

6568

COUNCILMAN OF VILLAGE—ELECTED—NOT DISQUALIFIED TO HOLD OFFICE BY REASON OF FACT HE SERVED AS PRECINCT ELECTION OFFICER IN ELECTION AT WHICH HE WAS ELECTED—OPINIONS ATTORNEY GENERAL, 1933, 1902, PAGE 1913 APPROVED AND FOLLOWED.

SYLLABUS:

A person who was elected to the office of councilman of a village is not disqualified from holding such office by reason of the fact that he served as a precinct election officer in the election at which he was elected. (Opinions of the Attorney General for 1933, No. 1902, page 1913, approved and followed.)

Columbus, Ohio, December 30, 1943.

Hon. Raymond O. Morgan, Prosecuting Attorney,
Wooster, Ohio.

Dear Sir:

You request my opinion concerning the following facts:

“The Wayne County Board of Elections would like to have you get an opinion from the Attorney General on the following situation:

'A' is a candidate for election for Councilman of 'C' village. 'A' is not a write-in candidate. His name was printed on the ballot.

'A' served as a precinct official in a precinct voting upon his candidacy. 'A' had been certified as a precinct official by the County Board of Elections. The County Board of Elections was not cognizant of the fact that 'A' the candidate and 'A' the precinct official was one and the same person.

'A' received enough votes to elect him.

Questions:

1. Should the County Board of Elections issue a certificate of election to 'A'?
2. Is 'A' eligible to serve as Councilman for the term for which he was elected?
3. Should the County Board of Elections or a Court of Record determine the eligibility of 'A'?"

Section 4785-16 of the General Code is probably the statutory provision which prompted your inquiry. Such section reads:

"No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employe of the board of elections who is a candidate for an office to be filled at an election, except the office of delegate or alternate to a convention or a member of a party committee."

Appearing as annotations under the above quoted section in Throckmorton's General Code Annotated are references to 1927 Opinions of the Attorney General, No. 1390, p. 2541; 1928 Opinions of the Attorney General, No. 1565, p. 91; 1928 Opinions of the Attorney General, No. 1577, p. 106. Such citations are given as authority for the proposition that a judge or clerk of elections is not eligible to hold an office to which he was elected with his consent while acting as such judge or clerk. Such opinions of the Attorney General construed the provisions of former Section 5092 of the General Code as then in effect. Such former section read:

"No person, being a candidate for an office to be filled at an election, other than for committeeman (committeeman) or delegate or alternate to any convention, shall serve as deputy state supervisor or clerk thereof, or as a judge or clerk of elections, in any precinct at such election. A person serving as deputy

state supervisor or clerk thereof, judge or clerk of elections contrary to this section shall be ineligible to any office to which he may be elected at such election."

Such opinions are undoubtedly correct interpretations of former Section 5092 of the General Code. The conclusions therein reached were necessary by reason of the last sentence of such former section. Such language does not appear in Section 4785-16 of the General Code.

As stated by Marvin, J. in *State, ex rel. Keeler v. Wagner*, 19 O. C. C. 149, 151:

"One who is an elector, is entitled to hold office to which he is elected, unless the statute forbids. There must be a provision of the statute forbidding his holding the office."

In an opinion of one of my predecessors in office, reported in 1933 *Opinions of the Attorney General*, No. 1992, p. 1913, a question similar to that presented by your inquiry was posed with respect to the right of a person elected as a member of the board of education while serving as clerk in a precinct booth to hold the office to which he was so elected. The syllabus of such opinion reads:

"Where a person who serves as a member, clerk, deputy clerk, assistant clerk, or employe of a board of elections is a candidate for office, and is elected to such office, that fact alone does not make such person ineligible to the office to which he was elected."

Such opinion construed the provisions of Section 4785-16 of the General Code which is applicable to your inquiry. You will observe that the language of Section 4785-16 of the General Code is an inhibition against a candidate for public office from being a member or employe of a board of elections and does not purport to specify what persons may be elected to office.

While it is possible that by reason of Section 4785-16 of the General Code a candidate for public office might not legally be a precinct official during the election at which he is such candidate, I express no opinion concerning such question herein. It is not presented by your inquiry. On the converse, I am unable to find any language in Section 4785-16 of the General Code which would prevent the issuance of the certificate of election to the person referred to in your inquiry.

While there may be a question as to compatibility of the two jobs in the event that the person mentioned in your inquiry attempts to hold

the job of clerk of the election precinct after he qualifies as member of council by reason of Section 4218 of the General Code, such fact would, by virtue of the terms of that section, cause a forfeiture of office, which is no concern of the board of elections. Further, I may state that if "A" were an elector at the time of the election and had properly become a candidate, I am unable to find any provision of statute requiring further determination by the board of elections as to his eligibility to the office sought by him.

Specifically answering your inquiry, it is my opinion that a person who was elected to the office of councilman of a village is not disqualified from holding such office by reason of the fact that he served as a precinct election officer in the election at which he was elected. (Opinions of the Attorney General for 1933, No. 1902, page 1913, approved and followed.)

Respectfully,

THOMAS J. HERBERT,
Attorney General.