

be a technical departure or error, which in the judgment of the election judges should not invalidate the vote."

A study of the Ohio decisions above cited indicates that the courts proceed on the principle that the voter's intention should be effectuated if ascertainable from the ballot, coupled with the purpose to keep the door closed against possible fraud. The determination of your question depends upon whether it is a case under paragraph 7 of Section 5070, General Code, *supra*, wherein the voter has made it impossible to determine his choice, or whether he has committed a mere technical error, as contemplated under paragraph 9 of Section 5070, General Code, but which does not interfere with the determination of his choice.

By making the mark in the circle at the head of the Democratic ticket the voter has evidenced the purpose to vote for the candidates for elector set out on that ticket. By making the cross-mark in front of the names of Hoover and Curtis, on the Republican ticket, he has just as effectively evidenced an intention to vote for the Republican candidates for electors. It is true that the vote appearing on the Democratic ticket is made in accordance with the statute while the marks on the Republican ticket are not in accordance with the statute, but so far as the intention of the voter is concerned, one is as definite as the other. I do not believe, therefore, that the marks in front of the names of Hoover and Curtis on the Republican ticket can be regarded as mere surplusage or technical errors, and my conclusion is that such a ballot falls within the provisions of paragraph 7 of Section 5070, *supra*, which provides that where the voter has for any reason made it impossible to determine his choice for an office to be filled, his ballot shall not be counted for such office.

I am, therefore, of the opinion that such a ballot should be thrown out and not counted at all.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2887.

APPROVAL, BONDS OF PUTNAM COUNTY—\$129,378.71.

COLUMBUS, OHIO, November 15, 1928.

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

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2888.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS, IN  
CUYAHOGA COUNTY.

COLUMBUS, OHIO, November 16, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio,*