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MUNICIPALITY — TIME LIMITATIONS — ADOPTION OF EITHER ONE OF THREE SPECIAL FORMS OF GOVERNMENT SET OUT IN SECTION 3515-1 THROUGH 3515-71 GC—SECTION 3515-2 GC PROVIDES PROPOSITION MAY BE SUBMITTED AT SPECIAL ELECTION TO BE HELD ON SAME DAY AS REGULAR NOVEMBER MUNICIPAL ELECTION—OAG 2755, 1925, PAGE 561, OVERRULED IN PART.

SYLLABUS:

1. Under the provisions of Sections 3515-1 and 3515-2, General Code, and with due regard to the limitations as to time therein contained, the proposition for the adoption by a municipality of either one of the three special forms of government set out in Sections 3515-1 to 3515-71, General Code, may be submitted at a special election to be held on the same day as the regular November municipal election. (Opinion No. 2755, Opinions of the Attorney General for 1925, page 561, overruled in part).

2. Where the electors of a municipal corporation at a special election held on the same day as the general municipal election in November, 1953, adopt one of the special forms of government set out in Sections 3515-1 to 3515-71, General Code, officers for such newly adopted form of government will be elected at the general municipal election in November, 1955.

Columbus, Ohio, May 20, 1953

Hon. Ted W. Brown, Secretary of State  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“A group of electors of the city of Celina, Mercer County, are circulating petitions pursuant to General Code Section 3515-1 et seq. for the submission of the question of organizing their municipality under the city management form of government. The Board of Elections of that county has been asked if this question may be submitted at the November General Election.

“The Board was also asked when and in what manner candidates for City Council will be nominated and elected in view of the provisions of General Code Section 3515-4 which states that such plan, if approved, ‘shall go into effect immediately, in so far as it applies to the nomination and election of officers provided for herein and in all other respects it shall go into effect upon the first day of January following the next regular municipal election.’

“At this November General Election, Celina will elect city officials under their present form of government, which is the statutory municipal plan. These officers will consist of: Mayor, President of Council, Council (both at large and from wards), Treasurer and Solicitor.

“We find an Attorney General’s Opinion No. 2755, rendered in 1925 which disallowed the submission of this question at a general election. However, at that time the law provided for candidates filing ninety days before a general election, which provision has since been changed.”

Sections 3515-1 to 3515-71, of the General Code, were enacted pursuant to the provisions of Section 2, of Article XVIII of the Constitution of Ohio, with the obvious purpose of giving the electors of any municipality an opportunity to select a form of municipal organization differing from the general form set up by the Municipal Code. Section 3515-1, General Code, reads as follows:

“Whenever electors of any municipality, equal in number to ten percentum of those who voted at the last regular municipal election, shall file a petition with the board of deputy state supervisors of elections or board of deputy state supervisors and in-

spectors of election, as the case may be, of the county in which such municipality is situated, asking that the question of organizing the municipality under any one of the plans of government provided in this act be submitted to the electors thereof, said board shall at once certify that fact to the council of the municipality and the council shall *within thirty days*, provide for submitting such question at a special election to be held *not less than sixty nor more than ninety* days after the filing of such petition. Any such election shall be conducted in accordance with the *general election laws* of the state except as otherwise provided in this act and the council of any municipality holding such an election shall appropriate whatever money may be necessary for the proper conduct thereof." (Emphasis added.)

Section 3515-2, General Code, reads as follows:

"The proposition to adopt a plan of government provided in this act shall not be submitted to the electors of any municipality less than ninety days before a regular municipal election. If in any municipality, a sufficient petition is filed, requiring that the question of choosing a commission to frame a charter be submitted to the electors thereof, the proposition to adopt a plan of government provided in this act shall not be submitted in that municipality as long as the question of choosing such commission or adopting a charter framed thereby is pending therein. In any municipality while the proposition of adopting any one of the three forms of government herein provided for is pending, then no other proposition herein provided for shall be submitted until said pending proposition is adopted or rejected."

It will be observed that the petition of the electors for the submission of the question of organizing a municipality under one of the three special forms provided in these statutes is to be *filed* with the board of elections, and that the board shall "at once certify *that fact*" to the council of the municipality and the council is required within thirty days thereafter, to provide for submitting such question at a special election to be held not less than sixty days nor more than ninety days "after the *filing* of such petition." There is no provision for filing the petition with the council. In view of the language of this section and the particular provisions above noted, it seems impossible to resist the conclusion that the "filing" above referred to, must relate to the time when the petition is filed with the board of elections and not to the time when the fact of filing is certified to the council. I appreciate the fact that if the board of elections should not act promptly as the law requires, the time allowed the council for its action might, without its fault, be abbreviated. But I think we must assume that the board of elections will perform its duty.

In Section 3515-2, General Code, another stipulation as to the time of the election is introduced, which might plainly conflict with the time schedule set out in Section 3515-1. It is provided that the proposition in question shall not be submitted to the electors of any municipality less than ninety days before a regular municipal election. It is manifest that a petition for such submission might be filed with the board of elections at such time that the council of the municipality could not perform the duty required of it within the period—not less than sixty days nor more than ninety days—without encountering the time of a regular municipal election, and the time for the special election might have to be postponed.

There is nothing in the statute that appears to cover this contingency directly, but it is my opinion that if the date of the special election could not be fixed within the time limit prescribed by Section 3515-1 without conflicting with the provisions of Section 3515-2, General Code, it would be the duty of the council to fix a date for the special election as soon thereafter as possible.

This might result in fixing the time of this special election on the day immediately following the regular municipal election, which would be manifestly an unfortunate result entailing undue expense and possible confusion.

I come, therefore, to the question which you propound, to wit, whether this special election could be ordered for the same day on which the regular municipal election is to be held. That would escape the barrier set up by Section 3515-2 *supra*.

I can see no good reason why this should not be done. The election in question is a special election and is no part of the general election for municipal officers. If we turn to the general election laws, we find this provision in Section 4785-3, General Code:

“d. The term ‘special election’ shall mean any election other than the elections required by law to be regularly held on the day of a general or primary election, provided, however, that a special election may also be held on the day of a general or primary election.”

Section 3515-3, General Code, provides the form of the ballot and also provides for mailing copies of the proposed plan of government to each elector, together with a facsimile of the ballot and the date and hours of

the election and a copy of a written argument, if any has been submitted, for or against the proposition.

I note your reference to Opinion 2755, Opinions of the Attorney General for 1925, page 561, in which it was held :

“Under the provisions of sections 3515-1 and 3515-2, General Code, a proposition to adopt a plan of government for a municipality may not be submitted to the electors of a municipality less than ninety days before a regular municipal election, *nor on the regular municipal election day.*” (Emphasis added.)

The then Attorney General quoted the two sections of the statute which I have above set out and adopted the clear language of Section 3515-2, providing that said proposition could not be submitted at an election to be held less than ninety days before a regular municipal election. He then proceeded to the further conclusion that such special election could not be held on the same day as the regular municipal election. For that conclusion I can see no good reason. His entire argument consisted of the following paragraph :

“At this time the regular election machinery is set in motion to elect the municipal officers at the next municipal election. If a plan of government as proposed in the above section should be adopted at the November election, your city would be in the peculiar position of having elected its municipal officers for a term of two years and if a new plan of city government should be adopted on the November election day it would be two years before another municipal election would be held to elect officers under the new plan of government. It is believed that the same reason that forbids the election to be held looking to the adoption of a plan of government less than ninety days before a regular municipal election, would operate against it being held on the regular municipal election day.”

While it may be admitted that the electors will have decided on a new plan of government and that it would be two years before another municipal election would be held to elect officers under this new plan, that does not seem to me to be a serious result. It is obvious that if this special election should be postponed for a day, a week or a month after the general election, the same result would ensue.

I direct attention to Section 3515-4, General Code, which describes the results of a favorable vote at the special election. It reads as follows :

“If, when submitted in any municipality the proposition of adopting a plan of government provided in this act is approved by a majority of those voting thereon, such plan, together with any of the supplementary propositions that may have been approved by a majority of the electors voting thereon, shall become the charter of such municipality. When so adopted, this act shall go into effect immediately, in so far as it applies to the nomination and election of officers provided for herein and in all other respects it shall go into effect upon the first day of January following the next regular municipal election. All officers of any plan of government superseded by the adoption of any plan provided in this act, except members of the commission or council, shall continue in office and in the performance of their duties until the commission or council elected hereunder shall have provided by ordinances for the performance of the duties of such officers, whereupon the terms of all such officers shall expire and their offices be deemed abolished.”

This establishes the order of procedure, and the only effect of holding this special election on the day of the regular municipal election, is that the municipality would continue under the regular municipal organization until in due course it has nominated and elected the officers provided for in the new plan, and they would take their office on the first day of January following the next municipal election.

Attention might be called to Section 3515-8, General Code, which is one of the provisions applicable to all three of the optional forms of government. It reads as follows :

“Regular municipal elections shall be held on the first Tuesday after the first Monday in November in the odd numbered years, and shall be conducted and the results canvassed and announced by the regular election authorities. Candidates to be voted for at the regular municipal elections shall be nominated as provided by law.”

You state that at the time of the 1925 opinion, the law provided for candidates filing ninety days before a general election, which provision has since been changed. I presume that you have reference to the fact that, effective January 1, 1952, Section 4785-92, General Code, was amended to require all nominating petitions to be filed not later than 6:30 P.M., of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding a general election. While, in view of the conclusion I have reached, it is not necessary to give any further con-

sideration to the effect, if any, of such amendment to the question presented, the present requirement that nominating petitions be filed in February does help to illustrate the accuracy of my conclusion.

At the time of the 1925 opinion Section 5004, General Code, authorized the filing of nominating petitions for municipal officers up to sixty days before the election, not ninety days as stated in your letter. Section 4785-92, the successor of Section 5004, continued to authorize such filing up to sixty days before the election until amended in 1947, 122 O. L. 119, to require such filing ninety days before the election. As heretofore noted, this section was again amended in 1951, effective January 1, 1952, 124 O. L. 686, to require such filing in February.

At the time of the 1925 opinion, therefore, where a municipality, ninety days before the election, voted to adopt one of the forms of government set out in Sections 3515-1 to 3515-71, General Code, a period of thirty days remains in which candidates could qualify for the new offices thereby created by filing nominating petitions. This, of course, is no longer true, so that unless the proponents of such new plan of government are content with setting in motion a plan which will result in the election of new municipal officers by a write-in vote, it now is necessary that the vote on such new plan of government be held at some time prior to the ninetieth day before the May primary. This would result in a delay from the time of the adoption of such plan of government until the assumption of office of the new officers, of at least a period of almost eleven months. If such election for a new plan of government be adopted at the November, 1953 municipal election, there would be a delay of almost twenty-five months, i.e., until January 1, 1956, until the new officers could assume office. Whether the allowance of such delay is or is not wise, is a question of legislative policy. Under the 1925 opinion it would be possible to hold such election on Wednesday, November 4, 1953, and I feel it necessary, therefore, to disagree with the conclusion reached by my predecessor in the 1925 opinion aforesaid, and must therefore overrule the same.

Specifically answering your question, it is my opinion :

1. Under the provisions of Sections 3515-1 and 3515-2, General Code, and with due regard to the limitations as to time therein contained, the proposition for the adoption by a municipality of either one of the

three special forms of government set out in Sections 3515-1 to 3515-71, General Code, may be submitted at a special election to be held on the same day as the regular November municipal election. Opinion No. 2755, Opinions of the Attorney General for 1925, page 561, overruled in part.

2. Where the electors of a municipal corporation at a special election held on the same day as the general municipal election in November, 1953, adopt one of the special forms of government set out in Sections 3515-1 to 3515-71, General Code, officers for such newly adopted form of government will be elected at the general municipal election in November, 1955.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General