

1170

TERM "YEAR" CONSTRUED AS 365 DAYS EXCEPT LEAP YEAR WHICH INCLUDES 366 DAYS. ART. XVIII, §8 OHIO CONSTITUTION.

SYLLABUS:

The term "year," as used in Article XVIII, Section 8 of the Ohio Constitution, must be construed to mean 365 days and during a year which includes a leap year February, 366 days.

Columbus, Ohio, March 2, 1960

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

Dear Sir:

I have before me your request for my opinion which request reads as follows:

"We respectfully request your opinion concerning the interpretation to be given to the phrase underlined here below contained in Article XVIII, Section 8, of the Constitution:

'Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and *within one year from the date of its election*, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law.'

"The question becomes one of whether the 'year' is to be computed as the time elapsing between general elections, that is,

from the first Tuesday after the first Monday in November in one year through the first Tuesday after the first Monday in November of the following year, or whether the 'year' is to be computed as 365 days and in leap years as 366 days."

The question you pose is whether a year, as that term is used in Article XVIII, Section 8 of the Ohio Constitution, means twelve months, 365 days, and in leap year is 366 days, or from one general election to another general election.

While it is ordinarily the case that a year is construed to mean 365 or 366 days, it may be that the context in which that term is used necessitates a different meaning. While I have found no Ohio authority construing the meaning of a year, as found in this constitutional provision, and I have also found no direct analagous case in Ohio law, there are cases which have held that a year need not necessarily mean 365 days but may take on a meaning suitable to the intent of the people or the Legislature, as the case may be. Thus, in *Thornton vs. Boyd*, 25 Miss., 598, 604, a statute fixing the office of certain officials in "years" was interpreted to mean years as political years, i.e., from the date of one general election to the next succeeding general election. In the present case there is much merit in this interpretation of a year as a political year inasmuch as the legislative authority of any municipality must submit the question of whether a charter commission is to be chosen by the electors at the next regular municipal election not less than 60 nor more than 120 days after passage of the legislative resolution. The constitutional provision goes on to provide, however, that otherwise the question shall be submitted at a special election held within the same period of time.

Thus, it may be seen that the definition of a "year," as being from one general election to the next succeeding general election would not be appropriate if the charter resolution were to be submitted at a special election and not at the regular municipal election. For this reason it will be necessary to find some other suitable definition of a "year" other than the political year from one election to the next. Ruling out the use of a political year the only practical alternative is to define a year as 365 days and during a year which includes a leap year February, 366 days.

For this reason, I am of the opinion and you are accordingly advised that the term "year," as used in Article XVIII, Section 8 of the Ohio

Constitution, must be construed to mean 365 days and during a year which includes a leap year February, 366 days.

Respectfully,

MARK McELROY
Attorney General