

contains argument either for or against a proposed law or reasons why it should or should not be enacted is not an impartial synopsis.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1855.

ELECTION LAW—FILING OF PETITION SIGNED BY ONE PER CENT OF TOTAL VOTE FOR GOVERNOR AND CONTAINING TICKET OF CANDIDATES TO BE NOMINATED—SUCH CANDIDATES PLACED ON BALLOT UNDER INDEPENDENT COLUMN—METHOD FOR CREATION OF NEW PARTY.

SYLLABUS:

1. *When a petition is filed, signed by one per cent of the total vote for governor, as provided in Section 4785-91, General Code, containing a list or ticket of candidates for office to be nominated as therein provided, such petitioners are not entitled to have any party designation used at the head of the column on the ticket. The names of such candidates are required to be placed upon the ticket under the column designated "Independent."*

2. *The only method provided for the creation of a new party which is entitled to have its name placed upon the ticket is that method provided in Section 4785-61, which requires at least fifteen per cent of the total vote cast for Governor at the last preceding election.*

COLUMBUS, OHIO, May 12, 1930.

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

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication, which reads:

"Section 4785-61 provides for the formation of political parties and the per cent of votes necessary for such party candidates for Governor to receive in order to continue as a political party in Ohio. It further provides that in order to form a political party, petitions containing signatures of electors equal to fifteen per cent of the total number of votes cast for Governor at the last general election must be filed ninety days before an election.

Section 91 provides for the nomination of candidates, in addition to nominations made at party primaries, by petitions signed by electors of a number equal to at least one per cent of the total vote cast for Governor at the last election.

Section 100 provides for the arrangement of ballots and provides that in addition to the arrangement of party ballots, 'the tickets or list of candidates nominated by nominating papers, their party names or designations, shall be printed at the right of and parallel with tickets of political parties.'

It further provides that where candidates have been nominated by petition and the group of petitioners has failed to indicate a designation, the word 'independent' shall be used at the head of the column wherein the names of all such candidates shall appear. In other words, Section 61 seems to provide as to how political parties shall be formed, although not mentioning anything about the candidates of such party.

Section 91 provides for the nomination by petition outside of party primaries and Section 100 seems to provide for such persons nominated by

petition to have the right to use some particular name to designate their ticket.

As a result this question has arisen: Has a group of petitioners, under Section 100, the right to file a list or ticket of candidates and select the name of the party to be used at the head of the column by only obtaining the signatures of electors equal to one per cent of the total vote cast for Governor, as provided in Section 91, or must such petitioners first qualify under Section 61?"

Section 4785-61, General Code, to which you refer, reads:

"A political party within the meaning of this act shall be any group of voters which, at the last preceding general state election, polled for its candidate for governor in the state at least ten per cent of the entire vote cast therein for Governor; or which shall have filed with the Secretary of State at least ninety days before an election a petition signed by qualified electors equal in number to at least fifteen per cent of the total vote for governor at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding election. Such petition shall be circulated, signed, verified, and the signatures thereon examined and certified to in the same manner as is required of referendum petitions. No such group of electors shall assume a name or designation which shall be so similar, in the opinion of the Secretary of State, to that of an existing political party as to confuse or mislead the voters at an election. When any political party fails to cast ten per cent of the total vote cast at an election for the office of governor it shall cease to be a political party within the meaning of this act."

Section 4785-91, to which you refer, and which relates to nomination of independent candidates by petition, reads in part:

"Nominations of candidates for office, in addition to the nominations made at party primaries, may be made by petitions signed for each candidate by qualified electors of the state or the district or county for which such candidates are nominated, not less in number than one per cent of the qualified electors voting at the next preceding general election for the office of governor in any such county, district, municipality or in the state. In case of such independent nominations for a district larger than a county, at least one-half of the signatures shall be obtained from one-half of the several counties in such districts. In the case of state candidates, at least one-half of such signatures shall be obtained from one-third of the counties in the state. * * *"

Said section further sets forth the form of petition to be presented, and it will be observed that there is no provision therein for the designation of any party. It simply presents the name of a certain person as a candidate for a certain office.

Section 4785-100, to which you refer, and which relates to the arrangement of the ballot, reads:

"In general the arrangement of the ballots shall conform as nearly as practicable to the plan hereinafter provided. On the party ballot the tickets of the various political parties shall be printed in parallel columns, headed by the chosen device, upon a shaded background; and the party names in the order herein provided, precedence being given to the political party which cast the highest number of votes for Governor at the next preceding Novem-

ber election, followed by the next highest, and so on. The tickets or lists of candidates nominated by nomination papers, with their party names or designations, shall be printed at the right of and parallel with the tickets of political parties in such order as the Secretary of State shall direct, precedence being given to the order herein prescribed for party tickets. No ticket or list of candidates containing more candidates for any office than are to be elected shall be printed under the name of any party. When candidates have been nominated by petition, and the group of petitioners has failed to indicate a designation, the word 'independent' shall be used at the head of the column wherein the names of all such candidates shall appear. Each political party or group of petitioners whose designation contains more than eleven letters shall select an abbreviated form thereof containing not more than eleven letters, which shall be used upon the ballot whenever the board determines that the necessities of space so require. The abbreviated form shall be certified at the same time and in the same manner as party names are required to be certified. If any political party or group of petitioners fails to submit such abbreviated designation, then the Secretary of State may determine the abbreviations to be used."

Your difficulty arises by reason of the clear indication throughout this section that lists of candidates, as distinguished from political parties, possess the right to have separate columns upon the ballot, together with the designations under which the lists are filed. This is the necessary conclusion from the language of this statute alone, since it indicates that, in the absence of a selection of a designation, the names of the candidates upon a list shall be grouped under the heading "independent".

It would be the logical assumption that elsewhere in the statute there would exist the right for a list of candidates, as distinguished from a party, to select a distinctive name or designation and to so indicate to the election officials, whose duty it is to prepare the ballots. An examination of the new Code, however, reveals that this is not true. Section 4785-91 of the Code, to which you refer and which has been heretofore quoted in part, makes no provision for the indication of any designation and, on the contrary, describes the nominations made by petition as "independent nominations." There is, accordingly, a manifest conflict which makes it extremely difficult to determine exactly what the intention of the Legislature was. Quite often in instances of this character some light is thrown on the intention of the Legislature by an analysis of the history of the legislation, but this is not true in this instance.

The first three sentences of Section 4785-100 are taken practically verbatim from Section 5018 of the General Code as that section existed prior to its repeal by the last Legislature. The remaining portion of the new section is added language which strengthens the conclusion that the right to select a designation and to have a separate column on the ballot exists. On the other hand, however, prior to the adoption of the new Code, Section 5003 of the Code specifically provided in part as follows:

"Besides containing the names of candidates, all certificates of nomination and nomination papers shall specify as to each candidate:

1. The office for which he is nominated;
2. The party or political principle which he represents, expressed in not more than three words;
3. His place of residence, with street and number thereon, if any.

In nominations by petition, the certificate may designate instead of a party or political principle any name or title which the signers may select. Candidates nominated by petition without distinctive appellations shall be certified as independent candidates. * * *"

Thus it is clear that, under the old law, the right to have a separate column and

a designation existed and it was so held in Opinions of the Attorney General for 1916, Vol. 1, p. 86, a portion of the syllabus being as follows:

“Where a ticket or list of candidates, not containing the names of more candidates for any one office than may be elected, is nominated by a petition, and there is designated a proper name or title for such ticket or list of candidates, it is required that such ticket be printed in a separate column on the ballot to the right of all party tickets, under the name so designated, having printed above such designated name or title a circular space similar to that above party tickets.

The failure of the Legislature to incorporate the substance of what has heretofore been quoted from Section 5003 of the Code, prior to its repeal, leaves me in a quandary as to how your inquiry should be answered. I feel, however, that I am forced to conclude that the right to use a separate designation at the head of the column on the ticket does not exist except as to those groups of candidates which have qualified as parties within the meaning of Section 4785-61 of the General Code. It would be beyond my province to supply an omission apparently advisedly made by the Legislature.

I deem it unnecessary to discuss in detail the provisions of Section 4785-61, which describe the method by which a group of voters may constitute a political party within the meaning of the election Code. The provisions of the section are clear and need no particular interpretation in answering your inquiry. It is sufficient for me to say that all persons who do not participate in the primaries, but, on the contrary, choose to become candidates for public office by petition, must follow the form set forth in Section 4785-91, *supra*, declaring for what office they are candidates. When such petition is filed under the provisions of Section 4785-100, such candidates shall be placed upon the ballot under the column designated “Independent.” In other words, by reason of the express provisions of the statutes outlining the manner in which persons become candidates by petition, it will always result in the petitioners having failed to indicate a designation. It would therefore follow that all such candidates shall be placed in the column designated “Independent.”

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion:

1. A group of petitioners which files a list or ticket of candidates and selects the name of a party by obtaining the signatures of electors equal to one per cent of the total vote cast for Governor, is not entitled to have said party designation used at the head of the column on the ticket. The names of such candidates are required to be placed upon the ticket under the column designated “Independent.”

2. The only method provided for the creation of a new party which is entitled to have its name placed upon the ticket is that method provided in Section 4785-61, which requires at least fifteen per cent of the total vote cast for Governor at the last preceding election.

Respectfully,

GILBERT BETTMAN,
Attorney General.