

**Opinion No. 84**

**Schools—School Districts, Consolidation of—Electors, Qualifications of**

**Held:** In conformity with the law as given to us by our legislature, in an election, on the consolidation of school districts, voters in the district which would assume an indebtedness by reason of consolidation must

have the qualifications set out in Section 1002, Revised Codes of Montana, 1935, as amended by Chapter 65, Laws of 1941, and also the qualifications required by Section 5199.1, Revised Codes of Montana, 1935. Thus, in addition to the requirements of Section 1002, Revised Codes of Montana, as amended, the voters in such district must be registered and their names must appear on the last preceding assessment roll. In districts not assuming an indebtedness, the voter need only have the qualifications under Section 1002, Revised Codes of Montana, 1935. In other words, when no indebtedness is assumed the voter need not be a taxpayer, or registered voter.

December 11, 1947

Mr. Truman Bradford  
County Attorney  
Cascade County  
Great Falls, Montana

Attention: Mr. W. H. Swanberg,  
Deputy County Attorney

Dear Mr. Bradford:

You have requested an opinion of this office concerning the qualifications of electors at an election on the question of consolidation of two third class school districts. You advise me that one of the districts has a bonded indebtedness.

Section 1034, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1943, authorizes consolidation of school districts by the county superintendent of schools after an approving vote of the board of trustees of each district. However, such consolidation cannot be made if twenty per cent of the qualified electors of any one or more districts petition for an election in their district on the question, until after a favorable vote on the question.

In Opinion No. 384, Volume 19, Report and Official Opinions of the Attorney General, it was held that elec-

tors who satisfy the requirements of Section 1002, Revised Codes of Montana, 1935, as amended, are eligible to vote at an election for the consolidation of school districts. The opinion did not consider the problem where one district had bonded indebtedness as is the situation here.

Section 1034, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1943, provides in part:

"Bonded indebtedness of any districts merged by consolidation or annexation shall be assumed by the consolidated district or the district to which another is annexed."

It is apparent that if the bonded indebtedness is assumed by the consolidated district then a district without any indebtedness, in becoming a part of a new district would be assuming a debt or liability in proportion to its assessed valuation.

Section 2 of Article IV of the Montana Constitution provides:

"If the question submitted concerns the creation of any levy, debt or liability the person, . . . 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 qualifications for voting upon the creation or increasing of indebtedness is covered by Section 5199.1, Revised Codes of Montana, 1935, which reads:

"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." (Emphasis supplied).

Our Supreme Court in *Weber v. City of Helena*, 89 Mont. 109, 297 Pac. 455, said in regard to this section:

"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. . . ."

In a district which has indebtedness, but assumes no new indebtedness, electors who meet the requirements of Section 1002, Revised Codes of Montana, 1935, as amended by Chapter 65, Laws of 1941, could vote on the question of consolidation. This would result in different qualifications in the elections held in the two districts.

It is, therefore, my opinion, in conformity with the law as given to us by our legislature, in an election, on the consolidation of school districts, voters in the district which would assume an indebtedness by reason of consolidation must have the qualifications set out in Section 1002, Revised Codes of Montana, 1935, as amended by Chapter 65, Laws of 1941, and also the qualifications required by Section 5199.1, Revised Codes of Montana, 1935. Thus, in addition to the requirements of Section 1002, Revised Codes of Montana, as amended, the voters in such district must be registered and their names must appear on the last preceding assessment roll. In districts not assuming an indebtedness, the voter need only have the qualifications under Section 1002, Revised Codes of Montana, 1935. In other words, when no indebtedness is assumed the voter need not be a taxpayer, or registered voter.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General