

"Quo warranto is the proper remedy to try title to office in a private corporation. Subject to a few exceptions to be hereafter considered, the rule is of general application that all questions relating to the validity of the election of officers of a private corporation can, and should, be determined in proceedings at law.

"While the contrary has been held (Nebr.), the general rule is well settled in most jurisdictions that a court of equity has no power or jurisdiction to entertain a bill merely for the purpose of reviewing a corporate election; nor to oust parties in possession who claim to have been elected. The reason is that the remedy at law is usually adequate."

In view of the foregoing, it is my further opinion that the validity of the acts of directors elected at a meeting of which statutory notice was not given, may not be questioned collaterally because of such irregularity.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

102.

COUNTY LINES—PROPOSED CHANGE MUST BE AGREED TO BY  
MAJORITY OF ELECTORS OF EACH COUNTY AFFECTED.

*SYLLABUS:*

*Under Sec. 30, Art. II of the Constitution, a law changing county lines shall not become effective until adopted as therein provided by the electors in each county affected, even though the aggregate vote cast in all such counties considered together might show a majority for such change.*

COLUMBUS, OHIO, February 3, 1933.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"This office would like to have a formal opinion regarding the interpretation of Article 2, Section 30, of the Constitution of Ohio, which is partially in regard to changing county lines. Evidently, if the General Assembly passes the bill authorizing the change, it must be submitted to all the electors in each county concerned at the next general election.

You will note that Section 30 reads as follows:

"\* \* \* before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, *and be adopted by a majority of all the electors voting at such elections, in each of said counties.*"

Does this mean that the total number of electors in each of the counties affected are taken as a whole, and that a majority thereof, if

they approve this step is what is required, or does it mean that the electors in each county will be considered separately.

In order to make ourselves clear, we will put it this way:

County 'a' contemplates taking a part of County 'b'; the bill is passed by the General Assembly. It is then at the next general election submitted to the electors in both counties. Supposing County 'a' has three hundred thousand electors, and County 'b' one hundred thousand electors; if a majority of the electors in County 'a' approves the measure, and a majority of the electors in County 'b' disapproves the measure, is it adopted or not—or, do you take the one hundred thousand electors of County 'b' and the three hundred thousand electors of County 'a' as a whole, being in full four hundred thousand, and consider the majority vote of the whole four hundred thousand as an approval or disapproval."

Section 30, article II of the Constitution provides in clear, unambiguous language that "all laws \* \* changing county lines \* \* shall, before taking effect, be submitted to the electors of the several counties to be affected thereby \* \* and be adopted by a majority of all the electors voting at such election in each of said counties". Under this express constitutional provision, it necessarily follows that until a law changing county lines shall be approved by a majority of all the electors voting at the election as provided in the section in each county affected by the change, the law changing the county lines shall not go into effect. There is no provision to the effect that the law shall be effective upon the approval of a majority of the electors voting at the election in all the counties affected, the Constitution requiring that before such a law shall become effective, it must be approved by a majority of the electors voting at the election "*in each of said counties.*"

Applying this constitutional provision to the specific illustration which you present, the law providing the change cannot become effective upon the affirmative vote of a majority of the electors in only one of the two counties affected although such majority may be a majority of the total vote of the two counties.

Specifically answering your question, it is my opinion that under Section 30, Article II of the Constitution, a law changing county lines shall not become effective until adopted as therein provided by the electors in each county affected, even though the aggregate vote cast in all such counties considered together might show a majority for such change.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

103.

POUNDAGE—SHERIFF MAY CHARGE ON SALE OF PERSONAL PROPERTY AT EXECUTION.

SYLLABUS:

*A sheriff can charge poundage as a result of handling money from the sale of chattel property on execution.*

COLUMBUS, OHIO, February 4, 1933.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows: