

744.

LEASE—STATE GAME REFUGE, TO STATE BY G. A. REUTER, LAND, RECOVERY TOWNSHIP, MERCER COUNTY.

COLUMBUS, OHIO, June 10, 1939.

HON. D. G. WATERS, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by G. A. Reuter to the State of Ohio, on a parcel of land in Recovery Township, Mercer County, Ohio, containing 300 acres of land, as described in said lease. By this lease, which is one for a term of five (5) years, this land is leased and demised to the state solely for state game refuge purposes; and it is noted in this connection that acting under the provisions of Section 1430-1 and other related sections of the General Code, the Conservation Council, acting through you as Conservation Commissioner, has set this property aside as a state game and bird refuge during the term of said lease.

Upon examination of this lease, I find that the same has been properly executed and acknowledged by said lessor and by the Conservation Council, acting on behalf of the state through you as Commissioner.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

745.

BOARD OF ELECTIONS—SECTION 4785-90 G. C. PROVIDES METHOD FOR NOMINATIONS OF CANDIDATES FOR ELECTIVE OFFICES — TOWNSHIP — MUNICIPALITY — POPULATION—LESS THAN TWO THOUSAND—PETITION—DIRECT PRIMARY.

**SYLLABUS:**

*Under the provisions of section 4785-90, General Code, nominations of candidates for all elective offices in any township and for all elective offices in a municipality which has according to the next preceding federal census a population of less than two thousand, shall be made by petition unless the electors of the township or of such municipality petition the board of elections for a direct primary, in the manner set forth in said section.*

COLUMBUS, OHIO, June 12, 1939.

HON. KARL H. WEANER, JR., *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"Defiance Township in this county has a population of more than two thousand. It has been requested of the Board of Elections that this township be permitted to hold a primary and not nominate by petition as provided for in Section 4785-90 of the General Code of Ohio.

QUERY: Does Section 4785-90 of the General Code of Ohio limit nominations by petitions to townships and municipalities having a population of less than two thousand or does it apply only to municipalities?"

An answer to the question propounded in your communication requires an examination and interpretation of section 4785-90, General Code (114 O. L. 692), to which you refer in your letter. Said section reads as follows:

"Nominations of candidates for members of boards of education, and for all elective offices in a township, or in municipalities having according to the next preceding federal census a population of less than two thousand, except as otherwise provided by law, shall be made only by petitions signed in the aggregate for each candidate by not less than one per cent of the qualified electors voting at the next preceding election for the office of governor in the school district, township, village or municipality; provided that no such nominating petition shall require more than five thousand or less than twenty-five signatures. In case of nominations for a district larger than a county at least one-half of the signatures shall be obtained from one-half of the several counties in such district. If the electors of any such township or municipality, except charter municipalities, shall file with the board a petition, not later than 6:30 p. m., of the sixty-fifth day preceding such primary election signed by a majority of such electors as determined by the number of votes cast in such township or municipality at the last general election, asking that candidates be nominated as party candidates in the same manner as are candidates for county offices, then all nominations of party candidates in such township or municipality shall be made in such manner."

In view of the wording of that section you seek my opinion as to whether candidates seeking elective offices in any township shall be non-

inated by petition or whether such form of nomination is applicable only to candidates seeking elective offices in a township having according to the next preceding federal census a population of less than two thousand. As to municipalities the statute needs no interpretation. It specifically provides that the nomination of candidates seeking elective offices in a municipality having according to the next preceding federal census a population of less than two thousand shall be by petition only. It follows that the provisions of said statute would not apply to municipalities having a population of two thousand or more.

Section 4785-90 was originally enacted in 1929 as part of the election laws of Ohio (113 O. L. 307, et seq.), and was in substantially the same form as it appears in our Code today. Said original section provided as follows:

“Nominations of candidates for members of boards of education, and for all elective offices in a township or in municipalities having, according to the next preceding federal census, a population of less than two thousand, except as otherwise provided by law, shall be only by petitions signed in the aggregate for each candidate by not less than one per cent of the qualified electors voting at the next preceding election for the office of governor in the school district, township, village or municipality; provided that no such nominating petition shall require more than five thousand nor less than twenty-five signatures. In case of nominations for a district larger than a county at least one-half of the signatures shall be obtained from one-half of the several counties in such district. \* \* \*”

A comparison of the original enactment with the present section reveals a difference in punctuation in the opening sentence as follows: the insertion of a comma after the word “township”, and the omission of the commas which enclosed the phrase “according to the next preceding federal census”. It must be presumed that the Legislature changed the punctuation with a definite thought in mind, namely to clarify the meaning of the statute. The language of the original enactment was not clear as to whether the phrase “having, according to the next preceding federal census, a population of less than two thousand” modified both “township” and “municipalities” or “municipalities” alone. The 1931 amendment, *supra*, however, removed that ambiguity. By giving that phrase its ordinary grammatical construction, it would appear that said phrase modifies “municipalities” alone and has no connection with “townships”.

This view is strengthened by an examination of Article V, section 7 of the Constitution of Ohio, in conformity to which section 4785-90, General Code, was enacted. Said constitutional provision reads in part as follows:

“All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality.”

The language of the provision above quoted is clear and unequivocal. It provides that there shall be no direct primaries for the nomination of any elective township officer or for the nomination of any elective officer of a municipality having a population of less than two thousand, unless petitioned for by a majority of the electors of the particular local subdivisions. In view of the fact that a general statute must conform with the Constitution, in our particular case the provisions of Article V, Section 7, *supra*, are of assistance in determining the legislative intent expressed in section 4785-90, General Code.

The construction I have given Article V, Section 7 is in accord with the position taken by a former Attorney General, as expressed in Opinion No. 303, Opinions of the Attorney General, 1915, Vol. I, pages 593, 594, as follows:

“It will be observed that in the general constitutional provision requiring that nomination shall be made at direct primaries or by petition no mention is made of township officers, while in the exception to this general provision township officers are specifically referred to. This would indicate a clear distinction between township officers and municipal officers, and that it was not intended that the phrase ‘municipal officers’ as used in the general provision should be construed to include township officers as referred to in the exception. Indeed, it may well be argued that the primary purpose of the first phrase of the exception in reference to township officers was to clear up any possible ambiguity that might arise in the interpretation of the phrase ‘municipal officers,’ and to emphasize the intent that township officers were not subject to the preceding provisions except when within the subsequent terms of section 7 of article V of the Constitution.

To my mind the phrase ‘of less than two thousand population’ modifies only municipalities and does not relate to townships. It appears that if the intent of this provision had been to limit this exception as to township officers to those townships having a population of less than two thousand, and that the prepositional phrase ‘of less than two thousand’ should relate to or modify townships, the word township would have been used as a noun

rather than as an adjective, and that the phraseology in the first instance would have been offices of a township as distinguished from township officers, and the terms placed in similar relationship to those of the latter phrase."

In arriving at this construction of section 4785-90, General Code, I am not unmindful of the word "such" appearing at the beginning of the last sentence of said section, as follows: "if the electors of any *such* township or municipality." The use of the phrase "such township" would make it appear that only townships having a population of less than two thousand were contemplated by the terms of that section. However, I feel the inclusion of that word in the present statute was an oversight on the part of the Legislature and was inadvertently allowed to remain. In view of what has been said above concerning the provisions of Article V, Section 7 of the Constitution of Ohio, I feel the position here taken is in keeping with and in nowise violates the legislative intent.

In conclusion, I am therefore of the opinion that section 4785-90, General Code, which provides for nomination by petition, applies to all elective offices in a township and to elective offices only in those municipalities having according to the next preceding federal census a population of less than two thousand.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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746.

QUIT CLAIM DEED — UNITED STATES OF AMERICA, BY SECRETARY OF WAR, TO STATE, LANDS, GALLIA COUNTY, PURPOSE, WIDENING AND RELOCATING STATE HIGHWAY NO. 7.

COLUMBUS, OHIO, June. 12, 1939.

HON. ROBERT S. BEIGHTLER, *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a proposed quit-claim deed in quadruplicate, by and between the United States of America, by the Secretary of War, and the State of Ohio by the Director of Highways, the purpose of which is to grant to the State of Ohio, under authority of Section 10 of Chapter 535 of an Act of Congress, approved June 20, 1938, certain lands situated in Gallia County, Ohio and recorded in Vol. 116, p. 337 of the deed records of said county to the State of Ohio for the purpose of widening and relocating the public highway known as State Highway No. 7.