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ELECTION SPECIAL—MAY BE HELD ONLY WHEN AUTHORIZED BY STATUTE—NO PROVISIONS FOR HOLDING SPECIAL ELECTION FOR OFFICES OF MEMBER OF BOARD OF EDUCATION AND TOWNSHIP TRUSTEE—SUCH ELECTIONS HELD IN ODD NUMBERED YEARS—SECTION 4785-4 G. C.

SYLLABUS :

A special election is permitted to be held only when authorized by statute. There are no provisions for the holding of a special election for the offices of member of a board of education and township trustee. Such elections under the provisions of Section 4785-4, General Code, are to be held in odd numbered years.

Columbus, Ohio, January 16, 1950

Hon. F. H. Cox, Prosecuting Attorney
Morgan County, McConnelsville, Ohio

Dear Sir :

Your request for my opinion is as follows :

"1. Mr. W. of Center Township, Morgan County, Ohio, duly filed his petition as a candidate for member of the School Board. His name did not appear on the ticket as candidate for school board.

"2. Mr. W. did not file as a candidate for Trustee. His name did appear on the ticket as a candidate for Trustee.

"3. 'Vote for Not More Than Two' appeared on the ticket above the names of the candidates for school board. Three were to be elected.

"As a result of the above errors, Mr. W. received 35 votes for Trustee, before the error was noticed. Afterward he received 35 votes for member of the School Board. If Mr. W. had received 70 votes for member of the School Board, he would have been elected.

"The voters of Center Township feel that they are entitled to a special election for Trustee and School Board in their Township.

"In your opinion, is Center Township entitled to a special election in this case?"

I believe it is too well settled to admit of argument that an election may be held only when there is specific statutory authority therefor. Section 4785-4, General Code, provides the statutory authority for holding elections for township officers and members of boards of education. That section, so far as pertinent, reads as follows :

"General elections in the state of Ohio and its political subdivisions shall be held as follows :

* * * "For municipal and township officers, members of boards of education, judges and clerks of police and municipal courts, and justices of the peace, in the odd numbered years."

Section 3268, General Code, relative to the election and terms of office of township trustees, provides :

"Two trustees shall be elected at the general election in 1937 and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after their election. One trustee shall be elected at the general election in 1937 in each township who shall hold his office for a term of two years, commencing on the first day of January next after his election. One trustee shall be elected at the general election in 1939 and quadrennially thereafter in each township, who shall hold his office for a term of four years, commencing on the first day of January next after his election."

Section 3262, General Code, relative to a vacancy in the office of township trustee reads :

"When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years shall appoint a suitable person or persons, having the qualifications of electors in the township to fill such vacancy or vacancies for the unexpired term. Whenever in any township a municipal court shall replace and supersede the justices of the peace, the municipal judge or the presiding municipal judge if there be more than one, shall have power to fill vacancies on the board of trustees. In those townships wherein there are no justices of the peace or municipal judges the probate judge shall have the power to fill vacancies on the board of trustees."

Section 4832, General Code, pertaining to membership on boards of education, provides :

"In county, local, and exempted village school districts, the board of education shall consist of five members who shall be electors residing in the territory composing the respective districts and shall be elected at large in their respective districts."

Section 4832-8, General Code, relative to the term of office of members of each board of education, reads as follows :

“The terms of office of members of each board of education shall begin on the first Monday in January after their election and each such officer shall hold his office for four years, except as otherwise provided by law, and until his successor is elected and qualified.”

A vacancy in a board of education can only occur in the manner set out in the statute, and such vacancy is filled by the board. Thus Section 4832-10, General Code, reads :

“A vacancy in any board of education may be caused by death, nonresidence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting. A majority vote of all the remaining members of the board may fill any such vacancy for the unexpired term.”

I am unable to find any provision of law which permits a special election to be held for a township trustee or a member of a board of education. You are therefore advised that Center Township is not entitled to hold a special election for such position.

Respectfully,

HERBERT S. DUFFY,
Attorney General.