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ELECTIONS—PRIMARY — SPECIAL — REGISTRATION—AB-
SENT VOTING—FOURTH CONGRESSIONAL DISTRICT—SEP-
TEMBER 8, 1947 LAST DAY FOR REGISTRATION.

SYLLABUS:

Registration and absent voting in regard to primary and special elections to be held in Fourth Congressional District discussed.

Columbus, Ohio, September 12, 1947

Hon. Edward J. Hummel, Secretary of State
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“On Tuesday, September 9, 1947, Honorable Thomas J. Herbert, Governor of Ohio, filed with the Office of Secretary of State a proclamation calling a special election for the office of member of Congress, unexpired term in the Fourth Congressional District. The proclamation carried the dates of the primary to be held on Tuesday, October 7, 1947, and the election to be held on November 4, 1947. General Code, Section 4785-97 sets out the provisions of the law pertaining to special elections for the above mentioned vacancy for Congressman in the Fourth Congressional District of Ohio.

This office has already had inquiries as to certain sections of the Ohio Election Law pertaining to both the primary and election above mentioned. Due to the fact that the last filing date for Declaration of Candidacy for this primary election is 6:30 P. M., Friday, September 26, 1947, it is obvious that these questions should be answered immediately:

Question 1: What is the latest date an elector can make an application for an Absent Voter's Ballot for both the primary and election to be held October 7, and November 4, respectively, under provisions of General Code, Section 4785-135?

Question 2: What is the last date an Absent Voter's Ballot must be returned to the County Board of Elections for both the primary and election to be held on October 7, and November 4,

1947, respectively, under provisions of General Code, Section 4785-137?

Question 3: Will there be an opportunity for persons wanting to register in any of the registration precincts in the Fourth Congressional District for both the primary and election to be held on October 7, and November 4, 1947, respectively, under provisions of General Code, Section 4785-39 of the Ohio Election Laws?

As stated above, an answer to these questions at the earliest possible moment is desired. I am earnestly requesting a formal opinion on these questions at the earliest possible time, in order to properly instruct the local County Boards of Elections of the Fourth Congressional District."

The time during which absent voters' ballots may be applied for and the time when such ballots, after having been voted, must be returned to the boards of elections is fixed by Sections 4785-135 and 4785-137, General Code, respectively. In the former of said sections it is provided:

"Such elector, not more than thirty days nor later than 6:30 p. m. of the Thursday preceding the date of a primary or general election, or twelve o'clock noon of the third day preceding a special election held on another date, shall make application in person or in writing to the clerk of the board of such county, for any official ballot to be voted at such election. * * * "

The latter section reads in part:

" * * * All such envelopes must be in the hands of the clerk of the board not later than twelve o'clock noon of the Friday preceding a primary or general election, or twelve o'clock noon of the day preceding a special election held on another date. * * * "

It will be noted that in each of the above sections the elections referred to are (1) primary elections, (2) general elections and (3) special elections held on dates other than the date of a primary or general election.

The date of the primary election, in the instant case, was fixed by the Governor, under the authority of Section 4785-97, General Code, which section reads as follows:

"When a special election is found necessary to fill a vacancy, the date of the primary shall be fixed at the same time and in the same manner as that of the election, by the authority calling such special election; which primary shall be held at least fifteen days

prior to the time fixed for such special election. Declaration of candidacy and certificates for such primary shall be filed and fees shall be paid at least ten days before the date for holding such special election."

From the above it is apparent that the election to be held on October 7 is a "primary election." Therefore, unless it can also be said that such election is a "special election held on another date", the latest time when absent voters' ballots for such election may be applied for would be 6:30 p. m. of the Thursday preceding October 7, and the latest time for the return of such ballots, after having been voted, would be twelve o'clock noon of the Friday preceding said date.

In Section 4785-3, General Code, it is provided:

"The terms used in this act and in the statutes relating to elections shall have the meaning herein defined, unless other meaning is clearly apparent in the language or context.

2. The term 'general election' shall mean any election held on the first Tuesday after the first Monday in November. * * *

d. The term 'special election' shall mean any election other than a regular state, a regular municipal or primary election.

e. The term 'primary' or 'primary election' shall mean any election held for the purpose of electing party committees, choosing delegates to a party convention, or nominating candidates to be voted for at an election."

It will be observed from the above definition of a "special election" that a primary election can in no instance be regarded as a special election. It is likewise noteworthy that a primary election is "any election held for the purpose of * * * nominating candidates to be voted for at an election." Since the election to be held on October 7, 1947 is an election held for the purpose of nominating candidates to be voted for at the special election to be held on November 4, 1947, it is, under the above definition, a primary election and, furthermore, since a primary election is not a special election, it would follow that application for absent voters' ballots to be voted at the primary election to be held on October 7, 1947 must be made not later than 6:30 p. m. of Thursday, October 2, 1947, and that such ballots, when voted, must be returned to the proper board of elections not later than twelve o'clock noon of Friday, October 3, 1947.

I come now to the election referred to in your communication to be

held on November 4, 1947. Said date is, of course, the date of the general election to be held this year. Therefore, since the special election in question is to be held on the same day as the general election, it obviously can not be regarded as "a special election held on another date" within the meaning of Sections 4785-135 and 4785-137, General Code.

In view of this, it would appear, and it is accordingly my opinion, that application for absent voters' ballots to be used at the special election in question must be made not later than 6:30 p. m. of Thursday, October 30, 1947 and such ballots must, after having been voted, be returned to the proper board of elections not later than twelve o'clock noon of Friday, October 31, 1947.

The third question is answered by the provisions of Section 4785-39, General Code. Said section reads :

"Persons qualified to register or to change their registration may register or change their registration at the office of the board at any time such office is open except twenty-eight days preceding or ten days following a primary or general election, provided that any registered elector who removes from one precinct to another in the same political subdivision after the close of such registration period shall have the right to vote at the next succeeding election in the precinct from which he moved, wherein he was legally registered."

The above section, in plain and unambiguous language, expressly states that persons qualified to do so may register at any time "except twenty-eight days preceding or ten days following a primary or general election."

The primary election, in the instant case, is to be held on October 7, 1947. The twenty-eighth day preceding October 7, 1947 was September 9, 1947. The tenth day following October 7, 1947 will be October 17, 1947, which will fall within the twenty-eight day period next preceding November 4, 1947, the date of the general election.

Therefore, in light of the above statutory provision, the last day for registration in registration precincts situated in the Congressional District in question was September 8, 1947.

Specifically answering your questions in the order presented, you are advised that in my opinion :

1. Application for absent voters' ballots to be voted at the primary election to be held in the Fourth Congressional District on October 7, 1947 for the purpose of nominating candidates to run at the election for the unexpired term of the office of representative to Congress from said district may lawfully be made at any time prior to 6:30 p. m. of Thursday, October 2, 1947, and application for absent voters' ballots to be used at the special election to be held in such district on November 4, 1947 for the purpose of electing a representative to Congress from said district may lawfully be made not earlier than Monday, October 6, 1947 nor later than 6:30 p. m. of Thursday October 30, 1947.

2. Absent voters' ballots, voted at said primary election, must be returned to the proper board of elections not later than Friday, October 3, 1947, twelve o'clock noon, and absent voters' ballots, voted at said special election, must be returned to the proper board of elections not later than Friday, October 31, 1947, twelve o'clock noon.

3. The last day for registration for persons living in registration precincts in said Congressional District who desire to register in order to vote in either or both of aforesaid elections was September 8, 1947.

Respectfully,

Hugh S. Jenkins.
Attorney General.