

Schools, Notice of Election, Sufficiency Of. Election, Notice of School Bond. Bonds, Notice of School Election for Issuance Of.

The notice of a school election to vote upon the question

of issuing bonds need not state the exact rate of interest, nor the number of years that the bonds shall run, such matter being left to the discretion of the board, within the maximum limits.

Helena, Montana, June 6, 1910.

Hon. Harry L. Wilson,
County Attorney,
Billings, Montana.

Dear Sir:—

I am in receipt of your letter of June 4th in which you state that a certain proposed bond issue of a school district has been rejected by the counsel of a bond house upon the ground that the election notice is not sufficient, in that it does not state the exact time when the bonds which they should bear, and that counsel cites in support of his objections the case of *Stanford v. School District*, 15 Mont. 133. You further state that the election notice used was a verbatim copy from the form set out in the printed circular of instructions issued by the state board of land commissioners to trustees of school districts in this state.

The form of notice of election contained in said circular was prepared by my predecessor in office. However, we have heretofore checked the same up in passing upon forms contained in such circular and decided the notice was in proper form, and we have again carefully considered the same in connection with the opinion of the supreme court are payable, nor when they are redeemable, nor the exact rate of interest above referred to, and are still of opinion that the notice is sufficient. The notice held insufficient in said decision of the supreme court was clearly defective in that it did not even attempt to name the maximum interest, or any limit to the period that the bonds might run. At the time the supreme court rendered said opinion construing Section 1950, as amended by the laws of 1893, p. 55, Section 1951 of the fifth division of the Compiled Statutes of 1887 did not attempt to set out the form of ballot that should be used at the election held in pursuance of the notice given, further than to provide that the ballot should contain the words "Bonds, Yes". or "Bonds, No.". Said Section 1950 appears as Section 1960 in the Codes of 1895 in practically the same form, but there we find that Section 1962 prescribed the form of ballot that shall be used, which is as follows:

"Shall bonds be issued and sold to the amount of
..... thousand dollars, bearing per
cent. interest, redeemable in years, and
payable in years, for the purpose of pur-
chasing a school lot and building a school house thereon.

"Bonds, Yes;
Bonds, No."

This form of ballot required not only the amount, but also the interest and the time when redeemable and when payable to be definitely stated. Thereafter, the legislature, by the session laws of 1901, p. 125,

amended said Section 1962 by providing that the form of ballot shall be as follows:

"Shall bonds be issued and sold to the amount of
 dollars and bearing not to exceed
 per cent. interest and for a period not to
 exceed years, for the purpose of pur-
 chasing a school lot and building a school house thereon
 and furnishing the same?"

This form of ballot now appears in Section 1005 of the Revised Codes of 1907.

By this amendment of Section 1962 it is clear that it was the intention of the legislature to leave a certain discretion in the hands of the board of trustees by simply limiting the maximum interest that the bonds could bear and limiting the maximum period for which they should run, but the trustees were to have the discretion of selling the bonds for less than the maximum interest if they could do so, and also of fixing the time when the bonds should be payable and redeemable at such term as they considered for the best interest of the district, not exceeding the maximum time stated in the ballot. In our opinion this amendment to Section 1962, by implication, amended said Section 1960 (1003, Revised Codes). Otherwise we would have this peculiar condition existing, to-wit: , The school trustees would publish their notice of election, stating the amount of bonds to be voted upon and fixing the rate of interest, and the time when payable and when redeemable, then, when election day came they would us a ballot entirely different, and which, when cast by an elector would vote for a different proposition from that set out in the notice; therefore, when the law was changed, specifically stating what should be stated in the ballot, we concluded that the form provided for the notice of election should be so worded as to notify the electors of the question in the same form that they would actually vote upon when they came to the polls. It is possible that counsel for the bond house has not investigated the history of this legislation, for, if he had, I feel that he would have reached the conclusions stated above.

Yours very truly,

ALBERT J. GALEN,

Attorney General.