9, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Honorable Herbert S. Taylor, State Representative, McKinley County, Box 268, Gallup, New Mexico

QUESTION

FACTS

Prior to a school bond election conducted on May 11, 1965, in McKinley County, New Mexico, a property owner who possessed real estate within such school district, sold an interest in the realty to an individual who in turn conveyed such interest to 141 other persons. One of the 141 persons further conveyed a portion of his fractional interest to 42 other individuals. Many of the 183 persons involved have taken the position that they were qualified to vote in such school bond election.

QUESTION

In your opinion, are persons who took property under the various conveyances "property owners" in the sense that they are qualified to vote at school bond elections?

CONCLUSION

See analysis.

OPINION

{*160} ANALYSIS

The State Constitution (Article IX, Section 11) is controlling as to the question presented. This provision states in applicable part:

"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. . . ." (Emphasis added.)

This constitutional provision definitely entitles persons who are otherwise "qualified electors" and "owners of real estate within such school district" to vote on all questions

involving school general obligation bond elections. The constitutional provision makes no mention of the payment of property taxes on such realty.

In our prior Attorney General's Opinions Nos. 64-27, dated March 9, 1964, and 64-87, dated June 24, 1964, a number of questions were answered concerning what persons are entitled to vote in school bond elections. In the prior referred to opinion we have held that purchasers of real property under a real estate contract which has been placed in escrow with the instructions to the escrow agent to deliver the warranty deed to the purchasers upon the payment of the full purchase price, are "property owners" and entitled to vote in school bond elections. In the latter opinion above mentioned, we have ruled that any person otherwise qualified to vote in a general election and who is an owner of real estate within such school district in which the election is conducted may vote in a school bond election. In such opinion we held that a voter in a school bond election need not be a registered voter, and both husband and wife may vote in a school bond election if they otherwise meet the qualifications specified in Article IX, Section 11, of the State Constitution and hold property within the school district as community property.

Under the language of the State Constitution, no discussion is made as to the precise degree of ownership in real estate within such school district -- the provision merely states that such electors must be "owners of real estate within such school district." The New Mexico Supreme Court has several times interpreted the term "owner of real estate. See: **Hill v. Long**, 61 N.M. 299, **Freidenbloom v. Pecos Valley Lumber Co.**, 35 N.M. 153, 290 P. 797; **Scudder v. Hart**, 45 N.M. 76, 110 P.2d 536; and **Mesich v. Bd. of Co. Com'rs of McKinley Co.**, 46 N.M. 412, 129 P.2d 974; and **Gray v. N.M. Pumice Stone Co.**, 15 N.M. 478, 110 P. 603.

In **Hill v. Long**, supra, our State Supreme Court observed that regarding the contractor's and materialman's lien law the word "owner" does not "necessarily refer to the holder of the legal title to the property" involved. The Court said such term "may have reference to one whose interest is less than a fee-simple estate, such as * * * a conditional vendee in possession."

In **Mesich v. Bd. of Co. Com'rs**, supra, our Court held:

"the word 'owner' as used in statutes providing for eminent domain proceedings includes {*161} all persons who have an interest or estate in the property taken or injured."

The New Mexico Supreme Court in **Scudder v. Hart**, 45 N.M. 76, 110 P.2d 536, held "the term 'owner' as used in determining who may redeem from tax sale, has been construed to include mortgagees, judgment creditors, and holders of contingent interests in the land affected by the sale."

As held in **State ex rel. Palmer v. Miller**, 74 N.M. 129, 391 P.2d 416, election laws should be liberally construed to accomplish their purpose, and technicalities should not

be permitted to deprive voters of their franchise or render an election void. As stated in **State v. Christ**, 25 N.M. 175, 179 P. 629, no **construction of constitutional** or statutory provisions is to be indulged which will defeat or unduly restrict or obstruct the free exercise of the elective franchise, unless the same is compelled by the strict letter of the law. In **Roswell Municipal School Dist. No. 1, v. Patton**, 40 N.M. 280, 58 P.2d 1192, it was also stated by our Supreme Court that words of a constitutional provision relating to school elections should be interpreted as written unless strong reasons compel a court to give a narrower meaning. See also, **Klutts v. Jones**, 20 N.M. 230, 148 P. 494.

Construing the above cases in a liberal tone we are of the opinion that a person who owns an **actual** interest in real property within such school district (even though it be a fractional, or undivided interest) and otherwise is qualified to vote in a general or primary election, may vote in a school district general obligation bond issue.