

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the consent of the Controlling Board to the release of funds has been obtained in accordance with Section 11 of House Bill 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the Fidelity and Deposit Company of Maryland appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1021.

CANDIDATES—COMMISSION TO FRAME MUNICIPAL CHARTER—HOW
NOMINATED—DUTY OF ELECTION OFFICIALS TO PROVIDE
BLANK SPACES ON BALLOT WHEN THERE ARE NO NOMINEES.

SYLLABUS:

1. *Candidates for commissioners to frame a charter under Section 8 of Article XVIII of the Ohio Constitution should be nominated as provided by general law, for the nomination of other municipal officers.*

2. *Where no nominations have been made for such candidates, it is the duty of the election officials to provide blank spaces for such election upon the ballot, as provided in Section 5025 of the General Code.*

COLUMBUS, OHIO, October 12, 1929.

HON. WINSTON W. HILL, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following statement of facts:

“The city of Delaware through its council, has passed the necessary ordinance as required by Article 18, paragraph 8, of the Ohio Constitution, to submit the question of a charter form of government to the people at the next regular election in November.

The aforementioned article also provides that provision shall be made on the ballot for the election of fifteen persons from the municipality at large to constitute a charter commission.

The question concerning all of the charter enthusiasts is:

Are the fifteen persons, or perhaps more than fifteen, placed on the ballot through selection by the local charter club, or are the said persons placed on the ballot through the medium of a nominating petition for each, and does the said petition have to be filed with the Board of Elections sixty days before the election? As there is no provision in the statutes governing the com-

mission to be voted upon, my opinion was that the commission to be voted upon could not be classified as municipal officers (Section 5004), therefore they (names) would either by selection or petition be placed in the hands of the Board of Elections a reasonable time before the election."

Section 8 of Article XVIII of the Constitution of Ohio, as amended in 1912, provides :

"The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, 'Shall a commission be chosen to frame a charter.' The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein."

Section 14 of Article XVIII of the Constitution, which may be pertinent in connection with your inquiry, provides :

"All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election."

Section 7 of Article V of the Ohio Constitution, which must be considered, provides :

"All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presi-

gency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority."

While your communication does not so state, in specific language, it will be assumed for the purpose of this opinion, that the ordinance to which you refer does not undertake to provide a method for the nomination of candidates to be elected as commissioners to frame a charter, in the event that the proposal to submit a charter carries.

Section 8 of Article XVIII, supra, in specific language requires that such ordinance shall require that the question be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage. Otherwise, the ordinance shall provide for the submission of the question at a special election to be called within the time hereinbefore mentioned. Said Section 8 then provides that the ballot containing such question shall contain a provision for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter, in the event that the question as to whether a commission shall be chosen to frame a charter carries.

In analyzing said Section 8, it will be noted that while it is a mandatory requirement that the ordinance provide for the time of the submission of the question, it apparently is not mandatory that the ordinance contain a provision relative to the election of the commissioners. However, it may be stated, as a general practice, that it has been the custom, in the adoption of such an ordinance, to enact therein express provisions as to the method of nominating the candidates who are to be voted for as the commissioners to frame a charter. See Ellis' Ohio Municipal Code. The form of ordinance set out in the text above mentioned, after providing for the submission of the question as to whether a commission shall be chosen, provides in detail the method of selecting the candidates for commissioners. Without undertaking to set forth all of the provisions thereof it may be stated that it apparently undertakes to adopt the method provided by statute for the nomination by petition of candidates for municipal offices. However, it may be noted in Section 3 of said form that it is provided that the filing of the certificate and nomination papers of candidates shall be made not less than twenty-five days prior to the date of election. This provision is significant, for the reason that the statutes governing such cases now provide that such papers shall be filed not less than sixty days before the election.

However, it is believed that said form is the same as that employed in the submission of the question to the electors of the city of Columbus. The commission to frame a charter for said city was elected May 6, 1913, and on said date the law required such nominating petitions to be filed twenty-five days prior to date of election. The amendment of the law which contains the sixty day provision did not become effective until May 19, 1913. See 103 O. L. 844. Therefore, it will be seen that the form under consideration was in accordance with the election laws that were in force at the time it was used and apparently has not been revised in view of the amendment.

While Section 14 of Article XVIII of the Constitution above quoted, provides that elections and submission of the question under Article XVIII, shall be conducted by the election authorities prescribed by general law, it does not necessarily follow that this requires that the method employed by general law should be followed. The following is quoted from the court's opinion, in the case of *Fitzgerald vs. Cleveland*, 88 O. S., 388, at page 350:

"If the constitutional convention had intended that the election of all

municipal officers should be conducted by the methods prescribed by general law, it is natural to suggest that so important an exception to the grant of all power of local self government would have been included in the article.

It will be noted that the language of Section 14 is not that the elections referred to shall be conducted according to the methods prescribed by general law, but shall be conducted by the election authorities prescribed by such law."

However, in the use of the language last quoted, the court was considering charter provisions governing election procedure as contra-distinguished from the general law. The court, in the same opinion, after quoting Section 7 of Article V, *supra*, states:

"It will be remembered that this section and Article XVIII were adopted as amendments to the constitution on the same day. By that adoption they became parts and provisions of the same instrument. There are well-established rules by which they must be weighed. They must be construed together and effect must be given to both. Differences, if there are any, must if possible be reconciled. As stated in *Cooley on Const. Limitations* (7 ed.), p. 92: 'One part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together.' The mandate in Section 7, Article V, is to provide by law for the nomination by primary or by petition of all elective *state, district, county and municipal officers.*"

In view of some recent decisions of the Supreme Court to the effect that non-chartered municipalities may exercise the same powers as those which have adopted charters, it could well be argued that a municipality by ordinance could provide a method of nominations different from that of the general law. However, I am not inclined to that view and it would be unwise to so hold until the State Supreme Court has expressly sanctioned such a procedure.

In the case of *State ex rel. vs. Fouts*, 103 O. S. 346, it was ordered that the question as to whether a commission should be chosen to frame a charter be submitted to the electors in view of the ordinance under consideration therein. While other questions were urged, an examination of the files disclosed that the ordinance submitting the question provided that the nominations of candidates for election as commissioners to frame the charter should be by petition in the manner set forth in Section 4999 of the General Code. Said ordinance further provided that the names of the candidates should be placed upon the ballot, in the same manner that the names of candidates for members of boards of education are placed.

From the foregoing, it is my opinion that nominations of candidates for commissioners to frame a charter should be made in the same manner as provided by general law for the nomination of other municipal offices. The action of council in the ordinance adds nothing to the power that already exists. The question now arises as to what steps should be taken in view of the fact that nominating petitions may not now be filed sixty days before the November election. The constitution is mandatory in that provision must be made upon the ballot for the election of such officers. It is believed that the election officers in the preparation of the ballots are required to take into consideration the provisions of Section 8 of Article XVIII, to the end that within the powers of such election officials provision will be made for the election of such officers.

In this connection Section 5025 of the General Code is applicable, which provides in part:

"The name of each candidate shall be printed in a space defined by ruled lines, and with a blank square on its left, enclosed by heavy, dark lines. If

upon a ticket there is no candidate or candidates for a designated office, a blank space, equal to the space that would be occupied by such name or names if they were printed thereon with the blank spaces herein provided for, shall be left."

In specific answer to your inquiry, it is my opinion that :

1. Candidates for commissioners to frame a charter under Section 8 of Article XVIII of the Ohio Constitution should be nominated as provided by general law for the nomination of other municipal officers.

2. Where no nominations have been made for such candidates, it is the duty of the election officials to provide blank spaces for such election upon the ballot, as provided in Section 5025, of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1022.

CHURCH PROPERTY—LEASED TO Y. W. C. A.—NOT EXEMPT FROM TAXATION.

SYLLABUS:

Property owned by a religious society in this state which is leased by it to a Young Women's Christian Association from year to year or for a term of years at an annual rental specified in the lease, is not exempt from taxation, because used by the owner with a view to profit, even though it appear that such lessee, as an organization and in its use of the property, is an institution exclusively for charitable purposes.

COLUMBUS, OHIO, October 12, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication which reads as follows :

"Our commission has before us the application of the Windermere Presbyterian Church, Cleveland, Ohio, for exemption of certain property. Said property is leased to the Young Women's Christian Association for its exclusive use, but the Association, under the lease is to pay an annual rental of \$780.00 to the church.

Inasmuch as this rental is used for religious purposes, is this property exempt from taxation?

We will be pleased to have your opinion on this, or have a representative of your department present when the hearing is assigned."

As I view the question presented in your communication, the same does not call for any extended discussion. I assume that the Young Women's Christian Association holds the property here in question by lease from year to year or for a definite number of years. In this situation, said association would not be liable for the payment of the taxes on this property unless it has contracted to do so. However this may be, taxes in this state are levied on the corpus of real property unless otherwise provided by statute, and the practical question here presented is whether the real