

including doors in a building known as Central Unit of Chemistry Building, Miami University, Oxford, Ohio, as set forth in Item M-10 of the form of proposal dated June 23, 1930. Said contract calls for an expenditure of two thousand nine hundred and sixty-five dollars (\$2,965.00).

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. You have also submitted a certificate of the Controlling Board showing that said board has approved the expenditure of the monies appropriated for the purpose covered by this contract in accordance with Section 2 of House Bill 513 and Section 11 of House Bill 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the Seaboard 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 hereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2437.

REGISTRATION OF VOTER—ELECTION—ADDITIONAL TIME AND FACILITIES MAY BE PROVIDED AFTER GENERAL REGISTRATION WHEN.

SYLLABUS:

1. *Local boards of elections are required to effect the registration of any qualified person appearing for that purpose at the office of the board at any time such office is open on October 13 and 14, 1930.*
2. *Under proper instructions of the Chief Election Officer of the state, local boards of elections may, in order to facilitate registration, establish branch offices for registration, as defined in Section 4785-40 of the General Code, and keep them open on October 13 and 14, 1930; or, as an alternative, such boards may provide for registration in each registration precinct on October 14, 1930, such registration to be conducted and governed by the provisions of the Election Code relating to general registration.*

COLUMBUS, OHIO, October 11, 1930.

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

DEAR SIR:—Acknowledgment is made of the receipt of your communication of October 7, 1930, as follows:

“Sections 4785-34 to 4785-60, inclusive, of the new Election Code, provide for the permanent registration and the detailed operation thereunder.

Section 4785-36 provides that permanent registration shall be held ‘on Thursday in the fifth week and Friday and Saturday in the fourth week preceding the general election of November in 1930.’

Section 4785-39 and Section 4785-40 contain the following provisions:
Section 4785-39.

'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 4785-40.

'After the general registration in 1930 the board of any county, in order to facilitate new registrations and the change of registrations by electors already registered, may adopt one of the following methods:

a. The board may provide and keep open for a period of not to exceed ten days in each year immediately before the close of registration preceding a general election, at convenient locations in different parts of the city, branch registration offices where qualified persons may register or transfer their registration. Such branch offices, which shall not exceed one for each thirty thousand population of the city, as determined by the last preceding federal census or the last census estimate by the federal census bureau, shall be in charge of two or more competent assistant clerks of opposite political parties who shall receive for their services not to exceed ten dollars per day. The board shall provide a sufficient number of such branch offices to enable all eligible voters to register or transfer their registrations, and they shall be kept open at least eight hours of each day as may be fixed and publicly announced by the board. Notices of the location as such branch offices and the hours during which they will be opened shall be posted in one or more conspicuous places in the locality in which the branch office shall be located.

b. The board may arrange each year for registration in each registration precinct on the third Tuesday preceding the day of the November election. Such one day registration, when so arranged, shall be conducted and governed by the provisions of this act relating to general registrations.

All registrations shall be carefully checked and in case any person is found to have registered more than once the additional registration forms shall be cancelled by the board.'

The first day of registration as set out in Section 4785-36 has already been held. Under the provision of the law it is necessary that each elector desiring to be registered must give detailed information to the registrars, sign and take oath on two forms.

Under 4785-36 but twenty-four hours have been provided to register more than sixteen hundred thousand eligible registrants in the state. An investigation by the Secretary of State reveals that it is very doubtful that it will be physically possible for the registrars to take care of all registrants within the time allotted. If such proves true, thousands of qualified electors may be disfranchised through no fault of their own but simply through physical impossibility for the election machinery of the state to care for all that apply.

I am therefore asking you the following questions as to the power and authority of the Secretary of State in such an emergency under Section 4785-7:

First, may the Secretary of State, where a county Board of Elections reports that it has been physically impossible to register persons in the hours and on the days set out in 4785-36, have the power to authorize such boards of elections to arrange for additional days of registration, either in the pre-

cinets or branch board offices of their county on Monday, Tuesday and Wednesday, October 13th, 14th and 15th, or any one or more days thereof, under the provisions of Section 4785-39 or Section 4785-40?

Also, as to whether or not the Secretary of State has the authority and power to authorize boards of elections to name, either additional registrars or assistant clerks of the board of elections, and assign them to such precincts where congestion may arise on the regular registration days of October 10th and 11th?

Inasmuch as this matter is of extreme importance to the electorate of Ohio, and an emergency will undoubtedly exist within a few days, I shall appreciate it if you will give it your most prompt attention so that we may have your opinion in sufficient time to advise boards of elections as to what shall be done to meet the emergency."

Your letter presents a question which demands both careful and immediate consideration.

The sections of the new Election Code which you quote, together with other related sections, are for from clear upon the point you raise, and it is accordingly necessary to consider these provisions fairly exhaustively in order to arrive at the true intention of the legislature with reference to registration in the year 1930.

No difficulty is encountered in construing the sections relating to registration with respect to all elections held subsequent to the 1930 election. It is clear that, by virtue of Section 4785-39 of the Code, an elector may at any time during the year, except for twenty days preceding or ten days following an election, personally appear before the board of elections and be registered. As an additional facility for registration, it is provided by the next succeeding section that the board of elections, in any county, may open a branch office for a period of not to exceed ten days prior to election, or may provide a single registration day in each year when registration may be had in the individual precincts. These provisions are ample to afford the opportunity for such registration as may be necessary after the initial registration in any particular voting district. The difficulty accordingly exists solely with reference to the general registration of this year and presents the question of whether the provisions of Section 4785-36, with respect to certain days for permanent registration, are exclusive, or whether the additional facilities for registration described in Sections 4785-39 and 4785-40 are to any extent available during this year—they being admittedly available with respect to any subsequent year.

Section 4785-36 of the General Code is in full as follows:

"The board shall provide such printed forms, blanks, supplies, and equipment, and prescribe such reasonable rules and regulations as are necessary to carry out the provisions herein relating to registration. On Thursday in the fifth week and Friday and Saturday in the fourth week preceding the general election of November in 1930, between the hours of 1 p. m. and 9 p. m. the board of elections shall cause to be held in each precinct in registration cities, and in other precincts where registration is required, a general registration of all qualified electors of the city and such other precincts; and thereafter, no general registration shall be held in such city or other precincts except as otherwise provided herein. 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."

It will be observed that it is mandatory upon the board to hold a general regis-

tration upon the days set forth, and it is further provided that no general registration in such localities shall thereafter be held.

Section 4785-39 of the General Code, which I re-quote for the purpose of emphasis, is as follows:

“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.”

This section is, in my opinion, susceptible to two interpretations. It may, perhaps, be argued that the phrase “after the general registration in 1930” precludes the board registering any voter at its office for the 1930 election. On the other hand, this phrase is certainly subject to the construction that at any time after the general registration of 1930, which will be completed, according to the provisions of Section 4785-36, at nine o'clock p. m. on Saturday, October 11th, registration may be effected at the office of the board at any time the office is open except during the twenty days preceding the election, which would include the 1930 election. Under such a construction the opportunity is afforded to register at the board's office until midnight, October 14th.

Similarly, the language of Section 4785-40 of the General Code, which you quote, is susceptible of two interpretations. It is therein provided that “after the general registration in 1930, the board of any county, in order to facilitate new registrations and the change of registration by electors already registered, may adopt one of the following methods: * * * ” (Then follow the alternative methods to be used, which I have hereinbefore discussed.) In both of these sections it is clear that the board's power to function only arises subsequent to the general registration of 1930. It is significant, however, that in neither section has the legislature described the time when the board's authority to act comes into being as “after the general election in 1930.” Had such terminology been utilized, the right to provide any additional facilities for registration beyond the registration days enumerated in Section 4785-36, would be clearly negated. The legislature has, however, adopted other language and this language is, as I have indicated, susceptible of two interpretations. The problem is, which one of these interpretations should be adopted.

After careful examination of the entire context of the election code on the subject of registration, I have reached the conclusion that the act was drawn with the end in view of granting the widest possible freedom of registration consistent with the protection of the public against fraud in voting and the preservation of the purity of the ballot. I know of no rule of statutory construction requiring that Sections 4785-39 and 4785-40 be entirely read out of the law as applicable to the general election in this year. The express language certainly does not clearly require such a construction and the duty and authority of the board of elections, as therein expressed, being general in character and not limited to a particular time, will not be restricted beyond the plain import of the language of the exception. It is a cardinal rule of statutory construction that an exception to the application of a statute otherwise general in terms is subject to the rule of strict construction. By the application of this principle in the present case, I would incline to the opinion, independent of other considerations, that the respective duty and authority of the local board of elections, granted under the sections here under consideration, become operative immediately upon the completion of the registration in the year 1930 and hence

there exists authority to provide additional registration facilities beyond the precinct general registration afforded by the provisions of Section 4785-36, supra.

Were there any doubt with respect to this question, however, the construction which I have adopted would be impelled upon other grounds. The constitution of Ohio guarantees to citizens the right of franchise by virtue of the provisions of Section 1 of Article V of the Constitution, which provides as follows:

“Every 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 Constitution is silent upon the subject of registration of voters. The authority of the legislature to provide for registration is, accordingly, at best merely implied from general language vesting in the law-making body the right to regulate the conduct of elections. The right to provide for reasonable registration of voters is, however, firmly entrenched in the judicial law of this state. The Supreme Court has always recognized that reasonable regulations may properly be enacted with a view of safeguarding the ballot and to prevent fraud in election matters. You will observe, however, that these regulations must be reasonable and it has been held, not only in this state but in other jurisdictions as well, that provisions with respect to registration must not be such as to result in an unnecessary restriction upon the right of the voter. The leading case in Ohio upon this point is that of *Daggett vs. Hudson*, 43 O. S. 548, the syllabus of which is as follows:

“1. The general assembly, under the general grant of legislative power, secured to it by the constitution, has power to provide by statute for the registration of voters, and to enact that all electors must register before being permitted to vote.

2. Such an act, however, to be valid, must be reasonable and impartial, and calculated to facilitate and secure the constitutional right of suffrage, and not to subvert or injuriously, unreasonably, or unnecessarily restrain, impair, or impede the right.

3. The registration act of May 4, 1885 (82 O. L. 232), relating to elections in Cincinnati and Cleveland, requiring registration in all cases as a condition to the right of suffrage in those cities, and allowing the voters only seven specified days within the year in which to register and correct the registration, which contains no provision for registration after the seven days (though five days thereafter intervene before election day), and no regulation whereby those constitutionally qualified, may, upon proof of their qualifications, and a reasonable excuse for not registering in time, be allowed to vote, and where no other means are provided whereby persons necessarily absent at the time fixed for registration may have their names registered, is unreasonable, and has a direct tendency to impair the right of suffrage, and may disfranchise without their fault a large body of voters necessarily absent from the place of registry during the allotted time for registration, and is, therefore, unconstitutional and void.”

This case is a leading one not only in Ohio but in other jurisdictions as well, since it has been cited on many occasions as authority for the general propositions set forth in the syllabus. It reviews in detail the authorities in other jurisdictions and points out that the courts generally will reject as invalid any provisions of law

with respect to registration which unreasonably restrict the constitutional privilege of the voter.

Applying the reasoning of the court to the present registration provisions, it may readily be seen that unless opportunity be afforded for registration in addition to the three days enumerated in Section 4785-36, there might be a serious question as to the constitutionality of the whole law. As you point out in your communication, the general registration affords but twenty-four hours in which to effect the registration of more than a million and a half of voters. It may also quite properly be assumed that because of the unfamiliarity of the precinct officials with the forms prescribed by the new Election Code, a longer time will be required to register an individual voter than was the case under prior existing law. In fact, you have assumed that in certain instances, at least, local boards of elections will report to you that it is physically impossible to complete the registration within the hours prescribed.

In view of the situation, it scarcely seems a reasonable construction of these statutes to hold that the right to register is confined to the three day period.

It is a fundamental rule of statutory construction that, where a legislative enactment is susceptible of two interpretations—one making the enactment valid, and the other rendering it invalid and unconstitutional—the court will adopt that construction which will preserve the legislation. Applying this principle in the present instance but fortifies the conclusion which I reached earlier in the opinion, viz., that additional right with respect to registration exists beyond the three day period enumerated in Section 4785-36. It accordingly remains to be determined just what this additional right comprehends. Since, as I have before indicated, the statutes (Sections 4785-39 and 4785-40) both indicate clearly that the power and authority therein conferred are only to be exerted after the general registration in 1930, it is obvious that no additional facilities for registration may be afforded prior to the last day of general registration, which is October 11th. Immediately thereafter, it becomes the duty of the board, under Section 4785-39, to receive registrations at the office of the board at all times when the office is open, except as to the twenty days preceding and ten days following the election. The election being this year on November 4th, the twenty days prior thereto would commence on the 15th of October. It follows that a voter may, at any time the office of the board is open on October 13th and 14th, register by presenting himself at the office of the board.

Section 4785-40 contains additional authority for registration facilities and provides two alternative methods. Under the first method, the board may provide branch offices, which shall not exceed one for each thirty thousand population, and may provide sufficient assistant clerks to perform all the duties of registration. These offices may be kept open for such hours as may be deemed necessary. It is to be noted that the authority in this section extends to keeping these offices open for a period not to exceed ten days in each year immediately after the close of registration preceding a general election.

Inasmuch, however, as the right of the board in this respect is limited as to the year 1930 by the requirement that such steps be taken after the general registration in 1930, it follows that in this year the only days remaining for the assertion of the board's power in this respect are October 13th and 14th.

The second alternative permits registration in each registration precinct on the third Tuesday preceding the day of the November election. In this year the day indicated would be October 14th. I accordingly feel that, in the proper exercise of discretion, this second alternative might be adopted and the precinct booths kept open on October 14th. If this alternative be followed, the statute provides that all provisions relating to general registration shall be applicable and it would follow that the registration must be between the hours of 1 p. m. and 9 p. m.

It is perhaps needless to say that in the performance of their duties with respect

to affording facilities for registration, local boards of elections should act with the advice and under the instructions of the Secretary of State, as the chief election officer. In matters of this kind, it is both reasonable and proper, under the provisions of Section 4785-7 of the Code, that local boards should solicit and receive instructions from their superior officer.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that local boards of elections are required to effect the registration of any qualified person appearing for that purpose at the office of the board at any time such office is open on October 13 and 14, 1930. I am further of the opinion that, under proper instructions of the Chief Election Officer of the state, local boards of elections may, in order to facilitate registration, establish branch offices for registration, as defined in Section 4785-40 of the General Code, and keep them open on October 13 and 14, 1930; or, as an alternative, such boards may provide for registration in each registration precinct on October 14, 1930, such registration to be conducted and governed by the provisions of the Election Code relating to general registration.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2438.

APPROVAL, BONDS OF CITY OF KENT, PORTAGE COUNTY, OHIO—
\$95,087.01.

COLUMBUS, OHIO, October 13, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

2439.

APPROVAL, BONDS OF VILLAGE OF MAPLE HEIGHTS, CUYAHOGA
COUNTY, OHIO—\$150,000.00.

COLUMBUS, OHIO, October 13, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

2440.

APPROVAL, BONDS OF PREBLE COUNTY, OHIO—\$11,550.00.

COLUMBUS, OHIO, October 13, 1930.

Industrial Commission of Ohio, Columbus, Ohio.