

Opinion No. 54-5889

January 14, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Assistant Superintendent of Public Instruction State Department of Education Santa Fe, New Mexico

{*325} This will acknowledge receipt of your letter of January 5, 1954, in which you enclosed a letter from George E. McDevitt, attorney for the McKinley County Board of Education, requesting an opinion on the following:

1. Need a petitioner, who signs a petition under Section 55-721, 1941 Compilation, as amended, initiating a school bond issue, be a registered voter?
2. Need a voter in a school bond election under Article 7, of Chapter 55, 1941 Compilation, be a registered voter?

Article 9, Section 11 of the New Mexico Constitution requires that the proposition to create the debt be submitted to " * * a vote of such qualified electors of the district as are owners of real estate within such school districts."

Article 7, Section 1 of the New Mexico Constitution provides " * * the Legislature shall have the power to require the registration of the qualified electors as a requisite for voting * * *."

Section 55-721 of the 1941 Compilation, as amended, provides that the petition shall contain " * * the genuine signatures of the qualified electors of the district * * *."

Section 55-728 provides that "One (1) ballot shall be delivered to each qualified voter of the district presenting himself to vote * * *."

From the foregoing statutes, it is clear that nothing in the school bond election Code requires that otherwise qualified electors be registered to vote as a pre-requisite to their right to cast a ballot or sign a petition with respect to a school bond election. Prior to the adoption of the present general election Code, the Supreme Court ruled in Board of Education vs. Citizens National Bank, 23 N.M. 205, 167 P. 715, that registration was not necessary.

Two sections of the present general election Code should be considered in determining whether the above mentioned Supreme Court ruling is still applicable.

Section 56-203 states in part, "The word 'election' shall be construed to mean and apply to all primary elections, general elections, special elections and municipal elections."

Section 56-246 of the 1941 Compilation, provides, "No person shall vote at any general, special, primary, or municipal election unless registered {326} as provided by the laws of the State of New Mexico * * *."

Section 56-203 was adopted in 1939 and Section 56-246 was adopted in 1927 and amended to conform to the wording of Section 56-203 in 1939. It is significant to note, we believe, that the Legislature found it necessary in 1947 to specifically require the use of registration books in elections for members of municipal boards of education, thus indicating a feeling on the part of the Legislature that absent specific provision, registration requirements were not applicable to school elections.

The wording of Section 56-203 and 56-246 lends itself, we believe, to the interpretation that the special elections referred to therein are special elections such as elections upon adoption of constitutional amendments rather than school bond elections, inasmuch as school bond elections are not specifically mentioned anywhere in the election Code and historically have been treated as a separate type of election.

We do not believe that the Legislature would be foreclosed from imposing a requirement of registration as a pre-requisite to vote or sign petitions in a school bond election. In fact, we believe, that specific authority exists from such action under Article 7, Section 1 of our Constitution.

Our opinion is therefore, that although the Legislature might, if it wish, provide that only registered qualified electors vote or sign petitions in or with respect to school bond elections, it has not done so and unregistered electors qualified may legally vote at such elections and sign the petition requesting the calling thereof.

By: Walter R. Kegel

Assist. Attorney General