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1. ELECTORS—REGISTRATION—LEGAL RIGHT TO REGISTER OR CHANGE REGISTRATION DURING CERTAIN PERIODS—BOARD OF ELECTIONS NOT PROHIBITED FROM ACCEPTING REGISTRATION AND CHANGES OR REGISTRATION AT OTHER TIMES—SECTION 3503.11.
2. REGISTRATION OF ELECTORS—LAWS LIMITING RIGHT TO REGISTER OR CHANGE REGISTRATION DURING PERIODS PRIOR TO OR AFTER ELECTION—CONVENIENCE OF BOARDS OF ELECTIONS—MUST FACILITATE RIGHT OF SUFFRAGE—NOT IMPAIR OR IMPEDE RIGHT.
3. BOARD OF ELECTIONS—REGISTRATIONS AND CHANGES OF REGISTRATION—REASONABLE TIMES OTHER THAN PROVIDED IN SECTION 3503.11 RC WHEN SPECIAL ELECTION AND PRIMARY OR GENERAL ELECTION IN CLOSE PROXIMITY.

SYLLABUS:

1. The provisions of Section 3503.11, Revised Code, designating certain limited periods within which electors "may register or change their registration" confer on such electors the legal right to register or change their registration during such periods but do not forbid the board of elections to receive registrations and changes of registrations by electors at times other than during such limited periods.

2. Laws limiting the rights of electors to register or change their registration during periods immediately prior to or after election dates are designed for the convenience of the board in the conduct of elections. Such laws, to be valid, must be designed to facilitate the right of suffrage and must not unreasonably or unnecessarily restrain, impair or impede such right.

3. Where a special election is held on a date in such proximity to the date of a primary or general election that a literal and strict application of the provisions of Section 3503.11, Revised Code, would, in the judgment of the board of elections, unreasonably or unnecessarily restrain, impair, or impede the right of suffrage of electors in the later election, the board of elections should provide for the reception of registrations and changes of registrations during reasonable periods other than the limited periods provided in such section.

Columbus, Ohio, June 6, 1956

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Section 3503.11, Revised Code, provides, in part, as follows:

" 'Persons qualified to register or to change their registration may register or change their registration at the office of the board of elections at any time such office is open except forty days preceding a primary or general election, or ten days preceding a special election held on a day other than a primary or general election day and ten days following a primary, general, or special election.'

"The 1956 General Election will fall on November 6, 1956. In accordance with this section, registration of voters would close at 4:30 P.M., September 26, 1956. A special election has been called for the City of Columbus on numerous bond issues, such election to be held on Friday, September 14th. Under the provisions of the above cited section, if registration of voters is closed for ten days preceding and ten days following such special election, registration would be closed beginning September 4, 1956 and ending September 24, 1956. This would mean that registration of voters for the 1956 general election would be closed after September 1, 1956 (since September 2nd is Sunday and

September 3rd is a legal holiday), except for two days, September 25th and 26th. The Franklin County Board of Elections anticipates a large number of voters to register or re-register for this General Election and the Board feels that two days during the month of September is an insufficient time to take care of these registrations. Since an elector cannot vote in this county unless he is registered, and since it would be almost impossible to register the anticipated number of voters during that two-day period, this would probably result in many electors being denied their right to vote even though there would have been a lengthy opportunity for them to register prior to September 1st. Because of this factor, the Board of Elections would like to waive the provisions of Section 3503.11, Revised Code, relating to the closing of registration during the ten days preceding and the ten days following a special election, if such provision can be waived by the Board.

“Because there are many counties in Ohio which require registration of voters, we believe this question to be of state-wide interest and that any ruling thereon should be of state-wide application. We are, therefore, requesting your opinion as to whether or not a county Board of Elections can waive the provisions of Section 3503.11, Revised Code, relating to the closing of registration of voters during the ten days preceding and the ten days following a special election.

“We have conducted a preliminary research of the law of Ohio and other jurisdictions on this question and have been unable to find a clear-cut answer. This research has been reduced to memorandum form, a copy of which is enclosed in the hope that it will be of some benefit to you.”

In *Daggett v. Hudson*, 43 Ohio St., 548, the syllabus reads:

“1. The general assembly, under the general grant of legislative power, secured to it by the constitution, has power to provide by statute for the registration of voters, and to enact that all electors must register before being permitted to vote.

“2. Such an act, however, to be valid, must be reasonable and impartial, and calculated to facilitate and secure the constitutional right of suffrage, and not to subvert or injuriously, unreasonably, or unnecessarily restrain, impair, or impede the right.

“3. The registration act of May 4, 1885 (82 Ohio L. 232), relating to elections in Cincinnati and Cleveland, requiring registration in all cases as a condition to the right of suffrage in those cities, and allowing the voters only seven specified days within the year in which to register and correct the registration, which contains no provision for registration after the seven days (though five days thereafter intervene before election day), and no regu-

lation whereby those constitutionally qualified may, upon proof of their qualifications, and a reasonable excuse for not registering in time, be allowed to vote, and where no other means are provided whereby persons necessarily absent at the time fixed for registration may have their names registered, is unreasonable, and has a direct tendency to impair the right of suffrage, and may disfranchise without their fault a large body of voters necessarily absent from the place of registry during the allotted time for registration, and is, therefore, unconstitutional and void."

It is, of course, a commonly accepted rule of construction that a statute, if capable of more than one interpretation, should be so construed as to conform to constitutional limitations. 37 Ohio Jurisprudence, 624, Section 444.

It was evidently in recognition of this principle that in *Jeffrey v. State ex rel. Butler*, 4 O.C.C. (N.S.) 494, the court ruled, as summarized in the headnote of the reported decision that:

"Courts will presume that the true construction of the statute will be adopted and the elections so conducted as to give every elector an opportunity to register and vote."

It is quite apparent that in those cases where the date of a special election falls on or near the fiftieth day prior to the date of a primary or general election the opportunity of electors to register will be seriously curtailed if the provisions of Section 3503.11, Revised Code, are to be deemed mandatory and such as to forbid registration in any circumstances within the periods therein designated. In such case, having in mind the decision in the *Hudson* case, *supra*, a serious question is raised as to the constitutional validity of the statute as thus interpreted. We may properly inquire, therefore, whether any other interpretation is possible whereby such constitutional question is avoided.

It is to be observed that the language of Section 3503.11, *supra*, appears to be directed toward a definition of the right of electors to register within prescribed periods, and of the duty of the board to accept registration during such periods. To this extent the statute may be deemed mandatory.

This language does not expressly deny the right of electors to register at other times, nor deny the right of the board to receive registrations at such other times. At most there is a suggestion of this, but I do not regard that suggestion as sufficient to constitute a *necessary* implication.

A registration provision somewhat similar to that here involved was under consideration in *State ex rel. Ellis v. Brown*, 326 Mo., 637. In that case, in considering the legislative purpose in enacting a limiting provision somewhat similar to that here under study, the court said (p. 643):

“* * * The filing and hearing of applications for transfer ten days or more before election would no doubt afford convenience to the board of election commissioners and render less difficult the making and printing of the supplemental list in time for use on election day; but if the ten-day provision serves any other purpose under the statutory scheme, it is not perceivable.

“As the Act does not prescribe the consequences of a failure to comply with the time provision of said Section 29, and it further appearing from a consideration of the statute as a whole that said provision was intended merely to promote the convenient and orderly prosecuting of the work of registration, it must be held that *the provision does not operate as a limitation upon the power of the board of election commissioners*, nor, in consequence, upon that of the circuit court in the disposition of appeals.” (Emphasis added.)

The court thus held that the limitation there involved was applicable to the *right of the elector* to demand registration but was not a limitation on the power of the board to permit registration in its discretion during the designated period prior to the election.

It is quite clear that where the date of a special election is set in such proximity to that of a primary or general election that the right of electors to register for the later election will be seriously limited, thus raising a question of constitutional validity of the limitation, that question of constitutional validity may be avoided by an interpretation of the limiting provision which recognizes the limitation as directory rather than mandatory so far as the power of the board to receive registrations is concerned, and where the board, in extreme cases, permits registration during some part of the periods designated in the statute.

In the situation you have described I cannot undertake to express an opinion on whether there is such a curtailment of the right to register as to make it necessary for the board, in order to avoid an unconstitutional application of the statute, to extend the registration privilege beyond that which the electors may claim as of right under the statute. I do hold, however, that it is within the discretion of the board, in the event

they deem such curtailment sufficiently serious, to extend the period of permissible registration to embrace some reasonable period, or periods, of time other than the periods designated in Section 3503.11, Revised Code, within which electors are given a statutory right to register or change their registration.

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

1. The provisions of Section 3503.11, Revised Code, designating certain limited periods within which electors "may register or change their registration" confer on such electors the legal right to register or change their registration during such periods but do not forbid the board of elections to receive registrations and changes of registrations by electors at times other than during such limited periods.

2. Laws limiting the rights of electors to register or change their registration during periods immediately prior to or after election dates are designated for the convenience of the board in the conduct of elections. Such laws, to be valid, must be designed to facilitate the right of suffrage and must not unreasonably or unnecessarily restrain, impair or impede such right.

3. Where a special election is held on a date in such proximity to the date of a primary or general election that a literal and strict application of the provisions of Section 3503.11, Revised Code, would, in the judgment of the board of elections, unreasonably or unnecessarily restrain, impair, or impede the right of suffrage of electors in the later election, the board of elections should provide for the reception of registrations and changes of registrations during reasonable periods other than the limited periods provided in such section.

Respectfully,
C. WILLIAM O'NEILL
Attorney General