School Districts—Extra Levy—Trustees—Duties.

In school districts of the third class the board of trustees is required to submit the question of an extra levy to the taxpayers, the word "may" as used therein being construed as "shall" or "must".

Mr. J. C. McIntire, April 13, 1931.
Clerk of School District No. 9,
Musselshell, Montana.

My dear Mr. McIntire:

You have written me relative to the provisions of section 1219 as amended by section 1, chapter 120, laws 1925, relating to who is entitled to vote at an election called for the purpose of submitting the question of whether a special levy shall be made in excess of ten mills. You call particular attention to the last part of this section, which reads as follows: "provided, that in all school districts of the third class such question may be submitted to the legal voters of said district, who are taxpayers therein."

Your question is as to whether the word "may" as used in the provision quoted makes it optional with the board of school trustees of a third class district as to whether the call for such election shall be restricted to freeholders or extended to include taxpayers who are not freeholders.

In my opinion the word "may" as used in this part of the section must be construed as "shall" or "must," otherwise the act would not have uniform operation in third class districts. There is nothing in the act which attempts to make any classification of third class districts so as to definitely determine when the trustees may submit the matter to the taxpayers and when they may elect to submit it to taxpaying freeholders. If the use of the word "may" in this section gives the trustees discretion as to when they may submit the matter to taxpayers and when they may decide to submit it to taxpaying freeholders it would violate the constitutional provision in regard to special or class legislation.

In the case of State ex rel. Redman vs. Meyers, 65 Mont. 124-128, 210 Pac. 1064, the court said:

> "The fact that section 1038 applies only to some school districts does not necessarily render it invalid. So-called class legislation may be constitutional if the class is germane to the purpose of the law and is characterized by some special qualities or attributes which reasonably render the legislation necessary,

> or, in other words, if the classification is reasonable, and the law operates equally upon every person or thing within the given class. (1 Lewis' Sutherland's Statutory Construction sec. 203.) Interdicted class legislation includes all laws that rest upon some false or deficient classification, and the vice in such laws is that they do not embrace all of the class to which they are naturally related. (State v. Parsons, 40 N. J. L. 1.) A fair test for determining whether a statute is special is this: Does it operate equally upon all of a group of objects, which, having regard to the purpose of the legislature, are distinguished by characteristics sufficiently marked and important to make them a class by themselves? (Clendaniel vs. Conrad, 3 Boyce (Del.) 549, Ann. Cas. 1915B, 968, 83 Atl. 1036)."

It is therefore my opinion that the word "may" must be construed to mean "shall" or "must" so as to require in third class districts the submission to its taxpayers of questions relative to making a special levy in excess of ten mills.

Very truly yours,

L. A. FOOT,

Attorney General.