

Opinion No. 21-2877

March 30, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. G. W. Woodman, Moriarty, New Mexico.

Electors Qualified to Vote in Newly Consolidated School District.

OPINION

{*36} In reply to your oral inquiry for an opinion relative to the right of certain residents in Santa Fe County to vote at a school election in a newly created school district formed from districts in Torrance and Santa Fe counties, I would advise you as follows:

Consolidation of school districts in two or more counties is authorized by the provisions of Chapter 14, Laws 1919. It is provided in that act that the county which, at the time of consolidation, has the larger or largest number of children of school age residing within the consolidated district as shown by the last official school census preceding such consolidation, shall be known as the dominant county, and that the Board of Education of the dominant county, shall constitute the governing body of such consolidated district.

The law further provides that upon consolidation, the school directors of the former school district of the dominant county shall become the directors of the consolidated district until the next regular election of school directors and shall have all the rights, powers and duties specified by law for other school directors.

Section 4 of the act then provides that school districts or parts of school districts consolidated under the provisions of the act should become, to all intents and purposes, a school district of the dominant county, and that elections in school matters should be held and conducted in the same manner as in other rural school districts.

It would appear as if the conduct of the election is provided for in the act, but there is nothing which specifically provides who may be voters at such an election.

It certainly could not have been the intention of the legislature to deprive the voters of any part of the district from having a voice in the administration of its affairs, and if such an intent had been manifested by the legislature in the law, such part of it would have been unconstitutional, as it would have deprived the residents of that particular part of the district of representation, although it taxed such persons for the support and maintenance of the district. Taxation without representation is not tolerated by either the Federal or the State Constitution and, therefore, the residents of that part of the school district who reside in Santa Fe County cannot be deprived of the right to vote at the school election by reason of such residence in the said named county.