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1. ELECTION TO OFFICE—INDEPENDENT CANDIDATE—MUNICIPALITY OVER 2,000 PERSONS—GENERAL ELECTION—NOVEMBER, 1953—REQUIRED TO FILE NOMINATING PETITION, SIGNED BY QUALIFIED ELECTORS OF MUNICIPALITY NOT LESS IN NUMBER THAN ONE PER CENT OF ELECTORS WHO VOTED FOR GOVERNOR AT NEXT PRECEDING GENERAL ELECTION—SECTION 4785-91 G. C.
2. INDEPENDENT CANDIDATE—ELECTION TO OFFICE OF MUNICIPAL JUDGE—GENERAL ELECTION, NOVEMBER, 1953—REQUIRED TO FILE NOMINATING PETITION—SECTIONS 1587, 9785-91 G. C.

SYLLABUS:

1. An independent candidate for election to an office in a municipality of over 2,000 persons, which office is to be voted for at the general election to be held in November, 1953, is required to file a nominating petition, pursuant to the provisions of Section 4785-91, General Code, signed by qualified electors of the municipality not less in number than one percent of the number of electors who voted for governor in such municipality at the next preceding general election.
2. An independent candidate for election to the office of municipal judge, which office is to be voted for at the general election to be held in November, 1953, is required to file a nominating petition pursuant to the provisions of Sections 1587 and 4785-91, General Code, signed by qualified electors of the district not less in number than one per cent of the number of electors who voted for governor in such district at the next preceding general election.

Columbus, Ohio, December 18, 1952

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion concerning the nomination of candidates for municipal offices, which candidates will be elected at the general election in 1953. Your request arises from the following situation:

Section 4785-90, General Code, provides that candidates for members of boards of education, township offices, and offices of municipalities having a population of *less* than 2,000 persons shall be made only by nominating petition. This section further provides that such nominating petitions shall contain signatures "not less in number than one per cent of the number of electors who voted for governor at the next preceding general election * * * in the respective school district, township or municipality," and that in no event shall such petitions contain signatures more than twice the minimum required.

Section 4785-91, General Code, prescribes the form of such nominating petitions, and Section 4785-92, General Code, provides that such petitions shall be filed at the same time as declarations of candidacy, viz: ninety days before the date of the primary election.

Your specific question concerns candidates for offices in municipalities having a population of *more* than 2,000 persons, when such candidates do not wish to file for a party nomination and participate in the primary—in other words, independent candidates who seek to be nominated by petition only. As was pointed out above, Section 4785-92, General Code, provides that such petitions shall be filed ninety days prior to the date of the primary election. The problem raised is the number of signatures which such petitions must contain. Section 4785-91 provides in part as follows:

" * * * Each nominating petition herein provided for, *except nominating petitions for candidates provided for in Section 4785-90 of the General Code*, shall be signed by qualified electors of the state, district, county or municipality in which the candidate designated therein would be a candidate for election as an officer thereof, not less in number than seven per cent of the

number of electors who voted for governor at the next preceding general election for the office of governor in the state or in the respective district, county or municipality; * * *."

(Emphasis supplied.)

Section 4785-90 which is referred to provides in part as follows:

" * * * Each nominating petition herein above provided for, [boards of education, townships, and municipalities of less than 2,000] and each nominating petition nominating a candidate for election to an office in a municipality having a population in excess of 2,000 persons as ascertained by the next preceding federal census and in which a primary election has not been held for the nomination of candidates of a political party, or in which candidates have not been nominated under the provisions of section 4785-67a, shall be signed by qualified electors of the school district, township or municipality in which the candidate designated therein would be a candidate for election as an officer thereof, not less in number than one per cent of the number of electors who voted for governor at the next preceding general election for office of governor in the respective school district, township or municipality; * * *."

(Parenthetical matter added.) (Emphasis supplied.)

Section 4785-67a, which is thus referred to provides in part as follows:

"If in any odd numbered year no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to any of the offices to be voted for at the general election to be held in such year, or if the number of persons filing such declarations of candidacy for nominations as candidates of one political party for election to such offices should not exceed, as to any such office, the number of candidates which such political party shall be entitled to nominate as its candidates for election to each such office, then no primary election shall be held for the purpose of nominating candidates of such party for election to offices to be voted for at such general election and no primary ballots shall be provided for such party, * * *."

The emphasized language in Section 4785-90, supra, referring to a primary "which has not been held," undoubtedly was inserted in reliance on the provisions of former Section 4785-92, General Code, which provided that nominating petitions for independent candidates should be filed in August. This language probably has been allowed to remain in the statute by a legislative oversight, since under the present statute it is im-

possible for a candidate filing his petitions in February to know whether a primary will be held in May.

So we are confronted with this situation: In Section 4785-91 it is provided that the petitions of independents must contain signatures equal to seven per cent of the required number, excepting candidates provided for in Section 4785-90; Section 4785-90 provides that "each nominating petition * * * in a municipality having a population in excess of 2,000 persons * * * and in which a primary election has not been held, or in which candidates have not been nominated under the provisions of Section 4785-67a, shall be signed by * * * one per cent"; and we have no way of knowing whether a May primary will be held. It is necessary to decide, therefore, whether all the petitions in question must contain seven per cent, or whether all must contain one per cent.

While the question is not free from doubt, it is my opinion that all of the petitions must be required to contain but one percent. I base this opinion on several reasons. In the first place, the literal language of Section 4785-90 referring to a primary which has not been held, applies to the February filing date. Secondly, I believe that the General Assembly, by carving an exception from the general seven per cent requirement of Section 4785-91, clearly intended to deal more liberally with municipal officers. Finally, I believe that doubtful cases construing limitations on the placing of names and issues on the ballot must always be liberally construed so as to give the electors the widest possible field of choice. Such a construction is particularly applicable in reference to elections held in odd numbered years, and in which, under the provisions of Section 4785-67a, supra, primaries are often dispensed with and the privilege of writing in is thus curtailed.

In answer to your first question, therefore, it is my opinion that an independent candidate for election to an office in a municipality of over 2,000 persons, which office is to be voted for at the general election to be held in November, 1953, is required to file a nominating petition, pursuant to the provisions of Section 4785-91, General Code, signed by qualified electors of the municipality not less in number than one per cent of the number of electors who voted for governor in such municipality at the next preceding general election.

You have also asked my opinion as to the number of electors who must sign the nominating petition of an independent candidate for muni-

cipal judge. This problem arises from the same statutes set out above, and from Section 1587, General Code, which provides in part as follows:

" * * * All candidates for municipal judge, including candidates for chief justice, may be either nominated by petition or by primary election in the manner provided for judges of the court of common pleas, provided however that in a municipality operating under a city charter candidates shall be nominated in conformity to the provisions of such city charter if provisions are made therefor, or at any municipal primary election which may be provided in such charter. The nominating petition shall be in the general form and signed, verified and filed in the manner prescribed by sections 4785-91 to 4785-94, inclusive, of the General Code."

Section 1588, General Code, provides that municipal judges shall be elected in the odd numbered years.

The first question to be answered here is whether candidates for municipal judgeships are candidates for municipal offices within the meaning of Section 4785-90, in view of the fact that Section 1587 provides that they shall be nominated "in the manner provided for judges of the court of common pleas." This matter, again, is not free from doubt, but it is my opinion that for the purposes of your questions dealing with the election laws, they must be held to be municipal officers.

In so holding I am necessarily ruling that the word "manner" as used in Section 1587 is a general term only, and does not extend to cover the particulars of the "off-year" elections in which these judges run. In this connection it should be pointed out that Section 4785-67a, referred to above, does not refer to "municipal" elections but to elections held "in any odd numbered year." Since municipal judges are clearly covered by this statute, and since it in turn is referred to by Sections 4785-90 and 4785-91, it is my opinion that municipal judges should be classified with the other municipal officers who run in the odd numbered years, pursuant to the provisions of the election statute of Ohio.

Having decided that for present purposes candidates for municipal judges are candidates for municipal offices, I believe that the reasoning set out above dealing with your first question is applicable. In answer to your second question, it is therefore my opinion that an independent candidate for election to the office of municipal judge, which office is to be voted for at the general election to be held in November, 1953, is required to

file a nominating petition, pursuant to the provisions of Sections 1587 and 4785-91, General Code, signed by qualified electors of the district not less in number than one per cent of the number of electors who voted for governor in such district at the next preceding general election.

Respectfully,

C. WILLIAM O'NEILL

Attorney General