

Opinion No. 38-1907

March 12, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. J. V. Gallegos City Attorney Tucumcari, New Mexico

{*218} Under date of March 4, 1938, you make certain inquiries with respect to general obligation municipal bonds.

a. You are correct in your conclusion that only resident voters in a municipality may vote at an election for a bond issue, and that residents without the city limits cannot vote even though they own property within the city limits and even though they have paid a tax on such property for a previous year.

{*219} b. This office has held that "property" in Article IX, Section 12, New Mexico Constitution, includes personal property such as furniture or livestock.

c. Even though sewer bonds may not be within the limitations contained in Article IX, Sections 12 and 13, of the New Mexico Constitution, their issuance is governed by Section 90-2502, 1929 Compilation, which limits the qualifications of electors at such a bond election to persons who "have paid a property tax therein during the preceding year," and therefore the qualifications for voters at such an election are the same as those at a public buildings bond election.

d. The Supreme Court has decided in *Varney vs. City of Albuquerque*, 40 N.M. 90, 55 P. (2d) 40, that where a statute requires a two-thirds vote to carry a bond election, such a requirement is valid as within the provisions of Section 12, Article IX of the Constitution.

Whether the issue of bonds for the hospital has to be carried by a majority vote as provided in Section 90-402, subdivision 6, or by a two-thirds vote as provided in subdivision 67 of Section 90-402, 1929 Compilation, is a question which I do not think it proper for us to pass on at this time. It may be that if the State should propose to buy the bonds, we may be called upon to pass on the bond issue, and it may be that we would want some expression from the Supreme Court on that point if it should happen that the bond issue is not carried by a two-thirds majority. Both sections may be in effect. See discussion in *Smith vs. City of Raton*, 18 N.M. 613. The Supreme Court in the recent case of *Mann vs. City of Artesia* seems to assume that subsection 6 is still in effect notwithstanding the later act codified as subsection 67.

With reference to the sewer bonds it would seem from some expressions in *Lanigan vs. Gallup*, 17 N.M. 627, that the issuance of such bonds is entirely within the control of the Legislature and in no way limited by Sections 12 and 13 of Article IX. The Legislature, however, in Section 90-2501 of the 1929 Compilation, passed subsequent to that case,

seems to have recognized that the limitations did apply. Whether those limitations apply or not is immaterial, however, since the statute itself sets limitations and prescribes the vote by which such a bond issue must be carried. Section 90-2503 of the 1929 Compilation requires only a majority in sewer bond elections, and it is my opinion that a majority is sufficient to authorize such a bond issue.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.