

Opinion No. 38-2041

August 31, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. C. R. Hughes County Clerk Deming, New Mexico

{*270} I have your letter of August 29th regarding certain matters in connection with bond election for court house and jail.

It is not clear under the statute as to just who is entitled to sign the petition providing for the election the matter only being covered by Chapter 52 of the Session Laws of 1937, which is amendatory of Section 33-3904 cited in your letter.

As you will note, the statute merely provides that the petition is to be signed by not less than two hundred qualified electors of the county.

The only definition we have of the qualified elector is that which is set forth in Article VII, Section 1, of the Constitution.

It is my belief that electors meeting those qualifications would be entitled to sign the petition and that it is not necessary that such signers actually be taxpayers or that they have actually paid a property tax.

{*271} Insofar as the voting upon the question is concerned however, under Section 10, Article IX of the Constitution, they must have paid a property tax during the preceding year and this office has previously held that payment of a tax upon personal property is sufficient to meet this constitutional requirement, although the payment of a fee for automobile license and matters of that kind are not sufficient; these not constituting property taxes.

We have also held that ex-soldiers who have completely used up their exemption are not entitled to vote unless they have actually paid property taxes during the preceding year. Also, under the case of Baca vs. Belen, 30 N.M. 541, where the couple owns community property, taxes upon which have been paid by either the husband or the wife, both are entitled to vote.

Members of a firm or a corporation whose individual names do not appear on the taxrolls or where it is not shown that certain individual members have paid property taxes, are not entitled to cast a vote. This is true for the reason that otherwise in all probability such taxes would be paid by the entity rather than the individual people who go to make up such entity.

I believe the foregoing answers all questions submitted by you.