

VOLUME 31

Opinion No. 3

**SCHOOLS AND SCHOOL DISTRICTS; Additional levy elections; close of registration not required in any school districts including first class districts—Sections 23-513, 75-3801, 75-3802, 75-3803, 75-3804, 75-3805, 84-4711, R.C.M. 1947—Chapter 38 of Title 75, R.C.M. 1947, Montana Constitution by Section 9 of Article IX.**

**HELD: Chapter 38 of Title 75, R.C.M. 1947, is a special statute relating only to elections to submit the question of additional or special levy to the qualified electors and is an exception to the registration statutes, including Section 23-513, R.C.M. 1947, and requires only a ten day notice of election in any school district, including first class districts, and close of registration is not required.**

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May 24, 1965

Mr. Byron L. Robb  
Park County Attorney  
Livingston, Montana

Dear Mr. Robb:

We have your recent letter and a copy of your opinion directed to Mr. J. L. Gleason, Clerk of School District No. 4 of Park County and relating to school district elections submitting the question of an additional tax levy for school purposes under the provisions of Chapter 38 of Title 75, R.C.M. 1947. The question raised is whether the voters at such elections held in school districts of the first class must be registered electors in view of Opinion No. 63 of Volume 26 of the Opinions of the Attorney General holding that "only registered electors may vote at **annual elections** in school districts of the first class."

The above cited opinion should not be extended to apply to so-called special levy elections which are governed by the provisions of Sections 75-3801 to 75-3805, R.C.M. 1947. At no place in those sections is any mention made of "registered electors." Section 75-3801, R.C.M. 1947, as amended, relates to "any school district" and provides that the question of an additional levy shall be submitted "to the **qualified electors** residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes." Section 75-3805, R.C.M. 1947, provides for challenging any person offering to vote at the special levy election and an oath to be taken by the challenged voter. The oath says nothing about registration. Since registration is no part of the qualifications of an elector (**State ex rel. Lang vs. Furnish**, 48 Mont. 28, 32, 134 Pac. 297; **State ex rel. Fadness vs. Eie**, 53 Mont. 138, 145, 162 Pac. 164; **Ainsworth vs. McKay**, 55 Mont. 270, 272, 175 Pac. 887) and since provisions relating to the special levy election provided for in Chapter 38 of Title 75, R.C.M. 1947, are special statutes complete in themselves and relating to that particular subject it would appear that the special statutes must be read as an exception to the registration statutes, including Section 23-513, R.C.M. 1947, covering the subject of elections in general terms. See **In re Wilson Estate**, 102 Mont.

178, 195, 56 Pac. 2nd 733. Opinion No. 54 of Volume 28 of the Opinions of the Attorney General supports this conclusion.

Qualifications of electors are set out in the Montana Constitution in Section 2 of Article IX. When a question submitted to the electors "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 \* \* \* ." The quoted portion was included in an amendment to the Constitution submitted by the legislature to the people by Chapter 101 of the Laws of 1931 and approved by the people at the general election of November 8, 1932. Prior to that amendment there existed a Montana statute which is now Section 84-4711, R.C.M. 1947, which created similar qualifications as those included in the Constitutional amendment with respect to "any proposal to create or increase any indebtedness of a city, town, school district or other municipal incorporation." That section also provided that only "registered electors" should vote at such an election. It will be noted, however, that Section 84-4711, R.C.M. 1947, related only to "any proposal to create or increase any indebtedness" and did not, like the Constitution, refer to "any levy." In addition Section 84-4711, R.C.M. 1947, even if applicable to levies, is a general statute and, as indicated above, Chapter 38 of Title 75, R.C.M. 1947, is a special statute. Also, the most recent amendments of the applicable sections of Chapter 38 of Title 75, R.C.M. 1947, are more recent than the last amendment of Section 84-4711, R.C.M. 1947.

The Montana Constitution by Section 9 of Article IX also gives the legislature "**the power** to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise." It appears that in relation to special levy elections the legislature provided a procedure for "any school district" (including first class districts) to follow in holding such an election. It would seem that the legislature considered that in this type of election the purity of the election would be secured and abuses would be guarded against by provisions made for challenging the electors and the taking of an oath to entitle a challenged elector to vote, all as required by Section 75-3805, R.C.M. 1947.

Although the period for closing registration will be reduced from 75 days to 60 days when the amendment to Section 23-513, R.C.M. 1947, by Section 3 of Chapter 156 of the Laws of Montana of 1965 becomes effective July 1, 1965, it is obvious that closing registration takes a considerable period of time. Since under our statutes special levy elections must be held prior to August 1, and a prior determination has to be made by the trustees whether or not a special levy election is needed, the period required for closing registration under Section 23-513, R.C.M., might make a special levy election practically impossible because of lack of time. Considering all the circumstances it must be concluded that the ten day notice required by Section 75-

3802, R.C.M. 1947, is all that is required prior to holding a special levy election in any school district, including school districts of the first class.

Very truly yours,

FORREST H. ANDERSON  
Attorney General

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