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THE REGISTRATION OF VOTERS AT THE FIRST GENERAL REGISTRATION—QUALIFIED VOTER MAY REGISTER AT BOARD OF ELECTIONS IF ABSENT FROM PRECINCT ON DAY SET FOR REGISTRATION—VALID REASON FOR BEING ABSENT—§§3503.06, .08, .27, R.C.

SYLLABUS:

1. When a registration of voters is established in an area pursuant to the provisions of Section 3503.06, Revised Code, the first general registration of all qualified electors in precincts which become registration precincts should be held in accordance with Section 3503.08, Revised Code; and residents of such precincts may not register at the office of the board of elections as provided in Section 3503.11, Revised Code, until such first general registration has been held.

2. When a first general registration of voters is held pursuant to Section 3503.08, Revised Code, a person who is qualified to register may register at the board of elections if he will necessarily and unavoidably be absent from his precinct on the day set for the registration and is otherwise qualified under Section 3503.27, Revised Code.

Columbus, Ohio, September 14, 1960

Hon. Edward R. Ostrander, Prosecuting Attorney  
Lake County, Painesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Our local Board of Elections has recently consulted this office concerning the problem of registration in this County. Although the official results of the last federal census have not

been made known, the unofficial results indicate that at least three cities will exceed sixteen thousand, and therefore be subject to mandatory registration.

“The Board of Elections, in view of this desire to have registration throughout the County under the authority contained in Section 3503.06. However, it was their desire at first to require registration only in the cities exceeding sixteen thousand and thereafter to require the general registration in the western section of the County and later in the year in the eastern section, but to complete all of this prior to the general election in November, 1961.

“Under Section 3503.08, the first general registration must take place on either Thursday and Saturday in the 11th week and Wednesday in the 10th week or Thursday and Saturday in the 7th week and Wednesday of the 6th week preceding the next January election. However Section 3503.11 authorizes the persons qualified to register to do so at the office of the Board of Elections at any time it is open up to the dates designated therein. My question to you is whether the Board of Elections under the facts outlined above are limited to conducting their first registration pursuant to Section 3503.08 or whether they may conduct registration of certain of the electors in the County at times other than those designated in that section under the authority of Section 3503.11.”

Section 3503.06, Revised Code, provides when registration of voters is required, or may be required, in an area, reading :

“In every city which at the last preceding federal census had or which at any local, state, or federal census provided by law has reached a population of sixteen thousand or more, the board of elections shall establish and maintain a registration of all the qualified electors of such city.

“Any municipal corporation of less than sixteen thousand population may, by ordinance, elect to become a registration municipal corporation. When such ordinance is adopted the board shall establish and maintain a registration of voters as in the case of registration cities. The board of any county may, by the vote of a majority of its members, establish and maintain registration of any or all the qualified electors of such county. If the members of the board divide equally upon the question of establishing and maintaining registration of the qualified electors of such county or a part thereof, the clerk of such board shall notify the secretary of state of such tie vote, and the secretary of state shall thereupon cast the deciding vote. If a board adopts registration or if a board deems it necessary to publicize information relative to registration, notice shall be published in one or more newspapers having general circulation within the county.

“No person residing in any registration precinct shall be entitled to vote at any election, or to sign any declaration of candidacy or any nominating, initiative, referendum, or recall petition, unless he is registered as an elector.”

Section 3503.08, Revised Code, provides for the first general registration in areas which become registration precincts, reading :

“The board of elections shall provide such printed forms, blanks, supplies, and equipment and prescribe such reasonable rules and regulations as are necessary to carry out sections 3503.06 to 3503.32, inclusive, of the Revised Code. In precincts which become registration precincts, the first general registration of all qualified electors shall be held as the board determines, either on Thursday and Saturday in the eleventh week and on Wednesday in the tenth week or on Thursday and Saturday in the seventh week and on Wednesday in the sixth week preceding the next general election, thereafter, from ten a.m. to two p.m. and from four p.m. to nine p.m. Thereafter no general registration shall be held in such precincts except as provided in such sections.”

Thus, where registration is required in an area which has not had registration, the first general registration must be held as provided in Section 3503.08, *supra*.

Section 3503.11, Revised Code, to which you refer, reads as follows :

“Persons qualified to register or to change their registration may register or change their registration at the office of the board of elections at any time such office is open except after nine p.m. of the forty-first day preceding a primary or general election, or after four p.m. of the eleventh day preceding a special election held on a day other than a primary or general election day and ten days following a primary, general, or special election. Any registered elector who removes from one precinct to another in the same political subdivision or from one county to another county after the close of such registration period may vote at the next succeeding election in the precinct from which he moved, wherein he was legally registered.”

While Section 3503.06, *supra*, states that in certain instances the board of elections shall establish and maintain a registration of electors, the section is not specific as to how or when such establishment should be accomplished. Section 3503.08, *supra*, does clearly provide that the first general registration in the precincts which become registration precincts shall be held on certain days; however, Section 3503.11, *supra*,

apparently provides that persons qualified to register may register at the board of elections on other than such certain days.

Also to be considered in this question is Section 3503.27, Revised Code, which provides that a person may register at the board of elections when he swears that he will be absent from the precinct on the days allowed for the general registration of voters. This section reads as follows:

“Any person who will be lawfully entitled to vote at any primary, general, or special election in a registration precinct may go before the clerk at the office of the board of elections and make and subscribe an oath before him or one of his assistant clerks that he will necessarily and unavoidably be absent from such precinct on all the days appointed or allowed for the general registration of electors by the registrars of the precinct in which he resided and more than fifty miles distant therefrom. The clerk, if satisfied, shall thereupon file such affidavit and make registration of such person in such precinct, on compliance of such applicant with the requirements for general registration and his signature to the statement prescribed, and no further registry of such applicant shall be necessary.”

In order to ascertain the effect of the section here involved, it would appear advisable to review the history of said sections and the past public policy concerning them. All of the sections of law here quoted were originally enacted by Amended Substitute Senate Bill No. 2 of the 88th General Assembly, effective January 1, 1930. Sections 4785-34, 4785-36, 4785-39, and 4785-55, General Code, enacted by that bill, are now Sections 3503.06, 3503.08, 3503.11, and 3503.27, Revised Code, respectively.

Section 4785-36, General Code (now Section 3503.08, Revised Code), as effective January 1, 1930, provided for general registration of voters on “Thursday in the fifth week and Friday and Saturday in the fourth week preceding the general election of November in 1930” and further provided:

“In the case of cities which shall hereafter become registration cities a general registration of all qualified electors shall be held on the days herein fixed preceding the next general election thereafter.”

Section 4785-39, General Code (now Section 3503.11, Revised Code), as effective January 1, 1930, read:

“Persons qualified to register or to change their registration may, after the general registration in 1930 or any registration

thereafter, register or change their registration at the office of the board at any time such office is open, except twenty days preceding or ten days following an election. Any elector changing his residence after the close of such registration period may transfer his registration up to and including the third day preceding an election.”

Section 4785-55, General Code (now Section 3503.27, Revised Code), as effective January 1, 1930, read:

“Any person who will be lawfully entitled to vote at any primary, general or special election in a registration precinct may go before the clerk at the office of the board, and, on making and subscribing an oath before him or one of his assistant clerks that he will necessarily and unavoidably be absent from such precinct on all the days appointed or allowed by law for the general registration of electors by the registrars of the precinct in which he resided, and more than fifty miles distant therefrom, the clerk, if satisfied, shall thereupon file such affidavit and make registration of such person in such precinct, on compliance of such applicant with the requirements of law for general registration and his signature to the statement prescribed, and no further registry of such applicant shall be necessary.”

It appears, therefore, that under the 1929 enactment (Amended Substitute Senate Bill No. 2, *supra*) all persons who resided in registration precincts and who desired to vote at the November, 1930, election, were required to register at the general registration in the precincts on the days prescribed by Section 4785-36, *supra*, except that those persons who would be necessarily and unavoidably more than fifty miles distant from their precincts on those registration days could register at the board of elections, and that regular registration at the board of elections under Section 4785-39, *supra*, could be made only *after* the general registration of 1930.

During the years since 1929 the sections of law here under consideration have undergone certain recodification and change. While the present statutes do not contain the specific language of the original act, it does not appear that in making such changes the legislature intended to alter the original intent as to first registration of voters as discussed above. Actually, the amendments were mainly concerned with changes in phraseology and omissions of words which were probably thought redundant by the legislative draftsman. As stated in 37 Ohio Jurisprudence, Section 440, starting at page 770:

“A change in the terms of the statute does not necessarily result in a change in the meaning thereof. It does not so result where the context indicates that such change in effect was not within the contemplation of the general assembly. The intention of the legislature in enacting the amendment may have been to correct a mistake or remove an obscurity in the original act without changing its meaning. It is very common, in framing new statutes, to omit clauses which were contained in antecedent ones merely because they were unnecessary and superfluous; and it is a well-settled rule of statutory construction that in the amendment of statutes the mere change of phraseology or the mere omission of words which are deemed redundant does not indicate a legislative intent to change the pre-existing law. These rules are of special application where the rule in effect under the earlier statutes and prevailed for a long period of time or where the suggested change results in a radical departure from the previous rule on the subject.”

As a further aid in arriving at a determination in this question, it will be noted that the practice since the original enactment of the law has been to forbid registration under Section 3503.11, *supra*, in a new registration precinct until a first general registration has been held pursuant to Section 3503.08, *supra*. As this has been the settled policy of the state it should be given consideration in ascertaining the effect of the statutes and a contrary construction should be avoided if at all possible (37 Ohio Jurisprudence, Section 372, page 677).

Finally, I am of the opinion that the legislature intended that there be a definite time for establishment of registration and, in the absence of any other designation, I conclude that such is accomplished with the holding of the first general registration in the precinct, and not before.

It would appear, therefore, that the board of elections in the instant case should hold the first registration of voters in accordance with the provisions of Section 3503.08, *supra*, and that the provisions of Section 3503.11, *supra*, are not available to the residents of a new registration district until such first registration has been held. A person who comes within the provisions of Section 3503.27, *supra*, would, however, be entitled to register at the board of elections as noted in that section.

Accordingly, it is my opinion and you are advised:

1. When a registration of voters is established in an area pursuant to the provisions of Section 3503.06, Revised Code, the first general registration of all qualified electors in precincts which become registration

precincts should be held in accordance with Section 3503.08, Revised Code; and residents of such precincts may not register at the office of the board of elections as provided in Section 3503.11, Revised Code, until such first general registration has been held.

2. When a first general registration of voters is held pursuant to Section 3503.08, Revised Code, a person who is qualified to register may register at the board of elections if he will necessarily and unavoidably be absent from his precinct on the day set for the registration and is otherwise qualified under Section 3503.27, Revised Code.

Respectfully,

MARK McELROY

Attorney General