

Opinion No. 64-34

March 12, 1964

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

TO: Mr. William L. Dwyer, Superintendent of Schools, Village of Jemez Springs, Jemez Springs, New Mexico

QUESTION

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Are the heirs to an estate eligible to vote in a school bond election?

CONCLUSION

See analysis.

OPINION

ANALYSIS

The New Mexico State Constitution, Article IX, Section 11, provides in part that:

"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).

In **Johnston v. Board of Education of Portales School Dist. No. 1**, 65 N.M. 147, 333 P. 2d. 1051; and **Board of Education of City of Roswell v. Citizen's National Bank**, 23 N.M. 205, 167 P. 715, the New Mexico Supreme Court held that persons who were otherwise qualified to vote in school bond elections need not as a prerequisite to voting, register with the county clerk as in the case of other elections. See also Attorney General's Opinion No. 64-27, dated March 9, 1964, which discussed the requirements incident to voting in school bond elections.

Under Article IX, Section 11, supra, of the State Constitution, it is clear that persons desiring to vote in school bond elections must as a prerequisite, own real property situate in such school district.

In **Clovis National Bank v. Callaway**, 69 N.M. 119, 346 P. 2d. 748; **Schmitz v. New Mexico State Tax Commission**, 55 N.M. 320, 232 P. 2d. 986; **Dunham v Stitzberg**, 53 N.M. 81, 201 P. 2d. 1000; and **Conley v. Wikle**, 66 N.M. 366, 348 P. 2d. 485, the New Mexico Supreme Court has held that real estate of a decedent passes directly to the heirs or devisees on the death of the prior owner, and does not pass to the executor or administrator. As stated in **Clovis National Bank v. Callaway**, supra:

"With personal property the rule is otherwise, and before title passes there must be a due administration followed by a determination of heirship and an order of distribution. *Parker v. Beasley*, 40 N.M. 68, 54 P. 2d. 687; *York v. American Nat. Bank of Silver City*, 40 N.M. 123, 55 P. 2d. 737."

In accord with the above cases, it is our opinion that upon the death of an owner of real property situate in a local school district, the heirs or persons named in the will to take such real property immediately become vested with title to such land and such persons become owners of realty entitling them to vote in school bond elections, if they are otherwise qualified to vote in such elections. As stated in Attorney General's Opinion No. 64-27, March 9, 1964, the other requisites necessary to be eligible to vote in school bond elections, are (1) residence in the school district for the required period of time, (2) ownership of realty in the district, (3) legal age. A copy of Opinion No. 64-27, supra, is included herewith for your reference.

Voting officials may demand from the persons seeking to vote in such school bond elections **reasonable proof** of their ownership of real property, such as recorded copies of real estate records or certified copies of real estate records, tax receipts, proof of the death of the former owner, affidavits of heirship, probate proceedings if initiated, and any other appropriate documents evidencing ownership of realty within the school district by such persons.