

## Opinion No. 52-5611

December 1, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. H. B. Hickam President, Board of Directors Antelope Valley Irrigation District  
Springer, New Mexico

{\*324} This is in reply to the inquiry made by Mr. Robert A. Morrow, attorney for your irrigation district, with regard to the election of the Board of Directors of the district.

Mr. Morrow advised that some of the land owners within the district at the time of board elections had been circumventing the provisions of law with regard to voting in these elections.

Section 77-2105 NMSA, 1941 Comp., governing the qualifications of electors {\*325} to vote in elections of the directors of irrigation districts states in part as follows:

". . . If otherwise qualified voters shall be entitled to cast, and have counted, as many votes as he shall have acres of land owned by him and situate within said district, but in no event shall voters be entitled to cast, and have counted, more than one hundred (100) votes."

The question of law to be resolved is whether the shareholders who own land in excess of 100 acres can by quit-claiming a portion of their land to another give him the right to vote in a board of directors' election. The deeding of the land has been by quit-claim deed in most instances and is not recorded, with the deed being torn up after the election or with the land being redeeded to the original owner. Such quit-claiming of land to another to give that person the right to vote in the directors' election is an obvious attempt to circumvent the provision of law.

If the conveyance of land is a bona fide transfer of ownership no question of the transferee's right to vote could be raised. The best standard for determination of whether the transaction is a bona fide one or not is to inquire whether the deed has been properly recorded at the County Clerk's office to give the public notice of the transaction.

Sec. 77-2105 clearly contemplates voting by the bona fide owner of land within the district. To permit voting on the strength of an unrecorded quit-claim deed would violate the basic intent of the Legislature in enacting this statutory provision.

In my opinion those authorities who must determine the qualifications of the electors presenting themselves to vote on irrigation district elections should permit only those owners of land to vote whose ownership is a matter of public record in the office of the County Clerk. The presentation of a deed bearing the County Clerk's endorsement of

recording should be required of those would-be electors of doubtful standing before they are permitted to vote.