

Opinion No. 23-3746

December 20, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Hon E. B. Garcia, Jr., District Attorney, Bernalillo County, Santa Fe, New Mexico.

Qualifications of Electors in County School Bond Elections.

Individual Members of Taxpaying Partnership Are Entitled to Vote.

Married Women Whose Husbands Paid Taxes on Community Property are Qualified Voters.

Payment of Some Part of Property Tax Assessed During Preceding Year is Necessary Qualification.

Citizens Whose Exemptions Cover all Taxes Assessed Cannot Vote.

Stockholders of Taxpaying Corporations Cannot Vote on Account of Taxes Paid by Corporation.

Taxes Must be Paid in the County Where Election is Held.

OPINION

{*112} This inquiry arises upon the question who are qualified voters at the Special Bond Election to be held in Bernalillo County on December 22, 1923. This is an election called for the purpose of submitting the question of issuing bonds for a new Court House. The election has been called in pursuance of the requirements of Section 10 of Article 9 of the Constitution of the State of New Mexico which reads as follows:

No county shall borrow money except for the purpose of erecting necessary public buildings or constructing or repairing public roads and bridges, and in such cases only after the proposition to create such debt shall have been submitted to the qualified electors of the county who paid a property tax therein during the preceding year and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years.

There is some uncertainty regarding the qualification of electors and, consequently, the District Attorney has submitted the following specific questions:

1. Where a partnership is assessed, can members of the firm vote?

2. Can a woman whose husband has paid a tax during the preceding year, upon community property, vote?

3. Can one whose property was assessed during the preceding year vote, even if he is delinquent in the payment of his taxes for such year?

4. Can persons whose property is wholly covered by householder's or soldiers' exemption, vote?

{*113} 5. Can stockholders of tax paying corporations vote?

6. Can a resident of Bernalillo County who pays no taxes within the county, but who pays taxes in some other county of the state, vote?

1. In construing provisions relating to voters at municipal bond elections, similar to those contained in our constitutional provisions, the courts have universally held that the individual members of a tax paying partnership firm are property taxpayers and are entitled to vote. -- Ralls v. Sharps, Admr. (Ky) 131 SW 998. State v. Martin, 32 Nevada, 197.

It makes no difference whether a person pays taxes individually or as a partner in a firm; in either instance he is an elector "who paid a property tax during the preceding year."

2. I think that married women whose husbands have paid a tax during the preceding year, upon the community property, have a right to vote at the election. Under the system obtaining in New Mexico, the husband and wife are joint owners of the property of the marriage community and their status would seem to be analogous to that of members of a partnership mentioned in the first paragraph of this opinion. In most cases it will be found that the property assessed in the name of the husband is community property, and that the tax is paid with community earnings. In all such cases the wife is a qualified elector who has paid a property tax during the preceding year, even though the property is assessed in the name of the husband and the taxes are ostensibly paid by him. -- Opinion of Attorney General Bowman No. 3306.

See also, Peck v. Board of Directors, La., 68, Southern 629. Endom v. City of Monroe, La., 36 Southern 681.

3. Under the constitutional provision, payment of the property tax, during the preceding year, is an essential qualification of the voter at this sort of an election. In my opinion, this provision of the constitution means that the person offering to vote must establish that he has paid some part of the 1922 taxes. While there is room for uncertainty on the precise meaning of the words "during the preceding year," I think the phrase was intended to apply to taxes assessed for the preceding year. I think that any other construction will lead to great confusion.

4. It seems quite clear that heads of families whose exemptions cover all the property owned by them and who, consequently, paid no taxes for 1922, cannot vote at this election. The same rule would apply to soldiers' exemptions but at this particular time the case of the soldiers is complicated by the fact that exemption was not allowed for 1922, and payment of taxes was demanded. The Supreme Court recently sustained the validity of the 1922 exemptions and all soldiers who paid 1922 taxes are entitled to refund within the limits of the exemptions; however, no refunds have been made in Bernalillo County and, hence, the soldiers who have paid their 1922 tax fall within the constitutional description of a qualified voter and are, therefore, doubtless entitled to vote.

5. The stockholders of a tax paying corporation cannot vote on account of taxes paid by the corporation. The case of the corporation tax payer is quite different from that of the partnership, because the stockholder has no title in the corporate property.

6. A resident of Bernalillo County who pays no tax in Bernalillo County, but who pays tax in some other county cannot vote. *{*114}* The constitution is very clear in declaring that the elector must have paid a property tax in the county for which the election is held.