

1290.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENT IN CUYA-HOGA COUNTY.

COLUMBUS, OHIO, December 13, 1929.

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

1291.

ELECTION—DUTY OF CANVASSING BOARDS TO DETERMINE PERSONS ELECTED FROM FACE OF RETURNS—SUCH BOARDS NOT TO PASS UPON IRREGULARITIES.

SYLLABUS:

After an election has been held and the returns are certified to the proper canvassing official or board, it is the duty of such official or board to proceed to canvass the vote and determine the persons duly elected to the offices to be filled at such election, if it is possible upon the face of the returns to determine such result. It is not within the province of such canvassing official or board to pass upon questions of irregularities in connection with such election resulting from the use of improper forms of ballot, or otherwise, since the duty of such official or board is ministerial in character and confined to a consideration of the returns alone.

COLUMBUS, OHIO, December 13, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have recently received from various prosecuting attorneys four separate requests for opinion in election matters which are more or less along similar lines and which involve questions of such importance that I deem it proper to address my opinion on these questions to you and send copies to the interested prosecutors.

The Honorable C. E. Moyer, Prosecuting Attorney of Erie County, submits two questions. In the first, a village board of education in a newly created district has been serving pursuant to appointment under authority of Section 4736. There were, accordingly, five members to be elected at the late election, two for the term of two years and three for four years. Through error the ballot did not designate which were running for the two year term and which were running for the four year term, and the question submitted is as to whether there was a valid election, and, if so, for what term.

Mr. Moyer's second communication presents a somewhat different situation. In this instance there were three members of a board of education to be elected and by mistake the ballots stated that two only were to be elected. He states that the first candidate received twenty-five votes, the second twenty-two and the third and fourth twenty votes each. His question is as to the validity of this election.

The Honorable F. H. Buckingham, Prosecuting Attorney of Sandusky County, submits a similar question to the latter one submitted by Mr. Moyer. In this instance, however, there were two justices of the peace to be elected and the ballot stated "vote for not more than one." No names appeared upon the ballots and all names were written in by the electors. He inquires as to the validity of this election.

The Honorable J. D. Sears, Prosecuting Attorney of Crawford County, submits