

school district holds the office or position of clerk of the joint high school committee ex officio, but a clerk may be selected from the membership of the committee or the clerk of one of the boards of education of the districts comprising the joint high school district may be selected as such clerk and compensation may be paid to him for his services on the committee when those services are sufficient to justify payment therefor.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4158.

SIGNATURES—PERSON SIGNING NOMINATING PETITION BY DIFFERENT NAME THAN ONE UNDER WHICH HE REGISTERED—SUCH VALID WHERE NO QUESTION ABOUT HIS IDENTITY.

*SYLLABUS:*

*Where a person has registered as "John A. Smith" and signs a nominating petition and a declaration as "Albert Smith," if there is no question about his identity and he is commonly known as "Albert Smith," his signature on the nominating petition can be counted and the declaration of candidacy is valid, provided said papers are in all other respects regular.*

COLUMBUS, OHIO, March 17, 1932.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

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

"I desire your opinion on the following question:

1. John A. Smith resides in Precinct I, 4th Ward, Lima, Allen County, Ohio, and so registers. He signs a candidate's nominating petition, signing as Albert Smith, Precinct I, 4th Ward, Allen County, Ohio. Is his signature valid and can it be counted on a candidate's nominating petition?

2. John A. Smith resides in Precinct I, 4th Ward, Lima, Allen County, Ohio, and is so registered. He files a declaration of candidacy, signing his name Albert Smith in Precinct I, 4th Ward, Allen County, Ohio. Is his declaration of candidacy valid by reason of signing his name Albert Smith instead of John A. Smith?"

Section 4785-34, General Code, reads in part as follows:

"No person residing in any registration precinct shall be entitled to vote at any election, or to sign any declaration of candidacy, nominating, initiative, referendum or recall petition, unless he is duly registered as an elector in the manner provided herein."

Section 4785-70, General Code, provides in part as follows:

“Each person desiring to become a party candidate by the method of declaration shall, not later than 6:30 p. m. of the sixtieth day before the date of the primary at which such nominations are to be made, file a declaration of candidacy, accompanied by a petition, signed by at least one thousand electors of his party, from at least one-third of the counties of the state in the case of an office to be voted for by the electors of the entire state; and at least one hundred electors of his party, or five per cent of the electors who voted for the party candidate for governor at the next preceding regular state election, in the case of an office in a county or district, larger than a county and less than the state; and at least five electors of his party in all subdivisions less than a county, and shall pay the fee required by law.”

In the form of declaration of candidacy described by section 4785-71, General Code, there is a space for the signature of the candidate. Section 4785-72, General Code, reads as follows:

“Attached to each declaration of candidacy shall be a petition signed by the required number of electors, as follows:

PETITION FOR CANDIDATE

We, the undersigned, qualified electors of the state of Ohio, residing at the location set opposite our names, and members of the..... party, hereby certify that.....who resides at .....city (or township) of..... the county of.....and who is a candidate for the office (or position) of .....to be voted for at the primary next hereafter to be held, and whose declaration of candidacy is herewith filed, is a member of the..... party, and is, in our opinion well qualified to perform the duties of the office for which he is candidate.

Signature Residence Municipality (or county)
.....
.....
.....
.....
.....
.....
.....

The State of Ohio )
County of ) ss:

Personally appeared before me this.....day of..... 19....., .....who acknowledged the signing of the above certificate and took oath that the above signatures were made in his presence and are the signatures of the persons whose names they purport to be.

Signed.....

Subscribed and sworn to before me this.....day of 19.....

Signed.....

(Title of officer)

In case of a petition for a candidate for member of a party controlling committee the five persons signing such petition of candidacy shall subscribe and swear to (or affirm) the same before any person authorized by law to administer an oath or take an affirmation."

Section 4785-78, General Code, with reference to the filing of protests against the candidacy of any person seeking to become a candidate for nomination of a political party, reads in part as follows:

"If it is found that such candidate is not an elector of the state, district, county, ward or precinct in which he seeks to become such party candidate, or has not fully complied with the provisions of law as herein provided, his name shall be withdrawn and shall not be printed upon the ballot; but no declaration of candidacy shall be rejected for mere technical defects."

There is no express provision in the statutes compelling a person signing a nominating petition or declaration of candidacy to sign his name exactly as it appears in the registration records. If John A. Smith is also known as Albert Smith, there is nothing in the statutes which would prohibit him from signing either a candidate's nominating petition or a declaration of candidacy as Albert Smith, even though he may not have registered in that name, provided he is the same person who registered. I am of the view that the identity of the person signing is the thing to be looked to.

"Name" is defined as "one or more words used to distinguish a particular individual." Bouvier's Law Dictionary. As said in *Laflin Company vs. Steytler*, 146 Pa. St. 434, it is "the designation by which one is known in his community."

In Opinions of the Attorney General for 1921, Vol I, page 572, wherein it was held by the sheriff whose real name was "George L. Ewing," but who was commonly known as "Bob Ewing," could sign writs, processes, etc., as Bob Ewing, it was said:

"It is significant that our election laws look to the identity of the person \* \* \*."

This is equally applicable to our present election laws.

In the case of *State, ex rel., vs. Foster*, 38 O. S. 599, it was held:

"Where the governor and secretary of state, under section 2986 of the Revised Statutes, in canvassing the returns of votes from a congressional district, aggregate the votes returned from one county for H. L. Morey with the votes returned from the other counties for Henry L. Morey, treating the names as designating the same person, a mandamus will not be awarded requiring the votes thus aggregated to be counted as given for different persons, in the absence of an averment that the votes were intended for different persons."

That the Legislature did not intend to require a person signing a nominating petition or declaration of candidacy to use his name exactly as it appears in the registration records is apparent from the provisions of section 4785-42, General Code, which reads in part as follows:

"The registration forms shall contain spaces for inserting the following information concerning the applicant for registration:

1. The full name, including the first and last names and middle name, if any. In the case of married women the christian name of said woman shall be entered prefixed by the word "Mrs." In the case of single women the christian name shall be prefixed by the word "Miss."

Surely the Legislature did not intend to require the signing of the first and middle names in full or, in the case of women, the prefixing of the word "Miss" or "Mrs." in the signing of the papers in question. This is more apparent from the form of primary ballot which is set forth in section 4785-80, General Code, as this form contains several names with only the initial of the middle name, and in case of the names of women which are on this form neither of the words "Miss" or "Mrs." appears.

Section 4785-47, General Code, provides as follows:

"Whenever, after an original registration, a person shall change his name, such person shall be required to re-register; provided, however, that when such change is made during the twenty days immediately preceding the election, such person, if duly registered may vote at the election under his former name. Such person, however, shall be required to re-register before he or she will be permitted to vote at any subsequent election, and he or she shall be so notified by the board."

This, I believe, refers to a change to a name by which the person has not been known, an adoption of an entirely new name, such as is contemplated by section 12209, General Code, providing for a change of name.

The only cases which I have been able to find in which this exact question has arisen are from Rhode Island. In that state it has been held that the names as they appear on the voting lists are the standard by which the signatures on the nomination papers are to be judged. Thus it was held in the case of *Dupre, et al., vs. Jacques, et al.*, 153 Atl. 240, that a nomination paper was insufficient whereon the names P. Lee Ridges, Mrs. Clemence V. Fonteyne and Eva Rondeau appeared, whereas they appeared on the voting lists as Plato Lee Ridges, Clemence V. Fonteyne and M. Eva Rondeau. To the same effect are the cases of *Attorney General, ex rel., vs. Clarke*, 59 Atl. 395, and *Stone, et al., vs. Waterman*, 70 Atl. 1009.

However, the election laws of Rhode Island have no provisions similar to those of section 4785-42 General Code, quoted above, nor do they have any provision to the effect that such papers shall not be rejected for mere technical defects as is contained in section 4785-78, General Code, which shows the intention of our Legislature not to deny the rights of any elector in these matters when he has substantially complied with the law. I do not believe that the courts of this state in construing our election laws would follow these cases construing the election laws of Rhode Island.

It might also be added that where protests are filed against a candidate, the officers with whom the declaration of his candidacy is filed have jurisdiction under section 4785-78, General Code, only to determine whether such candidate is an elector of the state or of the district or county in which he seeks to become a candidate, and has fully complied with the provisions of the law with regard to the preparation and filing of his declaration of candidacy, and they have no au-

thority to hear and determine protests on grounds not within these limitations. *State, ex rel vs. Smith*, 101 O. S. 358.

I am of the opinion that, if there is no question about the identity of the person to whom you refer and if he is known as Albert Smith, his signature on the nomination petition can be counted and his declaration of candidacy is valid and is a sufficient compliance with the law, provided said papers are in all other respects regular.

I also note that Lima, the city in which the person referred to resides, does not appear in the nominating petition. I am of the view that this omission is a mere technical defect within the meaning of the provision contained in section 4785-78, General Code, which may be disregarded by the election officials.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4159.

LIQUIDATION OF BANK—HUNTING AND FISHING LICENSE FEES DEPOSITED AS STATE FUNDS—SUCH A PREFERRED CLAIM.

*SYLLABUS:*

*When a person, authorized to issue fishing or hunting and trapping licenses, deposits in a bank, as agent of the state, funds collected by him as license fees, such funds are entitled, in the event of the subsequent insolvency of such bank, to priority of payment.*

COLUMBUS, OHIO, March 17, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

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

“You are no doubt familiar with the fact that the Division of Conservation has about two thousand county and township clerks in this state issuing Hunter’s and Rod and Reel licenses. They are required by law to make a settlement quarterly.

There are now about fifteen or twenty banks in the state being liquidated which had the money of these clerks on temporary deposit. In all such cases, part of this money is that which belongs to this Division for the sale of aforesaid licenses.

Will you please advise me if it is your opinion that the money due the Division of Conservation deposited in a bank being liquidated is a preferred claim?”

I assume that such deposits were made by the persons referred to in their capacity as agents of the state.

Section 1433, General Code, provides, with reference to hunting and trapping