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IDENTIFICATION OF AN ELECTOR FOR ELIGIBILITY TO SIGN A COUNTY CHARTER COMMISSION PETITION— ART. X, S. 4, O.C., ART. V, S. 1, O.C., ART. II, S. 1 AND 1a, O.C.— §§3501.01, 3503.01, 3503.06, R.C.

SYLLABUS:

1. Every person who has the qualifications of an elector under the provisions of Section 1 of Article V, Ohio Constitution, and Section 3503.01, Revised Code, is a qualified elector within the purview of Section 4 of Article X, Ohio Constitution, and such person is eligible to sign a county charter commission petition under said Section 4.

2. In determining whether the signers of such a county charter commission petition are electors of the county within said Section 4, the board of elections should consider only whether the signers are qualified electors within the meaning of Section 1 of Article V, Ohio Constitution, and Section 3503.01, Revised Code; and the provisions of Section 3503.06, Revised Code, requiring that in registration precincts only registered electors may sign certain petitions, do not apply to the signers of a county charter commission petition.

3. The fact that signatures affixed to a county charter commission petition under Section 4 of Article X, Ohio Constitution, have been written with a lead pencil, does not render such signatures invalid.

4. Where a "Mary Jones" signs such a petition "Mrs. John Jones," said Mary Jones also being known as Mrs. John Jones by reason of marriage, the signature is valid if the person in question meets the qualifications of an elector, and there is no fraud.

Columbus, Ohio, October 30, 1962

Hon. Paul R. Young, Prosecuting Attorney
Montgomery County, Dayton 2, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“This office has been requested by the Montgomery County Board of Elections to answer certain questions that have arisen from the initiative petition filed with the local board. It appears to this office that the questions raised are a matter of statewide concern and interest and should be answered by a responsible party whose opinion would have statewide effect.

“The request from the local board of elections is contained in a letter addressed to me and set out in full as follows :

“ ‘Dear Sir :

“ ‘Mr. Charles Fox has asked us to secure a ruling from you on the following :

“ ‘When “Mary Jones” signs her name “Mrs. John Jones”, is the signature valid?

“ ‘Are signatures in lead pencil considered valid?

“ ‘What constitutes a qualified elector?

“ ‘These points arose specifically from the Charter Commission Petition filed recently. The accompanying Resolution from the County Commissioners read in part: “. . . that the question ‘Shall a County Charter Commission be chosen’ be placed on the ballot by the Board of Elections for the election to be held November 6, 1962, provided nevertheless that if there is not sufficient *valid* signatures on said petitions to qualify under Article X of the Constitution of the State of Ohio, then this resolution shall be void.”’

“These questions arose from the filing of an initiative petition with the board of county commissioners to place upon the ballot the question of a Charter form of government pertaining to Montgomery County. The Board of County Commissioners forwarded the petitions to the local board of elections for certification of the petition signers to be qualified as electors within the meaning of the statute concerning home rule government. The local board of elections deleted certain names for the reasons embodied in the letter forwarded to me.

“The authority of the local board of elections to delete names for those reasons appears to be embodied in the state statutes

pertaining to nominations for a political office. There appears to be no direct statutory authority for the board of elections to delete names for any reason on initiative petitions other than initiative petitions concerning a state-wide law or constitutional amendment, as provided in Chapter 3519 of the Ohio Revised Code. However, Article X Section 4 of the Constitution of Ohio, 1851, states that 'or upon petition of ten per cent of the *electors* of the county' shall be sufficient to place the issue upon the ballot. This constitutional provision implies that there shall be some determination as to the legal meaning of the word electors. Inasmuch as the state statutes concerning elections and electors do not specifically mention an initiative petition as described in Article X Section 4, the question is whether or not a local board of elections shall utilize the general state statutes concerning petitions in their determination of electors under Article X Section 4 of the Constitution of Ohio."

1. The issue of whether or not a county charter commission shall be chosen is submitted to the voters under the procedure established by Section 4 of Article X, Ohio Constitution, which reads as follows:

"The legislative authority of any charter county or the board of county commissioners of any other county may by a two-thirds vote of its members, *or upon petition of ten per cent of the electors of the county* shall forthwith, by resolution submit to the electors of the county the question, 'Shall a county charter commission be chosen?' The question shall be voted upon at the next general or primary election, occurring not sooner than sixty days thereafter. The ballot containing the question shall bear no party designation, and provision shall be made thereon for the election from the county at large of fifteen electors as such commission if a majority of the electors voting on the question shall have voted in the affirmative. Candidates for such commission shall be nominated by petition of one per cent of the electors of the county, which shall be filed with the election authorities not less than forty days prior to such election. Candidates shall be declared elected in the order of the number of votes received, beginning with the candidate receiving the largest number, but not more than seven candidates residing in the same city or village may be elected. Within ten months after its election such commission shall frame a charter for the county or amendments to the existing charter, and shall submit the same to the electors of the county, to be voted upon at the next general election occurring not sooner than sixty days after such submission. Amendments to a county charter may also be submitted to the electors of the county in the manner provided in this section for the submission of the question whether a charter commission shall be chosen, to be voted upon at the first general election occurring not sooner than sixty days after their submission. The authority

which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.”

As to residence requirements provided by law, Section 3503.01, Revised Code, reads, in part, as follows:

“Every citizen of the United States who is of the age of twenty-one years or over and who has been a resident of the state one year, of the county forty days, and of the voting precinct forty days next preceding the election at which he offers to vote has the qualifications of an elector and may vote at all elections, provided that any qualified elector who in good faith moves his residence from one county to another county or from one precinct to another precinct in the same county at any time subsequent to the fortieth day preceding an election may vote at such election in the precinct from which he moved wherein his voting residence had been legally established. In any precinct where registration is required, electors who have moved from one residence to another residence within the same precinct shall be permitted to vote and the election officials shall note the change of address on the proper forms.

“* * * * * * * * *”

Thus, Section 3503.01, *supra*, provides that to be an elector a person must be a resident of the county forty days and of the voting precinct forty days next preceding the election at which he offers to vote. These requirements are added to those of Section 1 of Article V, *supra*, to constitute the full qualifications of an elector.

Since you are concerned with all of the general laws pertaining to petitions, it becomes necessary to consider that part of Section 3503.06, Revised Code, reading:

“* * * * * * * * *”

“* * * No person residing in any registration precinct shall be entitled to vote at any election, or to sign any declaration of candidacy or any nominating, initiative, referendum, or recall petition, unless he is registered as an elector.”

The question arises whether a person residing in a registration precinct, such person being qualified as an elector under Section 3503.01, *supra*, may sign a county charter commission petition if he is not registered as an elector. To resolve this question, it is necessary to determine whether a petition submitted pursuant to Section 4 of Article X, *supra*, is an initiative petition within the meaning of Section 3503.06, *supra*.

Initiative and referendum is provided for by Sections 1 and 1a of Article II, Ohio Constitution. Said Section 1a reads as follows:

“The first aforesated power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: ‘Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors.’”

Section 4 of Article X, *supra*, dealing with the county charter commission falls within the constitutional provisions relating to county and township organization, and I see no reason to term a petition filed thereunder an initiative petition. The reference in Section 3503.06, *supra*, to “initiative” can not, therefore, be deemed to apply to a county charter commission petition, said reference clearly being to an initiative petition within the purview of Section 1a of Article II, *supra*. I thus conclude that the requirement of Section 3503.06, *supra*, as to the signer of a declaration of candidacy or any nominating, initiative, referendum, or recall petition being registered as an elector, is not applicable to persons signing a petition filed under Section 4 of Article X, Ohio Constitution.

In summary, every citizen of the United States who is of the age of twenty-one years or over and who has been a resident of the state one year, of the county forty days, and of the voting precinct forty days, is a qualified elector (Section 1 of Article V, Ohio Constitution; Section 3503.01, Revised Code) and entitled to sign a county charter commission petition filed under Section 4 of Article X, Ohio Constitution; and those are the only qualifications which should be considered by a board of elections in determining whether the signer of such a petition are electors within the purview of the constitutional provision.

2. Coming to the question of whether or not a signature appearing on a petition such as the one in question is valid when affixed by lead pencil, the Constitution is silent as to the kind of writing implement re-

quired to affix signatures on such a petition. Also, I have found no provision in the statutes requiring that signatures be affixed on such a petition by any particular kind of instrument. Section 3515.261, Revised Code, requires that signatures on nominating petitions must be written in ink or indelible pencil. Section 3519.09, Revised Code, provides the same for signatures on petitions proposing constitutional amendments. A county charter commission petition is not, however, a nominating petition or a petition proposing a constitutional amendment, and is not governed by those statutes.

Accordingly, I am of the opinion that signatures on the petition in question are not invalid because of the fact that they may have been made with a lead pencil.

3. As to whether a signature appearing as "Mrs. John Jones" when affixed to a petition by "Mary Jones" is a valid signature, I can find no provision in the Constitution or the statutes which would invalidate or void such a signature. (Here I assume that Mary Jones is married and that her husband's name is John.) If the person so affixing her signature to a petition is a qualified elector under the Constitution and under Section 3503.01, Revised Code, it is, in my opinion, immaterial whether she uses her own first name in signing, or her husband's. When the name appearing on the petition is that claimed by the signer as her own, there is no fraud involved, "Mrs. John Jones" is in fact "Mary Jones," a qualified elector for the purpose of the petition, and the board of elections can identify such signature as that of the signer for the purpose of determining her qualifications as an elector, such a signature is, in my opinion, valid.

In conclusion, it is my opinion and you are advised:

1. Every person who has the qualifications of an elector under the provisions of Section 1 of Article V, Ohio Constitution, and Section 3503.01, Revised Code, is a qualified elector within the purview of Section 4 of Article X, Ohio Constitution, and such person is eligible to sign a county charter commission petition under said Section 4.

2. In determining whether the signers of such a county charter commission petition are electors of the county within said Section 4, the board of elections should consider only whether the signers are qualified electors within the meaning of Section 1 of Article V, Ohio Constitution, and Section 3503.01, Revised Code; and the provisions of Section 3503.06,

Revised Code, requiring that in registration precincts only registered electors may sign certain petitions, do not apply to the signers of a county charter commission petition.

3. The fact that signatures affixed to a county charter commission petition under Section 4 of Article X, Ohio Constitution, have been written with a lead pencil, does not render such signatures invalid.

4. Where a "Mary Jones" signs such a petition "Mrs. John Jones," said Mary Jones also being known as Mrs. John Jones by reason of marriage, the signature is valid if the person in question meets the qualifications of an elector and there is no fraud.

Respectfully,
MARK McELROY
Attorney General