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ELECTIONS—PRIMARY—SECOND TUESDAY IN SEPTEMBER, 1951;—AMENDED SENATE BILL 173, 99 GENERAL ASSEMBLY—COUNCILMEN—PROCLAMATION BY SECRETARY OF STATE—1950 FEDERAL CENSUS.

SYLLABUS:

Amended Senate Bill 173 of the 99th General Assembly providing for primary elections on the second Tuesday in September, 1951, in certain municipalities discussed.

Columbus, Ohio, June 20, 1951

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads in part as follows:

“An inquiry has been received from the City Solicitor of Canton, Ohio, concerning the fact that Canton will be entitled to additional councilmen because of an increase in population under the proclamation of the Secretary of State, issuance of which is awaiting the release of the *official* figures for the 1950 federal census by the Bureau of the Census of the United State Department of Commerce. The questions set out in the inquiry read as follows:

“* * * what will be the effect of an ordinance for redistricting a city under the 1950 federal census if such redistricting is not in effect before the time for filing declarations of candidacy in a primary, or before the time of filing nominating petitions, for election of municipal officers at the November 6, 1951 General Election.”

The question raised by your request involves the districting provisions of Section 4212, General Code. That section provides in part as follows:

“After each recurring federal census, and within three months after the issuance of the proclamation, by the Secretary of State of the population of such city * * * the council shall subdivide the city into wards, equal in number to the members of the council therein to be elected from wards. * * *”

The number of members of council to be elected from wards is determined by the provisions of Section 4206, General Code, which provides as follows:

“The legislative power of each city shall be vested in, and exercised by a council, composed of not less than seven members, four of whom shall be elected by wards and three of whom shall be elected by electors of the city at large. For the first twenty thousand inhabitants in any city, in addition to the original five thousand, there, shall be two additional members of council, elected by wards, and for every fifteen thousand inhabitants thereafter there shall be one additional member similarly elected, pro-

vided that the total number of members of such council shall not exceed thirty-two. When the total number of members of council is fifteen or more, one member of every five shall be elected at large, and the remainder from wards."

Your basic question, which goes beyond the question of districting, is how to carry out the provisions of Section 4206, supra, in light of the preliminary figures of the 1950 federal census, when the proclamation referred to in Section 4212, supra, has not been issued and may not be issued until shortly before the municipal election to be held in November, 1951. You have referred to the procedure to be followed under a redistricting ordinance, since at the time your request was prepared that seemed to be the only solution to the problem.

On May 25, 1951 Amended Senate Bill No. 173 of the 99th General Assembly was approved by the Governor and filed with the Secretary of State. It had been passed as an emergency measure and so became effective immediately. That Act provides in part as follows:

"Any provision of the law to the contrary notwithstanding, * * * in any city having an indicated population as ascertained by the unofficial preliminary figures of the 1950 federal census which indicated population would change the number of members of the council of such city as determined by the provisions of Section 4206, General Code, from the number of members of such council as so ascertained and determined by the 1940 federal census, in the year 1951 the primary election * * * shall be held on the second Tuesday in September.

"* * * In any city having an indicated population as ascertained by the unofficial preliminary figures of the 1950 federal census which indicated population would increase the number of members of the council of such city as determined by the provisions of Section 4206, General Code, over the number of members of such council as so ascertained and determined by the 1940 federal census, the additional members of council to be elected in the year 1951 shall be elected at large; those members of such council who were elected by wards in the year 1949 shall be elected by the same wards in the year 1951; and those members of such council who were elected at large in the year 1949 shall be elected at large in the year 1951."

This Act covers squarely the situation which you have described in your inquiry. In 1951 the additional councilmen provided by the 1950 federal census will be nominated in September and elected at large in November. After the Secretary of State has issued his proclamation, the

normal redistricting procedure contemplated by Sections 4212 and 4206, General Code, can be carried out in time to be effective in the 1953 municipal election. Since the General Assembly has dealt with the problems in this manner, your exact question as to the effect of a redistricting ordinance passed prior to the 1951 election need not be answered literally.

You will note that I stated above that only the *additional* councilmen will be nominated in September under the terms of Amended Senate Bill No. 173. This statement is based upon a provision of that Act which provides as follows:

“* * * No primary election shall be held under the provisions of this section in a municipality which held a primary election on Tuesday, May 8, 1951 on the basis of the unofficial preliminary figures of the 1950 Federal census.”

The significance of this provision is explained by the history of the Act. Amended Senate Bill No. 173 was originally introduced prior to the regular primary held May 8, 1951. However it was not enacted into law until some time after the primary. The provision quoted above was added by amendment after the primary had been held in order to prevent the expense of two primaries in those municipalities which had already complied with the law.

Since the obvious intent of the legislature was to avoid holding two primaries for nomination to the same office, and since all of the candidates except the additional councilmen may be presumed to have been already nominated, I have no difficulty in arriving at the conclusion that only the additional councilmen in question will be nominated in September, 1951.

Respectfully,

C. WILLIAM O'NEILL
Attorney General