

Opinion No. 16-1809

May 22, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Professor W. D. Shadwick, Superintendent of Schools, Tucumcari, New Mexico.

Qualification of voters at a municipal school bond election, and right to charge for tuition of non-resident pupils.

OPINION

{*371} Your letter of the 19th instant was received yesterday, Sunday, so that I was not able to answer until today. You ask for my opinion as to the qualification of voters at a school bond election to be held in Tucumcari on Friday, next, and you say that the question of property ownership and the right of women to vote are the questions as to which you desire this opinion.

By Section 11 of Article IX of the Constitution it is provided that 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 the qualified electors of the district, and approved by a majority of those voting thereon. It is clear from this provision that a majority of the qualified electors of the district voting on the question is sufficient to authorize the debt, and the only possible question which can be raised is as to what is meant by qualified electors. The only existing definition {*372} of qualified electors is to be found in Section 1 of Article VII of the Constitution, the material portion of that section being as follows:

"Every male citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons, persons convicted of a felonious or infamous crime unless restored to political rights, and Indians not taxed, shall be qualified to vote at all elections for public officers. All school elections shall be held at different times from other elections. Women possessing the qualifications prescribed in this section for male electors shall be qualified electors at all such school elections."

All such persons as those described in the above quotation must be considered as qualified electors, and there is no property qualification hinted at in the section above quoted, nor in the one previously mentioned as to the vote upon the question of whether a school district shall borrow money or not. It is unnecessary to consider whether the legislature would have the power, which, to say the least, is doubtful, to add to the qualifications of voters upon school bond elections, because the legislature has made no such attempt. The provision on the subject, which is equally applicable to rural school districts or to municipal districts, is to be found in Section 4903 of the

Codification, and that section, like the Constitution, requires the proposition to create the debt to be "submitted to the qualified electors of the district, and approved by a majority of those voting thereon."

I invite your attention also to Section 8 of Article IX of the Constitution, which requires the submission of any law to create a debt, other than those specified in the preceding section, "to the qualified electors of the state," and you will remember that the law authorizing the issuance of the state highway bonds was submitted to the people and was voted upon by all voters, without regard to any property qualification.

There are two kinds of debt which can be created only after the proposition has been "submitted to the qualified electors of the county who paid a property tax therein during the preceding year," or to the qualified electors of municipalities who have paid such a tax, and they are to be found in Sections 10 and 12 of Article IX of the Constitution, and apply to county debts for erecting public buildings or constructing or repairing public roads and bridges, and to municipal debts generally. The fact that as to these kinds of indebtedness a property qualification has been imposed, would indicate the intent not to impose any such qualification as to elections under Section 11 of the same article.

The controversy about the qualification of voters must have arisen on account of the provisions of said Section 12, which are applicable to debts contracted by any city, town or village, but the school bond issue is not a debt of that kind. The board of education is something separate and apart from the municipal corporation within the limits of which it has charge of the schools, and a {373} debt created by the issue of school bonds is not to be counted as a part of the debt of the municipality. This is well settled, and my recollection is that many years ago the Board of Education of the city of Albuquerque had no difficulty in selling a large bond issue which, if it could have been considered as a part of the municipal debt, would have put the debt of the city above the authorized limit. Persons who insist that at your bond election the voters must be tax-payers have lost sight of the distinction between the city and the board of education. Such an election as is called for by said Section 12 must be at a regular election for city officers, while this school bond election could not be held at the same time as the regular election in view of the prohibition in Section 1 of Article VII of the Constitution that all school elections shall be held at different times from other elections.

As to the right of women to vote, the last clause of the quotation hereinbefore made from Section 1 of Article VII of the Constitution, is a sufficient answer, and there can be no reasonable doubt that a school bond election falls within the description of "school elections." In 1913, in a letter to Mrs. S. C. Nutter, of Clovis, on this subject, I used the following language:

"I think there can be no reasonable doubt that the comprehensive phrase 'school elections' includes every election where any question is submitted to a vote which relates to, or affects the schools, whether it be an election of school officers, an election as to the imposition of special taxes, an election as to the issue of bonds, or an election

as to the establishment of a county high school. These elections are all provided for in different statutes and must be considered as school elections."

You say further that another point which has arisen during the campaign is in regard to the legal right of a board of education to charge non-resident pupils within the county tuition, and that there has been some question, since the passage of the "County Unit Tax Law," as to whether the board could collect tuition from pupils who live in the county but out of the district.

The right to charge such tuition is given by Section 4859 of the Codification of 1915, and from a hasty examination of the new statute, which appears as Chapter 79 of the Laws of 1915, I am unable to discover anything which, by implication, affects the section about tuition. The school districts, whether rural or municipal, are preserved as separate entities, and the expenses of each are separate and apart from the expenses of any other, although it is true that a tax is levied on the whole county for the support of all of the schools, whether in rural or municipal districts, but it has been true in the past that there has been a general school tax upon all of the property in a county for the support of all of the schools. In municipalities we have always had, in addition, a municipal school tax, which is devoted entirely to the municipal schools. The change, so far as municipalities are concerned, is to make them pay more taxes for the support of schools, not only within their own limits, but throughout the county, and I cannot see any reason {^{*374}} why that should interfere with their charging the tuition provided for by Section 4859 for non-resident pupils.

P. S. The distinction between the boards of education of municipal school districts and the city itself is clearly pointed out in the great work of Dillon on Corporations at Section 138 of the Fourth Edition, and Section 82 of the Fifth Edition.