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VOTING PRECINCT—VILLAGE SITUATED IN TWO OR MORE TOWNSHIPS CAN NOT LEGALLY BE MADE INTO ONE VOTING PRECINCT—EACH PORTION OF VILLAGE LYING WHOLLY WITHIN ONE TOWNSHIP, IF NUMBER OF ELECTORS RESIDING THEREIN IS NOT SUFFICIENT TO CREATE SEPARATE PRECINCT OUT OF SUCH PORTION, MUST BE COMBINED WITH TOWNSHIP PRECINCT IT EMBRACES.

SYLLABUS:

A village which is situated in two or more townships can not lawfully be made into one voting precinct and, consequently, each of the portions of said village lying wholly within one of such townships, if the number of electors residing therein is insufficient to permit the creation of a separate precinct out of such portion, must be combined with the township precinct embracing it.

Columbus, Ohio, October 15, 1947

Hon. William A. Ambrose, Prosecuting Attorney, Mahoning County
Youngstown, Ohio

Dear Sir:

This will acknowledge receipt of your letter wherewith you inclose a letter from Mahoning County Board of Elections, addressed to you, and request my opinion on the facts and questions set out therein. Said letter reads:

“The Mahoning County Board of Elections respectfully requests an opinion from your office, and one that we can forward to the Secretary of State at his request because the problem, according to the Secretary, has never been brought to his attention before.

“In Poland Village in Mahoning County, which has a large area of Poland Township in the Village still has a small part of Boardman Township in the Village, which is a small part of Precinct No. 1 of Boardman Township and a larger part of Precinct No. 3 of Boardman Township. This part of Boardman Township in Poland Village is in the Poland Village School District, and now a question arises: Can the people living in this portion of Boardman Township and Poland Village School District go to the polling place in Poland Village No. 1, which is in the Town Hall

in Poland nearby, and must the Board of Elections at the proper elections furnish that precinct in which they reside, which is Precinct No. 1, Poland Village, ballots for Poland Village offices, Poland School District offices, and Boardman Township offices and questions and Issues, or must the people in this district go to the Boardman Township voting places, which are located in Boardman School several miles away, and must the Board then furnish Poland Village ballots, Poland School District ballots, and Boardman Township ballots to the voters?

“We would appreciate your opinion on this as soon as possible, because at the present time we do not know how to mark their registration cards properly.”

The authority to establish election precincts is conferred upon boards of elections by Section 4785-22, General Code. It is therein provided:

“* * * Each precinct shall be compact in form and shall not contain portions of two civil divisions except that a municipality may be combined with a township precinct, and the precinct election officials shall be chosen from the precinct thus formed.
* * *”

Since the above is an express inhibition against combining portions of two townships, the Board of Elections of your county is clearly without authority in law to place that portion of Poland Village situated in Boardman Township in the same precinct with that portion of said village which lies in Poland Township.

While the letter submitted by you does not expressly state that the polling place in Precinct No. 1 of Poland Village is in that part of Poland Village which lies in Poland Township, I assume such to be the case since said letter does state that the portion of said village which is situated in Boardman Township lies in Precincts 1 and 3 of said township. Therefore, since the part of Poland Village lying in Boardman Township may not lawfully be combined with the remaining portion of said village to form one voting precinct, it would appear that the people living in that part of the village which lies in Boardman Township may not lawfully vote in the polling place located in the village.

On the other hand, inasmuch as Section 4785-22, General Code, expressly provides that a municipality may be combined with a township precinct, it would seem to follow that if the number of people residing in that portion of the village lying in Boardman Township is insufficient to

permit the creation of a separate precinct out of such portion, the same must be combined with the township precincts.

While I realize that the statute provides that "a municipality" may be combined with a township precinct, I can see no reason why, under the authority thereof, "a part of a municipality" may not be combined with a township precinct. Especially would this be true in the instant case since the statute, as above pointed out, expressly prohibits the combining of the two parts of the village in question into one precinct, and inasmuch as the village in question lies in two townships, the statute likewise prohibits the combining of the entire village with a precinct in either of the townships. Consequently, unless it can be said that the part of the village which lies in Boardman Township may be combined with the precincts in said township above mentioned, the people residing in that part of the village would be disfranchised. Certainly no statute should be construed to bring about such a result if the language thereof is susceptible of any other construction.

Therefore, in specific answer to your question, you are advised that, in my opinion, the electors residing in that portion of Poland Village which lies in Boardman Township are required to vote in that precinct in Boardman Township which embraces the particular territory in Poland Village in which they reside, and it is the duty of the Board of Elections of your county to furnish each of the precincts in Boardman Township wherein part of Poland Village lies with ballots for Poland Village offices, Poland School District offices and Boardman Township offices and all questions and issues to be voted on by the electors of said village, school district and township.

Respectfully,

HUGH S. JENKINS,
Attorney General.