

“* * * If the publisher so notified, notifies the superintendent in writing that he accepts the price fixed, and agrees in writing to furnish such book during a period of five years at that price, such written acceptance and agreement shall entitle the publisher to offer the book so filed for sale to such boards of education.”

The effect of this language is that for five years following the time of listing there is contractual relation existing between the publisher and the state text book commission acting for the boards of education, as set forth in opinion No. 1068, the syllabus of which appears above.

During such period of five years the publisher is bound to offer his book so filed for sale to any and all boards of education in the state, but he is no wise bound by his agreement in writing to offer such books for sale to boards of education after the five year period has expired; the contemplation of the state text book law appears to be that if the publisher desires to have his text book used in the schools of the state through adoption by boards of education, he should file such text book in the office of the Superintendent of Public Instruction at the expiration of the five year period mentioned in section 7710 G. C., or make a new agreement in writing for the five years following such refiling or relisting. If his text book has not been relisted or refiled at the end of this five year period, starting with the time of its first filing and listing, the contractual relations set forth in section 9710 G. C. between the publisher and the state text book commission no longer obtain and the stability as to prices charged for text books would disappear for the reason that the publisher “agrees in writing to furnish such book during the period of five years at that price,” and when this five years is up, the contractual relations in existence are discharged, unless a new agreement is submitted by the publisher and accepted by the state text book commission on behalf of the boards of education of the state.

In reply to your specific question you are therefore advised that boards of education are limited in their selection of books to be used in the public schools to the text books filed with the state text book commission, and the board of education may not adopt for use text books which were first filed in 1915 at a certain price but were not relisted in 1920 by the publisher at the end of the five year period mentioned in section 7710 G. C., since such period ends with the expiration of the five years, starting with the date of acceptance by the publisher of the price fixed by the text book commission.

Very respectfully,

JOHN G. PRICE,
Attorney-General.

2138.

FEDERAL CENSUS—WHEN FIRST GENERAL REGISTRATION OCCURS IN CITIES HAVING POPULATION OF 11,800 AND LESS THAN 100,000—WHEN MEMBERS AND CLERKS OF ELECTION BOARDS ENTITLED TO ADDITIONAL COMPENSATION—WHEN SUCH CITIES COMMENCE PAYING SHARE OF REGISTRATION EXPENSES—WHEN AND HOW MUNICIPAL CORPORATIONS MAY PROVIDE FOR GENERAL REGISTRATION OF ELECTORS.

1. *In cities which had a population of eleven thousand eight hundred and less than one hundred thousand, as announced by the secretary of state in his official proclamation of January 21, 1921, a general registration of all the electors in such*

cities shall only be had quadrennially at each and every presidential election, and the first general registration in such cities following the official announcement of the federal census of 1920, would take place in such cities in the presidential year 1924.

2. *The members and the clerks of the boards of deputy state supervisors of elections and the boards of deputy state supervisors and inspectors of elections, as the case may be, cannot draw the additional compensation provided in section 4942 G. C. until the presidential year of 1924 following the official announcement of the federal census by the secretary of state on January 21, 1921.*

3. *The cities of the state which had a population of eleven thousand eight hundred and less than one hundred thousand, as announced in the proclamation of the secretary of state of January 21, 1921, do not begin paying their share of the registration expenses provided under section 4946 G. C. until the presidential year of 1924.*

4. *Under the provisions of section 4947 G. C. the council of any city or village having a population of less than eleven thousand eight hundred, may provide for a general registration of the electors in such municipality, but such general registration brought about by action of the council of a municipality can take place only in the presidential years and in the manner and at the time required by law in those cities which have quadrennial registration.*

COLUMBUS, OHIO, June 6, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“We note that the official proclamation of the population of municipal corporations of Ohio as shown by the federal census of 1920, issued by the secretary of state January 21, 1921, in compliance with section 3498 G. C., shows that the cities of Barberton, Cleveland Heights, East Cleveland, Fremont, Kenmore, Niles, Cambridge and Warren have automatically become registration cities under the provisions of section 4878 G. C.

Question:

When can the members and the clerks of the boards of deputy state supervisors of elections and the boards of deputy state supervisors and inspectors of elections, as the case may be, draw additional compensation from these cities, as provided by section 4942 G. C., and when must these cities begin paying their share of the registration expenses as provided under section 4946 of the General Code?

We presume that if any of the cities mentioned above became registration cities at any previous period of time by due action of council under the provisions of section 4947 G. C., they would be an exception to your opinion from the date that they became such registration cities by the action of their councils.”

Section 4870 G. C. reads as follows:

“In cities which at the last preceding federal census had, or which at any subsequent federal census may have a population of eleven thousand eight hundred or more, there shall be a general registration of electors in the several wards or precincts thereof in the manner, at the times and on the days hereinafter provided. No person shall have acquired a legal residence in a ward or election precinct in any

city for the purpose of voting therein at any general or special election, nor shall he be admitted to vote at any election therein unless he shall have caused himself to be registered as an elector in such ward or precinct in the manner and at the time required by the provisions of this chapter."

Following the announcement by the United States bureau of census of the population of Ohio municipalities, the secretary of state, under date of January 21, 1921, issued his proclamation showing the official population of the cities and villages within the state, the same to be effective under the statutes thirty days thereafter or as of February 21, 1921. This proclamation showed the cities named by you in your statement of facts to have more than eleven thousand eight hundred population, as mentioned in section 4870, and your question is whether these cities are now registration cities under the election laws of this state.

It will be noted that while section 4870 G. C. states the line of demarcation to be a population of eleven thousand eight hundred or more, and that in such cities there shall be a general registration of electors, yet such registration must be had "in the manner, at the times and on the days hereinafter provided" and also in the "manner and at the time required by the provisions of this chapter." Cities which have a population of one hundred thousand or more by the last preceding federal census are annual general registration cities, while those having a population of less than one hundred thousand, but having eleven thousand eight hundred or more are quadrennial registration cities. Thus section 4871 G. C. reads:

"In cities which now or hereafter may have a population of one hundred thousand or more, when ascertained in the manner provided in the preceding section, there shall be an annual general registration of all the electors therein in the several wards and precincts thereof on the days and in the manner hereinafter provided."

The second class of registration cities, that is, the quadrennial registration cities, are treated in section 4872 G. C., which reads:

"In cities which now or hereafter may have a population of eleven thousand eight hundred and less than one hundred thousand, when so ascertained, a general registration of all the electors therein shall only be had quadrennially at each and every presidential election, at the times and upon the days hereinafter specified. At all other state or public elections those electors only of such cities shall be required to register as may be new electors or who have moved into any precinct of such city since such general registration."

This latter section governing the cities which you mention specifically says that

"A general registration of all the electors therein *shall only be had quadrennially at each and every presidential election*, at the times and upon the days hereinafter specified."

This means that the registration in cities of this class must come in the years which are divisible by four, that is, 1920, 1924, 1928, etc. In the case at hand the year 1920 is not to be considered because the cities in question

did not have in that year the official population of eleven thousand eight hundred or more. Therefore the next presidential election following the announcement of the census would be in the year 1924. In quadrennial cities at other state or public elections, only those electors shall be required to register as may be new electors or who have moved into any precinct "*since such general registration.*" This means, then, that there must first be a general registration before there can be any registration in these cities for other state or public elections, and that following such general registration had only in the presidential years, that is, quadrennially, can there be a registration of new electors or those who have moved into any precinct.

The additional compensation for members and clerks of the boards of deputy state supervisors of elections and the boards of deputy state supervisors and inspectors of elections is provided in section 4942, but this section says in its opening sentence that such compensation, in addition to that provided in section 4822, shall obtain only in counties "containing cities *in which registration is required.*" As previously pointed out, under the provisions of section 4872 registration in cities having between eleven thousand eight hundred population and one hundred thousand population, can be had only quadrennially or in the presidential years, and the next presidential year is the calendar year of 1924 following the official announcement of the census on these cities in 1921. This compensation when allowed to these officers during any year is determined by the number of precincts in such city at the November election at the next preceding year. That is to say, if these cities entered the registration class in the calendar year of 1924, the first presidential election following the census, the compensation received during 1924 would be based on the number of precincts in the city at the November election in 1923. The compensation mentioned in 4942 G. C. could not be legally paid during the years 1921, 1922 or 1923, to election board officials in a county having a city with a population of eleven thousand eight hundred or more, because such city cannot be a registration city until there is first had a quadrennial registration in the presidential years and which can be held under section 4792 G. C. at no other time.

You also desire to know when these cities having a population of eleven thousand eight hundred or more should begin paying their share of the registration expenses as provided under section 4946 of the General Code. This section refers to the compensation of registrars in registration cities and the necessary cost of the registers, books, blanks, forms, stationery and supplies provided by the board for the purpose of registration, but the section refers to "such city hereinbefore specified", that is, the city or cities mentioned in section 4942 G. C. heretofore discussed.

The answer therefore as to the registration expenses mentioned in section 4946 would be the same as the compensation of deputy state supervisors and clerks in cities mentioned in 4942, that is, that the compensation mentioned in either section and the necessary cost of supplies mentioned in 4946 G. C., can be paid by the city only when the city is one in which general registration is required, and in cities having a population of eleven thousand eight hundred or more and less than one hundred thousand, this would come quadrennially in the presidential years, the first time following the federal census of 1920 as announced in 1921 being in the calendar year 1924.

In the last paragraph of your letter you say:

"We presume that if any of the cities mentioned above became registration cities at any previous period of time by due action of council under the provisions of section 4947 G. C., they would be an

exception to your opinion from the date that they became such registration cities by the action of their councils."

This presumption would not be correct unless the city had acted through the council prior to 1920, for section 4947 provides as follows:

"The council of any city or village in which registration is not now required by law, may provide for a general registration of electors * * * *in the manner* and at the times and on the days *provided by law for registration in cities which have quadrennial registration*. When the council so provides, no person shall have acquired a legal residence * * * in such city or village for the purpose of voting * * * unless he shall have caused himself to be *registered* as an elector * * * *in the manner* and at the time *required by law in cities which have quadrennial registration*."

In an opinion issued on August 4, 1909, and appearing at page 611 of Annual Report of the Attorney-General for 1909, the then Attorney-General held that the council of the municipality is not given authority relating to registration in cities, the population of which exceeds eleven thousand eight hundred.

In a foot note following section 4947 G. C. in the Ohio election laws, issued by the secretary of state (edition of 1920) that official says:

"Although a village possess an ordinance for registration, such registration cannot be had for the first time until the presidential year."

Apparently section 4947 G. C. is for the benefit of those municipalities which may desire the privileges of registration for the electors residing therein, though such municipalities may not have reached eleven thousand eight hundred in population, as officially announced following the last federal census, but even though these municipalities having less than eleven thousand eight hundred population availed themselves, through the council of the municipality, of the provisions of section 4947 G. C., all that they acquire is simply the rights and privileges as to registration which exist in quadrennial registration cities. Thus the council acting under 4947 G. C. could bring about a general registration of the electors in the municipality, but this would have to be "in the manner and at the time required by law in cities having quadrennial registration." So that whatever the requirements might be under other sections of the law, governing the quadrennial registration cities, the same requirements would obtain in those cities and villages less than eleven thousand eight hundred population, where the council of the municipality had acted under section 4947 G. C. The city or village in question could have only a quadrennial general registration, which would have to take place in the presidential years, the first of which, following the official announcement of the census of 1920, would be in the calendar year of 1924. The cities which you mention as having reached eleven thousand eight hundred in population, as announced in 1921, by the secretary of state, would gain no privileges under section 4947 G. C. other than what they now possess under the provisions of 4870 and 4872 G. C. Of course if any of these cities had become registration cities by action of council, under section 4947 G. C., prior to the presidential year of 1920, they would still be registration cities following the presidential year in which general registration was first had.

You are therefore advised, in answer to your questions, that it is the opinion of the Attorney-General that:

1. In cities which had a population of eleven thousand eight hundred and less than one hundred thousand, as announced by the secretary of state in his official proclamation of January 21, 1921, a general registration of all the electors in such cities shall only be had quadrennially at each and every presidential election, and the first general registration in such cities following the official announcement of the federal census of 1920, would take place in such cities in the presidential year 1924.

2. The members and the clerks of the boards of deputy state supervisors of elections and the boards of deputy state supervisors and inspectors of elections, as the case may be, cannot draw the additional compensation provided in section 4942 G. C. until the presidential year of 1924 following the official announcement of the federal census by the secretary of state on January 21, 1921.

3. The cities of the state which had a population of eleven thousand eight hundred and less than one hundred thousand, as announced in the proclamation of the secretary of state of January 21, 1921, do not begin paying their share of the registration expenses provided under section 4946 G. C. until the presidential year of 1924.

4. Under the provisions of section 4947 G. C., the council of any city or village having a population of less than eleven thousand eight hundred, may provide for a general registration of the electors in such municipality, but such general registration brought about by action of the council of a municipality can take place only in the presidential years and in the manner and at the time required by law in those cities which have quadrennial registration.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2139.

ROADS AND HIGHWAYS—WHERE VILLAGE PAID INTO COUNTY TREASURY MONEY TO PROVIDE FOR VILLAGE'S SHARE OF COST OF STATE AID HIGHWAY IMPROVEMENT—DEPOSITORY INTEREST ON SUCH MONEYS TO BE CREDITED TO VILLAGE.

Where a village, under authority of sections 1193-1 and 1193-2 G. C., has paid into the county treasury a sum of money to provide for the payment of the village's share of the cost of a state aid highway improvement, depository interest paid to the county on account of such sum is to be credited to the village and is to form part of the balance, if any, to be refunded to the village on completion of the improvement work.

COLUMBUS, OHIO, June 6, 1921.

HON. H. H. DEMUTH, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—You have submitted to this department the following statement and inquiry:

“By proceedings previously had the village of Stryker, Williams county, Ohio, on December 22, 1919, turned over to the treasury of