

**School Bond Elections—Qualifications of Voters—Interpretation of Constitutional Provision.**

Chapter 104 of the Laws of the 17th Legislative Assembly, providing that no election for the issuance of bonds of any school district shall be called except upon petition signed by a specified number of qualified registered electors who are taxpayers upon property within the school district, and whose names appear upon the assessment roll for the year next preceding the election, is not in conflict with Section 2 of Article IX of the Constitution, which provides the qualifications of electors, and is not in conflict with Section 10 of Article IX of the Constitution, treating of the same question.

George Bourquin, Esq.,  
County Attorney,  
Butte, Montana.

My dear Mr. Bourquin:

You have asked whether Chapter 104 of the Laws of 1921, limiting voting at school bond elections to registered taxpayers, is in conflict with Section 2 of Article IX, or Section 10 of Article IX, of the Constitution of Montana.

The same question has also been raised by Mr. Chas. L. Tyman, County Attorney of Meagher County.

Chapter 104 provides that no election for the issuance of bonds of any school district, town, city or county shall be called except upon petition signed by at least 20 per cent of the qualified registered electors, who are taxpayers upon property within said school district, town, city or county, and whose names appear upon the assessment roll for the year next preceding said election, and that only persons having these qualifications may vote at such election.

Section 2 of the Act was amended by Chapter 17 of the Extraordinary Session of 1921, by leaving out the word "county."

A qualified elector, as defined in *State ex rel. Lang v. Furnish*, 48 Mont. 28, 134 Pac. 297, does not mean simply a registered voter, but one who possesses the qualifications prescribed by the Constitution as necessary to entitle him to vote. Registration is merely a means of ascertaining who the qualified electors are.

Section 2 of Article IX of the Constitution, submitted and carried at the general election of 1914, provides the qualifications of electors as follows:

"Every person of the age of twenty-one or over, possessing the following qualifications, shall be entitled to vote at all *general elections* and for all officers that are, or hereafter may be, elective by the people and upon all questions which may be submitted to the vote of the people:" (Then follow the qualifications.)

This amendment is what is commonly known as the Woman's Suffrage Amendment, and the only change made was to eliminate the word "male" after the word "every."

It is suggested that the provision "and upon all questions that may be submitted to a vote of the people," and also the provision of Section 10 of Article IX of the Constitution which provides that "women shall be eligible to hold the office of county superintendent of schools or any school district office, and shall have the right to vote at any school district election," prevent the Legislature from fixing qualifications such as those contained in Chapter 104 for bond elections in school districts.

While the rule is recognized that where the Constitution enumerates the qualifications of a voter at certain elections, it is not within the power of the Legislature either to add to or take from the qualifications therein provided for such election, the qualifications of voters at any election, not included in the constitutional provision, may be fixed by the legislature.

9 Ruling Case Law 1024, Sec. 41;

20 Corpus Juris 66, Sec. 21.

It has been held in numerous cases that it was competent for the Legislature to provide special limitations or qualifications of voters or extend the right to vote to persons in local, municipal, or school elections, on the ground that constitutional provisions similar to Section 2 of Article IX, *supra*, do not apply to local or municipal elections.

*Prosecutor v. Board of Education*, 57 N. J. L. 605, 31 Atl. 1033;

*Coggeshall v. Des Moines*, 138 Ia. 750, 117 N. W. 309;

*People ex rel. Tilden v. Welsh*, 70 Ill. App. Div. 641;

*State ex rel. Mills v. Board of Elections*, 9 Ohio C. C. 134;

*Harris v. Burr*, 32 Ore. 348, 52 Pac. 17;

*Wheeler v. Brady*, 15 Kan. 26;

*State ex rel. Gibson v. Monahan*, 72 Kan. 492, 84 Pac. 130;

*Gould v. Seneca Falls*, 121 N. Y. Supp. 723;

*Spitzer v. Village of Fulton*, 68 N. Y. Supp. 660;

*Fee v. Richardson* (Kan.) 107 Pac. 789;

*Scoun v. Czarnecki* (Ill.) 106 N. E. 276.

That part of Section 2 of Article IX, *supra*, reading "for all officers that now are or hereafter may be elected by the people, and upon all questions which may be submitted to a vote of the people," is identical with the provisions of Section 1 of Article 2 of the New York State Constitution. This provision was construed by the New York court in the case of *Spitzer v. Village of Fulton*, 68 N. Y. Supp. 660. The question there presented was whether a provision in a village charter, requiring an elector or his wife, in addition to the other qualifications, to be the owner of property in the village and assessed upon the last preceding assessment roll, to entitle him

to vote upon a proposition, was in conflict with the constitutional provisions above referred to. The question arose on the validity of a bond election. The court in this case used the following language:

"Conditions imposed by the legislature or constitution must be strictly complied with. Such a condition is the common one, requiring the consent of the voters or taxpayers of the municipal body. *Leavenworth & D. M. R. Co. v. Platte County Court*, 42 Mo. 171; *Essex County R. Co. v. Selectmen, etc., of Town of Lunenburg*, 49 Vt. 143; *Town of Eagle v. Kohn*, 84 Ill. 292. The submission, by the legislature, to a local constituency, of a question affecting their local interests, is to be distinguished from the submission of a question affecting the whole state to the entire body of the electors. *Bank of Rome v. Village of Rome*, 18 N. Y. 38; *Gould v. Town of Sterling*, 23 N. Y. 439, 456. \* \* \*. It will be observed from the cases cited, the marked distinction between the voter entitled to vote at a general election, and the one where questions of a local nature affecting property, such as issuing bonds and incurring debts, are concerned."

The court then reviewed the history of the provisions and the debate in the constitutional convention at which it was adopted, which shows that an amendment was offered adding the words "of the state at large" so as to avoid the question of municipal charters, to which the reply was made: "I did not think there was any doubt under my amendment. If there is, I accept it. I suppose all questions to be submitted to the people relate to the administration of the affairs of the state, and we are now determining the rule as to who shall participate in the government of the state."

The opinion continues:

"It was evidently the opinion that this amendment had no relation to municipal charters. It is also evident that he and his associates were dealing with the qualification of the electorate for elective officers and upon all questions submitted to a vote of the people."

The following language of the court later in the same opinion is of value in view of the fact that various enactments of the Montana Legislature, passed contemporaneously with the Constitution, relate to the same subject:

"Contemporaneous legislative exposition of a constitutional provision is entitled to great deference, as it may well be supposed to result from the same views of policy and modes of reasoning which prevailed among the framers of the instrument expounded. Thus, where a compilation of statutes was prepared and adopted soon after taking effect of a new state constitution, it constitutes a construction as to how the constitution was then understood. \* \* \* The legisla-

ture has always assumed, and been permitted to assume, the right to determine who might vote for trustees, and what qualifications should or should not be requisite and necessary; and to that class of officers the constitutional provisions have never been applied. \* \* \*

Subdivision 64 of Section 3259 of the Revised Codes of 1907 provides that:

"No money must be borrowed on bonds issued for the construction, purchase or securing of a water plant, water system, water supply, or sewerage system, until the proposition has been submitted to the vote of taxpayers affected thereby of the city or town."

Substantially the same provision was formerly part of Subdivision 64 of Section 4800 of the Political Code of 1895, and was adopted soon after the Constitution was adopted, and no question has ever been raised during all the time since this enactment as to its validity and as being in conflict with Section 2 of Article IX of the Constitution.

Section 12 of Article IX of the Constitution provides:

"Upon all questions submitted to the vote of the taxpayers of the state, or any political division thereof, women who are taxpayers and possessed of qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote."

This provision clearly shows that the framers of the Constitution contemplated that the Legislature might provide for the submission of other questions, than those enumerated in the Constitution, to a vote, limiting the voting to those who are taxpayers.

Section 10 of Article IX of the Constitution is as follows:

"Women shall be eligible to hold the office of county superintendent of schools or any school district office, and shall have the right to vote at any school district election."

This section was not intended to prescribe any qualifications for women electors at the elections therein referred to; it was merely intended to extend the right to women to vote at such elections, if possessed of the qualifications otherwise required by the Constitution. It was merely intended to give women a right equal and not superior to that of men to vote at school elections. It was not intended to give them rights additional to those given by Section 12 of Article IX of the Constitution, as this section specifically covers the subject of voting at elections where questions were submitted to taxpayers and gives them an equal right to vote where they are taxpayers.

Rose v. Sullivan, 56 Mont. 480.

Abbott on Public Securities, Section 135, states the rule as follows:

"Qualification of voters at such an election (bond election) may be fixed by either constitutional provision or legislative action, and the privilege of voting limited to the taxpayers, or such other classes as may seem advisable. The validity of these provisions has been universally sustained since the act of voting is not a right, but a mere privilege to be granted as a matter of favor by the sovereign state."

I am, therefore, of the opinion that Chapter 104 is not in conflict either with the provisions of Section 2 of Article IX, or Section 10 of Article IX, of the State Constitution.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.