

808

VOTE—USE OF PASTERS—BEARING NAME OF “WRITE-IN”
CANDIDATE—ATTACHED TO OFFICIAL BALLOT BY INDI-
VIDUAL VOTERS—NOT AUTHORIZED BY LAW—SECTION
4785-98 G. C.

SYLLABUS:

The use of pasters bearing the name of a “write-in” candidate which are attached to the official ballot by individual voters is not authorized by law.

Columbus, Ohio, October 8, 1951

Hen. Joel S. Rhinefort, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Many of the petitions filed by prospective candidates in Lucas County for township offices to be voted on at the Novem-

ber 6 election were defective, thus the ballots at this election will have no names of candidates printed thereon for many of the offices. As a result of this situation there is considerable interest by prospective write-in candidates. There have been inquiries by these candidates of the Board of Elections of Lucas County as to the legality of furnishing voters with pasters containing the name of the candidate to be attached by the voters in the place provided on the ballot for write-ins. The Board has passed the question along to me.

"My first impression was that no such addition to the ballot is authorized and that under the present wording of the election statutes the voter must personally write in the name of the candidate on the ballot. However, in Opinion No. 1286, 1949, your predecessor rendered an opinion, the closing paragraph of which reads as follows: 'In deciding whether a particular write-in vote may be counted, the Board of Elections may consider only one factor, i. e., is it possible to determine the voter's choice?' Since it appears to me that the attaching of a paster containing the name of a candidate by a voter certainly indicates clearly the voter's intention to cast a vote for the person whose name appears on the paster, I have considerable hesitancy in advising the Board that such a procedure is unlawful.

"While the Board may be under no obligation to determine this question in advance, I feel that under the circumstances now prevailing in Lucas County it would be advisable for the Board to adopt and announce its policy with respect to such write-ins prior to election so that prospective candidates may conduct their campaigns accordingly. In view of the advisability of having a uniform rule in such cases, I would appreciate your opinion as to the authority of the Board to count write-ins for candidates whose names have been attached to the ballot by means of such pasters."

The first question which appears to merit consideration in the factual situation you describe is whether the attachment of "pasters containing the name of the candidate" to a ballot is a change in the official ballot. This point is especially important for the reason that the paster to be attached to the ballot is printed matter rather than a hand-written name or mark of preference made by the voter. The form of official ballots and the designation of the names of candidates to be printed thereon are provided for in Section 4785-98, General Code, which reads in part as follows:

"The secretary of state shall, on the seventy-fifth day before the day of the next general election, certify to the board of elections of each county in the state the forms of the official ballots to be used at such general election, together *with the*

names of the candidates to be printed thereon whose candidacy is to be submitted to the electors of the entire state. * * *

“If, subsequently to the seventy-fifth day before and prior to the tenth day before the day of such general election, a certificate should be filed with the secretary of state to fill a vacancy caused by the death of a candidate, the secretary of state shall forthwith make a supplemental certification to the board of elections of each county in the state amending and correcting his original certification provided for in the first paragraph of this section. * * * If, at the time such supplemental certification is received by a county board of elections, ballots carrying the name of the deceased candidate shall have been printed, such board shall cause strips of paper bearing the name of the candidate certified to fill such vacancy to be printed and pasted on such ballots so as to cover the name of the deceased candidate, before such ballots are delivered to electors. (Emphasis added.)

The voting of any but the official ballot is prohibited by Section 4785-202, General Code, which reads as follows:

“Whoever votes or attempts to vote in any primary, special or general election in a precinct in which he is not a legally qualified voter; or votes or attempts to vote more than once at the same election; or impersonates or signs the name of another person, real or fictitious, living or dead, and votes or attempts to vote as such person in any such election; or whoever votes or attempts to vote at any primary the ballot of a political party with which he has not been affiliated, as required by law, or which he did not vote at the last election; or casts a ballot at any such election after objection has been made and sustained to his vote; or *knowingly votes or attempts to vote a ballot other than the official ballot*; shall, upon conviction thereof, be fined not less than fifty nor more than one thousand dollars, or be imprisoned in the penitentiary not less than one year nor more than five years, or both.” (Emphasis added.)

A further statutory provision on this point is found in Section 4785-131, General Code, which reads in part as follows:

“* * * No ballot delivered by a voter to the judge in charge of the ballot boxes with Stub A detached therefrom, *and only ballots provided in accordance with the provisions of the election laws of Ohio shall be voted or deposited in the ballot boxes.* * * *” (Emphasis added.)

Since the General Assembly has made provision in Section 4785-98, General Code, for the attachment to the ballot of pasters bearing the

printed names of candidates in the special circumstances therein described and has made no provision for such action in any other circumstances, it must be presumed to be the legislative intent to forbid such use of pasters by the board of elections in any other circumstances. In this situation it can hardly be supposed that the voter is authorized to change a ballot in a manner in which the law forbids the board to change it.

There is, however, a more cogent reason why the use of such pasters cannot be deemed to be authorized under the statute. As noted hereinbefore, Section 4785-144, General Code, in its present form, contains the provision that "no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice." In considering the effect of this provision my immediate predecessor in office, in Opinion No. 1286, Opinions of the Attorney General for 1949, p. 916, reached the following conclusion, as stated in paragraph 3 of the syllabus:

"In deciding whether a particular 'write-in' vote may be counted, the board of elections may consider only one factor, i.e., is it possible to determine the voter's choice?"

This is an exceedingly broad conclusion and can be considered correct only as applicable to those cases comprehended by the provisions of Section 4785-144, General Code; and I have no doubt that the writer of that opinion intended its application to be so limited. By the plain language of this section its provisions are applicable only to those cases where there is an irregularity with respect to a ballot, which irregularity results from a *technical error* on the part of the voter.

In the case at hand we are not concerned with a technical error nor, indeed, with an error of any sort. It clearly appears from your inquiry that the use of the pasters will be a planned and deliberate act and in no sense can that use be attributed to neglect, mistake or inadvertence. In this situation, the provision of Section 4785-144, General Code, mentioned above, cannot be deemed applicable, nor would the situation here be comprehended by the rule stated in the 1949 opinion, *supra*.

Accordingly, in specific answer to your inquiry, it is my opinion that the use of pasters bearing the name of a write-in candidate which are attached to the official ballot by individual voters is not authorized by law.

Respectfully,

C. WILLIAM O'NEILL

Attorney General