

1272.

CORRUPT PRACTICES ACT—EXPENSE STATEMENTS ACCEPTABLE  
AFTER TEN DAYS STATUTORY LIMIT—DUTY OF CANVASSING  
POWER BEFORE ISSUING ELECTION CERTIFICATE.

*SYLLABUS:*

1. *The clerk of the board of deputy state supervisors of elections may receive and file statements of the expenses after the expiration of the ten day period referred to in Section 5175-2, General Code.*

2. *It is the duty of the canvassing power, before issuing a certificate of election, to ascertain from the clerk of the board of deputy state supervisors of elections that the expense statement required by Section 5175-2, General Code, has been filed, but such certificate of election may be issued where the expense statement has been filed after the expiration of the ten day period.*

COLUMBUS, OHIO, December 9, 1929.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 5175-2, of the General Code of Ohio provides under the Corrupt Practices Act relative to the filing of statements of expenditures.

Attorney General's opinion, 1912, page 1267 holds that such a statement must be filed by reciting ‘Every candidate who is voted for at any election, and this applies regardless of whether or not the candidate spent any money in securing his election.

Section 5175-2, above cited, requires that such statement shall be filed within ten days.

Section 5175-8, provides that no certificate of election shall be issued until statement is filed.

It is provided by law in local elections that statements of expenditures shall be filed with the Clerk of the Board of Deputy State Supervisors of Elections, and the certificate of Election is issued by the local election board.

FACTS

At the recent election one hundred and forty-seven (147) candidates failed to file within a ten day period a statement of their expenditures, many of whom had no expenses incurred in their election.

Of the one hundred and forty-seven who were delayed, practically all of them have now filed with the Clerk those statements as required by law.

The clerk of the local election board who issues the certificate of election, in my opinion has no way provided by law that he may know, or be informed without personal inquiry, whether or not a certificate has been filed as required by law with the Clerk of the Board of Deputy State Supervisors of Elections.

QUESTIONS

May the Clerk of the Board of Elections receive and file statements of expenditures after the expiration of the ten day period referred to in Section 5175-2?

If the clerk of the local board has issued a certificate of election and in fact no statement of expenditures was filed within ten days, is the office vacant,

and is it the duty of the Prosecuting Attorney to see that that office is not filled by the party who did not comply with all of the provisions of law?

This situation presents a rather important problem and one that requires immediate action and an early reply will be greatly appreciated."

Section 5175-2, General Code, to which you refer, reads as follows:

"Every candidate who is voted for at any election or primary election held within this state, and every person, committee or association or persons incorporated or unincorporated, who may have contributed, promised, received or expended directly or indirectly, any money or thing of value in connection with any election held in this state, shall within ten days after such election file, as hereinafter provided, an itemized statement showing in detail all the moneys or things of value, so contributed, promised, received or expended, and all liabilities directly or indirectly incurred in connection with such elections; but individuals other than candidates making only contributions, the receipt of which must be accounted for by others, need not file such statement under this section."

In the case of *State ex rel. Riggs vs. Elijah Lee Jaquis*, 11 O. C. D., 91, it was held that the right of the person to hold office is not defeated by a failure to file statements of expenses within ten days after nomination and election, respectively, if such statement of expenses is later filed. It was there held that the provision with reference to the filing of a statement of expenses as to time, was directory and not mandatory.

In Opinion No. 1813, Opinions of the Attorney General, 1928, Vol. I, page 595, my immediate predecessor held on March 5, 1928, that a candidate elected in the November 1927 election could yet qualify by filing his expense statement, the vacancy not having been filled previously by the appointing power.

Section 5175-8, General Code, provides that the certificate of election shall not issue until the expense statement is filed, and reads as follows:

"No board, office or officer authorized by law to issue commissions or certificates of election shall issue a commission or certificate of election to any person required by this act to file a statement or statements until such statement or statements have been so made, verified and filed by such persons as provided by this act. No person, required by this act to file a statement or statements shall enter upon the duties of any office to which he may be elected until he has filed all statements provided by this act, nor shall he receive any salary or emolument prior to the filing of the same."

It will be observed that Section 5175-6, General Code, provides that statements required in Sections 5175-2, and 5175-8, General Code, shall be filed with the Deputy State Supervisors of Elections in the county in which such election is held, if they relate to election of candidates for office to be filled by, or propositions submitted to electors of a county, or smaller subdivision.

Thus the clerk of your board of deputy state supervisors of elections would have an absolute check on the 147 candidates to which you refer.

It is to be observed, however, that in certain instances the certificate of election is not issued by the board of deputy state supervisors of elections. Notable among these are certificates to members of boards of education, which are issued by such board of education; certificates to justices of the peace, issued by the township clerk or auditor; certificates to township officers, issued by the township clerk; certificates to municipal officers in non-registration cities, issued by the clerk or auditor of the municipality.

In such instances, it is the duty of the canvassing power, before issuing a certificate of election, to ascertain from the clerk of the board of deputy state supervisors of elections, that the expense statement required by Section 5175-2, General Code, has been filed.

A consideration of the above citations furnishes the answers to the two branches of your inquiry.

I assume, from the wording of the second branch of your inquiry that election certificates issued after the ten day period were not, however, issued until the expense statements were actually filed, and this opinion is based on that assumption.

Specifically answering your questions, I am of the opinion that:

1. The clerk of the board of deputy state supervisors of elections may receive and file statements of the expenses after the expiration of the ten day period referred to in Section 5175-2, General Code.

2. It is the duty of the canvassing power, before issuing a certificate of election, to ascertain from the clerk of the board of deputy state supervisors of elections that the expense statement required by Section 5175-2, General Code, has been filed, but such certificate of election may be issued where the expense statement has been filed after the expiration of the ten day period.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1273.

APPROVAL, BONDS OF GEAUGA COUNTY—\$42,576.40.

COLUMBUS, OHIO, December 9, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1274.

APPROVAL, CONTRACT FOR RECONSTRUCTION OF SEPARATED CROSSING IN THE VILLAGE OF BRILLIANT, JEFFERSON COUNTY.

COLUMBUS, OHIO, December 9, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of November 7, 1929, enclosing for my approval a copy of a proposed contract providing for the rearrangement and reconstruction of highway facilities through and adjacent to an existing separated crossing, further described as Pennsylvania Railroad Bridge No. 23.63 on State Highway No. 7, in the Village of Brilliant, Jefferson County, Ohio, between the State of Ohio and the Pennsylvania Railroad Company as lessee of the Cleveland and Pittsburgh Railroad Company and the Steubenville and Wheeling Traction Company.