

2067.

BOARD OF DEPUTY STATE SUPERVISORS AND INSPECTORS OF ELECTIONS—DEPUTY CLERK MAY BECOME CANDIDATE FOR OFFICE.

SYLLABUS:

Under the provisions of Section 5092, General Code, a deputy clerk of the Board of Deputy State Supervisors and Inspectors of Elections is not prohibited from becoming a candidate while holding such position.

COLUMBUS, OHIO, May 7, 1928.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

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

“I would appreciate an opinion from you, on the following, as soon as possible:

May a deputy clerk to the clerk of the Deputy State Supervisors and Inspectors of Elections hold such position while a candidate for a county elective office?

I might add that in such position as deputy clerk, the party in question has nothing to do with the counting of ballots, but merely occupies a clerical position.”

The statutory inhibition against an election officer becoming a candidate is found in Section 5092, General Code, 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, at such election. 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.”

It will be observed that the inhibition is against a “deputy state supervisor or clerk thereof.” This question was heretofore considered by this department. In Opinion of the Attorney General for 1916, Vol. II, page 1147, the first paragraph of the syllabus of an opinion is as follows:

“The term ‘clerk,’ referring to clerks of deputy state supervisors of elections in Section 5092, G. C., 103 O. L., 496, does not include deputy clerks of deputy state supervisors of elections.”

While there may be little, if any, reason for making a distinction between the clerk and the deputy clerk of Boards of Deputy State Supervisors of Elections in the matter of their being candidates for office at an election as to which they bear any official relationship, yet the Legislature has seen fit to limit the inhibition to the “clerk” and has not included the deputy clerk.

It is an elementary principle of statutory construction that “if the words are free from ambiguity and doubt and express plainly, clearly and distinctly the sense

of the framers of the instrument, there is no occasion to resort to other means of interpretation." Lewis' Sutherland Statutory Construction, 2nd Edition, Section 366.

It was said in the opinion above referred to:

"The Legislature must be presumed to have been mindful of the statutory authority for the office or position of deputy clerks of Boards of Deputy State Supervisors of Elections and the relationship of such persons to the conduct of elections. No reason for omitting specific reference to deputy clerks of Boards of Deputy State Supervisors of Elections suggests itself if it were intended that they should be rendered ineligible to hold any office for which they might be a candidate at an election in which such deputy clerks participate in an official capacity.

In view of the plain and unambiguous language of the statute, I am of the opinion that deputy clerks of Boards of Deputy State Supervisors of Elections are not included within the provisions of Section 5092, G. C., supra."

Specifically answering your question, therefore, it is my opinion that under the provisions of Section 5092, General Code, a deputy clerk of the Board of Deputy State Supervisors and Inspectors of Elections is not prohibited from becoming a candidate while holding such position.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2068.

BANKS—INTEREST NOT PAYABLE ON DEPOSIT OF MUNICIPAL COURT FUNDS IN THE ABSENCE OF A CONTRACT PROVIDING FOR SUCH INTEREST—SECTION 1579-537, GENERAL CODE, CONSTRUED.

SYLLABUS:

Banks designated for the purpose by the judges of the Municipal Court of Akron, which receive deposits of funds made by the clerk of said Municipal Court in compliance with the provisions of Section 1579-537, General Code, are not required to pay interest on such deposits in the absence of contract providing for the payment of such interest.

COLUMBUS, OHIO, May 8, 1928.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication, which reads as follows:

"Section 1579-537, G. C., (Section 41 of the Akron Municipal Court Act) reads:

'All money deposited as security for costs and all other moneys other than costs paid into the court shall be noted on the record of the cause in which they are paid and shall be deposited by the clerk daily in such bank or banks in the city of Akron as shall be designated by the judges and shall