

electors as they may desire to be elected to that office and express their choice for that elector by placing a cross mark in front of the name so written on the ballot, and I am therefore of opinion that electors may lawfully write in the names of electors and vote for the person whose name is so written in the manner suggested."

These are the only provisions for blank spaces in ballots and, as you will observe, Section 5028, General Code, is only applicable in township and municipal elections. Section 5025, General Code, clearly only authorizes a blank space where there is no candidate or candidates for a designated office and there exists no authority otherwise to provide a blank space on the ballot for delegates to national conventions.

Specifically answering your question, therefore, it is my opinion that in the preparation of presidential delegate ballots where there are qualified candidates at least equal to the number to be elected, you are not authorized to leave a single blank line or space at the end of the list of candidates for such office.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1974.

CANAL LANDS—DUTY OF DIRECTOR OF HIGHWAYS TO SURVEY
ABANDONED PORTION OF MIAMI AND ERIE CANAL—USE OF GENERAL APPROPRIATION.

SYLLABUS:

1. *Under the provisions of Sections 14153-5 and 14153-6, General Code, it is the duty of the Director of Highways, as soon as it may be practicable, to cause surveys to be made of that portion of the Miami and Erie Canal abandoned by the provisions of Amended Senate Bill No. 39 (112 v. 388-390), together with maps and plans of the same; and further, to make a plat or plan showing the highway proposed to be constructed thereon, its length, grades and width and so much of the canal property as may be used for such highway purposes.*

2. *In carrying out the provisions of Sections 14153-5 and 14153-6, General Code, the Director of Highways is authorized to use general appropriations made to the Department of Highways for the purpose of employing engineers, clerks, and other employees, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation made to such department that may be necessary to accomplish the duties of the Director of Highways under said sections.*

COLUMBUS, OHIO, April 14, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion, as follows:

"Sections 14153-5 and 14153-6 of the General Code, being Sections 5 and 6 of amended Senate Bill No. 39, enacted at the last session of the Legis-

lature, provide that the Director of Highways shall make surveys of the abandoned Miami and Erie Canal and prepare plans of a proposed highway to be located on the site of the abandoned canal.

I know of no special appropriation made for the purpose of carrying out these sections. The canal, of course, is not a part of the state system of highways.

Will you please give me your opinion as to whether this Department has authority to expend any funds appropriated to it for the purpose of carrying out the provisions of this law as contained in the two sections mentioned above."

Sections 14153-5 and 14153-6 of the General Code were enacted by the 87th General Assembly as a part of Amended Senate Bill No. 39 (112 v. 388-390).

Amended Senate Bill No. 39 is an act entitled :

"An Act—To abandon for canal and hydraulic purposes, that portion of the Miami and Erie Canal from a point five hundred feet north of the state dam near the corporation line of the city of Middletown, Butler County, Ohio, to the present terminus of said canal at St. Bernard, in the city of Cincinnati, Hamilton County, Ohio."

Sections 14153-5 and 14153-6 of the General Code respectively provide as follows :

Sec. 14153-5. "As soon as practicable, after this act goes into effect, the Director of Highways of the State of Ohio, shall cause surveys to be made of the canal property herein abandoned, together with maps and plats of the same, and of all lands used in connection with that portion of the Miami and Erie Canal, hereby abandoned, belonging to the State of Ohio adjacent thereto, and file a copy thereof with the Governor."

Sec. 14153-6. "The Director of Highways is further directed to make a plat or plan, showing the highway, its length, grades and width of so much of the canal property as may be used for such highway purposes, and all other lands adjacent *thereof* that may be leased for other purposes."

I find from a reading of all of the various provisions of Amended Senate Bill No. 39 that the portion of the Miami and Erie Canal, abandoned by said act, was so abandoned in order that a state highway might ultimately be constructed over a portion of the canal lands thus abandoned.

No definite time is fixed for the establishing and construction of the proposed highway over said lands, and it is noted, from the provisions of Section 14153-3 of the General Code as therein enacted, that the Legislature took recognition of the fact that it might not be practicable to establish a state highway over the canal lands abandoned for some time to come. This section reads :

"So much of said lands as were used and occupied by the Miami and Erie Canal shall be forever held for the State of Ohio in fee simple, and held by the state for the purpose of constructing upon the said lands, a highway, to be erected, constructed and improved at such time or times as the State of Ohio may hereafter either by legislative enactment, or otherwise, find proper and convenient."

Also, under the provisions of Section 14153-7, it is provided that :

“Until said highway shall be constructed and improved, no portion of the lands within the plat or plan showing such highway shall be leased for any purpose whatever, except as hereinafter provided, but until the State of Ohio shall construct and improve said lands for a highway, all municipal corporations through which said highway shall pass when completed shall be permitted to use said canal lands for public purposes only, without compensation. Lands reserved for highway purposes as shown on said plat may be leased to municipalities, individuals, firms or corporations under the direction of the Director of Highways in the same manner as provided in the following sections, except that all such leases shall be subject to cancellation by the state, whenever construction of such highway is begun.”

By Sections 14153-5 and 14153-6, supra, the making of surveys, maps and plats of the canal lands abandoned and a plat or plan showing the proposed highway, its length, grades and width, by the Director of Highways, is to be accomplished according to the express provisions of Section 14153-5 “as soon as practicable.” Although no definite time is fixed in which the Director of Highways is to accomplish the making of prescribed surveys, maps and plans, by the use of the words “as soon as practicable after this act goes into effect” in Section 14153-5, supra, it is obvious that the Legislature intended that the Director of Highways should comply with the provisions of Sections 14153-5 and 14153-6, supra, as soon as the demands and requirements upon his department would permit.

While it is true that the Legislature has not provided a special appropriation to your department to cover the cost of making the surveys, maps, plats and plans in question, yet there are several items in the appropriations to the Department of Highways and Public Works, Division of Highways, that are available to the department in carrying out the provisions of Sections 14153-5 and 14153-6, supra.

Your attention is directed to the various appropriation items made to the “Department of Highways and Public Works, Division of Highways” appearing at pages 44 and 45 of House Bill No. 502, 87th General Assembly, the act making general appropriations for the fiscal period. These items are contained under the classifications “Personal Service” and “Maintenance.” Under “Personal Service” various sums of money are appropriated to pay the salaries of the employes of your department, including a number of engineers, clerks, bookkeepers and other employes. In addition, under this classification, there is an appropriation for “Wages” under the code symbol “A 2.” Under “Maintenance” are many items, including those denominated “Office,” “Motor Vehicle,” “General Plant,” etc.

While Section 1 of House Bill No. 502 provides that “Appropriations for departments * * * , for the uses and purposes of which, or of any activity or function thereof, specific funds in the state treasury are provided by law,” are made from such specific funds, to the extent that there be sums to the credit of such funds, yet, if there be no specific funds, such appropriations are appropriated out of any moneys in the state treasury to the credit of the general revenue fund. It is true that a number of appropriations made to your department are made from funds raised for a specific purpose and could not, under the terms of House Bill No. 502, be used for the purpose under consideration, as for example, the appropriation contained on page 45 :

“F 1. Repairs—To maintain and repair highways as provided in Sections 6309, 6309-1, 6309-2, 614-94, 614-95, 614-96 and 5537 of the G. C. and amendatory and supplementary provisions * * * .”

This item appropriates moneys derived from the motor vehicle license tax, taxes from motor transportation companies and the two cent gasoline tax, all of which funds were raised for and appropriated to be used for the purpose of maintaining roads in the state highway system. And so also with reference to the appropriation contained on page 49 of House Bill No. 502, namely :

“G. Additions and Betterments—There is hereby appropriated to the State Highway Improvement Fund the State's portion of revenues derived under H. B. No. 206, 87th General Assembly of Ohio.”

which item appropriates the moneys derived and to be derived from the new one cent gas tax, the moneys contained in this last appropriation being from taxes imposed for and appropriated for the purpose of constructing state highways and eliminating grade crossings thereon. There are other specific appropriations to your department which could not be used for the purpose of paying the cost of the surveys under consideration, but these need not be set forth in this opinion.

It is sufficient to say that the Legislature has seen fit to add certain duties to your department in addition to the duties formerly imposed thereon, as was within its power, and that any general appropriations made to your department for the purpose of carrying out the duties of the department generally, may lawfully be used to pay the cost and expenses entailed in performing these additional duties.

Answering your question specifically, it is my opinion that, under the provisions of Sections 14153-5 and 14153-6, it is your duty, as soon as it may be practicable, to cause surveys to be made of that portion of the Miami and Erie Canal abandoned by the provisions of Amended Senate Bill No. 39 (112 v. 388-390), together with maps and plans of the same, and further, to make a plat or plan showing the proposed highway, its length, grades and width and so much of the canal property as may be used for such highway purposes. In carrying out the provisions of Section 14153-5 and 14153-6, General Code, you are authorized to use the general appropriations made to your department for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation that may be necessary to accomplish the duties of the Director of Highways in carrying out the directions of the Legislature.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1975.

MINNOW DEALER—SALE OF MINNOWS—LIMIT.

SYLLABUS:

1. *By the terms of Section 1414-1, General Code (112 v. 255), a minnow dealer is prohibited from selling to any one person more than one hundred minnows in any one day.*