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1. VILLAGE BECOMES CITY—DUTY OF LEGISLATIVE BODY OF MUNICIPALITY TO PROVIDE FOR ELECTION OF NEW LEGISLATIVE BODY — WARDS — SECTIONS 703.06, 731.01 RC.
2. RIGHT OF ELECTORS OF CITY—PASSED FROM STATUS AS VILLAGE—TO VOTE AT ALL TOWNSHIP ELECTIONS, NO WAY AFFECTED BY TRANSITION—STATUS AS TO COUNTY BOARD OF EDUCATION—SECTIONS 703.06, 3311.07 RC.
3. TRANSITION OF VILLAGE INTO CITY—RIGHT OF ELECTORS TO VOTE FOR OFFICERS PRESCRIBED BY LAW—NOMINATION—NOMINATING PETITIONS.
4. TRANSITION OF VILLAGE, STATUS OF CITY—NEXT REGULAR MUNICIPAL ELECTION—BOARD OF ELECTIONS—BLANK SPACES ON BALLOT—WRITE IN NAMES —LEGISLATIVE BODY—WARDS.
5. TRANSITION OF VILLAGE, STATUS OF CITY—OFFICERS OF VILLAGE—CONTINUE TO SERVE UNTIL ELECTION AND QUALIFICATION OF CITY OFFICERS—MAY EXERCISE POWERS GIVEN BY LAW TO VILLAGE OFFICERS —SECTION 703.07 RC.

SYLLABUS:

1. When a village becomes a city pursuant to the provisions of Section 703.06, Revised Code, it becomes the duty of the legislative body of the municipality then in office to provide for the election of a new legislative body for such city by dividing the city into wards as prescribed in Section 731.01, Revised Code.

2. The right of the electors of a city which has passed from its status as a village by virtue of Section 703.06, Revised Code, to vote at all township elections, is in no way affected by such transition. The right of such electors to vote for members of a county board of education is in no way affected until the board of education of the district in which it is situated proceeds under the authority of Section 3311.07 to declare such district to be a city district.

3. After the transition of a village into a city, the electors of such city have the right to vote for such officers as are prescribed by law for cities, including the legislative body, and no names of persons who have been nominated or have filed nominating petitions for offices of the preexisting village are entitled to be placed on the ballot for such offices, at any succeeding election.

4. At the next regular municipal election following the transition of a village to the status of a city, it would be the duty of the board of elections to provide on the ballot blank spaces for writing in the names of candidates for the several offices to be filled, where no nominations or petitions for nomination for said offices have been presented. This duty, however, would not include provision for voting for members of the legislative body of the city unless the city has, by appropriate action, been divided into wards.

5. The officers of a village serving at the time of its transition to the status of a city continue, under the provisions of Section 703.07, Revised Code, to serve as such officers until the election and qualification of city officers, but may exercise only the powers given by the law to village officers.

Columbus, Ohio, October 17, 1955

Hon. Jackson Bosch, Prosecuting Attorney
Butler County, Hamilton, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

"I am herewith requesting your opinion on the following questions and I would appreciate your urgent attention thereto because of the nearness of the election on November 8, 1955.

"The Village of Fairfield, Butler County, Ohio, requested a special census from the Bureau of Census of the Federal Government and the result thereof showing this area to be of over 5000 inhabitants was sent to the Secretary of the State of

Ohio. On September 20, 1955, the Secretary of State certified the Village of Fairfield as having a population of more than five thousand and thirty days therefrom, October 20, 1955, this area will officially be proclaimed a city.

"Petitions have heretofore been filed by various candidates for the offices of Mayor, Clerk, Treasurer and six Councilmen and these to be elected at the November 8th election.

"If this area is officially certified as a city on October 20, 1955, the voters of the city will be voting on officials of a village at the election on November 8th.

"Section 703.07, Ohio Revised Code, sets out in detail the status of officers of a village that has been advanced to city status and you will note that in this section they continue in office until succeeded by the proper officers of the new municipal corporation at the regular municipal election. Former Section 3499, General Code of Ohio, included the words *at the next regular municipal election*.

"The only Attorney General's opinion that I could find was Opinion No. 62, 1951, in which the Attorney General found that the candidates for offices should become candidates for city offices but under those facts set out in the opinion, the result of the census was known in sufficient time so that the proper petitions could be filed before the Board of Elections, in other words, before the ninetieth day preceding the election. That is not the case in regard to Fairfield Village in that the Secretary of State made his proclamation on September 20, which, of course, was too late to file for the election in November.

"A suggestion was made that possibly because the Fairfield Village is now a city that the Board of Elections should present a blank ballot to all the voters of the City of Fairfield with only the designation of the offices to be elected and allow the voters to write in their candidates.

"Therefore, as a result of the change of status of Fairfield village to the city of Fairfield, the following questions are presented for your opinion:

"1. Do the voters of the city of Fairfield vote on the County Board of Education and Township officers?

"2. Do the voters of the city of Fairfield vote for village officials who have been nominated and will appear on the ballot?

"3. Does the Board of Elections furnish a blank ballot for write-ins for the offices provided for in a city election?

"4. Do the village officials, if elected to the various village offices, become de facto city officials until the next city election?

“I would appreciate an early reply to this request for an opinion as the Board of Elections must know in advance of the election as to how to proceed in furnishing ballots to the voters of this area.”

At the outset, it must be understood that Fairfield, on October 20, 1955, ceases to be a village and becomes a city. See Section 703.06, Revised Code. It becomes so by virtue of the proclamation issued by the Secretary of State on September 20, 1955, with a stated population of 6,202.

A city is governed by the legislative body provided by Section 731.01, Revised Code, and by the administrative officers set forth in Chapter 733, to wit, a mayor, president of council, auditor, solicitor and treasurer, all of whom are elected by the electors of the city.

As to the legislative body, commonly referred to as the council, the composition of that body is set set forth in Section 731.01, and requires the division of the city into wards. Not less than seven members are to constitute the council. Four are to be elected by wards, and three at large, with further changes depending upon increased population. With the population, as above stated, of 6,202, Fairfield will have the minimum of four councilmen elected by wards, and three at large.

Section 703.07, Revised Code, provides as follows:

“Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new municipal corporation at the regular municipal election, and the ordinances thereof not inconsistent with the laws relating to the new municipal corporation shall continue in force until changed or repealed.”

The question may arise as to the authority of the present council, elected as a village council, to divide the city into wards. I have not the least doubt that it is not only within its power, but also a part of its duty to do so. I recognize the force of the decision of the Supreme Court in *State ex rel. Heffernan v. Serp*, 125 Ohio St., 87, where the question was whether the mayor of a village which was in process of transition to a city could appoint a civil service commission for the city which power is lodged by law in the *mayor of a city*. The court held:

“3. It is the true intent and meaning of Section 3499, General Code (703.07 R. C.) that village officers shall continue

in office, with the powers and duties only of village officers until the first regular election after the proclamation of the secretary of state has been filed with the mayor of the municipality as provided by Section 3498, General Code."

The court in the opinion points out that there are many acts which the mayor of a village in process of transition could not perform, such as vetoing an ordinance, or appointing directors of service and safety, those being powers that are expressly vested in the mayor of a city, and which do not belong to the mayor of a village.

However, let it be noted that the division of a city into wards for the purpose of compliance with Section 731.01, *supra*, is not a power conferred by the law upon the council of a city, and therefore the village council is so acting could not be said to be assuming a power vested alone in a city council. In fact such action is not mentioned in the statute. It seems obvious to me that it must be regarded as an implied power which must be performed by the existing legislative body for the purpose of enabling the new city to elect and organize its council. It must be remembered that there is no process provided in the law, for the initial incorporation of a city. It can only come into being as such by the process of transition from village status. If we do not concede to the council in office at the time a village is advanced to a city, the right to make such provision, there appears to be no way in which a new city could ever elect and organize its council in accordance with the law. In the present case, it appears to me that unless the present council takes prompt action, it will be impossible to elect city councilmen until the election of November, 1957.

Furthermore, I would regard such legislative action as within the power of local self-government which is conferred upon all municipalities by Section 3 of Article XVIII of the Constitution; and it must be borne in mind that while Fairfield changes its status, it is still the same municipality.

Coming to your specific inquiries, I note that your first question is as to the right of the electors in the City of Fairfield to vote (a) for the members of the county board of education, and (b) for township officers.

(a) Section 3311.07, Revised Code, provides in part:

"When a local or exempted village school district contains within its territorial boundaries the major portion of the territory lying within the corporate limits of a village advanced to a city,

such school district may by a majority vote of the full membership of such board of education, declare that such local or exempted village school district shall become a city school district."

The village of Fairfield school district was either a local district or an exempted village district. If the latter, its electors, of course, did not participate in election of members of the county board. If they were in a local district they will continue so, with the right to vote for such board members, unless and until the board of education takes the action mentioned in Section 3311.07, *supra*.

(b) A city or village is a part of the township in which it is located, and its electors are entitled to vote at all township elections. The only circumstance which can disturb this right is when township lines are adjusted in proceedings under Section 503.07 et seq., Revised Code. See Opinion No. 4642, Opinions of the Attorney General for 1954, page 648.

(2) As to the right of the voters of the city of Fairfield to vote at the coming election for village officials who have been nominated for village offices, I have no hesitancy in answering that question in the negative. There will be no village officials to be elected, and the names of any persons who have been nominated or have filed nominating petitions for village offices will not appear on the ballot as such. In that connection, I call your attention to Opinion No. 62, Opinions of the Attorney General for 1951, page 1, where it was held:

"1. Candidates for office in a municipality, which is presently a village but which will become a city because the 1950 census will officially disclose, prior to the November, 1951 election, that it has a population of 5,000 or more, should become candidates for city offices."

(3) Under the provisions of Section 3505.03, Revised Code, it would become the duty of the board of elections to furnish on the ballot, at the next municipal election, blank spaces for writing in the names of candidates for the several offices to be filled, where there are no nominees. Quite clearly this could not be done in the case of the offices of member of council, however, if the existing council fails to divide the city into wards by such date reasonably in advance of the election that ballots could be prepared for use in such wards.

(4) Your question as to whether the village officials, if elected to the various village offices, become de facto city officials, presupposes that at the forthcoming election village officials are to be elected, which, of course, is not consistent with the facts or the law, as Fairfield at the time of the election is no longer a village, and the officers to be elected are the city officers prescribed by the statutes.

Accordingly, it is my opinion:

1. When a village becomes a city pursuant to the provisions of Section 703.06, Revised Code, it becomes the duty of the legislative body of the municipality then in office to provide for the election of a new legislative body for such city by dividing the city into wards as prescribed in Section 731.01, Revised Code.

2. The right of the electors of a city which has passed from its status as a village by virtue of Section 703.06, Revised Code, to vote at all township elections, is in no way affected by such transition. The right of such electors to vote for members of a county board of education is in no way affected until the board of education of the district in which it is situated proceeds under the authority of Section 3311.07 to declare such district to be a city district.

3. After the transition of a village into a city, the electors of such city have the right to vote for such officers as are prescribed by law for cities, including the legislative body, and no names of persons who have been nominated or have filed nominating petitions for offices of the pre-existing village are entitled to be placed on the ballot for such offices, at any succeeding election.

4. At the next regular municipal election following the transition of a village to the status of a city, it would be the duty of the board of elections to provide on the ballot blank spaces for writing in the names of candidates for the several offices to be filled, where no nominations or petitions for nomination for said offices have been presented. This duty, however, would not include provision for voting for members of the legislative body of the city unless the city has, by appropriate action, been divided into wards.

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of city officers, but may exercise only the powers given by the law to village officers.

Respectfully,
C. WILLIAM O'NEILL
Attorney General