

3021.

PRESIDENTIAL ELECTORS—NOTICE OF MEETING AND PRESENCE
OF ELECTORS—DIRECTORY ONLY.

SYLLABUS:

The provisions of Section 5171, General Code, requiring electors of President and Vice President of the United States to give notice to the Governor of their presence before twelve o'clock on the day preceding the day fixed by Congress for the election of such President and Vice President, are directory, and it is not the duty of the Governor to instruct such electors to be present and give such notice.

COLUMBUS, OHIO, December 14, 1928.

HON. VIC DONAHEY, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—I am in receipt of your recent communication which reads as follows:

“At the general election held in this State November 6th, 1928, the electors for President and Vice President were chosen. It is their duty to meet in Columbus soon to cast their votes as directed.

House Resolution 7373, also known as Public Act, No. 569, was passed at the 70th Congress, providing that the electors for President and Vice President of each state shall meet and give their votes on the first Wednesday in January, next following their appointment. The first Wednesday of January, 1929, is the second day of the month.

Ohio General Code, Section 5171, provides that each elector shall, before the hour of twelve o'clock, on the day next preceding the day fixed by Congress to elect a President and Vice President, give notice to the Governor that he is present and ready at the proper time to perform the duties of an elector.

It is the duty of our office to notify the electors chosen at the last election when to meet. I am asking you this question: Shall I instruct them to notify me of their presence on New Year's Day, a legal holiday, or will it be sufficient if they present themselves on the second day of January?”

The House Resolution, fixing the time for the meeting of electors for President and Vice President to which you refer, was adopted pursuant to Article II, Section 1, of the Constitution of the United States, which reads:

“The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

The provisions of the Ohio General Code, prescribing the manner of casting votes for President and Vice President by such electors, are found in Chapter 13 (12) of Title XIV, and, so far as they affect your question, are as follows:

Sec. 5170. “At twelve o'clock on the day appointed by the congress of the United States, the electors of president and vice-president of the United States shall meet at the state house in Columbus, and then and

there perform the duties enjoined upon them by the constitution and the laws of the United States."

Sec. 5171. "Before the hour of twelve o'clock on the day next preceding the day fixed by the law of congress to elect a president and vice-president of the United States, each elector of president and vice-president shall give notice to the governor that he is present, and ready at the proper time to perform the duties of an elector. Thereupon the governor shall deliver to each such elector a certificate of the names of all the electors."

Sec. 5172. "If any of the electors are absent, and fail to appear before nine o'clock on the morning of the day appointed for the election, the electors then present shall immediately proceed to elect by ballot in the presence of the governor, persons to fill the vacancies occurring through such non-attendance."

The above sections are in all respects substantially the same as Sections 6 and 8, originally enacted by the Legislature on February 15, 1820, entitled "An Act to provide for the election of electors of President and Vice President of the United States."

It is quite apparent that the requirement therein contained, that the electors shall report before noon of the day prior to the day fixed by Congress for the casting of ballots, is based upon the exigencies of the early stage of development in transportation and communication facilities. This is further explained by phraseology in the original enactment, which, in the codification of the Revised Statutes, was amended. What are now Sections 5171 and 5172, General Code, were originally included in Section 8 of the act which then provided that:

"* * * the Governor shall forthwith deliver to the electors present a certificate of all the names of the electors; and if on an examination thereof it should be found that one or some of said electors are absent, and shall fail to appear before nine o'clock on the morning of the day of election of president and vice president as aforesaid" * * *.

This provision contemplated a long period of travel required by the electors from the outlying portions of the State and the lack of facilities for communication by telephone or telegraph, also, perhaps the absence of newspapers of state-wide circulation which would apprise the respective electors of the identity of the other electors.

The provisions of Section 5171, General Code, are designed for the convenience of the electors and the Governor in effecting an organization, filling possible vacancies due to failure of electors to attend, and the casting of the ballots at the time prescribed by Congress. It is to be noted that no penalty or other consequence is provided for the failure of compliance with the terms of that Section. I am of the opinion that the provisions therein are, therefore, to be considered as directory rather than mandatory. The first mandatory requirement is contained in Section 5172, General Code, to the effect that upon the failure of any elector "to appear before nine o'clock on the morning of the day appointed for the election", his place may be filled by ballot cast by other electors present; and by lot in case of a tie resulting from such ballot. In other words, regardless of the failure of any elector to notify the Governor of his presence on the day preceding, his right to appear and cast his ballot as such elector, on the day fixed by Congress, is not in any wise affected.

I do not find any provision of law requiring the Governor to notify electors for President and Vice President of the United States concerning either the duty fixed by Congress for the giving of votes, or the requirement of Section 5171, General Code, in regard to being present on the preceding day and notifying the Governor. I presume that such notice is based upon a custom of propriety. This being so, there is no imperative injunction upon the Governor to notify electors in either of these respects. In view of the fact that it is my opinion that the provisions of Section 5171, General Code, are directory and that no elector will lose his right to give his vote for failure to appear on the preceding day, I see no reason why your notice to electors concerning the meeting fixed for January 2, 1928, should instruct them to notify you of their presence on New Year's day.

In view of the above, it is needless for me to point out that if any notice is given, it should advise electors that they are required to appear before nine o'clock on the morning of the day appointed for the election and fill the vacancies which may occur at that time and that it is the duty of the Governor to deliver a certificate of the names of all the electors to any of them who may apply therefor immediately after twelve o'clock on the preceding day.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3022.

APPROVAL, BONDS OF GEauga COUNTY, OHIO—\$34,300.00.

COLUMBUS, OHIO, December 15, 1928.

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

3023.

APPROVAL, NOTES OF BELMONT COUNTY, OHIO—\$167,240.00.

COLUMBUS, OHIO, December 15, 1928.

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