

Opinion No. 209

Initiative and Referendums, Petition for—Qualification of Voters—Qualification of Signers—Section 1, Article V, and Section 2, Article IX, Montana Constitution—Section 107, Laws of 1937—Qualified Elector Defined.

HELD: A person voting on an initiative or referendum measure concerning the creation of a levy, debt or liability must be a taxpayer as provided by Section 2, Article IX of the Montana Constitution.

The signer of a petition for an initiative or referendum measure which concerns the creation of a levy, debt or liability need not be a taxpayer.

March 7, 1940.

Professor W. F. Brewer
Manager, Montana State College
Building Fund Campaign
Bozeman, Montana

Dear Mr. Brewer:

You have requested my opinion on the following:

“1. What are the qualifications of voters on the University millage referendum and on the State College bond initiative?”

“2. What are the qualifications of the signers of petitions for the proposed referendum and initiative?”

Section 2, Article IX, of the Montana Constitution provides:

“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, except as herein-

after provided, upon all questions which may be submitted to the vote of the people or electors: 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. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question.
* * *"

Since the questions submitted by referendum and initiative concern the creation of a levy, debt or liability, it is my opinion that in addition to the general qualification of a legal voter with reference to citizenship, age and residence, a person to qualify to vote on such measures would have to be "a taxpayer whose name appears upon the last preceding completed assessment roll" as provided by the above quoted section. The requirement of the Constitution is clear and unambiguous. We do not think there can be any question of doubt concerning it. See *Martin v. State Highway Commission*, 107 Mont. 603, 615, 88 Pac. (2) 41. It will be seen from this case that no question was raised as to the meaning of the Constitution.

As to the second question we think a signer of the petitions needs to possess only the general qualification of voters relating to citizenship, age and residence.

Section 107, R. C. M., 1935, provides: "Every person who is a qualified elector of the State of Montana may sign a petition for the referendum or for the initiative * * *."

Had the legislature intended that the signer should also be a taxpayer in case the initiative or the referendum measure to be submitted concerns the creation of a levy, debt or liability, they could easily have said so and should have said so. The right to sign such petitions is a substantial right of a legal voter and should not be denied him because he is not a taxpayer, unless such is the clear intent of the

legislature. From the language used we do not think it can be said that was the intent of the legislature.

Section 1, Article V of the Montana Constitution, which provides for the initiative and referendum, was declared to be in force by proclamation of the Governor on December 7, 1906. Throughout this section uses the term "legal voters." Thereafter Chapter 62, Laws of 1907 (now Chapter 13 of the Political Code) was enacted. It provided the legal machinery for putting the initiative and referendum into effect. Section 107 thereof, supra, uses the term "qualified elector." These terms, when used, could only mean a person possessing the general qualifications of all electors pertaining to citizenship, age and residence for they were used before the taxpayer qualification was added to Section 2, Article IX of the Constitution by vote of the people in 1932, effective by the Governor's proclamation December 9, 1932. Assuming that these terms could be given a different meaning by an amendment to the Constitution, the amendment of Section 2, Article IX above referred to does not in our opinion give a different meaning to them by necessary implication.

It is therefore my opinion that a signer of petitions for initiative or referendum which concern the creation of any levy, debt or liability need not be a taxpayer.