

Opinion No. 16-1766

March 28, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Pearce C. Rodey, Albuquerque, New Mexico.

Interpretation of Section 12 of Article IX of the Constitution, and qualification of voter at municipal bond election.

OPINION

{*336} I have this morning received your letter of yesterday asking me as to the interpretation to be put upon Section 12 of Article IX of the State Constitution, which section is the one which provides for the submission to the qualified electors of cities of the question of incurring municipal debt, and I take pleasure in giving you my views as to the matters indicated in your letter.

You say that section provides for the levying of a tax to cover interest and to provide a sinking fund in case municipal bonds are issued, and you ask whether the levying and collection of the tax would be necessary in the event that the return from the water rents were more than enough to meet those charges. In the first place, the constitutional provision is that the ordinance by which the debt is contracted, must provide for the levy of tax sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years, but there is nothing to indicate that the ordinance must be construed as mandatory so as to require the levying of the tax if it is not necessary. If the money derived from the collection of water rates would be sufficient to pay interest and provide for a sinking fund, or if the general funds of the city should be sufficient to be used for those purposes, there could be no sense in holding that this special tax must be levied. No bond holder would have any standing in court to compel the levying of such a tax unless he could show that he would be injured by the failure to levy it, and as long as he receives his interest, and provision is made for the extinguishment of the debt, he could have no ground for complaint.

You further ask my opinion as to the legal meaning of the language in the same section which requires the question of incurring the debt to be submitted at a regular election for city officers "to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year."

I am of opinion that in order to be qualified to vote on any proposed municipal bond issue, the elector must be registered, and that this is distinctly required by Section 3592 of the Codification. That section provides for registration of voters for any annual, or any other election in all municipalities in the state, and it distinctly declares that no person whose name is not registered shall, on any account, be permitted to vote at the election. The constitutional provision requires that the question of incurring indebtedness must be

submitted at a regular election for officers of the city. A resident of the city who has not been registered is not qualified as an elector, and cannot vote at such an election upon any question which may be submitted thereat.

{*337} The phrase "property tax" in the Constitution must be held to cover any kind of property, whether real or personal. If the intention had been to limit it to any particular kind of property, apt words could easily have been used to effect that intention.

You also ask as to the period of time which I consider to be covered by the phrase "during the preceding year." I do not see how there can be any reasonable doubt as to what this means, but I have been informed that some persons have thought the meaning is the preceding calendar year. I am clear that it means the period of time covering one year next preceding the day of the election, and not the calendar year preceding the one in which the election is held. This gives to the words their ordinary meaning, and there is no reason to depart from such meaning. Any qualified elector who has, within one year next before the day of the election, paid a property tax in the town, is entitled to vote. The other construction would deprive a man, who in January of the year in which the election is to be held, might have paid up several years' taxes, of any right to vote.

You also ask whether payment by the husband of a tax on community property would be considered as meeting the qualification of a payment of a property tax, even though the title to the community property may stand in the name of the wife. As I understand the law, community property is to be regarded the same as the property of a partnership, and if the husband pays a tax upon such property he should be regarded as qualified to vote upon a bond issue. By Section 2764 of the Codification it is declared that when property is conveyed to a married woman by an instrument in writing, the presumption is that the title is to be vested in her as her separate property, but this presumption is, of course, not conclusive, and as I understand your question, it relates only to what certainly is community property.

I believe the foregoing fully covers all matters mentioned in your letter.