

2620.

ELECTION—FILING OF EXPENSE STATEMENT REQUIRED—TIME
LIMITATION, DIRECTORY.

SYLLABUS:

1. Under the provisions of Section 5175-8, General Code, no certificate of election shall issue to any person required to file an expense statement until such statement is in fact filed as provided therein. Neither shall any person required by the act to file an expense statement enter upon the duties of the office to which he may have been elected until he has in fact filed his expense statement. Neither shall said person draw any salary or emolument prior to the filing of a proper expense statement.

2. Under the provisions of Section 5175-2, General Code, the ten day limitation therein mentioned is directory and not mandatory as to time.

COLUMBUS, OHIO, September 24, 1928.

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

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“We are enclosing herewith a letter from the Clerk of the Board of Deputy State Supervisors of Elections for Van Wert County and ask that you give us an opinion thereon.”

Accompanying your letter and to which you refer, is one from the clerk of the board of deputy state supervisors of elections of Van Wert County, as follows:

“A number of the county central committee who were elected at the recent primary have failed to file an expense statement. The ten day period is up now, the expense statement is not on file and certificates of election have not been issued to those failing to file statements.

Is it lawful for the clerk to issue certificates of election after the ten day period and if so, when is the limit. If certificates of election can not be issued at this time what is necessary to declare a vacancy exists?

Is it lawful for a county central committeeman, elect, to sit in a meeting and take an active part therein when he has not filed his expense statement and has not received his certificate of election?

I would be glad to have your opinion on the above questions in order that I may know how to proceed.”

Section 5175-2, General Code, provides as follows:

“Every candidate who is voted for at any election or primary election held within this state, and every person, committee or association or persons incorporated or unincorporated, who may have contributed, promised, received or expended directly or indirectly, any money or thing of value in connection with any election held in this state, shall within ten days after such election file, as hereinafter provided, an itemized statement showing in detail all the moneys or things of value, so contributed, promised, received or expended, and all liabilities directly or indirectly incurred in connection with such elections; but individuals other than candidates making only contributions, the receipt of which must be accounted for by others, need not file such statement under this section.”

Section 5175-8. General Code, provides that the certificate of election shall not issue until the expense statement is filed, and reads as follows:

"No board, office or officer authorized by law to issue commissions or certificates of election shall issue a commission or certificate of election to any person required by this act to file a statement or statements until such statement or statements have been so made; verified and filed by such persons as provided by this act. No person, required by this act to file a statement or statements shall enter upon the duties of any office to which he may be elected until he has filed all statements provided by this act, nor shall he receive any salary or emolument prior to the filing of the same."

A consideration of the provisions of the last above mentioned section furnishes the answer to two branches of your inquiry. First, that no certificate of election shall issue to any person required by this act to file an expense statement until such statement or statements have been so made, verified and filed by such person as provided in the act. Second, that no person required by the act to file an expense statement shall enter upon the discharge of the duties of the office to which he may have been elected until he has in fact filed his expense statement, and if the office is a salaried one, he may not draw any salary or emolument prior to the filing of his expense statement.

The position of committeeman is one to which no salary is attached and therefore that provision of the section would not be involved. The entering upon the discharge of his duties and the performance of his duties as such committeeman elect, however, would be involved. These are expressly prohibited prior to the filing of his statement.

In the case of *Board of Elections of Montgomery County, et al. vs. Henry*, 24 Ohio App. 481, it was held that the position of committeeman was not a public office. However, under the provisions of Section 5175-2, General Code, "every candidate who is voted for at any election or primary election held within this state," is required to file the expense statement mentioned, and this is required to be filed before the certificate of election may issue. It is also held in the above mentioned case that the position of county central committeeman is one for which a proper certificate of election should issue upon compliance with the law.

You further inquire if certificates of election may not be issued after the ten day period, what is necessary to declare a vacancy. While the ten day period has expired, it is my opinion that the committeeman elect may yet file his expense statement and upon its being filed in proper form the certificate of election may yet issue after the expiration of the ten day period. In other words, it is my opinion that the time mentioned for the filing of this statement is directory and not mandatory.

In an opinion found in Opinions of the Attorney General, 1924, page 87, a similar question was considered by this office. In that opinion it was said:

"Taking this view of the case, we think the two newly elected councilmen who did not file their expense statement would be authorized to file them after the ten day period, or before entering upon the duties of the office, and upon so complying and taking the oath of office would be authorized to assume the duties of their office."

Also in an opinion of this department, No. 1813, rendered March 5, 1928, on the same subject, the syllabus among other things held:

"The ten day period, however, is directory and not mandatory as to time. Where persons are elected as members of a board of education and have not filed their expense accounts within said ten day period, they may do so there-

after if the vacancies have not been filled previously and may enter upon the discharge of the duties of the office."

If, however, the committeeman elect fails and refuses to file a proper expense statement, a vacancy should be declared by the body of which he is elected a member, in this instance the county central committee, and said committee should proceed to fill the vacancy.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2621.

ICE CREAM MANUFACTURER—LICENSE—TYPES OF FREEZERS DISCUSSED.

SYLLABUS:

1. *By the terms of Section 12730-3, General Code, no person, firm or corporation shall engage in the business of operating a commercial ice cream plant as that term is defined by Section 12730-7, General Code, without first obtaining a license to operate such a plant from the Director of Agriculture.*

2. *A person, firm or corporation who uses a machine such as the "T. Freezer" in which ice cream is manufactured for the purpose of being placed on the open market, either wholesale or retail, for general consumption as human food, whether such machine is used in a hotel, restaurant, ice cream parlor or amusement place, is required to obtain a license therefor as provided by Section 12730-3, General Code.*

3. *By the terms of Section 1177-12, General Code, the Department of Agriculture of Ohio has authority to make such uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy and sanitary laws of this state.*

4. *Upon an application for a license being made as provided in Section 12730-3, General Code, it then becomes the duty of the Director of Agriculture to cause an investigation to be made of the plant and equipment of the applicant. If it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant and that the plant is in a sanitary condition, then a license should be issued to such applicant.*

COLUMBUS, OHIO, September 24, 1928.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Division of Foods and Dairies, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter dated September 17, 1928, which reads as follows:

"There have recently been placed on sale in the State of Ohio some new types of ice cream freezers. These machines are designed for use in drug stores, confectioneries and other retail stores. They are a combination of an electrical freezer and a holding refrigerator of the Frigidaire type installed in a cabinet as a single unit, designed to be used in sales room and of satisfactory construction. Mr. Werner has a detailed description of one type of these machines.