

tect, for the purposes above indicated, prior to the submission to the electors of the county of a bond issue for the improvement or improvements that may be determined upon by said board.

With respect to your question as to the fund out of which the compensation of the architect so employed is to be paid, it is quite clear that such compensation is to be paid out of the general county fund subject, of course, to the provision that an appropriation covering a contract for the services of an architect and the expenditure of money for such services has been made by the board of county commissioners in the manner required by law.

You inquire what resolution should be passed by the board of county commissioners with respect to the employment of an architect for the preliminary services mentioned in your communication, and above noted. With respect to this, I can only suggest that such resolution should contain some recital of the conditions calling for the erection and construction of some improvement or improvements for the purpose of providing additional court house facilities. Such resolution should further contain a finding or determination by the board of county commissioners of the necessity of erecting and constructing such improvement or improvements by the erection of a new building or by the extension, enlargement, alteration and repair of the present building as may be later determined on by the board; the resolution should likewise recite the necessity of the employment of an architect for the purpose of making such plans, sketches, drawings and estimates as will be necessary in aiding the board of county commissioners in determining the kind of improvement to be constructed, and the amount of the bond issue to be submitted therefor; and the same should provide for the employment of some architect to be named therein to render such services.

No question is made by you with respect to the employment of an architect for services to be rendered in the construction of the building improvement determined upon, in the event of the approval of the bond issue therefor by the electors of the county; and I do not deem it necessary to discuss this question further than to say that this is a matter depending, in the first instance, on whether the building improvement to be made is one to be erected under the supervision of the county building commission under the provisions of Sections 2333, et seq., General Code, or, on the other hand, the building improvement is one that may be constructed by the board of county commissioners under the authority of Section 2433, General Code, as amended, (112 O. L. 381).

I am likewise of the view that there is nothing in your communication calling for any expression of opinion at this time with respect to the application of Sections 4343 and 4344, General Code, originally enacted as Section 216 of the Municipal Code Act of 1902, and relating to the appointment and duties of a board of supervision in the erection of public, municipal or county buildings in cities.

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

1395.

ELECTIONS—ELECTOR MAY VOTE FOR REGULARLY NOMINATED CANDIDATE WHOSE NAME IS OMITTED FROM BALLOT BY WRITING IT IN—FACE OF RETURNS WILL GOVERN UNLESS ELECTION IS CONTESTED.

*SYLLABUS:*

1. *If by inadvertence, or otherwise, the name of a candidate regularly nominated is omitted from the ballot, an elector may nevertheless vote for said candidate by*

writing in his name in the space provided therefor, and the same is required to be counted.

2. It is presumed that the elector intended to vote for the person shown to have received the vote on the face of the returns and in the absence of a contest of election the face of the returns will govern.

COLUMBUS, OHIO, December 17, 1927.

HON. W. P. TUCKER, *Prosecuting Attorney, West Union, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion, as follows:

“We have a problem that is too deep for our solution, and I wish to submit it to you for your consideration.

These are the facts as nearly as I am able to ascertain: Election, November 8th, 1927; place, Jefferson Township, Adams County, Ohio; In re: Township Trustees.

The Republicans nominated Frank Evans, Mr. Price and Mr. Hayslip. The Democrats did not have any candidates, owing to the fact that there were not names enough on the nominating papers.

On the Democratic nomination papers thrown out, one name there was Fred Evans. On the printed ballots these names should have appeared: Frank Evans, Mr. Price and Mr. Hayslip for trustees and no other names. The printer or election officers made a mistake and printed the name of Fred Evans (the Democrat), and made the names on the ballots read, Fred Evans, Mr. Price and Mr. Hayslip.

There are two precincts in the township, viz.: Wamsley and Churn Creek. About 9:30 on election morning, the error was noted, and the county board of elections gave the following instructions: ‘Mark out the name ‘Fred’ and write in its place the name ‘Frank.’ After that time this was done in Churn Creek precinct, but the word did not get to the Wamsley precinct until about 11:30, and the presiding judge tells me that it only came indirectly, and that in the Wamsley precinct no change was made from what it was originally.

A Mr. Newman’s name was written in and properly voted, making five men voted for. Under this condition the result of the election was as follows:

	Fred Evans	Frank Evans	Mr. Newman	Mr. Price	Mr. Hayslip.
Wamsley Precinct	35	2	47	39	77
Churn Creek Precinct	28	57	15	83	83
	—	—	—	—	—
	63	59	62	122	160

Query: Who constitute the township board of trustees?”

Pertinent to your inquiry are the provisions of Section 5071, General Code, as follows:

“If there was no nomination for a particular office by a political party, or if by inadvertence, or otherwise, the name of a candidate regularly nominated by such party is omitted from the ballot, and the elector desires to

vote for some one to fill such office, he may do so by writing the name of the person for whom he desires to vote in the space underneath the heading or designation of such office, and make a cross mark in the circle at the head of the ticket, in which case the ballot shall be counted for the entire ticket, as though the name substituted had been originally printed thereon."

and also paragraph 6 of Section 5070, General Code, which is as follows:

"If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in black lead pencil or in black ink in the proper place, and making a cross mark in the blank space at the left of the name so written." o

The fact that the surnames of the candidates "Evans" are the same, and only the given names "Fred" and "Frank" are different, may have misled some electors. But the fact remains that the electors had the right to write in the name of the person for whom they desired to vote and were entitled to have it counted. It is also presumed that the electors intended to vote for the person shown to have received the vote. In the absence of a contest therefore, the election would be governed by the face of the returns.

Specifically answering your inquiry, it is therefore my opinion, that as shown by the detailed votes submitted in your letter, Mr. Hayslip, Mr. Price and Mr. Fred Evans should be declared elected on the board of township trustees.

In this connection, it may be well to invite your attention to the case of *Board of Elections vs. Henry*, in the Court of Appeals, Franklin County, Ohio, 25 Ohio Appellate ———, wherein it is held in the eighth branch of the syllabus, as follows:

"Ballots on which voters wrote H.'s name in pencil, but did not add cross mark, held properly counted for H."

This case was presented to the Supreme Court upon motion to certify, which was overruled November 2, 1927, 158 N. E. 94.

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

1396.

OFFICES INCOMPATIBLE—MEMBER OF VILLAGE COUNCIL WITH (1) ASSISTANT IN THE COUNTY SURVEYOR'S OFFICE (2) JANITOR OF PUBLIC SCHOOL (3) SCHOOL TEACHER.

**SYLLABUS:**

1. Under the provisions of Section 4218, General Code, a person holding the position of assistant in the county surveyor's office is ineligible to membership in a village council.
2. Under the provisions of Section 4218, General Code, a person holding the position of janitor of a public school is ineligible to membership in a village council.