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LISTS—CHALLENGER, JUDGE OR CLERK OF PRECINCT MAY NOT KEEP LISTS OF PERSONS VOTING AT ELECTIONS AND FURNISH THE LISTS TO PERSONS NOT CONNECTED WITH BOARD OF ELECTIONS—AUTHORIZED DUTIES OF PARTIES IN INTEREST.

SYLLABUS:

A challenger, judge or clerk of a precinct may not keep lists of persons voting at the elections and furnish them to persons not connected with the Board of Elections. This should not be interpreted to interfere with the authorized duties of these persons.

Columbus, Ohio, May 25, 1950

Hon. Herbert R. Freeman, Prosecuting Attorney
Huron County, Norwalk, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 4785-120 providing for challengers and witnesses at elections contains the following language:

“ ‘No such challengers and witnesses shall receive any compensation from the county, city, village or township, and they shall take the following oath, to be administered by one of the judges of the elections:

“You do solemnly swear that you will faithfully and impartially discharge the duties as an official challenger and witness, assigned by law; that you will not cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of their qualification as electors, and that you will not disclose or communicate to any person how any elector has voted at such election.” ’

“I should like your opinion on the following questions:

“1. May a challenger legally keep a list of the persons voting at the polls and make the same available to persons not connected with the Board of Elections in any official capacity requesting the use of such list?

“2. May a judge or clerk of the precinct legally keep a list of the persons voting at the precinct and make the same available to persons not connected with the Board of Elections in any official capacity?”

I assume from your request that the challengers have a list of electors of their party who may vote in the particular precinct or ward in which the polls are situated. The usual situation is that when the voter gives his name to the election officials the challenger marks his name off the prepared list he has previously compiled so that he knows at all times the eligible persons who have not yet voted. He then furnishes this list to party workers who urge these persons to vote.

At common law there was no such position as a challenger. The legislature of Ohio provided for them in Section 4785-120, General Code. The sole purpose of a challenger, as contemplated by the legislature of Ohio, was to prevent unauthorized persons from voting. To achieve this purpose, the general assembly created the challenger and gave him definite duties as set forth in Section 4785-129, General Code. It permitted the challenger to remain in the polls during the election so that he might carry out the purpose for which his position was created. This was allowed in spite of Section 4785-126, General Code, which prohibited other persons from loitering within one hundred feet of the polls. At no time, in the election code, did the Ohio legislature indicate any intent upon its part that a challenger should be permitted to carry on activities within the polls clearly beyond his express duties. On the other hand, it is clear that a challenger is allowed to remain within the polls only because of his official position as challenger. Surely the legislature did not intend to permit a practice of this nature when it is apparent that it could easily lend itself to much abuse. If the legislative intent were to allow the compilation and distribution of such lists, it could have been affirmatively shown. In the absence of any such intent, it is my opinion that a challenger is not permitted to compile a list of those electors voting and make the same available to others. This should not be interpreted as to interfere with the authorized functions of a challenger.

As to the question of judges or clerks of the precinct keeping such lists, I believe the same arguments are applicable. The positions are created and the duties established by statute. Nowhere in the statutes is there any provision made for the persons in these jobs to keep such lists. Their duties are clearly defined and they should keep within their authorized functions. Their positions were established to facilitate the speedy and impartial conduct of the election. They are the election officials. For this reason alone, they should be prevented from participating in a purely partisan activity. The legislature gave to them the responsibility of con-

ducting the election on an impartial basis. The judge and clerk as election officials should be above reproach or criticism. There should be no suggestion as to their partiality when they are acting as officials of the election board. In the absence of any contrary intent by the legislature, it is my opinion that the judge and clerk of the precinct are prohibited from compiling lists of those persons voting and later distributing those lists. The above, of course, is not applicable when the duties of these officials require such lists for official purposes.

Respectfully,

HERBERT S. DUFFY,
Attorney General.