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1. REDISTRICTING OF CITY WARDS UNDER 731.06, R.C. DOES NOT BECOME EFFECTIVE UNTIL NEXT ENSUING ELECTION HAS NO EFFECT ON GENERAL ELECTION FOLLOW-
2. WHEN PRIMARY ELECTION IS REQUIRED TO BE HELD FOR NOMINATION OF CANDIDATES FOR MUNICIPAL OFFICERS, THE ELECTION PROCESS BEGINS WITH SUCH PRIMARY ELECTION—
3. REDISTRICTING OF WORDS AFTER A PRIMARY ELECTION HAS NO AFFECT ON GENERAL ELECTION FOLLOWING AND DOES NOT BECOME EFFECTIVE UNTIL THE NEXT ENSUING ELECTION—§731.06, R.C.

## SYLLABUS:

1. The redistricting of wards of a city under the provisions of Section 731.06, Revised Code, does not become effective until the next ensuing election of municipal officers.
2. When a primary election is required to be held for nomination of candidates for municipal officers, the election process begins with such primary election.
3. Where city wards are redistricted under the provisions of Section 731.06, Revised Code, after a primary election was held for the nomination of ward councilmen, such redistricting has no effect on the general election following such primary election and does not become effective until the next ensuing election of municipal officers.

Columbus, Ohio, September 6, 1961

Hon. Ted W. Brown, Secretary of State  
State House, Columbus 15, Ohio

Dear Sir:

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

“I am enclosing a copy of a letter dated August 10, which I received from the Board of Elections of Jefferson County.

“In accordance with the wishes of the Board I respectfully request your opinion on the following questions:

- “(1) Are two Councilmen serving from the 5th and 6th Wards in Steubenville, who no longer live within

their respective wards as a result of re-districting and not as a result of changing their residences voluntarily, presently qualified Councilmen from said wards?

- “(2) Shall the names of three Ward candidates for City Council, which candidates were nominated at the May, 1961 Primary Election and who do not now live within the wards from which they were nominated as a result of re-districting and not due to their changing residence voluntarily, be placed on the ballot in the forthcoming general election; and if so, for what ward?

“Your earliest consideration of these questions will be greatly appreciated.”

The letter enclosed with your request reads in part as follows :

“Steubenville, a Municipality, operating under the General Statutes of the State of Ohio (not charter, commission, etc.) has nine councilmen. These are composed of six ward councilmen and three At Large. The geographical boundaries of the six wards have existed for many, many years.

“On the 7th day of March, 1961, a large area adjacent to the Sixth Ward was annexed to the City, and on the 7th day of February 1961 the Federal Census was certified to the City, thus redistricting due to disproportionate ward population was doubly necessary.

“So, redistricting was required even though the census did not evidence a total population increase to justify an additional councilman.

“Under Section R. C. 731.06, the City Council failed to act within three months, so the Service Director redistricted the City into new wards during the first few days of August 1961, which changed most of the boundaries. Former wards 1, 2, 3, 4, and 5 had their boundaries enlarged, old Ward 6 was abolished and a new Ward six was created for the newly annexed area.

“As a result, the present 5th and 6th Ward Councilmen now live in Wards other than those from which they were elected.

“Further, at the May 1961 Primary, candidates were nominated from the former 5th and 6th Ward, and as a result of the August 1961 redistricting, they no longer reside therein.

“\* \* \*

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Section 731.06, Revised Code, referred to in your letter, reads in part as follows:

“The legislative authority of a city shall, after each recurring federal census, and within three months after the issuance of the proclamation by the secretary of state of the population of the city, and when there is annexed thereto any territory containing, according to the last federal census, such number of inhabitants as will entitle the city to an additional member of the legislative authority, subdivide the city into wards, equal in number to the members of the legislative authority therein to be elected from wards. If the legislative authority fails to make such subdivision within the time required, on the application of its president, it shall be made by the director of public service. \* \* \*”

According to the information contained in your letter of request, it appears that a redistricting of the municipality in question was had in accordance with the above quoted statutory provisions long after the primary election in said city for nomination of candidates for councilmen therein was held. It is, of course, apparent that at the said election candidates were nominated for the then existing wards and only those voters who lived within the boundaries of said wards as they then existed were permitted to vote to nominate candidates within said ward. Further, the information contained in your letter indicates that all of said wards have now had their boundaries changed to some degree. If the redistricting is considered to be effective as of the date it was made, it would have the effect of abrogating the primary election for all ward councilmen since none of the nominees for ward councilmen were nominated from the redistricted wards.

The first question to be determined, therefore, is the time at which a redistricting in accordance with Section 731.06, *supra*, becomes effective.

I have been unable to find any statutory provision or decision of any court which deals directly with this question. My predecessors in office have on several occasions, rendered opinions which dealt with this matter. The syllabus of Opinion No. 117, Opinions of the Attorney General for 1927, page 188, reads as follows:

“Where, under authority of Section 4212 of the General Code, a city is redistricted and the number of wards therein is increased, the council is without authority to appoint councilmen to serve for the new wards so created. Such redistricting does not become effective until the next regular municipal election.”

At page 189 of that opinion the then Attorney General said:

“My conclusion is that the redistricting does not become operative until the next regular election and that therefore no vacancy exists at present. This must obviously be the fact, for, were it to be held otherwise, then all of the present councilmen, the boundaries of whose wards were changed in the redistricting, would no longer be officers of the municipal corporation. The inescapable conclusion is that the present council continues until the next municipal election, at which time councilmen will be elected in accordance with the redistricting already adopted.

“\* \* \*

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Opinion No. 2843, Opinions of the Attorney General for 1922, page 72, considered a question somewhat analogous to that involved herein. The syllabus of said opinion reads as follows:

“1. The additional councilmen, provided by section 4206 G.C. to meet the requirements of the increase in population in municipalities, must, in accordance with the provisions of section 4212 G.C. be elected at a regular municipal election, by the electors of the redistricted wards, created previously by council or the director of public service for that purpose.

“2. Council having failed to make provision, in conformity to the provisions of section 4212 G.C., for the additional councilmen to which the city of Mansfield is entitled under section 4206 G.C. previous to the municipal election of 1921, no provisions for the qualification of such officials as councilmen can be made until the next regular municipal election occurring in the year 1923.” (Section 4206 G.C. is now Section 731.01, Revised Code, and Section 4212 G.C. is now Section 731.06, Revised.)

In the case of *Philo Scovill v. The City of Cleveland and others*, 1 Ohio St., 126 (1853), the Supreme Court of Ohio had before it a question dealing with the effective date of a charter amendment which caused the number of councilmen of each ward in the City of Cleveland to be reduced. The pertinent part of said amendment, quoted by the court at page 129 of the *Scovill* case, *supra*, reads as follows:

“The number of councilmen for each ward, *hereafter to be elected*, at the annual charter election, shall be reduced to two, and the annual charter election of said city shall, after the present year, be held on the first Monday of April.”

Immediately following said quotation, the court said:

“No provision whatever was made for holding any elections, in the whole or any part of the city, in the year 1850. On the

contrary, by the positive terms of the act, the first election under the new division, was to be held *after* that year. Now as the principal, if not the only object, in dividing the city into wards, was for election purposes, we feel no hesitation in postponing all such provisions of the law to the time when they could be called into requisition for that purpose. We think this the obvious intention of the act, and we are sure this construction gives legitimate effect to every provision in it. This leaves the council elected March 4th, 1850, the legally constituted council of the city for that year; nor do we suppose that this alteration of the wards had any more effect upon them, than an alteration of the legislative districts of the State before the expiration of the terms of the sitting members, with a view to a future election, would have upon the latter. The object would be the same in both cases. \* \* \*

The first and second paragraphs of the syllabus of the *Scovill* case, *supra*, read as follows :

“Under the charter of the city of Cleveland, (which was divided into three wards) a Council was elected on the 4th of March, 1850, to serve for one year, consisting of three aldermen elected at large, and three councilmen in each ward, who were required to ‘reside therein.’ On the 22d of that month the Legislature amended the charter, dividing the city into four wards, and reducing the number of councilmen to two in each ward. By this division, some of the councilmen were thrown out of the wards for which they were elected. This amendment made no provision for an election under it until the next year, nor did it provide when it should take effect.

“The amendatory law had no effect upon the Council then elected. The effect of its provisions, dividing the city into wards for election purposes, must be postponed until they could be called into requisition in future elections.”

It is, of course, apparent that the situation considered by the Supreme Court in the *Scovill* case, *supra*, in 1853, is analogous to the situation which the municipality in question now finds itself.

There can be no question that the election process in the municipality involved herein had begun long before the redistricting in question was made, i.e. at this primary election. In this respect your attention is called to the following statement found at 18 American Jurisprudence, 276, Elections, Section 146 :

“\* \* \* The primary is the initial step in the system looking to the nomination of candidates whose names are to find a place on the official ballot. Its purpose is to give vitality to the consti-

tutional guaranty of a free and untrammelled ballot, for freedom of choice of candidates is no less important than freedom in expression of choice as between candidates on the final election.  
\* \* \*

See also *The State, ex rel. Campbell, v. Durbin, et al., Board of Elections of Allen County*, 81 Ohio App., 398.

While it may be argued that the council of said municipality should have been aware of the fact that a redistricting would be necessary and should have acted so as to cause said redistricting to be effective prior to the election of municipal officers held this year, such arguments are of no benefit in solving the problem herein and there is no statutory duty imposed upon council to so act.

In accordance with the above, I am of the opinion that the redistricting of wards by the service director of the municipality in question, does not become effective until such time as an election can be had for councilmen from the wards as so redistricted. A primary election, where required by law, is, of course, the beginning of such election process and, therefore, a redistricting subsequent to a primary election cannot become effective until the next ensuing primary election for municipal officers.

I realize that the foregoing conclusion will cause the people in the newly annexed area of the municipality involved to be without a ward councilman for the next two years. However, to hold otherwise would of necessity, I believe, be to hold that the primary election had in May of this year, was a nullity since those persons nominated at such election were not nominated by the electors of the redistricted wards under Section 3.01, Revised Code. This conclusion would have the effect of continuing in office the existing councilmen until the successors can be elected and qualified, thereby retaining the present councilmen in office until after the 1963 municipal election. This alternative, disfranchising the electors of the municipality, is not supported by law, and is repugnant to the public policy of the state with regard to the elector's right to vote for public officers.

Accordingly, it is my opinion and you are advised :

1. The redistricting of wards of a city under the provisions of Section 731.06, Revised Code, does not become effective until the next ensuing election of municipal officers.

2. When a primary election is required to be held for nomination of candidates for municipal officers, the election process begins with such primary election.

3. Where city wards are redistricted under the provisions of Section 731.06, Revised Code, after a primary election was held for the nomination of ward councilmen, such redistricting has no effect on the general election following such primary election and does not become effective until the next ensuing election of municipal officers.

Respectfully,  
MARK McELROY  
Attorney General