

High Schools—Petitions to Abandon—Petitioners—Qualifications—Time.

A petition for abolishing a county high school must be signed by 20% of the qualified electors whose names appear on the last assessment roll and not 20% of the total of all qualified electors whose names are on the assessment roll.

Between the first day of July and the first day of September is determined by excluding both terminal dates.

Mr. H. F. Miller,
County Attorney,
Fort Benton, Montana.

September 13, 1932.

My dear Mr. Miller:

I have your request for an opinion relative to the interpretation of section 20, chapter 148, laws of 1931. This section reads as follows:

“Between the first day of July and the first day of September in any year in which a general election is held in the State of Montana twenty per centum (20%) or more, of the qualified electors of any county maintaining a county high school who are also assessed in their own names on the assessment books of the county for that year upon real or personal property may file their written petition with the county clerk of the county praying that the county high school will be abolished.”

I am not able to agree with your opinion as to the meaning of this section to the effect that it requires 20% of the qualified electors, and such 20% must in addition be assessed on the last assessment roll. The language of this section is substantially the same as in section 8 of chapter 147 of the session laws of 1927. It has always been construed by this office to mean 20% of the registered electors who are taxpayers and not 20% of the total registration who possess such qualification.

In the case of section 20 you will observe that the reference is to qualified electors of the county. Qualified electors, of course, mean persons possessing the qualifications prescribed by the constitution. It would be practically impossible to determine what 20% of the qualified electors of the county is since you have no means of knowing how many qualified electors there are in the county. Registration is no part of the qualification. An elector, it is true, of course, must be registered in order to vote, and he must be a qualified elector in order to register, but there may be many qualified electors who are not registered. On the other hand, it would not be impossible to ascertain 20% of the qualified electors whose names appear on last assessment roll since you have a full list of such names and by a process of comparison with the registration list and inquiry as to those not registered it would not be impossible to determine 20% thereof.

The question of time within which the petition must be filed is to me a more difficult one. We have a statute providing that the time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, etc. ((Section 10707, R.C.M. 1921). Here the act is required to be done between certain fixed dates.

I find a rule in regard to excluding the first day and including the last day in a note found in 49 L. R. A., 247, as follows:

“The more modern decisions have changed this rule, and, in the absence of a statute or rule of court controlling the question, the courts now compute time, as a general rule, by excluding the first day and including the last day. But this rule was subject to exceptions with reference to the language of the provision for

time or the surrounding circumstances, and in many instances in which the words 'within' or 'between' or 'at least' or 'not less than' were used, both the first and last days were excluded, and such days were included or excluded, as the case might be, so as to avoid a penalty or forfeiture."

Section 21 of chapter 148 of the session laws of 1931 requires the commissioners of the county immediately following the said filing to immediately direct the submission to the registered voters of the county at the ensuing general election for that year of the question whether the county high school of the county shall be abolished.

Section 22 requires the publication of notice of the filing and purpose of the petition to be made between September 1st and September 15th of said year. The first meeting of the board of county commissioners would, in the event that it was not a holiday, be on the first day of September, and if the petitioners had a right to file petitions on the first day of September then the board might not be able to consider them at the first regular monthly meeting held thereafter, and in that event the notice could not be published between September 1st and September 15th.

It is therefore my opinion that the language "between the first day of July and the first day of September" as used in section 20 must be construed to exclude both July 1st and September 1st in computing the time. This is in line with the decision of our supreme court in the case of Mountjoy vs. Bevan, 82 Mont. 594.

Very truly yours,

L. A. FOOT,

Attorney General.