

1872.

ELECTION LAW—REGISTRATION OF ELECTOR BY MAIL UNAUTHORIZED.

SYLLABUS:

Under the existing statutes, there is no provision of law to authorize an elector to register by mail.

COLUMBUS, OHIO, May 17, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Section 4785-34 to Section 60, inclusive, provide for the registration of votes in certain cities in Ohio. However, I cannot find any provision for registration of voters by mail at the general registration next Fall.

The right of the absentee voters to register by mail has been given in Ohio for many years. The new law gives the right of changing residence registration by mail in case of change of residence, etc., as well as the right to actually vote by mail, but through some inadvertance the right to register in the first instance by mail has been taken away.

I am wondering if you can point out any section in the new code which will give the right to register by mail and whether or not the Secretary of State, under the powers given in Section 7 to prepare rules, regulations and instructions for conduct of elections, has the right to provide for registration by mail.”

In my opinion No. 1423 issued to you under date of January 16, 1930, consideration was given as to the extent of your powers to make rules and regulations governing the conduct of elections. The syllabus of said opinion reads:

“1. Under the provisions of Section 4785-7, General Code, as enacted by the 88th General Assembly, effective January 1, 1930, whereby the Secretary of State, as chief election officer, is charged with the duty ‘to prepare rules, regulations and instructions for the conduct of elections’, the adoption of such rules, regulations and instructions as will carry out the provisions and principles of the election laws of the State of Ohio, and apply and explain the provisions, intent and purpose of such laws in harmony with the rulings of the courts and opinions of the Attorney General, would be within the authority vested in the Secretary of State, so long as the laws were not thereby amplified, and such rules, regulations and instructions should be followed and obeyed by county boards of elections and other election officials in the state.

2. The form of registration cards, blanks and records should be provided by the Secretary of State in the rules, regulations and instructions for the conduct of elections which the Secretary of State is authorized and directed to prepare under the provisions of Section 4785-7, General Code.”

Without an extended discussion, it is believed that an analysis of said opinion will disclose that you do not have power to make a rule upon a matter about which the Legislature has spoken in definite and certain language. That is to say, where the Legislature, in the Election Code, has definitely set forth a form of affidavit or registration blank as set forth in Section 4785-42, of the General Code, you would be without authority to change the substance thereof. Upon matters wherein the Legisla-

ture has granted the power but has not set forth in detail the manner in which it shall be exercised, you undoubtedly, as chief election officer, have power to prescribe reasonable rules and regulations. On examining the Code, it will be observed that nowhere therein is there found a provision for the registration of voters by mail.

It is true that Section 4897, of the General Code, in definite and certain language did authorize registration of voters by mail. However, this section was repealed by the Election Code, to which you refer. The act under consideration, which was a complete revision of all the election laws of Ohio, in Section 4785-34, among other things, provides:

“* * * No person residing in any registration precinct shall be entitled to vote at any election or to sign any nominating, initiative, referendum or recall petition unless he is duly registered as an elector in the manner provided herein; provided, however, that for the primary election and any special elections held before the general election in 1930, all voters who were duly registered and qualified to vote at the general election in 1929 and have not changed their places of residence shall be deemed to have registered for any such primary or special election. Registrars of each precinct, on the Friday and Saturday in the second week before such primary or special election held before the general election in 1930, shall obtain from the board the last registers for such precincts, and attend at the polling places in such precincts on such dates between the hours fixed by the board, and then and there receive applications for registration by qualified electors residing therein as are not already registered. If such applicants are qualified, the registrars shall enter them in the registers, subject to the rules and conditions prescribed for registration.”

Section 4785-35, General Code, among other things, provides:

“* * * When once registered in accordance with this act, an elector shall not be required to register again unless his registration is cancelled for reasons as hereinafter provided.”

Section 4785-36, General Code, provides, in part:

“The board shall provide such printed forms, blanks, supplies, and equipment, and prescribe such reasonable rules and regulations as are necessary to carry out the provisions herein relating to registration. * * *”

It will be seen from the foregoing, that in definite language the Legislature has provided that no person residing in a registration precinct shall be entitled to vote or sign any nominating, initiative, referendum or recall petition unless he is registered as an elector, as required by law.

Section 4785-38, General Code, which relates to the manner of registration and the duties of the registrars, reads in part, as follows:

“* * * They shall take the oath as in the case of judges and clerks of elections; and they shall receive the applications and register all such persons, resident in such precinct, who shall personally come before them and who are or will be entitled to vote therein at the next ensuing election. All such registrars shall have the authority to administer the oath and take the affidavit of such applicants.

The registrars shall examine the applicants as to their qualifications as

electors and, except as otherwise provided in this act, shall immediately in the presence of each applicant enter on the registration forms the answers in full as to the facts required thereon regarding each applicant. Said applicant shall then, in the presence of both registrars, sign both the original and duplicate registration forms. If the right of an applicant to register is challenged by an elector or one of the registrars, the registrars may administer the oath and shall proceed to examine such applicant and other witnesses as to his residence and qualifications to vote. If not satisfied that the applicant is entitled to register the registrars shall enter the word 'challenged' after such applicant's name on his registration form. The board shall immediately investigate such challenge and if the challenge be sustained, such applicant's registration forms shall be removed from the files and cancelled, and the applicant notified. If the board finds that such applicant is entitled to register he shall be duly registered."

In analyzing the provisions of the sections last quoted, it will be observed that the personal appearance of the elector, desiring to be registered, is required before the registration officials. In the presence of such officials the applicant for registration is required to sign both the original and duplicate registration form, and an opportunity is given to challenge his right to register. It will thus be seen that the Legislature has prescribed in minute detail the manner and method of registration, and when such registration is properly made the same is permanent unless such elector moves from the precinct. While of course the intention of the Legislature is always the guide in construing statutes, there is no room for construction where the Legislature has spoken in definite and unambiguous terms.

If a statute is clear, courts have no power to improve it by extending it so as to cover omissions or correct defects. *Park vs. Development Company*, 109 O. S., 358. However, upon the question of intent, the history of the act does not assist us. The law having definitely provided for registration by mail and such provision having been completely eliminated it may well be argued that the omission was clearly intended.

Taking the history of this legislation into consideration in connection with the fact that registration laws are enacted for the purpose of preventing fraud, irrespective of what our personal view may be as to the expediency of such a requirement, it must be said that there is as much logic in the conclusion that the Legislature intentionally left out the provision for registration by mail as there is in the assumption that it was through inadvertence that this provision was omitted. In any event, the Legislature in definite and certain language, has stated the manner in which a registration may be made which requires the personal appearance of the applicant before the registrar, and as a proposition of law, it is not within your power or of any other official to authorize a different method.

In reaching the conclusion hereinbefore set forth, I am not unmindful of the provisions of Section 1, of Article V, of the Ohio Constitution, which provides that every citizen who is twenty-one years of age and has the residential requirements set forth therein, shall have the qualifications of an elector, and shall be entitled to vote at all elections. This section of the Constitution has been under consideration on many occasions, and it has been held that requirements with reference to registration if reasonable, do not violate the provisions of said section. The following cases support the validity of such registration laws: *Dagget vs. Hudson*, 43 O. S., 548; *State ex rel. Klein vs. Hillenbrand et al.*, 101 O. S., 570, and *State of Ohio vs. Babst*, 104 O. S., 167.

In the Hudson case, above mentioned, the registration law was held to be unconstitutional because certain definite days were named for the applicant to appear before the board and there was no provision for an absentee to register at any other time irrespective of the reason for his absence. However, in said opinion, there is a suggestion to the effect that if the elector were given an opportunity to register during

the year a different situation might have obtained with reference to the legal status of the act.

It will be observed that Section 4785-57, General Code, expressly provides for registration by an applicant without making his personal appearance before the registrars on account of sickness or physical disability. When such action is taken the application must be transmitted to the board by a reliable and responsible person who is an elector and "personally cognizant of the sickness and disability of the applicant and of the facts stated in the affidavit." The section then provides that the person transmitting the application under such circumstances shall be examined under oath by the clerk or registrars.

Section 4785-39 of the General Code, provides:

"Persons qualified to register or to change their registration may, after the general registration in 1930 or any registration thereafter, register or change their registration at the office of the board at any time such office is open, except twenty days preceding or ten days following an election. Any elector changing his residence after the close of such registration period may transfer his registration up to and including the third day preceding an election."

While the law seems to require personal appearance before the registrar of all applicants for permanent registration, except in cases of illness and physical disability, it will be seen that after the registration in 1930, one may appear before the board at any time except twenty days before and ten days after an election; also by the terms of Section 4785-55, General Code, any one anticipating that he will be absent on registration days may register before the clerk of the board. Therefore the constitutional objections raised as to the law considered in the Hudson case, *supra*, apparently are eliminated from the present law.

While other sections of the General Code fully authorize the application for an absent voter's ballot and the casting of said ballots by mail, there is no such provision made for registration. As hereinbefore indicated, inasmuch as when a registration is once made it is permanent in character, with certain exceptions stated in the act, it would seem that more safeguards are thrown around the subject of registration than have heretofore been required in connection with such matters.

My personal view is that it would have been wise for the Legislature to have made provision for registration by mail in certain instances. In view of the foregoing, however, I am compelled to the conclusion that under the existing statutes, there is no authority to authorize an elector to so register. The express provisions of the statute setting forth the manner in which a registration shall be made, in my opinion, preclude your power to make a rule or regulation supplying that which the Legislature has failed to grant.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1873.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE HENDERSON ELECTRIC COMPANY, COLUMBUS, OHIO, FOR ELECTRIC WORK IN SHEEP EXHIBIT BUILDING, OHIO STATE FAIR GROUNDS, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$3,780.12—SURETY BOND EXECUTED BY GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, May 17, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Agricul-