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RESIDENCE—PERSON OTHERWISE ELIGIBLE TO VOTE AND TO REGISTER—MUST HAVE BEEN RESIDENT OF STATE FOR ONE YEAR NEXT PRECEDING DAY OF PRIMARY ELECTION—MAY NOT VOTE AT PRIMARY ELECTION OR REGISTER PRIOR THERETO UNLESS RESIDENCE REQUIREMENTS MET.

SYLLABUS:

A person otherwise eligible to vote and to register may not vote at the primary election or register with the board of elections prior thereto unless such person will have been a resident of the State of Ohio for one year next preceding the day of such primary election.

Columbus, Ohio, March 20, 1952

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I am in receipt of your request for my opinion, which reads in part as follows:

“The Board of Elections of Montgomery County has this question it desires you to answer for it. Is it legal for an adult citizen of the United States, who will not have resided in the State of Ohio for one year, until subsequent to the primary election in May, but will have resided in the State of Ohio for one year before the general election in November, the right to register and vote at the primary election in May under Section 4785-35?”

Section 4785-35, General Code, referred to in your letter, relates to the qualifications for registration, while other sections deal specifically with the residence qualifications of persons required in order to vote at an election and provide who may vote at a primary election.

Since the right of registration is keyed to the right to vote, I shall first examine into the right of a person who will not have resided in the State of Ohio for one year until after the primary election to vote at such election.

Section 4785-82, General Code, provides who may vote at a primary election and reads, in so far as pertinent, as follows:

“At such primary election every *qualified elector who is* twenty-one or more years of age, or who will be twenty-one or more years of age on or before the day of the next general election, and who is a member of or is affiliated with the political party whose primary election ballot he desires to vote, shall be entitled to vote such ballot at such primary election. * * *”

(Emphasis added.)

To determine what is meant by “qualified elector,” we must turn to Section 4785-29 and Section 4785-30, General Code. Section 4785-29 provides that every citizen of the United States who is of the age of twenty-one years or over “who possesses the qualifications herein required” shall be entitled to vote at all elections. These additional qualifications are provided by Section 4785-30, which, in so far as pertinent, reads as follows:

“No person shall be permitted to vote at any election unless he shall have been a resident of the state one year, of the county forty days and of the voting precinct forty days *next preceding the election at which he offers to vote*, * * *.” (Emphasis added.)

It is clear from the provisions of Section 4785-30 that a person offering to vote at the May primary election would not be eligible therefor unless he had been a resident of the State of Ohio for one year next preceding the day of such primary election, if, under the law of Ohio, a primary is an election.

Under the provisions of Section 4785-3, General Code, it is quite clear that a primary is an election within the meaning of the Ohio Election Laws. That section provides for and defines a “general election,” a

“regular municipal election,” a “regular state election,” a “special election,” and a “primary” or “primary election.” “Primary” or “primary election” is defined as follows:

“The term ‘primary’ or ‘primary election’ shall mean an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year.”

Since it is clear that a primary or primary election is, an election within the meaning of the Ohio Election Laws, it necessarily follows that the plain and unequivocal terms of Section 4785-30 preclude a person from voting in a primary election when he has not been a resident of the State of Ohio for one year next preceding such election.

It might be well to point out that prior to the complete revision of the Election Laws by the 88th General Assembly, effective January 1, 1930, 113 Ohio Laws, 307, old Section 4980, General Code, referring to primary elections, provided that at such elections “only legally qualified electors or such as will be legally qualified electors at the next ensuing general election may vote.” This statute was repealed at that time and the present qualifications for voting were enacted into law.

I turn now to a consideration of the right, if any, of such person to register prior to the primary election where he will not have resided in the State of Ohio one year prior to the primary election, but will have resided in the State of Ohio for one year prior to the November election.

Section 4785-39, General Code, provides, in part, that persons “qualified to register” may do so at the office of the board at any time such office is open, except forty days preceding a primary or general election. In the case of precinct registration, Section 4785-38, General Code, provides that the registrar “shall receive the applications and register all such persons, resident in such precinct, who shall personally come before them and *who are or will be entitled to vote therein at the next ensuing election.*”

Section 4785-35, General Code, to which your letter refers, reads as follows:

“Each person, who will be of the age of twenty-one years or more at the next ensuing *November election*, who is a citizen of the United States, and who, if he continues to reside in the pre-

cinct until the *next election*, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector shall, unless otherwise disqualified, be entitled to be registered as an elector in such precinct. When once registered in accordance with this act, an elector shall not be required to register again unless his registration is cancelled for reasons as hereinafter provided.” (Emphasis added.)

It will be noted that while Section 4785-35 provides that persons who will be of the age of twenty-one years or more at the next ensuing *November election* are qualified to register, the section does not permit qualification of persons for registration who will have fulfilled all residence requirements by the November election, or the general election, but, instead, provides that such residence requirements be fulfilled by the *next election*. As previously pointed out, a primary election, under the provisions of Section 4785-3, General Code, is an election and in the case of any attempt to register prior to the primary election, such primary election would be the “next election.”

This same conclusion must also follow from an examination of Section 4785-42, General Code, which prescribes the contents of the registration form, reading in part as follows:

“* * * 3. The applicant’s statement that he is over twenty-one years of age or that he will be twenty-one years or more of age on the day of the *next general or special election*; that he is a citizen of the United States and the state of Ohio; that if he continues to reside at the residence at which he resides at the time of his registration until the day of the *next election* his residence will *then have been in the state of Ohio for at least one year* and in the county and precinct in which it is then located at least forty days *immediately preceding the day of such election*. * * *” (Emphasis added.)

It might be pointed out that this conclusion is in accord with a directive issued by the Secretary of State as the chief election officer of Ohio on February 23, 1952, addressed to all boards of election. I quote from that directive:

“One must have been a resident of the State one year at the time of the *next election* in order to register prior to such election, and to vote at such election. Therefore, if a person will not have been a resident of the state for one year until June, 1952, such person may not register prior to the primary election, nor may such person vote in the primary election. He may, how-

ever, register prior to the November election and vote in such general election. Specific provision is made for a person who will be 21 years of age prior to the November election to vote in the primary election of that year, but the same exception is not made for the residence requirement.”

In conclusion, and in specific answer to your question, it is my opinion that a person otherwise eligible to vote and to register may not vote at the primary election or register with the board of elections prior thereto unless such person will have been a resident of the State of Ohio for one year next preceding the day of such primary election.

Respectfully,

C. WILLIAM O'NEILL
Attorney General