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ELECTION, PRIMARY—DELEGATES AND ALTERNATES-AT-LARGE—TO NATIONAL CONVENTIONS OF DIFFERENT POLITICAL PARTIES—DELEGATES AND ALTERNATES TO SUCH CONVENTIONS FROM DISTRICTS WITHIN STATE—ARE TO BE ELECTED IN YEAR 1948—IN EVERY FOURTH YEAR THEREAFTER—PRIMARY ELECTION TO BE HELD FIRST TUESDAY AFTER FIRST MONDAY IN MAY OF SUCH YEARS.

## SYLLABUS:

Delegates and alternates-at-large to the national conventions of the different political parties and delegates and alternates to such conventions from districts within this state are to be elected in the year 1948, and in every fourth year thereafter, at the primary election to be held on the first Tuesday after the first Monday in May of such years.

Columbus, Ohio, January 22, 1948

Hon. Edward J. Hummel, Secretary of State  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your letter wherein you request my opinion as to the time for holding the primary election for the purpose of electing delegates and alternates to the national conventions of the political parties to be held this year. It appears that the question presented by you arises from the fact that Section 4785-75 of the General Code, which deals with the election of such delegates and alternates, refers to the primary election to be held on the second Tuesday in May in the year 1932, and similarly in every fourth year thereafter, while Section 4785-67, General Code, provides that primary elections shall be held on the first Tuesday after the first Monday in May of each year.

In the former of said sections it is provided:

“At the primary election which shall be held on the second Tuesday in May in the year 1932, and similarly in every fourth year thereafter, delegates and alternates-at-large to the national conventions of the different political parties shall be chosen by direct vote of the electors in the manner prescribed in this chapter

for the nomination of candidates for state office, and candidates for election as delegates and alternates to such conventions from districts within the state shall be chosen by direct vote of the electors in the manner prescribed in this chapter for the nomination of candidates for district offices. \* \* \*

The pertinent portion of Section 4785-67 reads as follows:

“On the first Tuesday after the first Monday in May of each year primary elections shall be held for the purpose of nominating persons as candidates of political parties for election to offices to be voted for at the next succeeding general election; \* \* \*.”

Each of said sections, under the respective numbers presently borne by them, came into the law for the first time on January 1, 1930 by the enactment of Senate Bill No. 2 of the 88th General Assembly (113 O. L. 307). While Section 4785-67 has twice been amended since its original enactment, Section 4785-75 reads today as it did when first passed. When enacted as a part of said Senate Bill No. 2, Section 4785-67 read:

“Primaries, in presidential years, to choose delegates and alternates to national conventions, to nominate party candidates, and to select members of controlling committees of political parties, shall be held at the usual polling places in each precinct on the second Tuesday in May next preceding the day on which the election is to be held. Primaries in the years, except presidential years, shall be held on the second Tuesday in August next preceding a general election. The polls shall be open from 6:30 o'clock a. m. until 6:30 o'clock p. m.”

It is thus seen that when each of said sections first came into existence, the seeming inconsistency with which we are here concerned was not present. In other words, the primary election referred to in Section 4785-75 was, without doubt, the same primary election provided for in then Section 4785-67 and, in considering said sections as they exist today, I am unable to bring myself to the conclusion that the primary election for the choosing of delegates and alternates to the national conventions, referred to in Section 4785-75, is not the primary election now held on the first Tuesday after the first Monday in May, as provided in Section 4785-67 as it reads today. I say this notwithstanding the fact that Section 4785-67, in its present form, provides for the time for holding primary elections “for the purpose of nominating persons as candidates of political parties for election to offices to be voted for at the next succeeding general election”, whereas

said section, as originally enacted, dealt with primaries in presidential years “to choose delegates and alternates to national conventions, to nominate party candidates, and to select members of controlling committees of political parties.”

In the first place, it will be noted that in Section 4785-75 the article “the” precedes the words “primary election”. In other words, the election at which delegates and alternates to the national conventions are to be elected under the terms of said section is not “*an* election which shall be held, etc.”, but “*the* election which shall be held, etc.” By the use of the word “the” in said manner, the General Assembly clearly indicated that it referred to a primary election provided for by some other statute; that is, a primary election for which provision had already been made elsewhere in the law.

Therefore, since Section 4785-67 is the only section which contains provisions fixing the time for holding primary elections, it must follow that “the primary election” referred to in Section 4785-75 is the one provided for in the former section. Furthermore, when the provisions of Section 4785-3 of the General Code are considered, it can scarcely be said that the primary election to be held on the first Tuesday after the first Monday of May of each year, pursuant to Section 4785-67, is for the sole purpose of nominating candidates for election to offices to be voted for at the next succeeding general election as said latter section might indicate. In said Section 4785-3 it is provided:

“The terms hereinafter specified, when used in the statutes of Ohio relating to elections, the nomination of persons as candidates in elections, the registration of persons to qualify them as electors, and other related matters, shall have the meanings hereinafter specified unless the context of the words with which they are used shall clearly indicate another meaning. \* \* \*

“e. The term ‘primary’ or ‘primary election’ shall mean an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties.”

Moreover, the provisions of Section 4785-107 of the General Code may not be overlooked. Said section, which deals with the form of the presidential ballot and the arrangement of the tickets thereon, reads in part:

“On the presidential ballot shall be printed the names of the candidates for election to the offices of president and vice president of the United States, nominated as such by the national conventions of those political parties to which delegates and alternates were elected at the next preceding primary election.”

It would seem that here alone is sufficient support for the position taken by me. In express terms, the above section speaks of national conventions of political parties to which delegates and alternates were elected *at the next preceding primary election*. The above language, which is entirely new in the election laws, was enacted by the 97th General Assembly and became effective on January 2, 1948. Certainly, the primary election referred to therein is the primary election defined in Section 4785-3, the time for the holding of which is prescribed by Section 4785-67 and, in so far as the presidential election to be held in 1948 is concerned, the words “next preceding primary election” refer to the primary election to be held on the first Tuesday after the first Monday in May of this year.

In light of the above, and in specific answer to your question, you are advised that, in my opinion, delegates and alternates-at-large to the national conventions of the different political parties, and delegates and alternates to such conventions from districts within this state, are to be elected in the year 1948, and in every fourth year thereafter, at the primary election to be held on the first Tuesday after the first Monday in May of such years.

Respectfully,

HUGH S. JENKINS,  
Attorney General.