

No. 384

SCHOOLS AND SCHOOL DISTRICTS, qualifications of electors to vote on consolidation of—ELECTIONS, qualifications to vote on consolidation of school districts—CONSOLIDATION OF SCHOOL DISTRICTS, elections on

Held: In order to vote at a school election on the question of consolidation of districts under Section 1034, Revised Codes of Montana, 1935, an elector need have only those qualifications enumerated in Section 1002, Revised Codes of Montana, 1935, as amended by Section 1 of Chapter 65 of the Laws of 1941.

March 26, 1942.

Mr. Oliver M. Lien
County Attorney
Roosevelt County
Wolf Point, Montana

Dear Mr. Lien:

You have asked this office for an opinion as to the qualifications of electors to vote upon the question of consolidation of school districts under the provisions of Section 1034 of the Revised Codes of Montana of 1935.

It is noted the said section provides the petition which is a prerequisite to the calling of an election to vote upon consolidation of school districts must be "signed and acknowledged by a majority of the resident freeholders of the district affected, qualified to vote at school elections." Although the petition may be a condition precedent to action in calling an election, the qualifications set out for the petitioners appear to have no relation to the qualifications of the electors, nor could they have.

The Constitution of Montana, in Section 2 of Article IX, prescribes the qualifications of electors. The legislature may not add thereto unless the constitution so provides. (See Vol. 18, Opinions of the Attorney General, p. 31). Under the authority of Section 2 of Article IX of the Constitution of Montana, every person twenty-one years of age or over, a citizen of the United States, a resident of the state one year preceding the election and of the school district such time as may be prescribed by law, is entitled to vote except when the election concerns the creation of a levy, debt or liability—in which case he must also be a taxpayer whose name appears upon the last completed assessment roll. It does not appear an election to vote on the question of consolidation is one to create a "levy, debt or liability." Accordingly, one need not be a taxpayer on the last preceding assessment roll nor need one be a freeholder to vote at the election—since that qualification is not listed at all as being required of an elector at such an election.

It is my opinion that, in order to vote at a school election on the question of consolidation of districts under Section 1034 of the Revised Codes of Montana of 1935, an elector need have only those qualifications enumerated in Section 1002 of the Revised Codes of Montana, 1935, as amended by Chapter 65, Laws of 1941, which follows the constitutional requirements and prescribes the citizenship, age and period of residence required to make a person eligible to vote.

Very truly yours,

JOHN W. BONNER
Attorney General