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1. RECORD—PETITION FILED UNDER SECTION 6064-32 ET SEQ., G. C.—LOCAL OPTION ELECTION—A PUBLIC RECORD.
2. PETITION REFERRED TO IN PARAGRAPH 1—OPEN TO INSPECTION BY PRIVATE INDIVIDUAL—BOARD OF ELECTIONS—NO AUTHORITY TO WITHHOLD SUCH PETITION FROM EXAMINATION.

SYLLABUS:

1. A petition filed under Section 6064-32 et seq. of the General Code, relative to a local option election is a public record.

2. As a public record, the petition referred to in paragraph No. 1, is open to inspection by a private individual and a board of elections has no authority to withhold such petition from examination by a private individual.

Columbus, Ohio, October 10, 1950

Hon. Glenn L. Fortune, Prosecuting Attorney
Carroll County, Carrollton, Ohio

Dear Sir:

Your request for my opinion is as follows:

“I am confronted with the following question in behalf of

the Board of Elections of Carroll County, on which I would appreciate your opinion :

A local municipality in Carroll County has filed a local option petition with the Carroll County Board of Elections, and a demand has been made by a private individual upon said Board of Elections for an examination of said petition, and the privilege of copying the names thereon, which demand has thus far been refused.

Our question is: Is the Board of Elections within their legal rights to withhold from examination by a private individual, a local option petition, and the names thereon, which has been filed with said Board?"

The answer to the question you present will depend upon whether the petitions filed with the board of elections are public records. Section 6064-32 et seq. of the General Code, outlines the procedure to be followed in submitting a petition for a local option election. These sections are silent on the question of inspection of a petition by a private individual.

An earlier analogous statute concerning local option elections was called the Brannock Law (97 O.L. 87). The Common Pleas Court of Darke County was presented a question similar to yours in the case of *Krickenberger v. Wilson, Mayor*, 3 Ohio Nisi Prius (n.s.) 179. In that case a citizen sought by means of mandamus to compel the mayor of a city to permit him to inspect or take a copy of a certain petition filed under the Brannock Law. The mayor had refused the citizen the right of inspection. The court per Allread, J. stated in the syllabus of the case the following :

"1. A petition under the Brannock Law (97 O. L., 87) for a residence district election in a municipal corporation, presented to and filed by the mayor of such corporation, is a public document and open to inspection by anyone who is a citizen, elector and petitioner in said local option district.

2. Mandatory injunction is an appropriate remedy to enforce such right of inspection."

On page 183 in the body of the decision the reasons for the decision are stated as follows :

"The petition avers that the petitioner desires to inspect the petition to ascertain whether it has been changed, and for other lawful purposes. At common law the purpose of the inspection was required to be shown. But while there is no statute extending or defining the common law right, yet the authorities justify the conclusion that the plaintiff has a right to inspect the petition,

which is the basis of an election now pending: (1), Because he is a citizen and elector in the local option district; (2), Because he is a petitioner. A citizen and elector is interested in the cost of the election, in the fact that an election is pending, and in its results. He has a vote; has the right of contest, or if some one else contests, he may defend the election. Upon all these subjects his right to be informed is important. The fact of his being a petitioner, in a qualified sense a party, gives emphasis to his right of inspection."

There have been numerous cases in Ohio on the rights of the public to inspect public records. In the majority of cases this right has been upheld so long as the request is not unreasonable and does not interfere with the discharge of the duties of the officer charged with the custody thereof. This right extends to the books of the county auditor, records of the civil service commission, proceedings of the state tax commission and many other records.

In 35 Ohio Jurisprudence, Section 41, page 44, the proposition is stated as follows:

"There seems to be some doubt as to what the right of inspection was in England in the early days of the common law; and the decisions are somewhat conflicting and therefore not satisfactory. However, it may be assumed that under the common-law rule the right to inspect public records was confined to those who had an interest in the subject-matter thereof. This, however, is not a general rule, and has not only been denied as obtaining in this country, but its application has been limited. It pretty generally is held that subject to proper regulations and restrictions the public records are open to the inspection of any and all persons who choose to examine them, regardless of whether or not they have any definite interest in the subject-matter thereof.

The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same."

An excellent discussion on inspection of public records is presented in 60 A.L.R., 1356 at 1368, and supplemented in 169 A.L.R. 653.

In the case of *Wells v. Lewis*, Auditor, 12 Ohio Decisions (N.P.) 170, the second, third and fourth branches of the syllabus read as follows:

“2. The right to inspect public records is not confined to persons having a private interest to be subserved by such inspection; and the inspection is not limited to such records and such parts of them as affect such interest.

3. Public records are the people's records. The officials in whose custody they happen to be are mere trustees for the people, any one of whom may inspect such records at any time, subject only to the limitations that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

4. The right to inspect public records is a property not political right, and will be enforced by courts of equity in a case calling for the exercise of the powers of such courts.”

From the above it may be seen that if a petition filed with the board of elections is a public document, then a private individual has the right as a citizen to inspect such petition. The Wilson case, *supra*, held that a petition filed under a law simliar to the present local option law is a public document. In 45 American Jurisprudence, 429, it is stated that poll books and registration lists are public records, which may be examined. Further the records of the proceedings of an electoral board required by law to be kept are public records.

Generally, a public record is defined as one required by law to be kept or necessary to be kept in the discharge of a duty imposed by law. In the majority of instances where by law a document is filed in a public office and required to be kept there, it is of a public nature. See 45 American Jurisprudence, 420; 35 Ohio Jurisprudence, 6.

The petition referred to in your request is required to be presented to the Board of Elections. The Board is required to determine the sufficiency of the petition. The petition must conform to certain requirements as to form, signatures, etc. and must be attested. Although there is no procedure set out relative to protesting the signatures and form of the petition, it is generally conceded that the procedure to protest is the same as that set out for other petitions filed with a board of elections. This procedure has been followed by several courts.

In view of the above, I must conclude that such a petition is a public record. It is one required by law to be kept, and in general conforms to the definition set up above. In the Wilson case *supra*, Judge Allread states at Page 183 of the decision:

“When a petition is presented to a public officer and made

the basis of an election and is required to be filed, in the absence of an express provision to the contrary it is a public document.”

Having determined that the petition referred to in your request is a public record, I can see no valid reason why an inspection of such petition should not be permitted. There is nothing secret in the petition and no harm or injury would be done by such an inspection.

In summary and conclusion it is my opinion that:

1. A petition filed under Section 6064-32 et seq. of the General Code, relative to a local option election is a public record.

2. As a public record, the petition referred to in paragraph No. 1 is open to inspection by a private individual and a board of elections has no authority to withhold such petition from examination by a private individual.

Respectfully,

HERBERT S. DUFFY,
Attorney General.