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ELECTIONS, BOARD OF—WITHOUT AUTHORITY IN LAW TO REMOVE OR CAUSE TO BE REMOVED FROM BALLOT TO BE VOTED AT PRIMARY ELECTION NAME OF DECEASED PERSON—DEATH OCCURRED AFTER FILING DECLARATION OF CANDIDACY AND BEFORE DATE OF PRIMARY ELECTION—CLERK OF COURTS.

SYLLABUS :

A Board of Elections is without authority in law to remove or cause to be removed from the ballot to be voted at a primary election the name of a deceased person whose death occurred after the filing of his declaration of candidacy and before the date of such primary election.

Columbus, Ohio, April 28, 1948

Hon. Edward J. Hummel, Secretary of State
Columbus, Ohio

Dear Sir :

This will acknowledge receipt of your request for my opinion, which reads as follows :

“I received today a letter under date of April 14, 1948, signed by Mr. Frank Marsh, Clerk of the Franklin County Board of Elections, and I am setting out herein the letter in full as follows :

“FRANKLIN COUNTY
BOARD OF ELECTIONS

Columbus 15, Ohio

April 14, 1948

Hon. Edward J. Hummel
Secretary of State
Columbus, Ohio

Dear Sir :

As chief election officer of the State of Ohio, the Franklin County Board of Elections feels that it should have an official ruling from you on the following legal question involved in the coming Primary Election :

On April 9, 1948, William F. Berkhemer, the candidate for full term of Clerk of Courts on the Republican ticket died. The name of Mr. Berkhemer is the only name for this office appearing on the ballot. The Board is now in receipt of a request, signed by Mrs. Josephine Berkhemer, the widow of Mr. William F. Berkhemer, that out of respect to Mr. Berkhemer his name be removed from the ballot.

The Board has sufficient time to prepare and distribute stickers together with instructions to the precinct election officials that the name be removed from the ballot by placing a sticker over the name before the ballot is delivered to the voter. The Board does not find any specific authority in the election laws for the removal of the name from the ballot by this means. It is felt by the Board that it does have certain implied powers to see that the voters are not misled by permitting the name of a deceased person to remain on the ballot when it has sufficient time and facility to remove the name by this means.

In your opinion does the Board of Elections have such implied authority to order the name of Mr. Berkhemer removed from the ballot?

Your early opinion will be greatly appreciated.

Respectfully,

FRANKLIN COUNTY BOARD OF ELECTIONS,
Frank Marsh, Clerk.'

“You will note that the Franklin County Board of Elections asks the office of the Secretary of State for an early opinion on the questions set out in the above letter.”

At the outset, it should be pointed out that members of boards of elections are public officers, and as such have only those powers which are

expressly conferred upon them by statute and such implied powers as are necessary to carry out those expressly granted. The powers and duties of boards of elections are prescribed in detail in various sections of the General Code. Section 4785-13, General Code, defines generally the powers and duties of boards of elections. An examination of said section, and others defining such powers, discloses nothing contained therein which would authorize the board in question to comply with the request of Mrs. Berkhemer.

In Section 4785-69, General Code, it is provided :

“Candidates for party nominations to state, district, county and municipal offices or positions, for which party nominations are provided by law, and for election as delegates or alternates to national or state party conventions, and for election as members of party controlling committees, shall have their names printed on the official primary ballot by filing a declaration of candidacy and paying the filing fee as required by law. * * *”

The provisions of law governing the filing of declarations of candidacy and accompanying petitions are set out in Section 4785-70 of the General Code, which reads in part :

“Each person desiring to become a candidate for a party nomination or for election to an office or position to be voted for at a primary election shall, not later than 6:30 P. M. of the ninetyth day before the day of such primary election, file a declaration of candidacy and petition and pay the fee required by law. * * *”

From the above it is apparent that after a proper declaration of candidacy and petition is filed and the fee required by law paid, the person named therein as the candidate shall have his name printed on the official primary ballot. Nothing is contained in the law for the withdrawal of candidacy after such filing or the removal of a name from the ballot after the same has once been printed thereon in accordance with law.

Therefore, since there is no provision in law which authorizes such withdrawal or removal, it would appear, and it is accordingly my opinion, that the same can not be lawfully effectuated.

This conclusion is strengthened by the fact that Section 4785-93 of the General Code, in express terms, provides that any person nominated in a primary election or by nominating petition as a candidate for election at the next general election, may withdraw as such candidate at any time

prior to the eightieth day before the day of such general election. After so providing said section sets out in detail the manner in which such withdrawal may be effected. The fact that the General Assembly wrote into the law precise language authorizing the withdrawal of candidacy in one case and not in another must inevitably lead to the conclusion that such latter withdrawal was not intended to be permitted. In fact, the General Assembly, by the enactment of Section 4785-87 of the General Code, definitely recognized that the name of a deceased person might appear on the official primary ballot.

Therefore, in specific answer to your question you are advised that, in my opinion, the Board of Elections of Franklin County is without authority in law to remove or cause to be removed the name of William F. Berkhemer from the ballot to be voted at the Republican primary election to be held on May 4th of this year.

Respectfully,

HUGH S. JENKINS,
Attorney General.