

**Opinion No. 216.**

**Special Election—Election, Special—  
High School, Abolishment of—School,  
Abolishment of High School—Qualifi-  
cations, Electors.**

**Held: An election to abolish a county  
high school shall be submitted  
to the registered voters of the**

county, without the requirement that their names appear on the assessment rolls. The poll books for such election are the same as those used for the election of county officers, without the requirement of the preparation or posting of a separate list.

November 1, 1946.

Mr. Edison W. Kent  
County Attorney  
Granite County  
Philipsburg, Montana

Dear Mr. Kent:

You have requested my opinion concerning the procedure to be followed in the conduct of the special election for the abolishment of the county high school. You ask if there are any special qualifications for the electors.

Section 1262.19 to 1262.25, Revised Codes of Montana, 1935, cover the manner of holding an election to abolish a county high school.

Section 1262.20, Revised Codes of Montana, 1935, states that the petition for abolishment of the county high school must be signed by 20% of the qualified electors "who are also assessed in their own names on the assessment books of the county for that year upon real or personal property." The qualifications of those eligible to vote on the proposition are to be distinguished from the qualifications of the signers of the petition to abolish, in that Sections 1262.21, and 1262.23, Revised Codes of Montana, 1935, provide that the question of the abolishment of the county high school shall be submitted to the "registered voters." No qualification of being a taxpayer is included in the sections next above referred to concerning the right to vote on the abolishment of the high school.

You did not advise me the date your high school was established, but you will find that Chapter 76, Laws of 1913, sets out a procedure for the establishment of a county high school, and in that chapter it was provided that the petition for the creation of the high school must be signed by one hundred freeholders of the county, but the electors eligible to vote were "qualified electors" and there was no requirement that the voters on the question be freeholders. In other words,

in the establishment of a high school, there was not the requirement that the elector be a freeholder although the latter were the only authorized persons who could, by petition institute the procedure for such an election.

Section 2, Article IX of the Montana Constitution, was amended in 1932 by the addition to the qualifications to vote that:

"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."

The question of the abolishment of the county high school does not come within the above quoted portion of our constitution in that a debt or liability does not result from the abolishment of the high school.

Section 1262.23, Revised Codes of Montana, 1935, provides in part:

"... such question shall be submitted to the registered voters of the county at the ensuing general election in November, and the votes cast thereon canvassed and returns thereof made in the manner provided by law for the election of county officers at that election . . ."

The above quoted indicates that the poll books used and the manner of conducting the election do not differ from the manner of electing county officers with the exceptions of the notice given under Section 1262.22 and the form of ballot as found in Section 1262.23.

It is therefore my opinion an election to abolish a county high school shall be submitted to the registered voters of the county, without the requirement that their names appear on the assessment rolls.

It is also my opinion the poll books for such election are the same as those used for the election of county officers, without the requirement of the preparation or posting of a separate list.

Sincerely yours,  
R. V. BOTTOMLY, .  
Attorney General