

Opinion No. [30-45]

June 27, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Dr. John H. Sanford, Mayor, Santa Rosa, New Mexico.

MUNICIPAL CORPORATIONS -- Right of married woman having Community property interests to vote at election for sale of Municipal plant.

OPINION

I have before me yours of the 25th inst. in which you ask an opinion as to the right of a married woman to vote at an election relative to the sale of a municipal water and light plant, it being one of the qualifications of electors that they shall have paid a property tax within the preceding year. You ask,

"Does this mean that only the man or the wife, in whose name the property is assessed, can vote on this matter or can both the man and wife vote?"

I believe you will find this question completely answered in a decision of our Supreme Court rendered in 1925 in the case, *Baca v. Village of Belen, et al.*, 30 N.M. 541.

This question came up on the right of a married woman to vote on a bond election in the Village of Belen in which election the requirement of the payment of a property tax in the preceding year was the same as in your case. The opinion as rendered by the Supreme Court is a long one and every phase of the subject is there discussed. It is not practicable for us to quote into this letter the entire opinion as it is probably available to you. The syllabus, however, which is by the court itself, is as follows:

"A married woman, being otherwise a qualified elector, owning with her husband community property in the village of Belen, whose husband had paid the tax assessed against such community property during the year preceding an election to authorize the issuance of the village bonds to procure funds for the construction of a sewer system for such village, was qualified to vote upon the question of the issuance of such bonds; she thereby having paid a property tax within the contemplation of the provisions of section 12, art. 9, New Mexico Constitution."

You will note then that where the tax has been paid on community property it is immaterial whether that property was listed in the name of the husband or the wife or both. The payment of such tax inures to the benefit of both husband and wife and enables each and both of them to meet the requirements as to the payment of a property tax as a condition qualifying them to vote contemplated by the provisions of section 12, Article IX of the Constitution of New Mexico.

You ask further as to the limit of years that a franchise may be granted to maintain and operate a water and light plant. The answer to this, I believe, is found in subsection 70 of section 3564, Codification of 1915, or item 70 of section 90-402, Codification of 1929, by which you will see that "they may make such grants to inure for a term of not more than twenty-five years." This matter is passed on also by our Supreme Court in the case, Asplund vs. City of Santa Fe, 31 N.M. 291.

Your third and last question has to do with the supplying of the Board of Trustees with a copy of the 1929 Codification and as to this I am sorry to have to inform you that the statute authorizing the new compilation, Chapter 135, Laws of 1929, does not authorize the Attorney General to furnish copies gratis to any but those named in the following:

"Sec. 8. Said statutes when received shall be distributed by the Attorney General to all state, county, precinct, and district officers and also to each member of the Ninth Legislature Assembly of the State of New Mexico."

You will note that Boards of Trustees, City Councils, and Commissioners are not included in the list.