

603.

## LOCAL OPTION ELECTIONS UNDER 6064-31, OHIO GENERAL CODE—MUNICIPAL CORPORATIONS NOT INCLUDED, ETC.

## SYLLABUS:

1. *A local option election in a township under the provisions of Section 6064-31, General Code, does not include municipal corporations within the township; the existence of municipal corporations within such a township is a factual matter to be determined as of the time of the election.*

2. *The election of municipal officers is not a prerequisite to the attainment of corporate status by a village.*

COLUMBUS, OHIO, May 17, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

“We will ask you to please give us your opinion as to whether or not a special election may be held in ‘Halls Corners Village’ due to the following circumstances.

Halls Corners Village was incorporated as a village on the 20th day of October, 1936, territorially being a portion of Liberty Township, Trumbull County, Ohio. Some time prior to the incorporation of the above mentioned village, petitions were filed with the Board of Elections of Trumbull County by residents of Liberty Township calling for a local option election.

On November 3, 1936, at the general election, the local option questions were submitted to all the voters of Liberty Township and upon the question, ‘Shall the sale of spirituous liquors by the glass be permitted?’ a majority of the voters voted ‘No.’ The local option election was conducted in one polling place used in common by all the voters of Liberty Township.

Section 6064-31, of the General Code, provides in part that a local option election on the sale of intoxicating liquors may be held in the ‘municipal corporation,’ or ‘a township, exclusive of any municipal corporation or part thereof therein located.’

The electors of Halls Corners Village set up the claim that, were an election held in the municipal corporation, the vote would be strongly in favor of the sale of spirituous liquors by the glass, but since they were compelled to vote upon the question as submitted to the electors of the entire township, regardless of the fact of their being an incorporated village, the result of the election was against the sale of spirituous liquors by the glass in Liberty Township. Up to the present time Halls Corners Village has not held an election of municipal officers.

The following questions were raised—

First, whether or not Halls Corners Village is bound by the result of the vote cast on the local option questions submitted at the special election of November 3rd, in the political subdivision of Liberty Township.

Second, 'Has Halls Corners Village attained the status of a municipal corporation, as this term is used in Section 6064-31, G. C., regardless of the fact that they have never elected municipal officials?'

Third, 'Would Halls Corners Village now be permitted to hold a special local option election, were they to qualify for same under the provisions of Section 6064-32, G. C., which defines such election procedure.'"

Section 6064-31 of the General Code, to which you refer, makes the following provision as to local option in a township:

"The privilege of local option as to the sale of intoxicating liquor is hereby conferred upon the electors of the following districts, to-wit:

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\* \* \*

3. A township exclusive of any municipal corporation or part thereof therein located."

Therefore this provision confines the election which was held on November 3, 1936, to that part of Liberty Township which was not occupied by municipal corporations. Whether or not the voters knew of the existence of the municipal corporation either at the time the petition for the local option election was circulated, or when the election was held, is beside the point. The sole question is, was there a municipal corporation in existence within the township at the time the election was held? Therefore, the answer to your inquiry depends upon whether or not Halls Corners Village was a municipal corporation on November 3, 1936.

Your letter does not state whether the Village was incorporated

under Section 3517 or Section 3526 of the General Code, but in either event, the election of officers is not necessary to the attainment of the status of an incorporated municipality. An examination of Sections 3525 and 3532, General Code, reveals that the election of officers is not a necessary preliminary to the attainment of corporate status by a village no matter which procedure is followed. Sections 3524 and 3525 and Sections 3530 and 3531, General Code, set forth the final requirements for incorporating a village and among them the election of officers is conspicuously absent. With these statutory provisions in mind I have no hesitancy in saying that if the other statutory requirements have been complied with the Village attained a corporate status whether or not there was an election of municipal officers. See 1925 O. A. G. 244, No. 2413.

Therefore, it is my opinion that the result of the election held on November 3, 1936, by the electors of Liberty Township did not affect Halls Corners Village. This conclusion is predicated upon an aforesaid affirmative answer to your second question, namely, that in my opinion it is not necessary that municipal officers be elected in order that the village attains the status of a municipal corporation within the terms of Section 6064-31, General Code.

In the light of the above conclusions I necessarily am of the opinion that Halls Corners Village may be permitted to hold a local option election under the terms of Section 6064-31, General Code, which confers the privilege of municipal corporations. As yet there has been no local option election in Halls Corners Village and the electors therein have the same privileges as to such local option elections under Section 6064-31, General Code, as any other municipality in which a local option election has never been held.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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604.

APPROVAL — BONDS OF NORTH OLMSTED VILLAGE  
SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO,  
\$13,000.00.

COLUMBUS, OHIO, May 18, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*