

Opinion No. 57-190

August 6, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: The Honorable David A. Martin, State Representative, Bloomfield, New Mexico

QUESTIONS

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May land owners within the boundaries of an irrigation district vote such acreage as is allowable under Section 75-22-5, N.M.S.A., 1953 Compilation, even though such acreage is not benefited by the irrigation works and the owner does not pay assessments on the acreage?

CONCLUSION

Yes.

OPINION

ANALYSIS

It is our understanding that a bond election will be held in an irrigation district in the very near future pursuant to § 75-22-15, N.M.S.A., 1953 Compilation. The above section provides for the calling of a special election whereby the bond issue is submitted to the property holders in the district for their approval. The section further provides that voters shall qualify if they possess the qualifications provided for by § 75-22-5 supra. Section 75-22-5, in this regard, provides in part:

"At said election and all elections held under the provisions of this act, **all owners of land within such district**, who are citizens of the United States over twenty-one years of age (except idiots, insane persons, convicted felons not restored to political rights and Indians not taxed) **shall be qualified electors**; Provided, that if any farm or tract of land in such district is owned by more than one owner, only one person shall be permitted to vote at any election as the owner of such one farm or tract of land; and Providing further that at such elections each otherwise qualified voter 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 such voter be entitled to cast, and have counted, more than one hundred votes." (Emphasis supplied.)

In the contemplated election, we are informed that there are tracts of land within the district which do not benefit from the existing irrigation works and upon which lands the

owners are not assessed nor will they be assessed in the event that the bond question carries. It seems rather unfair that a man owning, say, for example, five acres of assessed land and ninety-five acres of non-assessed land should have one hundred votes, while a man owning thirty acres of assessed land, and none other, would only have thirty votes. We hold, however, notwithstanding the above apparent inequity, that all land owners are entitled to vote who own acreage, as is authorized by § 75-22-5 supra. This section makes no provisions for the allocation of voting privileges based on whether the land will be benefited by the bond issue or the property assessed thereon. The Statute speaks of "land owners" within the district, and allows each elector up to one hundred votes based on acreage owned within the district.

Justification for allowing all land owners to vote may stem from § 75-22-18, N.M.S.A., 1953 Compilation, which indicates that the district, as well as the property assessed, might be liable to a suit to enforce payment of the bonds.

In any event, if inequalities exist they must be corrected by the Legislature, since the mode in which an election district is formed and operated under a general law is within the discretion of the Legislature and, as a general rule, can not be questioned by the courts. See *Re Madira Irrigation District*, 92 Cal. 296, 28 P. 272, 14 L.R.A. 755.