

Opinion No. 17-1827

January 25, 1917

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Hon. Jay T. Conway, County Supt. of Schools, Raton, N.M.

Women are Not "Legal Electors" Within Meaning of Law Relating To Establishment of New School Districts.

OPINION

We have your favor of recent date wherein you ask (1) whether the words "legal electors" in Section 4840, relating to the establishment of new school districts, include women, and (2) whether you have any corrective powers in the case of a teacher who has taught for 18 years without ever having procured better than a third grade certificate, and who is related to one of the school directors.

In reply to your first inquiry, you are advised as follows:

Section 4820 says, "Whenever it is desired that a new district shall be formed, a petition and statement of facts signed by a majority of legal electors residing within the proposed district shall be presented to the County Superintendent of Schools, etc. etc." The Constitution of this state, as you are aware, provides that women shall be qualified electors at all school elections. It has been held by our Supreme Court that women are entitled to vote at elections for bond issues for school districts, and it seems to be the law that women are qualified voters at any sort of a school election. However, it does not seem to me that the term "election" can be said to include the signing of a petition even though the petition may be concerned with school affairs. In other words, merely because a woman is a qualified elector in school elections, she is not a "legal elector" of the school district in which she resides. It would appear that the legislature of this state has recognized this principle, because in the County High School law, passed after the adoption of the Constitution, women are specifically permitted to sign petitions for the calling of an election to determine the question of establishing a High School. The section (4964) says, "When petitioners to the number of one-fifth of the electors of the county, including women qualified as provided in section 1, Article VII of the State constitution, shall petition the board of county commissioners etc." It would seem from the wording of this section that women would not have been included within the classification of "electors," unless the legislature has so specially provided. The very question you ask is discussed in the case of Klutts vs. Jones, 20 N.M. 230, by our own Supreme Court. It was in that case that our Supreme Court held that women could rightfully vote at school bond issue elections, and a portion of the opinion in that case is as follows:

"The case of Oppegaard vs. Board of County Commissioners, 120 Minn. 443, 139 N. W. 949, 43 L. R. A. (N. S.) 936, is cited in support of this contention. (ie -- that women cannot vote at bond issue elections). As we read the case, however, it is not in point. There the court was construing a statute, providing for the enlargement of a school district upon the petition of a 'majority of the legal voters residing within such school district,' and held that the term 'legal voter' applied only to male electors, notwithstanding the Constitution gave women the right to vote at 'any election held for the purpose of choosing officers of schools * * * or upon any measure relating to schools.' * * * The petitioning for a change in boundaries of a school district is not an election. * * *"

Thus our Supreme Court simply held that the above mentioned case did not apply to the question before the Court, and our Court found no fault with the above decision. In fact the New Mexico Supreme Court used the opinion in that case to show that had the question been as to the right of women to vote at a bond or other school election, instead of the question as to the right of the women to sign a petition, that the decision of the Minnesota Court would have been otherwise. I have examined the case quoted by our Court and find that the question considered there is almost identical with the question you ask. The Court in that case said,

"We do not mean to say * * * that there may not be educational matters other than elections of schools officers upon which women, under the constitution, would be entitled to vote. We mean that in this state women are considered to be voters only in a qualified sense, and that the term 'legal voters,' without more, does not include women. * * * we are not impressed with the argument * * * that the term 'legal voters' as used in the statute declaring who may petition the board upon a matter which may here be conceded to concern education, must be held to include all persons who are qualified by the constitution to vote upon educational measures."

The term "legal electors" has a well defined meaning, and in view of the foregoing, I see no reason why the usual meaning of the term is not to be placed upon it in Section 4840. It is therefore my opinion that women are not qualified to sign the petition mentioned in said section.

In answer to your second question, I can only say that I know of no direct manner in which you can deal with the teacher you mention. You might lay the matter before the State Board of Education, which is empowered to revoke the certificate of a County teacher for "incompetency." The power which is conferred by section 4818 seems to be a very general one. I am informed that there has been introduced in the present session of the legislature, a bill providing that all contracts between rural teachers and directors shall be approved by the County Superintendent before such contracts shall be valid.