

1165.

VOTING MACHINES—WHEN QUESTION OF ADOPTION MAY BE SUBMITTED TO VOTERS—OBTAINING OF SIGNATURES TO PETITION—FILING OF PETITION.

SYLLABUS:

1. Under the provisions of Section 161 of Amended Substitute Senate Bill No. 2, 113 O. L. 307, there can be no valid election upon the question of the adoption of voting machines by a county, prior to the general election to be held therein on the first Tuesday after the first Monday in November, 1930.

2. Electors of such county are not authorized to sign a petition to the board of elections of the county for the submission of such question prior to January 1, 1930, when said act goes into effect. Electors of the county may sign such petition any time after said act goes into effect on January 1, 1930, and until the petition is filed with the board of elections. Such petition should be filed with the board of elections of the county at such time that the board of elections may adopt the necessary resolution for the submission of such question to the electors of the county at least forty days prior to the election.

COLUMBUS, OHIO, November 8, 1929.

HON. R. H. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“Since the recent decision of the Supreme Court of this State in the case of *State of Ohio, ex rel Automatic Registering Machine Company vs. Green*, (No. 21676), wherein it was held that the use of voting machines is constitutional in Ohio, a sample petition for the adoption of voting machines in this county in accordance with the new election law has been presented to us together with the following seven questions,—

1. Does the enclosed petition properly conform with Section 161-A of the new election law which is amended Substitute Senate Bill No. 2?

2. Under the provisions of Section 161-A of amended Substitute Senate Bill No. 2 will an election to determine whether the voting machine shall be adopted in Geauga County be legal if held before January 1st, 1930?

3. If the aforementioned election cannot be legally held before January 1st, 1930, will an election on the question as to the use of voting machines in Geauga County held after January 1st, 1930, be legal if the petitions asking for the submission of this question to the voters is circulated and signed prior to the first day of January, 1930?

4. How much time may elapse from the date of the first signature to the date of the last signature appearing on the petition?

5. How long before the date of the election must the petition be filed?

6. With whom should the petitions be filed?

7. At what election may the question as to the adoption of the voting machine be submitted to the voters?

In behalf of the board of elections of Geauga County, I am enclosing herewith a copy of the sample petition which was presented to us and I respectfully request your opinion on each of the above questions at an early date.”

The decision of the Supreme Court in the case of *State ex rel. Automatic Registering Machine Company vs. Green*, referred to in your communication, overrules

the case of *State ex rel. Karlinger vs. The Board of Deputy State Supervisors of Elections*, 80 O. S. 471, in which it was held that an act providing for the use of voting machines at elections was void because repugnant to the second section of the Fifth Article of the Constitution which provides that "all elections shall be by ballot."

The new election law referred to by you is an act passed by the 88th General Assembly, as Amended Substitute Senate Bill No. 2, (113 O. L. 307) which act has been carried into the General Code by designation of the Attorney General as Sections 4785-1 to 4785-234, inclusive.

Section 161 of said act designated as Section 4875-161, General Code, provides in part as follows:

"The board of elections in any county may adopt the voting machine or machines for use in any or all elections in the county or municipalities in the following manner and under the following restrictions:

a. The board, upon the filing of a petition signed by two per cent of the qualified electors of such county or any municipality thereof, shall submit to the electors at the next general election the question 'Shall the voting machine be adopted in ----- County (or municipality)?' If the proposal is approved by a majority vote thereon then the board shall be authorized to purchase voting machines for use in all general and primary elections in such county or municipality in which the voting machine can be used. By the same proceedings the use of voting machines may be discontinued."

The above provisions of Section 161 of said act make no requirement with respect to the form of the petition to be signed by the required percentage of the qualified electors of the county or municipality, as the case may be, and filed with the board of elections of the county for the purpose of authorizing the board of elections to submit to the electors at the next general election the question of the adoption of voting machines in such county or municipality. Without discussing the form of the proposed petition inclosed with your communication and therein referred to, it is sufficient to say that said petition meets the requirements of the provisions of Section 161 of said act, and the same is hereby approved.

With respect to your second question, it is noted that said act by Section 235 thereof, provides that the same shall become effective on the first day of January, 1930. In the case of *The Patterson Foundry and Machine Company vs. The Ohio River Power Company*, 99 O. S. 429, it was held that "Where a future time is named in an act when it shall become effective, it will speak and operate only from that time unless a different intention is manifested." With respect to the question here presented, it is observed that there is nothing in said act which indicates any intention on the part of the Legislature that Section 161 of said act, above quoted, should be effective for any purpose prior to January 1, 1930, when the act as a whole goes into effect.

Giving effect to the principle stated in the case of *Patterson Foundry & Machine Company vs. The Ohio River Power Company*, above noted, this office in Opinion No. 900, directed to the Prosecuting Attorney of Montgomery County, under date of September 23, 1929, held that:

"The question of the adoption of voting machines in a county or any municipality thereof, may not, under the provisions of Section 161 of Amended Substitute Senate Bill No. 2, enacted by the 88th General Assembly, be submitted at the general election to be held November 5, 1929."

It follows from what has been said above, that your second question must be answered in the negative.

What has been here said in the discussion of your second question, applies as well in consideration of the third question presented in your communication. In line with what is said in the decision of the court in the case of *Patterson Foundry & Machine Company vs. The Ohio River Power Company*, *supra*, it is noted that 36 Cyc. at page 1192, states the rule somewhat more comprehensively as follows:

“Until the time arrives when it is to take effect and be in force, a statute which has been passed by both houses of the Legislature and approved by the executive, has no force whatever for any purpose, and all acts purporting to have been done under it prior to that time, are void.”

This rule would seem to indicate that there would exist no authority to sign petitions prior to January 1, 1930, the effective date of the act. I realize that the argument may be advanced that the petitions would speak only from the date of filing and that accordingly, the actual date of the signatures would be immaterial. However that may be, a substantial doubt as to the validity of such signatures would exist, and in my opinion it would be safer to hold that there exists no authority to sign petitions prior to the effective date of the act.

There is nothing in Section 161 of said act nor in any other section of the same, which makes any specific provision touching the fourth question stated in your communication. It follows therefore that signatures may be taken to said petition from the time said act goes into effect until the petition is filed with the board of elections.

There is likewise nothing in said act making provision for the time when such petition must be filed with the board of elections in order to authorize such board to submit to the electors the question of the adoption of voting machines for use in elections. With respect to this question, however, the provisions of Section 161 of the act here under consideration should be read in connection with other statutory provisions touching the question. This act makes no provision with respect to the notice of the election on the question of the adoption of voting machines. In this situation, the provisions of Section 4840, General Code, are applicable. This section reads as follows:

“Unless a statute providing for the submission of a question to the voters of a county, township, city or village provides for the calling of a special election for that purpose, no special election shall be so called. The question so to be voted upon shall be submitted at a regular election in such county, township, city or village, and notice that such question is to be voted upon shall be embodied in the proclamation for such election.”

Section 4827, General Code, provides for the proclamation referred to in Section 4840, above quoted. Said Section 4827, General Code, provides as follows:

“At least fifteen days before the holding of any such general election, the sheriff of each county shall give notice by proclamation throughout his county of the time and place of holding such election and the officers at that time to be chosen. One copy of the proclamation shall be posted at each place where elections are appointed to be held, and such proclamation shall also be inserted in a newspaper published in the county.”

Before the sheriff can include in his proclamation a notice of the election upon the question of the adoption of voting machines in the county, the board of elections of the

county is required to adopt a resolution providing for the submission of such question. And inasmuch as the filing of the petition provided in Section 161 of said act with the board of elections is necessary before said board can exercise the power and authority given it by the statute to submit such question to the electors, it follows that so far as the provisions of Sections 4840 and 4827, General Code, are concerned, said petition must be filed more than fifteen days before the date of election. In considering this question, however, other applicable statutory provisions must be taken into consideration. Sections 5078-1, et seq., General Code, provide for the casting of ballots by absent voters on candidates or questions to be voted on. Such absent voter may cast his ballot not earlier than thirty days prior to the election.

Again, by Section 5080-1, General Code, provision is made for the nomination of inspectors to the count at the election when any question is submitted. This section provides that not later than forty days prior to an election at which any question is submitted to a vote of the people, any committee may file a petition with the board of elections of any county asking that such petitioners be recognized as a committee entitled to nominate inspectors to the count at such election; and if such committee is recognized by the board of elections as the rightful committee entitled to advocate or oppose the question to be voted upon, such committee is entitled to nominate inspectors at such election.

It follows from this that the board of elections must adopt its resolution providing for the submission of the question of adopting voting machines at least forty days prior to the date of election, and the petition provided for in Section 161 of said act, should be filed with the board of elections at or before said time.

By way of answer to your sixth and seventh questions stated in your communication, it may be said that under the provisions of Section 161 of the said act, above quoted, the petition or petitions therein provided for should be filed with the board of elections of the county, and the election on the question of the adoption of voting machines in the county is to be held at the general election for the state and county officers to be held in such county in an even numbered year. It is obvious that the first election that can be held on this question is that to be held on the first Tuesday after the first Monday in November of 1930.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1166.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN VINTON COUNTY.

COLUMBUS, OHIO, November 8, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*