

Dear Mr. Lessley:

You have requested my opinion as to whether qualified electors at a school election to vote upon the question of an extra levy in excess of the 10 mill levy must be registered electors. You have also asked if it is necessary for the County Clerk and Recorder to prepare poll-books for such an election.

The statutory provisions for an election for a school district to vote an extra levy are found in Sections 1219 to 1223, Revised Codes of Montana, 1935, as amended. Under Section 1219 the question must be submitted "to the qualified electors residing within the district who are taxpayers upon property therein." The qualifications for electors at general school elections are found in Section 1002, Revised Codes of Montana, 1935, as last amended by Chapter 65, Laws of 1941. In Section 1223, as amended by Chapter 31, Laws of 1941, there is provision made for the challenging of voters and in the oath to be taken no mention is made of registration. This Section, as amended, states specifically that if the person offering to vote signs the oath his vote must be received, and provides a penalty for false swearing. Section 584, Revised Codes of Montana, 1935, makes a similar provision for the challenging of electors at primary elections, but does not specifically state that if the oath is taken the vote shall be received. It states if it appears he is not a qualified voter his vote be rejected. By implication the converse is true.

Section 5199.1, Revised Codes of Montana, 1935, provides that "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 an indebtedness of city, town, school district or other municipal corporation."

This Section, by its terms, is applicable to the creation or increase of indebtedness. Our Supreme Court in *State ex rel. Tillman v. District Court*, 101 Mont. 176, 53 Pac. (2d) 107, stated:

Opinion No. 94

**Schools—School Districts — Electors,
Qualifications of—Levy—County
Clerk and Recorder—Poll Books.**

Held:—Registration is not one of the necessary qualifications to vote upon the question of an extra levy for school purposes. It is not necessary for the County Clerk and Recorder to prepare in advance poll-books with the names of registered electors for an election to vote an extra levy for school district purposes.

January 7, 1948

Mr. W. W. Lessley
County Attorney
Gallatin County
Bozeman, Montana

"Taxes are levied against the person, not against property; property serving only as a basis for computing each person's measure of liability and as security for the discharge of the lien which the tax imposes, and in no way depend upon the will or consent, express or implied, of the person taxed, and therefore, when levied, do not become a debt within the meaning of the word, as ordinarily used."

Also, in 51 Am. Jur. 41, the text states:

"A tax differs materially and essentially from a debt. The one is founded on contract; the other is not. The form of the procedure to collect taxes cannot change a tax into a debt or contract obligation."

An increase in the tax levy beyond the ten mill levy does not, therefore, create a debt or liability.

The general election laws do not apply to school elections in their entirety as Section 989, Revised Codes of Montana, 1935, provides that, "The voting must be by ballot without reference to the general election laws."

It would, therefore, appear that registration is not a condition precedent to the right to vote in a school district on the question of an extra levy and Section 5199.1 does not apply to a school district election on an extra levy.

Your question concerning the furnishing of poll-books is answered by Section 996, Revised Codes of Montana, 1935, wherein it is held that at school elections the judges and clerk at each polling place must keep poll lists and "the clerk shall write down in alphabetical order in a poll-book provided for that purpose the name of every person voting at the time he deposits his ballot." In other words, the poll-books are made at the time of the election and not supplied in advance by the clerk and recorder as provided in Section 586, which is the general election procedure. In the latter section direction is given to the clerk for the listing of names in alphabetical divisions in advance from the registration cards. Thus, the manner of handling poll-books has been differentiated in school elections by our

legislature from those in other elections.

This office previously held in Opinion No. 54, Volume 19, Report and Official Opinions of the Attorney General that one of the qualifications to vote at an election for an extra levy was that the voter must be registered. That opinion was based upon the decision in the case of Weber v. City of Helena, 89 Mont. 109, and the language quoted concerned the increase or creation of indebtedness. To the extent of eliminating such qualification, the former opinion is hereby modified.

Section 1222, Revised Codes of Montana, 1935, which is part of Chapter 114, Revised Codes of Montana, 1935, dealing entirely with "extra taxation for school purposes", provides for the "Form and marking of ballot—conduct of elections", as follows:

" . . . The election shall be held, votes canvassed, and returns made as in other school elections. . . ." (Emphasis mine).

Section 1223 of the same Chapter provides for the giving of an oath to a voter challenged, and if the oath is taken, permits the voter to cast his ballot. The contents of the oath embodies all the qualifications required of a voter at such election. This Section also provides a penalty for false swearing.

Inasmuch as Section 1222, supra, provides that elections for raising extra levies in school districts "shall be held . . . as in other school elections", we must look to our statutes dealing with "other school elections." The only other statutes dealing with school elections are found in Chapter 93, Revised Codes of Montana, 1935, which concern election of school trustees.

Section 989 of Chapter 93 supra, entitled "Conduct of election," provides, in part, as follows:

" . . . The voting must be by ballot, with reference to the general election laws in regard to nominations, form of ballot, or manner of voting. . . ." (Emphasis mine).

It would, therefore, appear that inasmuch as an increase of taxes above

the ten mill levy in school districts, upon vote of qualified electors, does not create a debt or liability, the provisions of Section 5199.1, Revised Codes of Montana, 1935, do not apply. In view of the provisions of Chapter 114, Revised Codes of Montana, 1935, and of Section 989, supra, elections on the question of increasing tax levy above the 10 mill levy shall be held as elections for school trustees, and with reference to registration, the provisions of Section 996, Revised Codes of Montana, 1935, shall apply.

It is, therefore, my opinion that registration is not one of the necessary qualifications to vote upon the question of an extra levy for school purposes.

It is also my opinion that it is not necessary for the County Clerk and Recorder to prepare in advance poll-books with the names of registered electors for an election to vote an extra levy for school district purposes.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General