

1993.

ELECTION OFFICIAL — PRECINCT — REQUIRED UPON DEMAND TO ISSUE BOND ISSUE BALLOT AT PRIMARY ELECTION TO ELECTOR WHO IS NOT REQUIRED TO TAKE PRIMARY BALLOT OR STATE POLITICS — ABSENT VOTERS' BALLOT — DISABLED VOTER — REQUIREMENTS FOR RETURN OF BALLOT TO BOARD OF ELECTIONS — SECTION 4785-137 G. C.

SYLLABUS:

1. *A precinct election official shall, upon demand, issue to a qualified elector a bond issue ballot at a primary election without first requiring such elector to state his politics and take a primary ballot.*

2. *A disabled voter who casts an absent voter's ballot is required under the terms of Section 4785-137, General Code, to return the same to the board of elections by registered mail, postage prepaid, or by delivery to such board in person.*

Columbus, Ohio, March 9, 1940.

Hon. John M. Kiracofe, Prosecuting Attorney,
Eaton, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads in part as follows:

“ * * * I have been requested to secure an opinion from your office as to whether or not the election officials of the precinct may upon demand, issue to the elector or electors bond issue ballot without any declaration of politics and without any other ballot being issued to them.

I am further requested to seek an opinion as to whether or not the vote from a disabled voter must be delivered to the Board of Elections by Registered Mail or may it be returned to the Board by personal representative if more convenient. * * * ”

The term “election,” broadly defined, means the expression of a choice by the voters of a body politic relating to the selection of a person to fill a public office, or with respect to some question or issue. 15 O. Jur., 304.

Section 4785, General Code, defines a primary election as follows:

“ * * *

e. The term ‘primary’ or ‘primary election’ shall mean any election held for the purpose of electing party committees, choosing delegates to a party convention, or nominating candidates to be voted for at an election. * * * ”

The question of issuing bonds may be defined as a separate question submitted to the voters for the purpose or determining whether or not bonds shall be issued in a political subdivision for a specific purpose.

It is obvious that the question of issuing bonds is a separate question in and of itself, and its very purpose readily distinguishes it from a primary election. When the question of a bond issue is submitted to the electors at a primary election there are actually two issues voted on at the same time. The fact that the bond issue is submitted at a primary election does not change its distinctive character as a separate question.

Section 4785-80, General Code, provides that separate ballots shall be

provided for each political party entitled to participate in such primary. Provision is likewise made for a question or issue to be submitted to electors on a separate ballot.

With respect to the necessity of a voter to declare his politics before receiving a ballot, Section 4785-82, General Code, provides in part as follows:

“At such primary election every qualified voter who is or who will attain the age of twenty-one years on or before the date of the next general election and who is a member of the party as herein provided shall be entitled to vote at such primary. It shall be the duty of the witnesses and challengers and of the judges and clerks of election, and the right of any elector, whenever there is reason to doubt the legality of any vote that may be offered, to interpose a challenge. The cause of a challenge shall be: * * * that having previously voted he was not previously affiliated with the party whose ticket he now desires to vote. * * *”

It can be seen from the above that if an elector desires to vote a primary ballot he must be affiliated with a political party, and he can be challenged concerning his affiliation with the party whose ticket he may desire to vote. Nowhere does the law require an elector to declare his politics before receiving a ballot on the question of a bond issue.

It follows therefore that a qualified elector may vote on a question or issue ballot without also voting a primary party ballot, and a precinct election official may be required to issue to such elector a bond issue ballot at a primary without first requiring such elector to state his politics.

With respect to your second inquiry relative to the right of a disabled voter to return his ballot to the board of elections other than by registered mail, your attention is directed to Section 4785-140, General Code, which reads as follows:

“Any qualified elector who, on account of his own personal illness or physical disability, will be unable to travel from his home or place of confinement to the voting booth in his precinct on the day of any general, special or primary election, may make application in writing for an absent voter's ballot to the clerk of the board of elections of his county not earlier than fifteen days nor later than 6:30 p. m. of the Thursday preceding the date of a primary or general election, or twelve o'clock noon of the third day preceding a special election held on another date, stating the nature of his illness or physical disability and his resultant inability to travel to the election booth in his precinct on election day. Such application and statement shall be accompanied by the certificate of the attending physician or other reputable physician giving the facts relative to such illness or disability, and an affidavit signed by such disabled

elector and two other qualified electors residing in the same precinct. After the clerk has satisfied himself that the applicant is a duly qualified voter and that the facts regarding such voter's illness or disability are as stated, he shall proceed as in the case of an absent voter to furnish such elector with an absent voter's ballot and permit him to cast an absent voter's ballot."

It is apparent from the above that a disabled voter may, after an application for an absent voter's ballot has been made to the clerk of the board of elections, be furnished with an absent voter's ballot and be permitted to cast an absent voter's ballot.

The manner in which such ballot shall be returned to the board of elections is provided for in Section 4785-137, General Code, which reads in part as follows:

"Such absent voter shall make and subscribe to the affidavit before an officer authorized by law to administer oaths, and he shall thereupon in the presence of such officer and no other person, mark the ballot or ballots, but in such a manner that such officer cannot know how the ballot is marked; and the ballot or ballots shall then in the presence of such officer be folded by the voter so that each ballot will be separate, and so as to conceal the marking, and then in the presence of such officer be deposited in the envelope and the envelope securely sealed. The envelope shall be mailed by the voter by registered mail postage prepaid, to the board issuing the ballot, or if more convenient it may be delivered in person. * * *"

From the above, it will be noted that after securely sealing the ballot voted upon in the envelope furnished for such purpose, such envelope shall be mailed by the voter by registered mail, postage prepaid, or delivered by the voter in person to the board of elections issuing such ballot.

In specific answer to your questions therefore, it is my opinion that:

1. A precinct election official shall, upon demand, issue to a qualified elector a bond issue ballot at a primary election without first requiring such elector to state his politics and take a primary ballot.

2. A disabled voter who casts an absent voter's ballot is required under the terms of Section 4785-137, General Code, to return the same to the board of elections by registered mail, postage prepaid, or by delivery to such board in person.

Respectfully,

THOMAS J. HERBERT,
Attorney General.