

required by law, and the contract duly awarded. Also it appears that the laws relating to the Workmen's Compensation have been complied with.

Finding said contract in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4408.

CANDIDATE—PRIMARY ELECTION—VOTERS UNLAWFULLY INFLUENCED—LEGALLY NOMINATED IN ABSENCE OF UNLAWFUL ACTS ON HIS PART.

SYLLABUS:

When a candidate is nominated for public office at a primary election by voters unlawfully induced so to vote, such candidate is legally nominated in the absence of evidence of unlawful acts on his part.

COLUMBUS, OHIO, June 10, 1932.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I would appreciate your advices either formally or informally on the following question.

At the last primary election the Republican Party had no candidate for surveyor. Several days before election cards were printed requesting voters to write in the name of a person who had signified his willingness to the party to become a candidate.

In two of the precincts and only two, the precinct officers of the republican party passed out cards to each and every voter who called for a republican ticket and requested that they write in the name of the proposed candidate.

We have 31 precincts in the county and in only two precincts was this done and in only two precincts were any votes cast for this candidate. He received the required number of votes which would ordinarily authorize his name being placed on the ballot this fall.

There has been a question raised as to the legality of this practice and I am requesting you to advise me whether or not this person whose name was written in by the electors in the two precincts, can be a candidate for the election this fall."

Authority for the provision of a space for writing in names on a ballot under the circumstances presented and for the nomination of a candidate under such circumstances is contained in Section 4785-87, General Code, which section is as follows:

"In case of any office for which nominations are sought to be made at any primary election, and for which no declarations of candidacy have been filed within the time prescribed by law, the board shall provide on the primary ballot space for writing in names. No valid nomination shall be made for such office unless the name of the person attempted to be nominated and receiving the highest number of votes for said office shall have been written on at least eight per cent of all the ballots containing such vacancy which have been voted at such primary election."

You state that the candidate in question received the required number of votes to be nominated and I therefore assume that such candidate received the highest number of votes for the office and that his name was written in on at least eight per cent of all the ballots voted at the primary election, in accordance with the requirements of the foregoing section.

The acts which you set forth of the precinct officials in two of the precincts of your county of passing out cards to the voters and requesting that they write in the name of a certain candidate are clearly violative of Section 4785-228, General Code, which section provides as follows:

"Whoever, being a judge, clerk, witness or deputy sheriff, special deputy sheriff, police officer, or other election officer, while performing the duties of his office wears any badge, sign, or other insignia or thing indicating his preference for any candidate or for any question submitted, or influences or attempts to influence any voter to cast his ballot for or against any candidate or issue submitted at such election, shall, upon conviction thereof, be fined not less than fifty and not more than one hundred dollars and imprisoned in the county jail not less than thirty days nor more than six months."

In your communication, you do not state that the candidate whose name was written in on the ballots had any part in the activities of the precinct officials and I therefore presume that their illegal acts in inducing voters at the polls to vote for the candidate in question were not committed on behalf of the candidate as his agents. If this presumption is correct, although the votes cast were induced unlawfully, the General Code contains no provision that they may not be counted, nor does it contain any provision that the nomination of the candidate shall be forfeited. Accordingly, upon the facts presented in your communication, it is my opinion that the person whose name was written in by the electors in the two precincts is legally nominated for the office of county surveyor.

The provisions for forfeiture of a nomination or for an office to which a candidate has been elected are contained in Section 4785-190, General Code. This section provides as follows:

"Whoever, before, during, or after any primary, convention or election, gives, lends, offers or procures, or promises to give, lend, offer or procure, any money, office position, place or employment, influence or any other valuable consideration to or for a delegate, elector or other person; or attempts by intimidation, coercion or other unlawful means, to induce such delegate or elector to register or refrain from registering, to vote or refrain from voting at a primary, convention or election for a particular person, question or issue; or advances, pays or causes to be paid, or procures or offers to procure, money or other valuable thing to

or for the use of another, with the intent that it or part thereof shall be used to induce such person to vote or to refrain from voting, shall be guilty of bribery, and shall, upon conviction thereof, be fined not more than one thousand dollars, or imprisoned in the penitentiary not more than three years, or both; and if he be a candidate he shall forfeit the nomination he received, or if elected to any office he shall forfeit the office to which he was elected at the election with referenc to which such offense was committed."

Applying the foregoing section to the facts presented, if the candidate attempted by unlawful means to induce an elector to vote for him at a primary, such candidate shall forfeit the nomination. As hereinbefore indicated, however, you have presented no facts to indicate a violation of Section 4785-190, supra, by the candidate.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4409.

HOCKING CANAL LANDS—AUTHORIZED TO BE USED BY MUNICIPALITY FOR STREET PURPOSES—UNUSED PORTION MUST BE APPRAISED BEFORE SOLD TO ABUTTING OWNERS.

SYLLABUS:

Marginal parcels of abandoned Hocking Canal lands not included within the lines of a street laid out and constructed by the city of Lancaster, Ohio, in and upon the lands of such canal, under authority of House Bill No. 417, enacted by the 89th General Assembly, 114 O. L. 536, cannot be legally sold to the owners of abutting property or to others without an appraisal being made of such marginal parcels in the manner provided for by said act.

COLUMBUS, OHIO, June 10, 1932.

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

GENTLEMEN:—This is to acknowledge the receipt of a communication from you in which you ask my opinion upon a question submitted by the city solicitor of the city of Lancaster, Ohio, which communication reads as follows:

"In accordance with your letter of February 29, will you kindly obtain for me the opinion of the Attorney General with reference to House Bill No. 417, passed by the 89th General Assembly.

Section No. 2 of this Act grants to the City of Lancaster the authority and permission to enter upon, improve and occupy forever for street, sewerage, drainage and other municipal purposes that portion of the said Hocking Canal property situated within the corporate limits of the said City, described as follows:

'Whatever right, title and interest the state of Ohio may have in and to that portion of the abandoned Hocking Canal, originally known