

Third, the county may furnish "outdoor relief" to persons who are entitled to admission to a county home, but can not be received therein and to needy non-residents.

Fourth, the proceeds of tax levies for poor relief and the proceeds of a bond issue under House Bill No. 102, (Pringle-Roberts Bill) as enacted by the 89th General Assembly may be expended by the county for hospitalization of the poor as authorized under section 3138-1, of the General Code, and such relief is not limited to non-residents.

Fifth, the proceeds of said bond issue may be used to furnish outside relief to indigent persons who are entitled to admission to the county home, but for some reason can not be cared for therein.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3619.

CANDIDATE—BOARD OF EDUCATION—NOMINATING PETITION, NOT SPECIFYING TERM SOUGHT, INVALID AND NAME MAY NOT APPEAR ON BALLOT.

COLUMBUS, OHIO, September 30, 1931.

SYLLABUS:

When there are to be elected persons for membership on a board of education for both a long term and short term, nominating petitions for candidates for said offices should show the length of time for which the persons are so nominated, and when the petitions fail to state the term for which the persons are nominated such petitions are insufficient and the names of such candidates can not lawfully be printed on the ballot.

COLUMBUS, OHIO, September 30, 1931.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"The Board of Elections of Muskingum County has asked me for a ruling as to whether or not they are required to prepare ballots for election of members to the Board of Education of what is known as East Hopewell Rural School District.

The facts are, that about a year and one-half or two years ago the county board of education created a new school district comprising a comparatively large area taking in part of Muskingum and Licking counties, and called it the Hopewell-Licking Rural School District. About two months ago the county board of education of Muskingum county again took action and divided said Hopewell-Licking Rural school district by cutting off over half of the eastern part of said district and named it the East Hopewell Rural School District. The remaining portion of the district retained the old name and the local board remained the

same in the Hopewell-Licking Rural School District. As the law provided the Muskingum board then appointed five persons to act as the East Hopewell Rural School District board of education. Shortly thereafter, an injunction proceeding was brought by the local board of Hopewell-Licking against the county board and the newly created board of East Hopewell. Temporary injunction was allowed and the case was heard in the Court of Common Pleas in which the Court decided that the injunction should be made permanent for the reason that the county board acted arbitrarily and not in good faith and that it was an abuse of discretion. His further reason was that since the local board had begun proceedings to issue bonds and erect a new school building for the entire district that the county board could not interfere, which last reason was based upon a Trumbull county decision. The members of the newly created board of East Hopewell who, as I stated, were made parties defendant, appealed their case to the court of Appeals, but the county board did not appeal. The appeal case is pending at the present time. I presume that it is considered that while the appeal case is pending the temporary restraining order still stands but the permanent injunction is set aside by the taking of an appeal.

Qualified electors in the district known as the newly created East Hopewell Rural School District signed and filed a petition with the board of elections to have five of their residents placed upon the ballots to be elected to said newly created district. The petition, however, did not designate which two were to run for the two-year term and which three were for the four-year term.

Under this set of circumstances, is the condition such that the board of elections should prepare ballots for the election of five members to the board of education in the East Hopewell Rural School District? If so, is the petition too indefinite in which event the ballots would be prepared blank?

An early reply and receipt of your opinion is requested for the reason that the board must prepare ballots within the next twelve or fifteen days."

It appears from your letter that the action of the county board of education of the Muskingum County School District, in attempting to create a school district to be known as East Hopewell Rural School District, the legality of which action has been questioned in the courts, was taken by authority of Section 4736, General Code. This section reads as follows:

"The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it.

Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office until the first election for members of a board of education

held in such district after such appointment, at which said first election two members shall be elected for two years and three members shall be elected for four years, and thereafter their successors shall be elected in the same manner and for the term as is provided by section 4712 of the General Code. The board so appointed by the county board of education shall organize on the second Monday after their appointment."

Without discussing the status of the territory embraced within what the county board of education chose to call East Hopewell Rural School District during the pendency of the appeal which has been taken from the decision of the common pleas court, it is sufficient for the purposes of this opinion to state that the situation is such, in my opinion, as to call for the election of an entire new board of education to succeed the board appointed by the county board of education in the event the action of the county board is upheld by the courts. The election of this new board should take place at the coming November election, it being the first election for members of boards of education after the creation of the new district and the appointing of a board for the district. At this coming election there should be two members elected for two years and three members for four years as provided for by the statute quoted above.

Nominations may be made for the said positions by petition, as provided for by Section 4785-90, General Code, and ballots should be prepared by the county board of elections in accordance with Sections 4785-101 and 4785-102, General Code. Section 4785-101, General Code, which relates to the preparation of ballots to be used in an election for members of a board of education, provides *inter alia*:

"If there are candidates for the same office, but for different terms, the term for which each is nominated shall be printed as a part of the title of the office."

As a matter of fact, the term is a part of the title of the office and a two year term member of a board of education is in reality holding a different office from a member who has been elected for four years. Obviously, if the nominating petition does not state for what length of term the persons named in the petition are nominated, ballots could not be prepared in accordance with the petition, for the reason that the ballot must show the term for which the person is nominated as a part of the title of the office for which he is running. There is no way for the board of elections to determine from the nominating petition, when that petition does not state the term for which the persons are nominated, who, if anyone is nominated for four years or for two years.

The statutes controlling the nomination and election of members of boards of education, to wit: Sections 4785-90, 4785-101 and 4785-102, General Code, are substantially the same as former Sections 4997, 4998, 4999, 5032 and 5033, General Code, which were repealed in 1929, upon the enactment of the so-called election code containing the present existing sections referred to above.

Before the enactment of the new election code and the repeals spoken of, a very similar question to that submitted by you, was presented for my consideration. There was rendered in response thereto, Opinion 1015 under date of October 10, 1929. This opinion may be found in the published Opinions of the Attorney General for 1929, Volume II, page 1547. It was there held:

"When both candidates for the long term and short term, of a rural board of education, are to be elected and nominating petitions of candidates fail to state the term sought, such petitions are insufficient, and the name of such candidates cannot appear on the ballot." See also Opinions of the Attorney General for 1920, page 452.

I am of the opinion that the conclusions reached in the former opinion cited above, are applicable as well under the present law whereby machinery is provided for the nomination and election of members of boards of education.

It has been held by the Supreme Court, in the case of *State ex rel. Smith v. Lloyd*, 93 O. S., page 20, that when nominating petitions are filed with a board of elections, which petitions are illegal or insufficient, it is the duty of the board to reject the petitions and prepare ballots without regard to those petitions.

It is provided by Section 4785-101, General Code, that in the preparation of ballots to be used in an election for members of boards of education, the names of all candidates who have been properly nominated should be printed in rotation on said ballots as in the case of names of candidates on the party primary ballot. It is provided further that at the bottom of each group as many separate spaces as there are candidates to be elected, shall be left blank, in which the voter may write the names of any candidates not on the ballot, but not more than the number to be elected. It follows that if there are no candidates properly nominated, blank spaces should be left, as provided by the statute.

I am therefore of the opinion, in specific answer to your questions that:

First, the board of elections of Muskingum County should prepare ballots for the election of five members of a board of education for the East Hopewell Rural School District, two to be elected for a term of two years, and three for a term of four years.

Second, the nominating petition which you describe in your inquiry is insufficient and does not constitute a proper nomination of persons for members of the board of education to be elected for the East Hopewell Rural School District at the coming election. The petition should be disregarded by the county board of elections and ballots prepared for said election with blank spaces in which the voter may write the names of persons he wishes to vote for for said board of education for both the long and the short term.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3620.

APPROVAL, BONDS OF VILLAGE OF NEWTON FALLS, TRUMBULL COUNTY, OHIO—\$8,500.00.

COLUMBUS, OHIO, September 30, 1931.

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