

Opinion No. 20-2534

March 30, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. Ludwig:

Persons Who Do Not Pay Taxes Not Qualified to Vote at Election to Determine Whether Water Works Bonds Shall Be Issued.

OPINION

Referring to your oral inquiry in regard to the right of persons whose names appear on the tax rolls, but who, by reason of exemptions granted by law pay no taxes, to vote at an election to determine whether bonds shall be issued to construct water works, we wish to advise you as follows:

Section 12 of Article IX of the Constitution, provides no debt shall be created by any city, town or village

"unless the question of incurring the same shall, at a regular election for councilmen, aldermen or other officers of such city, town or village, have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year."

Section 3717, Code 1915, in making provision for the issuing of bonds for the construction of water works or sewers, says:

"Before any bonds shall be issued, the city council or board of town or village trustees, as the case may be, shall cause the question of issuing such bonds to be submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year."

You will note that the language of the section of the code last above quoted, is identical with that of the Constitutional provision also quoted, and that it is clear that the qualified elector in such a case would be one who had "paid" a property tax during the preceding year. We believe that the language is plain and needs no construction and that a person who has not "paid" his tax during the preceding year, would not be qualified to vote at such an election, even though his name might appear upon the tax rolls.

There are many cases in which it has been held that the word "taxpayer" would include all persons whose names appear upon the assessment roll, whether or not they paid the tax, but the language in the statutes where the word is used does not require that the tax should be "paid."

We, therefore, are of the opinion that persons whose names appear upon the tax roll, but who are, by law, exempted from paying any tax and who do not pay a tax, would not be authorized to vote at such an election.