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PETITION, NOMINATING — UNDER PRESENT STATUTES —  
SUCH PETITION OF INDEPENDENT CANDIDATE NOT IN-  
VALID BY REASON OF FACT IT DOES NOT CONTAIN NAMES  
AND ADDRESSES OF FIVE PERSONS TO CONSTITUTE COM-  
MITTEE TO FILL VACANCIES IN CASE OF DEATH OR WITH-  
DRAWAL OF CANDIDATE AS REQUIRED UNDER FORMER  
SECTION 5000 G. C.

SYLLABUS:

Under the present statutes a nominating petition of an independent candidate is not invalid by reason of the fact that it does not contain the names and addresses of five persons to constitute a committee to fill vacancies in case of death or withdrawal of a candidate, as required under former section 5000, General Code.

July 28, 1944

Hon. William G. Wickens, Prosecuting Attorney  
Elyria, Ohio

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

"I respectfully solicit your opinion on the question of whether or not under the present and effective statutes of Ohio a petition for an independent nomination for the office of County Sheriff which does not show the names of a committee to fill a vacancy is valid and sufficient.

In this connection I call your attention to the case of State ex rel. vs. Curtis, 101 O. S. 383, wherein it was held that under the statutes existing at the time of decision a petition for an independent nomination which did not show the names of the committee to fill vacancies was insufficient. However, at the time of that decision Section 5000 G. C. was effective, which provided that:

'Signers of such nomination papers shall insert in them the names and addresses of such persons as they desire to the number of five as a committee who may fill vacancies caused by death or withdrawal.'

The court held that by virtue of such express provision it was mandatory for the designation of a committee. Sec. 5000 is now repealed.

It now appears that there is no mandate in the statute that such a committee be appointed. I call your attention to Section 4785-91, G. C. which is apparently the corresponding section and point out that such statute does not direct the appointment of a committee that provides for a form of nominating petition which, it is ordered, shall be 'substantially' as follows and then follows a form of petition which includes the words 'we hereby constitute the following persons or petitioners as a committee to represent said candidates'.

Checking the statutes for the duties of such committee we find that under Section 4785-93, G. C. the committee filing such petition together with the candidate shall be notified by the Clerk of the Board of Elections if the petition is found insufficient. However, in that connection I wish to point out that by virtue of Amended Senate Bill No. 284 the provisions of that statute have been suspended until November 8, 1944 and in lieu thereof, by Section 3 of the Act, it is now provided

that notice shall be given, not to the committee, but to the person whose nomination is objected to. Thus it seems that one function of the committee is suspended until November 8, 1944.

The other statutory function of the committee relates to the filling of vacancies, which function is provided for by Section 4785-94, G. C., and which is likewise suspended until November 8, 1944. In lieu thereof Section 5 of Amended Senate Bill No. 284 provides that if a person nominated by petition shall withdraw as candidate prior to July 20, 1944, such vacancy *may* be filled by the committee of five designated in such nominating petition to represent the candidate named therein. It is therefore apparent that the committee has no duty to appoint a successor and the question is presented as to whether or not in such case the very appointment of the committee is optional with the candidate. In this connection I again call your attention to the fact that there is now no mandate that the committee be appointed, as was formerly true under the provisions of Section 5000, G. C.

I will appreciate your immediate attention to this problem as the Lorain County Board of Elections is presently faced with the situation of petitions for the nomination of candidate for county sheriff, which petitions apparently contain a sufficient number of valid signatures but which petitions designate no committee, although the form of petition is as set forth in Section 4785-91, G. C. You will understand that the statutory form was employed in the instant case but no committee designated and the lines were permitted to remain blank."

Section 5000, General Code, at the time of its repeal, provided as follows:

"Signers of such nomination papers shall insert in them the names and addresses of such persons as they desire to the number of five as a committee who may fill vacancies caused by death or withdrawal."

This section was under consideration by the Supreme Court in the case of *State, ex rel. Minor v. Curtis*, 101 O. S. 353, wherein it was held that it was mandatory that a nominating petition of an independent candidate should contain a committee of five signers to fill vacancies in case of death or withdrawal, and compliance therewith was essential to the validity and sufficiency of the petition. See also *State, ex rel. Bloker, v. Gabel*, 113 O. S. 398.

Section 5000, General Code, was repealed by the 88th General Assembly in Amended Substitute Senate Bill No. 2 (113 O. L. 307),

and no language of a similar nature has been found in the statutes that will take its place. Section 4785-91, General Code, reads in part as follows:

“Nominations of candidates for offices, in addition to the nominations made at party primaries, may be made by petitions signed for each candidate by qualified electors of the state or the district or county for which such candidates are nominated, not less in number than one per cent of the qualified electors voting at the next preceding general election for the office of governor in any such county, district, municipality or in the state.

At the time of filing such petitions, each candidate shall pay a fee of one-half of one per cent of the annual salary of such office, but in no case shall such fee be more than fifty dollars; and such fees shall be disposed of in the same manner as is provided for in section 4785-75 of the General Code. In case of such independent nominations for a district larger than a county, at least one half of the signatures shall be obtained from one-half of the several counties in such district. In the case of state candidates, at least one-half of such signatures shall be obtained from one-third of the counties in the state. The form of the nominating petitions shall be substantially as follows:

NOMINATING PETITION

For Office of \_\_\_\_\_

We, the undersigned qualified electors of the state of Ohio and of the county \* \* \*.

\* \* \*

We hereby constitute the following persons, or petitioners, as a committee to represent said candidates:

Committee of Five Persons	Residence
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Section 4785-91, General Code, as amended by the 91st General Assembly (116 O. L. 149), and as amended by the 93rd General Assembly (H. B. 624, 118 O. L. 230) does not mention or refer to an independent candidate's committee other than that mentioned in the form set forth in the statute.

In the original enactment of section 4785-91 General Code, and in the various amendments thereto, the only reference to a committee is in the form of the petition set out in the statute. In this connection, attention is directed to the fact that the Legislature did not impose a strict compliance with the form therein contained, for the reason that the Legislature prefaced the form with the word "substantially". In other words, a strict compliance with the form is unnecessary. It is significant that the only reference to an independent candidate's committee, in the recodification and in the various amendments, is in the form of the petition, which form only has to be "substantially" followed.

It is true the form at the bottom provides "Committee of Five Persons" and contains lines for five signatures. Does it mean that the committee should be "substantially" five persons? If so, how many should constitute the committee in order to have a "substantial" compliance? Former section 5000 specifically required a committee of five. The flexibility of section 4785-91 indicates that the Legislature did not intend to maintain the precept of former section 5000.

No language was adopted in subsequent statutes as found in former section 5000.

In 37 O. Jur., section 441, page 771, the following language is found:

"In the interpretation of statutory law after an amendment thereof, the courts may take into consideration the construction by earlier decisions of the statute before its amendment. The body enacting the amendment is presumed to have in mind such judicial construction; and if, in the subsequent statute, it uses different language in the same connection, the presumption arises that a change of the law was intended."

The next question for consideration is whether or not the adoption of Amended Senate Bill No. 284 of the 95th General Assembly requires a designation of a committee on the nominating petition of an independent candidate. Section 5 of this act provides in part as follows:

"If a person nominated by petition as a candidate for election at the general election to be held on the seventh day of November, 1944, shall withdraw as such candidate prior to the twentieth day of July, 1944, such vacancy so created may be filled by the committee of five designated in such nominating petition to represent the candidate named therein. To fill such

vacancy the members of such committee, or a majority of them, shall not later than the twenty-fourth day of July, 1944, file with the election officials with whom the nominating petition nominating the person who has withdrawn was filed, a certificate signed and sworn to under oath by each of them, designating the person they select to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is so certified.

If a person nominated in the primary election held on the ninth day of May, 1944 or nominated by petition, as a candidate for election at the general election to be held on the seventh day of November, 1944, shall die the vacancy so created may be filled by the same committee in the same manner as provided in the four next preceding paragraphs for the filling of similar vacancies created by withdrawals, excepting that the certification, when filling a vacancy created by death, may not be filed with the secretary of state or with the board of elections of the most populous county of an election district later than 6:30 p. m. of the twenty-eighth day of October, 1944, or with any other county board of elections later than the second day of November, 1944."

Several sections of the election laws were suspended by the foregoing act, but section 4785-91, General Code, was not included and it therefore remains in full force and effect.

There is nothing in the language of the foregoing section that would indicate that the appointment of a committee at the time of filing a nominating petition is imperative. It does not provide that signers of such nomination papers shall insert names of five persons to act as a committee who may fill vacancies. It merely provides that the committee "may" fill a vacancy in case of death or withdrawal of a candidate. It cannot be construed that such language presupposes the appointment of a committee. It merely grants a committee a discretionary power, provided such committee exists.

In so far as the designation of a committee in the nominating petition is concerned, the statutes in force and effect at the present time are silent and therefore none is required.

It is not the province of the courts to read into a statute anything beyond the fair import of the language used. *Locotosh v. Brothers*, 52 O. App. 158.

Therefore, in view of the foregoing, it is accordingly my opinion that no provision having been made for the designation of a committee in the nominating petition to fill vacancies in case of death or withdrawal of a candidate, a nominating petition is not invalid by reason of the failure to designate such a committee.

Respectfully,

THOMAS J. HERBERT

Attorney General