

Opinion No. 12-962

December 10, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. F. McFarland, Logan, N. M.

IRRIGATION DISTRICT.

If one's land is within the limits of an irrigation district, as is entitled to vote at district elections.

OPINION

{*119} Your letter of the 4th inst. was duly received, but I have not been able sooner to answer on account of press of important official business.

You ask whether it is necessary for a man, who was a homesteader and had not made proof on his land at the time of the formation of an irrigation district, to make application to the directors of the district and be voted in before he is qualified to vote after he has obtained title to his land.

I assume from the form of your question that the homesteader did not participate in the organization of the irrigation district and probably, under the requirements of Section 1 of Chapter 109 of the Laws of 1909, if strictly construed, he could not properly have done so. Taking this to be true the next question for consideration is as to whether the boundaries of the district as organized include his lands or not. If his land is included within the limits of the district as organized then it seems that he would be entitled to vote at all future elections in the district under the provisions of Section 4 of the same act. That is the section which provides for the election upon the formation of the district and declares that "At said election and all elections held under the provisions of this act, all persons who are qualified electors within said proposed district and are resident freeholders and shall have paid a property tax in said proposed district during the year preceding such election shall be entitled to vote, and none others."

If, however, the district as established does not include the lands of the homesteader in question then he should proceed, as required by Section 32 of the act, to have his land included in the district. I should add, however, that it would be necessary for him to proceed in this way even though his lands are within the boundaries of the district if, at the time of its formation, his land was excluded from the district. After presenting his petition the further proceedings are quite fully specified in Sections 33 to 38 of the act.