

3785

1. BALLOT, PRESIDENTIAL—MARKED WITH “X” IN CIRCLE AT TOP OF EITHER TICKET, DEMOCRATIC OR REPUBLICAN—ALSO MARKED WITH “X” IN RECTANGULAR SPACE BEFORE NAME OF ONE OR MORE OF TWENTY-FIVE INDEPENDENT CANDIDATES FOR PRESIDENTIAL ELECTION—SHOULD BE COUNTED AS VOTE FOR CANDIDATE AT LEFT OF NAMES WHERE “X” IS PLACED.
2. BALLOT, PRESIDENTIAL—“X” MARKED IN SHADED SPACE AT TOP OF COLUMN—NAMES OF TWENTY-FIVE CANDIDATES FOR PRESIDENTIAL ELECTOR APPEAR—“X” ALSO MARKED IN CIRCULAR SPACE APPEARING AT TOP OF EITHER TICKET SHOULD BE COUNTED AS VOTE FOR TWENTY-FIVE PRESIDENTIAL ELECTORS NOMINATED BY DEMOCRATIC OR REPUBLICAN STATE CONVENTION.

3. BALLOT MARKED OTHER THAN "X" MARKS BY VOTER
—INVALID—ENTIRE BALLOT SHOULD BE INVALID-
DATED AND NOT COUNTED.

SYLLABUS:

1. A presidential ballot marked with an "X" in the circle at the top of either the Democratic or Republican ticket and also marked with an "X" in the rectangular space before the name of one or more of the twenty-five independent candidates for presidential elector should be counted only as a vote for those independent candidates at the left of whose names such "X" is placed.

2. A presidential ballot bearing an "X" in the shaded space at the top of the column in which the names of the twenty-five candidates for presidential elector appear and also an "X" mark in the circular space appearing at the top of either the Democratic or Republican ticket should be counted as a vote for the twenty-five presidential electors nominated by the Democratic or Republican State Convention as the case may be.

3. A ballot which bears any marks other than "X" marks placed thereon by the voter is invalid and the entire ballot should be invalidated and not counted.

Columbus, Ohio, September 21, 1948.

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

Dear Sir:

This will acknowledge receipt of your letter of September 13th, wherein you request my opinion on the following questions:

"(1) How should a Presidential Ballot be counted when a voter marks an (X) in the circle at the top of the Democratic ticket and then marks an (X) at the space before the name of one or more of the twenty-five (25) Independent Candidates for Presidential Electors? (Sample ballot attached hereto marked Exhibit 'A'.)

"(2) How should a Presidential Ballot be counted when the voter marks an (X) in the *blacked-out space* at the top of the ticket of the twenty-five (25) Candidates for Presidential Electors and also places an (X) mark in the circle above the candidates for President and Vice-President on the Democratic ticket? (Sample ballot attached hereto marked Exhibit 'B'.)

"(3) How should a ballot be counted when a voter marks a ballot with *any mark* other than an (X) before any candidates on any ballot under provisions of General Code Section 4785-144? Is the *entire ballot invalidated* or only the *vote* for that *par-*

ticular candidate? (Sample ballot attached hereto marked Exhibit 'C'.)"

The answer to your first question is found in Section 4785-131, General Code, which section sets out the rules to be observed in marking the ballot. Paragraph numbered 1c of said section reads as follows:

"1c. When more than one person is to be elected to an office and there are names of candidates for election to such office on more than one ticket on the ballot, a voter who places 'X' in the circular space above one ticket and also places 'X' in the rectangular space at the left of the names of candidates for such office on other tickets, should also indicate what candidates for said office, if any, he desires to vote for on the ticket in the circular space above which he placed 'X', by placing 'X' in the rectangular space at the left of their names. If the voter in marking his ballot as herein prescribed places 'X' in the rectangular space at the left of the names of candidates for said office equal in number to the number of candidates to be elected to said office, his ballot will be counted as to such office, as a vote for each of the candidates in the rectangular space at the left of whose names he shall have placed 'X'. If the voter in so marking his ballot places 'X' in the rectangular space at the left of the names of candidates for said office less in number than the number of candidates to be elected to such office, *his ballot will be counted, as to such office, as a vote only for each of the candidates in the rectangular space at the left of whose names he shall have placed 'X'.* If the voter in so marking his ballot places 'X' in the rectangular space at the left of the names of candidates for said office more in number than the number of candidates to be elected to said office, his ballot will not be counted for any candidate for said office." (Emphasis added.)

From the above it will be noted that, in a case where more than one person is to be elected to an office, if a voter places "X" in the circular space above one ticket and also places "X" in the rectangular space at the left of the name of a candidate whose name appears in another column or another ticket, his ballot will be counted, as to such office, as a vote only for each of the candidates voted for individually by placing of an "X" in the rectangular space at the left of his name.

In the instant case there are twenty-five presidential electors to be elected, and under the terms of paragraph 4a of Section 4785-131, General Code, an "X" placed in the circular space above the names of the candidates for election to the offices of president and vice-president of the United States will be counted as a vote for each of the candidates for

election as presidential elector. In view of this it is obvious that the ballot in question should be counted as a vote only for those candidates to the left of whose names the voter placed an "X".

This brings me to the second question. In regard thereto your attention is directed to my Informal Opinion No. 408 given to you on August 14, 1948, in response to your inquiry as to whether or not the same twenty-five candidates for presidential electors with which we are here concerned can be voted for by means of only one "X" mark. In said opinion it was stated:

"Since the names of said candidates can not appear on the ballot under an emblem or party or group designation it is obvious that an 'X' mark must be placed before the name of each of such candidates to vote for them and that one 'X' mark can not be made for the entire group of twenty-five candidates."

Therefore, since the entire group of candidates in question can not be voted for by the placing of only one "X" mark on the ballot, it seems to me that if an "X" mark is placed in the shaded area at the top of the column in which the names of said candidates appear it would be meaningless and consequently should be disregarded, in which event it would follow that the ballot should be counted as a vote for the electors chosen at the Democratic State Convention and voted for on said ballot by the placing of an "X" in the circular space above the names of the Democratic candidates for the offices of president and vice-president.

While your first two questions refer specifically to the Democratic ticket on the presidential ballot you understand, of course, that what has been said above would likewise be applicable to similar markings on the Republican ticket appearing on said ballot.

Section 4785-144, General Code, to which you refer in connection with your third question, provides in part:

"No ballot shall be counted which bears any marks other than 'X' marks placed thereon or a name written therein by the voter, in a blank space provided therefor, and the printed or other matter ordered placed thereon for use in such precinct by the board of elections. * * *"

While certain terms appearing in the election laws are defined in Section 4785-3, General Code, reference to said section will disclose that

the General Assembly has failed to define the word "ballot" as the same is used in said laws. Consequently, in order to ascertain the meaning of said word as so used it becomes necessary to resort to the established rules of statutory construction. It is a familiar rule of statutory construction that words of a statute should be given the meaning commonly attributed to them unless it plainly appears from a construction of the entire statute that such meaning was not intended.

The term "ballot" as the same is used in connection with voting is commonly understood to mean a piece of paper containing the names of candidates and the offices to which they are seeking election, or containing certain questions to be submitted to the electorate upon which the voter gives expression to his choice. In *The City of Wellsville et al. v. Connor*, 91 O. S. 28, it is stated that a ballot is the instrument by which a voter expresses his choice between candidates or on a question. An examination of Section 4785-144, General Code, reveals nothing which would indicate that it was intended that said word as used therein was intended to be given a different meaning. In fact in said section it is also provided:

"* * * If two or more ballots are found folded together among the ballots removed from a ballot box, they shall be deemed to be fraudulent. Such ballots shall not be counted.
* * *"

From the above it is obvious that the word "ballot" as used therein can mean only the paper containing the names of the candidates which is given to the voter to be used by him as an instrument of expressing his choice.

In view of the above, and in specific answer to your several questions, you are advised that, with respect to the presidential election to be hold on November 2nd of this year, it is my opinion:

1. A presidential ballot marked with an "X" in the circle at the top of either the Democratic or Republican ticket and also marked with an "X" in the rectangular space before the name of one or more of the twenty-five independent candidates for presidential elector should be counted only as a vote for those independent candidates at the left of whose names such "X" is placed.

2. A presidential ballot bearing an "X" in the shaded space at the top of the column in which the names of the twenty-five candidates for presidential elector appear and also an "X" mark in the circular space appearing at the top of either the Democratic or Republican ticket should be counted as a vote for the twenty-five presidential electors nominated by the Democratic or Republican State Convention as the case may be.

3. A ballot which bears any marks other than "X" marks placed thereon by the voter is invalid and the entire ballot should be invalidated and not counted.

Respectfully,

HUGH S. JENKINS,
Attorney General.