

the ballots containing such vacancy, which have been voted at such primary election."

From the language of this section I am of the opinion that the section is applicable only to nominations which are to be made at a primary election. The first part of the section specifically refers to any offices "for which nominations are sought to be made at any primary election." The position of central committeeman is not a public office (*Board of Education vs. Henry*, 24 Ohio App. 481, Ohio Law Bulletin and Reporter, November 14, 1927), and at the primary, persons are elected to this position and not nominated therefor.

If no petition has been filed nominating a candidate for central committeeman, no nomination has been made for the position. The electors in casting their votes do not vote for the nomination of a central committeeman but vote for the election to said position. It therefore must follow that Section 4984-1, General Code, has no application to the election of a central committeeman. This is further emphasized in the latter provisions of the section, "that *no valid nominations* shall be made for such office unless the name of the person attempted to be nominated * * * shall have been written on at least eight per cent of the ballots," etc. It is quite apparent that in no event is a nomination made for a central committeeman at the primary election, and any one whose name is being written in is not attempting to be nominated. The electors in writing in the name do not do so for the purpose of nominating him to the position, but for the purpose of electing him.

Section 4959, *supra*, specifically provides as hereinbefore pointed out, that such person receiving the highest number of votes "shall be the member of such controlling committee."

For these reasons, it is my opinion that:

1. When there are no candidates for the position of member of the county controlling committee of any political party and the electors of the precinct or district for which such committeeman is to be selected write in the names of qualified persons upon the ballot and vote for such persons for such office, such qualified elector receiving the highest number of votes shall be declared to be elected to such position.

2. Section 4984-1, General Code, has no application to the election of members of the party controlling committee and is only applicable to nominations made at the primary election.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2543.

PENSION—FROM MUNICIPAL POLICE RELIEF FUND—NO BAR TO PART TIME EMPLOYMENT AS TRAFFIC OFFICER—WIDOW OF PENSIONER AS POLICE MATRON—CONTINUANCE OF PENSION DISCUSSED.

SYLLABUS:

1. *An ex-policeman who is receiving a pension from a municipal police relief fund may be employed as a part time traffic officer in the police department and be paid compensation for such services.*

2. *The widow of an ex-policeman receiving a pension from the municipal police relief fund may be employed as a matron in the police department, and be paid for said services.*

3. *Whether or not in either of such cases such employment would defeat the right of the person so employed, to continue to participate in the pension fund, would depend upon the rules and regulations governing such fund.*

COLUMBUS, OHIO, September 5, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

“In an opinion to be found at page 1008, Opinions of the Attorney General for 1918, it was held that a retired patrolman, receiving a pension from the Police Relief Fund, might legally serve as park policeman, and receive compensation for said service in addition to his pension.

Question 1: May ex-policemen who are receiving pensions from a municipal police relief fund, be employed as part time traffic officers in the police department, and legally be paid compensation therefor in addition to such pensions?

Question 2: May the widow of an ex-policeman, receiving pension from the municipal police relief fund, be employed as a matron in the police department and legally be paid compensation in addition to such pension?”

The syllabus of the opinion of the Attorney General to which you refer, reads as follows:

“A retired patrolman under one-half pay from the police fund can legally serve as park policeman and receive his pay therefor, even though both compensations are paid from the funds of the municipality.”

As is stated in said opinion:

“When a person under the rules of the organization is entitled to participate in the fund his status is fixed as far as the fund is concerned at least for the time being. The mere fact that the patrolman has been retired and is entitled to a pension does not mean that he is incapacitated to perform any further physical labor. It may be that he has served a sufficient number of years to entitle him to retirement and that he still may be in fit condition for certain work.”

I concur in the statements contained in said opinion and the rule applied therein.

Coming to the consideration of your specific questions, there is no statute which prohibits the employment of a pensioned policeman or the widow of a policeman who is receiving a pension, by the municipality. Whether or not the employment of the policeman would defeat his right to continue to receive a pension is not herein discussed for the reason that that would depend solely upon the provisions of the rules adopted for the disbursement of the pension fund, which rules I do not have before me. The same may be said relative to the rights of the widow. As is stated in the opinion referred to by you:

"A pension is not payment for present services rendered or to be rendered. 'Pension' is defined as a periodical allowance for an individual on account of past services, or some meritorious work done by him. So it is apparent there is a difference between receiving both a pension and pay for present services and the receiving of pay for services rendered in two positions in the same municipality."

Therefore, answering your questions specifically, it is my opinion that:

1. An ex-policeman who is receiving a pension from a municipal police relief fund may be employed as a part time traffic officer in the police department and be paid compensation for such services.
2. The widow of an ex-policeman receiving a pension from the municipal police relief fund may be employed as a matron in the police department, and be paid for said services.
3. Whether or not in either of such cases such employment would defeat the right of the person so employed to continue to participate in the pension fund, would depend upon the rules and regulations governing such fund.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2544.

REFORMATORY—RULES OF OHIO PENITENTIARY FORBIDDING
SALES TO PRISONERS NOT APPLICABLE TO REFORMATORY—
REGULATIONS BY DIRECTOR.

SYLLABUS:

1. *Section 2198, General Code, has no application to officers and employes of the Ohio State Reformatory.*
2. *There is no section of the General Code, pertaining to the Ohio State Reformatory, which is similar to Section 2198, General Code.*
3. *The Director of Public Welfare, or the other proper officers in charge of a state institution, to which prisoners from the Ohio State Reformatory are employed, have power to make reasonable orders, rules and regulations prohibiting the employes of such institution from selling to or otherwise carrying on business transactions with such prisoners.*

COLUMBUS, OHIO, September 5, 1928.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of August 24th, 1928, in which you request my opinion upon the questions asked in a letter from one of your examiners, which letter you enclose and which reads as follows:

"The undersigned respectfully requests that the Department of Auditor of State ask an opinion of the Attorney General as to:

- 1st. Does Section 2198 of the state penal code apply also to Ohio State Reformatory, and if not, is there a similar section that does apply to that institution?