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ELECTOR — PERSON WHO WILL ATTAIN AGE TWENTY-ONE YEARS, ON OR BEFORE DATE, NEXT GENERAL ELECTION, MAY BE CANDIDATE IN PARTY PRIMARY — OPINIONS ATTORNEY GENERAL, 1928, PAGE 1345, OVERRULED.

SYLLABUS:

A person otherwise qualified who will attain the age of twenty-one years on or before the date of the next general election, may be a candidate in the party primary for that election. (Opinions of the Attorney General for the year 1928, page 1345, overruled.)

Columbus, Ohio, July 24, 1941

Hon. John E. Sweeney, Secretary of State,
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Can a person who will reach the age of 21 before the general election but after the primary held for that election, be a candidate for election in the primary in question?”

Candidates for party nominations in primary elections are entitled to have their names printed on the official ballot by filing a declaration of candidacy accompanied by a petition bearing the proper number of signatures and by paying the filing fee as required by law.

This declaration of candidacy which must be subscribed, acknowledged, and verified by the person seeking nomination sets forth the basic requirements as to eligibility for election and is contained in Section 4785-71, General Code, in the following form:

“Such declaration of candidacy accompanied by the necessary petition shall be in substantially the following form:

DECLARATION OF CANDIDATES: PARTY PRIMARY

I, hereby declare that I reside at No. street, in the city of (or in precinct township) county of Ohio, and am a qualified elector therein. I am a member of the party. At the last general election I voted (did not vote) for a majority of the candidates of such party, and intend to vote for a majority of the candidates of such party at the forthcoming election. I hereby declare myself a candidate for nomination to

the office of to be made at the primary election to be held on day of, 19, and hereby request that my name be printed upon the official primary ballot as provided by law as a candidate of the party.

I further declare that if nominated and elected, I will qualify as and that I will support and abide by the principles enunciated by the party in its national and state platform.

Dated this day of, 19.....

.....
Signature of Candidate

The State of Ohio }
County of..... }

Personally appeared before me the undersigned, a candidate for in and for said county, this day of 19....., the above named, who acknowledged the signing of the above declaration and declared to me that the statements made therein were true as he verily believed.

Signed.....

Subscribed and sworn to before me this day of, 19.....

Signed.....

.....
(Title of officer) ”

In brief it may be said that a candidate in order to qualify for the party primary must reside at a stated address; be a qualified elector in the ward and precinct in which such address is located; and, if he voted at the last general election, must have voted for a majority of the candidates of the party, the nomination of which he now seeks.

It is obvious that the requirement as to prior voting has no application if the franchise was not exercised or, as in the case of a minor, did not exist. This question was considered in Opinion No. 4216, Opinions of the Attorney General for the year 1932, Vol. I, page 487, wherein it was stated in the third branch of the syllabus that:

“A voter cannot be denied the right to have his name appear on the primary ballot because of the fact that he did not vote at the last general election held in even numbered years.”

Assuming, therefore, that the prospective candidate in question has complied with the requirement as to residence, the remaining qualification and point in issue is the determination of whether the candidate is a qualified elector.

The qualifications of an elector are set out in Article V, Section 1 of the Constitution of Ohio, which reads as follows:

“Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law shall have the qualifications of an elector, and be entitled to vote at all elections.”

In the case of *State v. Felton*, 77 O.S. 554, it was held that the above section had no application to a primary election. In this connection it was stated:

“But a primary election held merely to name the candidates of a political party is not an election within the meaning of this section of the Constitution. That section refers to an election of officers, and not to the nomination of candidates.”

Under the provisions of Section 4785-82, General Code, a person who will attain the age of twenty-one years before the date of the next general election may vote at a primary election. Said section reads:

“At such primary election every qualified voter who is or who will attain the age of twenty-one years on or before the date of the next general election and who is a member of the party as herein provided shall be entitled to vote at such primary. It shall be the duty of the witnesses and challengers and of the judges and clerks of election, and the right of any elector, whenever there is reason to doubt the legality of any vote that may be offered, to interpose a challenge. The cause of a challenge shall be: that the person challenged is not a legally qualified elector; that he has received or been promised some valuable reward or consideration for his vote; that having previously voted he was not previously affiliated with the party whose ticket he now desires to vote. Party affiliation shall be determined by the largest number of candidates of any one party voted for by the electors at the last general election held in even numbered years.”

In the recent case of *State, ex rel. Latimer v. Leonard*, 65 O.App. 158, the term “qualified elector” in its context in Section 4785-71, *supra*, is defined in the first branch of the syllabus as follows:

“A qualified elector is one who is qualified at any designated time to exercise the privilege of voting.”

Further clarifying is the statement in the text of the Latimer case, supra, at page 161, declaring that “the natural inference, from the terms of the statute, is that the candidate must be such elector at the time he signs and swears to the declaration * * * qualified to vote then and there, not at some future time, or some other place.”

The word “elector” is defined in Bouvier’s Law Dictionary as:

“One who has the right to make choice of public officers; one who has a right to vote.”

In Webster’s International Dictionary the following definition is used:

“A person who has, by law or constitution, the right of voting for an officer.”

In the case of *Aczel v. United States* (C.C.A. Ind.), 232 Fed. 652, 657, it is stated that the word “elector” is synonymous with the word “voter” and means one who votes, or has legal right to vote; one who elects or has right of choice, or who has right to vote for any functionary, or for the adoption of any measure.

In *Clayton v. Hill City*, 207 Pac. 770, 111 Kan. 595, it is declared that:

“While the terms ‘electors’ and ‘voters’ are sometimes used interchangeably, their meaning is not precisely the same, ‘electors’ being properly applied to those entitled to vote rather than to those actually voting while ‘voters’ is implied in both senses.”

Whether the terms “qualified elector” and “qualified voter” are to be treated as synonymous depends on their usage in the laws governing the party primary. In view of the language employed in Section 4785-82, General Code, with reference to who may vote at the primary, it seems unnecessary to cite further definitions concerning the synonymy of the terms.

Since it is established by the decisions cited, the sections of the Code set forth and the reference to general definitions that a qualified elector, for the purposes of the party primary, is a qualified voter, it follows that a candidate who is a qualified voter is a qualified elector.

Section 4785-82, *supra*, provides that every qualified voter who is or who will attain the age of twenty-one years on or before the date of the next general election shall be entitled to vote at such primary. The prospective candidate in question who will reach the age of twenty-one before the general election but after the primary held for that election is obviously within the terms of Section 4785-82, *supra*, and is entitled to vote at the primary. This right to vote automatically qualifies the person as an elector in the primary.

In considering the question herein attention should also be given to Article XV, Section 4 of the Constitution of Ohio, which reads in part as follows:

“No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector;
* * * .”

The prohibition contained in the above section is that a person may not be *elected* to office unless possessed of the qualifications of an elector.

Conceding that the qualifications of an elector referred to therein are those named in Article V, Section 1, *supra*, it is clear that the section can have no application in the instant case for the reason that a person is not elected to office at a primary election, such election, as stated in the Felton case, *supra*, being held merely to name the candidates of a political party.

Former Section 4980, General Code, now Section 4785-82, General Code, in amended form, was construed in Opinion No. 2185, Opinions of the Attorney General for the year 1928, Vol. II, page 1345 as extending the elective franchise to persons coming of age in the interim between the primary and the general election, but denied the right of such voter to file a declaration of candidacy in the primary because of his inability to qualify as an elector. The *ratio decidendi* of the 1928 opinion seems to have been based on the erroneous assumption that the constitutional definition of an elector was controlling in the party primary. In view of the non-applicability of Article V, Section 1 of the Constitution to primaries, I find it necessary to overrule this opinion.

In specific answer to your inquiry, therefore, it is my opinion that a person otherwise qualified who will attain the age of twenty-one years

on or before the date of the next general election, may be a candidate in the party primary for that election.

Respectfully,

THOMAS J. HERBERT,

Attorney General.