

Section 1 of Chapter 83, is as follows:

"Every citizen of the United States, twenty-one years old, who has resided in the State of Montana for one year, and thirty days in the School District next preceding the election, and whose name appears on the tax rolls of the County of which that School District is situate, or whose wife or husband's name appears on the tax rolls of that County, or who is a parent, guardian or person having custody and control of any child then attending school in such District, or who will be eligible to attend such school during the term that the school officers then to be elected shall hold office, may vote thereat." (The portion in black face type constitutes the amendment to Section 1002.)

Section 2 of said chapter provides the manner and form in which challenges shall be made and oaths given and is in substantial conformity with the language found in Section 1.

Article IX of the Constitution relates to suffrage and the qualifications to hold office. Section 2 thereof enumerates the voter's qualifications, excepting time of residence in various subdivisions of the state, and authorizes the Legislature to establish the time for residence requirements.

This provision refers to the qualifications of voters in school elections because such elections, under the terms and meaning of said constitutional provision, are either general elections, elections where the trustees are elected by the people, or elections relating to the creation of a levy, debt or liability. When the Constitution uses the language "all general elections," it includes "a general election" and not merely "the general election" referred to in Section 531, R. C. M., 1935.

Arps v. State Highway Commission, 90 Mont. 152;
State ex rel. Eagye v. Bawden et al., 51 Mont. 357;
Evers v. Hudson, 36 Mont. 135.

Under authority of Section 2, Article IX, every person twenty-one years of age or over, a citizen of the United States, a resident of the state

Opinion No. 32.

**Schools and School Districts—Electors
 —Qualifications—Constitutional
 Law.**

HELD: 1. That portion of statute requiring different and additional qualifications for school electors than provided for by the Constitution is invalid.

2. That portion of statutory form of oath submitted to challenged voter, inconsistent with the Constitution, is invalid.

March 17, 1939.

Mr. George S. Smith
 County Attorney
 Billings, Montana

Dear Mr. Smith:

You have submitted the question as to whether the amendments to Sections 1002 and 1003, R. C. M., 1935, by Chapter 83, Laws of 1939, are constitutional.

one year preceding the election, and of the county, town or precinct (which would include the school district) such time as may be prescribed by law, is entitled to vote, except if the election concerns the creation of a levy, debt or liability, the elector must have the additional qualification of being a taxpayer whose name appears upon the last preceding completed assessment roll. In view of the rule requiring the reconciliation of a statute with the Constitution, wherever possible the words "and whose name appears on the tax rolls of the county of which that school district is situate" must be interpreted to mean "a taxpayer whose name appears upon the last preceding completed assessment roll," and applies only in the event said election concerns the creation of a levy, debt or liability against the school district. A person voting at an election which does not concern the creation of a levy, debt or liability would not be required to have his name appear as a taxpayer upon the tax rolls for the last completed assessment roll because the Constitution does not so require.

The words in Section 1 of Chapter 83, "or whose wife or husband's name appears on the tax rolls of that county, or who is a parent, guardian or person having custody and control of any child then attending school in such district, or who will be eligible to attend such school during the term that the school officers then to be elected shall hold office," are in violation of Section 2, Article IX of the Constitution, because they constitute different or additional qualifications from those authorized by the Constitution. That portion of the statute which is different or additional to the Constitution is in conflict therewith, and unconstitutional.

The form of oath as provided for in Section 2, Chapter 83, for the reasons first above assigned, must be restricted to the following:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in the state for one year, and in this school district thirty days next preceding this election, (and when the election concerns a levy, debt or liability the following additional language shall be part of the oath, 'that

you are a taxpayer, whose name appears upon the last preceding completed assessment roll of the county of which School District No. — is situate'); that you have not voted this day, SO HELP YOU GOD."