

Opinion No. 355**Schools — School Districts — Bonds —
School Site—Elections**

HELD: In a special election held for the purpose of increasing the bonded indebtedness of a school district, Chapter 147, Laws of 1927, should be followed rather than the general registration laws.

The general laws relating to the closing of registration, preparation and delivery of lists, etc., must be followed in an election for the selection of a school site.

October 6, 1933.

You submit the following: "Should not the provisions of chapter 147, Laws of 1927, apply to a bond election held thereunder, insofar as such provisions conflict with sections 566, and with sections 567 and 568, as amended by Chapter 61, Laws of 1933, and Chapter 98, Laws of 1923, as amended by Chapter 47, Laws of 1929?"

Section 12, Chapter 147 of the Laws of 1927, defines the procedure in relation to elections for school bonds. This law makes an exception to the general law and provides that registration books shall be closed on the 15th day prior to the election and further provides that it shall not be necessary to give any notice of such closing of registration books; that after the closing of the registration books the county clerk shall promptly prepare a list of the registered electors of such district who are taxpayers upon property therein and whose names shall appear on the last completed assessment roll for state, county and

school district taxes and who are entitled to vote at such election and shall prepare poll books and deliver them to the clerk of the school district and that in districts of the first class the school district clerk shall post such lists in five public places in the district at least ten days prior to the date of the election.

The general procedure in relation to elections, and in particular as to the closing of registration, notice in relation to same, printing, delivery and posting of lists of registered electors, is set forth in sections 566, 567 and 568 of the Revised Codes. This procedure is materially different from the procedure as definitely set forth in Chapter 147 of the Laws of 1927 as noted above. Section 582 Revised Codes provides: "The word 'election' as used in this law where not otherwise qualified shall be taken to apply to general, special, primary nominating, and municipal elections, and to elections in school districts of the first class."

In the case of *Weber v. City of Helena*, 89 Mont. 109, it was held that the general law in relation to notice of closing of registration and posting of voters' lists governed rather than a special statute which omitted such provisions. That was a case involving a municipal bond issue. In that case another subsequent statute, enacted in 1923, was held to have required compliance with sections 566, 567 and 568, R.C., and an election held without compliance therewith was declared to be invalid. No such statute is involved in this case. Chapter 147 of the Laws of 1927, was enacted subsequent to Sections 566, 567 and 568 and by its enactment those sections of the Revised Codes were modified and made inapplicable to an election of this character.

This statute was also enacted subsequent to Chapter 98, of the Laws of 1923, which was the Chapter that in the case of *Weber v City of Helena* it was held required compliance with sections 566, 567 and 568 of the Revised Codes. Therefore, independent of the amendments which will be hereafter considered, the definite procedure in relation to bond issues of this character as set forth in Chapter 147 of the Laws of 1927 would control.

Chapter 98 of the Laws of 1923 was amended by Chap. 47, Laws of 1929. This amendment is set forth in 89 Mont. page 118 and left such statute exactly the same as to city and school district bond issues and eliminated therefrom certain provisions as to county and state obligations.

Sections 567 and 568 are likewise amended, same being contained in Chapter 61 of the Session Laws of 1933. The amendment to these sections shortened the time in municipal primary nominating elections for the printing and posting of a list of electors from thirty to fifteen days and did away with the printing of such lists in such elections when no candidates had filed. Otherwise these statutes remain as before. Therefore neither of the amendments changed the laws amended in any particular which might affect the question here involved.

Section 93, Revised Codes, provides as follows: "Where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment."

The Montana Supreme Court has said: "This section was recommended by the Code Commissioners of New York in 1859, being adapted from the language of Chief Justice Denio in *Ely v Holton*, 15 N. Y. 595, in which that learned jurist said: 'The form in which amendments, both of the Code and of the revised statutes have generally been made, by declaring that particular sections shall be amended so as to read in a given way, was adopted for the purpose of adjusting them to the original enactments, so that when the system should, after repeated amendments, become complete, the different parts might be put together without further revision, and thus form a perfect Code. The portions of the amended sections which are merely copied without change, are not to be considered as repealed and again enacted, but to have been the law all along; and the new parts, or changed portions, are not to be taken

to have been the law at any time prior to the passage of the amended Act. * * * The theory of amendments, made in the form adopted in the present instance, we take to be this: The portions of the section which are repeated are to be considered as having been the law from the time they were first enacted, and the new provisions are to be understood as enacted at the time the amended Act took effect." (*Snidow v Mont. Home for the Aged*, 88 Mont. 337, 345.)

In the enactment of Section 12, Chapter 147, of the Laws of 1927, it is plain that the legislature intended that in a school bond election of this character the provisions of Revised Codes 566, 567 and 568 are to be disregarded where they conflict with that statute and the provisions in relation to notice of closing of registration and posting lists for thirty days were made inapplicable and to that extent modified. When such statutes were subsequently amended and the statute also amended which required compliance therewith as construed in the case of *Weber v City of Helena* it cannot be held that it was the intent of the legislature to repeal by implication the said section 12 of Chapter 147 of the Laws of 1927. These statutes were each amended in different particulars after they had been impliedly modified by the enactment of the 1927 statute. It would be a most strained construction to hold that their amendments, in particulars in no way connected with the question involved, would either modify or repeal section 12, Chapter 147 of the Laws of 1927.

I therefore hold that such sections control and that the provisions of Revised Codes 566, 567 and 568 as amended insofar as they in any manner conflict therewith need not be complied with.

This conclusion is reached although the Supreme Court of this state in 89 Mont. 123 makes the following statement: "It is worthy of note that by section 12, of Chapter 147, Laws of 1927, the notice of closing registration was shortened substantially as to school districts of the first class, but whether the provisions therein made have been repealed by implication by Chapter 47, Laws of 1929, may present a serious question." This quotation from the

case of *Weber v City of Helena* must involve this matter in some uncertainty. To reach any other conclusion, however, would require a construction to the effect that the amendment made by Chapter 47 of the Laws of 1929 also rendered invalid section 10 of Chapter 147 of the Laws of 1927 wherein it is required that the board of trustees "fix the date of election which shall not be less than twenty (20) days nor more than thirty (30) days after the date of the passage and adoption of such resolution."

You ask "does the opinion in *Weber v the City of Helena*, 89 Mont. 109, relating to municipal elections apply to elections to elect school trustees or vote upon school sites?" I take it that this question includes the question as to whether or not the requirements of sections 566, 567 and 568, Revised Codes, must be complied with in such elections. Revised Codes 1015, subsection 8, as amended by Chapter 122 of the Laws of 1931, permits trustees to purchase school sites, the same being in part as follows: "Provided that they shall not build or remove school houses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three notices in three public places in the district at least ten days prior to such election, which notices shall specify the time, place and purpose of such election."

Section 992, Revised Codes, relative to notices of election of trustees of school districts required a fifteen day notice. That statute certainly cannot apply to this case where the subsequent amendment of section 1015 expressly provides for a ten day notice. Section 582, Revised Codes, specifically states that the word "election" shall apply to elections in school districts of the first class. Section 566, Revised Codes, contains the following provision: "The county clerk shall close all registration for the full period of forty-five days prior to and before any election." Sections 566 con-

tinues and with sections 567 and 568 requires the publication of notice of closing of registration, the preparation and delivery of the list of registered voters, the posting of a list of electors. I do not find in section 1015, as amended, or any other statute an intimation that in an election of this character any of the requirements of sections 566, 567 and 568 are dispensed with or made impossible of accomplishment.

The case of *Weber v the City of Helena*, 89 Mont. 109, holds that compliance with these sections was necessary in that case. I can see no distinction which would render that unnecessary in the present instance. In that case the Supreme Court quoted from the case of *State ex rel. Kehoe v Stromme*, 49 Mont. 25: "Its obvious purpose is to provide a scheme for perpetual registration suitable to all elections under all conditions, and the amendments consist largely in making the various provisions applicable to special as well as to general elections."

I can find no authority which would warrant the omission of the requirements of sections 566, 567 and 568, Revised Codes.

To summarize: 1. It is our best judgment that Chapter 147, Laws of 1927, which prescribes special procedure in the case of first-class school districts should be followed rather than the general registration laws. However, in face of the length to which the court went in the case of *Weber v City of Helena*, and the statement made by the court in that case, quoted above, we cannot assert with complete confidence that the court will agree with our judgment.

2. The general laws relating to the closing of registration, preparation and delivery of lists, etc., must be followed in voting upon a school site. We have not overlooked *Nichols v School District*, 87 Mont. 181, in arriving at this conclusion.