

Option, Local. Local Option, Petition for. Petition for Local Option, How Signed.

A petition for local option is only required to contain the names of one-third of the taxpaying voters of the county.

June 29, 1915.

Hon. Herbert H. Hoar,
County Attorney,
Sidney, Montana.

Dear Sir:

I am in receipt of your telegram submitting the following question relating to a construction of the local option statute:

"In re Code, Section 2041, Revised Codes, petition requires one third of electors who are qualified to vote for members of the legislative assembly. Must that one-third be taxpayers, or must petition have one-third of taxpaying electors and sufficient other electors to make one-third registration list?"

The first part of Section 2041, Revised Codes, provides that the petition therein referred to must be "signed by one-third of the voters who are qualified to vote for members of the legislative assembly" in the county. This petition is addressed to the Board of County Commissioners, and it is provided in the last part of the Section that the Board "must determine the sufficiency of the petition presented by the last assessment roll of the county."

The first local option law, in so far as we need here trace the history, was approved March 10, 1887.

Sec. 1395 to 1405, 5th Div. Compiled Laws, 1887.

The first general registration law, which we need here consider, was approved March 8, 1889. Said Section 1395, above, provides that the petition shall be "signed by one-third of the voters who are qualified to vote for members of the legislature, etc.", and further on, provides:

"that the county commissioners shall determine upon the sufficiency of the petition presented by the tax books of the year before."

The County Commissioners at that time could not call to their aid any registration of voters, for there was no registration law in existence until some two years later, and it appears that the only guide which the Commissioners had in determining the sufficiency of the petition, was the tax books of the previous year. They were not authorized to look to any other record in testing the sufficiency of this petition. The territorial legislature appears to have taken into account the fact that the liquor license law was not only a police regulation, but also a revenue measure, and that before the question, as to whether the power inherent in the law should be made to operate within the county, could legally be submitted to the qualified electors, one-third of the tax-paying voters were required to give sanction to the election therefor, by signing the petition. In determining the sufficiency of the petition under this territorial law, the County Commissioners were not required to look beyond the test which by its terms was made obligatory upon them. In fact there was nothing beyond that test for them to look to. There was not any registration list, nor was there any record which gave them information as to who were qualified voters, unless it was the list of those who had previously voted, and no reference is made to this list in the local option law. The provisions of that law simply were that the petition must be signed by legal voters, and that those voters must stand the test of having their names upon the tax books; and in as much as the Commissioners could not look beyond the tax books, the number of voters who were not taxpayers became wholly immaterial. If the petition then was signed by one-third of the tax-paying voters, it was sufficient to give to the county board, jurisdiction to act. The provisions of Section 2041, Revised Codes of 1907, are substantially the same as Section 1395, 5th division, Compiled Laws of 1887. Hence, said Section 2041, Revised Codes, must be construed as a continuation of the former law, rather than as a new enactment.

Section 5, Revised Codes.

This Section 2041, instead of using the phrase "tax books," uses the phrase "assessment roll," which to all intents and purposes has the same meaning, and it is made mandatory that the Board determine the sufficiency of the petition by the last assessment roll. Nowhere in the law is there any duty placed upon the Board to look beyond this roll. Hence, if the petition is signed by one-third of the voters whose names appear on the assessment roll, which is the only test the Commissioners are authorized to apply, then the petition is sufficient to give the Board jurisdiction to act. This question has heretofore been considered

by this department.

Opinions Attorney General, 1905-06, p. 257;

Opinions Attorney General, 1908-1910, p. 15;

Opinions Attorney General, addressed to Hon. Paul Babcock,
Plentywood, Montana, May 19, 1915.

In the first of these opinions referred to, it was stated:

"When a petition is presented containing the names of such qualified voters equal to one-third of the qualified voters whose names appear upon the last assessment roll, it is sufficient to authorize the county commissioners to act thereon."

It was further stated in said opinion that as a matter of precaution, the petition should not only contain the names of one-third of the taxpaying voters of the county, but enough qualified voters in addition thereto, so that the total number would equal one-third of the qualified voters of the county. This doctrine has been adhered to ever since, and the language used does not appear to be ambiguous.

From these considerations, it is my conclusion that if the petition filed contains the names of one-third of the taxpaying voters of the county, it is sufficient to give the County Board jurisdiction to call the election; but, as a matter of protection, the petition should contain the names of enough qualified voters, so that the total number on the petition would equal one-third of the total number of qualified voters of the county.

Yours very truly,

J. B. POINDEXTER,

Attorney General.