

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the State Office Building Commission, duly appointed under authority of Section 1 of House Bill No. 17 of the 88th General Assembly, passed March 14th, 1929 (113 O. L. 59), and The Struck Construction Company of Louisville, Kentucky, and Cincinnati, Ohio.

This contract covers the construction and completion of contract for exterior work for the State Office Building, as set forth in Item 1 of the form of proposal dated February 25th, 1932. Said contract calls for an expenditure of One Hundred Fifty-nine Thousand, Nine Hundred (\$159,900.00) Dollars.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. It is to be noted that the Controlling Board's approval of the expenditure is not required under the law appropriating the money for this contract. In addition, you have submitted a contract bond upon which the Seaboard Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

A certificate from the Secretary of State showing that the above contracting foreign corporation is authorized to do business in Ohio has been filed.

Furthermore, it appears that the Governor has approved all the acts of the Commission in accordance with Section 1 of House Bill No. 17, 88th General Assembly, heretofore mentioned.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4237.

ELECTION LAW—CANDIDATE FOR CORONER—UNREGISTERED PERSON NOT ENTITLED TO HAVE HIS NAME APPEAR ON BALLOT AT PRIMARY ELECTION.

SYLLABUS:

1. *Where a person residing in a registration precinct has filed a declaration of candidacy and is not registered as an elector, he is not entitled to have his name appear on the ballot of his party at the primary election as a candidate for coroner.*

2. *In such a case the board of elections has the authority to reject and refuse to act upon the declaration of candidacy.*

COLUMBUS, OHIO, April 7, 1932.

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

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

"I desire your opinion on the following question:

A. became a resident of the city of L. on the first day of August, 1931. The city of L. has a population of more than 16,000. On the first day of March, 1932, A. filed with the Board of Elections of the county in which the city of L. is located his declaration of candidacy for the office of County Coroner. He is not registered as an elector of the city of L. as required by the provisions of Section 4785-34 of the General Code of Ohio. Except for such registration he has the qualifications of an elector under Section 1, Article 5 of the Constitution of Ohio and under the provisions of the General Code.

Under the above state of facts:

1. Is A. entitled to have his name appear on the ballot of his party at the primary election as a candidate for County Coroner?
2. If A. is not entitled to have his name so appear is it the duty of the Board of Elections to omit same without any protest being filed against his declaration?

Since the ballots for the primary must be printed shortly I shall appreciate it if you can give me a very prompt reply to this inquiry."

Section 4785-34, General Code, answers your first question. The pertinent part of this section provides:

"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."

It is clear, therefore, that the person referred to above is not entitled to have his name appear on the ballot of his party at the coming primary election.

As to your second question, there seems to be no express provision giving a board of elections the authority to reject an unlawful declaration of candidacy where no protest has been filed. Section 4785-13, General Code, prescribing some of the duties of the boards of elections, reads in part as follows:

"The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this act, and shall perform all the duties imposed by law which shall include the following:

* * * * *

j. To investigate irregularities, non-performance of duties, or violations of laws by election officers and other persons; to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and to report the facts to the prosecuting attorney.

k. To review, examine and certify the sufficiency and validity of petitions and nomination papers.

* * * * *

p. To perform such other duties as may be prescribed by law or the rules of the chief election officer."

The papers referred to in paragraph "k" apparently refer to nomination peti-

tions rather than declarations of candidacy. However, the statute plainly shows that it is not meant to cover all the duties and powers of such boards, and the right to reject the declaration of the candidacy of a person who is not eligible to become a candidate surely is necessarily implied from and incident to their duties with respect to the conduct of elections. In the case of *State, ex rel., Lloyd*, 93 O. S. 20, where a nomination petition was involved, while the court held that authority to reject such petition in the absence of protest was conferred upon boards of elections, it also held that such power would be inherent in such boards. The court said in the opinion:

“Not only would the board have the inherent right, but authority is conferred upon it, without objection filed, to reject and refuse to act upon nominating petitions which clearly are not in conformance with the requirements of the law.”

A board of elections would have the same inherent power with respect to a declaration of candidacy.

I am of the opinion, therefore, that:

1. Where a person residing in a registration precinct has filed a declaration of candidacy and is not registered as an elector, he is not entitled to have his name appear on the ballot of his party at the primary election as a candidate for coroner.

2. In such a case the board of elections has the authority to reject and refuse to act upon the declaration of candidacy.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4238.

ELECTION LAW—GENERAL REGISTRATION IN A TERRITORY CONTIGUOUS TO A REGISTRATION CITY MAY BE HELD WHEN.

SYLLABUS:

By analogy to section 4785-36, General Code, a general registration in a territory adjoining and contiguous to a county containing a registration city can be held only on Thursday in the fifth week and Friday and Saturday in the fourth week preceding a general election in November.

COLUMBUS, OHIO, April 7, 1932.

HON. R. H. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—I am in receipt of your request for an opinion which reads in part as follows:

“Can a registration be held by the County Board of Election prior to the primary election May 10, 1932, under the present election law, in a territory contiguous to a County containing a registration city?”

I assume that there has been no registration in the territory in question and