

Opinion No. 22-3306

February 25, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Ralph S. Spann, Attorney at Law, Lordsburg, New Mexico.

"Assessed" Value Real Estate Contemplated in Petitions for Water Works Election. Married Women Qualified Electors at Such Election.

OPINION

{*127} In reply to your letter of the 8th instant, asking for my opinion concerning matters in connection with the submission of the proposition of the issuance of bonds for the purpose of installing a water works and sewer system in the city of Lordsburg, I wish to advise you as follows:

You ask if the "value of real estate" prescribed in Section 4 of {*128} Chapter 98, of the Laws of 1921, requiring that a petition be filed requesting the calling of an election by one-half the owners in "value" of real estate situated within corporate limits of the city contemplates market or assessed value.

In my opinion the "value" intended to be used by this section is the assessed value, as it would be almost impossible to determine what the correct market value would be, and in several cases where the words "value" were used in statutes the courts held that "assessed" value was intended.

You also ask if women whose husbands have paid a tax during the preceding year upon real estate which was community property would have the right to vote at an election held for the purpose of voting upon the issuance of bonds for purposes above mentioned.

Section 10, Article IX of the Constitution, which prescribes a property tax payment as a qualification for voting at elections for this purpose, states that the proposition to create such debt shall have been "submitted to the qualified electors of the county who paid a property tax therein during the preceding year." If the tax was paid out of community earnings, as in most cases it is, and was paid upon community property as stated in your letter, in my opinion the tax is "paid" by the members of the community and both such members would be qualified electors under this provision. The moneys with which the tax was paid would be equally those of the wife as well as that of the husband and she therefore is a qualified elector who has paid a property tax during the preceding year, even though the tax may have been technically paid by the husband and paid upon property which was assessed to him individually. The only question which could arise would be the question of the proof of the ownership which should not deprive the wife of the right to vote upon such questions.