

1680

1. ELECTION—REQUIREMENT, EACH MEMBER OF CONTROLLING COMMITTEE BE A RESIDENT AND QUALIFIED ELECTOR OF DISTRICT, WARD OR PRECINCT HE IS ELECTED TO REPRESENT, IS A CONTINUING REQUIREMENT—MEMBER MUST MEET PROVISIONS OF SECTION 4785-62 G. C. IN ORDER TO QUALIFY AND HOLD SUCH POSITION.
2. CONTROLLING COMMITTEEMAN—SECTION 4785-80 G. C. PROHIBITS WRITE-INS FOR POSITION.
3. PRECINCTS — CHANGE — IF NO QUALIFIED PERSON FILED PETITION FOR COMMITTEEMAN FROM A NEW DISTRICT AND NO ELECTION CAN BE HELD FOR POSITION, CONTROLLING COMMITTEE AUTHORIZED TO FILL VACANCY—SECTIONS 4785-22, 4785-65 G. C.

SYLLABUS:

1. The requirement in Section 4785-62, General Code, that each member of a controlling committee be a resident and qualified elector of the district, ward or precinct which he is elected to represent is a continuing requirement which the member must meet in order to qualify and to hold such position.
2. Section 4785-80, General Code, as amended by the 98th General Assembly, prohibits write-ins for the position of controlling committeeman.
3. If due to action of a county board of elections rearranging, changing or dividing precincts, pursuant to Section 4785-22, General Code, no qualified person has filed a petition for committeeman from the new district, and, therefore, no election can be held for the position, the controlling committee is authorized by Section 4785-65, General Code, as amended, to fill the vacancy thus created.

Columbus, Ohio, April 21, 1950

Hon. Harold K. Bostwick, Prosecuting Attorney
County of Geauga, Chardon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of Elections of my County under Section 4785-22 has just started to establish and rearrange the election precincts in our County.

"Under Section 4785-24, they started at least 30 days previous to any election as provided therein, but starting at this time has resulted in a complex situation.

"In the first place, Section 4785-62 says, 'Each member of a controlling committee shall be a resident and qualified elector of the District, ward or precinct which he is elected to represent.' At the present time, the precincts are not changed and won't be until after the time of filing nomination petitions on February 2, 1950. Therefore, the County Central Committee candidate will file in the regular manner for say the present precinct A and B, and by the time of election, he won't be a resident of Precinct A or B and, therefore, can't qualify if elected, because in changing the precincts, the Board of Elections now has him in Precinct C. Then, because before February 2, the new precincts won't yet be legally established, therefore, no one will be able to file as a candidate for nomination as central committeemen.

"The Board would like your immediate opinion as to how to proceed to have a central committeeman for the newly established precincts under these circumstances and what will happen to the committeemen elected for the old precinct, they not being residents of the same at the time of their election. Your opinion on these matters will greatly be appreciated."

As indicated in your letter, Section 4785-22 of the General Code authorizes boards of elections "to establish, define, divide, rearrange and combine the several election precincts within their jurisdiction * * *." Section 4785-24, General Code, requires that a board of elections commence its action to change a precinct at least thirty days previous to any election. Said section provides as follows:

"When the board deems it necessary to change, divide or combine any precinct, or to locate a polling place outside the boundaries of a precinct, it shall, at least thirty days previous to

any election, give ten days notice by posting a notice in a conspicuous place in the board's offices and in at least one conspicuous place in such precinct, stating that such question will be considered on a day named in the notice. On such day, or some subsequent day to which the matter may be adjourned, the question of dividing, changing or combining such precinct, or of locating such polling place shall be heard. If there are no remonstrances against such question, the board of elections shall declare in favor thereof and designate the precincts so established, or the location of such polling place. If twelve electors of such precinct remonstrate against such division, change, combination or location of such polling place, the matter shall be heard at a public hearing to be called by the board and determined; and such order shall be made for or against such division, change, combination, or location of such polling place, as is deemed proper. When the location of a polling place has been changed either within or outside a precinct the board shall notify each of the registrants in such precinct of such change by mail."

You also refer to Section 4785-62, General Code, which requires, among other things, that "Each member of such controlling committee shall be a resident and qualified elector of the district, ward or precinct which he is elected to represent." You assume that the proposed change in the precincts of the county now being undertaken by the county board of elections will become effective prior to the primary election this spring even though under the provisions of Section 4785-25, *supra*, it appears possible that the proposed action of the board may be either postponed or upset if twelve electors of any precinct concerned remonstrate against the action affecting such precinct. However, since the possibility of conflict is readily apparent, I shall accept your assumption and endeavor to answer the question raised by the board of elections.

I am not aware that any court of law in Ohio has had occasion to pass upon the precise question confronting the election officials of your county. It is clear that the requirement that a member of the controlling committee be a resident and qualified elector of the district, ward or precinct which he is elected to represent is a continuing requirement. "Removal from the precinct or district from which a committeeman was chosen" is noted in Section 4785-65, General Code, as one of the cases where vacancies may occur within such committee.

I believe one of the questions which I had before me in **Opinion No. 1070**, rendered October 5, 1949, is analogous to your situation. In answer

to the question concerning the effect of a change in a local school district upon a nominating petition filed for the board of education of the old district, I stated my opinion in branch 3 of the syllabus as follows :

“3. Nominating petitions filed by candidates seeking election as members of a board of education of a school district which has been abolished by action of a county board of education pursuant to Section 4831-1 of the General Code, are invalid.”

Since the board of elections appears to be acting within the scope of its duties in changing or rearranging the precincts and the residence requirement with respect to controlling committeemen is continuing, I can not avoid the conclusion that a person who has filed a petition for controlling committeeman of the district where he is residing at the time loses his eligibility for such position if upon redistricting, in accordance with law, his place of residence is outside the district for which he has filed a nominating position.

I realize that the situation may result where no qualified person has filed a petition for a newly arranged district; and under a recent amendment of Section 4785-80 of the General Code, prohibiting write-ins for committeemen, a vacancy in the position would thus be created. Though I am reluctant to interpret the law in such a manner as to restrict or limit a voter's right to a free expression of his choice, I do not feel at liberty to fly in the face of clear and unequivocal statutory language. The statutory provision prohibiting write-ins for committeemen, to which I have referred, reads as follows :

“Section 4785-80. “* * * provided, however, that inasmuch as candidates for the office of delegate and alternate to the national and state conventions, member of the state central committee and member of the county central committee are elected at the primary election no blank space shall be left on the ballot after the names of the candidates for such office, and no vote shall be counted for any person whose name has been written in on said ballot for any such offices. If no person files and qualifies as a candidate for the office of member of the state central committee or member of the county central committee such office shall not appear on the ballot.”

In addition to adding the above provision to the election laws of Ohio, the 98th General Assembly enacted a corresponding amendment to Section 4785-65, General Code, authorizing the controlling or executive committee to fill vacancies created in the committee by “failure to elect.”

(Am. S. B. No. 206, 98th General Assembly.) Thus, it is readily clear that the General Assembly of Ohio has provided that there shall be no write-ins for committeemen, and that if there should be a failure to elect a committeeman from any particular district in the county, the controlling committee shall fill the vacancy so created.

In view of the preceding I am of the opinion that the requirement in Section 4785-62, General Code, that each member of a controlling committee be a resident and qualified elector of the district, ward or precinct which he is elected to represent is a continuing requirement which the member must meet in order to qualify and to hold such position. Further, Section 4785-80, General Code, as amended by the 98th General Assembly, prohibits write-ins for the position of controlling committeeman. It is also my opinion if due to action of a county board of elections rearranging, changing or dividing precincts, pursuant to Section 4785-22, General Code, no qualified person has filed a petition for committeeman from the new district, and, therefore, no election can be held for the position, the controlling committee is authorized by Section 4785-65, General Code, as amended, to fill the vacancy thus created.

Respectfully,

HERBERT S. DUFFY,
Attorney General.