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CITY CHARTER ISSUED IN 1941 BY PROCLAMATION OF SECRETARY OF STATE, BASED ON 1940 FEDERAL CENSUS—ISSUED PRIOR TO REGULAR MUNICIPAL ELECTION HELD IN 1941—SUCH CHARTER CITY REQUIRED TO ELECT CITY AUDITOR AT SUCH ELECTION TO SERVE FOUR-YEAR TERM FROM JANUARY 1, 1942—PROVISO, NO STIPULATIONS IN CHARTER TO CONTRARY.

## SYLLABUS:

Unless provisions contained in a charter which may have been adopted by it provide otherwise, a city which became such in the year 1941 by reason of the proclamation of the Secretary of State based on the 1940 Federal census and issued prior to the regular municipal election held in the year 1941, was required to elect a city auditor at such election to serve for a term of four years from the first day of January, 1942.

Columbus, Ohio, June 2, 1943.

Mr. Carson Hoy, Acting Prosecuting Attorney,  
Cincinnati, Ohio.

Dear Sir:

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

“On March 29, 1943, the Hamilton County Board of Elections requested an opinion as follows:

'In conformance with the United States census of 1940, the Village of North College Hill became a city in the year 1941 and as a consequence they nominated complete municipal tickets in that city, among the offices being that of Auditor which, under the state law, is a four-year term.

The question has now arisen: Was that term for a two or a four-year period? The Auditor in all the other cities in Hamilton County will be on the ballot this year whereas if, the North College Hill election in 1941 was for four years that office would be the only Auditor in any city or village in Hamilton County on the ballot in the year 1945. If the term were for two years only, it would have that office expire at the same time as the other cities and villages in Hamilton County.'

In view of the fact that this is the first time this situation has arisen in Ohio and that the question involved is one of state-wide application, I am requesting your opinion in this matter."

Section 3498 of the General Code reads as follows:

"When the result of any future federal census is officially made known to the Secretary of State, he forthwith shall issue a proclamation, stating the names of all municipal corporations having a population of five thousand or more, and the names of all municipal corporations having a population of less than five thousand, together with the population of all such corporations. A copy of the proclamation shall forthwith be sent to the Mayor of each municipal corporation, which copy shall be forthwith transmitted to council, read therein and made a part of the records thereof. From and after thirty days after the issuance of such proclamation each municipal corporation shall be a city or village, in accordance with the provisions of this title."

The proclamation of the Secretary of State provided for in the above section was issued on January 9, 1941. In said proclamation it is recited that the population of the municipality of North College Hill, Hamilton County, Ohio, as ascertained by the 1940 federal census, was 5,231. Therefore, said municipality became a city on February 8, 1941.

The provisions of law relative to the election of officers of a city which has been advanced to such status pursuant to the proclamation of the Secretary of State, issued in accordance with the terms of the above section, are contained in Section 3499, General Code, which reads as follows:

"Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new corporation at the next regular election, and

the ordinance thereof not inconsistent with the laws relating to the new corporation shall continue in force until changed or repealed."

Section 4785-3 of the General Code, which contains definitions of the terms used in the statutes relating to elections, reads in part as follows:

"b. The term 'regular municipal election' shall mean the election held on the first Tuesday after the first Monday in November in odd numbered years."

The phrase "regular election" employed in Section 3499, General Code, is not specifically defined in the election law, but taken in connection with the provisions of Section 4785-4, General Code, there can be no question but that this phrase is to be construed as synonymous with "regular municipal election." Section 4785-4, General Code, provides:

"General elections in the State of Ohio and its political subdivisions shall be held as follows: \* \* \*

d. For municipal and township officers, members of boards of education, judges and clerks of police and municipal courts, and justices of the peace, in the odd numbered years."

The above section, in its present form, has been in effect since 1931. There is, therefore, no question but that upon the Village of North College Hill becoming a city in the year 1941, prior to the November election, it was proper for the municipality to elect an auditor whose term, according to the provisions of Section 4275, General Code, would be for four years commencing on the first day of January next after his election.

It would appear from your letter that some confusion has arisen from the fact that the election of the Auditor in all of the other cities in Hamilton County is to be held in 1943, whereas the Auditor of the City of North College Hill was elected in 1941. Section 4275, General Code, which fixes the term of the City Auditor was amended by an act passed May 16, 1935, and became effective August 30, 1935. Said section, which prior to such amendment provided for a term of two years, now reads as follows:

"The Auditor shall be elected for a term of four years, commencing on the first day of January next after his election, and shall serve until his successor is elected and qualified. He shall be an elector of the corporation."

It necessarily follows that all the cities of the State existing as such at

that time were required to and did elect an Auditor for a term of four years beginning the first day of January, 1936, and that thereafter in the year 1939 an Auditor was again elected for a like term and that in 1943 a like election for such officer will be held. However, there is nothing in the statute that requires the election of an Auditor to be held in any specific odd year and it was only incidental that elections to four-year terms were first held in 1935 following the effective date of the amendment.

In the case of the City of North College Hill the fact that it became a city in 1941 would in no wise change the law as affecting its first and subsequent elections of the City Auditor. The duty to elect city officers, including the Auditor, at the next regular municipal election applied to this city and there can be no question but that the next regular municipal election at which such officer should have been and was elected occurred in 1941. Furthermore, the provisions of Section 4275, General Code, to which I referred, make it clear that the term of the Auditor so elected was for four years and commenced on the first day of January, 1942.

Nothing in this opinion should be considered as applying to a city which has adopted a home rule charter since it would have the right to provide in such charter for a term of office for its officers differing from those prescribed in the general municipal law.

In specific answer to your question, it is my opinion that unless provisions contained in a charter which may have been adopted by it provide otherwise, a city which became such in the year 1941 by reason of the proclamation of the Secretary of State based on the 1940 Federal census and issued prior to the regular municipal election held in the year 1941, was required to elect a City Auditor at such election to serve for a term of four years from the first day of January, 1942.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.