

as the board may designate, should be placed in the fund provided for by paragraph (f) of Section 5625-9, General Code, which section so far as here pertinent provides:

“Each subdivision shall establish the following funds:

\* \* \* \* \*

(f) A special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose.”

In the consideration of your question as to the use of such proceeds in the construction of a jail on top of and as a part of the new court house building, it should be observed that no part of such proceeds can be used in addition to the proceeds of the bond issue for the new court house, for the purpose of constructing any part of the improvement contemplated by such bond issue. *State ex rel. vs. Andrews*, 105 O. S. 489. Subject to such limitation, however, I see no reason why the proceeds of the sale of the present jail and sheriff's residence building, or such portion of such proceeds as may be placed in fund for the purpose, may not be used in the construction of a new jail whether the same be constructed on top and as a part of the new court house or otherwise; and the expenditure of such funds may, of course, be made without submitting the question of making such expenditure to the vote of the electors of the county.

No question is made by you as to whether the construction of a new jail and the expenditure of the proceeds of the sale of the present jail and sheriff's residence building should be done under the supervision of the county building commission, or whether the same should be done under the supervision of the board of county commissioners; and I do not deem it necessary to express my opinion on this question.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1390.

#### ELECTIONS—VALIDITY OF ELECTION OF OFFICER WHO OFFICIATES AS JUDGE OR CLERK AT POLLS, DISCUSSED.

##### SYLLABUS:

1. *Under the provisions of Section 5092, General Code of Ohio, a judge or clerk of elections whose name is printed on the ballot at said election as a candidate for member of council, is ineligible to the office if elected.*

2. *A judge or clerk of elections whose name is not printed on the ballot as a candidate for member of council, but whose name is written in, and who is actively promoting his candidacy for such office is also ineligible to the office if elected.*

3. *Where votes are cast, by writing in for member of council the name of a person who is serving as judge or clerk at the election but who has not been regularly nominated for the office of member of council, and who has not sought or aspired to such office or actively promoted his candidacy, said person is eligible to said office, if elected.*

COLUMBUS, OHIO, December 17, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

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

"We are enclosing herewith letter from the village clerk of Summerfield, Ohio. In view of the provisions of Section 5092, General Code of Ohio, kindly advise us whether or not a clerk after canvass of the village issues certificates of election to those candidates who served as judges or clerks."

Accompanying your letter is one from the village clerk of Summerfield, Ohio, which reads as follows:

"As it is my duty to notify the ones that are elected in the village at the last election, please advise me whom I shall notify in the following case for councilman, the vote being as follows:

Everet Bircher-----	80
Wm. Brister—served as judge of election-----	92
R. E. Burbucher-----	80
A. W. Friday—served as clerk of election-----	106
Peregery Gibson-----	117
Sam King-----	106
G. W. Mason-----	110
J. G. McGinnis-----	92
G. B. Taylor-----	90
Reed Williams-----	91

By Sec. 5092, election laws, is it my duty to notify Brister and Friday of their election?"

Section 5092, General Code, provides as follows:

"No person, being a candidate for an office to be filled at an election, other than for committeeman (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."

The letter of the clerk does not disclose whether or not William Brister, who served as judge of election, was a candidate for member of council or whether A. W. Friday, who served as clerk, was a candidate for member of council. If their names were printed on the ballot as candidates they would be clearly ineligible to the office under the provisions of the above mentioned section.

If they were candidates actively engaged in promoting their candidacy whether their names were printed on the ballot or not, they would be ineligible.

If, on the other hand, they were in no sense candidates for the office and the voters voluntarily wrote in their names, they would not come within the inhibition of the above mentioned section.

While a judge or clerk of elections cannot be a candidate, where such a person has received a sufficient number of votes by electors writing in his name on the ballot for a particular office, and such votes are in conformity to law in all other respects, such person should be declared elected to that office.

In an opinion found in Opinions of the Attorney General for 1917, page 2111, it was held:

"Where votes are cast for a person for office, who was not 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 in the election at which said votes are cast, and such person so receiving the highest number of votes would be eligible to the office to which he was elected, notwithstanding the provisions of Section 5092, G. C."

It is, therefore, my opinion that if the names mentioned were printed on the ballot as candidates they would be ineligible to the office. If they were candidates actively promoting their candidacy they would also be ineligible to the office even though their names should not have been printed on the ballot. If, on the other hand, they were not regularly nominated and did not seek or aspire to the office or actively promote their candidacy, they would be eligible to the office notwithstanding they served on the election board, the one as a judge, and the other as a clerk of elections.

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

1391.

**ELECTIONS—CANDIDATE RECEIVING REQUISITE NUMBER OF VOTES ENTITLED TO OFFICE, NOTWITHSTANDING FACT VOTERS HAD WRITTEN NAME ON BALLOTS FOR ANOTHER OFFICE.**

**SYLLABUS:**

*Where a candidate whose name is regularly on the ticket for member of village council receives the requisite number of votes to be elected thereto, he is entitled to be declared elected notwithstanding the fact that his name was written in for another office on a considerable number of the ballots.*

COLUMBUS, OHIO, December 17, 1927.

HON. WALTER J. MOUGEY, *Prosecuting Attorney, Wooster, Ohio.*

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

"We have a question in this county that has been causing some difficulty and I have been requested by the election authorities to ask for your opinion in this matter.

It is this, at the election in the village of Smithville, a certain man's name was on the ticket for member of council and he received sixty-six votes for such office; he also received thirty-three votes for clerk of the village but in this instance his name was written in. On twenty-six of the ballots he secured vote for member of council and his name was also written in for village clerk and the election board proceeded to throw out the vote on both offices on these twenty-six ballots. If he receives the sixty-six votes as a member of council independent of his vote as written in for clerk of the village, he would be elected as a member of council, if the twenty-six ballots as thrown out by the election board as invalid are not counted, he is not elected to either office.