1941

1. PETITION—SECTION 1079-14 G. C.—FULLY APPLICABLE IN COUNTIES WHERE THERE IS NO REQUIREMENT ELECTORS BE REGISTERED TO EXERCISE PRIVILEGE OF SUFFRAGE.

2. LOCAL OPTION PETITION—SUBMITTED TO BOARD OF ELECTIONS IN 1952—TOTAL NUMBER OF ELECTORS—RIGHT OF SUFFRAGE—PETITION NOT SIGNED BY 35% OF QUALIFIED ELECTORS—VALIDITY—SECTION 4785-142 G. C.

SYLLABUS:

1. The provisions of Section 1079-14, General Code, are fully applicable in the case of counties in which there is no requirement that electors be registered in order to exercise the privilege of suffrage.

2. Where a local option petition containing only four thousand signatures has been submitted to the board of elections in 1952, under the provisions of Section 1079-14, General Code, in a county in which there is no requirement of registration of electors, and where the total number of electors who exercised the right of suffrage in such county at the November, 1951 general election as determined by the several certificates addressed to the board of elections undr the provisions of Section 4785-142, General Code, is 16,821, and where the total number of votes cast for the office of governor in such county in the November, 1950 general election is 26,-829, such petition has not been "signed by thirty-five per cent (35%) of the qualified * * * electors * * * as shown by the next preceding general election" and such petition can not, therefore, be deemed valid.

Columbus, Ohio, October 9, 1952

Hon. Thomas H. Blakely, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

I have your request for an interpretation of certain provisions of Section 1079-14, General Code, the pertinent portion of your inquiry reading as follows:

> "A petition calling for a vote on the question—'shall licensed horse-racing be prohibited throughout this county for a period of five (5) years,' has been filed with the Lake County Board of Elections.

"The petition contains 4000 signatures. Lake County is a non-registration county and the Board of Elections felt that the 3500 signatures set forth as a minimum was applicable in this situation. You will note that the section requires that the petition shall be signed by thirty-five (35) per cent of the *qualified* and *registered* electors where such qualified electors are required by law to be registered as shown by the next preceding general election. As Lake County is a non-registration county, the board of elections felt that the 35% had no application. There are several questions involved which are as follows:

"(1) Does Section 1079-14 of the General Code of Ohio apply to non-registration counties in the state?

"(2) If so, how is the minimum number of signatures on the petition to be determined?

"(3) What is the meaning of 'next preceding general election?' Section 4785-3 provides that the term 'General Election' means any election held on the first Tuesday after the first Monday in November. Does this, therefore, mean the November 1951 election? Or does Section 4785-182 apply, which provides that the total number of votes cast for the office of Governor in the next preceding years is the proper basis?

"The Lake County Board of Elections has requested that an opinion be secured from your office at the earliest possible date. As near as the writer can determine there has been no interpretation of Section 1079-14."

Section 1079-14, General Code, reads in part:

"If there shall be presented to the board of elections of any county a petition, sworn to in the manner provided by section 4785-91, General Code and signed by thirty-five per cent (35%) of the qualified and registered electors, where such qualified electors are required by law to be registered to enjoy the privilege of suffrage, as shown by the next preceding general election (but in no event shall such petition contain less than thirty-five hundred signatures of qualified electors), requesting that there be submitted at a general election or at a special election, at the discretion of the board of elections, the issue, 'Shall licensed horse-racing be prohibited throughout this county for a period of . . . (not to exceed five) years?', the board of elections shall submit such issue to the electors of said county in the manner provided by law for the submission of questions and issues. * * *"

The use of the parenthetical expression "where such qualified electors are required by law to be registered to enjoy the privilege of suffrage," is quite clearly indicative of a legislative intent that the "registration

requirement" provided for in this section is to be applicable only as to petitioners who are residents of a district in which registration is a condition of suffrage, and that such requirement is not applicable in other election districts.

It is to be observed that a contrary view would deny entirely the privilege of local option, as provided in Section 1079-14, supra, in the case of citizens who reside in districts in which registration is not a legal requirement. However, the "registration requirement" in this section clearly constitutes a statutory provision in derogation of common rights, and as such, must be strictly construed so as to limit its restrictive operation to the field which the General Assembly clearly marked out. 37 Ohio Jurisprudence, 727, Section 406.

Furthermore, it is to be borne in mind that statutes regulating public elections are to be "given a broad interpretation to secure for the citizen his right to vote." Horack's Sutherland on Statutory Construction, Volume 3, page 445, Section 7215.

When there is added to these considerations the constitutional necessity that the statute operate uniformly throughout the state, I am bound to conclude that Section 1079-14, General Code, is fully applicable in counties in which there is no requirement of registration and that in such "non-registration" counties, the statute requires only that the petitioners shall be "qualified * * * electors * * * as shown by the next preceding general election."

At this point we are confronted with a somewhat more difficult question. It is clear that in ascertaining the total number of qualified electors in the county "as shown by the next preceding general election," the board of elections will not have recourse to any records of such election as would show the number of persons who were qualified to vote therein, but who did not choose to vote. In this connection we may note the difference between the terms "elector" and "voter." These terms are defined in Section 4785-3, General Code, as follows:

> "* * * h. The term 'elector' or 'qualified elector' shall mean a person having the qualifications provided by law to entitle him to vote.
>
> "i. The term 'voter' shall mean an elector who votes at an election. * * *"

It is possible, however, to ascertain the total number of *voters* who have participated in a general election by reference to the several certificates received by the board of elections under the provisions of Section 4785-142, General Code. This section reads:

> "At the time for closing the polls the presiding judge shall by proclamation announce that the polls are closed according to law. The judges and clerks shall then, in the presence of the witnesses, count the unused ballots undetached from the ballot pad, the soiled and defaced ballots and the stubs therefor, and, after checking the number with the number of ballots originally supplied by the board to see that all ballots are accounted for, shall place them with the ballots still attached to the stubs in envelopes provided for that purpose and indicate thereon the number of each kind. *The number of electors entered and shown on the poll books or poll lists as having voted, shall then be first certified, signed by the board of judges and clerks, and shall also be placed in the space provided therefor in the report forms provided by the board.* All such envelopes containing unused, soiled or defaced ballots, together with the report accounting for all ballots, shall be returned to the office of the board with the other returns of the election." (Emphasis added.)

In this situation it becomes apparent that the board of elections would find it wholly impossible to determine, in a non-registration county, the total number of qualified electors in such a county as of a particular date, and if such be the requirement of the law, it is clear that the provision in Section 1079-14, supra, relative to a required percentage of such electors must wholly fail of application in such counties. Here we are obliged to recall, however, that to interpret a law so as to make it wholly nugatory is the last extremity to which judicial construction should go; and all statutory provisions should be construed to give effect to them to the fullest extent possible. 37 Ohio Jurisprudence, 614, 617, Sections 339 and 341.

In the instant case it is possible to give the fullest possible effect to the "thirty-five per cent" provision by an interpretation which would apply such percentage to the number of qualified electors who actually voted in the next preceding general election. Moreover, there is forceful support for such interpretation in the words "as shown by the next preceding election" as used in the statute. The General Assembly, at the time of this enactment, had presumptive knowledge of the provisions of the election laws, and must be presumed to have known that the most that

could be "shown by the next preceding general election" was the number of electors participating therein. For this reason, and to give this statutory provision its fullest possible effect, I conclude that a petition submitted to a board of elections under the provisions of Section 1079-14, General Code, can not be deemed valid unless it has been signed by a number of electors equal to at least thirty-five per cent of the electors of the county who exercised their right of suffrage in the next preceding general election.

This conclusion, it may be noted, is in complete harmony with the decision in Seesholtz v. The Village of Johnstown, 6 O.N.P. (N.S.) 187, in which a similar question was under consideration. The headnote in the reported decision in this case reads:

> "The words 'the qualified electors at the last preceding municipal election,' contained in Section 4364-20e, Revised Statutes, construed in connection with the preceding words contained in the same section, mean 'qualified electors who voted at the last preceding municipal election.'"

In the course of the opinion by Judge Brister in this case, we find the following statements (pp. 190, 191):

> "If it were necessary, therefore, in order to determine the number of persons needed upon a petition for such an election, to prove the number of qualified electors of a municipality at a given time, by evidence which under the requirements of the law would be the best evidence, such a task, while perhaps not impossible, would involve an enormous expense and, for a long time at least, would practically monopolize the time of the court. It would render a contest in a Beal law election case, in villages, impracticable. * * *
>
> "In addition to the requirement of the context that these words should be held to mean the qualified electors who voted at the last preceding municipal election, the words themselves do not require any different construction. The construction sought by plaintiff's counsel would be plausible if the language of the section were 'forty per cent. of the qualified electors *at the time of* the last municipal election.' The language 'qualified electors *at* the last preceding municipal election' means, and the court holds that it means, qualified electors who voted at the last preceding municipal election."

The expression "qualified electors *at* the last preceding * * * election" is so similar to that here involved, "qualified * * * electors * * * *as shown*

by the next preceding * * * election," that I am persuaded that the same meaning must be attributed to each of them.

As to your third question, I note that the petition in question contains only four thousand signatures. However, I am informed by the Secretary of State that the number of electors who exercised the right of suffrage in Lake County in the November, 1951 election was 16,821; and that the "total number of votes cast for the office of governor" in the county in the 1950 general election was 26,829. Accordingly, since the petition with which you are concerned contains less than thirty-five per cent of either of these figures, it clearly fails to meet the requirements of the statute, regardless of which of the two interpretations you have suggested is correct. Thus, it appears from the facts in the case here under consideration that your third question is purely academic and need not be resolved in order to determine the validity of the petition.

Accordingly, and in specific answer to your inquiry, it is my opinion that:

1. The provisions of Section 1079-14, General Code are fully applicable in the case of counties in which there is no requirement that electors be registered in order to exercise the privilege of suffrage.

2. Where a local option petition containing only four thousand signatures has been submitted to the board of elections in 1952, under the provisions of Section 1079-14, General Code, in a county in which there is no requirement of registration of electors, and where the total number of electors who exercised the right of suffrage in such county at the November, 1951 general election as determined by the several certificates addressed to the board of elections under the provisions of Section 4785-142, General Code, is 16,821, and where the total number of votes cast for the office of governor in such county in the November 1950 general election is 26,829, such petition has not been "signed by thirty-five per cent (35%) of the qualified * * * electors * * * as shown by the next preceding general election" and such petition can not, therefore, be deemed valid.

Respectfully,

C. WILLIAM O'NEILL
Attorney General