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ELECTION — BALLOT — NOMINATING PETITION — ENSUING PRIMARY ELECTION — WHERE IDENTITY OF PERSON NOT QUESTIONED, SIGNATURE IS VALID, IF NAME SIGNED AS PERSON IS COMMONLY KNOWN — CANDIDATE, COUNCILMAN, COLUMBUS — “FRANK H. KEARNS” NAME TO APPEAR ON BALLOT, NOTWITHSTANDING NAME REGISTERED “FRANCIS H. KEARNS”.

SYLLABUS:

1. *Where a person whose identity is not questioned and who is commonly known as “Frank H. Kearns” signs an acceptance of candidacy for the office of councilman of the city of Columbus as “Frank H. Kearns”, the nominating petition of such person, if regular in all other respects, is valid, even though such person is registered in the name of “Francis H. Kearns.”*

2. *In such case, the name which is to appear on the ballot in the ensuing primary election should be “Frank H. Kearns”.*

Columbus, Ohio, August 1, 1941

Hon. John E. Sweeney, Secretary of State,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Board of Elections of Franklin County, Ohio, has before it the petition of ‘Frank H. Kearns’ for the office of member of City Council. The Board finds that Mr. Kearns is registered as ‘Francis H. Kearns’ and it desires an opinion as to whether the petition is a qualified one and if so whether the name of said candidate shall appear on the ballot as Frank H. Kearns or Francis H. Kearns.

Mr. Kearns has submitted an affidavit to the Board of Elections which is as follows:

State of Ohio, Franklin County, ss;

'AFFIDAVIT

Frank H. Kearns, being first duly sworn, deposes and says that although his given name is Francis H. Kearns, he is known to all of his friends by the name of Frank H. Kearns; that his wife has always called him by the name of "Frank" and that his own brothers address him by the name of "Frank". Further, that the persons with whom he has worked know him only by the name of "Frank" and would be confused and misled if reference was to be made to "Francis" H. Kearns.

Affiant further states that he has not at any time changed his name from "Francis" to "Frank" and that during his entire life he has been called "Frank".

Affiant further says that if his name were to appear on the ballot as "Francis" H. Kearns rather than "Frank" H. Kearns, a considerable number of persons would be misled and might hesitate to vote for him, fearing that they were voting for some person other than Frank H. Kearns with whom they are acquainted.

Affiant says that if his name does not appear on the ballot as "Frank H. Kearns" the voters of the City of Columbus will be deceived.

Further affiant saith not.

Frank H. Kearns.

Sworn to before me and subscribed in my presence this 22nd day of July, 1941.

Grace Alkire Notary Public,
Franklin County, Ohio.

We will ask you therefore to please favor us with your opinion relative to Mr. Kearns' candidacy as promptly as possible, due to the fact that ballots must soon be prepared for the forthcoming primary election to be held, under the provisions of the city charter, on September 17th."

I assume that the questions contained in your letter were prompted by reason of sections 4785-70a and 4785-90a, General Code of Ohio, under the provisions of which any person who has changed his name within ten years next preceding the filing of a declaration of candidacy by him, or has changed his name within ten years next preceding his nomination, is required to have his present name followed by his former name placed upon his declaration of candidacy and the accompanying petition or nominating petition, as the case may be.

The person in question is seeking nomination for the office of councilman in the city of Columbus in the primary election to be held in such city on September 16 of this year. Said primary election and the general election to be held in November of this year in the city of Columbus are, of course, both municipal elections. It is now well settled that under the powers of local self government conferred upon municipalities by Article XVIII of the Constitution of Ohio, a municipality may provide for the conduct of municipal elections, in a home rule charter adopted by it. See *State, ex rel. French v. Taylor*, 96 O. S. page 172; *Jones v. Cleveland*, 124 O. S. page 544.

Therefore, if the city of Columbus has adopted a charter and has made provision therein for the conduct of its municipal elections, the statutory provisions above referred to would have no application to your question.

The people of Columbus, in order to exercise the right of local autonomy granted by the Constitution, adopted a home rule charter on May 5, 1914. In said charter complete and elaborate provision is made for the nomination and election of municipal officers. Section 200 thereof, which deals with nominations and elections, reads in part as follows:

“(a) Elections. A general election for the choice of elective officers provided for in this charter shall be held on the first Tuesday after the first Monday in November in odd numbered years. Elections so held shall be known as regular municipal elections. Such other elections shall be held as may be required by law or provided for in this charter.

“(b) Nominations. Candidates for all offices to be voted for at any municipal election under the provisions of this charter shall be nominated at a non-partisan primary election to be held on the third Tuesday of September in odd numbered years.”

Sections 202 and 203 of said charter, which provide for the method of nomination and acceptance by a candidate read as follows:

Section 202.

“Nomination of councilmen and other officers. Candidates for the office of city councilman, and for mayor, city attorney, auditor and clerk of the municipal court, shall be nominated only by a nonpartisan primary election. The name of any elector of the city shall be printed upon the primary ballot if there

is filed with the election authorities a petition in accordance with the following provisions, to-wit;

(a) Such petitions shall state the name and place of residence of each person whose name is presented for a place upon the ballot and that he is a candidate for the designated office of the city of Columbus, Ohio.

(b) Such petition, if for the office of city councilman, shall be signed by electors of the city not less in number than one per cent of the total number of registered electors in the city, and if for any of the other officers above named, not less than two per cent of the total number of registered electors in the city.

(c) Such petitions shall contain a provision that each signer thereto thereby pledges himself to support and vote for the candidate or candidates whose names are therein presented for a place upon the ballot, and each elector signing a petition shall add to his signature his place of residence, with street and number, and date of signing, and may subscribe to one nomination for each of the places to be filled and no more. All signatures shall be made with ink or indelible pencil.

(d) The signatures of all the petitioners need not be appended to one paper, but to each separate paper there shall be attached an affidavit of the circulator thereof stating the number of signers thereto, that each person signed in his presence on the date mentioned, and that the signature is that of the person whose name it purports to be.

(e) Such petitions shall be filed with the election authorities not less than sixty days previous to the day of such primary election."

Section 203.

"Acceptance. Any person whose name has been submitted for candidacy by such petition shall file his acceptance of such candidacy with the election authorities not later than fifty-five days previous to such primary election; otherwise his name shall not appear upon the ballot."

A careful reading of all the sections contained in said charter germane to the conduct of elections fails to reveal any provisions similar to those contained in section 4785-70a or section 4785-90a, supra. I therefore have no hesitancy in dismissing from further consideration herein the provisions of said statutes.

It will be noted that under section 202 of the Columbus charter, only the name of an elector of a city may be printed upon the primary

ballot. Therefore, the person in question cannot lawfully be nominated for or elected to the office of councilman, unless possessed of the qualifications of an elector of the city of Columbus. Obviously, if the person who filed his acceptance of candidacy and signed it in the name of "Frank H. Kearns" is duly registered, he is an elector.

There is no express provision in the charter of the city of Columbus which requires a person to file his acceptance of candidacy in the exact name that appears in the registration records. If the person who signed his name "Frank H. Kearns" on the acceptance of candidacy filed by him, is in fact the "Francis H. Kearns" duly registered as a qualified elector of the city of Columbus, it appears to me that the requirements of section 202, *supra*, are fully met. In other words, if "Francis H. Kearns" is also known as "Frank H. Kearns", there is nothing contained in the charter of Columbus, or for that matter, in the statutes of Ohio, which would prohibit him from signing his acceptance of candidacy in the latter name even though he may not have registered in that name, provided of course he is the same person who registered as "Francis H. Kearns".

A question similar to the one presented herein was under consideration in an opinion rendered by the then Attorney General, on March 17, 1932, (Opinions of the Attorney General, 1932, Vol. 1, page 387) wherein it was held:

"Where a person has registered as 'John A. Smith' and signs a nominating petition and a declaration as 'Albert Smith,' if there is no question about his identity and he is commonly known as 'Albert Smith', his signature on the nominating petition can be counted and the declaration of candidacy is valid, provided said papers are in all other respects regular."

In said opinion it is stated:

"That the Legislature did not intend to require a person signing a nominating petition or declaration of candidacy to use his name exactly as it appears in the registration records is apparent from the provisions of section 4785-42, General Code, which reads in part as follows:

'The registration form shall contain spaces for inserting the following information concerning the applicant for registration:

1. The full name, including the first and last names and

middle name, if any. In the case of married women the christian name of said woman shall be entered prefixed by the word "Mrs." In the case of single women the christian name shall be prefixed by the word "Miss."

Surely the Legislature did not intend to require the signing of the first and middle names in full or, in the case of women, the prefixing of the word 'Miss' or 'Mrs.' in the signing of the papers in question. This is more apparent from the form of primary ballot which is set forth in section 4785-80, General Code, as this form contains several names with only the initial of the middle name, and in the case of the names of women which are on this form neither of the words 'Miss' or 'Mrs.' appears."

A former Attorney General, in an opinion rendered on June 29, 1921 (Opinions of the Attorney General, 1921, page 572), held that a sheriff whose real name was "George L. Ewing" but who was commonly known as "Bob Ewing" could sign writs, processes, etc., as "Bob Ewing".

In said opinion it was said:

"It is interesting to remember that that great American soldier, Ulysses Sidney Grant, was christened 'Hiram Ulysses.' When he was appointed a cadet at West Point, by mistake his name became confused with that of his brother, by the person recommending the appointment. So that his name got upon the rolls of the military academy as Ulysses Sidney Grant and by that name he will forever be known. Another great American president was christened 'Stephen Grover Cleveland,' but in his early boyhood dropped the name Stephen and assumed that of Grover Cleveland — a name by which he will always be known. The great African explorer, Henry M. Stanley's real name was John Rowlands, James B. Taylor became Bayard Taylor; James Mathews, Brander Mathews. Mark Twain is the pseudonym or pen name of Samuel L. Clemens, and Artemus Ward, that of Charles R. Browne, George Eliot is the pen name of a woman, Mary Ann Evans.

This list might be much enlarged. Current history is not without similar examples. Woodrow Wilson, twice elected president of the United States, was christened Thomas Woodrow Wilson. At the very election, and perhaps on the same ballot by which Bob Ewing was elected sheriff of your county, there appeared a candidate for governor under his popular name of 'Vic' Donahey, though for eight years prior thereto he had been signing his name officially as auditor of state for Ohio as A. V. Donahey, 'Vic' being an abridgment of his second name.

So that your sheriff who was christened 'George L.' but elected as 'Bob' Ewing, has some very distinguished examples

among former and recent great American officials to cite in support of a claim that identity of a person, as shown by the appellation by which he is best known in the community and among his friends, may indicate whether he shall sign himself by one name or another."

In the case of State ex rel. Foster, 38 O. S. page 591, it was held:

"Where the governor and secretary of state, under section 2986 of the Revised Statutes, in canvassing the returns of votes from a congressional district, aggregate the votes returned from the county for H. L. Morey with the votes returned from the other counties for Henry L. Morey, treating the names as designating the same person, a mandamus will not be awarded requiring the votes thus aggregated to be counted as given for different persons, in the absence of an averment that the votes were intended for different persons."

In the instant case it is not claimed that Frank H. Kearns is in fact a different person from Francis H. Kearns and certainly the Board of Elections is not bound to assume such to be the case without reference to what the fact might be. It is the identity of the person signing the acceptance of candidacy that should be looked to rather than the name used by him when signing.

You also ask whether the name of Mr. Kearns should appear on the ballot as "Frank H. Kearns" or "Francis H. Kearns". In section 204 of the Columbus charter, which provides for the form of primary ballot, it is stated:

" * * * there shall appear the names of candidates, actually seeking nomination, and the number of places to be filled, etc."

From the facts submitted, it appears that the petition which was filed bore the name of "Frank H. Kearns" and that the acceptance of candidacy was signed "Frank H. Kearns". In such case, clearly the candidate seeking nomination is "Frank H. Kearns" and not "Francis H. Kearns" and, consequently, the name which is to appear on the ballot should be "Frank H. Kearns."

In view of the above you are therefore advised that if there is no question about the identity of Mr. Kearns, and if in fact the person who signed the acceptance of candidacy as "Frank H. Kearns" and the per-

son who registered as "Francis H. Kearns" are one and the same, it is my opinion that his petition if regular in all other respects, should be filed with the Board of Elections and the name of "Frank H. Kearns" should be placed on the ballot to be voted on at the primary election held in Columbus on September 16, 1941.

Respectfully,

THOMAS J. HERBERT,

Attorney General.