

1789.

CONVENTION—MANNER OF MARKING BALLOTS, IN ELECTION OF DELEGATES THERETO TO CONSIDER RATIFICATION OF AMENDMENT TO REPEAL 18TH AMENDMENT OF U. S. CONSTITUTION, DETERMINED.

SYLLABUS:

1. *If an elector in voting for delegates to a convention to consider the ratification of an amendment to the United States Constitution, as provided for by Amended Senate Bill No. 204, passed by the 90th General Assembly, desires to vote for candidates appearing in more than one group, such elector should not place a cross mark in the circle above any one group but should only place cross marks before the names of those candidates for whom he desires to vote.*
2. *If such an elector does place a cross mark in the circle over one group of candidates and also places a cross mark before one or more names of candidates appearing in another group and does not cross out the names of the same number of candidates in the group under the cross-marked circle that he does not desire to vote for, or does not place marks before the names of the candidates in that group for whom he desires to vote, so that it is impossible to determine his choice as to the candidates in that group, his vote should be counted only for those candidates which have the mark or marks before his or their names.*
3. *Where such elector places a cross mark in the circle over one group of candidates and also places a cross mark before one or more names of candidates appearing only in that same group, such cross marks should be treated as surplage and his vote should be counted for all the candidates in that group.*

COLUMBUS, OHIO, October 31, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

“We have recently submitted to the Boards of Elections an official form of ballot for the election of delegates to the convention to be called for the ratification of the amendment proposed to repeal the 18th Article of Amendment to the Constitution of the United States. This form was prepared in accord with our interpretation of the provisions of Amended Senate Bill No. 204, passed by the Ninetieth General Assembly.

This Act, in Section 6, sets forth certain provisions relative to the way in which the voter may mark his ballot. However, there is one provision in this law which has not heretofore appeared in our election laws relative to the marking of ballots, and that is the lines in italics in the following quotation:

‘Instructions to Voters

Do not vote for more than fifty-two candidates. To vote for all candidates in favor of ratification, or for all candidates against ratification, or for all candidates who intend to remain unpledged, make a cross-mark in the circle. *If you do this, make no other mark.* To vote for an individual candidate make a cross-mark in the square at the left of the name.’

In this election the ballot under consideration contains two lists of fifty-two candidates each, one list pledged to ratification, and the other opposed to ratification. It is easily understood that where fifty-two candidates are to be elected out of two groups totaling one hundred and four, that straight group voting is much to be desired. To attempt to scratch such a ticket would be futile insofar as ultimate results are concerned and would materially slow up the canvass and tabulation of such vote. However, due to the instructions as to the manner in which an elector should mark this ballot when casting his vote, are we to conclude that the provisions of this Amended Senate Bill No. 204 supersede the provisions of Section 4785-131 of the General Code, relative to marking a mixed ticket?

In other words, are we authorized to instruct the voters that in marking this ballot, that when an elector has placed a cross mark in the circle, the placing of a cross mark before the name of a candidate in another column invalidates such ballot; or would we be authorized to advise that the placing of a cross mark in the circle will indicate the voter's intention, regardless of other cross marks which the law does not seem to authorize under such circumstances; or shall we hold that the provisions of Section 4785-131, relative to marking a mixed ticket shall prevail?

This inquiry is further prompted by requests from Boards of Elections for instructions as to how the votes cast for the candidates on the delegate ballot are to be counted."

Section 6 of Amended Senate Bill No. 204 reads in part as follows:

"The election shall be by ballot, separate from any ballot to be used at the same election, which shall be prepared as follows: It shall first state the substance of the proposed amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width, headed respectively in plain type, 'for ratification,' 'against ratification' and 'unpledged.' In the column headed 'for ratification' shall be placed the names of the nominees nominated as in favor of ratification. In the column headed 'against ratification' shall be placed the names of the nominees nominated as against ratification. In the column headed 'unpledged' shall be placed the names of the nominees nominated as unpledged. The voter shall indicate his choice by making one or more cross-marks in the appropriate spaces provided on the ballot. No ballot shall be held void because any such cross-mark is irregular in character. The ballot shall be so arranged that the voter may, by making a single cross-mark, vote for the entire group of nominees whose names are comprised in any column. The ballot shall be in substantially the following form: \* \* \*"

Then follows a ballot form which contains the instructions quoted in your letter. This section clearly shows that the voter is not to be limited to voting for all the delegates in one group, or what might be termed a straight ticket, however desirable such limitation might be. The reason for the instruction that a voter making a cross-mark in the circle above one of the groups of delegates should make no other mark is apparent. There are fifty-two to be elected to the office of delegate. If a cross-mark is placed in the circle above one group of

candidates and also before the name of one candidate for a delegate in another group, it would be impossible to determine which one of the fifty-two in the group under the marked circle the voter intended not to vote for. It is clear that he intended to vote for fifty-one of the candidates in that group, but it would be impossible to determine his choice. On the other hand, his choice as to the other candidate in the other group is easily determinable. It is obvious that he intended to vote for the candidate in that group before whose name he placed a cross-mark. This situation is analogous to the situation that exists where there are two or more persons to be elected to the same office for which there are candidates on each party ticket and the cross-mark is placed at the head of a party ticket and also placed before one or more candidates of another party for that office. To take care of this situation, section 4785-131, General Code, provides as follows:

“\* \* \* \* \* \* \* \* \*

3. When two or more persons for the same office are to be voted for in any precinct, as two or more representatives or other officers, and the names of several candidates therefor appear on each party ticket, grouped under the office for which they are all running, the elector who has marked a ticket in the circular space at its head, and marked one or more of a group of candidates for such office on another ticket or tickets, must in addition to marking the ticket in the circular space at its head, also make a cross mark before each one of the group of candidates for such office for whom he desires to vote on the ticket thus marked; or instead of marking the candidates for such office he desires to vote for on the ticket marked by him, he may cross out the names of candidates for such office for whom he does not desire to vote on the ticket thus marked by him to the number of candidates for such office marked by him on other party tickets, in which case his vote shall be counted for the candidates for such office not crossed out.

4. If an elector who has thus marked a party ticket in the circular space at the head thereof, and has marked one or more candidates on another ticket or tickets for an office for which there is more than one candidate on his own party ticket, fails or neglects to indicate, either by individual marks or by crossing out names, which of the several candidates for the same office on his own party ticket he desires to vote for, then the vote shall be counted only for the candidate or candidates for that office that have the distinguishing mark before his or their names.

5. If in marking either a straight or mixed ticket, a cross mark is made in the circular space above the name of a party at the head of a ticket, and also one or more cross marks made before the name or names of candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, such marks before the names of candidates on the ticket so marked shall be treated as surplusage and ignored and the ballot be counted for all the candidates on the ticket thus marked for offices for which no candidates on other tickets are marked. This provision is subject to the exception in the preceding paragraph when two or more persons for the same office are grouped on party tickets.

\* \* \* \* \* \* \* \* \*

Amended Senate Bill No. 204 provides that “all provisions of the laws of this state relative to elections except so far as inconsistent with this act are hereby

made applicable to such election." There is no provision in this act to the effect that a ballot would be void which contains other marks in addition to the cross mark in the circle. The provision that no such marks in addition to the cross mark in the circle should be made, is only contained in the instructions to voters which are a part of the ballot form which must be substantially followed by the board of elections in preparing ballots.

The above quoted portions of section 4785-131 are not, in my opinion, inconsistent with the provisions of Amended Senate Bill No. 204, and, while they are not strictly applicable to the election in question since the above statute refers to party tickets and these ballots will not contain party tickets, the group tickets are so similar to party tickets and the situation presented by your inquiry is so analogous to the situation that is provided for by said statute, that its provisions can be made applicable to this election, so far as the method of counting votes is concerned. If it would be held that when a voter has placed a cross mark in the circle the placing of a cross mark before the name of a candidate in another group would invalidate such ballot, it would also be necessary to hold that where a voter has placed a cross mark in the circle the placing of a cross mark before the name of a candidate in the same group would likewise invalidate such ballot, for the latter act would be as much a violation of the instructions to voters as the former act. To hold that the placing of a cross mark in the circle above one group indicates the voter's intention to vote for all the candidates of that group where he has also placed cross marks before the names of one or more candidates in the other group, would be to disregard the clearly expressed intention of the voter to vote for those candidates before whose names he has placed cross marks.

The following rule set forth in the case of *Michel vs. Nailor*, 18 N. P. (N. S.) 500, is almost a universal rule:

"The right of suffrage should not be denied to a voter because of his failure to follow the strict letter of the law in the marking of his ballot, and while laxity in the marking of ballots by those who know how should not be encouraged, yet in the case of irregular markings and erasures by a voter who evidently acted with an honest purpose, his ballot should be counted if his intention can be ascertained with reasonable certainty."

The following is said in 20 C. J. 155:

"\* \* \* Except in those cases in which statutes prescribing rules to be observed by a voter in the preparation of his ballot are shown to be mandatory by prohibitive terms, inhibiting the counting of a ballot in case of deviation from the rules, the cases all recognize that the intent of the voter is the prime consideration in determining the validity of the ballot; \* \* \*."

Since the above quoted portions of section 4785-131 are designed to give effect to the expressed intentions of the voter, I am of the opinion that they should be followed in this election. My conclusions, therefore, are as follows:

1. If an elector in voting for delegates to a convention to consider the ratification of an amendment to the United States Constitution, as provided for by Amended Senate Bill No. 204, passed by the 90th General Assembly, desires to

vote for candidates appearing in more than one group, such elector should not place a cross mark in the circle above any one group but should only place cross marks before the names of those candidates for whom he desires to vote.

2. If such an elector does place a cross mark in the circle over one group of candidates and also places a cross mark before one or more names of candidates appearing in another group and does not cross out the names of the same number of candidates in the group under the cross-marked circle that he does not desire to vote for, or does not place marks before the names of the candidates in that group for whom he desires to vote, so that it is impossible to determine his choice as to the candidates in that group, his vote should be counted only for those candidates which have the mark or marks before his or their names.

3. Where such elector places a cross mark in the circle over one group of candidates and also places a cross mark before one or more names of candidates appearing only in that same group, such cross marks should be treated as surplusage and his vote should be counted for all the candidates in that group.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1790.

BONDS—UNDER HOUSE BILL NO. 7 EARLIEST DATE OF ISSUE WAS  
SEPTEMBER 1, 1933.

**SYLLABUS:**

*The earliest date on which bonds could be issued under the provisions of House Bill No. 7, passed August 23, 1933, by the special session of the 90th General Assembly, was September 1, 1933.*

COLUMBUS, OHIO, October 31, 1933.

*State Relief Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I acknowledge receipt of your communication, which reads as follows:

“An opinion is requested as to the earliest date on which bonds may be issued by a county, under the provisions of House Bill No. 7, enacted by the 90th General Assembly, in special session, August 23, 1933, and approved by the Governor, August 25, 1933.”

Section 1 of this act reads in part as follows:

“That sections 1, 2, 5 and 7 of the act entitled ‘An act to authorize the issue of bonds by counties and cities and the expenditure of public money for the relief of the poor and unemployed, and the investment of public funds in such bonds to levy an excise tax on certain public utilities and to declare an emergency,’ passed March 31, 1932, and approved April 5, 1932, known as Amended Senate Bill No. 4, as said section 7 is amended by the act passed February 14, 1933, and approved February