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ELECTION, PRIMARY — HELD MAY 9, 1944 — WHERE PERSON NOMINATED AS CANDIDATE FOR ELECTION TO COUNTY OFFICE, NOVEMBER 7, 1944, GENERAL ELECTION, DIES AFTER BALLOTS PRINTED, MANDATORY DUTY OF BOARD OF ELECTIONS TO CAUSE STRIPS OF PAPER BEARING NAME OF PERSON CERTIFIED TO FILL VACANCY, TO BE PRINTED AND PASTED ON BALLOTS TO COVER NAME OF DECEASED CANDIDATE — COUNTY CENTRAL COMMITTEE OF POLITICAL PARTY WHICH MADE NOMINATION SHALL CERTIFY TO COUNTY BOARD OF ELECTIONS NAME OF PERSON SELECTED TO FILL VACANCY — PERSON CERTIFIED MUST FURNISH WRITTEN ACCEPTANCE OF NOMINATION.

SYLLABUS:

If a person who is nominated at the primary election held on May 9, 1944 as a candidate for election at the general election to be held on November 7, 1944 to an office, the election to which is to be determined by the voters of a county, dies after the ballots carrying his name have been printed and there is certified to the board of elections of such county, by the county central committee of the political party which made such nomination, the name of a person selected by it to fill the vacancy caused by such death, together with a written acceptance of such nomination by the person whose name is certified, it is the mandatory duty of such board of elections forthwith to cause strips of paper bearing the name of the person so certified to be printed and pasted on such ballots so as to cover the name of the deceased candidate before any more of such ballots are delivered to electors.

Columbus, Ohio, September 7, 1944

Hon. Jerome A. Nevius, Prosecuting Attorney
Springfield, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“A situation has developed in Clark County which requires the immediate opinion of the Attorney General.

Last week a candidate for a county office died and the political party committee duly nominated a replacement candidate and filed the certification thereof with the Board of Elections, in accordance with the provisions of Section 5 of the Temporary Election Laws (1944 Temporary Supplement of the Ohio General Code).

The question now arises as to the placing of that candidate's name upon the ballots which have already been printed.

Section 4785-96, G. C., clearly provides for such situation, but Section 11 of the Temporary Election Laws provides that Section 4785-96 be suspended until November 8, 1944.

Section 6 of the Temporary Election Laws, makes provision for the placing on the ballots of strips of paper bearing the name of the candidate certified to fill the vacancy. However, that particular section apparently limits such procedure to a candidate whose election is to be determined by the votes of the electors of the state at large, or a candidate whose election is to be determined by the votes of the electors of a district.

You will note that Section 6 is mute as to a county or less than a county candidate.

The Board of Elections of Clark County has voted unanimously to withhold any action in this matter until Friday noon, September 8th, awaiting the opinion of the Attorney General.

I might also add that the Board of Elections is withholding ballots for soldiers until the same time.

It is, therefore, of the utmost importance that we receive a reply to this request immediately.”

Pertinent to your inquiry are the provisions of Sections 5 and 6 of

Amended Senate Bill No. 284 of the 95th General Assembly which became effective on April 28, 1944 and under the terms of which the provisions of a number of the permanent statutes of Ohio dealing with the conduct of elections are suspended until November 8, 1944.

Section 6 of Amended Senate Bill No. 284 reads:

“The secretary of state shall, on the twenty-fifth day of July, 1944, certify to the board of elections of each county in the state the forms of the official ballots to be used at the general election to be held on the seventh day of November, 1944, together with the names of the candidates to be printed thereon whose election is to be determined by the votes of the electors of the state at-large.

The board of elections of the most populous county in each election district comprised of more than one county, in which there are candidates whose election is to be determined by the votes of the electors of such district, shall, on the twenty-fifth day of July, 1944, certify to the board of elections of each county in such district, the names of such candidates to be printed on such ballots.

If, after the twenty-fifth day of July, 1944, and before the twenty-ninth day of October, 1944, a certificate should be filed with the secretary of state to fill a vacancy caused by the death of a candidate, as in section 5 of this act provided for, the secretary of state shall forthwith make a supplemental certification to the board of elections of each county in the state amending and correcting his original certification provided for in the first paragraph of this section. If within such time such a certificate should be filed with the board of elections of the most populous county in an election district comprised of more than one county, such board shall forthwith make a supplemental certification to the board of elections of each county in such district amending and correcting its original certification provided for in the second paragraph of this section. If, at the time such supplemental certification is received by a county board of elections, ballots carrying the name of the deceased candidate shall have been printed, such board shall cause strips of paper bearing the name of the candidate certified to fill such vacancy to be printed and pasted on such ballots so as to cover the name of the deceased candidate, before such ballots are delivered to electors.”

You state in your letter that the above section apparently limits the pasting of strips of paper bearing the name of a candidate certified to fill a vacancy by the county central committee of the appropriate political party, to a candidate whose election is to be determined by the votes of the electors of the state at large or a candidate whose election is to be

determined by the votes of the electors of a district consisting of more than one county.

While such conclusion may seem apparent from a reading of said section standing alone, it becomes less so if those provisions of the act which are clearly in *pari materia* therewith are considered.

It is a fundamental rule of statutory construction that the several sections of an act must be construed together in order to arrive at a correct interpretation of any particular one. If doubt as to the meaning of the statute exists and that doubt can be removed and the intent of the Legislature gathered by reference to related provisions, it is the duty of the courts to resort to such related provisions in order to ascertain and carry out the legislative intent. Relative thereto it is stated in 37 O. Jur., pages 606 to 610:

“An act under consideration should be construed in its entirety. That is to say, the entire act should be examined and considered, and considered as a whole. No provision or part thereof can properly be disregarded in the construction of the statute. To the contrary, every part of the statute should be regarded in connection with the act of which it forms a part, so that all parts should be read together. The sense in which particular words, phrases, or clauses are used is to be ascertained from a view of the whole statute, rather than from isolated passages, except, perhaps, when such passages reach the entire subject-matter of the controversy.”

A reading of Section 6 of the Act discloses that the provisions of Section 5 are incorporated therein by reference. In view of this there can be no doubt that recourse to such provisions must be had in order to reach a correct interpretation of said Section 6. The provisions of Section 5 which are material hereto are contained in the third and fifth paragraphs of said section and respectively read as follows:

“* * * If a person nominated in the primary election held on the ninth day of May, 1944, as a candidate for election at the general election to be held on the seventh day of November, 1944, whose election is to be determined by the voters of a county or an election district smaller than a county, shall withdraw as such candidate prior to the twentieth day of July, 1944, the vacancy in the party nomination so created may be filled by the county central committee of the political party which made such nomination at said primary, at a meeting called for such purpose. Such meeting shall be called by the chairman of such committee, who

shall give each member of such committee at least two days notice of the time, place and purpose of such meeting. If a majority of the members of such committee are present at such meeting, a majority of those present may select a person to fill the vacancy. The chairman and secretary of such meeting shall certify in writing and under oath to the board of elections of such county, not later than the twenty-fourth day of July, 1944, the name of the person so selected to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is so certified. * * *

If a person nominated in the primary election held on the ninth day of May, 1944, or nominated by petition, as a candidate for election at the general election to be held on the seventh day of November, 1944, shall die the vacancy so created may be filled by the same committee in the same manner as provided in the four next preceding paragraphs for the filling of similar vacancies created by withdrawals, excepting that the certification, when filling a vacancy created by death, may not be filed with the secretary of state or with the board of elections of the most populous county of an election district later than 6:30 p. m. of the twenty-eighth day of October, 1944, or with any other county board of elections later than the second day of November, 1944."

The above language expressly provides that if a person nominated in the primary election held on the 9th day of May, 1944 as a candidate for election at the general election to be held on the 7th day of November, 1944, whose election is to be determined by the voters of a county, shall die, the vacancy in the party nomination so created may be filled by the county central committee of the political party which made such nomination at said primary, at a meeting called for such purpose, and the chairman and secretary of such meeting shall certify in writing to the board of elections of such county the name of the person so selected to fill such vacancy.

It certainly must be conceded that the name of a person nominated in the primary election will appear on the official ballots for the general election, unless he should withdraw or die prior to the printing of such ballots. In view of this, it should require no argument to support the statement that the name of a person designated to fill a vacancy in such nomination caused by the death of the nominee should likewise appear on the ballots for the general election. If such were not the case, it is difficult to perceive why the General Assembly made provision for the filling of such vacancies.

It will be noted that there is nothing in the Act which expressly provides that the name of the person selected by the appropriate county central committee to fill a vacancy which occurred prior to the printing of the ballots for the November election, shall be printed on such ballots. Notwithstanding this fact, it can scarcely be contended that the name of the person so selected should not be printed on the ballots. When the General Assembly provided for the filing of a vacancy in party nominations it certainly intended that the person named to fill such vacancy should succeed to all the rights that the person nominated in the primary election held by reason of such nomination. This, of course, would include the right to have his name appear on the ballot.

Furthermore, since the Act, in Section 5, expressly provides that the name of a person selected to fill a vacancy in the party nomination may be certified to a county board of elections as late as November 2, 1944, it certainly must have been intended by the General Assembly that the name so certified should appear on the ballot. If not, the provisions for such certification would, indeed, be meaningless. Unless it is imperative to do so by reason of its clear language, an act should never be construed so as to require or provide for the doing of a vain, idle or foolish thing. In this regard it is stated in 37 O. Jur., pages 634, 635:

“It is a maxim that the law never requires the doing of an idle thing or compels the doing of impossibilities. Accordingly, the courts will not assume, or presume, that the legislature intended the doing of a vain, useless, purposeless, or impossible thing. To the contrary, it is to be presumed that the legislature did not intend to compel the doing of an impossible thing. Therefore, a construction of an ambiguous statute should be avoided which would require the performance of a vain, idle, or foolish, thing or attempt to require the performance of an impossible thing.”

Finally, to say that those candidates selected by the appropriate committees, whose election is to be determined by the votes of the electors of the state at large and those who are to be elected by the electors of an election district larger than the county shall have strips of paper bearing their names pasted on the ballots, while those similarly selected, whose election is to be determined by the votes of the electors of a county shall not have strips of paper bearing their names pasted on the ballots would, indeed, be an absurdity.

With respect to the construction of statutes to avoid absurd or ridiculous consequences, it is declared in 37 O. Jur., pages 643 to 649:

“It is to be assumed that the legislature intends to enact only that which is reasonable, and courts sometimes refer to the presumption against absurdity in the provisions of a legislative enactment. It is clear that the general assembly will not be assumed, or presumed, to have intended to enact a law producing unreasonable or absurd consequences.

One of the established rules for the construction of statutes is that doubtful provisions should, if possible, be given a reasonable, rational, sensible, or intelligent construction. Accordingly, it is the duty of the courts, if the language of a statute fairly permits, or unless restrained by the clear language of the statute, so to construe it as to avoid unreasonable, absurd, or ridiculous consequences. Accordingly, in interpreting an ambiguous statute, the reasonableness or otherwise of one construction or the other is a matter competent for consideration.”

In view of the above, you are advised that if the person named in the certification to your board of elections by the county central committee had his written acceptance of such nomination filed with such certification, I am of the opinion that it is a mandatory duty of the board of elections of your county to cause strips of paper bearing the name of such person to be printed and pasted on the ballots to be used in the November election, before such ballots are delivered to the electors.

Respectfully,

THOMAS J. HERBERT

Attorney General