

## Opinion No. 13-979

January 21, 1913

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

**TO:** Mr. James A. French, State Engineer, Santa Fe, N. M.

### **ROAD AND BRIDGE BONDS.**

No proclamation necessary for election for bonds for roads and bridges.

### **OPINION**

{\*143} I have received your letter of the 20th instant asking my opinion as to the validity of an election for the issuance of bonds, held under the provisions of Chapter 79 of the Laws of 1912. You say that the election is claimed to be illegal because at the election the registered electors voted, although Section 10 of Article IX of the constitution specifies that only "the qualified electors of the county who paid a property tax therein during the preceding year," shall vote, and as to this you say that an attorney has suggested that inasmuch as the vote was practically unanimous, it would be possible by legal process to have the votes of those who are not taxpayers thrown out, and still have a large majority of the taxpayers.

As to this objection, under such circumstances as you state, I believe that something of the kind which you say was suggested by an attorney, can be resorted to, and thereby sustain the validity of the election. Even if the rejection of the votes of those who were not taxpayers would not leave a majority of the taxpayers in the county as voting for the bonds, it would still be effectual, because the constitution which provides for the submission of the question to the qualified voters who paid a property tax in the county during the preceding year, requires for the approval of the bonds merely "a majority of those voting thereon." It appears to me that it might be possible to satisfy an intending bond buyer by a certification from the tax rolls of all taxpayers who have paid a tax during the preceding year accompanied by certified copies of the names on the poll books at the election, by a comparison of which the number of those who paid taxes and voted, could be readily ascertained. If this should not be considered sufficient, a proceeding could be begun by any interested citizen in the district court to obtain a mandamus to compel the issuance of the bonds, and all the facts being shown the court would probably grant the mandamus on the ground that the election was valid.

You further say, however, in substance that another objection is made on account of the failure fully to comply with the requirements of Section 1 of Chapter 105 of the Laws of 1909 as to the publication of a proclamation of this election. You say that the notice calling the election was duly published several weeks before, by which I understand that the publication required by Section 3 of Chapter 79 of the Laws of 1912 was properly made, and the question really is whether in addition to that publication there should

have been another ten days before the election, as required by Section 1 of the Act of 1909.

My opinion is that the proclamation required by the act of 1905 {*\*144*} could have no application to such an election as the one we are now considering unless it should be made distinctly and clearly applicable by some provision of law. I do not find in the act of 1912 any language which would make it so applicable. The only ground upon which such a claim can be made is to be found in the first words of Section 4 of the act of 1912 which declares that "The election herein provided for shall be held under the same substantial provisions, and the votes cast for or against such bond issue shall be counted, returned, and canvassed and declared, in the same manner and subject to the same rules as votes cast for county officers." I am unable to see how this language can have any reference to the calling of the election. It is only as to the holding of the election, the counting of the votes and the canvassing of the returns. The provisions of Section 3 of the same act contain full and complete directions as to the publication of the call of the election, and nothing more can be necessary on that subject. Moreover, the requirements of the act of 1909 are that the proclamation shall set out the officers to be voted for, the names of the candidates, the postoffice address of each candidate, none of which things could possibly be set out in any proclamation of the bond election.

I notice that you say in your letter that the act of 1909 requires that the proclamation should be published, naming the judges and places of election, but this is incorrect. The proclamation which is to be published need not contain the names of the judges. The proclamation must be published 10 days before the election, but the judges need not be appointed until eight days previous to the election.

I am of opinion that no such proclamation was necessary for this election and that the second objection set out in your letter is of no importance.