

1961

ELECTIONS—MUNICIPAL CORPORATIONS—VOTER REGISTRATION—§3503.06 R.C.—ESTABLISHMENT; REPEAL; RE-ESTABLISHMENT—USE OF ORIGINAL REGISTRATION LIST.

**SYLLABUS:**

Where a city, having a population at the next preceding federal census of less than 16,000, has formerly, by action of its council procured the registration of its voters as provided by Section 3503.06, Revised Code, and its council by ordinance passed December 27, 1957, repeals such former action, and later, to-wit, on March 16, 1958, repeals its latest action and re-establishes registration, the original registration list on file with and being a part of the permanent records of the board of elections, may be used by the board of elections as the basis for the registration thus re-established.

Columbus, Ohio, April 15, 1958

Hon. Wm. H. Irwin, Prosecuting Attorney  
Belmont County, St. Clairsville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“On December 19, 1957 the City of Martins Ferry, Ohio passed Ordinance Number 4817 repealing a former ordinance requiring voters to register to vote, which ordinance became effective on said date under the signatures of the president of Council and Mayor of the City of Martins Ferry, a copy of which is hereby enclosed.

“On March 6, 1958 the Council of the City of Martins Ferry passed an ordinance, a copy of which is herewith enclosed, requiring voters to register in order that they may vote, said ordinance was not vetoed by the mayor for the reason that council had the necessary majority to pass it over his veto.

“Since the last day of the ‘pocket veto’ of the mayor was March 16, the ordinance will become law thirty days thereafter. As the last day for registration is 4:00 P. M., March 26, 1958, we have ruled that registration is not necessary for the primary. The question is, under this new ordinance, will the City of Martins Ferry have to re-register all persons who desire to vote in the general election, or can they use the old register list?”

Section 3503.06, Revised Code, reads in part as follows:

“Any municipal corporation of less than sixteen thousand population may, by ordinance, elect to become a registration municipal corporation. When such ordinance is adopted the board shall establish and maintain a registration of voters as in the case of registration cities. The board of any county may, by the vote of a majority of its members, establish and maintain registration of any or all the qualified electors of such county.  
\* \* \*”

Martins Ferry having, at the 1950 census, had a population of 13,220, plainly falls within the above provision of the law, whereby it may, by ordinance of its legislative body elect to become a registration city, and if it does so elect, the duty falls upon the board of elections to “establish and maintain a registration of voters.”

The same statute gives the board of elections the power, independent of municipal action, to establish registration “of any or all the qualified electors of the county,” which would certainly include the city in question. However, it appears from your letter that original registration in Martins Ferry was brought about by ordinance of the municipal council.

Such being the case, I have no doubt that the city council had full power to repeal its original action, as it did on December 19, 1957. The power to enact an ordinance carries with it the power to repeal the same. *State, ex rel. Schmidt v. Colson*, 7 Ohio App., 438; *State, ex rel. Singer*

v. *Cartledge*, 129 Ohio St., 279. Of course the same rule applies to the ordinance of March 16, 1958, declaring the desire of the city to re-establish registration.

The sole question presented by your communication is whether the registration list which was on file in the office of the board of elections on December 27, 1957, may be used now that registration, then withdrawn, has been re-established.

Section 3503.08, Revised Code, provides in part:

“The board of elections shall provide such printed forms, blanks, supplies, and equipment and prescribe such reasonable rules and regulations as are necessary to carry out sections 3503.06 to 3503.32, inclusive, of the Revised Code. \* \* \*”

Section 3503.09, Revised Code, requires the board of elections to designate four of the precinct officials to act as registrars.

Section 3503.13, Revised Code, reads in part:

“\* \* \* The duplicate forms shall be filed alphabetically and shall constitute the permanent office record of the board. It shall not be removed from the office of the board except upon the order of a court.”

It thus appears that the action of the city council did not originally *create* the registration lists. Its only power was to “elect to become a registration municipal corporation.” For the same reason, it had no power to destroy or annul the registration list. That list, created by the board of elections was and remains a part of its permanent record unless and until removed “upon the order of a court.”

Considering therefore that the list here in question is a complete list of the eligible voters of the City of Martins Ferry up to December 27, 1957; that there has been since that time no opportunity for any change therein which could operate to the prejudice of any voter, and that it is a part of the permanent record of the county board of elections, I can see no possible reason for discarding it and going to the trouble and expense of having the same electors re-register.

Such procedure would certainly violate no specific provision of the statutes, and would appear to be in line with good business practice, and in my opinion the exercise of sound discretion.

I am confirmed in this conclusion by consideration of the law above quoted, giving the board of elections full power to require any territory in the county to become registration territory. That board might have determined to continue registration in Martins Ferry at the very time when its council was taking action to do away with it. It might have taken such action the day after the city's ordinance was passed or the day after it took effect. In doing so, it could certainly avail itself of its own permanent records in putting its mandate into effect.

Some light is thrown on the power of the board of elections, as well as on the purposes of registration, by the case of *Mt. Healthy v. Harlow*, 25 Ohio Opinions, 416. There the board of elections had ordered registration in some twelve cities and villages adjacent to the City of Cincinnati. Ten of these municipalities objected and brought actions to enjoin the procedure. Judge Mack of the Common Pleas Court of Hamilton County, held, *inter alia*:

“2. Laws with relation to registration of voters seeks to preserve the purity of elections and are therefore to be construed liberally.

“3. An exercise of powers by an administrative board, like the Board of Elections, is not subject to review, except for fraud, corruption or an abuse thereof.”

It is manifest that for the purpose of the May primary there will be no registration for the reason (1) that it is now too late for any new electors to register, and (2) that it is provided in Section 3503.08, Revised Code:

“\* \* \* In precincts which become registration precincts, the first general registration of all qualified electors shall be held as the board determines, either on Thursday and Saturday in the eleventh week and on Wednesday in the tenth week or on Thursday and Saturday in the seventh week and on Wednesday in the sixth week preceding the next general election, thereafter, from ten a. m. to two p. m. and from four p. m. to nine p. m.  
\* \* \*”

Accordingly it is my opinion and you are advised, that where a city, having a population at the next preceding federal census of less than 16,000, has formerly, by action of its council procured the registration of its voters as provided by Section 3503.06, Revised Code, and its council by ordinance passed December 27, 1957, repeals such former

action, and later to wit on March 16, 1958, repeals its latest action and re-establishes registration, the original registration list on file with and being a part of the permanent records of the board of elections, may be used by the board of elections as the basis for the registration thus re-established.

Respectfully,

WILLIAM SAXBE

Attorney General