

**Elector—Who Entitled to Vote at School Election for  
Levying Taxes in Excess of Ten Mills—Wife of a Taxpaying  
Freeholder Not Entitled to Vote at Such Election.**

The wife of a taxpaying freeholder is not entitled to vote at a school election upon the question of levying taxes in excess of ten mills under Chapter 93 of the Laws of 1917, as she is not a freeholder solely by reason of her inchoate right of dower.

Jos. C. Tope, Esq.,  
County Attorney,  
Terry Montana.

My dear Mr. Tope:

You have requested an opinion of this office as to whether the wife of a taxpaying freeholder is entitled to vote at an election called under the provisions of Chapter 93 of the Laws of 1917. (Secs. 1219, 1223, Rev. Codes.)

You also wish to be advised whether the wife of one who is qualified to vote, under the provisions of Section 2 of Chapter 104 of the Laws of 1921 (Sec. 1253, Rev. Codes of 1921), is qualified to vote, by reason of her dower interest, without her name appearing upon the assessment roll.

Your contention is that the wife, by reason of her dower interest, is the owner of a freehold estate. While it is true that dower

at common law is an estate of freehold yet the wife is not entitled to this estate until after the death of her husband and after her dower has been assigned to her.

"The inchoate right of dower is neither a title, nor an estate in land, nor a lien upon the husband's land, nor a personal claim against the husband. It confers upon the wife no right of possession or control of the land to which it attaches. Some decisions deny that it is even an interest in land, and describe it as a mere possibility of a future interest. \* \* \* While inchoate dower is not a vested property right, it is more than a possibility, and amounts to a contingent right which may ripen into an estate in case the husband dies first."

19 C. J., p. 493, Sec. 105.

See, also:

Lavery v. Hutchison, 249 Ill. 86, 94 N. E. 6, Ann. Cas. 1912A, 74;

Stronghurst First Nat. Bank v. Kirby, 269 Mo. 285, 190 S. W. 597.

Volume 19, Corpus Juris, page 530, Section 202, lays down the following rule:

"Prior to the assignment of her dower the widow has no vested freehold estate, unless, as in some jurisdictions, the common law has been changed by statute, in which case the dower interest may become a vested estate immediately upon the death of the husband without being first assigned or set out. But in the absence of such statutes, the widow is not seized of any part of her deceased husband's lands, and her right is for most purposes nothing more than a mere right of action."

From the foregoing, I am unable to agree with your view that the wife would be a freeholder solely by reason of her inchoate right of dower.

Regarding the right of the wife to vote at a bond election called under the provisions of Chapter 104 of the Laws of 1921, the requirement is that the party shall be a qualified registered elector, who is a taxpayer upon property within the district and whose name appears upon the assessment roll for the year next preceding the election. The term "qualified registered elector" has reference to the qualifications of an elector as prescribed in the Constitution. However, it is apparent that this provision not only requires that a person be a taxpayer, but it is equally important that the name appear upon the assessment roll, for the year preceding the election.

I am, therefore, of the opinion that the wife, by reason of her inchoate right of dower alone is not entitled to vote under the provisions of this section, but in order to entitle her to vote at an election

therein provided for she must be a taxpayer upon property within the district and her name must appear upon the assessment roll for the year next preceding the election.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.