

ulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records and documents of such township shall be delivered to the council of such city or village. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation."

Section 4174, General Code, provides:

"The title to, and right of possession of public graveyards and burial grounds, located within a village and set apart and dedicated as public graveyards or burial grounds, grounds used as such by the public, but not dedicated, except those owned or under the care of a religious or benevolent society, or an incorporated company or association, are hereby vested in the corporation where such graveyard or burial ground is located."

The latter section is clear and unambiguous. Since the cemetery is now located in a village, title to it under specific statutory authority vests in the village.

The mayor of the village should, if he has not already done so, appoint a board of three trustees, as provided in Section 4175, General Code, to take charge of said cemetery.

Specifically answering your question, therefore, I am of the opinion that where a public cemetery operated by township trustees under the provisions of Section 3451, General Code, becomes located within the boundaries of a village, it becomes the property of said village through the terms of Section 4174, General Code, even though the township trustees failed to give a deed to said property to the village before their terms expired.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1340.

ELECTION LAW—CANDIDATE FILING DECLARATION AND PETITION  
IN COUNTY OR DISTRICT LARGER THAN COUNTY BUT LESS THAN  
STATE—NUMBER OF SIGNATURES REQUIRED TO SAID PETITION.

**SYLLABUS:**

*Under Section 4785-70, General Code, as enacted by the 88th General Assembly, a person desiring to become a party candidate by the method of declaration, for an office to be voted for by the electors of a county or district larger than a county and less than the state, must file a declaration of candidacy as therein provided, accompanied by a petition signed by either one hundred electors of his party, or five per cent of the electors who voted for the party candidate for Governor at the next preceding regular state election.*

COLUMBUS, OHIO, December 28, 1929.

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

DEAR SIR:—Your letter of recent date is as follows:

"Please permit me, as Secretary of State, to ask for an Opinion from you

as to Section 70 of Amended Substitute Bill No. 2, (known as the Election Laws of the State of Ohio,) and becoming effective January 1, 1930.

A part of Section 70, (said section pertaining to the method of declaration to become a party candidate) in lines 7, 8, 9 and 10 reads as follows: "and at least 100 electors of his party, or 5% of the electors who voted for the party candidate for Governor at the next preceding regular state election, in the case of an office in a county or district larger than a county and less than the state."

The question arises as to whether or not a candidate filing under this section is required to have a full 5%, or whether or not the signature of 100 electors of his party will qualify him as a candidate at the primary?

In other words, is the signature of 100 electors the maximum number required to qualify under this provision of the law? Also is the signatures of 100 electors the minimum number required to qualify in case where the 5% mentioned would be less than 100?"

Section 4785-70, General Code, 113 O. L. 338, to which you refer, provides insofar as is pertinent as follows:

"Each person desiring to become a party candidate by the method of declaration shall, not later than 6:30 p. m. of the sixtieth day before the date of the primary at which such nominations are to be made, file a declaration of candidacy, accompanied by a petition, signed by at least one thousand electors of his party, from at least one-third of the counties of the state in the case of an office to be voted for by the electors of the entire state; and at least one hundred electors of his party, or five per cent of the electors who voted for the party candidate for Governor at the next preceding regular state election, in the case of an office in a county or district, larger than a county and less than the state; and at least five electors of his party in all subdivisions less than a county; and shall pay the fee required by law. \* \* \*"

Upon consideration of this section, it is manifest that the Legislature has provided reasonable requirements as to the number of signatures necessary upon nominating petitions for public office. The number required, in case a candidate is seeking an office to be voted for by the electors of the entire state should, of course, be greater than in case the office is to be voted for by the electors of a county or such district. Likewise, the number of signatures required upon nominating petitions for a county or such district office should be greater than in case the office sought is to be voted for by the electors of a subdivision less than a county. There is no alternative provision in the case of a state office or in the case of an office to be voted for by the electors of a subdivision less than a county, the minimum in the first instance being one thousand and in the last, five. In the case of a county or district larger than a county and less than the state, the Legislature has, in my view, made two alternative provisions as to the number of electors necessary to sign nominating petitions, and neither provision qualifies, or has any reference to the other. The compliance with either requirement is sufficient. As previously mentioned, I am of the view that, in the enactment of this section, the Legislature intended to provide a reasonable requirement as to the number of signatures necessary to such petition, and did not intend to place an arbitrary and unnecessary burden upon the candidates seeking office by declaration. The wording of the section is perhaps unfortunate, and should be clarified by amendment, but a consideration of the manifest intention of the Legislature as expressed in the statute as a whole, precludes any other construction.

To hold that the five per cent provision must be met in all counties would result in requiring, in the larger counties, a greater number of signatures on petitions than in

the case of a state office. On the other hand, to say that in all cases the petition must be signed by 100 electors, would be an unreasonable and unnecessary burden upon the candidates seeking a county office in the smaller counties, if the candidate, for instance, is of a political party that polled comparatively few votes at the last preceding gubernatorial election.

Specifically answering your inquiry, I am of the opinion that under Section 4785-70, General Code, as enacted by the 88th General Assembly, a person desiring to become a party candidate by the method of declaration, for an office to be voted for by the electors of a county or district larger than a county and less than the state, must file a declaration of candidacy as therein provided, accompanied by a petition signed by either 100 electors of his party, or five per cent of the electors who voted for the party candidate for governor at the next preceding regular state election.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1341.

ELECTION LAW—AUTHORITY OF SECRETARY OF STATE TO REMOVE  
EMPLOYEES OF BOARDS OF ELECTIONS—PRECINCT OFFICIALS NOT  
INCLUDED.

SYLLABUS:

*The authority vested in the Secretary of State under Section 4785-11, General Code, as enacted by the 88th General Assembly, to summarily remove any member of a board of elections, or the clerk, deputy clerk or any other employe of the board for cause as therein provided, does not include precinct officials as may be appointed and removed by boards of elections under the provisions of Section 4785-13, General Code.*

COLUMBUS, OHIO, December 28, 1929.

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

DEAR SIR:—Your letter of recent date is as follows:

“Please permit me, as Secretary of State, to ask for an Opinion from you as to Section 11 of Amended Substitute Bill No. 2, (known as the Election Laws of the State of Ohio,) and becoming effective January 1, 1930.

Section 11 provides that the Secretary of State ‘may summarily remove any member of a board of elections, or the clerk, deputy clerk, or any other employe of the board,’ under certain conditions.

Will you please give me your Opinion as to the meaning of the word *employe* as used in this section? Does the word *employe* apply only to those persons who may be engaged in work in the Board of Elections office, or does it apply to precinct officials and any and all other persons employed by or appointed by the County Board of Elections?