

were described and included in the provisions of Sections 2732, 4295, 7605 and 7607, of the General Code.

The questions of law contained in your second and third inquiries are now being adjudicated by the courts arising out of litigation in Cuyahoga County and I therefore can express no opinion thereon at this time.

I am therefore of the opinion that township trustees may accept from depositories of township funds, and depository banks may deposit in lieu of the bond required by Section 3324 of the General Code, the securities mentioned in Sections 4295 and 2288-1, General Code, therein imposed. (Opinions of the Attorney General, 1928, page 108, approved and followed.)

Respectfully,

GILBERT BETTMAN,
Attorney General.

4077.

OFFICES INCOMPATIBLE—JUDGE OF SUPREME OR COMMON PLEAS COURT AND CENTRAL COMMITTEEMAN—MEMBER OF CONGRESS IS STATE OFFICER—ARTICLE IV, SECTION 14, CONSTITUTION OF OHIO INAPPLICABLE TO MUNICIPAL JUDGE.

SYLLABUS:

1. *A judge of the supreme court or of a court of common pleas may not be elected to the office of central committeeman.*

2. *The office of member of Congress is an office under authority of this state within the meaning of the phrase as used in Article IV, Section 14 of the Constitution.*

3. *The provision of Article IV, Section 14 of the Constitution that votes for a judge of the supreme court or judge of the court of common pleas for an elective office, except a judicial office, shall be void, has no application to judges of a municipal court.*

COLUMBUS, OHIO, February 20, 1932.

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

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

“The primary election this year, as you are aware, will be held on May 10th, and consequently the final filing date for Declarations of Candidacy, March 11th, is close at hand.

In the primary this year, members of party controlling committees are elected in the same manner in which other candidates are nominated. Article IV, Section 14 of the Constitution of Ohio reads as follows:

“The judges of the supreme court, and of the court of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished, or increased, during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or the United States. All votes for either of them

for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, shall be void.'

Taking these matters into consideration, we now have the question submitted to us, 'May a judge run for party committeeman?' Again, 'Is a central committeeman a public officer?'

Also in giving consideration to the constitutional provisions referred to, will you please favor us with your opinion upon the following questions:

First, is the office 'Member of Congress', an office 'under the authority of the State of Ohio', in the sense in which that phrase is used; and second, would votes cast in the November election for a municipal judge, running for member of Congress be void under the constitutional inhibition of the section referred to, that is, Article IV, Section 14?"

Your first question refers, I assume, to judges of the court of common pleas or to judges of the supreme court, since you quote the constitutional inhibition against such judges being elected to any elective office under authority of this state, except a judicial office.

Section 4785-63, General Code, provides for the election of central committeemen in the following language:

"The controlling committees of each political party or organization shall be a state central committee, consisting of two members, one a man and one a woman, from each congressional district in the state; a county central committee, consisting of one member from each election precinct in the county, or of one member from each ward in each city and from each township in the county, as the outgoing committee may determine; and such district, city, township or other committees as the rules of the party shall provide. All the members of such committees shall be members of the party and shall be elected by direct vote at the primary held in the even numbered years. Candidates for election as state central committee members shall be elected at primaries in the same manner as herein provided for the nomination of candidates for office in a county; and candidates for election as members of the county central committee shall be elected at primaries in the same manner as provided herein for the nomination of candidates for county offices. Each party controlling committee shall elect an executive committee which shall have such powers as may be granted to it by the party controlling committee, and as may be provided by law. Existing state, district, and county committees shall continue to act and be recognized as such, until their successors are chosen as herein provided. Where a judicial, senatorial or congressional district is comprised of more than one county the chairman and secretary of the county central committee from each county in such district shall constitute the judicial, senatorial or congressional committee of such district. Where a judicial, senatorial or congressional district is included within a county, the county central committee shall constitute the judicial, senatorial or congressional committee of such district."

The following section, being Section 4785-64, refers to the organization of

party central committees, and Section 4785-65 provides the terms of service of central committeemen in the following language:

"All party controlling committees, the selection of which is herein provided for, shall serve from the date of the party primary in the even numbered year at which they were elected, until the date of the next party primary in the next even numbered year, and until their successors are selected. In case of vacancies caused by death, resignation or removal from the precinct or district from which a committeeman was chosen, the controlling, or if authorized, the executive committee, shall fill the vacancy for the unexpired term by a majority vote of the members of such committee."

Among the duties of central committeemen which are pertinent to consider in a determination of whether or not such committeemen hold an elective office under authority of this state within the meaning of Article IV, Section 14 of the Constitution, which you quote, are those provided in Sections 4785-74 and 4785-94, General Code. Section 4785-74 provides as follows:

"Candidates for presidential elector shall be nominated by delegate state conventions, the delegates to which shall be chosen at a primary election which shall be held on the second Tuesday in May 1932, and similarly every fourth year thereafter. The state committee of each political party shall determine the time and place for holding the state convention of such party and shall apportion the delegates and alternates throughout the state in proportion to its party vote for governor cast in the several counties at the last preceding general election. Each state committee shall also by resolution determine the ratio of representation in such state convention. In addition to nominating candidates for presidential elector such state convention shall formulate the state party platform for that year.

In the year 1930 and every fourth year thereafter, the candidates for state offices, except judicial offices, the candidates for member of the General Assembly, the members of the state executive and central committees and the chairman of the county central and executive committees of each political party shall meet at such place and time as the state central committee of such party may designate and shall forthwith formulate the state platform of such party, and such platform shall be made public when so formulated."

Section 4785-94 provides that vacancies occurring in party nominations shall be filled by the executive committee of such party.

It is clear in view of the foregoing provisions of the Election Laws of the state of Ohio that central committeemen are elected to serve for a statutory term and that their duties are prescribed by statute. These duties, such as electing chairmen for the purpose of assisting in the formulation of state party platforms and such as filling vacancies occurring in party nominations comprise the exercise of a very important sovereign function in the state government. An application of the rules laid down by the courts for determining what is a public office which have been adhered to in innumerable decisions clearly disclosed that members of a party central committee, whether county or state, are public officers. *State, ex rel.*

vs. *Hunt*, 84 O. S. 143; *State, ex rel. vs. Coon*, 4 O. C. C. (N. S.) 560; *State, ex rel. vs. Kennon*, 7 O. S. 546.

Specifically answering your first question, therefore, it is my opinion that a judge of the supreme court or of a court of common pleas may not be elected to the office of central committeeman.

You next inquire whether or not the office of member of Congress is an office under authority of this state. In Opinion No. 3069, rendered under date of March 20, 1931, representatives in Congress were expressly recognized as state officers. The language of the opinion in regard to this matter is as follows:

“Representatives in Congress represent the entire state, even when elected by districts, *McPherson vs. Blacker*, 146 U. S. 1, and in my opinion, are properly elected by the people of an entire state, unless otherwise provided by law, without any specific legislation providing for such election other than general provisions for the election of officers to represent the entire state in any capacity, commonly called state officers, provision for the election of which is made by the general law relating to public elections. Section 4785-1, et seq. of the General Code of Ohio.”

It is my opinion, therefore, in answer to your second question that the office of member of Congress is an office under authority of this state within the meaning of the phrase as used in Article IV, Section 14 of the Constitution.

Your third question relates to whether or not the inhibition of Article IV, Section 14 of the Constitution here under consideration extends to municipal, as well as supreme court and common pleas judges. I am advised that the municipal judges to which you refer are judges of the Municipal Court of the city of Toledo. Section 1579-281, General Code, relating to the municipal court of the city of Toledo provides that “The judges of the municipal court shall be nominated and elected by the electors of the city of Toledo at municipal elections in the same manner as judges of the court of common pleas are nominated and elected.”

The case of *Fulton vs. Smith*, 99 O. S. 230, is dispositive of your third question. In that case, the court determined the matter of whether or not a duly elected, qualified and acting judge of the probate court of Muskingum County who had received a majority of votes cast for the office of Secretary of State was entitled to have the votes cast for him counted and considered as valid. Section 4826, General Code, provided that “All votes for any judge for an elective office except a judicial office, under the authority of this state, given by the general assembly, or by the people, shall be void.” After quoting Section 14 of Article IV of the Constitution, *supra*, the Supreme Court held:

“The whole judicial article must be viewed and construed together, and, in the creation of the judicial structure in our system of jurisprudence, the constitutional convention and the people specifically selected two courts the judges of which should not be voted for except for a judicial office.

Under rules which are familiar and sanctioned by experience, it must be presumed that when the makers of the constitution took up and considered the subject and specified the two courts as to which the prohibition should apply they intended that as to the judges of other courts no such prohibition should be made.

We, therefore, hold that the provisions of Section 4826, General

Code, in so far as they apply to the judges of any of the courts created by the constitution other than the common pleas court and the supreme court, are invalid."

In specific answer to your third question, it is my opinion that the provision of Article IV, Section 14 of the Constitution that votes for a judge of the supreme court or judge of the court of common pleas for an elective office, except a judicial office, under authority of this state, given by the general assembly, or the people, shall be void, has no application to judges of a municipal court.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4078.

BANK—MAY AMEND ARTICLES OF INCORPORATION TO CHANGE PLACE OF BUSINESS PROVIDING SUPERINTENDENT OF BANKS CERTIFIES APPROVAL.

SYLLABUS:

A bank, by amendment of its Articles of Incorporation, approved by the Superintendent of Banks, may change the place where its business is to be transacted from one city, village or township in the state of Ohio to another city, village or township in the state of Ohio.

COLUMBUS, OHIO, February 20, 1932.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion, which reads as follows:

"Under date of June 17, 1931, you rendered to me your opinion No. 3335, in which you stated, among other things:

'It is my opinion that when a bank has a legally established branch in a village contiguous to the village in which its principal place of business is located, such bank may file with the Secretary of State its amended Articles of Incorporation, changing its principal place of business to that of its branch bank.'

Since rendering this opinion, Section 710-73, therein quoted, has been amended, permitting a bank to operate branches in other parts of the county or counties in which the municipality containing the main branch is located.

I now have an inquiry before me as to whether or not a bank may by an amendment to its Articles of Incorporation change its place of transacting business from one municipality to another municipality, both of which are located in the same county but not being contiguous and would, therefore, appreciate your opinion."