

Finding said contract in proper legal form, I have endorsed my approval thereon as to form and legality and return the same herewith.

Yours very truly,

THOMAS J. HERBERT,  
*Attorney General.*

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888.

PRIMARY ELECTION—WHENEVER TOTAL NUMBER CANDIDATES, WHO FILED DECLARATION OF CANDIDACY IN ODD NUMBERED YEARS EXCEEDS TOTAL NUMBER TO BE NOMINATED BY ALL POLITICAL PARTIES, PRIMARY ELECTION CONDUCTED IN USUAL MANNER—SECTION 4785-67, G. C., DOES NOT APPLY.

*SYLLABUS:*

*Whenever the total number of candidates, taking into consideration all political parties, who have filed declarations of candidacy for offices to be voted upon at a primary election in an odd numbered year exceeds the total number of candidates to be nominated by all political parties at such primary, the provisions of sections 4785-67, General Code, do not apply and a primary election must be conducted in the usual manner.*

COLUMBUS, OHIO, July 14, 1939.

HON. NICHOLAS F. NOLAN, *Prosecuting Attorney, Montgomery County, Dayton, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent request for my opinion on the following:

“A municipal primary election is to be held this August for the nomination of a Chief Justice of the Municipal Court of the City of Dayton. The Republican party have three (3) candidates for the office; the Democratic party but one (1). The Board of Elections of this county have requested that I seek an opinion from your office in answer to the following query:

In view of the amendment to Section 4785-67 of the General Code, and the facts above stated, is it necessary for said Board to have printed ballots for the Democratic party aspirant, or for the Democratic party to hold a primary election?”

Upon inquiry, I have been informed by you that the office of chief justice of the Municipal Court of Dayton is the only office to be voted

upon at the municipal primary election to be conducted in August of this year.

Your inquiry is prompted by the recent amendment of section 4785-67 (House Bill No. 624, 93rd General Assembly), which now provides as follows:

“Primaries, in presidential years, to choose delegates and alternates to national conventions, to nominate party candidates, and to select members of controlling committees of political parties, shall be held at the usual polling places in each precinct of the second Tuesday in May next preceding the day on which the election is to be held. Primaries in the years, except presidential years, shall be held on the second Tuesday in August next preceding a general election. The polls shall be open from 6:30 o'clock a. m. until 6:30 o'clock p. m. *If in any odd-numbered year, the number of candidates who have filed declarations of candidacy for offices to be voted upon at the election in a political subdivision, does not exceed the number of candidates to be nominated at such primary, a primary election shall not be held, and the board of elections of the county in which such political subdivision is located shall issue a certificate of nomination to each such respective candidate and the names of all such candidates shall be printed on the party column ballot to be voted at the succeeding November election.*” (Emphasis the writer's.)

The portion above emphasized indicates the manner in which said section was supplemented by the 93rd General Assembly and is concerned only with primary elections which are held in odd numbered years.

A primary election is defined in section 4785-3e, General Code, as follows:

“The term ‘primary’ or ‘primary election’ shall mean any election held for the purpose of electing party committees, choosing delegates to a party convention, or nominating candidates to be voted for at an election.”

The election laws affecting primaries and nominations are contained in Part First, Title XIV, Chapter 5 of the General Code (sections 4785-67 to 4785-97, inclusive). Throughout the sections of that chapter reference is made to *the* official primary *ballot* and to *the* primary *election*, evidencing an intention by the Legislature to consider party primaries as a single primary election. That is, even though one ballot is printed for those seeking nomination by the Republican electors and a ballot similar in form thereto is made for those seeking the nomination by the Democratic electors, in the eyes of the election law there is only one primary

election and not a Republican and a Democratic primary election. The primaries of each political party, held on the same day and conducted by the regular election personnel and machinery, together constitute a primary election.

Being of the view that a primary election is a single election and not an election for each political party, I direct your attention to the provisions of section 4785-67, above emphasized. We note therefrom that in the event, in an odd numbered year, the number of candidates seeking nomination for offices to be voted upon at a primary election is not greater than the number of candidates to be nominated, a primary election shall not be held and the proper board of elections shall forthwith issue a certificate of nomination to each such candidate and shall also cause the names of those so nominated to be printed on the party column ballot to be voted at the succeeding November election.

You state in your communication that there are four persons who have filed declarations of candidacy for the office of chief justice of the Municipal Court of Dayton, three of whom are Republicans and the fourth a Democrat. You then inquire whether under those circumstances your county board of elections is required to have ballots printed for both Republican and Democratic electors. It seems certain that the major objective of the 93rd General Assembly, in enacting the amendments to section 4785-67, *supra*, was to effect a saving in a political subdivision under the circumstances set forth in said section. Unless a political subdivision can meet squarely the conditions contained in said section, it is required to hold a primary election as usual. The amount which might be saved by dispensing with the printing of ballots for a single political party would be very slight in comparison with the total cost of a primary election which would have to be conducted, nevertheless, for that political party which did not put forth a "solid slate." Thus it would seem that the Legislature intended there should be a primary election for all political parties or for none; it did not contemplate a primary for one without the other.

In view of the foregoing and in answer to your inquiry, I am of the opinion that whenever the total number of candidates, taking into consideration all political parties, who have filed declarations of candidacy for offices to be voted upon at a primary election in an odd numbered year exceeds the total number of candidates to be nominated by all political parties at such primary, the provisions of section 4785-67, *supra*, do not apply and a primary election must be conducted in the usual manner.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*