

1990

THE HOLDING OF A PRIMARY ELECTION—ISSUES TO BE VOTED ON—§§3501.01 (E), 519.25, R.C.

SYLLABUS:

A “primary election” is held only when one or more of the purposes stated in division (E) of Section 3501.01, Revised Code, are present; and the question of repeal of a township zoning plan, which under Section 519.25, Revised Code, must be submitted to the electors at the next primary or general election, may not be submitted for vote on the first Tuesday after the first Monday of May in a year if it would be the sole issue before the electors, since a “primary election” would not be held in the township in such a case.

Columbus, Ohio, February 3, 1961

Hon. George E. Martin, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“At the 1959 General election, the voters of Edinburg Township, in Portage County, approved a zoning plan for their township. Late in the summer of this year, a petition was presented

to the Township Trustees of Edinburg Township to have the question of repeal of this zoning plan submitted to the voters of the township in accordance with the provisions of section 519.25 of the Revised Code. However, this petition was presented too late for the submission of this issue at the 1960 General election.

“The resolution to submit the question of repeal of the zoning plan has now been adopted by the Edinburg Township Trustees and certified to the Portage County Board of Elections.

“As you know, section 519.25 of the Revised Code provides that the question be submitted at the next primary or general election.

“Since this is a township matter, normally there will be primary election held in Edinburg Township next year (1961). Section 3501.01 of the Revised Code, paragraph (D) defines a special election. Paragraph (E) of the same section defines a primary or general election. Section 3501.02, paragraph (E) reads in part as follows :

‘—unless provision is made by law or charter for the submission of a question or issue to the voters of a county, township, city, village, or school district at a special election, no special election shall be called and the question or issue shall be submitted at a general election.’

“We are wondering, if this question were to be submitted on the day of the primary election in 1961, wouldn't this be considered a special election since there would be no other issues to be voted upon in Edinburg Township?

Therefore, our question is—Should the question of repeal of a township zoning plan be submitted to the electors of a township on the date set for a primary election if the question of such repeal would be the only issue to be voted upon on that primary election day?”

Section 519.25, Revised Code, provides that the question of repeal of a zoning plan should be submitted to the particular electors concerned at the next general or primary election. This section reads in part :

“* * * The board shall adopt a resolution * * * requesting that the question of whether or not the plan of zoning in effect in such township shall be repealed be submitted to the electors residing in the unincorporated area of the township included in the zoning plan at the next primary or general election * * *”

Under the facts as given, without the vote on repeal of the zoning plan, there would be no issues to be submitted to the voters in question at an election on the first Tuesday after the first Monday in May of 1961,

which is the date on which the next primary election would be held. This raises the question, is there a primary election at which the question may be submitted?

“Primary election” is defined in division (E) of Section 3501.01, Revised Code, as:

“(E) ‘Primary’ or ‘primary election’ means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year.”

Division (E) of Section 3501.01, *supra*, provides that a primary election shall be held for certain purposes, *none of which are present in the instant case*; and although it is provided that primary elections shall be held in each year, I believe that this can only mean that such an election shall be held only when one of the stated purposes is involved. (Also see Sections 3513.01 and 3513.02, Revised Code, dealing with the situation where no primary is held.)

Section 519.25, *supra*, is quite clear that the election on the zoning question is to be held at the next primary or general election. It does not say that the election may be held at the time the next primary election *could be held* and, in view of the above, that is the interpretation which would have to be given if the election in question were to be held on the first Tuesday after the first Monday in May 1961.

In answer to your specific question, therefore, it is my opinion and you are advised:

A “primary election” is held only when one or more of the purposes stated in division (E) of Section 3501.01, Revised Code, are present; and the question of repeal of a township zoning plan, which under Section 519.25, Revised Code, must be submitted to the electors at the next primary or general election, may not be submitted for vote on the first Tuesday after the first Monday of May in a year if it would be the sole issue before the electors, since a “primary election” would not be held in the township in such a case.

Respectfully,
MARK McELROY
Attorney General