

1992.

ELECTION—MEMBER, OFFICER OR EMPLOYE OF BOARD OF ELECTIONS MAY BE CANDIDATE FOR OFFICE WHEN.

SYLLABUS:

Where a person who serves as a member, clerk, deputy clerk, assistant clerk, or employe of a board of elections is a candidate for office, and is elected to such office, that fact alone does not make such person ineligible to the office to which he was elected.

COLUMBUS, OHIO, December 11, 1933.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

“Where ‘A’ is regularly appointed by the County Board of Elections as Clerk of the Election Board in a certain Precinct, and about two weeks prior to the date of election ‘A’ announces that he will serve on the Rural School District Board if the voters of such District care to elect him to such office, no protest as to his serving on the election board having been made.

Now ‘A’ was elected to the school board and his right to serve on such school board is questioned, due to the fact that he served on the election board as a clerk in the Precinct in which the vote for school board was had. However, ‘A’s’ name was not printed on the ballot, but it is claimed that he had full knowledge of his candidacy for a member of the school board.

I would like your opinion as to whether or not ‘A’ would be disqualified from serving as a member of the board of education for such rural school district.”

Section 5092, General Code, formerly read as follows:

“No person, being a candidate for an office to be filled at an election, other than for committeeman or delegate or alternate to any convention, shall serve as deputy state supervisor or clerk thereof, or as a judge or clerk of elections, in any precinct of such elections. A person serving as deputy state supervisor or clerk thereof, judge or clerk of elections contrary to this section shall be ineligible to any office to which he may be elected at such election.”

Under this section, it was held in Opinions of the Attorney General for 1929, Vol. III, page 1922, that:

“Where votes are cast for a person for office who has not been regularly nominated therefor, and who has not sought or aspired to such office, such votes should be counted for such person, even though he is a judge or clerk at the election at which said votes are cast.”

It was the holding of this opinion that where such person was not an avowed or official candidate for an office, the fact that the voters wrote his name on the

ballot and elected him would not be a violation of that section. Said section 5092 has since been repealed and section 4785-16, General Code, reads as follows:

“No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employe of the board of elections who is a candidate for an office to be filled at an election, except the office of delegate or alternate to a convention or a member of a party committee.”

It is seen that the provision making ineligible to an office a person who was a candidate for such office and also served as a member, clerk, or employe of the board of elections at such election, has been eliminated, and the only prohibition now is that a candidate for an office shall not serve as a member, clerk, deputy clerk, assistant clerk, or employe of the board of elections. In eliminating the above provision, it was apparently the intention of the legislature that such a person should not be ineligible to the office to which he is elected. As stated in the case of *State, ex rel., vs. Wagar*, 19 C. C. 149:

“One who is an elector is entitled to hold office to which he is elected, unless the statute forbids. There must be a provision of the statute forbidding his holding the office.”

I am of the opinion therefore that where a person who serves as a member, clerk, deputy clerk, assistant clerk, or employe of a board of elections is a candidate for office, and is elected to such office, that fact alone does not make such person ineligible to the office to which he was elected.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1993.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, December 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1994.

APPROVAL, BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$40,000.00.

COLUMBUS, OHIO, December 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.