

2542.

ELECTION—COUNTY CONTROLLING COMMITTEE—VACANCY—NAME  
WRITTEN IN ON BALLOT AT PRIMARY COUNTED—NON-APPLICABILITY OF SECTION 4984-1, DISCUSSED.

*SYLLABUS:*

1. *When there are no candidates for the position of member of a county controlling committee of any political party and the electors of the precinct or district for which such committeeman is to be selected write in the names of qualified persons upon the ballot and vote for such persons for such office, such qualified elector receiving the highest number of votes shall be declared to be elected to such position.*

2. *Section 4984-1, General Code, has no application to the election of members of the party controlling committee and is only applicable to nominations made at the primary election.*

COLUMBUS, OHIO, September 5, 1928.

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

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

“I have an inquiry from the Board of Deputy State Supervisors of Elections of Preble County, and will ask you to favor me with your opinion relative to same.

Referring to Section 4957, Ohio General Code, if there are no nominations made for precinct committeeman, thus no name printed upon the ballot, and names are written on the ballot for the office of committeeman, is the person receiving the largest number of votes elected or does Section 4984-1, Ohio General Code, which provides that ‘the name of a candidate must appear upon at least eight per cent of all ballots containing such vacancy,’ relate to the election of precinct committeeman as well as to nomination for other offices, thus requiring said committeeman to receive at least eight per cent of the votes cast to be elected.”

Your question relates to the election of central committeemen who constitute the controlling committees of the political parties. You refer in your communication to Section 4957. There is no such section in existence at this time since the section formerly bearing this number was repealed in 103 Ohio Laws, 476.

Provision is made for the election of members of such committees in Section 4960 of the General Code, which reads as follows:

“The controlling committees of each voluntary political party or organization shall be a state central committee, consisting of two members, one of whom shall be a man and one of whom shall be a woman, from each congressional district in the state; a district committee for each district in the state, including congressional districts, which shall consist of the chairman of the county central committees of the several counties composing such district; a county central committee consisting of one member from each precinct in the county, or of one member from each ward and township in the county as the outgoing committee may determine, and the members of the central committee chosen from a city shall constitute a city committee. All of the members of such committee shall be chosen by direct vote at the primary held in the even numbered years. Candidates for election as state central com-

mitteemen may be nominated in the same manner as is herein provided for the nomination at primaries of candidates for district offices and candidates for election as members of the county central committee may be nominated in the manner provided in Section 4969 of the General Code. Existing state, district, county and city committees shall continue to act and be recognized as such, until their successors are chosen as herein provided. Where a judicial subdivision or district or congressional district is included within a county, the members of the county central committee who are residents of such district shall also act as the judicial or congressional committee."

It will be noted that this section provides that the members of the controlling committees of each voluntary political party or organization for counties, or what are more commonly known as county central committees, shall be chosen by direct vote at the primary election held in even numbered years and that the nomination for said position shall be in the manner provided in Section 4969 of the General Code, which reads:

"All nominations for offices or places on the primary ballot other than those heretofore provided for shall be made by the payment of the proper fees and by the filing of declarations of candidacy and certificates, which shall be filed with the board of deputy state supervisors at least sixty days before the day for holding the primary election.

Such declarations of candidacy shall be signed and acknowledged by the person desiring to become a candidate and shall be accompanied by the certificate of five electors of the county, municipality, precinct, ward or other political subdivision for which such nomination is to be made and shall be in the form hereinafter provided. Where the term 'nomination paper' or 'nominating petition' is used in this chapter it shall be held to include 'declaration of candidacy' and any other paper required by law to be filed by a person seeking to become a candidate at a primary election."

Section 4959 of the General Code provides as follows:

"All members of controlling committees of political parties shall be elected, by direct vote, except as otherwise provided herein. Their names shall be placed upon the official ballot as hereinafter provided. The person receiving the highest number of votes for committeeman shall be the member of such controlling committee."

You will note that it is expressly provided by this section that the "person receiving the highest number of votes for committeeman shall be the member of such controlling committee."

You inquire as to the effect of Section 4984-1, General Code, upon the election of a central committeeman. Said section provides:

"That in the event of any office for which nominations are sought to be made at any primary election, and for which no nominating petitions or declarations of candidacy have been filed within the time prescribed by law by or in behalf of any candidate of a political party, so that in so far as such office is concerned, there is a vacancy on the primary ballot to be nominated, no valid nomination shall be made for such office unless the name of the person attempted to be nominated and receiving the highest number of votes for said office, shall have been written on at least eight per cent of all

the ballots containing such vacancy, which have been voted at such primary election.”

From the language of this section I am of the opinion that the section is applicable only to nominations which are to be made at a primary election. The first part of the section specifically refers to any offices “for which nominations are sought to be made at any primary election.” The position of central committeeman is not a public office (*Board of Education vs. Henry*, 24 Ohio App. 481, Ohio Law Bulletin and Reporter, November 14, 1927), and at the primary, persons are elected to this position and not nominated therefor.

If no petition has been filed nominating a candidate for central committeeman, no nomination has been made for the position. The electors in casting their votes do not vote for the nomination of a central committeeman but vote for the election to said position. It therefore must follow that Section 4984-1, General Code, has no application to the election of a central committeeman. This is further emphasized in the latter provisions of the section, “that *no valid nominations* shall be made for such office unless the name of the person attempted to be nominated \* \* \* shall have been written on at least eight per cent of the ballots,” etc. It is quite apparent that in no event is a nomination made for a central committeeman at the primary election, and any one whose name is being written in is not attempting to be nominated. The electors in writing in the name do not do so for the purpose of nominating him to the position, but for the purpose of electing him.

Section 4959, *supra*, specifically provides as hereinbefore pointed out, that such person receiving the highest number of votes “shall be the member of such controlling committee.”

For these reasons, it is my opinion that :

1. When there are no candidates for the position of member of the county controlling committee of any political party and the electors of the precinct or district for which such committeeman is to be selected write in the names of qualified persons upon the ballot and vote for such persons for such office, such qualified elector receiving the highest number of votes shall be declared to be elected to such position.

2. Section 4984-1, General Code, has no application to the election of members of the party controlling committee and is only applicable to nominations made at the primary election.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2543.

PENSION—FROM MUNICIPAL POLICE RELIEF FUND—NO BAR TO PART TIME EMPLOYMENT AS TRAFFIC OFFICER—WIDOW OF PENSIONER AS POLICE MATRON—CONTINUANCE OF PENSION DISCUSSED.

**SYLLABUS:**

1. *An ex-policeman who is receiving a pension from a municipal police relief fund may be employed as a part time traffic officer in the police department and be paid compensation for such services.*