

1561.

MUNICIPAL COURT OF MARION—JUDGE HOLDS OFFICE TILL SUCCESSOR QUALIFIES AFTER 1931 GENERAL ELECTION.

SYLLABUS:

Under the provisions of the Municipal Court act of Marion, construed in connection with Section 1 of Article XVII of the Ohio Constitution and Section 4785-4 of the General Code, the present incumbent will hold office until his successor is qualified, in pursuance of the election in 1931.

COLUMBUS, OHIO, February 27, 1930.

HON. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“The Municipal Court of the city of Marion, its organization, etc., is provided for in Sections 1579-761 to 1579-812, under the provisions of General Code Section 1579-762. It is provided that one judge, to be designated as Municipal Judge and whose term of office shall be four years, shall be the judge of said court.

Under the provisions of Section 1579-765, it is provided as follows:

‘Said municipal judge shall be nominated by petition signed by not less than 300 electors of the city of Marion and Marion township, and shall be elected by said electors, in the manner that is now or may hereafter be prescribed by law for the election of judicial officers.

The first election of the municipal judge shall be held at the time of the regular county and state elections of 1926 and the term of office of such municipal judge shall commence on the first day of January next after his election, and he shall hold office until his successor is elected and qualified.’

According to our new election law which became effective on January 1, 1930, Section 4785-4 of the General Code, it is provided as follows:

‘General elections in the State of Ohio, and its political subdivisions shall be held as follows:

(d) For municipal and township officers, members of boards of education, judges and clerks of police and municipal courts, and justices of the peace, in the odd numbered years.’

Will the electors of the city of Marion and of Marion Township elect a Municipal Judge in the year 1930, as contemplated by the provisions of the original act, or will the present judge hold over until after the election in 1931?”

In considering the provisions of the act to which you refer, it clearly appears that the judge elected to the Municipal Court of the city of Marion shall hold office until his successor is elected and qualified. Therefore it would appear that construing the language which relates to the term being for four years in connection with the language to the effect that said judge shall hold office until his successor is elected and qualified, together with the provisions of Section 4785-4 of the General Code, would compel the conclusion that the judge first elected will hold office until 1931. The conclusion that I have hereinbefore reached must be correct for the reason that the act to which you refer provides that such a judge shall be elected “in the manner that is now or may hereafter be prescribed by law for the election of judicial officers.”

In my Opinion No. 488, issued under date of June 9, 1929, which had under consideration the election of judicial officers under the provisions of the Akron Municipal Court Act, it was held that:

"Under the provisions of Section 1 of Article XVII of the State Constitution, elections for all elective offices other than those for state and county offices are required to be held on the first Tuesday after the first Monday in November in the odd numbered years. In line with this constitutional provision, Section 4836, General Code, provides that all elective municipal officers and judges and clerks of police courts shall be chosen on the first Tuesday after the first Monday in November in the odd numbered years."

It would therefore seem that Section 4785-4 of the General Code, to which you refer, is simply declaratory of what the Constitution states upon the same subject. It further appears that construing the provisions of the Marion Municipal Court Act in conjunction with the constitutional provision above enumerated compels the conclusion that the judge who is the present incumbent will hold office until his successor is qualified in pursuance of the election in 1931.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1562.

BONDS—MAY BE SOLD BASED ON INTEREST RATE HIGHER THAN THAT PROVIDED IN LEGISLATION.

SYLLABUS:

Bonds may be sold under Section 2293-29, General Code, based upon a rate of interest higher than that provided for in the ordinance or resolution adopted under Section 2293-26, General Code, provided that bonds may not bear interest in excess of six per cent per annum as provided in Section 2293-8, General Code.

COLUMBUS, OHIO, February 27, 1930.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I am submitting to you the following question for your opinion.

When a school district issues bonds under authority of Sections 2293-2 and 2293-19, is the board permitted or authorized to sell these bonds for a higher rate of interest than that provided in the legislation, by reason of Section 2293-28, if the notice of sale of said bonds invites bids for a different rate of interest, in accordance with said Section 2293-28?"

Section 2293-26, General Code, being part of the Uniform Bond Act, sets forth certain provisions which must be included in the resolution or ordinance authorizing bonds, which shall be passed after having complied with the preliminary requirements set forth in the Uniform Bond Act. It is expressly stated in this section that this resolution or ordinance shall fix the rate of interest and maturity of such bonds