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1. ELECTIONS—PRIMARY—SECOND TUESDAY IN SEPTEMBER, 1951—MUNICIPALITY—AMENDED SENATE BILL 173, 99 GENERAL ASSEMBLY.

2. MUNICIPALITY, POPULATION LESS THAN 5000—1940 FEDERAL CENSUS—POPULATION MORE THAN 5000—1950 FEDERAL CENSUS—NUMBER OF COUNCILMEN TO BE ELECTED IN 1951 DETERMINED BY SECTION 4206 G. C.—1950 CENSUS FIGURES.

3. CHARTER FOR CITY OR VILLAGE—LEGISLATIVE AUTHORITY MAY SUBMIT TO ELECTORS QUESTION OF CHOOSING COMMISSION TO FRAME CHARTER—ARTICLE XVIII, SECTION 8, CONSTITUTION OF OHIO.

4. CHARTER ADOPTED BY ELECTORS OF MUNICIPALITY AT TIME WHEN MUNICIPALITY CLASSIFIED AS VILLAGE—REMAINS IN EFFECT IF MUNICIPALITY, THROUGH SUBSEQUENT FEDERAL CENSUS IS CLASSIFIED A CITY.

5. CHARTER FRAMED—PRIOR TO TIME SUBMITTED TO VOTE OF ELECTORS—CLASSIFICATION BY CENSUS CHANGED FROM VILLAGE TO CITY—FIXING OF TIME FOR ELECTION NOT ALTERED BY CHANGE IN CLASSIFICATION.

SYLLABUS:

1. Amended Senate Bill No. 173 of the 99th General Assembly, providing for primary elections on the second Tuesday in September in the year 1951 in certain municipalities, discussed.

2. In a municipality having a population of less than 5,000 persons as ascertained by the 1940 federal census and having an indicated population of more than 5,000 persons as ascertained by the unofficial preliminary figures of the 1950 federal census, the number of councilmen to be elected in the year 1951 will be determined by the provisions of Section 4206, General Code, as applied to said 1950 census figures.

3. Under the provisions of Article XVIII, Section 8 of the Constitution, the legislative authority of either a city or village may submit to the electors the question of choosing a commission to frame a charter for said municipality.

4. A charter duly adopted by the electors of a municipality at a time when said municipality was classified as a village remains in effect if such municipality as the result of a subsequent federal census is classified as a city.

5. When the electors of a municipality have voted to choose a commission to frame a charter pursuant to the provisions of Article XVIII, Section 8 of the Constitution, and prior to the time the charter so framed is submitted to the electors the classification of the municipality is changed from a village to a city as the result of a federal census, the charter shall be submitted to the electors at the time provided by said Section 8, and the fixing of such time will not be altered by such change in classification.

Columbus, Ohio, June 22, 1951

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion concerning several questions raised by the Board of Elections of Cuyahoga County. Part of that request is as follows:

> "Under date of February 2nd, 1951 the Attorney General issued Opinion No. 62 relative to candidates in municipalities which as a result of the 1950 census advance from the classification of *Villages* to *Cities*.
>
> "The changed status of those municipalities present some election problems. The Board of Elections, therefore, requests your opinion as to the procedure.
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> "In Cuyahoga County, six municipalities heretofore classified as Villages will under the 1950 census become cities, namely: Bay, Brooklyn, Fairview Park, Lyndhurst, Mayfield Heights, North Olmsted.
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> "The existing law as we understand it provides that in cities of less than 25,000 population, there shall be elected three councilmen-at-large and four from wards, unless otherwise provided by their Charter.
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> "The six municipalities mentioned above are not divided into wards.
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> "The questions—
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> "(1) How does Section 4206 apply in this case?
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> "(2) If it doesn't apply, are 7 councilmen to be elected, and shall all 7 be elected at large?
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> "(3) Nominations—Shall candidates be nominated in primaries and by independent petitions, or by independent petitions only?
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> "(4) If primaries are allowed—
>
> (a) By what formula is the primary date set?
>
> (b) The date of filing of candidates."

Your request and the accompanying documents indicate that the Board of Elections is familiar with my Opinion No. 62, February 2, 1951. The first branch of the syllabus of that Opinion provides as follows:

> "1. Candidates for office in a municipality, which is presently a village but which will become a city because the 1950 census will officially disclose, prior to the November, 1951 election, that it has a population of 5,000 or more, should become candidates for city offices."

I find that your second, third and fourth questions have been answered by an Act of the 99th General Assembly, which became effective May 25, 1951. Amended Senate Bill No. 173 provides in part as follows:

> "Any provision of the law to the contrary notwithstanding, in any municipality having a population of less than 5000 persons as ascertained by the 1940 federal census and having an indicated population of more than 5000 persons as ascertained by the unofficial preliminary figures of the 1950 federal census, * * * in the year 1951 the primary election, for the purpose of nominating persons as candidates of political parties for election to offices to be voted for at the 1951 general election, shall be held on the second Tuesday in September. No primary election shall be held under the provisions of this section in a municipality which held a primary election on Tuesday, May 8, 1951, on the basis of the unofficial preliminary figures of the 1950 federal census.
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> "In any municipality having a population of less than 5000 persons as ascertained by the 1940 federal census and having an indicated population of more than 5000 persons as ascertained by the unofficial preliminary figures of the 1950 federal census, all members of the council to be elected in the year 1951 shall be elected at large.
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> "* * * Each person desiring to become a candidate for a party nomination to be voted for at such primary election shall, not later than 6:30 p. m. on August 7, 1951, file a declaration of candidacy and petition and pay the fee required by law, and such declaration of candidacy and petition shall be filed at the same time as one instrument.
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> "In any such municipality, the declaration of candidacy and petition, of any person desiring to become a candidate for a party nomination for any office to be voted for at such primary election, which were validly filed on or before February 6, 1951, and to which no protests were filed or if protests were filed such protests were duly heard and the declarations and petitions to which they were filed were determined by the election officials to be valid,

shall be deemed to be re-filed under the provisions of this act. Any such declarations of candidacy and petitions shall apply to such primary election on the second Tuesday in September, 1951, in the same manner and with the same effect as they would have applied to the primary election which was provided to be held on the first Tuesday after the first Monday in May, 1951.

"* * * All provisions of law concerning primary elections not inconsistent with this act shall apply to and govern any primary election held on September 11, 1951, under the provisions of this act."

In my opinion these provisions are self-explanatory and answer the questions referred to above without further discussion.

I direct your attention to the fact that primaries are not to be held under the provisions of Amended Senate Bill No. 173, in those municipalities which held regular primary elections on May 8, 1951, on the basis of the preliminary figures of the 1950 federal census. As I pointed out to you in my Opinion No. 404, dated June 20, 1951, the purpose of this provision is to avoid the necessity of holding two primaries in cities which have already complied with the law. The application of this provision will depend on the facts of each particular case.

One of your questions concerns the application of Section 4206, General Code, in this situation. That section provides as follows:

"The legislative power of each city shall be vested in, and exercised by a council, composed of not less than seven members, four of whom shall be elected by wards and three of whom shall be elected by electors of the city at large. For the first twenty thousand inhabitants in any city, in addition to the original five thousand, there shall be two additional members of council, elected by wards, and for every fifteen thousand inhabitants thereafter there shall be one additional member similarly elected, provided that the total number of members of such council shall not exceed thirty-two. When the total number of members of council is fifteen or more, one member of every five shall be elected at large, and the remainder from wards."

I gather from your question that some of the municipalities in question have not only passed a population figure of 5,000 but have a population in excess of 25,000. In such a situation it is my opinion that the provisions of Section 4206, supra, apply, and that the number of councilmen to be elected in the year 1951 will be determined by the provisions of that section.

Your next question is as follows:

> "In the absence of certification of census returns by the Secretary of State, are the municipalities now empowered to legislate for the selection of Charter Commissions?"

The answer to this question does not depend upon the certification of census returns, but is found in the Constitution. Article XVIII, Section 8, provides in part as follows:

> "The legislative authority of any city or village may be a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, 'Shall a commission be chosen to frame a charter.' * * *"

It follows from the above provision that the legislative authority of any municipality, whether said municipality is classified as a city or a village, may by ordinance initiate the procedure for the selection of a charter commission.

Your next question deals with the village of Bay, which adopted a charter in 1949 and which is now a city according to the unofficial 1950 census returns. You ask:

> "Is that charter effective in the election of 1951?"

The charter referred to was adopted under the grant of authority provided by Article XVIII, Section 7 of the Constitution, and by the procedure set out in Section 8 of that Article. It remains the governing law of the municipality until revoked by the people. It follows that the change in status from a village to a city does not alter the effectiveness of the charter. The answer to this question answers your similar question concerning the charter of the village of Lyndhurst.

Your last question concerns three villages which chose charter commissions at the November 1950 election. The unofficial census returns now indicate that these villages will become cities. Your question apparently is whether or not the elected commissions can now proceed with their work and present the question of the adoption of their respective charters to the voters. In this connection Article XVIII, Section 8, of the Constitution provides in part as follows:

> "* * * Any charter so framed shall be submitted to the electors of the *municipality* at an election to be held at a time fixed

> by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the *municipality* in so far as not prescribed by general law. * * *" (Emphasis supplied.)

You will note that the term "municipality" is used throughout this section and the other sections quoted above. In my opinion it is the clear intention and effect of the constitutional provisions that so long as the voters of a particular municipality initiate and approve a charter it does not matter whether the municipality is a village or a city or changes from one to the other during the time allotted to carry out the constitutional provision. It is true that the "legislative authority of the municipality" may undergo some changes during the process of transition, but this is a question of mechanics which does not affect the basic constitutional grant of power.

Respectfully,

C. WILLIAM O'NEILL
Attorney General