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BOND ISSUE—SUBMITTED TO VOTE, SECTION 2293-15c G. C.
—SPECIAL ELECTION—JUNE 1950—QUESTION MAY BE
LAWFULLY RESUBMITTED TO VOTE AT GENERAL ELEC-
TION—NOVEMBER 7, 1950.

SYLLABUS:

Where the question of a proposed bond issue has been submitted to a vote under Section 2293-15c, General Code, at a special election in June, 1950, such question may lawfully be resubmitted to a vote at the general election to be held on November 7, 1950.

Columbus, Ohio, November 1, 1950

Hon. Darrell R. Hottle, Prosecuting Attorney
Highland County, Hillsboro, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Board of Elections has the question of whether or not to put on the ballot at the general election November 7 a proposed bond issue outside the ten mill limitation for use in constructing and equipping new school buildings.

“The proposal was voted on a special election last June.

“In view of Section 4785-3(d) and Section 2293-15c of the General Code and the ruling of the Attorney General in 1920 Volume 1, page 580 and *Yeatman vs. State*, 28 O.C.A. 10, should

the same proposal be put on the ballot for a vote at this coming general election? Or to state it differently, is the vote considered that of a special election when held at the time of the general election and thereby barred by the provision of Section 2293-15c prohibiting more than one special election on the same question in one calendar year?"

With reference to the Yeatman case and the 1920 opinion of the Attorney General, both mentioned in your inquiry, it must be remembered that at the time of this decision, and the opinion based on it, there was no statutory definition of "special election."

A general statutory definition was supplied, however, in the 1929 codification of the Election Laws, 113 O. L. 307, 308. Section 4785-3d, General Code, as therein enacted, read as follows:

"The term 'special election' shall mean any election other than a regular state, a regular municipal or primary election."

This definition was changed by amendment, effective January 1, 1950, Senate Bill No. 206, 98th General Assembly, approved by the Governor on June 24, 1949, to read as follows:

"The term 'special election' shall mean any election other than the elections required by law to be regularly held on the day of a general or primary election, provided, however, that a special election may also be held on the day of a general or primary election."

From this definition it is now made clear that a "special election," as defined under the Election Code, may be held simultaneously with a general election, and the fact that it is so held does not change its status as such.

The issue described in your inquiry is one which must be submitted to the electors of the school district under the provisions of Section 2293-15c, General Code. This section provides in part as follows:

"* * * the board of education * * * may declare by resolution * * * that the question of issuing such bonds and levying such tax shall be submitted to the electors of the subdivision at a *general*, *primary*, or a *special* election to be held at a time therein specified. * * *

(Emphasis added.)

This language apparently supplies a special definition of "special election" which would apply to the submission of issues to a vote under

Section 2293-15c, General Code, which definition is at variance with that found in the Election Code. Since a special definition must be held to qualify or restrict a general definition, it is clear that the term "special election," as used in that part of Section 2293-15c, quoted above, referred only to an election held at a *date* other than that on which a general or primary election is held; and was not used to designate an election on a special issue held simultaneously with a primary or general election.

A further provision in Section 2293-15c, General Code, reads as follows:

"* * * provided, however, that only one special election for the submission of such question may be held in any calendar year * * *."

If we ascribe the same meaning to the words "special election," wherever used throughout this section, as I think we are compelled to do, it would seem to follow that the prohibition of more than one special election on this issue in any one calendar year applies only to special elections held on dates other than those on which primary or general elections are held.

There is, however, a further proviso in Section 2293-15c, General Code, as follows:

"* * * provided, further, however, that a special election may be held upon the same day a primary election is held. * * *"

It must be admitted that this language is of doubtful meaning by reason of the implication of a criterion for definition of "special election" different from that herein stated. Two interpretations of this proviso suggest themselves.

The first interpretation is suggested from a consideration of the context and sentence structure in which the language is found. When so considered, it would seem that this proviso is merely a qualification of the immediately preceding proviso which prohibits more than one special election in any one calendar year. When viewed in this light, we might well conclude that the later proviso expresses a legislative intent that when the question of a bond issue is submitted to a vote, under authority of Section 2293-15c, General Code, at a primary election, such submission shall be considered a "special election" within the meaning of the prohibition against more than one special election in one calendar year.

From this it would follow, of course, that the submission of such a question at a general election is not to be considered a "special election" within the meaning of such prohibition.

The second interpretation suggested is that this proviso is intended to authorize a board of education, in submitting a question under Section 2293-15c, General Code, to a vote on the day a primary election is held, to specify in its resolution that such vote is to be considered a "special election" or merely part of the regular primary election.

From this interpretation it would follow also that the submission of such a question at a general election is not to be considered a "special election" within the meaning of the statutory prohibition against two special elections in one calendar year.

From the foregoing, it is apparent that whichever of these interpretations is adopted, the result is the same with respect to the question you have presented; and it is not, therefore, necessary to decide between them for the purpose of answering your inquiry.

Accordingly, in specific answer to your inquiry, it is my opinion that where the question of a proposed bond issue has been submitted to a vote under Section 2293-15c, General Code, at a special election in June, 1950, such question may lawfully be resubmitted to a vote at the general election to be held on November 7, 1950.

Respectfully,

HERBERT S. DUFFY,
Attorney General.