

statute requiring it, is so violative of the intent and purpose of the primary law as to invalidate the election.

The fact that the auditor of Brown county, by his arrangement of the ballot, intended an advantage to the contestee, does not invalidate the election, if the arrangement was one which legally he might make."

There is no doubt but that when the statute does not require rotation, and the names are not rotated, the election is valid. It is interesting to note that the court held the election valid, notwithstanding the fact that the boards of elections in four of the counties had rotated the names without statutory authority therefor.

A rotation of names, however, by precincts is not authorized by the general election laws, and such a rotation is obviously not a compliance with Section 4785-80, supra. As herein indicated, Section 4785-161 (1) in effect provides that these provisions as to rotation shall not apply in the case of the use of voting machines.

It is accordingly my opinion that there is no statutory requirement as to the rotation of names of candidates when voting machines are used, and elections at which such machines are used and such names not rotated, is valid.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3722.

APPROVAL, BONDS OF MONROE COUNTY, OHIO—\$8,915.02.

COLUMBUS, OHIO, November 2, 1931.

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

3723.

APPROVAL, BONDS OF MONROE COUNTY, OHIO—\$15,213.96.

COLUMBUS, OHIO, November 2, 1931.

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

3724.

CANDIDATE—DEFEATED AT PARTY PRIMARY—MAY BE ELECTED
AT A GENERAL ELECTION WHERE NAME WRITTEN IN ON
BALLOT.

SYLLABUS:

A person may be legally elected to the office of mayor of a city if a sufficient number of electors of the municipality vote for him by writing in his name

in the blank space provided therefor on the ballot carrying the names of the candidates for this office, and by making a cross mark before the name so written, in the manner provided for by sub-section 6, of Section 4785-131, General Code, although the person thus voted for was a candidate for nomination for such office at the party primary election, and was defeated at such election.

COLUMBUS, OHIO, November 2, 1931.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This is to acknowledge the receipt from you of a communication in which you present for my opinion the question, whether a person who was defeated as a candidate for the nomination for mayor of a municipality at the party primary election held on August 11, 1931, may be legally elected to said office at the November election if a sufficient number of electors write in his name in the blank spaces on the ballot provided therefor.

Touching this question, you refer to the provisions of Section 4785-69, General Code, in your communication to me. Section 4785-69, General Code, as enacted by the 88th General Assembly, 113 O. L., 307, 338, among other things, provides:

“No person who seeks party nomination for an office or position at a primary and fails to receive such nomination, shall be permitted to become a candidate at the following election for the same office by petition.”

It is obvious that the provisions of this section above quoted, expend their force in preventing a person who has been defeated as a candidate for nomination for a particular office at a party primary election from getting his name on the ballot as a candidate for such office by petition. The provisions of this section do not apply to the situation presented by the question stated in your communication.

Section 4785-131, General Code, enacted as a part of the “Election Laws of Ohio” by the 88th General Assembly, 113 O. L., 307, 367, provides certain rules and regulations to be observed by the elector in marking ballots at elections. Sub-section 6 thereof provides 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 in the proper place, and making a cross mark in the blank space at the left of the name so written.”

Although the new election laws enacted by the 88th General Assembly, are not as specific as were the statutory provisions superseded by the later act with respect to the duty of the election officials in preparing ballots to provide blank spaces thereon within which can be written the names of persons other than those whose names appear on the ballot as candidates, the general intent and spirit of the law requires that blank spaces be provided for on the ballot for this purpose; and so far as I am advised, all ballots that have been prepared and voted since the new election law went into effect have contained blank spaces in which the names of persons other than candidates could be written.

No limitation is expressed in Section 4785-131, or elsewhere in the General Code, with respect to the right of an elector to mark his ballot in the manner provided by sub-section 6, of Section 4785-131, General Code, above quoted; and

by way of specific answer to your question, I am of the opinion that the person referred to in your communication, may be legally elected to the particular office in question if a sufficient number of the electors of the municipality vote for him by writing in his name on the ballot carrying the names of the candidates for this office and by making a cross-mark before the name so written, as provided for by sub-section 6, of Section 4785-131, General Code, although such person was a candidate for the nomination for such office at said party primary election and was defeated. The conclusion here reached is supported in some measure by previous opinions of this office holding that although a person serving as a clerk or judge at an election may not be a candidate for an office to be filled at such election, such person may nevertheless be elected to an office at such election if a sufficient number of persons write in his name on the ballot for this purpose. See Opinions of the Attorney General for 1929, Volume 3, page 1922; Opinions of the Attorney General for 1917, Volume 3, page 2108. In this connection it is likewise noted that in an opinion of this office rendered under date of December, 1928, it was held that a person whose declaration of candidacy for nomination for a particular office at a primary election was rejected by the election board, might nevertheless be elected by having his name written in by the voters upon the ballot at the general election, if provision is made therefor by printing the designation of the office and providing spaces on the ballot in which the name could be written in and marked in the manner then provided by Section 5070, General Code, sub-section 6 of which was identical with sub-section 6 of Section 4785-131, General Code, above quoted. Opinions of the Attorney General for 1928, Volume 4, page 2831.

In conclusion, it may be noted that although sub-section 6, of Section 4785-131, General Code, provides that the elector shall make a cross-mark at the left of the name written in by him upon the ballot, it has been held that such ballot should properly be counted in favor of the person whose name has been written in for election to a particular office although the voter casting such ballot fails to add the cross-mark to the name written in upon the ballot so cast. *Board of Elections vs. Henry*, 25 O. A., 278.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3725.

COUNTY COMMISSIONERS—UNAUTHORIZED TO HAVE PUBLIC RECORDS PHOTOGRAPHED FOR SAFEKEEPING.

SYLLABUS:

A board of county commissioners has no authority to purchase a process by which a miniature photographic reproduction of county records may be made for the purpose of preserving the same.

COLUMBUS, OHIO, November 3, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This acknowledges receipt of your recent communication which reads:

“We are enclosing herewith a letter addressed to the Auditor of State involving authority of the County Commissioners to pay for having