

"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.

I have given the election board and the village my opinion, but the election board is desirous of having the opinion of the Attorney General in the matter, and I would be pleased to receive same at your earliest opportunity."

You state that a certain man's name was on the ticket for member of council and that he received sixty-six votes as such candidate.

Your letter also states that in addition to these votes for member of council this same candidate's name was written in for village clerk on twenty-six ballots and that by reason thereof the election board threw out these twenty-six ballots. In my opinion this was an error on the part of the election board.

There is nothing to prevent an elector from writing in the name of the same person for more than one office if said elector so chooses. The fact that an elector exercises this privilege of voting for a person for more than one office should not prevent the candidate from receiving the benefit of his election should he receive a majority of the votes cast.

In this instance your letter states that if the candidate whose name was regularly on the ticket receives the sixty-six votes cast for him as member of the council, he would be elected, while if the twenty-six ballots on which his name was written in for another office are thrown out, as was done in this case, he would not be elected to either office.

I am unable to find any adjudications on this subject. However, if the method practiced in the instant case would invalidate an election, then an elector over whom the candidate would have no manner of control could defeat the will of the majority of the electors by securing enough votes for said candidate for another office to reduce said candidate's vote below the given majority.

It is, therefore, my opinion that 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.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1392.

INSURANCE—AUTOMOBILE PROTECTIVE ASSOCIATION CONTRACTING TO PAY MEMBER FOR LOSS OF CAR NOT RECOVERED IS TRANSACTING AN INSURANCE BUSINESS.

SYLLABUS:

Under the provisions of Section 665, General Code of Ohio, an automobile protective association which contracts among other things that in the event it is unable to recover a stolen automobile belonging to one of its members within sixty days of said loss that it will pay said member such sum as shall be deemed just and right by arbitrators duly selected, said sums of payment being graduated upon the age of the car from one hundred per cent of its value on a car one month old to ten per cent of its value on a car eight years old or more, is transacting an insurance business.

COLUMBUS, OHIO, December 17, 1927.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

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