

from retailers as well as purchasers from wholesalers whereby a deposit of some character is required by the owner to insure the return of said bottles. In other words, as a matter of law it is nothing more than a contract of bailment. By implication the purchaser agrees to return the bottle to the owner. In order to secure the performance of the contract on the part of the bailee, the owner demands a deposit as security therefor. The title to the bottles does not pass under such an agreement, either when the milk is delivered to the purchaser or when the bottles are returned. Even if such a proceeding could be construed by any process of reasoning to constitute sales in each instance, it would necessarily follow in the cases which you mention that the sales were made with the consent of the original owner of the bottle in whose name the mark or device is registered, and it would not constitute a violation of the section of the code under consideration.

In this connection it should be pointed out that Section 13169-2, *supra*, excepts from the inhibitions therein stated any person, firm or corporation filling or refilling with his or its product any such bottle or container owned by and having the name, mark or designation when such firm shall have complied with the rules and regulations of the division of dairy and food of the agricultural department of Ohio relative to the cleansing of such bottles and other containers.

It will further be noted that Section 12730, General Code, provides as follows:

“Whoever fills or refills with milk, cream or other milk product a glass jar or bottle, with intent to sell such milk, cream or other milk product, unless such glass jar or bottle is first thoroughly cleansed or sterilized, shall be fined not more than one hundred dollars.”

From the section last mentioned in connection with the other sections hereinbefore referred to, it appears clear that it was the intent of the law to permit the distributor of dairy products to have the bottles or containers marked and registered and to refill the same if he complied with the laws with reference to sanitation.

The facts submitted suggest that, on occasion, the bottles are not all in fact returned and accordingly the deposit is retained by the retailer or owner as the case may be. This would not, however, in my opinion, constitute such transactions sales, but would represent merely the retention of the agreed amount of liquidated damages for breach of the contract to return the bottles.

Based upon the foregoing, you are specifically advised that it is my opinion that neither case presented in the communication being considered constitutes a violation of Section 13169-2 of the General Code.

Respectfully,

EDWARD C. TURNER,

Attorney General.

3129.

CORRUPT PRACTICES ACT—ORGANIZATIONS OF TWO OR MORE PERSONS AIDING CANDIDATES OR PROPOSITIONS BEFORE ELECTIONS MUST FILE FINANCIAL REPORTS—EXCEPTION—PROPER PARTIES TO FILE PETITIONS FOR NONCOMPLIANCE.

SYLLABUS:

1. *Under the provisions of Section 5175-1, General Code, a committee or organization of two or more persons co-operating to aid in or promote the success or defeat of a candidate or candidates, or proposition submitted to a vote at any election required under the law, is required to make a report of its receipts and expenditures unless it be*

a committee or organization for the discussion or advancement of political or economic questions.

2. A petition alleging failure to file statements or accounts of election expenses may, under authority of Sec. 5175-15, General Code, be filed by the attorney general, prosecuting attorney of the county, a candidate voted for at the election, or by any five resident or qualified electors who voted at the election.

COLUMBUS, OHIO, January 12, 1929.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“During the recent campaign an organization known as the Miami Farmers’ Protective Association distributed sample ballots to the voters of Miami County in which they marked the names of certain candidates to be voted for.

At the Primary election they also circulated sample ballots together with a letter supporting the candidacy of certain men whose names were marked on the ballots.

I am enclosing one of the ballots which was circulated for your examination.

This association has failed to file an expense account with the local Board of Elections and so far as I have been able to learn have not filed one with the Secretary of State. Is it your opinion that the association should be required to file an expense account under the Corrupt Practice Act, if so who should file the petition requiring this expense account to be filed?”

Section 5175-1, General Code, provides as follows:

“Committee” or “organization” defined.

“The term ‘committee’ or ‘organization’ as hereinafter used, shall include every committee or combination of two or more persons co-operating to aid or promote the success or defeat of a political party or principle, or of any proposition submitted to vote at any election, or to aid or take part in the election or defeat of any candidate for public office; or to aid or take part in the election or defeat of any candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of any candidate for any office, whether public or not, to be voted for at a primary election; under the primary election law, or any other organization or society soliciting or receiving money, assessments or other things of value, or in any way advocating or promoting the success or defeat of any candidate for office, or of any principal measure or proposition to be voted for at any election held in this state; but nothing herein contained shall apply to or in respect of any committee or organization for the discussion or advancement of political or economic questions.”

Accompanying your letter and to which you refer is a copy of “sample ballot” used in the election in Miami County. The language appearing at the heading of the “sample ballot” and addressed in large, boldface black letters “To the Voters of Miami County” is:

The following is a marked sample ballot of the State and County Ticket submitted by the Miami Farmers' Protective Association. It represents one-half of the six column ballot. It sets forth the names of the candidates of the three major parties. We have reduced this sample for the sake of economy.

It is an undisputed fact that we need economy, more efficient and more real co-operation between the County and State officials and the Tax Payers. There MUST be some radical changes in the personnel of the various offices before we can expect the necessary relief, and this relief can only be secured by the support of every one interested in these issues.

The enormous and unnecessary extravagance that has prevailed in the past is apparent to all of us, therefore it behooves us, as citizens, to use our right of suffrage on November 5th.

This is an earnest plea to the voters of our county, by a non-partisan organization, who have interests in common with the farmer and citizen.

The candidates marked on this sample ballot were chosen after careful consideration by a non-partisan organization and we feel they are not only sincere, but are ably qualified to determine.

MARK YOUR BALLOT AS SHOWN BELOW
THE MIAMI FARMERS' PROTECTIVE ASSOCIATION,
H. EDWIN WILSON, President
JOSEPH F. MARTIN, Secretary-Treasurer.

The ballot is marked with an X mark before the name of a candidate for Governor, for Attorney General, for Representative to Congress, for Representative to General Assembly, for Sheriff, for one County Commissioner, for County Treasurer, for Prosecuting Attorney, on one party ticket.

It is also likewise marked with an X mark before the name of a candidate for Lieutenant Governor, full term, for Lieutenant Governor, unexpired term, for Secretary of State, for Auditor of State, for Treasurer of State, for United States Senator, full term, for United States Senator, unexpired term, for State Senators to General Assembly, for Clerk of the Court of Common Pleas, for one County Commissioner, for County Surveyor, for Coroner, on another party ticket.

In a former opinion of this department, Opinions of Attorney General for 1919, Vol. 2, page 1392, it was held that a committee as defined in the above mentioned Section, is a combination of two or more persons co-operating to aid in, or promote the success, or defeat, of a candidate or candidates, or a proposition submitted to a vote at any election required under the law, and as such is required by law to make a report of its receipts and expenditures, unless clearly shown to be exempt therefrom as provided in Section 5175-1, General Code. The exemption contained in the above section, it will be noted, applies to, or in respect to, any committee or organization, for the discussion or advancement of political or economic questions.

It is not asserted that this organization claims to come within the exemption in said section stated. Therefore the exception mentioned in this section is not applicable to the facts in this case.

The only remaining question is whether or not the "Miami Farmers' Protective Association", bearing names of R. Edwin Wilson, President; Joseph F. Martin, Secretary-Treasurer, is such a committee as is required to file a statement of its receipts and expenditures. The minimum requirement is "two or more persons". Two persons' names appear on the "sample ballot". It does not appear how many others may be members of this organization, but, under the requirements of this section, in my opinion, this is immaterial so long as the minimum number required appear by name as members of the Association.

It is, therefore, my opinion, in specific answer to your inquiry, that said Association is required to file a statement of its receipts and expenditures as provided in Section 5175-1, General Code of Ohio.

Relative to the second branch of your inquiry, Section 5175-6, General Code, provides where the statements are required to be filed, specifying when to be filed with the Secretary of State and when to be filed with the Board of Deputies, state supervisors of said election of the county.

Section 5175-14 provides for the filing of a petition alleging failure to comply with the law and a summary investigation thereon.

Section 5175-15 states that the petition may be filed by the Attorney General of the state, the prosecuting attorney of the county, a candidate voted for at the election, or by any five resident and qualified voters who voted at such election.

Since the committee in this instance apparently confined its activities to Miami County, it would seem proper that the petition be filed by either yourself, or a candidate voted for at the election, or any five resident and qualified voters who voted at such election.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3130.

EXPENSES—ELECTIONS HELD IN NOVEMBER OF ODD NUMBERED
YEARS—COUNTY BOARD OF EDUCATION EXEMPT FROM ANY
CHARGE.

SYLLABUS:

Sections 5053 and 5054 of the General Code, which must be construed together, do not require election expenses therein mentioned to be charged against a county board of education.

COLUMBUS, OHIO, January 12, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication reads:

“You are respectfully requested to furnish this department with your written opinion upon the following:

Section 5053, G. C., provides that in November elections held in odd numbered years the expense of the elections is to be a charge against the township, city, village or political division in which such election was held. Members of a county board of education are elected in odd numbered years.

Question: Should any part of the cost of the election in odd numbered years be charged back against the county board of education, and if so, how is the county auditor to charge the same?”

Section 5053 of the General Code, to which you refer, provides: