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VILLAGE—POPULATION LESS THAN 2000—HAS NOT BEEN REQUIRED BY PETITION, MAJORITY OF ELECTORS TO HOLD PRIMARY ELECTION—MEETING TO FIX COMPENSATION FOR ALL OFFICES—MUST BE HELD NOT LATER THAN FIVE DAYS PRIOR TO FOUR P. M. OF 90th DAY BEFORE DAY OF GENERAL ELECTION—SECTIONS 731.13, 3513.251 RC.

SYLLABUS:

Where a village which is subject to the provisions of Section 731.13, Revised Code, has a population of less than 2,000 and has not been required by a petition of a majority of its electors to hold a primary election, the meeting to fix the compensation for all offices, as required by said Section 731.13, Revised Code, must be held not later than five days prior to four p. m. of the 90th day before the day of the general election, as provided by Section 3513.251, Revised Code.

Columbus, Ohio, February 14, 1955

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“The 100th General Assembly enacted Section 3513.251, effective January 1, 1954, which provides for the nomination of candidates for election of officers in municipal corporations having a population of less than two thousand to be made by nominating petition, unless a majority of the electors have petitioned for a primary election.

“Such petition shall be filed with the board of elections *not later than four P. M. of the ninetieth day before the day of the general election.* The filing date, in this instance, would be August 10, 1955.

“In villages of more than two thousand population, where a primary election is held, the candidates must file their petitions *not later than four P. M. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding such general election.* The filing date in this instance will be February 2, 1955.

“It will thus be noted that candidates for office in villages having less than two thousand population, unless a primary is petitioned for, must file on the ninetieth day before the general election whereas in villages of more than two thousand population, candidates must file on the ninetieth day before the primary election.

“A question has arisen from several parts of the state as to when salaries of elective officials shall be fixed, in view of the provisions of Section 731.13 of the Revised Code, which provides, in part, as follows:

‘The legislative authority shall, in case of officers, fix their compensation for the ensuing term of office at a meeting held not later than five days prior to the last day fixed by law for filing as a candidate for such office.’

“The question that is asked is this:

“Under the provisions of law which provide that, in villages of less than two thousand population, nominations shall be made by petition filed on or before the ninetieth day before the day of the general election, can the compensation of such village officers be legally fixed for the ensuing term of office, beginning January 1, 1956, by an ordinance passed at least five days before August 10, 1955, or is it necessary, in such instances for this compensation for the ensuing term of office, beginning January 1, 1956, to be fixed by an ordinance passed at least five days before February 2, 1955.

“As there are numerous villages in the state having less than two thousand population, in which no primary election for village officers will be held in 1955, this question seems to be of state wide concern.

“Also because of the proximity of the filing date, where primaries are to be held, this matter is of immediate concern in villages of less than two thousand population.”

Section 3513.251, Revised Code, provides in pertinent part as follows:

“Nominations of candidates for election as officers of a municipal corporation having a population of less than two thousand as ascertained by the next preceding federal census shall be made only by nominating petition, unless a majority of the electors of such municipal corporation have petitioned for a primary election.

“* * * Such petition shall be filed with the board of elections not later than four p. m. of the ninetieth day before the day of the general election, provided that no such nominating petition shall be accepted for filing or filed if it appears to contain sig-

natures aggregating in number more than twice the minimum aggregate number of signatures required by this section.”

The first paragraph of Section 731.13, Revised Code, a portion of which you have quoted in your opinion request, provides as follows:

“The legislative authority of a village shall fix the compensation and bonds of all officers, clerks, and employees of the village except as otherwise provided by law. *The legislative authority shall, in the case of officers, fix their compensation for the ensuing term of office at a meeting held not later than five days prior to the last day fixed by law for filing as a candidate for such office.* All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the term for which any officer, clerk, or employees is elected or appointed. * * *”

(Emphasis added.)

The emphasized portion of this section was enacted into law in 1939 by the 93rd General Assembly, in Amended Senate Bill No. 24, 118 O. L. 360, as an amendment to what was then Section 4219 of the General Code. Presumably the purpose of this amendment was to avoid the effect of the decision in such a case as Village of South Euclid v. Bilkey, 126 Ohio St., 505, wherein it was held that the legislative authority of a village could by ordinance, passed subsequent to a general election and prior to the commencement of a term of office, alter the compensation of that office without being subject to the statutory prohibition against increasing or diminishing salaries during the term. It would appear that the intention of the amendment was to apprise a candidate for office of the precise emoluments attaching thereto prior to the time when he was required to file for the office.

It follows, therefore, that in the case of a village subject to the provisions of Section 731.13, supra, which has a population of less than 2,000, and which has not been required to hold a primary election by reason of a petition filed by a majority of its electors, the purpose of the statute is subserved if the meeting to fix the compensation for an ensuing term is held no later than five days prior to the date upon which nominating petitions must be filed. That is to say, at least five days prior to four p. m. of the ninetieth day before the day of the general election, as provided by Section 3513.251, supra.

It would appear in such case that there is no other possible date which could be considered to be a "day fixed by law for filing as a candidate" within the purview of Section 731.13, supra.

Accordingly, in specific answer to your inquiry, it is my opinion that where a village which is subject to the provisions of Section 731.13, Revised Code, has a population of less than 2,000 and has not been required by a petition of a majority of its electors to hold a primary election, the meeting to fix the compensation for all officers, as required by said Section 731.13, Revised Code, must be held not later than five days prior to four p. m. of the 90th day before the day of the general election, as provided by Section 3513.251, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General