

## **Opinion No. 64-27**

March 9, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Mr. Robert A. Atwood, County Clerk, Catron County, Reserve, New Mexico

### **QUESTION**

#### QUESTIONS

1. Who is entitled to vote in school bond elections?
2. Must a voter in a school bond election be a registered voter?
3. May a person vote for a school bond issue if he does not reside within the school district in which the election is conducted?
4. May both husband and wife vote in a school bond election if they are owners of community property realty in the district, and if so, what is community property?

#### CONCLUSIONS

1. Any person otherwise qualified to vote in general elections and who is an owner of real estate within such school district may vote in a school bond election.
2. No.
3. No.
4. Both husband and wife may vote in a school bond election if they are owners of a community property interest in real estate located within the school district, and if they reside within the school district may vote in such school bond election. See analysis for a discussion of community property.

### **OPINION**

#### ANALYSIS

Your first question is governed in part by the provisions of Article IX, Section 11 of the New Mexico State Constitution, which provides in applicable part:

"No school district shall borrow money, except for the purpose of erecting and furnishing school buildings or purchasing school grounds, and in such cases only when the

proposition to create the debt shall have been submitted to a vote of **such qualified electors of the district as are owners of real estate within such school district**, and a majority of those voting on the question shall have voted in favor of creating such debt. . ."

(Emphasis supplied).

Under the above constitutional provision any person otherwise qualified to vote and who is an owner of real estate located in the school district, and who resides within the school district may vote in school bond elections. Article VII, Section 1, of the New Mexico State Constitution specifies that a **qualified voter** must be over the age of twenty-one years, have resided in New Mexico twelve months, in the county ninety days and in the precinct in which he offers to vote thirty days, next preceding the election. Excepted from the list of qualified voters are "idiots, insane persons, persons convicted of a felonious or infamous crime unless restored to political rights." Any person meeting the requirements of the above two constitutional provisions is entitled to vote in a school bond election.

Your second question inquires if voters must be registered in order to vote at a school bond election. This question was dealt with in our prior Attorney General's Opinion No. 30, dated January 27, 1931, and a copy of such opinion is enclosed herewith for your records. In that opinion it was held that registration for voting was not a necessary prerequisite to vote in a school bond election if the voter was otherwise qualified to vote in such election.

Although the provisions of Article IX, Section 11 of the State Constitution were amended in 1933, the nature of the amendment in our opinion does not vitiate the holding of such opinion. The New Mexico Supreme Court has supported this view in **Roswell Municipal School Dist. No. 1 v. Patton**, 40 N.M. 280, 58 P2d 1192; and **Johnson v. Board of Education**, 65 N.M. 147, 333 P2d 1051.

Your third question deals with the issue of whether or not an individual must reside within the school district if he desires to vote on the bond issue affecting such school district. In our opinion, the provisions of Article IX, Section 11, and Article VII, Section 1, when read together, clearly require that any person undertaking to vote in a school bond election must reside in such school district, and must own real estate therein, and be otherwise qualified to vote.

Finally, your last question poses the issue of whether or not a husband and wife may both vote if they are owners of realty in the school district and which realty is held as community property. In our opinion, both spouses may vote if otherwise qualified, and if they hold such realty as community property. This problem was discussed in prior Attorney General's Opinion No. 106, dated January 20, 1934, wherein it was held that both husband and wife could vote on a school bond election if they owned realty as community property within the school district. As stated in **Baca v. Village of Belen**, 30 N.M. 541, 240 P.803, married women owning community property on which the

husband paid a tax are qualified to vote on the question of issuance of bonds. In **Beals v. Ares**, 25 N.M. 459, 185 P.780, the court stated it is well settled in New Mexico that the wife's interest in the community property held by the spouse is equal with that of the husband. In determining what realty is in fact held as community property by the spouses it may be said as a general rule that community property consists of that property acquired by the husband and wife, or either, during marriage, when not acquired as the separate property of either. **McDonald v. Senn** 53 N.M. 198, 204 P2d 990; **McDonald v. Lambert**, 43 N.M. 27, 85 P2d 78; **Stroppe v. Potter**, 48 N.M. 404, 151 P2d 748.