

Elections — Homestead — Reclamation — School — Taxpayer.

The holder of a homestead in a reclamation project, upon which final proof has not been made, would not be a taxpaying freeholder within the meaning of that phrase and would not be entitled to vote at an election in a school district for the purpose of determining whether a tax of 10 mills should be levied.

F. A. Ewald, Esq.,
County Attorney,
Great Falls, Montana.

My dear Mr. Ewald:

You have requested my opinion as to whether settlers upon reclamation projects who have not obtained patents to their land are entitled to vote at an election held in a school district for the purpose of determining whether a levy in excess of ten mills should be made, and where "only legal voters of the district who are taxpaying freeholders therein" are entitled to vote.

Former Attorney General Ford held, the decision being found in Vol. 8, Opinions of Attorney General, page 487, that a purchaser of a tract of land upon deferred payments, with the condition that title shall not vest until the payments are completed, is the owner of an equitable estate and a taxpaying freeholder where he pays taxes on such land under the terms of his contract, and is entitled to vote at an election of this kind.

However, in the case of *Irwin v. Wright*, 258 U. S. 219, decided by the Supreme Court of the United States, Mr. Chief Justice Taft, speaking for the Court, said:

"We think, therefore, that the reason for the rule, making the acquisition of the equitable title the line between non-taxability and taxability, is stronger in case of reclamation homestead entrymen than in the instances where, before the Reclamation Act, it always applied. * * *

"It is argued that it is not government property which is sought to be taxed here before final certificate, but only the interest of the entryman. In the case at bar, the taxes were in the first instance assessed against the land, but later the Board of Supervisors changed the form of the assessment so as to insert the word 'equity' in the record. * * * It is enough to say that the entrymen did not have the equitable title until they received the final certificate and their interest in the government's land, until that issued, was, for the reasons given, not taxable."

It is, therefore, my opinion that the holder of a homestead in a reclamation project, upon which final proof has not been made, would not be a taxpaying freeholder within the meaning of that phrase and would not be entitled to vote at an election of this character.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.