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SCHOOLS AND SCHOOL DISTRICTS — SCHOOL ELECTIONS — TAX LIMITATIONS — BOND ISSUES — QUALIFICATIONS OF ELECTORS UNDER MICHIGAN CONSTITUTION — The plaintiff submitted to the school district electors two propositions: (1) that of increasing the tax limitation from 1.5 per cent to 1.802 per cent of the assessed valuation, and (2) that of bonding the school district in the amount of \$182,600 for improvements. Both at the registration of voters, and at the election, the qualifications of the electors were tested by the school code.¹ On the tax limitation question, all registered school electors were permitted to vote. On the question of the bond issue, only those registered electors who owned property assessed for school taxes in the district were permitted to vote. The defendant, president of the school board, refused to issue the bonds on the ground that persons entitled to vote on this issue were wrongfully deprived of their vote. The plaintiff sought mandamus to compel the defendant to execute the bonds. *Held*, mandamus denied. The qualifications of the electors should have been tested by the provisions of the constitution,² and not by the school code. Potter, J., concurred as to the question of the tax limitation, but as to the bonds held that the school code should govern. McAllister, J., dissented, holding that the school code should have governed as to both the tax limitation question and the question of the bond issue, and that the election as held was proper.

¹ "In all school elections every citizen of the United States of the age of twenty-one years . . . who owns property which is assessed for school taxes in the district, or who is the parent or legal guardian of any child of school age . . . shall be a qualified voter. On the question of voting school taxes, every citizen of the United States . . . who owns property which is assessed for school taxes within the district . . . shall be a qualified voter: Provided . . . where a husband and wife own property jointly . . . each may . . . vote upon all questions. . . ." Mich. Comp. Laws, (1929), § 7410.

² "In all elections every inhabitant of this state being a citizen of the United States . . . shall be an elector and entitled to vote . . . [if] he or she shall be above the age of twenty-one years, and has resided in this state six months, and in the city or township . . . twenty days next preceding such election. . . ." Mich. Const. (1908), art. 3, § 1, as amended. "Whenever any question is submitted to a vote of the electors which involves the . . . issue of bonds, only such persons having the qualifications of electors who have property assessed for taxes in any part of the district . . . or the lawful husbands or wives of such persons shall be entitled to vote thereon." *Ibid.*, art. 3, § 4, as amended in 1932. "The total amount of taxes assessed against property for all purposes . . . shall not exceed one and one-half per cent of the assessed valuation of said property. . . . Provided, That this limitation may be increased . . . by a two-thirds vote of the electors of any assessing district. . . ." *Ibid.*, art. 10, § 21, as added in 1932.

Dearborn Township School District v. Cahow, 289 Mich. 643, 287 N. W. 484 (1939).

The decision leaves much to be desired in the way of clarity. It has long been held that where the constitution does not provide for school elections, but gives the legislature the authority to do so, the legislature may prescribe different qualifications for electors in the school elections than those laid down by the constitution in the general election law.³ The majority holding in the principal case does not overrule these decisions. Instead it appears that the court felt that this election was provided for by the constitution,⁴ thus the constitutional qualifications governed.⁵ The practical result of this decision will be that in all school elections there will be three elector rolls: one for the election of school officers, the qualifications being that the electors be property owners, or the parents or legal guardians of school children; ⁶ one for bond issues, the qualifications being that the electors be the owners of property assessed for taxes in the district, or the lawful husbands or wives of such owners; ⁷ and one for the purpose of increasing the tax limitation for school purposes, the qualifications being nothing but citizenship, residence and age.⁸ This is going to mean added expense for the holding of school elections. Also, this decision means that the tax limitation can be increased by the vote of electors who do not own property that will be assessed for the taxes, and thus they will not have to pay the increased taxes that they have voted. It should also be noted that this decision may possibly pave the way for repudiation of bond issues voted by school districts subsequent to the adoption of article 3, section 4, and prior to this decision. Justice McAllister in his dissenting opinion would seem to reach the more practical result. And perhaps his opinion is based on the better reasoning. His view is that the school code should govern for both of the matters in this case. As to the tax limitation, the constitutional provision carries an ambiguity.⁹ This is perhaps due to the fact that, at the time of its adoption, the merits of the amendment overshadowed the language. Justice McAllister argues that in this case the assessing district is a school district, so the "electors" intended are school electors, therefore the statute governs. If the assessing district were a municipality, the constitutional qualifications would govern because this would be an election provided for by the constitution. This seems logical, and this ambiguity might even have been intended by the framers

³ *Belles v. Burr*, 76 Mich. 1, 43 N. W. 24 (1889); *Pingree v. Board of Education*, 99 Mich. 404, 58 N. W. 333 (1894); *Menton v. Cook*, 147 Mich. 540, 111 N. W. 94 (1907); *Burton v. Koch*, 184 Mich. 250, 151 N. W. 48 (1915). See also: *Plummer v. Yost*, 144 Ill. 68, 33 N. E. 191 (1893); *Ackerman v. Haenck*, 147 Ill. 514, 35 N. E. 381 (1893); *Wheeler v. Brady*, 15 Kan. 26 (1875); *Opinion of Justices*, 115 Mass. 602 (1874); *State ex rel. Crosby v. Cones*, 15 Neb. 444, 19 N. W. 682 (1884).

⁴ Mich. Const. (1908), art. 3, § 4, art. 10, § 21, as amended, quoted in note 2, *supra*.

⁵ Mich. Const. (1908), art. 3, § 1 as amended, quoted in note 2, *supra*.

⁶ Mich. Comp. Laws (1929), § 7410, quoted in note 1, *supra*.

⁷ Mich. Const. (1908), art. 3, § 4, as amended.

⁸ Mich. Const. (1908), art. 3, § 1, as amended.

⁹ "... electors of any assessing district. . ." Mich. Const. (1908), art. 10, § 21, added in 1932.

of the amendment for this very situation. As to the bond issue, the argument of the dissenting justice seems equally valid. "Electors" as used in article 3, section 4 means "electors" as set out in article 3, section 1; but the qualifications there prescribed do not apply to school elections;¹⁰ this is a school election; therefore the qualifications as set out in the constitution do not apply, and those provided in the school code govern. Inasmuch as the qualifications of school electors may be different from the qualifications of constitutional electors, the desirable result would be one set of qualifications for electors in all types of school elections. In view of this decision, the legislature cannot provide for that.¹¹ Thus the only way to correct the situation would seem to be an opinion of the court contrary to this one, or by a constitutional amendment. One of these is certainly called for.

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¹⁰ *Menton v. Cook*, 147 Mich. 540, 111 N. W. 94 (1907).

¹¹ "If the Constitution specifically provides the qualifications of electors for the purposes under consideration, such qualifications can neither be increased or decreased by legislation." Principal case, 289 Mich. at 644.