

a. The election by the widow or widower must be made within one year from the date of the service of the citation, except as provided in sections 10567 and 10568 G. C.

b. Under the provisions of amended section 10571 G. C. when the citation is issued and served, and no election is made within one year from the said service it "shall be deemed that she or he has elected to take under the will."

Respectfully,

C. C. CRABBE,

Attorney General.

2755.

PROPOSITION TO ADOPT A PLAN OF GOVERNMENT FOR A MUNICIPALITY MAY NOT BE SUBMITTED TO ELECTORS LESS THAN NINETY DAYS BEFORE A REGULAR MUNICIPAL ELECTION.

SYLLABUS:

Under the provisions of sections 3515-1 and 3515-2, General Code, a proposition to adopt a plan of government for a municipality may not be submitted to the electors of a municipality less than ninety days before a regular municipal election, nor on the regular municipal election day.

COLUMBUS, OHIO, Sept. 4, 1925.

HON. PETER P. BOLI, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, requesting the opinion of this department, as follows:

"A group of citizens is contemplating circulating a petition asking that the city of Hamilton submit the question of adopting a city manager form of government as provided under section 3513, General Code, to the electors. Section 3515-1 provides that 'The council shall within thirty days provide for submitting such question at a special election to be held not less than sixty nor more than ninety days after the filing of such petition.' The question has been raised whether this provision requires a special election in the sense of a separate election. In other words, could that special election be held on the same day as the regular election in November?

"This latter procedure was followed at Cincinnati at their recent election on the question of adopting amendments to their charter, but, of course, Cincinnati was a charter city and hence may have had special provisions applying to that election. It would seem to be the part of wisdom and economy to hold such an election at the same time as the regular November election and I should be very glad to have your opinion on the legality of this procedure.

"If you know of any requirements of a similar nature which must be met by the committee circulating the petition or if any particular form for this petition is prescribed by any state authorities, or if you have any other advice or suggestions concerning any phases of this whole proceeding, I should be very grateful to receive same. As the committee back of this

movement is very anxious to proceed as soon as possible, I shall appreciate a prompt reply to this question."

Section 3515-1 of the General Code of Ohio, providing for the submission of the question of adopting a plan of government, is as follows:

"Whenever electors of any municipality, equal in number to ten percentum of those who voted at the last regular municipal election, shall file a petition with the board of deputy state supervisors of elections or board of deputy state supervisors and inspectors of election, as the case may be, of the county in which such municipality is situated, asking that the question of organizing the municipality under any one of the plans of government provided in this act be submitted to the electors thereof, said board shall at once certify that fact to the council of the municipality and the council shall, within thirty days, provide for submitting such question *at a special election* to be held *not less than sixty nor more than ninety days* after the filing of such petition. Any such election shall be conducted in accordance with the general election laws of the state except as otherwise provided in this act and the council of any municipality holding such an election shall appropriate whatever money may be necessary for the proper conduct thereof."

The next section (section 3515-2) is as follows:

"The proposition to adopt a plan of government provided in this act shall not be submitted to the electors of any municipality less than ninety days before a regular municipal election. If in any municipality a sufficient petition is filed, requiring that the question of choosing a commission to frame a charter be submitted to the electors thereof, the proposition to adopt a plan of government provided in this act shall not be submitted in that municipality as long as the question of choosing such commission or adopting a charter framed thereby is pending therein. In any municipality while the proposition of adopting any one of the three forms of government herein provided for is pending, then no other proposition herein provided for shall be submitted until said pending proposition is adopted or rejected."

It is provided in section 3515-5, General Code, that after a municipality has adopted a plan of government provided for in this act, any of the supplementary propositions, not previously adopted, may be independently submitted to the electors *at any municipal election*.

It will be observed that section 1, above referred to, provides that the question of whether or not a plan of government shall be adopted shall be submitted at a special election. After the plan has been adopted, supplementary propositions may be submitted at the regular municipal election.

In view of the mandatory provisions of section 2, above referred to, that the proposition to adopt a plan of government shall not be submitted to the electors "less than ninety days before a regular municipal election," it is my opinion that your question should be answered in the negative.

At this time the regular election machinery is set in motion to elect the municipal officers at the next municipal election. If a plan of government as proposed in the above section should be adopted at the November election, your city would be in the peculiar position of having elected its municipal officers for a term of two years and if a new plan of city government should be adopted on the November election day it would be two years before another municipal election would be held

to elect officers under the new plan of government. It is believed that the same reason that forbids the election to be held looking to the adoption of a plan of government less than ninety days before a regular municipal election, would operate against it being held on the regular municipal election day.

Respectfully,

C. C. CRABBE,

Attorney General.

2756.

QUESTIONS RELATING TO CONTRACTS ENTERED INTO BY VILLAGE
COUNCIL ANSWERED—SECTION 4224 G. C. CONSTRUED.

SYLLABUS:

1. *A mayor of a village cannot cast the deciding vote when the vote of the members of council is a tie upon the resolution or ordinance of the village when such resolution or ordinance involves the expenditure of money as contemplated by section 4224 G. C., but in cases where, by resolution or ordinance the council has previously provided for the authorization of a contract and has provided for and appropriated the money involved in the contract price of the improvement, the mayor may cast the deciding vote in the formal letting of the contract to the successful bidder.*

2. *The section of council in awarding a contract involving the expenditure of money must be by ordinance, unless prior thereto, such expenditure has been authorized by ordinance.*

3. *An ordinance awarding a contract involving an expenditure of money must be read on three different days, unless the rule be dispensed with by three-fourths vote of all members elected to council, unless prior to the time of awarding said contract, the money involved in the same has been provided and authorized by ordinance of council.*

COLUMBUS, OHIO, September 4, 1925.

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

GENTLEMEN:—Acknowledgment is made of your recent request for an opinion as follows:

“In accordance with the provisions of section 4221 General Code, the council of a village advertised for bids for furnishing three traffic lights, the cost of which exceeds \$500.00. Bids were received and opened and a vote taken to award the contract to the low bidder. Three members voted ‘Yea,’ and three members voted ‘No.’ Section 4255 General Code, provides that the mayor of a village should be president of council but shall have no vote except in case of a tie. Section 4224 General Code, reads:

“The action of council shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by ‘yeas’ and ‘nays’ and entered upon the journal, but this shall not apply to the ordering of an election, or direction by council to any board or officer to furnish council with information as to the affairs of any department or office. No by-law, ordinance or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale, or transfer of