

Opinion No. 31-30

January 27, 1931

BY: E. K. Neumann, Attorney General

TO: Mrs. B. D. Garner, Member, Co. Board of Education, Picacho, New Mexico.

{*32} This is in reply to your letter of January 23, 1931, in which you ask for an opinion upon the following questions of law:

"1. Would it be legal for persons not registered, who are otherwise qualified voters, to vote on either consolidation of schools, or bond issue?"

2. Would it be legal for persons who are not taxpayers, otherwise qualified by virtue of residence, and naturalized citizens to vote on either consolidation of schools, or bond issue?"

In my opinion your first question should be answered in the affirmative. Section 41-209 of the 1929 Compilation, provides that, "no person shall vote at any **general** election unless registered as herein provided; etc."; and section 120-703, in reference to bond elections, provides, "in no event shall any such election be held on or within five days preceding or succeeding any general election held in the county." Section 120-1003, with reference to elections to establish Union High Schools, provides, "the election shall be called, conducted, canvassed and proclaimed in substantially the same manner as is provided for bond elections herein; etc."

From reading these sections above referred to it is apparent that registration of voters is not required for voting upon the question of consolidation of schools, or of bond issues, there being no other statute which requires such registration. This opinion is supported by the following language in section 120-708, as follows: "One ballot shall be delivered to each qualified voter of the district presenting himself to vote." There being no statute specifically requiring registration prior to voting in such election, it would follow that such registration is not required.

It is my opinion that your second question should also be answered in the affirmative. Section 41-210 sets out the necessary qualifications for voters and does not provide that a person must be a tax-payer in order to vote. There being no statute requiring special qualifications for persons voting at bond elections or upon consolidation of schools, it would follow that any voter who is otherwise qualified may vote at such elections, regardless of whether or not he is a tax payer.

Section 11 of Article 9 of the Constitution of the State of New Mexico also supports this view, in the following language:

"No school district shall borrow money, except for the purpose of erecting and furnishing school buildings or purchasing school grounds, and in such cases only when the proposition to create the debt shall have been submitted to the **qualified electors** of the district, and approved by a majority of those voting thereon."

Nothing is said in this section regarding the necessity of being a taxpayer in order to vote in such an election. Apparently it negatives such a requirement.

You will notice, however, by reference to section 120-702, that the petition asking for the calling of a bond election must be signed by "qualified electors of the district, **who shall have paid a property tax therein during the preceding year.**"

{*33} Trusting that I have answered your inquiries satisfactorily, I am

By Quincy D. Adams,

Asst. Att'y General