

1983.

DECLARATION OF CANDIDACY—PARTY CANDIDATE FOR COUNTY OFFICE—MUST ACCOMPANY SUCH DECLARATION WITH PETITION SIGNED BY AT LEAST ONE HUNDRED ELECTORS OF HIS PARTY OR FIVE PER CENT OF VOTE CAST WITHIN COUNTY FOR GOVERNOR AT NEXT PRECEDING STATE ELECTION—ELECTOR MAY SIGN PETITION OF SUCH DECLARATION OF MORE THAN ONE CANDIDATE FOR PARTICULAR COUNTY OFFICE.

SYLLABUS:

1. *A person desiring to become a party candidate for a county office by the method of declaration must accompany such declaration of candidacy with a petition signed by at least one hundred electors of his party, or, by at least five per cent of the vote cast within the county for his party candidate for governor at the next preceding state election, whichever number is the smaller. (Opinion No. 1340, Opinions of the Attorney General for 1929, Vol. III, page 2011, approved and followed.)*

2. *An elector may sign the petition which accompanies a declaration of candidacy of more than one candidate of such person's political party for a particular county office. (Opinion No. 1821, Opinions of the Attorney General for 1930, Vol. I, page 684, approved and followed.)*

Columbus, Ohio, March 7, 1940.

Hon. Nelson Campbell, Prosecuting Attorney,
Mount Gilead, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

“Two questions have arisen in this county concerning the interpretation of election laws.

First, how many electors are required on the petition of a candidate for county office? Pertinent portion of Section 4785-70 reads:

‘ . . . in the case of a candidate for an office in a county

or a district larger than a county and less than the state, at least one hundred electors of his party or by at least five per cent of the vote cast for his party candidate for governor at the next preceding state election if such five per cent is less than one hundred;’

Second, may an elector sign more than one candidate’s petition for a given county office?”

Your first question is concerned with the number of electors of a political party required to sign a petition accompanying a declaration of candidacy of a candidate for party nomination to a county office.

Section 4785-69, General Code, provides, inter alia, that a candidate for party nomination to a county office shall have his name printed on the official primary ballot by filing a declaration of candidacy and paying the fee required by law. Section 4785-70, General Code, to which you make reference in your request, requires that:

“ * * * Such declaration of candidacy shall be 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; in the case of a candidate for an office in a county or a district larger than a county and less than the state, at least one hundred electors of his party or by at least five per cent. of the vote cast for his party candidate for governor at the next preceding state election if such five per cent is less than one hundred; * * * .”

By force of the above quoted section, one seeking a county office must file with his declaration of candidacy a petition signed by at least one hundred electors of his party or by at least that number of electors of his party representing five per cent of the total vote cast for his party candidate for governor in the next preceding state election, providing such five per cent is less than one hundred. It has been contended that under any circumstances one seeking a county office must obtain signatures totaling five per cent of the vote cast for his party candidate for governor at the next preceding state election within the county in question.

A careful examination of the statute in question renders such contention untenable. The language of the statute is clear and unambiguous to the effect that the number of signatures required in the case at hand is at least one hundred, or, at least five per cent of the vote cast for his party candidate for governor at the next preceding state election, whichever number is the smaller.

In support of my opinion, I invite your attention to the case of State, ex rel. Thompson vs. Board of Elections of Montgomery County, et al., 122 O. S. 278 and Opinion No. 1340, Opinions of the Attorney General for 1929, Vol. III, page 2011.

The Thompson case, and the 1929 opinion, were both concerned with Section 4785-70, General Code, (113 O. L. 338) as it appeared in our General Code prior to its amendment by the 89th General Assembly (114 O. L. 689). However, in view of the fact that the amendment did not substantially alter the section, whatever was said in those opinions applies with equal force to the statute as it exists today.

In the Thompson case, our Supreme Court ruled, as evidenced by the first branch of the syllabus, as follows:

“A petition of a candidate for an office to be voted for by the electors of the county or district larger than a county and less than a state, signed either by one hundred electors of the candidate’s political party or by five per cent of the electors who voted for the party candidate for governor at the next preceding regular state election, meets the requirements of Section 4785-70, General Code.”

In the course of the opinion, Matthias, J. said at page 281:

“In the first case we are concerned only with the provision prescribing the number of signatures on a petition of one desiring to be a candidate for county office, and that requirement is ‘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.’ It is contended by the respondents that such petition must have the signatures of five per cent. of the electors who voted for the party candidate for Governor at the next preceding election. It is an elementary rule of construction that words are to be given their usual and ordinary signification unless a consideration of the entire statute, or of all statutory provisions *in pari materia*, clearly shows that a different meaning should be ascribed to the language employed. Ordinarily the word ‘or’ indicates an alternative, and unless there is language in this statute clearly manifesting a legislative intention to the contrary it must be concluded that the two provisions relating to county candidates are in the alternative, and, therefore, that a petition complying with either is sufficient. There are no provisions of the statute inconsistent with that view. On the contrary, other provisions of the section strongly support that conclusion. A petition supporting the candidacy for a state office is sufficient if it be signed by one thousand electors, and in subdivisions less than a county the signatures of only five are required. Presumably a less number would be required to support the candidacy for a county office than for a

state office, and a greater number required than for a subdivision less than a county. It is probable that the two provisions are in the statute as a result of some inadvertence. We cannot conceive that there was a legislative intent to require more signatures to petitions of candidates for county office than for a state office, but if this statute be construed as contended by respondents it would result in requiring candidates for county office in many of the counties of the state to procure a greater number of petitioners than is required of candidates for state office. Certainly such an absurd conclusion would be unwarranted unless required by clear and unambiguous language. All the provisions of this section construed together are consistent with the use of the word 'or' in its ordinary and usual signification. Hence, compliance with either requirement is sufficient."

The syllabus of the 1929 opinion above referred to reads as follows:

"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."

Coming now to your second question, you inquire whether an elector may sign more than one candidate's petition for a given county office.

Our Election Code provides for two kinds of candidate's petitions, to-wit: a "petition for candidate" which is attached to a declaration of candidacy (see Section 4785-72, General Code) and a "nominating petition" (see Section 4785-91, General Code).

The two types of petition are very different in form and substance; the former accompanies the declaration of candidacy and requires those electors signing to certify to certain statements therein contained, whereas the latter is a true nominating petition by which the signers pledge their support and votes for the particular candidate at the forthcoming election. The "petition for candidate" is filed prior to a primary election and in no wise acts as a nomination of a candidate. The nomination of the candidate is made by the members of his political party at the primary election. The "nominating petition" is filed prior to a general election and serves to nominate the candidate for a consideration of electors of all parties.

In view of the fact that your first question was concerned with the so-

called "petition for candidate," I assume your second question is, in like manner, directed to the same type of petition. The form of such petition is contained in Section 4785-72, General Code, which, in so far as is pertinent to your inquiry, provides as follows:

"Attached to each declaration of candidacy shall be a petition signed by the required number of electors, as follows:

PETITION FOR CANDIDATE

We, the undersigned, qualified electors of the State of Ohio, residing at the location set opposite our names, and members of theparty, hereby certify that who resides at city (or township) of in the county of and who is a candidate for the office (or position) ofto be voted for at the primary next hereafter to be held, and whose declaration of candidacy is herewith filed, is a member of the party, and is, in our opinion well qualified to perform the duties of the office for which he is a candidate.

Signature Residence Municipality (or county)"

It will be noted that by signing such petition an elector merely certifies that the candidate is a member of a particular party and is, in the opinion of the signer, well qualified to perform the duties of the office for which he is a candidate. The elector makes no further commitment as in the case of one signing a "nominating petition" under the provisions of Section 4785-91, General Code, wherein is contained the following statement:

"We individually pledge ourselves to support and vote for the above candidate for the above office at said election and that we have not signed the petitions of more candidates than there are candidates to be elected for said office."

It is obvious that an elector who is a member of a particular political party might consider each and every one of the candidates of his party seeking a particular county office well qualified to perform the duties of that office and, consequently, might be willing and inclined so to certify on the petition of each such candidate. An examination of the statutes contained in our Election Code reveals no prohibition for such action on the part of an elector. In Opinion No. 1821, Opinions of the Attorney General for 1930, Vol. 1, page 684, it was held, as stated in the syllabus, as follows:

“A person may sign the petition provided in Section 4785-72, General Code, of more than one candidate of such person’s political party for a given office.”

In the body of said opinion, at page 685, the then Attorney General observed as follows:

“ * * * The statute has made no requirement to the effect that the signers of these so-called petitions shall commit themselves to vote at the primary election for the candidate whose petition they have signed, unless it may be said that the legislature in designating this certificate as a ‘petition’ contemplated that upon signing the instrument the so-called petitioner has committed himself as being in favor of the election of that particular candidate. I do not think that such an inference may be accurately drawn from the fact that the instrument has been designated as a petition, because, conceding that the instrument is a petition in the true sense of the word, the signers have only requested that the candidate’s name be placed on the ballot. It is obvious that a person may be favorably impressed with the qualifications of two individuals of his political party who are candidates, for instance, for the office of prosecuting attorney, and desire that both of these individuals’ names appear on the ballot at the primary elections. Under such circumstances, there is no language in Section 4785-72, supra, which would preclude such a person from signing the petitions of both candidates.”

I am not unmindful of the fact that Section 4785-72, General Code, has been amended twice (114 O. L. 690 and 118 O. L. H. B. 624) since the rendition of the 1930 opinion. However, the reasoning and conclusion of that opinion still prevails in that the amendments did not change that portion of the “petition for candidate” with which we are concerned.

In view of the foregoing and in specific answer to your second question, I am of the opinion that an elector may sign the petition which accompanies a declaration of candidacy of more than one candidate of such person’s political party for a particular county office.

Respectfully,

THOMAS J. HERBERT,
Attorney General.