

Freeholder—School District Election—Additional Levy.

A person holding land under a contract for purchase is a freeholder within the meaning of Chapter 93 of the 1917 Session Laws.

July 2, 1918.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

Dear Miss Trumper:

You have requested my opinion upon the question of whether or not a person holding land under a contract for purchase is a tax-paying freeholder within the meaning of Chapter 93 of the Session Laws of 1917.

This Act provides for a special tax levy for furnishing certain additional school facilities for a school district, and that the trustees "shall submit the question of such additional levy to the legal voters of said district, who are taxpaying freeholders therein", either at the regular annual election or at a special election.

A freeholder is defined in Bouvier's Law Dictionary as "one who owns land in fee or for life, or for some indeterminate period". But in *Wheldon v. Cornett* (Neb.) 94 N.W. 626, under a statute requiring the return to an order of sale under foreclosure proceedings to recite that the appraisers were freeholders, the Court said:

"The term 'Freeholder', as used in statutes of the class now before us, is not construed with the same technical strictness as when employed in deeds or other instruments affecting title. The purpose and policy of such a statute are evidently to prevent appraisements being made by those who are not themselves interested in lands, and this would seem to be accomplished if the appraiser had a substantial interest in realty, even though it fall short of being a technical 'freehold'."

And also in *Maitlen v. Barley*, 174 Ind. 620, 92 N.E. 738, it was held that the word "freeholders", as used in statutes providing for the improvement of highways, is not so strictly construed as in deeds and other instruments affecting title. Also in *Starkweather*

v. Chatfield, 149 Mich. 443, 112 N.E. 1071, it was held that since by the common law and by statute estate of inheritance are freehold estates, and the estate of the vendee in a land contract for possession is an estate of inheritance, such a vendee is a freeholder.

It would therefore appear to me that a person in possession of land under a contract for its purchase and who is a qualified elector in the district, is entitled to vote at an election under Chapter 93 of the 1917 Session Laws.

Respectfully,

S. C. FORD,

Attorney General.