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CORONER — PERSON WHO PREVIOUSLY SERVED ELIGIBLE TO BE ELECTED OR APPOINTED — TIME, PREVIOUS SERVICE, NOT ESSENCE — NOT REQUIRED TO BE LICENSED PHYSICIAN — SECTION 2856 GENERAL CODE RELATES TO ELIGIBILITY AND NOT METHOD OF SELECTION FOR OFFICE.

SYLLABUS:

1. *Section 2856, General Code, relates to the eligibility of a person to the office of coroner and not to the method by which he is selected for that office, whether by election by the people or by appointment by the board of county commissioners.*

2. *A person who has previously served as coroner is eligible to be elected or appointed to that office regardless of the time of such previous service, notwithstanding the fact that he is not a licensed physician of good standing in his profession.*

Columbus, Ohio, December 31, 1941.

Hon. John M. Kiracofe, Prosecuting Attorney,
Eaton, Ohio.

Dear Sir:

I have your request for my opinion, which reads as follows:

"The coroner, who was a physician and who was elected at the last election to the office of coroner, has now resigned effective January 1, 1942.

The former coroner, who was a funeral director, has been appointed to fill the unexpired term on the basis that an elector who had previously served as coroner was eligible for election that he would also be qualified for appointment.

Some question has been raised as to his eligibility for the appointment, and I have been asked to obtain your opinion as to whether or not a person who has previously served as coroner,

although not continuously in office, is qualified to be appointed to fill a vacancy soon to exist in that office.

I would appreciate your opinion prior to January 1, 1942."

Your request is doubtless engendered by the provisions of Section 2856-3, General Code, as amended by the 92nd General Assembly, effective June 8, 1937 (117 v. 43). This section reads in part as follows:

"No person shall be eligible to the office of coroner in any county except a licensed physician of good standing in his profession *or a person who shall have previously served as coroner prior to his election.* * * * " (Emphasis mine.)

As the above provision formerly read, it related only to "counties having a population according to the last federal census of 100,000 or more" and did not contain the words above emphasized. (109 v. 543).

Provisions for the election of a coroner are contained in Section 2823, General Code, to the effect that there shall be elected quadrennially in each county a coroner, who "shall hold his office for a term of four years, beginning on the first Monday of January next after his election". Section 2829, General Code, provides inter alia that:

" * * * In counties having a population according to the latest federal census of less than 100,000, when the office of coroner becomes vacant by death, resignation, expiration of the term of office or otherwise, the county commissioners shall appoint a suitable person to fill the vacancy, who shall give bond and take the oath of office as prescribed for the coroner; * * * "

While there are particular qualifications required for eligibility to public office, for example, citizenship and residence, and while "certain other things disqualify one from holding office, such as crime, corrupt practice at a former time, and removal from office" (32 O. Jur. 898), generally speaking duly qualified electors are eligible to be elected and appointed to public office. See Section 4, Article XV, Constitution of Ohio, and the 19th Amendment to the Constitution of the United States.

In connection with Section 4, Article XV, Ohio Constitution, it should be noted that this section does not by implication forbid the Legislature to require other reasonable qualifications for state office.

That is to say, the Legislature may raise the requirements above those prescribed in the Constitution, as it has done in the instant case, but cannot lower them. See 32 O. Jur. 900; State ex rel Attorney General v. Covington, et al., 29 O. S. 102 (1876); and Mason v. State ex rel. McCoy, 58 O.S. 30, 50 N.E. 6, 41 L.R.A. 291 (1898).

Coming now specifically to answer your inquiries, as I understand your letter, two questions are presented:

First, do the provisions relative to the eligibility of persons to the office of coroner contained in Section 2856-3, supra, apply only to those who are candidates for *election* to that office as distinguished from persons who desire to be or have been appointed thereto; and

Second, in view of the provisions of Section 2856-3, supra, is a person, who is not a licensed physician of good standing in his profession but has previously served as coroner, eligible to be elected or appointed to the office of coroner, if he is not serving in such office at the time of his election or appointment?

1. As to the first of the above questions, it is my opinion that Section 2856-3, supra, relates to the eligibility or qualifications of a person to hold the office of coroner rather than to the method by which such office is obtained.

I am, of course, not unaware of the fact that there are many cases which hold that the word "election", as used in a constitution or statute, means an election by the people. But these cases turn upon the fact that the text of the provision under consideration indicates the word "election" to mean a selection by the electorate at an election held according to law. On the other hand, there are an equal number of cases which hold that the word "election" means a selection either by the people or by any duly constituted authority and that, when the text of the particular constitutional provision or statute so requires, the words "election" and "appointment" will be treated as being synonymous.

As stated in 18 Am. Jur., page 180:

"The words 'elect' and 'appoint' are not legally synonymous. As distinguished in meaning from the term 'appointment,' the

term 'election' carries with it the idea of a choice in which all who are to be affected by the choice participate, whereas an appointment is generally made by one person or by a limited number acting with delegated powers. The words are sometimes indiscriminately employed, however, in constitutional and statutory provisions, *and for the purpose of ascertaining the correct interpretation, the courts must give to the word used a meaning according to the connection in which it is found.* * * * " (Emphasis mine.)

In the case of Gabriel B. Reid, Relator, vs. William J. Gorsuch, 67 N. J. L. 396, 401, 51 A. 457 (1902), it was said as follows at page 401:

"Discriminating authorities sanction the use of the word 'appointed' in a sense which includes the notion of election by a body, as well as selection by an individual; and also the use of the word 'elected' as applied to those who are chosen by the votes of a body limited in numbers.

By way of authoritative definitions, we have the following:

'Appointment — the designation of a person, by a person or persons having authority therefor, to discharge the duties of some office or trust.

'Election — choice; selection. The selection of one person from a specific class to discharge certain duties in a state, corporation, or society.' Bouv. Dict.

'Appoint — to allot, set apart, or designate; nominate or authoritatively assign, as for a use, or to a post or office.

'Elect — to pick out; select from among a number. To select from an office or appointment by a majority or plurality of votes; choose by ballot or in similar method; as to elect a representative or a senator; to elect a president or mayor.' Cent. Dict. In this connection an election of an arch bishop by the monks of a certain convent is instanced as a proper use of the verb elect.

Under these definitions the distinction seems to be that election signifies the act of choosing where several participate in the election. The appointment relates to the bestowal of the office upon the person selected, whether the choosing be the act of one or of many. Where the choice rests in the sole discretion of an individual, the usual authoritative evidence that a selection has been definitely made is in the act of bestowal; hence, in such cases, the word 'appointment' has come to include the function of selection, as well as the function of authoritatively designating the person selected. That the functions are distinct, however,

> appears when we come to consider those cases where one has the exclusive function of selection, but the appointment is subject to the approval of others; for instance, the governor nominates and, with the advice and consent of the senate, appoints certain officers. But where the power of making an appointment resides in a numerous body, the exercise of the power necessitates a previous agreement, by a majority of the voices or otherwise, with respect to the person to be chosen; and the choice so made is an election; after which the person selected receives the appointment, and can properly be said to be 'appointed,' although he is the choice of many.
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> Under our system of government the most familiar example of 'election' is that which is participated in by the people at large; at the same time it requires the use of the phrase 'popular election,' or 'election by the people,' to clearly express the thought."

A similar conclusion was reached in the case of Odell v. Rihn, et al., 19 Cal. App. 713, 127 Pac. 802 (1912), in which the court said as follows at page 719:

> "The words 'elected' and 'appointed' ordinarily are not synonymous. In its limited sense the word 'elected' is usually employed to denote the selection of a public officer by the qualified votes of a community. On the other hand the word 'appointed' is generally understood to mean the selection of a public officer by one person who is employed by law to make the appointment. In its broadest sense, however, the word 'elected' means merely selected. When used in that sense the word 'elected' is synonymous with the word 'appointed'; and where, as in the case at bar, a public officer has been selected by a vote of several members of a city council, it may be truly said in the broadest sense of the term that he was elected. McPherson v. Blacker, 146 U.S. 1 (36 L.Ed. 869, 13 Sup. Ct. Rep. 3); Pierce v. Guggenheimer, 44 App. Div. 399 (60 N.Y.Supp. 703); State v. Compson, 34 Or. 25 (54 Pac. 349); People v. Langdon, 8 Cal. 1, 16; Reid v. Gorsuch, 67 N.J.L. 396 (51 Atl. 457); State v. Williams, 60 Kan. 837 (58 Pac. 476); Carson v. Harrison, 113 Ind. 434 (3 Am. St.Rep. 663, 16 N.E. 384.)"

Both upon reason and upon the above quoted authorities, and many others which might be cited, I conclude, therefore, that Section 2856-3, supra, has to do only with the eligibility of a person to serve as coroner, regardless of how selected for that office.

II. In so far as your second question is concerned, as above set forth, generally speaking electors are eligible to hold office except where disqualified because of misconduct or like reason, although the Legislature

may prescribe additional reasonable qualifications. It is obvious that such additional qualifications are limitations upon the general rule and a statute requiring additional qualifications should not be extended beyond the clear import of the language of such statute. As stated in 37 O.Jur. 781:

> "Exceptions to the operation of laws, especially if such laws are entitled to a liberal construction, should receive a strict, but reasonable, interpretation."

See also the same authority, pp. 774 to 787. For this reason it is my opinion that the language "who shall have previously served as coroner prior to his election" should not be extended beyond its plain wording and that one who has previously served as coroner is eligible to be elected or appointed to that office regardless of the time of the previous service.

In this connection I am not unmindful of the case of The State, ex rel Cox, v. Riffle, 132 O. S. 546 (1937), which held that a person not a licensed engineer, but who had previously served in that office, was not eligible to be elected to such office unless he were holding such office at the time of his election. This case, however, had to do with the provisions of Section 2783, General Code, which provides that no person should be eligible as a candidate for the office of county engineer or be elected or appointed thereto, except a registered professional engineer and registered surveyor, "or a person who shall have previously served as county engineer *immediately* prior to his election." It is unnecessary to enlarge upon the difference in the wording of the two statutes, other than to point out that the Supreme Court said as follows at page 550 of the Riffle case:

> " * * * The respondent received the higher number of votes but he was ineligible for election, not only by reason of not being a licensed engineer but also by reason of not having 'served as county engineer *immediately* prior to his election.' * * * " (Emphasis mine.)

It is of course patent that the provisions of Section 2783 are radically different from those of the section here under consideration and that the Riffle case is therefore not only plainly distinguishable, but in fact supports the conclusion herein reached.

In view of the foregoing, and for the reasons given and upon the

authorities cited, it is my opinion that:

I. Section 2856, General Code, relates to the eligibility of a person to the office of coroner and not to the method by which he is selected for that office, whether by election by the people or by appointment by the board of county commissioners.

2. A person who has previously served as coroner is eligible to be elected or appointed to that office regardless of the time of such previous service, notwithstanding the fact that he is not a licensed physician of good standing in his profession.

Respectfully,

THOMAS J. HERBERT,

Attorney General.