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CHARTER OR AMENDMENT—DISTRIBUTION TO ELECTORS
—“AS FAR AS IS REASONABLY POSSIBLE”—OCCUPANCY
MAIL DOES NOT COMPLY—OHIO CONSTITUTION, ART. X,
SEC. 4.

SYLLABUS:

1. The provisions of Article X, Section 4, of the Ohio Constitution that “the authority submitting any charter or amendment shall mail or otherwise distribute a copy thereof to each of the electors of the county as far as may be reasonably possible” is not satisfied by mailing such a copy to the occupant of each of a list of house numbers obtained from a direct-mail organization or otherwise.

2. The above quoted constitutional provision requires that, as far as reasonably possible, a copy of a proposed county charter, or amendment thereto, be mailed to each elector of the county at his last known place of abode, or otherwise delivered to the elector’s last known place of abode, by some messenger service at least as effective as individual mailing.

3. Distribution of the copies of the charter or amendment to each elector of a registration precinct who registered for the last general election, and to each elector of a non-registration precinct who signed the poll book in the last general election, is a compliance with the constitutional provision above quoted.

4. Publication of the text of a proposed county charter in one or more newspapers of general circulation is not an authorized substitution for the means of notification set forth in Article X, Section 4 of the Ohio Constitution.

Columbus, Ohio, August 12, 1959

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Article X, Section 4, of the Ohio Constitution states in part ‘The authority submitting any charter or amendment shall mail or otherwise distribute a copy thereof to each of the electors of the county as far as may be reasonably possible.’”

“The Lucas County Charter Commission is preparing a charter for submission to the electors of this county in November. The time will soon be at hand when the above quoted portion of the Constitution must be complied with. There seems to be no doubt but that a mailing to each elector would comply 100% with the Constitution. However, since the Constitution does not make an individual mailing mandatory but acknowledges that some other methods may be used, and since substantial time and expense to the county may be saved by using other methods, we are asking your opinion of the following: 1) Would so-called ‘occupancy’ mail comply with the law? As we understand it, lists are available from direct mail organizations which contain the house numbers of all or nearly all residents in a given area. However, rather than using the name of the individual, the word ‘occupant’ appears on the first line of the address. Obviously, if more than one elector lived at that address only one copy of the proposal would reach such electors. 2) Since there are many provisions in the statutes for giving notice by newspaper advertising, would the printing of the entire proposed charter in a newspaper published and of general circulation in the county comply with the Constitution?”

The term elector is defined by Section 3501.01, Revised Code, as follows:

“(H) ‘Elector, or ‘qualified elector’ means a person having the qualifications provided by law to entitle him to vote.”

In registration cities, registration is one of the prerequisites to being entitled to vote. Section 3503.06, Revised Code, provides in part:

“* * *

“No person residing in any registration precinct shall be entitled to vote at any election * * * unless he is registered as an elector.”

In such areas, therefore, the constitutional requirement is that a copy of the charter or amendment be distributed to each registered voter, for to do this is “reasonably possible.”

In non-registration precincts, all persons having the citizenship, age and residence qualifications prescribed by law are electors and entitled to vote, although some may never have done so. To fully comply with the constitutional requirements that a copy of the charter be distributed to “each elector” would necessitate the compilation of a mailing list of each person in these areas qualified to vote. This might prove to be a tremendous and perhaps impossible task. It is my opinion that the clause “as far as reasonably possible,” would permit the use of poll books and

the distribution of copies of the charter only to those electors of non-registration precincts who had exercised their right to vote at the last general election.

As pointed out by you in your above request, the weakness of occupancy mail is that only one piece of such matter is delivered to an address, but several electors might reside at that address. This would be true particularly in the case of a boarding or rooming house. Yet the constitution requires that a copy of the proposed charter or amendment shall be mailed or otherwise distributed *to each of the electors* of the county as far as may be reasonably possible.

It is my opinion that compliance with the constitutional requirement of distribution to each elector "as far as reasonably possible" is not met by a system of distribution which at the outset is certain *not* to reach each elector. Failure to comply with the constitutional requirement of notice might imperil the validity of a charter adopted by the voters, particularly when the submitting authority knows in advance that the distribution system used will not reach each elector. For that reason it is my opinion that occupancy mailing will not conform to the constitutional requirement.

Some forms of legal notices are authorized to be published in newspapers. The rules in each case are prescribed and must be strictly followed. There is no authorization in the Ohio constitution or statutes for substituting publication of the charter in a newspaper or newspapers for the explicit direction in Section 4, Article X, that the authority submitting such charter send a copy to each elector of the county by mail or otherwise. Since the plain intent of the provision is to get a copy of the proposed charter or amendment into the hands of each elector, we construe the words "or otherwise distribute," as meaning some delivery system, such as messenger service, which will be at least as effective as mail addressed to the elector's last known place of residence.

Based on the foregoing considerations, it is my opinion, and you are accordingly advised:

1. The provision of Article X, Section 4, of the Ohio Constitution that "the authority submitting any charter or amendment shall mail or otherwise distribute a copy thereof to each of the electors of the county as far as may be reasonably possible" is not satisfied by mailing a copy to the occupant of each of a list of house numbers obtained from a direct-mail organization or otherwise.

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Respectfully,
MARK McELROY
Attorney General