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ELECTION—JUSTICE OF PEACE—TO SUCCEED PERSON APPOINTED TO VACANCY IN SUCH OFFICE—PERSON WHO RECEIVED HIGHEST NUMBER OF VOTES ELECTED FOR FOUR YEAR TERM—COMMENCE FIRST DAY OF JANUARY FOLLOWING SUCH ELECTION—BALLOT RECITED SUCH ELECTION SHALL BE FOR UNEXPIRED TERM—INEFFECTIVE.

SYLLABUS:

Where an election is held for the purpose of electing a justice of the peace to succeed a person who was appointed to a vacancy in such office, the person receiving the highest number of votes at such election is elected for a term of four years commencing on the first day of January following such election, even though the ballot recited that such election shall be for the unexpired term.

Columbus, Ohio, December 30, 1943.

Hon. Ross Michener, Prosecuting Attorney,
St. Clairsville, Ohio.

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

“I am writing you requesting your opinion in the following matter:

On July 14, 1943, Mr. S. was appointed as Justice of the Peace in and for Pease Township, Belmont County, Ohio, to fill a vacancy in accordance with Section 1714 of the General Code of Ohio.

At the next regular election following said appointment, to-wit, November 2nd, 1943, three persons, namely: D., S. and B. each filed their respective petitions to have their names placed upon the ballot for the election to the unexpired term of the former incumbent. The three names were placed on the ballot as candidates for the Unexpired Term. Mr. B., one of the three candidates received the most votes and his election was announced by the Board of Elections.

The Board of Elections of our County forwarded certificate of election with the usual fee to the Secretary of State, and the Secretary of State returned the certificate of election and fee stating that their office was of the opinion that no commission should be issued for said unexpired term.

Upon the same ballot there were named and elected without opposition two other justices of the peace for the regular four year terms.

Sections 1714 and 1715 of the General Code of Ohio clearly indicate that there does not exist an unexpired term to be filled by election, and provides that a justice of the peace shall be elected at the next regular election after such vacancy for a full term of four years.

In view of these facts will you please give me your opinion on the following:

1. Was B. elected as justice of the peace for a full four year term or was said election a nullity?

2. If B. was not elected does the present incumbent, S., continue to hold that office until the next regular election two years hence?"

The provisions of law under which your questions arise are contained in sections 1714 and 1715 of the General Code, which respectively read as follows:

Section 1714:

"If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the trustees within ten days from receiving

notice thereof, by a majority vote, shall appoint a qualified resident of the township to fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of the courts of such vacancy and the date when it occurred."

Section 1715:

"At the next regular election for such office, a justice of the peace shall be elected in the manner provided by law, for the term of four years commencing on the first day of January next following his election."

Section 1 of Article XVII of the Constitution of Ohio, which prescribes the time for holding elections, reads as follows:

"Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years."

From the above constitutional provision it is clear that "the next regular election for justices of the peace", in the case submitted by you, would have been on the first Tuesday after the first Monday in the odd numbered year next following the appointment of Mr. S. which was of course November 2 of this year. Therefore, the election for a successor to the former elected incumbent was held on the proper date.

Under the provisions of section 1715, supra, the person elected on said date to succeed Mr. S. was to be elected for a term of four years commencing on the first day of January, 1944. At the election held on November 2, the ballot furnished the electors recited that one person was to be elected to the office of justice of peace for the unexpired term, in the following form:

For Justice of the Peace (Un-Expired Term) (Vote for not more than one)	
	C. J. D.
	J. H. S.
	G. T. B.

Such statement on the ballot was, of course, at variance with the provisions of section 1715. This fact, however, standing alone, would not in my opinion invalidate the election.

At the outset it should be pointed out that the election laws are, as a general rule, to be construed liberally so as to preserve, if possible, and not defeat, the choice of the people as expressed at an election. See *State, ex rel. Attorney General, v. Taylor*, 15 O. S. 137; *Cincinnati v. Puchta*, 94 O. S. 431.

With respect to irregularities in an election, it is stated in 15 O. Jur., pages 400, 401:

“It may be stated, as a general rule, that honest mistakes or mere omissions on the part of election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not render an election, or particular votes cast therein, invalid, unless they affect the result of the election, or render it uncertain.”

Again at page 420 of the same volume, it is declared:

“But mere irregularities which do not go to the foundation of the election will not invalidate it, although the provisions of the statute have been technically violated, if it appears that there has been a fair election and a comparatively full vote, and no fraud or attempt to deceive or mislead.”

In the instant case it is difficult to see how the slight irregularity in the form of the ballot was likely to mislead or hinder the voters in a free expression of their choice. There is nothing in the language which definitely fixes the term at less than four years. It merely recites “for the unexpired term”.

In this respect it should be pointed out that the term for which a justice of the peace should have been elected in accordance with section 1715, in fact includes the unexpired term of the former elected incumbent. It would therefore seem that the words “unexpired term”, rather than misleading the voters, might very well have been regarded by them as being informative of the fact that the term to be filled by the successful candidate was the one succeeding the unfinished term of the last elected justice of the peace.

If the election held on November 2 were to be held invalid by reason of the fact that the words “unexpired term” appeared on the ballot, the appointee now serving would, under the terms of section 1714 of the General Code, continue in office until his successor was elected at the

next regular election for justice of peace in November, 1945. To continue an appointee in office beyond the time when the voters have expressed their choice for such office would in my opinion, violate a fundamental policy of our government, to-wit, that the people shall be served by servants of their own selection. Therefore, since there has been a fair and honest expression of the will of the electors, such expression should not be lightly set aside for any slight irregularity where there is no showing of fraud.

You are therefore advised that, in my opinion, Mr. B. was elected as justice of the peace for a full term of four years commencing on the first day of January, 1944.

Respectfully,

THOMAS J. HERBERT,
Attorney General.