

3979.

APPROVAL, NOTES OF LIBERTY TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, January 21, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3980.

APPROVAL, NOTES OF NILES CITY SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$35,000.00.

COLUMBUS, OHIO, January 21, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3981.

REGISTRATION OF VOTER—ELECTION LAW—NECESSITY OF TO VOTE AT CITY ELECTION—EXCEPTION NOTED.

SYLLABUS:

1. *Assuming there is no provision in the Charter of the City of Cleveland governing registration for city elections, the Board of Elections of Cuyahoga County has no authority, under the law, to permit any one to vote at the city election to be held February 16, 1932, who has not registered, or who, having registered and thereafter changed his residence and has not changed his registration, prior to the twenty day period preceding said election as provided by section 4785-39, General Code.*

2. *Any registered elector who removes from one precinct to another in said city within said twenty day period preceding said election shall have the right to vote in the precinct from which he moved, wherein he was legally registered.*

COLUMBUS, OHIO, January 21, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter in which you set forth the following inquiry from the Board of Elections of Cuyahoga County:

“Under the new Charter of the City of Cleveland a Primary Election will be held on January 12th, 1932 and a General Election will be held on February 16th, 1932. Therefore, the closing day for registration is on December 22nd, 1931. The voters who move after December 22nd, 1931, are permitted under the law to go to their old voting places and vote. Under the above circumstances registration opens again on January 23rd, 1932, and since the election will be held on February 16th, there remains Saturday, January 23rd; Sunday, January 24th; Monday, January 25th, and Tuesday, January 26th for transfers and registration.

Our question is this,—

Since there are practically only three registration days left, may the Board permit those who fail to register or transfer on those three days to vote at the election on February 16th, 1932, and advise them to transfer or register 10 days after February 16th, 1932 (February 27th) ; or are we bound to refuse those who fail to transfer or register between January 23rd and January 26th."

The election code provides for what is known as a general registration. A general registration was provided by section 4785-36, General Code, to be held in cities which were then registration cities on Thursday in the fifth week and Friday and Saturday in the fourth week preceding the general election of November, 1930, and that section also provides for a general registration in cities which should thereafter become registration cities or municipalities on the same days preceding the next general election after they become registration cities or municipalities. Section 4785-60, General Code, also provides for a general registration quadrennially in such registration cities which may provide therefor by ordinance.

Section 4785-39, General Code, then provides as follows:

"Persons qualified to register or to change their registration may register or change their registration at the office of the board at any time such office is open, except twenty days preceding or ten days following an election, provided that any registered elector who removes from one precinct to another in the same political subdivision after the close of such registration period shall have the right to vote at the next succeeding election in the precinct from which he moved, wherein he was legally registered."

The question presented is whether this section excluding persons from registering or changing their registration during the period of twenty days before and ten days following an election refers to all elections, general and special, and especially the election provided by the city charter to be held in Cleveland on February 16, 1932, or whether it refers only to the primary and general elections provided by statute. I assume that there is no provision in the city charter governing registration for city elections. Of course, a board of elections, being a creature of statute, has no power or authority except as is expressly granted to it and such as may be incidental to the power and authority expressly given.

Section 4785-34, General Code, provides, among other things, that:

"No person residing in any registration precinct shall be entitled to vote at *any election*, or to sign any declaration of candidacy, nominating, initiative, referendum or recall petition, unless he is duly registered as an elector *in the manner provided herein*."

The following sections provide the manner in which persons may register or change their registration, and section 4735-39, General Code, expressly excludes the period of twenty days preceding and ten days following an election for registration or transfer.

It is apparent that unless a person is registered or transferred, as provided by these statutes, he cannot vote at any election, general or special.

- It is also to be noted that section 4785-34, General Code, as it stood prior to the general registration in 1930 (113 O. L. 307) provided as follows:

" * * * provided, however, that for the primary election and *any special elections* held before the general election in 1930, all voters who were duly registered and qualified to vote at the general election in 1929 and have not changed their places of residence shall be deemed to have registered for any such primary or *special election*."

Section 4785-3, General Code, defines "special election" as follows:

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

The evident meaning of section 4785-39, General Code, is that a person is not entitled to vote at an election unless he has registered or changed his registration prior to the twenty day period preceding that election whether it be a general or special election. It has been held that a registration of voters made any other time than that prescribed by statute is not a legal registration.

"The principal question brought up by the demurrer is, whether any entry of names on the registration lists kept by the Clerk of the Circuit Court, at any other time than that specially appointed by the act of 1877, chapter 3021, sections 1 and 2, to wit: between the first Monday in October and a day ten days previous to any general election, is a legal registration; and whether, therefore, the names added to the registration list for District No. 3, in Sumter county, at any other time or in any other manner than as is provided in the said act, are registered voters.

The answer to the question is in the negative."

State, ex rel. John H. Martin, vs. County Commissioners of Sumter County, 20 Fla. 589.

"Qualified citizens can be lawfully registered only between November 15th and January 5th following, and citizens registered after that time are not lawful voters, and are not entitled to be placed upon the list as such."

State, ex rel. Newton, vs. Herring, 196 Ala. 455.

To the same effect is the case of *Steele vs. Gilpatrick*, 18 Mont. 453. In the case of *Columbus vs. City Board of Elections*, 13 O. D. 453, the Court of Common Pleas of Franklin County enjoined the board of elections from holding a registration during the time other than was prescribed by statute, Bigger, J., holding that the board of elections was without authority other than prescribed by statute.

It is my opinion, therefore, that as the law expressly prohibits any person from voting at any election unless he has registered in the manner provided by law, the board of elections of Cuyahoga County has no authority to permit any one to vote at the city election to be held February 16, 1932, who has not registered or changed his registration prior to the twenty day period preceding the said election as required by section 4785-39, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.