

## Opinion No. 13-997

March 7, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** James A. Hall, Assistant District Attorney, Elida, New Mexico.

### **BOND ELECTIONS.**

Elector who pays a property tax in a town within a year before the day of election is qualified to vote at bond election.

### **OPINION**

{\*162} I have had, on my desk for a considerable time, your letter enclosing another from the Mayor of Hagerman, together with a copy of an opinion which you had written, but I have not been able sooner to take it up, partly because of the incessant press of business which could not be delayed and partly because I was unwilling to express an opinion different from yours without having given the matter careful consideration.

The Mayor, in his letter, asked two questions which are, substantially, whether an elector, who has, during the year 1912, paid a property tax which was assessed for some prior year, is entitled to vote on a bond election under the provisions of Chapter 76 of the Laws of 1912, and whether an elector, who has, during the year 1913, paid a property tax assessed for the year 1912, is entitled to vote at such an election. I state these together because, from the view which I feel compelled to adopt, they are to be answered together.

The statute in question provides on this point that the question of issuing bonds by a town or village is "to be submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year." I am unable to construe the language {\*163} about "the preceding year," as meaning anything else than the period of a year preceding the day of the election. If the election is to be held at any time in 1913, I cannot believe that this language means the calendar year 1912. So to hold might entirely disqualify a man who had very promptly paid all his taxes levied in 1911, before the beginning of the year 1912, but had failed to pay any of his taxes levied in 1912 until after the beginning of the year 1913. While this might not often happen, yet that it is possible at all, goes to show what the intent of the Legislature must have been.

On the other point involved, as to whether the payment of a property tax for some earlier year or years, is sufficient to qualify an elector, I think your reasoning is sound as to what the Legislature ought to have required, which is, in substance, that the man who has not been sufficiently interested in the welfare of his town to pay his taxes for each year as they become due, ought not to be allowed to vote. The difficulty in my mind, however, in the following that line of reasoning to a conclusion, is that it would require

us to read into the statute some words which are not there. As you say, if the Legislature had used the words "during and for the preceding year," there would be no difficulty, but the legislature has actually required the payment of a property tax "during the preceding year;" and it appears to me that this requirement would be met if, at any time within a year before the election, the voter paid a property tax in the town even if it were several years old. It shows an interest in the town that he tries to pay up his delinquent taxes and, very naturally, a man might desire to pay his oldest taxes first to avoid imposition of penalties, or loss of property by tax sales.

I feel forced to the conclusion that under this statute if an elector otherwise qualified, at any time within a year before the day of the election, pays a property tax in the town, no matter for what year it may have been levied, he is qualified to vote at the bond election.