

806

1. BALLOT—ON NON-PARTISAN BALLOT THERE SHOULD BE A BLANK SPACE OR SPACES BELOW NAME OR NAMES OF CANDIDATES APPEARING ON BALLOT—THERE SHOULD BE AS MANY BLANK SPACES AS OFFICES TO BE FILLED.
2. NO PERSON FILED AND QUALIFIED AS CANDIDATE FOR AN OFFICE—EITHER NON-PARTISAN OR PARTY COLUMN BALLOT—TITLE OF OFFICE SHOULD BE PRINTED ON BALLOT AND BLANK SPACE PROVIDED UNDERNEATH TITLE OF SUCH OFFICE.

SYLLABUS :

1. On a non-partisan ballot there should be a blank space or spaces left on the ballot below the name or names of candidates appearing on the ballot. There should be as many blank spaces as there are offices to be filled.

2. On either a non-partisan or party column ballot when no person has filed and qualified as a candidate for an office, the title of the office should be printed on the ballot and a blank space provided underneath the title of such office.

Columbus, Ohio, August 3, 1949

Hon. Charles F. Sweeney, Secretary of State
Columbus, Ohio

Dear Sir :

I have before me your communication requesting my opinion which request reads as follows :

“I am hereby requesting a formal opinion at your earliest possible convenience on the interpretation of General Code Section 4785-101 of the Ohio Election Laws, which section became effective January 2, 1948; the question is whether or not, under the provisions of General Code Section 4785-101, a blank space or spaces should appear on non-partisan ballots for member of board of education, township offices, or for village offices in villages having a population of less than 2,000.

“First, if there are candidates for the same office, should there be left on the ballot at the bottom of such group as many separate spaces as there are candidates to be elected; and on such ballots if there is only one candidate for an office and only one

to be elected should one blank space be left below the name of the candidate for such office.

“Second, where no person has filed and qualified as a candidate for an office should a blank space be left on the ballot under the title for an office for which there is no regularly nominated candidate.” (You have orally indicated that you desire the answer of your second question to apply both to party column ballots and non-partisan ballots.)

The election laws for the State of Ohio are contained in Section 4785-3 et seq., of the Ohio General Code. Section 4785-101, General Code, referred to in your communication reads in part as follows:

“On the non-partisan ballot shall be printed the names of all candidates for election to judicial office, office of member of board of education, municipal or township offices for such municipalities and townships in which primary elections are not held for nomination of candidates by political parties as provided for by law, and municipal offices of municipalities having charters which provide for separate ballots for elections for such municipal offices.

“Such ballots shall have printed across the top thereof and below the stubs, the words: ‘Official Non-partisan Ballot.’

“The order in which the offices shall be listed on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided, that state, district and county judicial offices shall be listed first on the ballot in such order, followed by municipal and township offices, and by offices of member of board of education, in the order stated. * * *”

The above section was effective January 2, 1948. Prior to amendment Section 4785-101 of the General Code provided:

“On the non-partisan ballots the names of candidates shall be arranged in a group under the title of the office in the same manner as the names of candidates are arranged on the party primary ballot. If there are candidates for the same office, but for different terms, the term for which each is nominated shall be printed as a part of the title of the office. The names of candidates for each office on such ballots, including judicial and school board candidates, shall be printed in rotation as in the case of names of candidates on the party primary ballots. At the bottom of each group as many separate spaces as there are candidates to be elected shall be left blank, in which the voter may write the names of any candidates not on the ballot, but not more than the number to be elected. The order in which the list of offices on the non-partisan ballot shall appear shall be determined by the

secretary of state, and shall be transmitted to the boards of election in the several counties in his printed instructions to such boards."

Your first question reduced to its simplest terms is: Does the fact that the legislature failed to re-enact the provisions relating to blank spaces on non-partisan ballots contained in Section 4785-101, General Code, mean that no blank space or spaces should be provided on non-partisan ballots under Section 4785-101 as amended?

The Ohio State Supreme Court has on several occasions held that the election laws of the state should be construed together in order to ascertain the legislative intent. In a Per Curiam opinion, State ex rel. Bigelow v. Butterfield et al., 132 O. S. 5 at page 6, we find the following:

"Statutes relating to elections should be construed in *pari materia*."

Further, in State ex rel. Beck v. Hummel, 150 O. S. 127 Judge Stewart at page 139 makes the following statement:

"All election statutes should be liberally interpreted in favor of the right to vote according to one's belief or free choice for that right is a part of the very warp and woof of the American ideal and it is a right protected by both the constitutions of the United States and of the state."

In light of the above statement we turn our attentions to other Sections of the election laws. Section 4785-131, effective January 2, 1948, which is the same effective date as the amended Section 4785-101 provides in part:

"In marking a non-partisan or primary election ballot the voter shall observe the following rules: * * *

"2b. If the voter desires to vote for the nomination of a person whose name is not printed on the ballot he may do so by writing such person's name on the ballot in the proper place provided for such purpose and placing 'X' in the rectangular space on the ballot at the left of the name so written. * * *"

Clearly then under this provision the legislature intended that an individual voter should have the opportunity to vote for a person whose name does not appear on the ballot. In order to do so there must be provided a space for the writing in of such name.

Further, in a very recent Ohio Supreme Court case, *Wilson v. Kennedy* 151 O. S. 485, the question was raised as to whether the amendments to the election laws effective January 2, 1948 had abolished the provisions for the so called "written in" votes on a *party column ballot*. The court in a 4 to 2 decision, one judge not participating, held that:

"* * * we are of the opinion that the name of a person written upon a ballot in a blank space provided therefor under the designation of the office to be filled * * * should be counted as a vote for the person whose name is so written at the November 2, 1948, election. * * *"

In the *Wilson* case, *supra*, there was no provision in Section 4785-131 of the General Code relative to party column ballots similar to Section 4785-131 2b which relates to the non-partisan ballot, yet in spite of such lack of express language the Court found that the legislature had not intended to abolish the provision for "write in" votes. Therefore, in view of the provisions of Section 4785-131 2b, General Code, *supra*, it is my opinion that on the non-partisan ballot blank spaces should be left on the ballot for as many candidates as are to be elected.

In considering your second question it will be helpful to consider first whether or not a blank space should be left on the *party column ballot* when no person has filed and qualified as a candidate for an office and, second, whether a blank space should be left on the *non-partisan ballot* when no person has filed and qualified as a candidate for an office.

In considering the party column ballot there is no provision in the election laws of the State of Ohio which provides that in the event no candidate has filed and qualified as a candidate the title of any office should be excluded from the ballot. On the contrary, Section 4785-99, General Code, effective January 2, 1948, provides in part:

"* * * The order in which the offices shall be listed on each ticket on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided, that for state, district and county offices the order from top to bottom shall be as follows: governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, United States senator, representative to congress at-large, representative to congress, district, senator to the General Assembly, county commissioner, county auditor, prosecuting attorney, clerk of the court of common pleas, sheriff, county recorder, county treasurer, county engineer and coroner.

“The names of candidates in each group of two or more candidates on a ballot seeking election to the same office shall be in alphabetical order.”

The above quoted section would seem to provide that at least those offices mentioned should be printed on the ballot. Further in the Wilson case, *supra*, the Supreme Court has held that the so-called “write in” method of voting is still possible on a party column ballot. In order to exercise such right there must be provided for the voter a place on the ballot where such choice is to be indicated. Therefore, I am of the opinion that on the party column ballot a blank space should be left on the ballot under the title for an office even though no person has filed and qualified as a candidate for such office.

In regard to the same question as relating to the non-partisan ballot, it is my opinion that Section 4785-131 2b, General Code, *supra*, will be determinative of the question. The phrase contained in Section 4785-131 2b, General Code, *supra*, “in the proper place provided for such purpose” can only mean that the legislature intended that a voter should have the opportunity of voting for a person other than one whose name already appears on the ballot. In order to do so a space or spaces must be provided so that the voter may indicate his choice. Therefore, it is my opinion that a blank space must be left on the non-partisan ballot under the title of an office even though no person has filed and qualified as a candidate for such office.

Respectfully,

HERBERT S. DUFFY,
Attorney General.