

*Jennings
Bartlett
Birmingham*

March 31, 1954

Mr. William C. Davis, Chairman
Americanism and Defense
Department of Arizona
304 E. 2nd Avenue
Casa Grande, Arizona

Letter Opinion
No. 54-90-L

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: Eligibility of exempted widows and
veterans to vote in bond elections.

Dear Mr. Davis:

This is in response to your request for an opinion in which you ask the question, "What is the status relative to the eligibility of exempted widows and veterans to vote in bond elections?" We apologize for the delay in answering, but due to the legislature now being in session, we are unable to answer requests as promptly as we would like.

Your question has been answered by the Arizona Supreme Court on two different occasions, and the express holdings by our court leaves little doubt as to the eligibility of widows and veterans, exempted from paying real property tax under our constitution, to vote in bond elections.

In the case of MORGAN vs. THE BOARD OF SUPERVISORS, (1948), 67 Ariz. 133, 192 P. 2d 236, Justice Udall stated:

"Having concluded that the trial court had jurisdiction to consider matters having to do with the conduct of the election, we now consider the fairness of the election and whether a widow or an honorably discharged soldier who by article 9, section 2, Arizona Constitution, is exempt from payment of taxes to the extent therein provided, and who has claimed such exemption and has paid no taxes during the current year, is entitled to vote at a bond election. The latter is governed by article 7, section 13 of the Arizona Constitution, which reads:

"Questions upon bond issues or special assessments shall be submitted to the vote of real property taxpayers, who shall also in all respects be qualified electors of this state, and of the political subdivision thereof affected by such question"* * *"
(Emphasis supplied)

* * * * *

"Appellant urges that to deny the right of widows and veterans who have claimed exemption from taxation and paid no taxes to vote at a school bond election is depriving them of some of their civil rights. As to this contention we think it pertinent to quote from 29 C.J.S., Elections, § 2:

'The right to vote is a political right or privilege or civil right, to be given or withheld at the exercise of the law-making power of the sovereignty. . . .

'the right to vote is not a natural, inherent, or inalienable right, but a franchise dependent on law, by which it must be conferred to permit its exercise. It is not a necessary incident of citizenship, It is not included among the rights of property or person.'"

* * * * *

"Certainly one who is wholly exempt from taxation and actually pays no taxes as in the instant case, cannot fairly be said to be a 'taxpayer' and so qualify under our constitutional provision."

* * * * *

"Our duty is to interpret the Constitution and laws as they have been written. The people in amending their Constitution have plainly said that the only persons entitled to vote at a bond election are 'real property taxpayers'. Who then comes within this classification? We construe it to mean a person subject to taxation on realty and regularly paying taxes thereon. We do not believe it was the intention of the framers of the Constitution to permit those who did not bear the 'burden of taxation' to be heard on the question of whether a bonded indebtedness should be incurred.* * *" (Emphasis supplied)

Again, in the case of JUNKER vs. GLENDALE UNION HIGH SCHOOL DISTRICT, (1951), 73 Ariz. 20, 236 P.2d 1010, Chief Justice Udall stated:

** * * However, the late case of Morgan v. Board of Supervisors, 67 Ariz. 133, 192 P. 2d

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236, decided a somewhat related matter. In that case the issue was whether a person owning real property which was wholly exempt from taxation was a real property taxpayer within the meaning of Section 13, Article VII, supra. The question was answered in the negative.* * *
(Emphasis supplied)

* * * * *

* * * that in the intendment of the Constitution, those only shall vote who are to pay the tax, who would be voting the tax upon themselves and not upon others; * * *
(Italics underscored)

We conclude, therefore, that in view of the express holdings of the Arizona Supreme Court, a widow or a veteran who pays no real property tax whatsoever, is not eligible to vote in bond elections. However, it would follow from the reasoning of our court that a veteran or a widow who is only partially exempt and does pay some real property tax is qualified to vote in such elections.

We hope the above information has answered the questions that you have in regard to this matter.

Very truly yours,

RODERIC M. JENNINGS
Assistant to the
Attorney General

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