

2185.

ELECTOR—MAY VOTE AT PRIMARY IF HE REACHES MAJORITY AT NEXT ENSUING GENERAL ELECTION—CANNOT BE A CANDIDATE FOR NOMINATION TO OFFICE UNTIL HE REACHES MAJORITY.

SYLLABUS:

Under the provisions of Section 4980, General Code, the elective franchise at the August primary is extended to electors that will be legally qualified electors at the next ensuing general election, yet under the provisions of Section 4974, General Code, the privilege of becoming a candidate and having one's name printed on the primary ballot is limited to an elector of the state who is such an elector at the time of filing his declaration of candidacy.

COLUMBUS, OHIO, June 1, 1928.

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

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"The question has been submitted to this Department as to whether a person who will become an elector of the state on October 28, 1928, is legally qualified to file as a candidate for a county office at the primary election August 14, 1928.

We are submitting the question to your Department for opinion and enclosing herewith a letter from Mr. Charles H. Mullen raising the question."

Accompanying your letter and to which you refer is one from a member of the board of deputy state supervisors of elections for Meigs County, as follows:

"A citizen of Meigs County who came into the state on October 28, 1927, with the intention of residing in Ohio and who has resided here continuously since, has inquired of me whether or not he would be qualified to become a candidate for a county office at the primary election this coming August and the general election in November. He has already voted at the recent presidential primary as allowed by Section 4980, General Code.

I will appreciate it very much if I can secure a ruling on this question at an early date."

Section 1 of Article V of the Ohio Constitution provides as follows:

"Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections."

The above restriction on the elective franchise as to sex has now been abrogated by the adoption of the constitutional amendment permitting woman suffrage. But that question is not pertinent to our present inquiry.

Section 4970, General Code, provides what names only shall be printed on the ballot, as follows:

"The name of no candidate for office or for committeeman or delegate or alternate shall be printed upon an official ballot used at any primary unless

prior to the beginning of the period limited by law, a declaration of candidacy and certificate shall have been filed with the state supervisor of elections or with the board of deputy state supervisors in his behalf in substantially the following form:

* * * * *

DECLARATION OF CANDIDACY FOR OFFICE OTHER THAN THAT OF PRESIDENT OR VICE-PRESIDENT OF THE UNITED STATES.

I, _____ hereby declare that I reside at No. _____ street, in the _____ of _____ (or in precinct _____ township) county of _____ Ohio, and am a qualified elector therein. I am a member of the _____ party and intend to vote for a majority of the candidates of such party at the coming election. * * *

CERTIFICATE OF FIVE ELECTORS WHICH SHALL BE FILED WITH EACH DECLARATION OF CANDIDACY.

We, the undersigned, qualified electors of the State of Ohio, and of the county, city, township, ward and precinct set opposite our names, and members of the _____ party, hereby certify that _____ who resides at No. _____ on _____ street of _____ city of _____ or (in the township of _____) in the county of _____, and who is a candidate for the office (or position) of (here specify office or position) _____ to be voted for at the primary next hereafter to be held, and whose declaration of candidacy is herewith filed, is a member of the _____ party, and is well qualified to perform the duties of the office for which he is a candidate.

Signatures	Residence	Ward	Precinct	Township
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The State of Ohio,
County of _____ ss.

Personally appeared before me the undersigned, a _____, in and for said county, this _____ day of _____ A. D. 19____ above named _____, and _____ who each severally acknowledged the signing of the above certificate to be his free act and deed and that the statements made therein were true as he verily believed.
Witness my hand and official seal * * *.”

Section 4973, General Code, is as follows:

“Each candidate shall state in his declaration of candidacy that he will qualify as such officer if nominated and elected, and each candidate shall also state in his declaration that he will support and abide by the principles

enumerated by his political party in such national or state platform as may have been adopted by it prior to such primary in the year in which he is seeking such nomination, or which may be subsequently adopted."

The pertinent part of Section 4974, General Code, providing for protests against candidacy is as follows:

"* * * *If it is found that such candidate* is not an elector of the state, or of the district or county in which he seeks to become a candidate, or has not fully complied with the provisions of law as herein provided, his name shall be withdrawn and shall not be printed upon the ballot; but no declaration of candidacy shall be rejected for mere technical defects. * * *"

Section 4969, General Code, provides as follows:

"All nominations for offices or places on the primary ballot other than those heretofore provided for shall be made by the payment of the proper fees and by the filing of declarations of candidacy and certificates, which shall be filed with the board of deputy state supervisors at least sixty days before the day for holding the primary election. Such declarations of candidacy shall be signed and acknowledged by the person desiring to become a candidate and shall be accompanied by the *certificate of five electors of the county*, municipality, precinct, ward or other political subdivision for which such nomination is to be made and shall be in the form hereinafter provided.

Where the term 'nomination paper' or 'nominating petition' is used in this chapter it shall be held to include 'declaration of candidacy' and any other paper required by law to be filed by a person seeking to become a candidate at a primary election."

Section 4949, General Code, is as follows:

"Candidates for member of the senate and house of representatives in the congress of the United States and for all elective state, district, county and municipal offices, delegates and alternates to national and state conventions and members of the controlling committees of all voluntary political parties or associations in this state which at the next preceding general election polled for its candidate for governor in the state or any district, county or subdivision thereof, or municipality, at least ten per cent of the entire vote cast therein for governor, shall be nominated or selected in such state, district, subdivision or municipality, in accordance with the provisions of this chapter, and persons not so nominated shall not be considered candidates and their names shall not be printed on the official ballots, nor shall delegates or alternates to such conventions, or party controlling committees whose members have not been so selected, be recognized by any board or officer."

In the case of *The State, ex rel. Smith vs. Smith, Secretary of State*, 101 O. S. 358, the syllabus is as follows:

"1. The scope of protests, provided for in Section 4974, General Code, against the candidacy of persons at primary elections, is, by the terms of that section, limited to the questions whether the candidate is an elector of the state or of the district or county in which he seeks to become a candidate, and has fully and truthfully complied with the provisions of the law with regard to the preparation and filing of his declaration of candidacy; and the state

supervisor of elections or deputy state supervisors and inspectors of elections have no authority to hear or determine protests on grounds not within these limitations.

2. If a candidate is an elector of the state, or of the district or county in which he seeks to become a candidate, and has fully and truthfully complied with the provisions of the law with regard to the preparation and filing of his declaration of candidacy, the state supervisor of elections or deputy state supervisors and inspectors of elections have no discretion in the matter, but only a mere ministerial duty to perform, to certify the candidate's name to be printed on the primary ballot, and may be compelled by mandamus to perform that duty."

While Section 4980, General Code, referring to primary elections reads in part as follows:

"At such election only legally qualified electors or such as will be legally qualified electors at the next ensuing general election may vote * * *,"

yet the right to become a candidate with the privilege of having one's name printed on the ballot is limited by the foregoing provisions of law to electors at the time of filing their declaration of candidacy.

It is clear, therefore, that the person in question can vote at the primary election to be held in August under the foregoing authority of law, yet he will not be a qualified elector within the meaning of law for the purpose of filing a declaration of candidacy at the August primary.

In Corpus Juris, page 58, the word elector is defined as:

"A technical generic term, descriptive of a citizen having constitutional and statutory qualifications that enable him to vote. * * *"

and

"Specifically an elector is one who has a right to vote for public officers or the adoption of any measure."

Bouvier's Law Dictionary defines the word elector:

"One who has the right to make choice of public officers; one who has a right to vote."

While Webster's International Dictionary uses the following definition:

"A person who has, by law or constitution, the right of voting for an officer." Citing *Beardstown vs. Va.*, 76 Ill. 34, 39.

The words, qualified elector, are defined as:

"An elector who has the right to vote." *Bergevin vs. Curtis*, 127 Cal. 86, 89.

It is apparent therefore, that under the authorities above quoted, A will not be a qualified elector at the time required to file a declaration of candidacy for the August primary of 1928. He will be entitled to vote at said primary under specific statutory

authority extending that privilege to him under the provisions of Section 4980, General Code, because he "will be a legally qualified elector at the next ensuing general election."

Specifically answering your question therefore, it is my opinion that a person who will not become an elector of the state until October 28, 1928, is not legally qualified to file a declaration of candidacy as a candidate for county office at the primary election, August 14, 1928.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2186.

CITY COUNCIL—AUTHORITY TO INVEST MONEYS IN CITY TREASURY—DETERMINATION OF AMOUNT—BOND.

SYLLABUS.

1. *A general ordinance authorizing the investment of moneys in the treasury of a city, which will not be required to be used for a period of six months or more, may be enacted by the council or other legislative authority of a city, leaving the determination of the amount of funds available for investment and the particular securities in which they will be invested to the chief executive officer, the chief law officer and the chief fiscal officer, as provided in Section 4296-2, General Code.*

2. *The bond to be given by the officers of a city having the power to make investments of idle funds, pursuant to Sections 4296-1, et seq., of the General Code, is in addition to the ordinary official bonds of such officers conditioned upon the faithful performance of their duties.*

COLUMBUS, OHIO, June 2, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

"Section 4296-1 G. C., 112 O. L. 128, provides for the investment of funds in municipal treasuries.

Question 1. Is it necessary in each instance, where money is in the city treasury and which will not be needed or required to be used by the city for a period of six months or more that council pass an ordinance authorizing the investment of particular funds in specified bonds or can a general ordinance authorizing such investment be enacted, which leaves the determination of the amount not needed for six months and the bonds in which it will be invested to the officers specified in Section 4296-2, General Code?

Question 2. Section 4296-4, G. C., provides that the officers making investments of treasury balances are required to give bond in the amount fixed by ordinance of council. Is such bond to be given in addition to the bond furnished for the faithful performance of their duties, etc.?"

The Eighty-seventh General Assembly passed Senate Bill No. 90, the title of which is as follows: