

latter one. In fact prior to the enactment of Section 5404-1 the true legal situation was that a receiver for a company reported, not under Section 5404, et seq., G. C., but under Section 5372, thereof.

It follows that the contention of counsel is correct, and that the receiver should list the property in his possession in such capacity as of the day preceding the second Monday of April. * * * The conclusion was reached that after the enactment of Section 5372-1, assignees and receivers, whether continuing the business under order of court or engaged in winding up the liquidating assets, are required to list for taxation the property in their possession on listing day.

* * * * *

Accordingly, it is my opinion that in the case under consideration the receiver is not obliged to list the personal property and other assets in his possession for taxation as of the first day of January, and may lawfully proceed at the present time to make distribution; but should any property remain in his possession or subject to his control as receiver on the day preceding the second Monday of April, it will be his duty at that time to list such property for taxation in the manner pointed out by Section 5372-1, G. C."

It is therefore my opinion that the return of personal property for taxation by the Receivers of the Virginia-Carolina Chemical Company should be made under the provisions of Section 5372-1, General Code, as of the day preceding the second Monday in April, 1926, and not under the provisions of Section 5404-1, General Code, as of the first day of January, 1926.

Respectfully,
EDWARD C. TURNER,
Attorney General.

693.

BOARDS OF EDUCATION—NOMINATION OF CANDIDATES FOR BOARD
—DIFFERENT SCHOOL DISTRICTS DISCUSSED—PRIMARY LAW
IN RELATION TO NOMINATION OF SCHOOL BOARD MEMBERS.

SYLLABUS:

1. *Under the provisions of Section 4997, General Code, nominations of candidates for the office of member of the board of education shall be made by nominating papers duly signed by not less than twenty-five electors of the school district, of either sex, for each candidate to be nominated in village districts, and in city school districts by not less than two per cent. of the electors voting at the next preceding general school election in such city school district.*

2. *Under the provisions of Section 4728-1, General Code, nominations of candidates for the office of member of the county board of education shall be made by petition signed by petitioners who shall be qualified electors residing in the county school district, not less in number than one per cent. of the electors voting at the last preceding election for members of local boards of education in the districts within the county school district, and not less in number than twenty-five in any case.*

3. *Under the provisions of Section 4951-1, General Code, nomination of candidates for member of the board of education is expressly exempted from the operation of the primary election law.*

4. *Nominations of candidates for member of the board of education in rural school districts shall be made by nominating papers duly signed by not less than twenty-five qualified electors of said rural school district for each candidate to be nominated in such rural school district.*

COLUMBUS, OHIO, July 6, 1927.

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

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“We request your opinion as to the manner in which candidates for members of the Board of Education may be nominated.”

Section 4679, General Code, classifies school districts as:

“City school districts, exempted village school districts, village school districts, rural school districts and county school districts.”

Section 4708, General Code, provides for a board of education consisting of five members for an exempted village school district and a village school district to be elected “in the manner provided by law.”

Section 4712, General Code, provides for a board of education in rural school districts to be elected at large at the same time the township officers are elected “in the manner provided by law.”

Section 4728-1, General Code, provides for the nomination of candidates for members of the county board of education, by petition, as follows:

“* * * who shall be qualified electors residing in the county school district not less in number than one per cent. of the electors voting at the last preceding election for members of local boards of education in the districts within the county school district; provided, however, that in no case shall the number of petitioners be fewer than twenty-five.”

Section 4997, General Code, provides how nominations shall be made for candidates for the office of member of the board of education as follows:

“Nominations of candidates for the office of member of the board of education shall be made by nominating papers signed in the aggregate for each candidate by not less than twenty-five qualified electors of the school district, of either sex, in village districts and in city school districts by not less than two per cent. of the electors voting at the next preceding general school election in such city school districts.”

The above section is found in Chapter 7 of the General Code relating to the nomination of candidates for public office. The first section of this chapter, 4992, General Code, provides:

“Except as provided by the preceding chapter of this title, nominations of candidates for public office may be made as herein prescribed.”

The preceding chapter referred to is Chapter 6 relating to “Primary Elections.” This last mentioned chapter provides how candidates for public offices shall be nominated.

Section 4951-1, General Code, found in this chapter, has this express provision:

“The provisions of this chapter shall not extend nor be applicable to the nomination of candidates for boards of education.”

This last mentioned section was added to the primary election laws in 110 Ohio Laws, page 144.

The above mentioned Section 4997, General Code, found in 103 Ohio Laws, page 279, was considered by the Supreme Court in the case of the *State, ex rel., Ach, et al., vs. Evans, et al.*, 90 O. S. 243, and this section was therein held to be valid and constitutional.

Upon examination of the foregoing sections of the General Code it is apparent that it was the legislative intent to remove the nomination of candidates for the office of member of the board of education from the party primary election law.

In the case of the *State, ex rel., Bloker vs. Gabel et al.*, and *The State, ex rel. Diment vs. Cabel, et al., Deputy State Supervisors of Elections*, 115 O. S., page 399, the opinion written by Chief Justice Marshall on page 401 uses this language:

“It therefore seems more reasonable to adopt the view that the Legislature intended that no candidates for board of education should be nominated at a primary election. It requires no strained interpretation or unusual meaning to be given to words to reach this conclusion, because this is in accord with the plain language of the amendment. Having removed boards of education from primary elections, it necessarily remained that nominations must be made by the only other course available, to-wit, by petition, and this subject comes clearly within the provisions of chapter 7 of title XIV.”

You are therefore advised that nominations of candidates for the office of member of the board of education shall be made by nominating papers duly signed by not less than twenty-five electors of the school district, of either sex, for each candidate to be nominated in village districts, and in city school districts by not less than two per cent. of the electors voting at the next preceding general school election in such city school district.

You are also advised that nominations of candidates for the office of member of the county board of education shall be made by petition signed by petitioners who shall be qualified electors residing in the county school district, not less in number than one per cent. of the electors voting at the last preceding election for members of local boards of education in the districts within the county school district, and not less in number than twenty-five in any case.

You are also advised that under the provisions of Section 4961-1, General Code, the Legislature has expressly provided that the chapter relating to primary elections “shall not extend nor be applicable to the nomination of candidates for board of education” and that under the opinion of the Supreme Court announced in 113 O. S., page 399, *supra*, the Legislature “having removed boards of education from primary elections it necessarily remains that nominations must be made by the only other course available, to-wit, by petition,” and that this provision applies to rural school districts as well.

Respectfully,
EDWARD C. TURNER,
Attorney General.