



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

May 6, 2013

The Honorable Branden Durst
P.O. Box 170117
Boise, ID 83717

Dear Senator Durst:

This letter is in response to your recent inquiry of this office. Specifically, you seek an analysis regarding the constitutionality of Idaho Code § 50-3112 (7). This code section provides that resident qualified electors and owner qualified electors may each be entitled to one vote in any election pursuant to Idaho Code Title 50, Chapter 31.

Idaho Constitution Article I, Section 20 prohibits property ownership from being a condition for voting or holding an elected office, except in limited circumstances.¹ Article VI, Section 4 grants the legislature the ability to modify voting requirements.² However, the legislature cannot nullify other constitutional provisions in doing so. Thus, even though the Constitution permits the legislature to add voting qualifications, it cannot require property ownership to be a voting prerequisite except in the limited situations specifically mentioned in Article I, Section 20.

Property Ownership As A Voting Qualification Is Extremely Limited.

There are some instances where property ownership may be a constitutionally permitted requisite. In such cases, the United States Supreme Court said that the interests of property owners and interests of non-property owners must substantially and sufficiently vary in order to justify excluding non-property owners from the opportunity to vote. Where all citizens might be affected by governmental decisions, the United States Constitution and the Idaho Constitution does not permit weighted voting (allowing property owners to vote twice) or the exclusion of otherwise qualified electors. Over the years, the Idaho Supreme Court examined property

¹ Article I, Section 20 of the Idaho Constitution states "no property qualifications shall ever be required for any person to vote or hold office except in school elections, or elections creating indebtedness, or in irrigation district elections, as to which the last-named elections the legislature may restrict the voters to land owners." (Emphasis added)

² Article VI, § 4 grants the authority for the legislature to "prescribe qualifications, limitations, and conditions for the right of suffrage additional to those prescribed in this article, but shall never annul any of those provisions in this article contained."

ownership voting requisites in several cases.³ In these cases, voting was limited to those electors who owned property. Residents who would otherwise qualify as electors but did not own property were barred from participating by the direct language of the statute.

Property Ownership Expands The Pool Of Eligible Voters.

The statute in question does not exclude non-property owners from voting. Idaho Code § 50-3112 states all resident qualified electors and owner qualified electors are permitted to participate in votes proscribed by that chapter. Facially, Idaho Code § 50-3112 does not violate the Idaho Constitution. The statute does not exclude a particular group from voting, nor does it make property ownership a requisite in order to vote. It simply identifies that in order to vote, one must be either a resident of the district or own property in the district in which the election occurs.⁴ In either case, the individual must also meet the constitutional requirements of Article VI, Section 2 of the Idaho Constitution, namely that they must be residents of this State and the county in which they wish to vote.⁵ In other words, a nonresident of the state of Idaho would not be able to participate in votes for elections under Idaho Code § 50-3112.

The Constitution Does Not Require A Minimum Number Of Voters.

The concern contained in your hypothetical is that the developer (presumably an owner qualified elector) could obtain municipal bonding authority to finance development of a district by petitioning the county to hold an election where he would be the sole qualified elector. Under Idaho Code § 50-3112, the developer would be the sole qualified elector because there are no other owner qualified electors or resident qualified electors.

You are correct in your observations. Applying Idaho Code § 50-3112 to these facts, one property owner would be deciding the outcome of a vote cast in that district. However, the application of the statute to these facts will not invalidate an otherwise lawful statutory provision. In order for statutes to be determined unconstitutional, the fault within the statute must

³ See Johnson v. Lewiston Orchards Irrigation Dist., 99 Idaho 501 (1978), (laws limited voting franchise to property owners in irrigation district elections are excepted from strict scrutiny only if non-property owners are substantially less interested or affected by the elections than property owners.); Muench v. Paine, 94 Idaho 12, 480 P.2d 196 (1971) (holding that Idaho constitutional provision allowing imposition of property qualifications in school elections or elections creating indebtedness violates Fourteenth Amendment's equal protection clause and, accordingly, general obligation bonding election statutes of Idaho limiting the franchise to real property owners must be considered invalid under the U.S. Supreme Court Decision in Phoenix v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L.Ed.2d 523 (1970).

⁴ Idaho Code § 50-3102 (13) states: "Qualified elector" means a person who possesses all of the qualifications required of electors under the general laws of the state of Idaho and: (a) Resides within the boundaries of a district or a proposed district and who is a qualified elector. For purposes of this chapter, such elector shall also be known as a "resident qualified elector"; or (b) Is an owner of real property that is located within the district or a proposed district, who is not a resident qualified elector as set forth above. For purposes of this chapter, such elector shall also be known as an "owner qualified elector."

⁵ Article VI, Section 2: Qualifications of electors. Every male or female citizen of the United States, eighteen years old, who has resided in this state, and in the county where he or she offers to vote for the period provided by law, if registered as provided by law, is a qualified elector.

be beyond a reasonable doubt and unmistakably invalid.⁶ It is doubtful a court would find this to be true of Idaho Code § 50-3112 because the statute does not require property ownership in order for an elector to vote. Rather than invalidating the statute in its entirety, a reviewing court could strike only that portion allowing non-resident property owners a vote. But this outcome would need to be determined by a reviewing court and is beyond the scope of this office's authority.

It is important to note, any general obligation bond elections must first be approved by the district board. The district board is composed of either city council members or county commissioners.⁷ Only if the district board deems it advisable will general obligation bonds be submitted to the district electors for election.⁸ Additionally, general obligation bonds and other district indebtedness are subject to maximum indebtedness levels.⁹ Both of these conditions provide controls on the ability of a single developer to gain county supported financing.

I hope you find this analysis helpful.

Sincerely,

A handwritten signature in black ink that reads "Chelsea Kidney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chelsea Kidney
Deputy Attorney General

cek/ljd

⁶ Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.3d 598 (2001).

⁷ Idaho Code § 50-3104(2)

⁸ Idaho Code § 50-3108(1)

⁹ Idaho Code § 50-3108(4)