1491.

MUNICIPAL CHARTER OF CLEVELAND RELATING TO MUNICIPAL ELECTIONS DISCUSSED—DITTO MARKS USED BY SIGNER OF NOMINATING PETITION IS COMPLIANCE WITH CHARTER PROVISIONS WHEN.

SYLLABUS:

1. *Provisions of the charter of the City of Cleveland, relating to municipal elections, discussed.*

2. *Where a municipal charter provides that each signer of a nominating petition shall place on the petition after his name his place of residence and give the date when his signature was made, such residence and date are sufficiently indicated by ditto marks under the residence or date written above after the name of another signer, and that the use of ditto marks is a compliance with such provisions of the charter.*

COLUMBUS, OHIO, September 2, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

> "We have just received a letter from the Board of Elections of Cuyahoga county, in part as follows:
>
> > 'Under our charter the last day for filing municipal petitions was August 23rd, 1933, at midnight. In the past we have made it a point to carry out the provisions of Section 4785-113 which reads, as follows:
> >
> > > "These ballots shall be designated as 'Absent Voters Ballots', and shall be printed and ready for use thirty days before the date of the election at which the same are to be used."
>
> In this case we would be required to have Absent Voters Ballots on September 3rd.
>
> Section 8 of the new charter has the following language:
>
> > "Within ten days after the filing of a nominating petition the election authorities shall notify the person named therein as a candidate whether the petition is found to be signed by the required number of qualified electors. If insufficient, the person named therein as candidate may amend said petition by filing, within five (5) days after notification of insufficiency by the election authorities, additional petition papers. Within five (5) days after the filing of the additional petition papers, the election authorities shall notify the person

named therein as a candidate whether the amended petition is found to be signed by the required number of qualified electors."

In checking the petition filed for candidates for Council we have up to this day found over ten that are insufficient. The work of checking the remainder of petitions will consume several more days and nights. We intend to comply with Section 8 of the charter and notify the candidates whose petitions are insufficient. Should they file additional names within the required time and the petition again be insufficient we will not be able to complete the work in accordance with this section until about September 12 or 14th. This, of course, will make it impossible to have Absent Voters Ballots in our office on September 3rd, which is thirty days prior to the election.

Some of the candidates who do not understand that it is impossible to keep checking petitions until September 12th or 14th and have Absent Voters Ballots in the office on September 3rd will offer complaint. We, therefore, request the ruling of your office as to our conduct in this matter.'

On referring to the provisions of Section 4785-92 of the General Code, we find the provision that nominating petitions shall be filed with the election authorities not later than 6:30 P. M. on the 60th day prior to the day of election, thus ample time is given for canvassing the signatures, and for filing of protests and the hearing of the same.

However, the provisions of the Charter of the City of Cleveland, Sections 8 and 9, as pointed out by the Board of Elections of Cuyahoga county makes it possible for the final acceptance of a nomination by a candidate to be filed as late as the 15th day prior to the date of their nonpartisan primary election. Under such circumstances, it apparently is impossible for the Board to prepare Absent Voters Ballots, as per the provisions of Section 4785-113, as the board of elections has stated in their communication. Kindly advise how this matter should be handled under such circumstances.

We now wish to invite your attention to another matter, Section 6 of the Charter of the City of Cleveland provides in part that, 'Each signer of a petition shall sign his name in ink or indelible pencil, and shall place on the petition after his name his place of residence by street and number, or other description sufficient to identify the place, and give the date when his signature was made.'

We are advised that many of the signers of such nominating petitions use ditto marks in designating the City of Cleveland, the County of Cuyahoga and the State of Ohio, as their place of residence, in addition to stating their proper address by street and number. Would the use of ditto marks under such circumstances warrant the elimination of the name of a qualified elector, thus placed upon a nominating petition."

While the right to vote at all elections has its source in the Constitution, it has been held that the provisions of article V, section 1 of the Ohio Constitution, conferring this right, refers to an election of officers and not to a nomination of candidates, and therefore does not apply to a primary election. Moreover, the right

of electors to vote at an election when they are absent from the place of election is not a constitutional right. However, the legislature has made provision giving every qualified elector who will be absent from the place of his residence on election day ample opportunity to vote at such election, whether such election be a primary or general election. Sections 4785-13 and 4785-134 to 4785-138, inclusive, General Code.

From the portion of the letter of the Board of Elections quoted in your communication, it is apparent that nominating petitions provided for in the charter may be filed at any time prior to forty days preceding the primary election. Consequently, if any of the nominating petitions are found insufficient, which finding gives further time for filing additional petition papers, it is impossible to have ready for use thirty days before election absent voter's ballots which contain the names of all the candidates.

If these charter provisions do not violate the Constitution, and I do not believe they do, they must prevail over the statutes, in so far as such provisions relate solely to municipal offices, since it has been held that matters relating to the election of municipal officers are within the home rule powers granted to municipalities by the Constitution. In the case of *Fitzgerald* vs. *Cleveland,* 88 O. S. 338, wherein it was held that the charter of a municipality may provide that nomination of elective municipal officers shall be made by petition and may describe the method thereof, the court said:

> "It must be remembered that any statute passed under Section 7 of Article V, which provides by law for nomination, by primary or by petition, of all elective state, district, county and municipal officers, is a general law. But this general law passed under this provision must yield to a charter provision adopted by a municipality under a special constitutional provision, which special provision was adopted for the purpose of enabling the municipality to relieve itself of the operation of general statutes and adopt a method of its own to assist in its own self-government, and which charter when adopted has the force and effect of law.
>
> Of course such a charter provision must be one which the municipality was authorized to adopt under the grant of authority to exercise all powers of local self-government. We have seen that the method of electing officers is a governmental function or power, and when the officer to be elected is chosen solely for the performance of a municipal duty, it is a municipal affair.
>
> The provision of a charter which is passed within the limits of the constitutional grant of authority to the city is as much the law as a statute passed by the general assembly."

And on page 357, the court said:

> "The system or plan to be followed in the nomination and election of the officials of any city is only of interest and concern to the people within the limits of the city, and when governmental powers have been conferred upon the city, it acts within its authority when it adopts its own plan, provided it violates no constitutional requirement."

In the case of *Billings, et al.,* vs. *Cleveland Railway Company,* 92 O. S. 478, the court said:

"It was contemplated by the framers of the amendment to the constitution that the provisions in a charter, adopted by a city, would differ from the general laws of the state, within the limits defined by the constitution. The object of the amendment was to permit such differences and to make them effective."

The following is said in the case of *State, ex rel.,* vs. *French,* 96 O. S. 172:

"The charter of a city, which has been adopted in conformity with the provisions of Article XVIII, finds its validity in the constitution itself, and not in the enactments of the general assembly."

In the case of *Reutener* vs. *Cleveland,* 107 O. S. 117, the court said:

"In 1912 the people of Ohio gave to municipalities all powers of local self-government, Sections 3 and 7, Article XVIII Ohio Constitution. Under these provisions this court has held that a system of preferential voting in a chartered municipality is valid *(Fitzgerald* vs. *Cleveland,* 88 Ohio St., 338); that the provisions as to civil service in the charter of a city, if they comply with the state constitution, discontinue the general law on the subject as to that municipality *(State, ex rel. Lentz et al., Civil Service Commission,* vs. *Edwards,* 90 Ohio St., 305); and that women can by home-rule charter be made voters in local affairs, contrary to the provision of Section 1, Article V. *(State, ex rel. Taylor,* vs. *French,* 96 Ohio St., 172.)

To hold valid this system of voting adopted by the people of Cleveland is merely to carry out the plain meaning of the constitutional provision that municipalities shall have all power of local self-government, and to give effect to the power which rightly takes precedence over all statutes and court decisions, the will of the people, as expressed in the organic law."

And in the case of *State, ex rel.,* vs. *Green,* 121 O. S. 301, the following is said:

"Under the doctrine laid down in the case of *State, ex rel. Taylor,* vs. *French,* 96 Ohio St., 172, 117 N. E., 173, Ann. Cas., 19180, 896, the power to regulate and supervise elections is a power of local self-government, and is extended even to the point of permitting a charter city to determine that women may vote at a municipal election prior to their general enfranchisement."

Consequently, if additional petition papers are filed by persons whose petitions have been found insufficient within the time provided by the charter, and such amended petitions are found sufficient, such persons are entitled to have their names placed on the ballots regardless of the provisions of the general law. Obviously, ballots, which are required by section 4785-113, General Code, to be "prepared in accordance with law as are the regular voter's ballots," cannot be prepared until all the names of the persons who are to be candidates for nomination are definitely ascertained.

Therefore, it is my opinion that the only thing the Board of Elections can do in the instant case, where some of the nominating petitions have been

found insufficient, is to have absent voter's ballots prepared as soon as possible after the time has elapsed for the filing of additional petition papers by the candidates whose petitions have been found to be insufficient.

Your further question relates to the use of ditto marks by signers on such petitions. Ditto marks are in common use, and their meaning is well-known to persons generally. 18 C. J. 1404. In the case of *Miller* vs. *Road Company,* 52 Ind. 51, the court said that the use of such marks "is sanctioned, not only by common usage, but by standard literary authority." In the case of *Hughes* vs. *Powers,* 99 Tenn. 480, the following was held:

> "When ditto marks are used in the notation of a deed for registration, they will be read as a repetition of the words immediately above them."

In this case the court said:

> "These marks are in general use, and are generally understood. They are as much a part of the English language as are punctuation marks, such as the comma, semicolon, colon, and period."

In the case of *People, ex rel.,* vs. *Newell,* 49 Colo., 349, the court held:

> "Under a statute requiring the residence of each subscriber to a statutory petition to be 'written' opposite his signature, ditto marks, opposite his signature, and under a street or street number, set above, is a compliance with the statute."

The court said in the opinion in this case:

> "Such marks are as much a part of the English language as are punctuation marks. They are often given an important, and sometimes a controlling, part in the construction of general writings, and in the interpretation of legal documents, statutes and constitutions, and being regarded as a part of the language, the court will, of course, take judicial notice of their meaning. * * * Abbreviations or ditto marks to designate the residence address, or dates of signing of the petition under consideration, are not prohibited by law. Neither does the act require that such addresses and dates of signing be written in old English script, Spencerian penmanship, or schoolboy vertical."

In the case of *Adamic* vs. *People,* 49 Colo. 546, the following is held:

> "The residence of a petitioner, and the date of signing, is sufficiently indicated by ditto marks under the proper word, written above, opposite the name of another subscriber."

See also *Wilson* vs. *Barttett,* 7 Idaho 271.

It is therefore my opinion that where a municipal charter provides that each signer of a nominating petition shall place on the petition after his name his place of residence and give the date when his signature was made, such

residence and date are sufficiently indicated by ditto marks under the residence or date written above after the name of another signer, and that the use of ditto marks is a compliance with such provisions of the charter.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1492.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN PAULDING COUNTY, OHIO.

COLUMBUS, OHIO, September 2, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

1493.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENT IN JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, September 2, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

1494.

HOSPITAL—TOWNSHIP TRUSTEES OR PROPER CITY OFFICIALS RESPONSIBLE FOR HOSPITAL BILL OF PATIENT WHEN.

SYLLABUS:

A hospital, as provided for by Section 3480-1, *General Code, in order to render the township trustees or proper officials of a city responsible for the hospital bill of a patient, must be owned or managed by a city or township or must render the hospital service at the request of the proper city or township officials.*

COLUMBUS, OHIO, September 2, 1933.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date requesting my opinion upon the following matters:

> "The Newark Hospital Association, a corporation not for profit, maintains and operates the only general hospital in Licking County, Ohio. A woman, a resident of Washington Township, Licking County, was