

The Supreme Court disposed of the case in the following language:

"It is ordered and adjudged that the demurrer to the petition be, and the same hereby is, sustained, on authority of *State, ex rel., McCrehen, v. Brown, Secretary of State*, 108 Ohio St. 454, 141 N. E. 69; and relator not desiring to plead further it is therefore ordered and adjudged that the writ of prohibition prayed for be, and the same hereby is, denied."

It is therefore my opinion that where the Secretary of State has once complied with the provisions of the last paragraph of Section 5175-29h of the General Code by having mailed to the board of deputy state supervisors of election of each county, from which there appears names of electors on any part petition filed with him, the part petitions containing the signatures of electors from that county, and the same are returned to him by said boards, with a certificate of the total number of sufficient signatures thereon, he is without authority again to return said part petitions to said local boards, and your first question should therefore be answered in the negative. This answer to your first question renders unnecessary an answer to your second question.

The Legislature having by law provided for the examination of initiative and referendum petitions by local boards and for testing the form and other constitutional requirements of such petitions through the local Common Pleas Courts, ample opportunity was afforded by law for the enforcement and protection of all rights existing under the constitutional provisions above referred to.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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857.

DISAPPROVAL, BONDS OF MEAD TOWNSHIP, BELMONT COUNTY,  
\$18,000.00.

COLUMBUS, OHIO, August 11, 1927.

In re: Bonds of Mead Township, Belmont County, Ohio, \$18,000.00.

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

GENTLEMEN:—I have examined the transcript of the proceedings of the Board of Township Trustees and other officers of the above township relative to the above bond issue, and find that among the bids submitted for the purchase of said bonds was that of W. L. Slayton & Company of Toledo, Ohio, of par, accrued interest to date of delivery and a premium in the sum of \$291.00, which was the highest bid. At a special meeting of the Board of Trustees held on July 16, 1927, the bid of Slayton & Company was rejected because the same contained the following language:

"If the bonds are awarded to us you are to furnish us promptly with a certified transcript of proceedings showing a legal issuance, sale and delivery of these bonds to us in accordance with law in the opinion of Messrs. Squire, Sanders & Dempsey, Attorneys, at Cleveland, Ohio, or the Attorney General of the State of Ohio."

The bid of the Davies-Bertram Company of Cincinnati, Ohio, of par, accrued interest and a premium in the sum of \$279.00, being the next highest bid, was accepted.

In the case of *State ex rel Ryan, et al. vs. Patton*, 109 O. S. 208, it was held that a bid which contains a qualification that the board shall furnish "a certified transcript showing said bonds to be legally issued in accordance with Section 7630-1 of the General Code of Ohio" is not unconditional or unlawful. The fact that in the instant case the bidder specified that the legality of the issue should rest in the opinion of a certain firm of attorneys or the Attorney General of Ohio does not in my opinion, in view of the decision in the Patton case, supra, make said bid a conditional bid. As stated in the opinion in the Patton case on page 211 "full compliance with the terms of the bid could in any event be compelled upon a showing that the proceedings were entirely regular and in full compliance with the section of the statutes, notwithstanding the language which the board found objectionable; and on the other hand if that language had been omitted from the bid performance could not have been compelled if the proceedings lacked regularity and legality."

The practicable way of determining the legality of an issue of bonds in the first instance is to submit the transcript of the proceedings to an attorney for examination. Should he advise the purchaser to reject the issue because in his opinion it was illegal and should the legality of the issue be established in a proper court the contract of sale could still be enforced in said court.

The language contained in W. L. Slayton & Company's bid is in my opinion mere surplusage and is not such a condition as will make the bid a conditional bid.

The bids were not awarded to the highest bidder and I am therefore compelled to advise you not to purchase the above issue of bonds.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

858.

ELECTION—NOMINATING PETITIONS NEED NOT BE SIGNED IN INK OR INDELIBLE PENCIL.

SYLLABUS:

*Nominating petitions under Chapter 7, Title XIV, of the General Code of Ohio, need not be signed in ink or indelible pencil.*

COLUMBUS, OHIO, August 12, 1927.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

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

"Please advise whether or not the election laws require petitions to be signed either in ink or indelible pencil.

Your immediate reply will be appreciated."