

Opinion No. 17-2044

August 11, 1917

BY: HARRY L. PATTON, Attorney General

TO: Mr. Albert S. Eyler, Pres. E. B. W. U. Assn., Las Cruces, New Mexico.

"Resident Freeholder" Defined. Qualification of Voter at Election to Form Irrigation District.

OPINION

We have your favor of the 3rd inst. wherein you ask whether residence within the proposed irrigation district is a necessary qualification of a voter at an election to form such district, under Chapter 60 of the New Mexico Compiled Statutes. As this Chapter has been completely amended by Chapter 21 of the Session Laws of 1917, your inquiry will be answered with reference to the new law.

You state that Section 5, which contains the qualifications of a voter at such an election, does not prescribe residence within the district as a qualification. The wording of Section 5 in this regard is as follows:

"At said election and all elections held under the provisions of this chapter all resident freeholders who are owners of land within the district; or of evidence of title to such land, together with resident entrymen of public lands within such district, who are qualified electors under the general election laws of the state, shall be entitled to vote, and none others."

You also point out other sections of the chapter which you think imply that residence in the district is a qualification, namely, a portion of Section 2, which describes the petition for the formation of the district and states that the prayer shall ask the board to

"submit the question of the final organization of the same to the vote of the qualified electors resident within said proposed district."

You also cite Section 4, defining the order of the Commissioners for calling the election, which states such order shall call an election,

"of the qualified electors of said district."

You also mention Section 6, regarding the canvass of the votes, where the following words appear:

"If upon such canvass, it appears that a majority of the resident freeholders within the district who are the owners in the aggregate of a majority of the whole number of acres belonging to the resident freeholders within said district."

In statutes such as this one it is frequently a grave question whether the term "resident freeholders," when applied to a district or locality, means residents of the State who have free holds within the district or locality, or whether the term means freeholders in the district who are also residents of the district. It is apparently your opinion that the latter view was intended in the statute in question. We are inclined to agree with your opinion. The term "resident freeholder" has been several times defined by the courts. In *Kirkland v. Indianapolis*, 41 N. E. 374, it was held that the expression "resident freeholders," used in a statute providing that, on confirmation of an order for street improvements, the same shall become final, unless within ten days, two-thirds of the resident freeholders on such street, remonstrate against such improvement, includes only resident freeholders on that street, the court said:

"Counsel for appellant argue that 'resident freeholders' here means resident within the city, and owning property upon the street; while counsel for appellees contend that the words mean what they seem to say, namely, resident freeholders upon the street. We think the latter to be the evident meaning and intent of the law. The terms 'resident freeholders,' within, near to, along, or upon a given place, are frequently used in this and other statutes; and the meaning is usually limited to the locality so designated, unless some other signification is shown by the context."

See also *Damp v. Dane*, 29 Wis. 419;

State v. Kokomo, 8 N. E. 718.

"The words 'resident freeholders' mean those living within the sub-division and holding title to real estate."

In re *Cohn* 151, N. W. 107.

It would therefore seem, in view of the various provisions of the statute in question, as above quoted, and in view of the wording of Section 5, that the statute must be interpreted to mean that only those who are both freeholders and residents within the district, are entitled to vote.