

OPINION NO. 72-001

Syllabus:

1. Those portions of a village charter which provide for the election of the village mayor in even numbered years are inconsistent with Article XVII, Section 1 of the Constitution of the State of Ohio, and are invalid.

2. Those portions of a village charter which provide for the regular election of members of council in odd numbered years, but which provide for a transition from the old form of government to the new charter form by a special election of members of council in an even numbered year, are not inconsistent with Article XVII, Section 1 of the Constitution of the State of Ohio, and are valid.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William J. Brown, Attorney General, January 18, 1972.

Your request for my opinion is stated in the following language:

"The Board of Elections of Columbiana County has asked my advice on whether the municipal charter which has been adopted by the Village of Columbiana requires the Board of Elections to hold municipal elections in 1972 and in the even-numbered years thereafter. Article XVII, Section 1, of the Ohio Constitution appears to require the municipal elections to be held in odd-numbered years.

"I am enclosing herewith a copy of Sections 10.01 and 10.02 of the village charter for your use. I would appreciate your advice as to whether I should instruct the Columbiana County Board of Elections to hold the election in question for municipal officials in 1972 in accordance with the provisions of the municipal charter. The filing

deadline for petitions of candidacy for village office is set at 4:00 p.m. of the 90th day before the day of the primary election, February 2, 1972."

Article XVII, Section 1 of the Ohio Constitution, provides for the election of state and county officers in even numbered years. All other elective officers are to be chosen in odd numbered years. The Section reads as follows:

"Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years."

Section 10.01 of the Charter adopted by the Village of Columbian reads in pertinent part as follows:

"Candidates for Mayor shall be nominated at a partisan primary election held on the first Tuesday after the first Monday in May in the even numbered years in which the Mayor is to be elected, or at such other time as may hereinafter be provided by the Ohio election laws pertaining to the conduct of municipal primaries, commencing in the year 1972, and each four (4) years thereafter.

"Candidates for Member of Council shall be nominated at a partisan primary election held on the first Tuesday after the first Monday in May, or at such other time as may hereinafter be provided by the Ohio election laws pertaining to the conduct of municipal primaries, as follows: In the year 1972 each political party may nominate not more than six (6) candidates for Member of Council. The three (3) candidates of each party receiving the largest number of votes shall be deemed nominated for three (3) year terms of office, and the three (3) candidates of each party receiving the next largest number of votes shall be deemed nominated for one (1) year terms of office. Commencing in the year 1973, and each two (2) years thereafter, each political party may nominate not more than three (3) candidates for Member of Council."

And the pertinent part of Section 10.02 of the Charter is as follows:

"The municipal election for Mayor shall be held on the first Tuesday after the first Monday in November in the even numbered years in which

the Mayor is to be elected, or at such other time as may hereafter be provided by the Ohio election laws pertaining to the conduct of municipal elections, commencing in the year 1972 and each four (4) years thereafter.

"The municipal election for Members of Council shall be held on the first Tuesday after the first Monday in November, or at such other time as may hereafter be provided by the Ohio election laws pertaining to the conduct of municipal elections, as follows: At the general election to be held in November, 1972, three (3) members of Council shall be elected to one (1) year terms of office, and three (3) members of Council shall be elected to three (3) year terms of office. At the municipal election to be held in November, 1973, and each two (2) years thereafter, three (3) members of Council shall be elected to four (4) year terms of office."

These two Sections of the Charter provide that the election for Mayor of the Village of Columbiana shall be held in even numbered years, beginning in 1972 and each four years thereafter. See also, Section 5.01 of the Charter. The Sections are clearly in conflict with the mandate of Article XVII of the Constitution, supra, which requires that all elective officers, other than those of the State and the counties, be chosen during odd numbered years. It is, therefore, my opinion that you should instruct the Board of Elections of Columbiana County that no election for Mayor of the Village of Columbiana can be held in 1972 under the present Charter. State, ex rel. Grace v. Board of Elections, 149 Ohio St. 173 (1948); State, ex rel. Higley v. Shale, 137 Ohio St. 311 (1940).

The provisions of Sections 10.01 and 10.02 of the Charter as to the election for Members of Council involve different considerations. It is quite clear that the framers of the Charter intended, consistently with the Constitution, that the Members of Council be elected regularly in odd numbered years. However, since all of the present chief offices of the Village are to be abolished as of January 1, 1973, and since the new Charter is to become effective on that date (see Sections 13.01, 14.01 and 14.02), it was necessary to provide for a special election of Members of Council during the even numbered year, 1972, so as to ensure an orderly transition from the old form of government to the new at the beginning of 1973. Consequently, Sections 10.01 and 10.02 provide for the election of six councilmen in 1972, three to serve one year, and the other three to serve three years. All subsequent elections for Members of Council are to take place, as required by the Constitution, in odd numbered years, and are to be for four-year terms. See, also, Section 4.01 of the Charter.

The Supreme Court has frequently said that election laws should be construed, wherever possible, so as to make them oper-

able. In State, ex rel. Grace v. Board of Elections, supra, the Court said (149 Ohio St. at page 177):

"Constitutional and statutory provisions should, if possible, be so construed as to give them reasonable and operable effect.
* * *"

In State ex rel. Harsha v. Troxel, 125 Ohio St. 235 (1932), the Court said (at page 237):

"* * * [I]t is the policy of the law that the people shall be served by the servants of their own selection, and the laws relative to filling vacancies in elective offices will be construed so as to give the people the opportunity to choose at the earliest possible time the successor to an official they have previously chosen."

In Jones v. Cleveland, 124 Ohio St. 544 (1932), the Court had before it an amendment of the Charter of the City of Cleveland which changed the form of government from the city manager plan to the mayor plan. One section called for a special election to select the new mayor. The Court approved the section although the election would take place in an even numbered year. The Court said (at page 547):

"It is to be observed that we are not dealing with a provision for the regular and permanent election of municipal officers. Section 73 of the city Charter provides a method of transition whereby the change in the form of government adopted could become promptly effective, and officers be chosen by the electors of the city in the manner prescribed by the terms of the Charter,
* * *"

The Court's opinion then quoted (page 548) the following language from a similar case; State, ex rel. Eavey v. Smith, 107 Ohio St. 1 (1923):

"* * * [T]hese constitutional provisions are proposed and adopted to control and limit the regular, orderly, and permanent course of public office and affairs, and are not designed or adapted to meet the transition periods of intervals that naturally result from needed changes in the public service through laws regularly and duly enacted."

The Court's opinion in Jones, supra, then continues (page 548):

"The unquestioned authority of the city

not only to adopt but to at will change its form of government includes the implied power to make provisions appropriate for, and essential to, the transition. Here the transition period has been provided for as nearly as possible in the same manner as the permanent situation under the Charter, which concededly is valid.

"Section 1 of Article XVII of the Constitution of Ohio has to do only with regularly recurring elections. * * *" (Emphasis added.)

See the opinion of the trial judge in the same case, 29 Ohio N.P. (n.s.) 118 (1931); and see State, ex rel. Anderson v. Duffy, 117 Ohio App. 137 (1962).

In the light of the foregoing, the Board of Elections of Columbiana County should be instructed to hold a municipal election in 1972 for Members of the Council of the Village of Columbiana in accordance with the provisions of the new Charter.

The invalidity of those provisions of the Charter governing election of a Mayor of the Village does not invalidate the entire Charter, nor does it mean that the Village will be without a Mayor.

Section 13.05 of the Charter provides that:

"A determination that any article, section, or part of any article or section, of this Charter is invalid shall not invalidate or impair the force or effect of any other part thereof, except to the extent that such other part is wholly dependent for its operation upon the part declared invalid."

And Section 5.05 of the Charter provides in pertinent part as follows:

"In the event the office of Mayor shall become vacant for any reason, the President of Council shall thereupon become the Mayor and serve for the unexpired term and his offices as President of Council and councilman shall become vacant." (Emphasis added.)

The vacancy thus created in the Council will be filled in accordance with the procedure provided in Section 4.12 of the Charter. And the term of the Mayor will expire as soon as those portions of Sections 5.01, 10.01 and 10.02, which pertain to the election of the Mayor, have been amended consistently with the Constitution and a new Mayor has been duly elected thereunder. The partial invalidity of Sections 5.01, 10.01 and 10.02 does not,

therefore, impair the force and effect of the remainder of the Charter.

In specific answer to your question it is my opinion, and you are so advised, that:

1. Those portions of a village charter which provide for the election of the village mayor in even numbered years are inconsistent with Article XVII, Section 1 of the Constitution of the State of Ohio, and are invalid.

2. Those portions of a village charter which provide for the regular election of members of council in odd numbered years, but which provide for a transition from the old form of government to the new charter form by a special election of members of council in an even numbered year, are not inconsistent with Article XVII, Section 1 of the Constitution of the State of Ohio, and are valid.