

County Free High School Election—Bonds, for Erecting Free High School Building.

1. An election for submitting to the electors of a county the proposition of issuing bonds to erect a county free high school building may be submitted at any time whenever the board of free high school trustees so decide, after giving the notice required by law.
2. Such question must be submitted to the electors of the county, not the taxpayers, therefore women cannot vote whether taxpayers or not.
3. Such election must be held in the various school districts and conducted in the manner of electing school district trustees.

4. County free high school trustees should furnish necessary supplies.

Helena, Montana, Oct. 28, 1905.

Hon. T. J. Porter, County Attorney, Miles City, Montana.

Dear Sir:—Your letter of October 23, 1905, received, together with a letter submitted to you by the trustees of the county free high school, relative to the method and manner of conducting an election for the purpose of bonding the county to procure means to erect and equip a building for high school purposes and to procure a suitable site therefor.

Four distinct questions are submitted, to-wit:

1. Can this question be submitted at any time after twenty days notice, or must it be submitted at a general election?
2. Should it be submitted to the electors of the county or to the taxpayers?
3. At what place should the election be held?
4. What provisions must the board make other than the furnishing of ballots for taking the poll, for counting the returns, for judges of election and for such other things as are generally incident to an election of this character?

These questions will be considered in their order.

1. The provisions of the law authorizing the submission of this bond question cannot apply to a general election, for the reason that election districts and school districts do not necessarily coincide as to boundaries, and this bond election must be conducted by the trustees of the school districts and the voting precincts are the school districts. Furthermore, the very terms of the act itself are to the effect that whenever a majority of the board shall so decide, etc., (Laws 1901, p. 8); it is, therefore, very evident that this question may be submitted to the electors at any time the board may decide so to do.

2. Under the provisions of section 5 of the act of March 14, 1901, laws 1901, p. 8, it is provided that this question shall be submitted to the "electors" of the county. And section 2, of article 9, of the state constitution, defines electors as follows: "Every male person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people and upon all questions which may be submitted to the vote of the people: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law; * * * " And section 10, of article 9, of the constitution provides that women shall be eligible to hold the office of county superintendent, or any school district office, and shall have the right to vote at any school district election. And by the provisions of section 12, article 9, of the constitution, and sections 1187 and 1188, Political Code, women who are taxpayers and possessed of qualifications for the right of suffrage required of men by the state constitution, equal with men, have the right to vote upon questions submitted to a vote of the taxpayers.

In consequence of the provisions of this law, and of the constitutional provisions above referred to, I am constrained to hold that the election contemplated under the law cannot be considered as a submission of the question to the taxpayers, nor as a school district election, but that it is rather a general county election, and under the express provisions of the law providing that the question shall be submitted to the "electors" I do not believe that women are entitled to vote thereat, whether they be taxpayers or not.

3. Immediately after the giving of notice hereinafter referred to, the board of high school trustees must notify the school district trustees and the latter must conduct the election, the polling places being the school houses in the various districts, or if no school houses, then the places designated and used as polling places at the last annual school election.

PROCEDURE:

The procedure would be about as follows:

(a) The board of county free high school trustees must, at a regular meeting or at a special meeting called for that purpose, decide to submit the question to the electors. (Laws '01, p. 8, Sec. 8).

(b) Twenty days' notice of the election must be given by publication in the official paper of the County. (Laws 1901, p. 6 Sec. 1). This notice shall state the time and purpose of election and contain the form of ballot, and should contain, also, the instruction as to how the voting should be done. (Laws 1901, p. 8, Sec. 8.) The notice should also name the polling places, which must be at the school houses in the various districts, if there are any. (Secs. 1770, Pol. Code, as amended 1899, p. 57.) If in any district there is no school houses, then at such places as was designated as the polling places at the last annual school election. (Sec. 1773, Pol. Code, as amended 1899, p. 58.) It is well to note here that there may be more than one polling place in the same district, and the hours when the polls will be open should also be stated. This time must be at least between 2 p. m. and 6 p. m. (Laws 1897, p. 138.) Inasmuch as this is in effect a county election it might be well to extend the hours of voting to the entire day and obviate any possible attack.

(c) The county free high school trustees must immediately, after publishing the notice, notify the several boards of district school trustees of the holding of such election. (Laws 1903, p. 139.)

(d) The election must be conducted by the district school trustees in the same manner as an election for district school trustees. (Laws 1901, p. 8; laws 1903, p. 139.)

(e) The district school trustees must appoint judges, etc. (Laws 1899, p. 56), and

(f) Make returns of election to the board of county free high school trustees. (Laws 1901, p. 8, Sec. 8.)

(g) Ballots must be furnished by the board of high school trustees. (Laws 1901, p. 9.)

The law requires this notice of election to be published twenty days. This means that at least twenty days must intervene between the date of first publication and the holding of the election. In order to evade

any controversy, or question, it may be well to publish this notice in four successive issues of the official paper of the county and then hold the election on the Saturday after the fourth publication, and while the law does not specially require the posting of this notice, it may be well to take the precaution of furnishing school districts a sufficient number of the notices that the same may be posted in three public places within the district. Neither does the law specially require that the notice of election by the county high school trustees shall specify the polling places, yet the notice of election for school district officer does make this requirement and it is safer to insert it in the published notice. The law also seems to convey the idea that the school trustees should select the polling places, but in view of the fact that the published notices of election must name polling places, and of the further fact that the school district officers do not have any notice of election being held at all until after the notice is published, it is apparent that the only way is for the county free high school trustees to designate the polling places, as above indicated, and the school district trustees may, to obviate any question, endorse this selection and order their clerk to sign and post the notices furnished them by the high school trustees.

4. The law does not specially enumerate any supplies which must be furnished school district trustees, except the printed ballots. (Laws 1901, pp. 8 and 9.) Neither does the law provide that the school district trustees shall furnish anything except to give the use of the school houses. This being an election, not for the benefits of the school districts, it is reasonable that it is the intention of the law that the county free high school trustees shall furnish all supplies required—that is, all ballots, paper or blank books; but it is probable that all the supplies that would be required, aside from the printed ballots, would be some foolscap paper or other suitable paper for keeping the record.

The numerous and complex provisions of the statute and session laws, not always harmonious, renders it somewhat difficult to decide upon the precise method of procedure in all the various phases that must be observed in the conduct of this election, but I believe the foregoing to be a general outline, and if the various provisions of law therein cited are studied and observed that the election conducted in pursuance thereof will be sustained.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.