

410

1. MUNICIPALITY—CREATED SINCE LAST FEDERAL CENSUS—NO PETITION FILED UNDER SECTION 4785-67 G. C. TO ASK FOR PRIMARY ELECTION—MUNICIPALITY REQUIRED TO HOLD PRIMARY ELECTION UNLESS OTHERWISE PROVIDED BY LAW.
2. NUMBER OF PERSONS FILING DECLARATIONS OF CANDIDACY FOR SAME OFFICE AT PRIMARY ELECTION—DOES NOT EXCEED NUMBER OF CANDIDATES WHICH PARTY SHALL BE ENTITLED TO NOMINATE—BOARD OF ELECTIONS OF COUNTY REQUIRED TO ISSUE CERTIFICATES OF NOMINATION AND PLACE NAMES OF CANDIDATES ON OFFICIAL BALLOTS AT GENERAL ELECTION—SECTION 4785-67a G. C.

SYLLABUS:

1. Where a municipality has been created since the last Federal census and no petition has been filed under the terms of Section 4785-67 General Code asking for a primary election, unless otherwise provided by law, such municipality is required to hold a primary election.

2. When the number of persons filing declarations of candidacy for the same office at a primary election does not exceed the number of candidates which such political party shall be entitled to nominate for such office, the board of elections of such county is required by virtue of the provisions of Section 4785-67a General Code to issue certificates of nomination and to place the names of such candidates for such office on the official ballots at the general election.

Columbus, Ohio, April 21, 1949

Hon. Thomas H. Blakely, Prosecuting Attorney,
Lake County, Painesville, Ohio

Dear Sir :

This will acknowledge receipt of your request for my opinion, which reads as follows :

“We respectfully request an opinion on the following questions relating to General Code Sections 4785-67 and 4785-67a.

“General Code 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; provided, however, that primary elections shall not be held for the nomination of candidates for election of officers of any township or any municipality having a population of less than 2,000 persons, as ascertained by the next preceding federal census, unless a majority of the electors of any such township or municipality, as determined by the total number of votes cast in such township or municipality for the office of governor at the next preceding general election, shall file with the board of elections of the county within which such township or municipality is located, or within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located, if the municipality is situated in more than one county, not later than one hundred and five days before the day of a primary election, a petition signed by such electors asking that candidates for election as officers of such township or municipality be nominated as candidates of political parties, in which event primary elections shall be held in such township or municipality for the purpose of nominating persons as candidates of political parties for election as officers of such township or municipality to be voted for at the next succeeding general election.”

General Code Section 4785-67a reads as follows :

“If in any odd numbered year no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to any of the offices to be voted for at the general election to be held in such year, or if the number of persons filing such declarations of candidacy for nominations as candidates of one political party for election to such offices should not exceed, as to any such office, the number of candidates which

such political party shall be entitled to nominate as its candidates for election to each such office, then no primary election shall be held for the purpose of nominating candidates of such party for election to offices to be voted for at such general election, and the election officials whose duty it would have been to provide for and conduct the holding of such primary election and declare the results thereof and issue certificates of nomination to the persons entitled thereto if such primary election had been held, shall declare each of such persons to be nominated and shall issue appropriate certificates of nomination to each of them, and shall certify their names to the proper election officials, in order that their names may be printed on the official ballots provided for use in the next succeeding general election in the same manner as though such primary election had been held and such persons had been duly nominated thereat."

"A part of Willoughby Township, Lake County, Ohio, by vote held in 1948, became the Village of Eastlake. Two (2) Declarations of Candidacy were filed with the Lake County Board of Elections for nomination as candidates at a Primary Election, one as a Republican Candidate and one as a Democratic Candidate.

"(1) In view of the provisions of Section 4785-67 that primary elections shall not be held for the nomination of candidates for election of officers of any township or any municipality having a population of less than 2,000 persons as ascertained by the preceding federal census, is a municipality created in 1948 entitled to hold a primary election when there has been no federal census since its creation and no petition has been filed under the terms of Section 4785-67 asking for a primary election?

"(2) If the Village of Eastlake is not entitled to hold a Primary Election under 4785-67, is the Board of Elections of Lake County, Ohio, by virtue of Section 4785-67a required to issue certificates of nomination and place the names on the official ballots in the general election, providing that the number of persons filing such declarations of candidacy for such election does not exceed the number of candidates which such political party shall be entitled to nominate?"

I shall answer your questions in the order in which they were asked.

Section 4785-67, General Code, reads in part, 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; provided, however, that primary elections shall not be held for the nomination of candidates for election of officers of any town-

ship or any municipality having a population of less than 2,000 persons, as ascertained by the next preceding federal census, * * *". (Emphasis added.)

The clause above emphasized should be considered a statement of the general rule. The part which follows the word "provided" is deemed an exception to this general rule. The facts stated in your recent request do not indicate that the population of the Village of Eastlake is less than 2,000. There is, therefore, no basis for my holding that the exception should govern.

Section 4785-67a, General Code, reads :

"If in any odd numbered year no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to any of the offices to be voted for at the general election to be held in such year, or *if the number of persons filing such declarations of candidacy for nominations as candidates of one political party for election to such offices should not exceed, as to any such office, the number of candidates which such political party shall be entitled to nominate as its candidates for election to each such office, then no primary election shall be held* for the purpose of nominating candidates of such party for election to offices to be voted for at such general election, and *the election officials whose duty it would have been to provide for and conduct the holding of such primary election and declare the results thereof and issue certificates of nomination to the persons entitled thereto if such primary election had been held, shall declare each of such persons to be nominated and shall issue appropriate certificates of nomination to each of them, and shall certify their names to the proper election officials, in order that their names may be printed on the official ballots provided for use in the next succeeding general election in the same manner as though such primary election had been held and such persons had been duly nominated thereat.*" (Emphasis added.)

The facts set forth in your request fall directly within the limits of the emphasized portion above quoted. You are also referred to informal opinion No. 4, dated February 16, 1949. I am therefore of the opinion :

1. That a municipality created in 1948, is required to hold a primary election when there has been no Federal census since its creation and no petition has been filed under the terms of Section 4785-67, General Code, asking for a primary election.

2. The Board of Elections of Lake County, Ohio, is required by virtue of the provisions of Section 4785-67a, General Code, to issue

certificates of nomination and to place the names on the official ballots at the general election, when the number of persons filing declarations of candidacy for such election does not exceed the number of candidates which such political party shall be entitled to nominate.

Respectfully yours,

HERBERT S. DUFFY,
Attorney General.