

## No. 54

**SCHOOL ELECTIONS TO CREATE OR INCREASE ANY  
INDEBTEDNESS—QUALIFIED ELECTORS—  
ELECTIONS**

**Held:** Qualified elector of school election to create or increase any indebtedness of a school district must be citizen of the United States, 21 years of age or over, resident of state one year, of school district thirty days immediately preceding election, registered to vote, taxpayer in district and one whose name appears upon the last preceding completed assessment roll of the county for state, county and school taxes, and if convicted of a felony, must have been pardoned.

March, 20, 1941.

Mr. Cedar B. Aronow  
County Attorney  
Toole County  
Shelby, Montana

Dear Mr. Aronow:

You have submitted the following:

“Who are qualified electors at a school election, to vote taxes in excess of the ten-mill levy?”

In answering your inquiry, we first turn to Section 5199.1, Revised Codes of Montana, 1935, which provides:

“5199.1. **Qualifications for Voting on Creation or Increasing Indebtedness.** That from and after the passage and approval of this Act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof.”

In construing the foregoing section, our Supreme Court has held:

“We think the evident purpose of the Act was to provide the procedure for all elections to increase or create the indebtedness of the political units therein mentioned whenever the laws required the approval of electors . . .” (Emphasis mine.)

Weber v. City of Helena, et al., 89 Mont. 109, 119, 297 Pac. 455.

We now turn to Section 1219, Revised Codes of Montana, 1935, which is as follows:

“1219. **District School Taxes in Excess of Ten Mill Levy—Election.** Whenever the Board of Trustees of any school district shall deem it necessary to raise money by taxation, in excess of the ten mill levy now allowed by law, for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any school house or houses of such district, for furnishing additional school facilities for said district, for building and equipping heating or other plants for said district, or for any other purposes necessary for the proper operation and maintenance of the schools in said district, said Board of Trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to such ten mill tax levy and it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers upon property therein and whose names appear upon the last completed assessment roll of the county for

state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the Board of Trustees of said district."

Where two statutes deal with the same subject, it is necessary to give effect to each if possible; and since there is no serious conflict between the two foregoing sections, effect may be given to each.

It is well to keep in mind Section 1223, Revised Codes of Montana, 1935, was amended by House Bill No. 90, which became effective February 24, 1941, and which is as follows:

"Section 1. Section 1223 of the Revised Codes of Montana, 1935, shall be and the same is hereby amended to read as follows:

Section 1223. CHALLENGING VOTERS—OATH OF ELECTOR—FALSE SWEARING. Any person offering to vote may be challenged by an elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation, in substance as follows:

'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 this state one year and in this school district thirty days next preceding this election; that you are a taxpayer on the last assessment roll from this school district; and that you have not voted this day. So help you God.'

Said oath shall be reduced to writing and signed by the person challenged and sworn to before one of the judges of election. Said oath or affirmation shall be returned with the ballots cast at such election. If the voter takes oath or affirmation, his vote must be received; otherwise, it will be rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

Section 2. All Acts and parts of Acts in conflict herewith, are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and approval."

The general qualifications of voters are covered in Section 540, Revised Codes of Montana, 1935:

"540. **Qualifications of Voter.** Every person of the age of twenty-one years or over, possessing the following qualifications, if his name is registered as required by law, is entitled to vote at all general and special elections and for all officers that now are, or hereafter may be, elective by the people, and upon all questions which may be submitted to the vote of the people: First, he must be a citizen of the United States; second, he must have resided in the state one year and in the county thirty days immediately preceding the election at which he offers to vote. No person convicted of felony has the right to vote unless he has been pardoned. Nothing in this section contained shall be construed to deprive any person of the right to vote who had such right at the time of the adoption of the state constitution. After the expiration of five years from the time of the adoption of the state constitution, no person except citizens of the United States have a right to vote."

It is therefore my opinion a qualified elector at a school election held for the purpose of creating or increasing any indebtedness of the school district, shall be:

1. A citizen of the United States;
2. Twenty-one years of age or over;
3. Resident of the State of Montana one year and in school district 30 days preceding the election;

4. Registered elector;
5. Taxpayer in district whose name appears upon the last preceding completed assessment roll of the county for state, county, and school taxes, and if convicted of a felony, has been pardoned.

Sincerely yours,

JOHN W. BONNER  
Attorney General

(Editor's Note: House bill No. 90, quoted above, appears as Chapter 31, Laws of 1941.)