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ELECTION—WHERE TWO CANDIDATES FOR GOVERNOR RECEIVE HIGHEST AND AN EQUAL NUMBER OF VOTES IN PRECINCT—“THE DOMINANT POLITICAL PARTY”—SHALL BE RESOLVED IN PRECINCT BY LOT—CHAIRMAN, BOARD OF ELECTIONS AND THE BOARD SHALL DESIGNATE ONE OF JUDGES WHO IS MEMBER OF “DOMINANT POLITICAL PARTY” TO SERVE AS PRESIDING JUDGE— IN PRECINCT AT NEXT ELECTION—SECTION 4785-153 G. C.

SYLLABUS:

Where two candidates for governor receive the highest and an equal number of votes in a precinct, the issue of which party shall be considered “the dominant political party” in that precinct shall be resolved by lot by the chairman of the board of elections according to the procedure established by Section 4785-153, General Code, and the board shall then designate one of the judges who is a member of such “dominant political party” to serve as presiding judge in that precinct at the next election.

Columbus, Ohio, March 20, 1951

Hon. H. K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

I am in receipt of your request for an opinion which reads in part as follows:

“The Board of Elections have stated to me that in one of our county precincts the Democratic and Republican candidates for

Governor received a tie vote. My question for your opinion is 'who will be the presiding judge in that precinct at the next election?' "

In reply to your request I find that Section 4785-119, General Code, provides in part.

"* * * The board (of elections) shall designate in each precinct one of the judges who is a member of the dominant party to serve as presiding judge. * * *"

The term "dominant party" is defined by statute, Section 4785-3g, General Code, as follows:

"The term 'dominant party in a precinct' or 'dominant political party in a precinct' shall mean that political party whose candidate for election to the office of governor at the next preceding regular state election received more votes than any other person received for election to said office in such precinct at such election."

An examination of the statutes pertaining to elections from Sections 4785-153 to 4785-157, General Code, inclusive, reveals the clear intent of the Legislature to resolve all ties in matters concerning elections. They all provide for the proper procedure to be followed in resolving a tie vote for the various elective offices, and for the determination of questions and issues in the event of a tie.

A vote for the office of governor by an elector serves both as a vote for the candidate and as a vote to determine the issue of which party shall be the dominant party in the voter's particular precinct at the following election. Therefore, the determination of which shall be the dominant party may be considered a direct result of the election.

The board of elections is charged with the duty of determining and declaring the results of the elections in its county, or in a district or subdivision within such county, under the provisions of Section 4785-153, General Code, which reads in part as follows:

"When the board of elections shall have completed the canvass of the election returns from the precincts in its county, in which electors were entitled to vote at any general or special election, it shall determine and declare the results of the elections determined by the electors of such county or of a district or subdivision within such county. If more than the number of candi-

dates to be elected to an office received the largest and an equal number of votes, such tie shall be resolved by lot by the chairman of the board in the presence of a majority of the members of the board. If both sides of a question or issue received an equal number of votes and a majority of the votes cast is required to determine the result of the election upon such question or issue, such tie shall be resolved by lot by the chairman of the board in the presence of a majority of the members of the board. * * *

It is my opinion therefore that where two candidates for governor receive the highest and an equal number of votes in a precinct, the issue of which party shall be considered "the dominant political party" in that precinct shall be resolved by lot by the chairman of the board of elections according to the procedure established by Section 4785-153, General Code and the board shall then designate one of the judges who is a member of such "dominant political party" to serve as presiding judge in that precinct at the next election.

Respectfully,

C. WILLIAM O'NEILL
Attorney General