

Opinion No. 90.

School Districts — Taxation — Special Levies—Qualification of Electors.

HELD: Upon the question of special levy in school districts, any taxpayer, owning either real or personal property, whose name appears on the last completed assessment roll, and who possesses all other qualifications, may vote.

April 19, 1937.

Mr. Jack L. Rider
Troy, Montana

Dear Mr. Rider:

You have asked our opinion as to who has the right to vote on a tax levy in a first, second, and third class school district. This office does not render opinions to individuals, but only to the board of county commissioners and the county attorney in the counties, ordinarily, but inasmuch as this is a matter that affects the school districts of your county, we are making an exception to that rule.

Section 1219, R. C. M. 1935, provided that whenever the board of any district desires to raise money in excess of the ten mill levy allowed by law for certain purposes, it shall submit the question of such additional levy to the legal voters of said district, who are tax paying freeholders therein.

Section 1223, R. C. M. 1935, has reference to the qualifications of such electors. Section 1219 was amended by Chapter 120, 1925 Session Laws, which provided that the board should submit the election to the legal voters of said district, who are tax paying freeholders therein, except in third class districts, where the questions should be submitted to the legal voters of said district, who are taxpayers therein.

Section 1219, R. C. M. 1935, being an amendment to Chapter 120, supra, provides that the board of trustees of any district who desire to submit a special levy for the purposes therein named, shall submit the same to the qualified voters residing in the district who are taxpayers upon the property therein, whose names appeared on the last completed assessment roll of the county for state, county, and school taxes. Section 544 provides who are taxpayers, and any person who has paid a tax upon property assessed on county or city assessment rolls next preceding the election constitutes a taxpayer at such election.

Section 1223, R. C. M. 1935, provides the manner in which a voter may be challenged, and among the provisions therein, sets forth that the voter may be required to swear that he is a tax paying freeholder on the last assessment roll, except in third class districts the word "taxpayer" is substituted for "tax paying freeholder."

In other words, Section 1223 would indicate that in a first and second class district, the elector must be a tax paying freeholder, while in a third class district the elector need only be a taxpayer. If he paid taxes upon personal property, he would be a taxpayer. However, inasmuch as Section 1 of Chapter 120 of the 1925 Session Laws was amended by Chapter 144 of the 1935 Session Laws, in the event that there is any conflict between Sections 1219 and 1223, then Section 1219, being the last amended, will take precedence.

Your attention is called to the following language in Section 1223:

"In all districts of the third class, in administering said oath or affirmation, the judges must substitute the word 'tax-payer' for the words 'taxpaying freeholder'."

Therefore, it is my opinion that any person who is a qualified elector residing in the district, who is a taxpayer upon property therein, whether or not the same be real or personal property, and whose name appears upon the last completed assessment roll, is entitled to vote upon the question of a special levy.