

Perry School Township, 162 Ind., 310, 70 N. E., 246; Holton vs. Board of Com'rs. of Mecklenburg County, 93 N. C., 430; * *

The syllabus in the Kerr case holds:

'Section 1, Article 10, of the state Constitution, requiring uniformity and equality in the rate of assessment and taxation of property, deals only with the rate of assessment and taxation. * * *'

The second proposition of the syllabus of the Holton case reads:

'The provisions of the Constitution requiring taxes to be uniform, apply to the levying and payment of taxes, and not to the distribution of the revenue arising therefrom.'

The following were the facts in the Holton case: The Legislature passed an act authorizing a county to be divided into suitable road districts, but providing that no incorporated city nor town should be embraced in such district. It further provided that a tax might be levied for road purposes on all the property in the county, including that situated in cities and towns, and that the revenue arising therefrom should be divided among the road districts, not according to the number of miles in such district, but according to the amount of work needed on such roads. In an action by the resident of a city to restrain collection of the tax on his property, it was held: (1) That the tax was uniform. (2) That the tax could be levied on the property situated in cities and towns."

The Legislature in this case having made the township the taxing unit, and authorizing a levy on all the taxable property within the township for the relief of the poor, I am of the opinion, in the light of the decision of the Supreme Court in the case of *Miller vs. Korns*, supra, that the tax is valid and constitutional and that it may be levied on all the taxable property within the township, including the property lying within a municipality within the township.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1042.

NOMINATING PETITION—ELECTOR SIGNING PETITION CANNOT
WITHDRAW AFTER SAME IS FILED WITH ELECTION BOARD.

SYLLABUS:

Under the provisions of Section 5001, General Code, each signer of a nominating petition thereby pledges himself to support and vote for the candidate or candidates whose nominations are therein requested, and such elector signing such nomination paper may not withdraw his name therefrom after the same is duly filed with the board of deputy state supervisors of elections.

COLUMBUS, OHIO, September 22, 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 are enclosing herewith a letter from Chas. A. Uphaus, Clerk, Deputy State Supervisors of Elections of Putnam County, Ohio.

We desire your opinion as to whether names may be withdrawn from declarations of candidacy and nominating petitions after said declarations and petitions have been filed with the Board of Deputy State Supervisors of Elections."

Accompanying your letter and to which you refer, is a letter from the clerk of the board of deputy state supervisors of elections of Putnam County, which reads as follows:

"A nomination petition was filed with this board in due time and with sufficient signatures. Late on the evening of the last day to file (at 8:45 P. M.) four requests were received in writing, signatures acknowledged by a notary, asking that their names be withdrawn as signatures to said petition. No reason was given why they were withdrawn. Can a protest now be filed against such petition on the ground of insufficient signatures? The Prosecuting Attorney holds that such signatures can be withdrawn. If so then it would be an easy matter to make almost any petition illegal.

The board would like to have your opinion."

Section 7, Article V of the Constitution of Ohio as amended in 1912, so far as pertinent, provides as follows:

"All nominations for elective state, district, county and municipal officers, shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality."

In accordance with this section of the Constitution the Legislature is empowered to pass laws providing for nominations by petition.

Section 4996, General Code, is as follows:

"Nominations of candidates for any elective office in any township or in any municipality which at the last preceding federal census had a population of less than two thousand may be made by petitions, signed in the aggregate for each candidate by not less than twenty-five qualified electors of such township or village. Nominations of candidates for any elective office in municipalities which at the last preceding federal census had a population of two thousand or more may be made by petition signed for each candidate by qualified electors of such municipality or ward thereof, not less in number than one for each one hundred persons who voted at the next preceding general election held in said municipality or ward."

Section 5001, General Code, provides as follows:

"Such nomination papers shall contain a provision to the effect that each signer thereto thereby pledges himself to support and vote for the candidate or candidates whose nominations are therein requested. Each elector sign-

ing a nomination paper shall add to his signature his place of residence and may subscribe to one nomination to each office to be filled and no more."

It was held that the above section was constitutional and did not unduly or unreasonably restrict the elective franchise in the case of *State ex rel. vs. Poston*, 59 O. S. 122, affirming *State ex rel. vs. Poston*, 58 O. S. 620.

Section 5005, General Code, provides as follows:

"When so filed, certificates of nomination and nomination papers shall be preserved and be open, under proper regulations, to public inspection. If in apparent conformity with the provisions of this chapter, they shall be deemed to be valid unless objection thereto is duly made in writing within five days after the filing thereof."

Section 5010, General Code, is as follows:

"If a person nominated as herein provided die, withdraw, or decline the nomination, or if a certificate of nomination is insufficient or imperfect, the vacancy thus occasioned, may be filled or the defect corrected in the manner required for original nominations. Such nomination to fill a vacancy, or corrected certificate must be certified to the secretary of state at least thirty days or to the board of deputy state supervisors at least twenty-five days previous to the day of election. If when the original nomination was certified, there was certified a committee authorized to represent the party, as herein provided, it may fill such vacancy."

It will be noted that the above section provides for the withdrawal of a candidate or the declination of the nomination by a candidate. It also provides for the correction of the certificate of nomination if it is insufficient or imperfect. It provides that this should be done in the manner required for original nominations. The next Section, 5011, General Code, provides for the manner in which the certificate in such case shall be made.

The only express authority for the withdrawal that I am able to find is that for the candidate himself, mentioned in Section 5010, *supra*. After the nominating petition is regularly made up and filed with the board of deputy state supervisors of elections, we find no provision authorizing the signer to withdraw his name from the petition, and for reasons that seem to be apparent. If the signers on a nominating petition were to be permitted to withdraw their names after such petition was duly filed, the door would be open to the gravest kind of fraudulent practice, for all that would be necessary to prevent the nomination of a certain candidate would be for the opponents of such candidate to sign his petition, and then, after its filing, withdraw their names leaving the petition without the number of names required by law.

For the reason that each signer pledges his support to the candidate whose petition he signs, because there is no statute authorizing such withdrawal, and because after the petition is duly filed it is beyond the control of any or all of the individual signers, it is my opinion that after a nominating petition is regularly filed with the board of deputy state supervisors of elections a signer of same may not withdraw his signature therefrom.

Respectfully,
EDWARD C. TURNER,
Attorney General.