

Opinion No. [29-89]

March 19, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. A. Russell Davidson, Chairman of Board of Directors, School District No. 8, Fierro, New Mexico.

SCHOOLS -- Bonds, petitioners must have paid property tax; qualified electors may vote.

OPINION

I have your letter of the 16th instant in which you refer to a petition recently signed asking for a special school bond election in District No. 8, and which petition you say was refused, presumably on the ground that the signers of the petition were not owners of "real property", and you ask for an opinion as to the qualifications required in signers of such petition, the qualifications of voters in an election for the issuing of school bonds, and especially, a definition of the word "property" as it occurs in that connection.

Section 702 of Chapter 148 of the Laws of 1923, as amended by Sec. 2 of Chapter 139 of the Laws of 1927, provides that in initiating the right to issue bonds provided for in that chapter, there must be a petition in duplicate, asking for the calling of an election, which petition must contain the genuine signatures of qualified electors of the district, who shall have paid a property tax therein during the preceding year, and to the number of ten (10) per cent of the combined vote cast in the said district at the last preceding general election for governor.

Property tax, as used in this act, means simply a tax on property, whether real or personal, as distinguished from a poll tax or an excise or license tax. Although not necessarily included in your question, permit me to say in this connection, that under a decision of our Supreme Court in the case of *Baca v. Village of Belen, et al*, 30 N.M. 541, it is held in effect, that where a tax is paid on community property, although it is actually paid by the husband, such payment ensures equally to the credit of the wife and entitles her to recognition as a tax payer.

Under our Constitution, Sec. 1, Art. 7, women possessing the qualifications prescribed in that section for male electors shall be qualified electors at all school elections, and our Supreme Court, in *Klutts et al v. Jones, Treasurer, et al*, 20 N.M. 230, has held that an election within a school district for the purpose of determining whether bonds of such district shall be issued for the purpose of building a school house, is a school election within the meaning of Sec. 1, Art. 7, of the Constitution.

Answering your remaining question as to who may vote at a bond election such as is described in your letter, Sec. 708 of Chapter 148 of the Laws of 1923 provides that one

ballot shall be delivered to each qualified voter of the district presenting himself to vote. This I take to mean that any person possessing the qualifications which would entitle him to vote in a general election in such district is entitled to vote on the question of the issuing or not issuing of school bonds.