

This case reversed what had been believed to be the rule for a long period of time, and held as stated in the syllabus, that the express authority conferred on municipalities to make assessments against property granted the power to assess school property as well as private property in the absence of any express statutory exemption of school property. The situation accordingly is analogous to that presented by your inquiry. As I have before stated, express authority is conferred on a municipality to adopt ordinances regulating plumbing and the right to exact an inspection fee is incident thereto. There is no provision of law exempting school property from the requirements of the municipal ordinance and I feel that, by a process of reasoning similar to that adopted by the court in the Jackson case, the conclusion must be reached that the municipality has the right to exact, and the board of education must pay, the fee prescribed by ordinance in the case of alterations in plumbing in school buildings.

The court in the Jackson case had little difficulty with the question of the authority of the board of education to pay the assessment. In substance, the conclusion was reached that the levy of the assessment created a debt against the owner of the property, which was the board of education. In the present instance, the board of education undoubtedly has authority properly to maintain its school buildings and if as an incident to proper maintenance it becomes necessary to pay a fee to the municipality in compliance with the ordinance relative to the regulation of plumbing, there should be no hesitancy in saying that the authority to expend the funds of the board for that purpose exists.

I may further suggest that there is an additional distinction between the question you present and the one under consideration in the Niehaus case. There, no authority existed, by state law, for the exaction of any fee whatsoever. With respect to the inspection of plumbing, however, it should be noted that Section 1261-6, General Code, authorizes the state inspector to collect fees for permits issued for changes in plumbing. You do not advise me as to the amount of the fees prescribed by the municipal ordinance, but if they were in the same sums as those prescribed by state law, an additional reason would exist for my conclusion. I prefer, however, to base the answer to your inquiry upon the reasoning hereinbefore set forth.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that a city, which has and is enforcing an ordinance providing that no plumbing alterations shall be made until a permit is obtained from a city plumbing inspector and a fee paid into the city treasury, may require the local board of education to obtain a permit and pay the fee prescribed in the event that schoolhouse plumbing is to be altered.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3009.

ELECTION—CANDIDATE REFUSED PRIMARY DECLARATION BY
ELECTION BOARD—ELECTED WHEN VOTERS AT A GENERAL
ELECTION PLACE NAME ON BALLOT IN BLANK SPACE PRO-
VIDED FOR A DESIGNATED OFFICE.

SYLLABUS:

A person whose declaration of candidacy for nomination at a primary election, has been rejected by the election board, may, nevertheless, be elected by having his name written in by the voters upon the ballot at the general election, as provided by Section 5025, General Code, if provision is made therefor by printing the designation of the office and providing a space as provided by Section 5025, General Code.

COLUMBUS, OHIO, December 10, 1928.

HON. E. P. MCGINNIS, *Prosecuting Attorney, Caldwell, Ohio.*

DEAR SIR:—I am in receipt of your recent communication, which reads as follows:

“More than a year ago our county auditor, Mr. T. resigned and Mr. M. was appointed to fill the office. Under the law we thought this was until the next general election at which time a successor would be elected to fill the unexpired term. The case was submitted to you and you rendered quite an exhaustive opinion which held that way.

Mr. M. filed a declaration of candidacy for the August primaries but the election board held that no vacancy existed and refused to place M.'s name on the ballot. At the time of the election quite a number of people wrote the name of Mr. M. on the ballots for auditor and I have been asked whether or not this constituted an election of Mr. M.

If you could help me any in arriving at a conclusion it would be appreciated.”

The opinion of this office to which you refer was issued under date of February 26, 1927, and appears in *Opinions, Attorney General, 1927, Vol. I, page 155.* The syllabus of this opinion is as follows:

“Under Section 2561 of the General Code, if a county auditor-elect fails to qualify on or before the second Monday in March next after his election, there will be a vacancy in such office. The person appointed to fill such vacancy shall hold the office until his successor is elected and qualified. His successor shall be elected for the unexpired term at the first November election at which state and county officers are elected.
* * * ”

Pursuant to the conclusions reached in this opinion, it became the duty of the Board of Elections in your county to receive declarations of candidacy, prepared and filed in conformity with the law, and to provide for the election of candidates at the primary election.

Section 4984-1, General Code, provides that such a nomination may be made by the writing in of the name of a candidate by eight per cent of all the ballots containing such vacancy, which have been voted at such primary election.

Section 5071, General Code, provides as follows:

“If there was no nomination for a particular office by a political party, or if by inadvertence, or otherwise, the name of a candidate regularly nominated by such party is omitted from the ballot, and the elector desires to vote for some one to fill such office, he may do so by writing the name of the person for whom he desires to vote in the space underneath the heading or designation of such office, and make a cross mark in the circle at the head of the ticket, in which case the ballot shall be counted for the entire ticket, as though the name substituted had been originally printed thereon.”

Section 5070, General Code, prescribes the “rules to be observed in marking ballot”, and contains the following provision:

"6. 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 or in black ink in the proper place, and making a cross mark in the blank space at the left of the name so written."

Section 5025, General Code, also contains the following provision:

"* * * If upon a ticket there is no candidate or candidates for a designated office, a blank space, equal to the space that would be occupied by such name or names if they were printed thereon with the blank spaces herein provided for, shall be left."

You will note that the provisions of Section 5071, General Code, contain no requirement that the votes cast for any candidate shall constitute any specified percentage of the votes cast in order to effect his election, as is required in the case of primary elections, (Section 4984-1, General Code, supra.)

Under date of September 5, 1928, in Opinion No. 2542, rendered to the Secretary of State, Columbus, Ohio, I held as follows:

"2. Section 4984-1, General Code, has no application to the election of members of the party controlling committee and is only applicable to nominations made at the primary elections."

You will also note that Section 5071, General Code, provides for the writing in of names on ballots at general elections in cases where "there was no nomination for a particular office by a political party, or if by inadvertence, or otherwise, the name of a candidate regularly nominated by such party is omitted from the ballot."

Since your letter contains no information in regard to the form of the ballots concerning which you inquire, your attention is directed to the following language appearing at the beginning of Section 5025, General Code, supra, in addition to that above quoted:

"All ballots shall be printed on the best quality, number two, book paper, in black ink, and, with the exception of the heading, which shall be in display, in brier type, the name or designation of the office in lower case, and the name of the candidate therefor in capital letters, with a space of at least one-fifth of an inch following each name."

In an opinion to the Secretary of State, under date of December 2, 1909, (Opinions of the Attorney General for 1909, p. 144), one of my predecessors held that "no elector has the right to draw for himself blank spaces in the ballot in the manner prescribed in Section 2966-32 R. S. (G. C. 5025) and to write therein the designation of any office."

I concur in this opinion and consequently, in the absence of such printed designation on the ballots, which form the subject of your inquiry, no election for the office, so omitted, was had.

Assuming that the ballots cast for the candidate, concerning whose election you inquire, were in the form prescribed by Section 5025, supra, and that a majority thereof were cast for such candidate, I am of the opinion that he is entitled to a certificate of election.

Respectfully,
EDWARD C. TURNER,
Attorney General.