

OPINION NO. 71-064

Syllabus:

Where a local option election is held under Section 4301.351, Revised Code, respecting Sunday sales of intoxicating liquor in a residence district of two or more election precincts, as defined in Section 4301.32, Revised Code, a new residence district that includes one precinct of such earlier district, may not be created for at least the four-year period, as provided in Section 4301.37, Revised Code, following the election.

To: James D. Ruppert, Warren County Pros. Atty., Lebanon, Ohio
By: William J. Brown, Attorney General, October 6, 1971

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

"Can an election be held pursuant to Section 4301.351 in a new residence district consisting of a precinct in which the question of Sunday sales of intoxicating liquor was held the previous year, which precinct voted in favor of the question of Sunday sales, and another contiguous precinct which was not involved in the previous year's election?"

In 1969, the General Assembly amended Chapter 4301, Revised

Code, to permit the electors of certain districts to determine whether or not the sale of intoxicating liquor should be permitted therein on Sunday. Definition of such districts is the same as that contained in Section 4301.32, Revised Code, governing other local option districts. The pertinent provision of Section 4301.351, Revised Code, is as follows:

"If a petition is for submission of the question of whether the sale of intoxicating liquor shall be permitted on Sunday, a special election shall be held in the district as defined in section 4301.32 of the Revised Code at the time fixed as provided in section 4301.33 of the Revised Code. In cases in which the district does not constitute a political subdivision, the expenses of holding such election, otherwise chargeable to a political subdivision, shall be charged to the municipal corporation or township of which the district is a part."

Section 4301.32, supra, in turn, is as follows:

"The privilege of local option as to the sale of intoxicating liquors is hereby conferred upon the electors of the following districts:

"(A) A municipal corporation;

"(B) A residence district in a municipal corporation consisting of two or more contiguous election precincts, and defined by the petition authorized by Section 4301.33, of the Revised Code;

"(C) A township, exclusive of any municipal corporations or part thereof located in such townships."

Your question is concerned only with subsection (B) of Section 4301.32, supra, or "residence district", i.e., two or more contiguous election precincts within a municipal corporation.

Under Section 4301.37, Revised Code, a local option election on Sunday sales can be held no more often than once in four years in a district. This is as follows:

"When a local option election under section 4301.351 [4301.35.1] of the Revised Code is held in any district, the result of such election shall be effective in such district until another such election is called and held pursuant to sections 4301.32 to 4301.36] [4301.36.1], inclusive of the

Revised Code, but no such election shall be held
in any district more than once in four years."

(Emphasis added)

Your question, then, is whether or not one precinct that was included in a local option district may be combined with another contiguous precinct to make up a new district in which a local option election on Sunday sales is petitioned, when less than four years has elapsed since the election in the original district.

In a related matter, the Supreme Court had occasion to consider the status of a local option territory under Section 4301.32, supra. Canton v. Imperial Bowling Lanes, Inc. 16 Ohio St. 2d 47 (1968). There, a township, had elected to be "dry" in a local option election. Thereafter, a part of the township was annexed to a municipality that was "wet". Pointing, among other things, to the provisions of Section 4301.39, Revised Code, requiring the preparation of a "plat of the local option district" in order to determine the exact liquor permits affected, the Court concluded that the annexed territory remained "dry" until changed by a subsequent local option election. It said at page 53 as follows:

"With this in mind, we conclude that the inclusion of paragraph (B) in Section 4301.32, Revised Code, indicates a legislative intention that the word "district" in the local option statutes should always describe the territory included within a district at the time of a local option election therein. It would then follow that the status as wet or dry of any part of that territory (which status had been acquired pursuant to a local option election) could only be changed by a subsequent local option election in a district including that part of that territory."

That view had been earlier shared by my predecessors. Opinion No. 597, Opinions of the Attorney General for 1957; Opinion No. 1882, Opinions of the Attorney General for 1950.

The decision and Opinions reflect a continuing concern to preserve the liquor sale status, decided upon in a community through a local option election. That concern was expressed judicially even before "prohibition". (See In re Davis, 4 Ohio N.P. (n.s.) 417 (1907), involving annexation of a "dry" area to a "wet" area and an attempted election in the annexed district; Browning v. Westroph, 12 Ohio C.C.R. (n.s.) 456 (1909), upholding the integrity of the original local option district as against changes in the district made for other governmental purposes; and Kilcoyn v. Hutchins, 10 Ohio C.C.R. (n.s.) 233 (1907), denying a district petition where the district boundaries overlapped an earlier one.)

While, with the exception of the Kilcoyn case, supra, the

above citations relate primarily to changes in municipal boundaries, both perimeters and internal divisions, the uniform rationale of them points to the necessary conclusion that a local option district may not be altered under the circumstances involved here. Indeed, the language quoted above from the Canton case, supra, is equally applicable to this situation and the reference in that Opinion to the requirement for platting the local option district is as persuasive here as in that case. Accordingly, I must advise you that the overlapping district is not permissible in these circumstances.

In specific answer to your question, it is my opinion, and you are so advised that, where a local option election is held under Section 4301.351, Revised Code, respecting Sunday sales of intoxicating liquor in a residence district of two or more election precincts, as defined in Section 4301.32, Revised Code, a new residence district that includes one precinct of such earlier district, may not be created for at least the four-year period, as provided in Section 4301.37, Revised Code, following the election.