

1761.

APPROVAL, FINAL RESOLUTION AND COOPERATIVE CONTRACT FOR
ROAD IMPROVEMENTS IN GEAUGA AND TUSCARAWAS COUNTIES.

COLUMBUS, OHIO, April 10, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1762.

FIRE CHIEF—PERSON RESIDING IN VILLAGE ONE DAY BEFORE
APPOINTMENT INELIGIBLE FOR SUCH POSITION—ORDINANCE
CONCERNING APPOINTMENTS DOES NOT AFFECT PRIOR APPOINT-
MENTS.

SYLLABUS:

1. *A man cannot be legally appointed to the position of fire chief of a village the next day after he becomes a resident thereof, for the reason that he is not an elector within the provision of Section 4389 of the General Code and its related sections.*

2. *When a village council passes an ordinance requiring the appointment of the fire chief to be approved and confirmed by council such provision would have no effect upon appointments properly made prior to the effective date of the ordinance.*

COLUMBUS, OHIO, April 11, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication which is as follows:

“Section No. 4389, G. C., reads:

‘In each village having or hereafter establishing a fire department, the head thereof shall be a fire chief, appointed by the mayor for a term of two years, and shall be an elector of the corporation.’

Question 1. May a person, a married man, who becomes a resident of a village on February 14, 1930, be legally appointed chief of the fire department on February 15, 1930?

Question 2. When a village council, by ordinance passed as an emergency measure, on February 17, 1930, provides that the fire chief shall be appointed by the mayor, with the approval and confirmation of council, does such provision apply to the person appointed on February 15, 1930, who became a resident on February 14, 1930.

Data in relation to this matter is enclosed, Sections 4785–29 and 4785–30, G. C., 113 O. L., page 320, and the case of in re: Jones Petition, 11 O. N. P. (NS) page 241, may be pertinent.”

The provisions of Section 4389, General Code, which you quote, to the effect that the chief of the fire department shall be an elector of the corporation, is to the same effect as the provision of Section 4 of Article XV of the Ohio Constitution, which provides:

"No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector: * * *"

It is generally conceded that the term elector has reference to a person who is qualified to vote under the constitution and the statutes of the State. Sections 4785-29 and 4785-30 of the General Code, as enacted in 113 O. L., page 320, and which relate to the qualifications of electors and are material to consider in connection with your inquiry, read:

Sec. 4785-29. "Every citizen of the United States who is of the age of twenty-one years or over, who possesses the qualifications herein required, shall be entitled to vote at all elections."

Sec. 4785-30. "No person shall be permitted to vote at any election unless he shall have been a resident of the state for one year, of the county for thirty days, and of the voting precinct twenty days next preceding the election at which he offers to vote except as otherwise hereinafter provided. A qualified elector who is the head of a family and has resided in the state and in the county the length of time required herein and who in good faith removes his family from one precinct to another precinct in the same political subdivision, he and the other qualified electors in his family shall have the right to vote in such precinct, provided that in the case of registration precincts they shall have corrected their registrations as herein required."

The latter part of Section 4785-30, supra, which authorizes an elector who is the head of a family who has resided in the state for one year and the county for thirty days to vote in a precinct to which he has moved from the same political subdivision, would have no application to the question before us for the reason that your inquiry is in reference to one who did not become a resident of the village until the day preceding his appointment. In other words, it would appear that the party about whom you inquire did not remove from one precinct to another in the same subdivision, but rather moved from one political subdivision to another.

An opinion of the Attorney General for the year 1920, page 13, contains an extended discussion of the right of one to qualify as a member of a school board when not a resident of the district at the time of his election. The conclusion of the Attorney General, with respect to this question, is stated in the first branch of the syllabus, as follows:

"Where a candidate for a member of a board of education receiving next to the highest number of votes in the election was not a resident of the district, he cannot legally qualify and a vacancy exists."

In the case of *State, ex rel. vs. Hathaway*, 22 O. C. C. (N.S.), 314, it was held, as disclosed by the first branch of the headnotes, that:

"The residence which is required by Section 1536-613, Revised Statutes, to qualify one to hold the office of city councilman, is the residence which is required to qualify one as an elector."

In re *Jones, etc.*, 11 O. N. P. (N. S.), 241, which considered the status of an elector with reference to registration, held, as disclosed in the first branch of the headnotes:

"The right to vote has its source in the Constitution of the State, and the statute requiring registration in no way qualifies that right. It follows, therefore, that the phrase 'qualified electors', as used in the statutes relating to local option elections, must be construed to mean an elector who is qualified to

register within the proposed residence district, and not in the more restricted meaning of one who is not only qualified to register but actually has registered."

It would therefore appear that one is not qualified to vote in a village until he has resided therein for a period of twenty days. While, as hereinbefore indicated, it has been held that it is not necessary that one be registered in a precinct wherein registration is required in order to make him an elector within the meaning of the constitution and statutes, it is believed to be imperative that he must be entitled to registration in such cases in order to become an elector. In the case you mentioned, the party under consideration was not entitled to vote at the time of his appointment for the reason that he had not resided in the municipality twenty days. Of course, if he continues to reside within such municipality for the period of twenty days it is doubtful what his status would be, for the reason that the courts have held that technical objections with reference to an officer's qualifications will not be enforced when such objections are removed after his taking office. However this may be, it must be stated as a proposition of law that a party who has resided in a village for but one day cannot be said to be an elector of that village.

In reference to the second question which your inquiry presents, relative to an ordinance passed after an appointment requiring the approval and confirmation by council of the appointment of said officer, it is evident that such a proceeding would be retroactive if applied to past transactions. It is a fundamental principle of law that acts of such character will be given a prospective operation rather than retrospective, and such acts would not apply to past performances.

Based upon the foregoing citations and discussions and in specific answer to your inquiries, it is my opinion that:

1. A married man who became a resident of a village on February 14, 1930, could not the next day be legally appointed to the position of fire chief of said village, for the reason that he was not an elector within the provision of Section 4389 of the General Code and its related sections.

2. When a village council passes an ordinance requiring the appointment of the fire chief to be approved and confirmed by council such provision would have no effect upon appointments properly made prior to the effective date of said act.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1763.

ELECTION LAW—SIGNATURES TO PETITION OF CANDIDATE FOR AN OFFICE IN DISTRICT LARGER THAN COUNTY AND LESS THAN STATE MAY BE SECURED IN ANY ONE COUNTY WITHIN SUCH DISTRICT—OPINION No. 1340, 1929, APPROVED.

SYLLABUS:

Signatures to a petition accompanying a declaration of candidacy for an office to be voted for by the electors of a district larger than a county and less than the state may be secured in any one county within such district, since there is no statutory provision as to the territorial distribution of such petitioners.