

portion of the county, nevertheless it is levied by the county, through its taxing authorities, and I am of the view that, within the meaning of section 2593, General Code, it is a county tax.

I am therefore of the opinion, that under this section, the auditor is limited in charging the omitted taxes against the properties in question to the tax chargeable for not more than the five next preceding years, unless such properties have changed ownership within said period in which event he would be limited to the tax chargeable since the last change of ownership.

I might add, in construing section 5573, General Code, providing for adding omitted property to the tax lists, which section contains the same limitation as does section 2593, General Code, it has been held that "change of ownership" means a change of ownership by a bona fide purchase and does not include change of ownership by inheritance or devise. *Scott vs. Raine*, 25 Bull. 154; *Shields vs. Gibson*, 1 C. C. (N. S.) 532.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4215.

APPROVAL, NOTES OF BUCHTEL VILLAGE SCHOOL DISTRICT,
ATHENS COUNTY, OHIO—\$1,800.00.

COLUMBUS, OHIO, March 31, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4216.

ELECTION LAW—PRIMARY—ELECTOR MAY NOT VOTE BALLOT OF
DIFFERENT POLITICAL PARTY FROM PREVIOUS PRIMARY—
MAY VOTE AT PRIMARY WHERE FAILED TO VOTE AT LAST
GENERAL ELECTION.

SYLLABUS:

1. *An elector cannot vote the ballot of a different political party at the May, 1932, primary than of the one he voted in the August, 1931, primary.*
2. *A voter cannot be prohibited from voting at the May, 1932, primary because of the fact that he did not vote at the 1930 election.*
3. *A voter cannot be denied the right to have his name appear on the primary ballot because of the fact that he did not vote at the last general election held in even numbered years.*

COLUMBUS, OHIO, March 31, 1932.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

"The Board of Elections of Trumbull County has submitted to me the following questions:

First: Can a voter ask for a ballot at the 1932 May Primary Election of a different political party than the one he voted in the August Primary of 1931;

Second: Can anyone vote in the 1932 May Primary, who did not vote in the 1930 election;

Third: Can a candidate run for office in 1932 Primary, if he didn't vote at the General Election in 1930?"

Section 4785-82, General Code, reads as follows:

"At such primary election every qualified voter who is or who will attain the age of twenty-one years on or before the date of the next general election and who is a member of the party as herein provided shall be entitled to vote at such primary. It shall be the duty of the witnesses and challengers and of the judges and clerks of election and the right of any elector, whenever there is reason to doubt the legality of any vote that may be offered to interpose a challenge. The cause of a challenge shall be: that the person challenged is not a legally qualified elector; that he has received or been promised some valuable reward or consideration for his vote; that having previously voted he was not previously affiliated with the party whose ticket he now desires to vote. Party affiliation shall be determined by the largest number of candidates of any one party voted for by the electors at the last general election held in even numbered years."

It will be seen, therefore, that party affiliation is determined by how the elector voted at the last general election held in even numbered years and not how he voted at any primary. Of course, if the elector complied with the law when he voted at the August, 1931, primary, he voted the ballot of the party, the largest number of candidates of which was voted for by him in the general election of 1930.

The above quoted section clearly prohibits an elector, who has previously voted, from voting the ballot of a party with which he is not affiliated as provided therein, and section 4785-202, General Code, makes it a criminal offense for an elector to vote at any primary the ballot of a political party with which he has not been affiliated, as required by law, or with which he did not vote at the last election. If a person wishes to change his politics, he must do so at the general election and cannot do it at the primary election. Opinions of the Attorney General for 1912, Vol. II, page 1920.

I am of the opinion, therefore, that an elector cannot vote the ballot of a different political party at the May, 1932, primary election than of the one he voted in the August, 1931, primary election.

As section 1, article V, of the Ohio Constitution, providing that every person having the qualifications of an elector, as defined therein, shall be entitled to vote at all elections, does not apply to primary elections (*State, ex rel., vs. Felton*, 77 O. S. 554), the answer to your second inquiry must be determined solely by the statutes governing such elections. Primaries are purely party elections by which the parties name the persons who shall represent them and be their candidates at the following election. This is clearly shown by sections 4785-67, et seq., General

Code. It can therefore be no valid objection that electors who do not belong to such parties cannot take part in the primaries.

The first part of section 4785-82, General Code, reads as follows:

“At such primary election every qualified voter who is or who will attain the age of twenty-one years on or before the date of the next general election and who is a member of the party as herein provided shall be entitled to vote at such primary.”

The last part of this section reads as follows:

“Party affiliation shall be determined by the largest number of candidates of any one party voted for by the electors at the last general election held in even numbered years.”

Taking this last provision in its strictest sense, the party affiliation of an elector cannot be determined if he did not vote at the last general election held in even numbered years and it might therefore follow that he would be prohibited from voting at the next primary. However, if this provision is to be so strictly construed, then it is inconsistent with the first part of the section quoted above, for naturally a person who became or becomes twenty-one years of age between the date of the 1930 election and the date of the 1932 election could not be a member of any party as defined by the last sentence of this section.

It is to be noted also that this same section provides that one of the causes of a challenge shall be “that having previously voted he was not previously affiliated with the party whose ticket he now desires to vote.” Therefore, the vote of an elector could not be challenged if he had not previously voted. This statute which was formerly section 4980, General Code, reads as follows:

“At such election only legally qualified electors or such as will be legally qualified electors at the next ensuing general election may vote and all such electors may vote only in the election precinct where they reside, and it shall be the duty of the challengers and of the judges, and the right of any elector, whenever there is reason to doubt the legality of any vote that may be offered, to interpose a challenge. The cause of a challenge shall be: That the person challenged has received or been promised some valuable reward or consideration for his vote; that he has not previously affiliated with the party whose ticket he now desires to vote. Affiliation shall be determined by the vote of the elector making application to vote, at the last general election held in even numbered years.”

This section, in making lack of party affiliation a cause of challenge, did not contain the words “having previously voted.” However, under the criminal statute, section 13327, General Code, there was no violation thereof if the elector had not previously voted. This section read as follows:

“Whoever votes at a primary election, not having voted at the last general election, held in an even-numbered year, with the political party with which he desires, or offers, to vote at such primary election, unless he is a first voter, or did not vote at such general election, shall be fined

not less than one hundred dollars nor more than three hundred dollars or imprisoned in the penitentiary for one year, or both."

This statute as enacted in 1904 (97 O. L. 107) read as follows:

"No person shall be allowed to vote at any primary election except he be an elector resident of the precinct, ward or township in which he desires to vote and except he voted with the political party holding such primary election at the last general election, providing he voted at all at such election, unless he be a first voter; nor shall any person vote more than one time, or at any other than at the polling place in that precinct, ward or township wherein he resides."

The history of this legislation shows clearly that its fundamental purpose is not to disfranchise an elector at a primary election because he had not voted at the next preceding general election, but is to prevent the voters affiliated with one party from voting in the primary of another and thereby dictating and controlling the nominees of a party with which they have no affiliation.

Where the meaning of a statute is doubtful, it should be construed to carry out its purpose, and where there are conflicting provisions, the statute should be so construed, if possible, as to give effect to all its provisions.

"The purpose for which the law was enacted is a matter of prime importance in arriving at a correct interpretation of its terms."

State, ex rel., vs. Commissioners, 94 O. S. 296.

"It is settled that where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction * * *." *In re Hease*, 93 O. S. 230.

"However, it is the general rule that in such a situation, where a statute contains conflicting provisions, the court should carry out the fundamental purpose of the act."

Industrial Commission vs. Hilshorst, 117 O. S. 337.

It seems to me that, taking this statute by its four corners and bearing in mind its fundamental purpose, it would be a reasonable construction to say that the last sentence of this statute can have no application where the elector has not previously voted, and where he has previously voted then his party affiliation must be determined by the largest number of candidates of any one party voted for by him at the last general election held in even numbered years at which he voted. This construction would tend to harmonize and give effect to all provisions of this statute and accomplish the purpose which prompted the enactment.

Suppose, for instance, that war is declared and a large army of men, eligible to vote, is sent overseas and are therefore unable to vote at a general election, and the men then return home in time to vote at the following primary. Could it be claimed that they would not be entitled to vote because, for reasons beyond their control, they did not vote at the last general election though they may have consistently voted the same party ticket in previous elections? I do not believe this was the intention of the legislature.

I am of the opinion, therefore, that a voter cannot be prohibited from voting at the May, 1932, primary because of the fact that he did not vote at the 1930 general election.

I come now to your third inquiry. If a person is not entitled to vote at a primary because he had not voted in the last general election held in even numbered years, he likewise would not be entitled to have his name appear on a party ballot in the primary election.

As stated in the case of *State, ex rel., vs. Graves*, 91 O. S. 36:

“If he is not a qualified voter, it is difficult to understand how he could be a qualified candidate. The same spirit runs throughout as to the voter and candidate in connection with the party primary.”

However, under the construction which I have placed in section 4785-82, a voter would not be prohibited from running for a party candidacy at a primary because of the fact that he had not voted at the preceding general election held in even numbered years.

Section 4785-71, General Code, provides as follows:

“Such declaration of candidacy accompanied by the necessary petition shall be in substantially the following form:

DECLARATION OF CANDIDATES—PARTY PRIMARY

I,, hereby declare that I reside at No. street, in the city of (or in precinct township) county of Ohio, and am a qualified elector therein. I am a member of the party. At the last general election I voted (did not vote) for a majority of the candidates of such party, and intend to vote for a majority of the candidates of such party at the forthcoming election. I hereby declare myself a candidate for nomination to the office of to be made at the primary election to be held on the day of, 19....., and hereby request that my name be printed upon the official primary ballot as provided by law as a candidate of the..... party.

I further declare that if nominated and elected, I will qualify as, and that I will support and abide by the principles enunciated by the party in its national and state platform.

Dated this day of, 19.....

.....
Signature of Candidate.

The State of Ohio)
County of.....)

Personally appeared before me the undersigned, a candidate forin and for said county, this..... day of, 19....., the above named, who acknowledged the signing of the above

declaration and declared to me that the statements made therein were true as he verily believed.

Signed.....

Subscribed and sworn to before me this.....day of

....., 19.....

Signed.....

.....
 (Title of officer.)"

In the form of the above declaration, the party desiring to become a candidate states whether he did or did not vote for a majority of the candidates of his party at the last general election. This shows the intention that voting at the last general election is not a prerequisite, otherwise the form would have contained the declaration only that he did vote for a majority of the candidates of his party at such election.

I am of the opinion, therefore, that a voter cannot be denied the right to have his name appear on the primary ballot because of the fact that he did not vote at the last general election held in even numbered years.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4217.

SHERIFF—COST OF FEEDING PRISONERS—COUNTY COMMISSIONERS MUST ALLOW ACTUAL COST WITHIN 75 CENTS LIMITATION PER DAY—RIGHT OF COUNTY COMMISSIONERS TO REGULATE.

SYLLABUS:

1. *In the absence of a violation of rules and regulations adopted by the county commissioners concerning the feeding of state prisoners in the county jail by the county sheriff, the county commissioners must allow the sheriff his actual cost of feeding such prisoners, subject to the 75c per day limitation set by Section 2850, General Code.*

2. *County commissioners may require the sheriff to furnish food for prisoners confined in the county jail and file the original bills with the county commissioners as provided by Section 2850, General Code.*

3. *County commissioners may not control the amount allowed by the sheriff for the preparation of meals for state prisoners confined in the county jail, unless such action is necessary to keep the cost of such meals within the statutory limitation of Section 2850, General Code.*

COLUMBUS, OHIO, April 1, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads:

"In opinion No. 1608 of the year 1928, it was held by the Attorney General that a contract might be made by the sheriff for the furnishing of