

799

1. MUNICIPAL JUDGE, STEUBENVILLE—NOMINATION OF CANDIDATE—PRIMARY ELECTION—NO EFFECT—SECTION 1579-1083 G. C.—MANDATORY THAT NOMINATION BE BY PETITION ONLY.
2. STATUTES MUST BE STRICTLY FOLLOWED AS TO NOMINATION TO OFFICE OF MUNICIPAL JUDGE—ANY ATTEMPT TO SECURE NOMINATION AT PRIMARY ELECTION NULL AND VOID—IF NO OPPOSITION THERE COULD BE NO NOMINATION.
3. WHERE LAW SPECIFIES PARTICULAR PROCEDURE BEFORE A CANDIDATE'S NAME CAN BE PLACED ON BALLOT AT GENERAL ELECTION SUCH PROCEDURE MUST BE FOLLOWED.

SYLLABUS:

1. The nomination of a candidate for the office of municipal judge of Steubenville, Ohio, at a primary election held in said city is of no effect, since the provision of Section 1579-1083, General Code, requiring nomination to be by petition only, is mandatory.

2. Where the statutes with reference to the office of municipal judge not only do not authorize the nomination of candidates therefor at a primary election, after the filing of a declaration of candidacy, but on the contrary exclude such method by requiring that nominations for such office shall be by nominating petition only, the statutes must be strictly followed. In such case, an attempt to secure a nomination at a primary election is null and void and does not, even if unopposed, result in a nomination.

3. Where the law specifically provides that certain procedure must be followed before a candidate's name can be placed on the ballot at the general election, such procedure must be followed.

Columbus, Ohio, July 29, 1949

Hon. C. J. Borkowski, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

Your recent request for my opinion reads as follows:

"The following question has been presented to this office by the Board of Elections of our county, to wit:

'X. was an unopposed candidate in the recent primary on the Republican ticket for the office of Municipal Judge of the city of Steubenville, Ohio. There was no candidate for this office on the Democratic ticket in the primary. It is claimed that under Section 1579-1083, being part of the Municipal Court Act of the City of Steubenville, Jefferson County, Ohio, that the only method whereby a candidate for this office can be nominated is by petition *only*, and that the effect of running for this office in the primary and securing the nomination is a nullity and does not authorize the Board to cause the name of such party nominee to be printed on the non-partisan ballot in November.'

"In view of the above question being of general interest to municipalities having established municipal courts, and in all fairness to X and any other person eligible as a candidate for such office, an early reply is sincerely requested as to:

"(1) Whether or not X's nomination thus far is void and of no effect, and if so whether or not in view of the fact that no one has contested such nomination nor any action is pending in Court in reference to prohibition of the same, the Board could still place his name on the November ballot;

"(2) If such nomination thus far is invalid, whether or not X will be required to comply with Section 4785-91 in view of the word *only* in Section 1579-1083 if he wishes to continue being a candidate for said office.

"It is to be assumed X did, so far as the primary is concerned, comply with Sections 4785-71, 4785-71a and 4785-91a."

Section 1579-1083, General Code, referred to in your request, relates to the qualifications, term and election of the Judge of the Municipal Court

of Steubenville, Ohio. That section provides for one municipal judge in said city and reads in part as follows :

“ * * Candidates for the office of municipal judge shall be nominated by petition only, in the manner as is now or hereafter may be provided by general laws for the nomination by petition of candidates for the office of common pleas judge, except that the number of signers of the petitions of each candidate for the office of municipal judge shall not be less than one hundred of the qualified electors of the city of Steubenville, Ohio. The form and contents shall conform to the law in such cases made and provided. * * *”*
(Emphasis added.)

Since reference has been made in the above cited section to general laws for the nominations by petitions of candidates for the office of common pleas judge, I will first call your attention to Section 4785-9I, General Code, with general provisions for the nominations by nominating petitions, which section reads in part as follows :

*“In addition to nominations of candidates of political parties for election to offices to be voted for at the next following general election, independent candidates for election to offices to be voted at such general election may be nominated by nominating petitions. * * *”*

Section 4785-9Ia, General Code, pertains to the nominating petitions for a judge of the court of common pleas, and reads as follows :

“The nominating petitions of each candidate for independent nominations for judge of the court of common pleas shall contain a designation of the term for which he is a candidate, when and as provided by section 4785-7Ia of the General Code and such candidate shall be nominated only for the term so designated.”

Therefore, since Section 4785-9Ia is the only section specifically referring to the nominations by nominating petitions of common pleas court judges, we must look to such section and following sections for the only proper procedure to be followed in the nomination of a candidate for the office of judge of the municipal court of Steubenville, Ohio.

Since Section 1579-1083 gives the specific provisions relative to the qualifications, term and election of a judge of the municipal court of Steubenville, the provision therein that the signers of the petitions of each candidate for the office of municipal judge shall not be less than one hundred of the qualified electors of the city of Steubenville, Ohio, such provision

relative to the number of signers of the petitions shall control and take precedence over any and all other provisions of other sections with respect to the required number of signers.

Section 4785-92, General Code, pertains to the method whereby such petition is filed. Such section reads in part as follows:

“All separate petition papers comprising the nominating petition of a candidate for election at a general election shall be filed as one instrument not later than 6:30 P. M. of the ninetieth day before the day of such general election, and shall be accompanied by the written acceptance of nomination by the nominee named in such petition. In the absence of such acceptance the nominee's name shall not be printed on the ballot. * * *”

In view of the above quoted statutes it is my opinion that the nomination of “X” at the primary election is of no effect since Section 1579-1083 states in mandatory terms that nomination shall be by petition only; it does not provide for a primary election.

It also appears to me that the board of elections may not place “X's” name on the ballot if he has not been nominated by petition because under Section 4785-92, General Code, unless the nominating petition is accompanied by a written acceptance of nomination the nominee's name may not be placed on the ballot. These words of Section 4785-92 are mandatory in terms and therefore must be complied with.

Therefore, in answer to the questions in your request, it is my opinion that:

1. The nomination of a candidate for the office of municipal judge of Steubenville, Ohio, at a primary election held in said city is of no effect, since the provision of Section 1579-1083, General Code, requiring nomination to be by petition only, is mandatory.

2. Where the statutes with reference to the office of municipal judge not only do not authorize the nomination of candidates therefor at a primary election, after the filing of a declaration of candidacy, but on the contrary exclude such method by requiring that nominations for such office shall be by nominating petition only, the statutes must be strictly followed. In such case, an attempt to secure a nomination at a primary election is null and void and does not, even if unopposed, result in a nomination.

3. Where the law specifically provides that certain procedure must be followed before a candidate's name can be placed on the ballot at the general election, such procedure must be followed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.