

## Opinion No. 34-715

January 20, 1934

**BY:** E. K. NEUMANN, Attorney General

**TO:** Mr. R. S. Fagan, Fort Stanton, New Mexico.

{\*108} With reference to your letter of January 18, 1934.

Section 11 of Article 9 of the State Constitution, as amended, provides in part, relating to the borrowing ability of a school district, "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 districts as are owners of real estate within such school district \* \* \*."

Your question is: Are both husband and wife eligible to vote in such an election, or is the vote limited to the one in whose name the property is registered?

A similar question was raised some years ago with reference to Section 12 of Article 9 of the Constitution. This latter section relates to the debt contracting power of municipalities, and the language used therein is as follows: "No such debt shall be created unless the question \* \* \* shall \* \* \* have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year."

In the case of *Baca vs. Village of Belen*, 30 N.M. 541, our Supreme Court held that married women, owning community property on which husband paid tax, were qualified to vote on question of issuance of bonds.

The Court, in arriving at its conclusion, quotes from *Beals vs. Ares*, 25 N.M. 459, as follows:

"From the foregoing, the following proposition may be accepted as settled: (1) That under the law in this jurisdiction, the wife's interest in the community property is equal with that of the husband; \* \* \* his interest in the property \* \* \* is not superior to that of his wife."

We believe the principle the same in both cases and the reasoning of the Court can readily and correctly be applied to your question. We conclude, therefore, that when a husband and wife own community property, both are entitled to vote upon any question submitted by amended Section 11 of Article 9 of our Constitution.