

of Bay City, Michigan. This contract covers the furnishing of wood pipe lines to condensers in power house on the campus of Ohio State University, and calls for an expenditure of \$9,634.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Aetna Casualty and Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney General.

2754.

ELECTION OF WIDOW OR WIDOWER MUST BE MADE WITHIN ONE YEAR FROM DATE OF SERVICE OF CITATION EXCEPT AS PROVIDED IN SECTIONS 10567 AND 10568 G. C.

SYLLABUS:

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."

COLUMBUS, OHIO, Sept. 4, 1925.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your recent communication to this department, which reads as follows:

"We have been requested by the probate court of this county to ask for an opinion upon the meaning and construction of section 10571, General Code.

"The probate court desires to know if the right of a widow or widower to elect to take under the will or under the law, is cut off within the period of one year from the service of citation under section 10567 General Code; and if this citation is issued is the widow or widower presumed to take under the will or under the law. Does the service of citation make any difference as to the time which is given to the widow or widower to elect?"

Section 10566 of the General Code reads as follows:

"If provision be made for a widow or widower in the will of the deceased consort, after the probate of such will, the probate court forthwith shall issue a citation to such widow or widower to appear and elect whether to take such provision or to be endowed of the lands of the deceased consort and take the distributive share of the personal estate."

Section 10567 of the General Code reads as follows:

"Such election must be made within one year from the date of the service of such citation; except that such widow or widower, at any time before the period of such election has expired may file a petition in the common pleas court for the proper county, making all persons interested in the will defendants thereto, asking a construction of its provisions in her or his favor, and for the advice of the court, or the proper appellate court on appeal thereon."

In the case of *Bowen vs. Bowen*, 34 O. S., 164, it is held that:

"The year within which the election must be made by the widow begins to run from the time of the service of the citation; and when the widow appears in open court, without service of citation and declines to make her election, she does not thereby waive the issuing and service of citation, or estop herself from denying that a citation had been served."

Section 10568 of the General Code provides as follows:

"When proceedings for advice, or to contest the validity of a will, are begun within such year, if the will is not set aside, the election may be made within three months after they finally are disposed of."

Section 10571, General Code, formerly read as follows:

"The election of the widow or widower to take under the will shall be entered upon the minutes of the court. If the widow or widower fails to make such election, she or he shall retain the dower, and such share of the personal estate of the deceased consort as she or he respectively would be entitled to by law in case the deceased consort had died intestate, leaving children."

In the case of *Milliken vs. Welliver*, 37 O. S., 460, it is held that:

"In order to bar a widow of her right of dower, her election must be either by matter of record in the proper court, as required by statute, or actually and in fact under such circumstances as would create against her an estoppel of her right to claim under the law."

Section 10571, General Code, as amended by the 86th general assembly of Ohio, enacted as senate bill No. 84, reads as follows:

"Whether or not a citation be issued in the manner provided by section 10566, the widow's or widower's election may be manifested by written instrument signed by such widow or widower, duly acknowledged and filed in the probate court within one year from the date of probate of the will of the

deceased consort. In case such election is made in person in the manner specified in the preceding section, the same shall be entered upon the minutes of the court. If the widow or widower fails to make such election in person as provided in section 10570, or by written instrument as provided herein, within the time limit provided by sections 10567 to 10568 or within the time limit provided in this section, then it shall be deemed that she or he has elected to take under the will and she or he shall be bound accordingly and persons may deal with property of the decedent in accordance therewith; if she or he elects not to take under the will then she or he shall retain the dower, and such share of the personal estate of the deceased consort as she or he respectively would be entitled to by law in case the deceased consort had died intestate, leaving children."

It is noted that under this amended section it is now provided that "the widow's or widower's election may be manifested by written instrument signed by such widow or widower duly acknowledged and filed in the probate court within one year from the date of probate of the will of the deceased consort."

It will also be noted that while under former section 10571, General Code:

"If the widow or widower fails to make such election, she or he shall retain the dower, and such share of the personal estate of the deceased consort as she or he respectively would be entitled to by law in case the deceased consort had died intestate, leaving children."

It is now provided under said amended section 10571, General Code, that:

"If the widow or widower fails to make such election in person as provided in section 10570, or by written instrument as provided herein, within the time limit provided by sections 10567 and 10568 or within the time limit provided in this section, then it shall be deemed that she or he has elected to take under the will and she or he shall be bound accordingly and persons may deal with property of the decedent in accordance therewith; * * *."

It is therefore evident that under this amended section, that if there be no election within the year from the service of citation, the widow or widower is presumed to, and does take under the will. It is also evident under the provisions of section 10567, General Code, that such election must be made within one year from the date of the service of the citation, unless the time is extended under the provisions of sections 10567 or 10568, General Code, as regards the election in person. However, under the provision in amended section 10571, General Code, that the "election may be manifested by written instrument signed by such widow or widower, duly acknowledged," such written instrument so evidencing said election must be "filed in the probate court within one year from the date of probate of the will of the deceased consort."

In answer to your question as to whether or not the service of citation makes any difference as to the time which is given to the widow or widower to elect, you are advised that the widow or widower still has one year from the service of citation upon her or him to appear in person before the probate court and make the election; but as hereinbefore noted, in order to manifest such election by written instrument, signed and acknowledged, said written instrument must be filed in the probate court within one year from the date of probate of the will of the deceased consort.

Summarizing:

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