

## Opinion No. 107.

Schools—Elections—Ballots  
—Taxation.

HELD: Where the ballot in an election to authorize an additional school levy does not comply with the provisions of Chapter 144, Laws of 1935, by stating the amount of revenue to be raised by the special levy, the election is invalid.

May 22, 1935.

Mr. H. O. Vralsted  
County Attorney  
Stanford, Montana

Your letter to us of May 7 is in part as follows:

"One of our school districts in Judith Basin County, Montana, not knowing that Senate Bill No. 197 had been passed changing the form of the ballot provided for in Section 1222 R. C. M. 1921, used the form enclosed herewith and the vote was unanimous in favor of additional levy of five mills."

"However, they are now asking whether or not the election was legal? If not, is it necessary to have another?"

The form of ballot used, and a copy of which you enclosed in your letter, stated:

"Shall the board of trustees of this district be authorized to make a levy of 5 mills taxes in addition to the regular ten mill levy authorized by law for the purpose of maintaining and operating the schools of district 5?"

- For Additional Levy of 5 mills.
- Against Additional Levy of 5 mills.

While your letter does not directly say so, we presume that this form of ballot was used in an election held

after March 13, 1935, on which date Chapter 144, Laws of Montana of 1935, became effective.

Chapter 144, supra, amends Section 1219, R. C. M. 1921, as amended by Chapter 120, Laws of Montana of 1925, which provides for a levy in excess of the ten mills now allowed under the law for school purposes by requiring the board of trustees "to determine and fix the amount necessary and required for such purposes." It also amends Section 1221, R. C. M. 1921, which provides that the submission of the question of an additional levy shall expressly state for what purposes it is required by adding thereto this provision: "In submitting such question there shall be specified the amount to be raised by such additional tax levy and the approximate number of mills required to raise the amount."

Section 3 of Chapter 144, supra, amends Section 1222, R. C. M. 1921, relating to the form and marking of ballots, to read as follows: "The ballot furnished electors at said election shall have printed thereon the following: 'Shall a levy be made in addition to the regular ten mill levy authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy) for the purpose of (insert the purpose for which the additional tax levy is made)?"

- For an additional levy to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) of mills.
- Against an additional tax levy to raise the sum of (state amount to be raised by additional tax levy), and being approximately (give number) mills. \* \* \*

An election for the submission of a proposition will be invalidated by failure to follow the prescribed form of ballot in a matter of substance. (20 C. J. 129, 56 C. J. 601). Can it be said that the ballot submitted by you substantially complies with the form prescribed by Section 3, supra? We do not think so.

The principal purpose of Chapter 144, supra, is to limit the total amount

which may be raised by the special levy.

The form of the ballot, therefore, is changed to be in harmony with the amendments to Sections 1219 and 1221, outlined above, and Section 3, *supra*, declares in positive language that the ballot must expressly tell the voter the exact amount to be raised and not merely tell him the millage rate of the increased levy. This, we think, is a change in the matter of substance which must be followed in all elections held subsequent to the passage and approval of the Act. *People v. Worley*, 260 Ill. 536, 103 N. E. 579; *People v. Meyers*, 256 Ill. 529, 100 N.E. 211; *Harvey v. Cook County*, 221 Ill. 76, 77 N. E. 424; *In re Taylor*, 150 N. Y. 242, 44 N. E. 790, (Aff. 3 App. Div. 244, 38 N. Y. S. 348).

It is our opinion, therefore, that since the ballots used in the election referred to were not in proper legal form said election was invalid and if the board of school trustees desires to increase the levy it will be necessary to submit the question to the vote of the qualified electors of said district as provided in Chapter 144, *supra*.