

OPINION NO. 72-025**Syllabus:**

Section 3503.12, Revised Code, respecting the establishment of registration places by a Board of Elections, is ambiguous as to whether or not such places may be established prior to primary elections and, having been consistently construed for many years by the Secretary of State to prevent establishment prior to such primaries, and such construction not being unreasonable, Boards of Elections are prevented from establishing such registration places prior to primary elections.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William J. Brown, Attorney General, April 3, 1972

I have before me your request for my opinion, which reads as follows:

"I have received a request from the Lucas County Board of Elections for an interpretation of Revised Code §3503.12. The Board desires to know whether they are authorized to establish registration centers other than at the Board of Elections prior to the coming primary election.

"Since the Board has already received instructions from the Secretary of State to the effect that they cannot open such agency offices until after the primary, I thought it advisable to request your opinion since this is a matter of state-wide application."

Section 3503.12, Revised Code, is as follows:

"After a general registration the board of elections, in order to facilitate new registrations and the change of registrations by electors already registered, may adopt one of the following methods:

(A) The board may provide and keep open, in each year before the close of registration preceding a general election, at convenient locations in different parts of the county, registration places where qualified persons may register or transfer their registration. Such registration places shall be in charge of two or more competent assistant clerks of

opposite political parties who shall receive for their service not to exceed eighteen dollars per day. The board shall provide a sufficient number of such registration places to enable all eligible voters to register or transfer their registrations, and they shall be kept open at least eight hours of each day, which may not include Sunday, as fixed and publicly announced by the board. Notices of the locations of a registration place and the hours during which it will be opened shall be posted in one or more conspicuous places in the locality in which the registration place is located.

"(B) The board may arrange each year for registration in each registration precinct on any one day, not including Sunday, during the ten days immediately preceding the close of registration. Such one day of registration, when so arranged, shall be conducted and governed by sections 3503.06 to 3503.32, inclusive, of the Revised Code.

"All registrations shall be carefully checked and in case any person is found to have registered more than once the additional registration forms shall be canceled by the board.

"The board may publish notices in one or more newspapers of general circulation advertising the places, dates, and times of registration."

Prior to 1953, Section 3503.12, supra (then Section 4785.40, General Code), read in pertinent part as follows:

"After a general registration the board of any county, in order to facilitate new registrations and the change of registrations by electors already registered, may adopt one of the following methods:

(A) The board may provide and keep open, for a period of not to exceed ten days in each year immediately before the close of registration preceding a general election, at convenient locations in different parts of the county, branch registration offices where qualified persons may register or transfer their registration. * * *

* * * * * * * * *

(Emphasis denotes words omitted in 1953 revision.)

The General Assembly clearly intended by the 1953 amendment to expand the time during which boards could provide registration centers. Accordingly, your question is whether or not this expansion covers the time before the primary election as well as the general election.

The Secretary of State, as chief election officer (Sections

3501.04 and 3501.05, Revised Code), has consistently construed this Section, and has uniformly so advised Boards of Elections, to authorize the establishment of registration centers only between the primary election and the general election.

As to the language of the Section, it goes almost without saying that the terms "general" and "primary" elections have specific meanings, being defined in Section 3501.01, Revised Code.

It may be argued persuasively that the reference to "general" elections in the Division that authorizes the use of registration places (or centers), implies that such places are not to be used prior to primary elections. That argument could be belabored (1) in comparing that language with the provisions of Division (B), which does not limit the use of precinct registration to any particular type of election, but only to the frequency of its possible use, (2) in comparison with the language of Section 3503.11, Revised Code, which distinguishes registration periods before primary elections from those prior to general elections, and (3) in comparison with the establishment of branch offices, which may be used before both types of election. (Opinion No. 6896, Opinions of the Attorney General for 1956.) Branch offices are provided for in Section 3501.10, Revised Code, which is as follows:

The board of elections shall, as an expense of the board, provide suitable rooms for its offices and records and the necessary and proper furniture and supplies for such rooms. The board may lease such offices and rooms, necessary to its operation, for such length of time and upon such terms as the board deems in the best interests of the public, provided that the term of any such lease shall not exceed fifteen years subject to the right of the board of county commissioners by a majority vote within sixty days after the board of county commissioners has been notified in writing of the execution of the lease to void the action of the board of elections. Such offices and rooms in cities over two hundred thousand population shall be kept open daily during office hours, except Sundays and legal holidays. In counties containing municipal corporations in addition to the county seat, the board may maintain temporary branch offices in any or all municipal corporations for such time prior to the election as the board deems necessary."

On the other hand, persuasive arguments also lead to the opposite conclusion. It may be said that a Board of Elections may establish registration centers with reference to a coming general election so as to foster the fullest possible participation in the choice of candidates. That choice begins with filing date, proceeds through the primary and ends with the general election. In that view, the important aid to registration must include the pre-primary election period as well as the pre-general election period, it being all of one fabric. Further, it may be said that statutes authorizing the use of discretion by a public body to accomplish a public purpose must not be restrictively construed, but must be read to permit such body all reasonable scope to accomplish the purpose.

If the matter were presented to me in the context of a recent enactment or amendment, the larger public policy of encouraging the widest possible citizen participation in the electoral process would be persuasive of a liberal construction of the language of Section 3503.12, supra. Such is not the context, however, in which the question reaches me. The Secretary of State is the chief election officer of the State of Ohio, elected by the voters of the State and vested by statute with broad powers to direct the Boards of Elections and to administer and enforce the election laws of the State. An interpretation of a statute by such official, uniformly adhered to, must be accorded great weight. One of my predecessors has stated in Opinion No. 3816, Opinions of the Attorney General for 1941, at pages 404-405, as follows:

"* * * It is well settled that administrative practice if long continued will be given great weight at least in the construction of the law appertaining thereto where no clear provisions of the law provide to the contrary. While such administrative interpretation is not conclusive, the courts have remarked that it should be accorded great weight and will be reckoned with most seriously. It has sometimes been said that such interpretation will not be disregarded unless clearly out of line with the terms of the law and necessarily must be disregarded to protect rights granted by the law."

Where also, that interpretation is reasonable, as respects a statute that is ambiguous at best, it would be inappropriate for me to question it. Indeed, under the circumstances, I do not question it but adhere to it as a reasonable construction of Section 3503.12, supra.

In specific response to your question it is my opinion, and you are so advised, that Section 3503.12, Revised Code, respecting the establishment of registration places by a Board of Elections, is ambiguous as to whether or not such places may be established prior to primary elections and, having been consistently construed for many years by the Secretary of State to prevent establishment prior to such primaries, and such construction not being unreasonable, Boards of Elections are prevented from establishing such registration places prior to primary elections.