

**Elections—Bonds—Electors.**

Question of issuing county bonds for the purpose of building a jail was properly submitted to the general electors of the county rather than to taxpaying electors, notwithstanding provisions of chapter 98, laws of 1923, said statute being unconstitutional insofar as it relates to state and county elections.

Donovan Worden, Esq.,  
Deputy County Attorney,  
Missoula, Montana.

January 25, 1929.

My dear Mr. Worden:

You state that at the last general election held in your county there was submitted the proposition of bonding the county for the purpose of constructing a jail and that the matter was submitted to the general electors of the county rather than to only the taxpaying electors, as provided in Chapter 98, Laws of 1923, and that the proposition received a majority of the votes cast.

You inquire if the failure to submit the proposition to the taxpaying electors only, in accordance with said Chapter 98, invalidates the election.

Section 5 of Article XIII of the Constitution of Montana reads in part as follows:

“No county shall incur any indebtedness or liability for any single purpose to an amount exceeding \$10,000.00, without the approval of a majority of the electors thereof, voting at an election to be provided by law.”

Your proposed bond issue exceeded the sum of \$10,000.00, and, therefore, it was necessary to submit the question of incurring this liability at an election before it could be incurred. The above provision requires the approval of a majority of the “electors” voting at said election.

Section 2 of Article IX of the Constitution of Montana reads as follows:

“Every 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; provided, first that no person convicted of felony shall have the right to vote unless he has been pardoned; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this Constitution; provided, that after the expiration of five years from the time of the adoption of this Constitution, no person except citizens of the United States shall have the right to vote.”

The persons possessing the qualifications mentioned in said Section 2 of Article IX are, by the terms of said section, entitled to vote “upon all questions which may be submitted to the vote of the people.” The provisions of our Constitution are by its own terms prohibitory and mandatory and the legislature would be without authority to add to or subtract from the qualifications of a voter mentioned in said Section 2 insofar as the right to vote upon the questions mentioned therein is concerned. The Constitution itself, by said Section 5, Article XIII, *supra*, required the question of issuing bonds by Missoula county for the purpose of constructing a county jail to be submitted to the electors of said county. It was, therefore, a question upon which the persons described in said Section 2 of Article IX were entitled to vote.

In my opinion, the word “people” as used in said Section 2, and “electors,” as used in said Section 5, are synonymous. This is apparent by Section 1 of said Article IX, which provides that all elections by the people shall be by ballot, and then follows Section 2 defining the qualifications of the persons entitled to vote at elections.

That it was the intention of the framers of the Constitution that in county bond elections the general electors should be entitled to vote without regard to whether or not they are taxpayers is further evidenced by Section 6 of Article XIII of the Constitution relating to indebtedness

of cities, towns, townships and school districts in which it is specifically provided that the legislative assembly may extend the limit mentioned in this section by authorizing municipal corporations to submit the question to the vote of the taxpayers affected thereby. Had the framers of the Constitution intended that the persons entitled to vote at elections relating to county indebtedness should be taxpaying electors, they could have said so as they did in said Section 6 of Article XIII relating to indebtedness of other subdivisions of the state.

That the word "electors" means the persons possessing the qualifications mentioned in Section 2 of Article IX is further evidenced by the provisions of Sections 8 and 9 of Article XIX relating to amendments of the Constitution, in which it is provided that the legislative assembly may submit to the electors of the state the question whether there will be held a convention, and that any amendments proposed by the legislature shall be submitted to the qualified electors of the state for ratification. "Electors" or "qualified electors" mean the persons qualified according to Section 2 of Article IX.

It is my opinion, that insofar as Chapter 98, Laws of 1923, attempts to restrict the right to vote upon the question of bonding counties to taxpaying electors it is in violation of said Section 5 of Article XIII of the Constitution of Montana, and that it was proper for the question of bonding your county to be submitted to the general electors.

However, in view of the rule that a law is presumed to be constitutional until it is shown to be unconstitutional beyond a reasonable doubt to a court having authority to declare its unconstitutionality, this office has taken the position, where it is called upon to approve county bonds for purchase by the state board of land commissioners, that it would neither approve nor disapprove the legality of the election authorizing their issuance until the validity of said Chapter 98 has been passed upon by the Supreme Court of Montana.

A bill has been introduced in the present legislature to amend said Chapter 98 by withdrawing states and counties from its provisions.

Very truly yours,

L. A. FOOT,

Attorney General.

By L. V. Ketter, First Assistant.