

1819.

APPROVAL, BONDS OF VILLAGE OF NEWCOMERSTOWN, TUSCARAWAS COUNTY—\$6,917.00.

COLUMBUS, OHIO, May 1, 1930.

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

1820.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN HAMILTON COUNTY.

COLUMBUS, OHIO, May 2, 1930.

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

1821.

ELECTION LAW—PERSON AUTHORIZED TO SIGN ALL PETITIONS OF HIS PARTY'S CANDIDATES FOR A GIVEN OFFICE.

*SYLLABUS:**A person may sign the petition provided in Section 4785-72, General Code, of more than one candidate of such person's political party for a given office.*

COLUMBUS, OHIO, May 2, 1930.

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

DEAR SIR:—Your letter of recent date is as follows:

"I will appreciate it very much if you will give me an official opinion as to the interpretation of Section 4785-72 of the General Code on the following question:

Has an elector the right to sign more than one petition accompanying the Declaration of Candidacy for the same office? Or, placing the question in other language, may an elector legally sign the petition of A as a candidate for the nomination for prosecuting attorney and then afterwards sign the petition of B who is also a candidate for the nomination for prosecuting attorney, and have the signatures on both petitions count as a part of the required number in order that the candidate may file?

If such a right is not given the elector, would such signatures invalidate the petition signed, or would simply the names signed be declared insufficient and stricken from the petition?

Or, if such signatures are stricken from the petition reducing the number

of signatures below one hundred, would either or both petitions be invalid? In other words, both A and B running for prosecuting attorney file their declarations and petitions with said petitions each containing one hundred signatures; five electors have signed both petitions. Would both petitions stand? Or, would the five names be stricken off either or both petitions? And if stricken off, would the petitions be declared invalid and the candidate's name not printed on the ballot?

Inasmuch as this question has arisen in several counties over the state and must be answered by the Boards of Elections, I would appreciate a ruling at the earliest possible moment."

Section 4785-70, General Code, provides that a person desiring to become a party candidate by the method of declaration shall file with his declaration of candidacy a petition signed by a prescribed number of electors of his party, the number depending upon the office which the candidate seeks.

Section 4785-72, General Code, to which you refer, sets forth the form of petition required by Section 4785-70. This section, insofar as is pertinent, provides:

"Attached to each declaration of candidacy shall be a petition signed by the required number of electors, as follows:

PETITION FOR CANDIDATE

We, the undersigned, qualified electors of the State of Ohio, and of the county, (city, district, township, ward and precinct) set opposite our names, and members of the.....party, hereby certify that.....who resides at.....city (or township) of.....in the county of.....and who is a candidate for the office (or position) of.....to be voted for at the primary next hereafter to be held, and whose declaration of candidacy is herewith filed, is a member of the.....party, and is, in our opinion, well qualified to perform the duties of the office for which he is a candidate.

Signature Residence Municipality (or County)

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As stated in Opinion No. 1627, addressed to you under date of March 18, 1930, "The signers of this instrument actually *certify* that the candidate is a member of a given party and is qualified for the office he seeks. There is some doubt as to whether the signers 'petition' for anything." The statute has made no requirement to the effect that the signers of these so-called petitions shall commit themselves to vote at the primary election for the candidate whose petition they have signed, unless it may be said that the legislature in designating this certificate as a "petition" contemplated that upon signing the instrument the so-called petitioner has committed himself as being in favor of the election of that particular candidate. I do not think that such an inference may be accurately drawn from the fact that the instrument has been designated as a petition, because, conceding that the instrument is a petition in the true sense of the word, the signers have only requested that the candidate's name be placed on the ballot. It is obvious that a person may be favorably impressed with the qualifications of two individuals of his political party who are candidates, for instance, for the office of prosecuting attorney, and desire that both of these individuals' names appear on the ballot at the primary elections. Under such circumstances,

there is no language in Section 4785-72, supra, which would preclude such a person from signing the petitions of both candidates.

The view that the legislature in providing the form of petition set forth in Section 4785-72, supra, intentionally omitted a provision as to a pledge to vote for the candidate at the primaries is strengthened by a consideration of Section 4785-91 of this same act, providing the form of petition to be used in the nomination of candidates for office in addition to the nominations made at party primaries. This nominating petition contains the following clause: "We individually pledge ourselves to support and vote for the above candidate for the above office at said election and that we have not signed the petitions of more candidates than there are candidates to be elected for said office."

Specifically answering your question, it is my opinion that a person may sign the petition provided in Section 4785-72, General Code, of more than one candidate of such person's political party for a given office.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1822.

HIGHWAY IMPROVEMENT—DEVELOPMENT OF LANDSLIDES—AWARDING OF EXTRA WORK CONTRACT BY HIGHWAY DIRECTOR CONSIDERED.

SYLLABUS:

Power of Director of Highways to award extra work contract discussed.

COLUMBUS, OHIO, May 2, 1930.

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

DEAR SIR:—In your recent communication you request my opinion upon the following statement of facts which you enclose:

"A contract was awarded to The H. B. Watters Company on November 30, 1928, for grading and constructing bridges and culverts on a section of highway 4.75 miles long, known as State Highway No. 7, Sections 'C', 'C-2' and 'Powhattan', located in Belmont County, between Dilles Bottom and Powhattan. The contract price was \$353,526.28, the principal item being 368,681 cubic yards of roadway excavation.

During the progress of the work several landslides developed and others were apprehended so that building the highway to the lines and grades shown on the plans for its entire length would have been very impracticable if not impossible. It has been deemed advisable by the engineers of the State Highway Department to relocate a section of the highway to avoid these landslides. The alignment has been changed at no point more than one hundred feet from the old line and the grades and type of excavation will be no more difficult but it will be necessary to haul a considerable portion of the excavated material farther than was required in the original contract. It is probable that the work as set forth on the new plan cannot be done as cheaply per cubic yard as that shown on the original plan.

The contract was awarded on a unit price basis and the standard State Highway Specifications in force at the date of the award govern.