

VOLUME NO. 38

OPINION NO. 17

ELECTIONS - School bond elections;  
 ELECTIONS - Elector qualifications;  
 ELECTORS - Qualifications for school bond elections;  
 ELECTORS - Taxpayer qualifications;  
 SCHOOL DISTRICTS - Bond elections, elector qualifications;  
 STATUTES - Repeal by implication.  
 MONTANA CODE ANNOTATED - Section 20-20-302;  
 REVISED CODES OF MONTANA, 1947 - Section 84-4711, R.C.M.

HELD: Property ownership is not a qualification for voting in an election called to create or increase a school district's indebtedness.

7 May 1979

Bruce E. Becker, Esq.  
 Park County Attorney  
 Park County Courthouse  
 Livingston, Montana 59047

Dear Mr. Becker:

You have requested my opinion on a question which may be stated as follows:

Is property ownership a qualification for voting in an election called to create or increase a school district's indebtedness?

You make reference to section 20-20-302, MCA (formerly section 84-4711, R.C.M. 1947), which provides:

From and after March 7, 1923, only such registered electors of the school district whose names appear upon the last preceding assessment roll should be entitled to vote upon any proposal to create or increase any indebtedness of the school district required by law to be submitted to a vote of the electors thereof, provided, however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote lies within another district.

You also refer to the fact that the taxpayer qualification presently found in the above statute formerly appeared in section 75-6411, R.C.M. 1947, as well, and that section 75-6411 was expressly repealed in 1971. I agree an apparent conflict exists and, in my opinion, the conflict must be resolved against the validity of the taxpayer qualification.

As originally enacted in 1923, and as re-enacted since, the taxpayer qualification now found in section 20-20-302, MCA, was applicable to elections concerning the creation or increase of indebtedness of counties, cities and towns, and school districts. 1923 Mont. Laws, ch. 98, § 1; § 5199.1, R.C.M. 1935, § 84-4711, R.C.M. 1947. In the course of the recent recodification, the qualification was placed in each of two sections; section 20-20-302, MCA, the statute in issue here, and section 7-7-4103, MCA, which prescribes voter qualifications applicable to questions of municipal indebtedness. Senate Bill 322, which was signed by the governor on March 22, 1979, amended section 7-7-4103 to delete the taxpayer qualification in that statute. Section 20-20-302, however, is not under consideration by the Legislature.

While section 20-20-302, MCA, as such has not received legislative attention, its subject matter has. In 1971, the Legislature passed chapter 83, Laws of 1971. Section 14 of that Act expressly repealed section 75-6411, R.C.M. 1947, which had imposed the same taxpayer qualification embodied in former section 84-4711, R.C.M. 1947, now section 20-20-

302, MCA. The title of the Act, which provides in part as follows, speaks for itself:

An act to repeal the taxpayer qualification of electors voting at school elections for issuing school district bonds, additional levy for general fund....

Chapter 83, Laws of 1971, became effective upon its approval on February 27, 1971.

In construing an enactment, courts will presume the legislature intended to make some change in existing law. State ex rel. Irvin v. Anderson, 164 Mont. 513, 523, 524, 525 P.2d 564 (1974). The change intended by chapter 83, Laws of 1971, is obvious: repeal of the taxpayer qualification for voting in school elections. That Act did not refer to the identical qualification then found in section 84-4711, R.C.M. 1947, now section 20-20-302, MCA. To the extent they deal with the same subject matter, the two enactments are wholly inconsistent and incompatible and cannot be reconciled. Therefore, the earlier, codified then as section 84-4711, R.C.M. 1947, was to that extent repealed by implication. State v. Langan, 151 Mont. 558, 564, 445 P.2d 565 (1968).

Furthermore, once repealed by implication, the taxpayer qualification in issue could not be revived even though it was carried forward into Montana Code Annotated as section 20-20-302. State ex rel. Jenkins v. Carisch Theaters, Inc., \_\_\_ Mont. \_\_\_, 564 P.2d 1316, 1320 (1977).

It should be noted that chapter 83, Laws of 1971, did not originate in a vacuum. By 1971 the Supreme Court of the United States had struck down property ownership qualifications as they applied to school board elections, Kramer v. Union Free School District, 395 U.S. 621 (1969); municipal utility revenue bond elections, Cipriano v. City of Huoma, 395 U.S. 701 (1969); and general obligation bond elections, City of Phoenix v. Kolodziejcki, 399 U.S. 204 (1970). The Court made it clear that as long as an election is not one of special interest, any classification restricting the franchise on grounds other than residence, age and citizenship violates equal protection unless the district or state can demonstrate the classification serves a compelling state interest.

By repealing the taxpayer qualification in issue here, the Legislature brought Montana into line with clearly established constitutional principles.

THEREFORE, IT IS MY OPINION:

Property ownership is not a qualification for voting in an election called to create or increase a school district's indebtedness.

Very truly yours,

MIKE GREELY  
Attorney General