

For these reasons, I am constrained to approve said contracts as against the objection above noted and discussed; my approval to said contracts is evidenced by my endorsed approval thereon and upon the copies thereof.

I am herewith returning said contracts and the files therewith submitted.

Respectfully,

GILBERT BETTMAN,

Attorney General.

875.

MUNICIPALITY—QUESTIONS OF BOND ISSUE FOR DISPOSAL PLANT AND AIRPORT SUBMITTED TO VOTERS—PROPOSITIONS MAY APPEAR ON SAME BALLOT.

SYLLABUS:

A municipality may submit the question of issuing bonds for a disposal plant authorized under the provisions of paragraph 10 of Section 3939, General Code, and the question of a bond issue for a municipal airport, authorized under the provisions of paragraph 22 of the same section, upon the same ballot or paper instrument which is submitted to the voters, so long as the voter has a full and complete opportunity to separately express his wishes upon each separate question and the form provided in Section 2293-23 is clearly set forth thereon with reference to each question submitted.

COLUMBUS, OHIO, September 16, 1929.

HON. A. M. RODGERS, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication, which reads:

“At the coming election there are two bond issues to be submitted to the voters of this city, namely, disposal plant and municipal airport. The board of elections want an opinion as to whether or not these two matters can be placed on the same ballot.

I have advised that under Section 5020 of the General Code separate ballots must be had for each matter.

A member of the board of elections informs me that in the past more than one question has been placed on the ballot under authority of Section 5019 of the General Code. They desire your opinion.”

Section 5020 of the General Code, to which you refer, provides:

“When the approval of a question, other than a constitutional amendment, is to be submitted to a vote, such question shall be printed on a separate ballot and deposited in a separate ballot box, to be presided over by the same judges and clerks of election.”

Section 5020, *supra*, was under consideration in an opinion found in Opinions of the Attorney General for the year 1915, at page 630. The syllabus of said opinion reads:

“More than one question, which may be properly submitted to a vote of the people at the same election, may be placed on one ballot.”

In the facts considered by the then Attorney General, it appears that the clerk of the city council had filed with the board of elections twelve separate resolutions each providing for the issue of bonds for different municipal improvements. All of such questions were to be submitted at a special election. The specific question presented to the Attorney General was, "shall these twelve resolutions be submitted separately on one ballot or shall they be submitted on twelve separate ballots?"

It may be noted that Section 5019, General Code, to which you refer, deals especially with constitutional amendments which are to be submitted, and, therefore, has no application to the question which you present. However, the opinion of the Attorney General, above referred to, if correct, is dispositive of your inquiry unless there are more recent provisions of the Legislature which would change the rule as then announced. The following is quoted from the body of said opinion, which clearly sets forth the reasons for the conclusions reached therein:

"By the act of May 2, 1902 (93 O. L. 352), it was provided that a question of the adoption of a constitutional amendment might, under the proper action of a party convention, be placed upon a party ticket on the ballot upon which was printed the names of the candidates for office. It may be further noted that there was then no authority for placing upon the ballot containing the names of candidates for office, any other matter or question submitted to a vote of the people, and that the provisions of this act was in effect at the time of the passage of the act of April 23, 1904 (97 O. L. 241), in Section 18, of which is found the following provision:

'Whenever the approval of any question other than a constitutional amendment is to be submitted to a vote of the people, such questions shall be printed on a separate ballot and deposited in a separate ballot box to be pre- scribed over by the same judges and clerks.'

Further examinations of Section 18 of this act will disclose that the two paragraphs thereof, preceding the provision above quoted, refer solely to the form and arrangement of the ballot with reference to the names of candidates for office and party tickets thereon. So that from the context of the whole section, when it is borne in mind that nothing other than the names of candidates and constitutional amendments might then be placed upon the ballot containing party tickets, it is fairly inferable that the meaning of the phrase 'separate ballot' is a ballot separate from that on which appears such party tickets rather than a ballot separate from that on which any other question is presented.

This view is strengthened when it is observed that in the original enactment of Section 5020, General Code (97 O. L. 231), the plural form is used in the provision that 'such questions shall be printed on a separate ballot' clearly indicating the intent of the Legislature, not that each question should be upon a ballot separate from all other questions, but that all such questions be placed upon one ballot separate from that exclusively referred to in the preceding provision of that section.

Indeed, this seems clearly to have been the legislative intent in the original enactment, and so slight are the changes of the original provisions as carried into the General Code, it will not be presumed without some apparent reason therefor that any modification of the legal effect thereof was contemplated."

It is apparent that the conclusion of said opinion is logical in view of the history of the legislation which was considered therein. However, the Uniform Bond Act, enacted by the 87th General Assembly (112 O. L. 364), which outlines the method of

submitting questions to a vote of the people for the purpose of issuing bonds, in Section 2293-23 sets forth and requires the use of the following form of ballot :

“Shall bonds be issued by the-----for
 (Here insert name of subdivision.)
 the purpose of-----in the sum
 (Here insert purpose of bond issue.)
 of -----and a levy of
 (Here insert amount of bond issue.)
 taxes be made outside of the fifteen mill limitation, estimated by the county
 auditor to average-----mills for a
 (Here insert number of mills.)
 maximum period ----- years to
 (Here insert longest maturity.)
 pay the principal and interest of such bonds.

	For the Bond Issue.
	Against the Bond Issue.

”

The provisions of Section 2293-23, as above set forth, show some indication that each question is to be set forth on a separate and distinct instrument or piece of paper and that a number of questions are not to be presented to the voters upon the same instrument. In other words, if the term “ballot” means the paper instrument upon which questions are submitted, as above stated, it would seem that only one ballot is contemplated by reason of said Uniform Bond Act. Furthermore, Section 5625-17, General Code, which provides for the manner of submission of proposals to levy a tax outside of the fifteen mill limitation, expressly provides that such question “shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers.” In the provisions of the section last mentioned, there can be found argument to sustain the theory that in connection with the submission of bond proposals and questions relative to the tax levies, the Legislature, in the use of the term “ballot,” had reference to the paper instruments upon which the questions were submitted. It furthermore can be logically argued that in those instances where the Legislature intended two or more propositions to be submitted upon the same paper, it so stated.

On the other hand, in view of the expression of the Supreme Court of Ohio, in the case of *State ex rel. vs. Green, Director of Finance*, No. 21676, decided June 19, 1929, as to what constituted a ballot within the meaning of the constitution, which provides that elections shall be by ballot, it is believed that the term should not be construed in a narrow or technical sense. The first branch of said syllabus reads as follows :

“A constitutional requirement that all elections be by ballot does not invalidate an otherwise legal enactment providing for the use of voting machines in elections. The term ‘ballot’ designates a method of conducting elections which will insure secrecy, as distinguished from open or viva voce voting. *State ex rel. Karlinger vs. Board of Deputy State Supervisors of Elections*, 80 Ohio St. 471, 89 N. E. 33, 24 L. R. A. (n. s.) 188, overruled.”

Heretofore, in the Karlinger case, which was overruled, it had been held that

voting machines could not be had because the operation of the same would not be voting by ballot as required by the constitution and this case apparently was not in harmony with most of the Supreme Courts of other states upon the question.

The following is quoted from the body of the opinion of the recent decision of the Supreme Court above mentioned :

“The basis of the decisions counter to the Ohio holding is that the word ‘ballot’, as used in the Constitution, the statutes, and in political literature generally, means secret voting in contradistinction to *viva voce*, or open voting. Thus Professor John H. Wigmore, in an article in 23 American Law Review, 725, says that ‘his search has convinced him that in common usage the term *ballot* has always been used, without an adjective, to express the idea of a vote cast in such a way that its purport is unknown at the time of casting—in short, of “secret” voting.’

In Opinions of the Judges, 7 Me. 492, 495, the court stated that the ‘word “ballot” may be considered as opposed to a vote by word or by signs,’ and decided that printed ballots come within the constitutional provision requiring written votes.”

From the foregoing, while the term “ballot” may have different meanings in connection with the context in which it is used, generally speaking it may be said that the term has reference to the secret expression of a voter’s choice. Applying the latter construction to the question under consideration, it can well be said to have been the intent of the Legislature, in the enactment of the various laws relating to the submission of questions relative to bond issues, that each voter shall have the opportunity of expressing his choice upon each question submitted. In other words, a number of bond issues may not be combined in such a way that the voter will not have a full opportunity to express his wishes upon each separate question. Therefore, I am in accord with the ruling of the former Attorney General to the effect that Section 5020 of the General Code does not prevent a number of bond issues being submitted upon the same ballot or instrument. I am further of the opinion that, under the provisions of the Uniform Bond Act, a number of ballots may be submitted upon the same paper or instrument so long as in each case the form provided in Section 2293-23 is used and each issue is separate and distinct from the other, to the end that a voter may clearly express himself upon each question submitted.

You are specifically advised, therefore, that in my opinion the question of issuing bonds for a disposal plant, authorized under the provisions of paragraph 10 of Section 3939, General Code, and the question of a bond issue for a municipal airport, authorized under the provisions of paragraph 22 of the same section, may be submitted upon the same ballot or paper instrument which is submitted to the voters, so long as the voter has a full and complete opportunity to separately express his wishes upon each separate question and the form provided in Section 2293-23 is clearly set forth thereon with reference to each question submitted.

Respectfully,

GILBERT BETTMAN,

Attorney General.