

VOLUME 32

Opinion No. 16

**SCHOOLS AND SCHOOL DISTRICTS: Bond election, may be held in conjunction with primary election—Sections 23-1203, 75-3910, 75-3913, 75-1612, and 75-3915, Revised Codes of Montana, 1947.**

**HELD: 1. A school bond election may be held in conjunction with a primary election at the same polling places and with the same judges and clerks of election.**

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April 18, 1968

Mr. Gene B. Daly  
Cascade County Attorney  
Great Falls, Montana 59401

Dear Mr. Daly:

You ask if a school bond election may be held in conjunction with the primary election to be held on June 4 of this year. If the answer to this question is yes, you also wish to know if the judges for the bond election may be the same persons as the judges for the primary election and, in addition, by whom the votes in the bond election are to be canvassed.

There is no specific statutory prohibition against holding a school bond election in conjunction with a primary election, so long as the primary election occurs not less than twenty days nor more than thirty days after the school district board of trustees passes and adopts the resolution for a bond election. This time period is required by section 75-3910, R.C.M. 1947, and must be followed. I also direct your attention to section 23-1203, R.C.M., 1947, which provides:

Whenever any special election is held for the purpose of submitting to the qualified electors of any county, high school district, school district, city or town, the question of incurring an indebtedness for any purpose, issuing bonds or making a special or additional levy for any purpose, the polls shall be open at 12 o'clock noon and shall remain open until 8 o'clock P.M. of the same day; **provided, that if any such special election is held on the same day as any general, county, school or municipal election or any primary election and at the same polling places with the same judges and clerks of election**, then the polls shall be opened and closed at the same hours as the polls for such general, county, school, municipal or primary election. (Emphasis supplied.)

This statute clearly indicates that the legislature contemplated and approved holding a school district bond election in conjunction with a primary election. The language of section 23-902, R.C.M. 1947, which describes the purpose of the primary election, is not in conflict with section 23-1203, since a school district bond election is a "special election," not a part of the primary election, although it may be "held on the same day . . . and at the same polling places with the same judges and clerks of election" as the primary election. Of course, if any conflict between these two statutes were found to exist, the provisions of section 23-1203 would govern since it was enacted after

section 23-902. See, e.g., **State ex rel. Hughes v. State Board of Land Commissioners**, 137 Mont. 510, 353 P. 2d 331 (1960).

It is therefore my opinion that a school district bond election may be held in conjunction with the June primary election at the same polling places and with the same judges and clerks of election. To the extent that Opinion No. 316 of Volume 17, Report and Official Opinions of the Attorney General, conflicts with this opinion, it is hereby overruled.

You next ask how the votes in the bond election are to be canvassed. Section 75-3913, R.C.M. 1947, provides in part that "The bond election shall be conducted in the manner prescribed for the election of school trustees and return shall be made and canvassed in a similar manner." Section 75-1612, R.C.M. 1947, provides that the school district trustees shall canvass the vote for school trustees. Therefore, the board of trustees of the school district should canvass the vote on the bond election. Since the county board of canvassers must canvass the primary vote no later than the third day after the close of the primary election (section 23-921, R.C.M. 1947) and no time limit is set on the canvass of school votes other than that the school board of trustees must adopt a resolution providing for the issuance of the bonds, if the bond issue passes, within sixty days of the election, section 75-3915, R.C.M. 1947, there should be no difficulty in arranging separate canvasses.

Very truly yours,

FORREST H. ANDERSON  
Attorney General

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