

**Opinion No. 86**

**Schools and School Districts—Determination of Forty Per Cent of Electors at Bond Election—Removal of Names From Registration Lists.**

**Held:** The names of deceased voters may not be deducted from the registration lists in determining the necessary forty per cent of the qualified electors voting on a bond proposition submitted at school district election.

May 20, 1952.

Mr. Bert W. Kronmiller  
County Attorney  
Big Horn County  
Hardin, Montana

Dear Mr. Kronmiller:

You have requested my opinion as to whether there may be deducted from

the list of registered electors for a bond election the names of those who have died prior to election. You advise me that in determining the necessary forty per cent of the qualified electors, the election failed by two votes. You ask if the names of two deceased voters on the registration list may be disregarded.

Section 75-3912, Revised Codes of Montana, 1947, provides that at a school bond election "only qualified registered electors residing within the district who are taxpayers upon property therein and whose names appear upon the last completed assessment roll . . . shall have the right to vote." This section also requires the county clerk to prepare lists of such registered electors and poll books for the use of the judges at the election.

Under the provision of Section 75-3914, Revised Codes of Montana, 1947, it is provided:

"Whenever the question of issuing bonds for any purpose is submitted to the qualified electors of a school district at either a general or special school election not less than forty (40) per centum of the qualified electors entitled to vote on such question at such election must vote thereon, otherwise such question shall be deemed to have been rejected; provided, however, that if forty (40) per centum or more of such qualified electors do vote on such question at such election and a majority of such votes shall be cast in favor of such proposition, then such proposition shall be deemed to have been approved and adopted."

It is to be noted that forty per cent of the qualified electors must vote, otherwise the proposition will be considered rejected. As Section 75-3912 requires the voters to be registered and makes it the duty of the county clerk to prepare lists of the registered electors, it is reasonable to assume that the forty per cent must be determined on the basis of the list prepared by the county clerk. The Supreme Court of Georgia, in several cases, considered a similar question as presented here, and held that where a majority must be computed on the basis of registration lists, that the courts may not deduct disqualified voters from the list in order to determine whether a majority

has favored the proposition submitted. *Chapman v. Sumner Consolidated School District*, 152 Ga. 452, 109 S.E. 129; *Fairburn School District v. McClarin*, 166 Ga. 867, 144 S.E. 765; and *Calloway v. Tunnell Hill School District*, 51 Ga. App. 101, 179 S.E. 737.

The purpose of the requirement of a forty per cent vote is to set a standard for public interest in the election and it is not designed to disenfranchise qualified electors, but to assure that the taxpayers will not be subjected to payment of bonds approved by a very small number of qualified electors within a school district.

It is, therefore, my opinion that the names of deceased voters may not be deducted from the registration lists in determining the necessary forty per cent of the qualified electors voting on a bond proposition submitted at a school district election.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General