Opinion No. 122

Elections—Poll Books—County Clerk
and Recorders, Duty of.

Held: That when a measure is sub-
mitted to the people concerning
the creation of any levy, debt
or liability, upon which only
registered voters residing within
the state who are taxpayers
upon property within the state
and whose names appear upon
the last completed assessment
roll of some county within the
state may vote, the county clerk
need not prepare a separate poll
book containing only the names
of the electors who are qualified
to vote on such a measure.
Rather, after determining those
voters qualified to vote on a
question of this nature, the
county cleark need only stamp
the word "TAXPAYER" on the
poll book opposite the name of
each qualified elector who is a
taxpayer and thus entitled to
vote upon such a measure.

September 30, 1952.

Mr. Sam W. Mitchell
Secretary of State
Capitol Building
Helena, Montana

Dear Mr. Mitchell:

You have requested my opinion on
the following question:

When a measure is submitted to
the people concerning the creation of
any levy, debt or liability upon which
only registered voters residing within
the state who are taxpayers upon pro-
perty within the state and whose
names appear upon the last com-
pleted assessment roll of some county
within the state may vote, must the
county clerk prepare a separate poll
book containing only those names, in
addition to the poll book for the
regular election?

You state that some confusion on
this matter has arisen by reason of
Section 23-304, Revised Codes of Mon-
tana, 1947, as amended by Chapter 92,
Laws of 1949, and Opinion No. 129,
Volume 22, of the Reports and Official

Opinions of the Attorney General. Said opinion was rendered July 31, 1948, and held that the county clerk must provide separate poll books for each precinct in the county, which poll books should contain only the names of the electors qualified to vote on referendums concerning the creation of any state levy, debt or liability. Electors qualified to vote on a measure concerning the creation of any levy, debt or liability are those who in addition to possessing the necessary qualifications to become voters in this state are taxpayers upon property within the state whose names appear upon the last completed assessment roll of some county within the state (Section 2, Article IX, Montana Constitution, Section 23-303, Revised Codes of Montana, 1947). At the time that opinion was rendered, Section 23-304, supra, read as follows:

"Lists And Poll Books. After the closing of registration the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county who are qualified to vote on the question to be submitted at such election, **and shall prepare poll books for such election generally in the manner provided by section 23-515, except that such poll books shall contain only the names of the electors qualified to vote on such question at such election, and deliver the same to the judges of election prior to the opening of the polls, and except that it shall not be necessary to print or post such lists of registered electors.** All of the laws of this state applying to the holding of general biennial state elections, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county clerks shall be returned to the secretary of state in the manner provided by sections 23-1812 and 23-1813 for the abstract of votes for state officers." (emphasis supplied)

In 1949 and subsequent to Opinion No. 129, supra, Section 23-304, supra, was amended to read as follows:
"Lists And Poll Books. After the

closing of registration the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county. He shall also prepare the poll book for each precinct in the manner provided by section 568, Revised Codes of Montana, 1935 (23-515), and deliver the same to the judges of election prior to the opening of the polls **In preparing poll books it shall not be necessary for the county clerk to make separate poll books containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax. In lieu of preparing such a list of electors qualified to vote on such question, the county clerk shall stamp the word "Taxpayer" on the poll book opposite the name of each qualified elector who is a taxpayer and entitled to vote upon any of the questions hereinbefore indicated. No other showing shall be required to establish that such elector is in fact a taxpayer and entitled to vote as such.**

All of the laws of this state applying to the holding of general biennial state elections, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county clerks shall be returned to the secretary of state in the manner provided by sections 801 and 802, Revised Codes of Montana for 1935 (23-1812, 23-1813), for the abstract of votes for state officers." (emphasis supplied)

It is therefore my opinion from the clear and explicit language of this statute, as amended by the 1949 legislature, that the county clerk need not prepare a separate poll book containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax, but rather, after determining those voters qualified to vote on such question, the county clerk need only stamp the word

"taxpayer" on the poll book opposite
the name of each qualified elector who
is a taxpayer and thus entitled to vote
upon such a measure

> Very truly yours,
> ARNOLD H. OLSEN
> Attorney General