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MUNICIPAL ELECTION—TWO OR MORE CANDIDATES FOR NOMINATION AS PARTY NOMINEE FOR MEMBER OF CITY COUNCIL FROM ONE WARD—TWO OR MORE PARTY CANDIDATES FOR NOMINATION FOR ANY OTHER OFFICE—TO BE FILED AT MUNICIPAL ELECTION—DECLARATIONS OF CANDIDACY DULY FILED—NO AUTHORITY FOR BOARD OF ELECTIONS TO DISPENSE WITH PRIMARY ELECTION FOR THAT PARTY—PRIMARY ELECTION MUST BE HELD FOR NOMINATION OF MEMBERS OF COUNCIL AND ALL OTHER OFFICES TO BE FILLED AT NEXT GENERAL ELECTION—SECTIONS 4785-67, 4785-67a G. C.

SYLLABUS:

Where two or more candidates for nomination as a party nominee for member of a city council from one ward, or two or more party candidates for nomination for any other office to be filled at a municipal election, have duly filed their declarations of candidacy, the board of elections would not be authorized by Section 4785-67a, General Code, to dispense with a primary election for that party, but must hold such primary election for that party for the nomination of members of council and all other offices that are to be filled at the next general election, as required by Section 4785-67, General Code.

Columbus, Ohio, March 30, 1951

Hon. Vernon Lee, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“At the instance of the Board of Elections of Tuscarawas County, your opinion is urgently requested on the following set of facts:

“The City of New Philadelphia has a contest on the Democratic Ticket for nomination for the office of member of council in one ward only. There are no contests for any other nomination for a city office in said city at the coming primaries. Will it be necessary to hold a Democratic primary in every precinct and ward, or may ballots be printed and an election held in one ward only?”

The matter of primary elections is governed by the provisions of Section 4785-67 of the General Code. This section provides in part as follows:

“On the first Tuesday after the first Monday in May of each year primary elections shall be held for the purpose of nominating persons as candidates of political parties for election to offices to be voted for at the next succeeding general election; * * *”

There follows an exception in the case of Townships and municipalities having a population of less than 2,000 persons.

Section 4785-67a, General Code, reads as follows:

“If in any odd numbered year no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to *any of the offices to be voted for* at the general election to be held in such year, or if the number of persons filing such declarations of candidacy for nominations as candidates of one political party for election to such offices should not exceed, *as to any such office*, the number of candidates which such political party shall be entitled to nominate as its candidates for election to *each such office*, then no primary election shall be held for the purpose of nominating candidates of such party for election to offices to be voted for at such general election and no primary ballots shall be provided for such party, and the election officials whose duty it would have been to provide for and conduct the holding of such primary election and declare the results thereof and issue certificates of nomination to the persons entitled thereto if such primary election had been held, shall declare each of such persons to be nominated and shall issue appropriate certificates of nomination to each of them, and shall certify their names to the proper election officials, in order that their names may be printed on the official ballots provided for use in the next succeeding general election in the same manner as though such primary election had been held and such persons had been duly nominated thereat.” (Emphasis mine.)

Here it will be noted that in case no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to any of the offices to be voted for in the odd numbered year, a primary is to be dispensed with.

It is further provided that if the number of persons filing such declarations of candidacy for nominations as candidates of one political party for any of the offices to be voted for at the general election should not exceed as to *any such office* the number of candidates which such

political party is entitled to nominate for such office, then no primary election shall be held for such party and no primary ballot shall be provided, and the election officials are then required to issue certificates of nomination to the persons who would be entitled thereto if such primary election had been held.

In order, however, to come within this latter provision it is necessary that as to each and every office to be filled, the number of candidates who have presented themselves should not exceed the number of candidates who are to be nominated for such office, in other words, no contest whatever. The converse of this is, that if as to any office more candidates have presented themselves than the party is entitled to nominate for such office, then a primary election must be held. The essence of the statute in question may be stated thus: (1) No declarations of candidates—no primary; (2) No contests as to any office—no primary; (3) A contest for one or more offices—primary must be held for all.

In the case which you present there is one of the several offices to be filled, to wit, a member of council from one ward, for which there is a contest. This councilman, though elected only by a single ward, is nevertheless a city officer. It follows that in this situation the board of elections would not be warranted in dispensing with the primary, and I can find nothing in the statute which would warrant it in holding such primary election in the one ward only, and limiting the voting to the council candidacy, and dispensing with the primary as to all other officers.

However desirable and reasonable such a plan might seem, it certainly is not provided by the statutes referred to or in any other statute. There is nothing ambiguous about the language used. Where that is the situation, a court will enforce a statute according to its plain terms no matter how unfair or how far from the real intention of the legislators. This principle was forcibly illustrated in the case of *Slingluff v. Weaver*, 66 Ohio St. 621, where the court was confronted by a statute which had the effect, certainly unintended, of depriving the Supreme Court of most of its appellate jurisdiction. The court held:

“But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it

did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

It is therefore my conclusion in answer to your question, that where two or more candidates for nomination as a party nominee for member of a city council from one ward, or two or more party candidates for nomination for any other office to be filled at a municipal election, have duly filed their declarations of candidacy, the board of elections would not be authorized by Section 4785-67a, General Code, to dispense with a primary election for that party, but must hold such primary election for that party for the nomination of members of council and all other offices that are to be filled at the next general election, as required by Section 4785-67, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General