

OPINION NO. 70-023**Syllabus:**

1. A local option election for a township must include the entire township, exclusive of any municipal corporation or part thereof located in such township.
2. A local option election must be held at a special election, ordered by the appropriate board of elections, on the same day as the general election.

To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio
By: Paul W. Brown, Attorney General, March 4, 1970

You have asked my opinion with respect to the following questions:

"1. 'In a township which has election precincts, would any two contiguous precincts (in which more than one half is devoted to residential use) be a valid election district for the the purpose of holding a separate local option

election under the provisions of Section 4301.32?

"2. Can a local option election referred to in Section 4301.32, be held at a primary as well as a general election?"

With respect to your first question, I analyzed the meaning of "residence district" as used in Section 4301.32, Revised Code, in my Opinion No. 69-129, Opinions of the Attorney General for 1969. The clear and unambiguous provisions of Section 4301.32, supra, preclude the use of a residence district for purposes of local option elections in geographic areas other than such areas encompassed within the boundaries of municipal corporations. Section 4301.32, supra, provides as follows:

"The privilege of local option as to the sale of intoxicating liquors is hereby conferred upon the electors of the following districts:

"(A) A municipal corporation;

"(B) A residence district in a municipal corporation consisting of two or more contiguous election precincts, as defined by the petition authorized by section 4301.33 of the Revised Code;

"(C) A township, exclusive of any municipal corporation or part thereof located in such township."

Based upon the foregoing, a residence district (consisting of two or more contiguous election precincts) must be within a municipal corporation to constitute a valid election district. Insofar as a township is concerned, under the provisions of Section 4301.32 (C), supra, the entire township must be included, exclusive of any "municipal corporation or part thereof located in such township."

Section 4301.33, Revised Code, which provides for the petition, protest and holding of a local option election, contains the answer to your second question. Section 4301.33, supra, provides in part, as follows:

"Upon the presentation of a petition, not later than four p.m. of the ninetieth day before the day of a general election, * * *

"(A) Such board shall, not later than the eighty-fourth day before the day of a general election, * * *

"(B) * * * [T]he board * * * shall order the holding of a special election * * * on the day of the next general election, * * *

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"Protest against such local option peti-

tions may be filed by any qualified elector eligible to vote on the question or questions, described in such petitions not later than four p.m. of the sixty-fourth day before the day of such general election. * * *"
(Emphasis added.)

The only reference in Section 4301.33, supra, is to a special election to be held on the day of a general election. I can only conclude, therefore, that a local option election may not be held at a primary election, but may only be held at a special election on the day of a general election as provided for in Section 4301.33, supra.

Therefore, it is my opinion and you are so advised that:

1. A local option election for a township must include the entire township, exclusive of any municipal corporation or part thereof located in such township.
2. A local option election must be held at a special election, ordered by the appropriate board of elections, on the same day as the general election.