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A MUNICIPALITY REALIGNING A CITY'S WARDS ARE EFFECTIVE IN DETERMINING THE GEOGRAPHIC BOUNDARIES OF PRECINCTS FOR COUNTY CENTRAL COMMITTEEMEN—SUCH ARRANGEMENT HAS NO EFFECT UPON COMMITTEEMEN ELECTED PRIOR TO BOUNDARY CHANGE—§3501.18, R.C., OPINION 1680, OAG, 1950, §§3517.02, R.C., 3517.05, R.C.

SYLLABUS:

1. The action of a municipality in realigning the wards of a city pursuant to Section 731.06, Revised Code, and the action of a board of elections in rearranging the boundaries of the precincts within the county pursuant to Sections 3501.18 and 3501.21, Revised Code, are effective as determining the geographical boundaries of the precincts for the election of county central committeemen at the primary election held in the even-numbered year which next follows said rearrangement.

2. Said rearrangement and realigning has no effect upon the county central committeemen who were duly elected to said positions prior to said boundary changes and does not cause a vacancy to arise in any precinct where, as a result of said boundary change, a county central committeeman does not reside within the boundaries of the new precinct so designated.

Columbus, Ohio, September 21, 1962

Hon. Joseph Loha, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

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

"I have been requested by the Board of Elections of Jefferson County, Ohio to solicit an opinion from your office concerning the status of precinct committeemen under conditions hereinafter set forth as follows:

"1. At the May primaries of 1962, members of the controlling committees of the Democratic and Republican parties were elected for each precinct in the City of Steubenville, Jefferson County, Ohio. The City of Steubenville was redistricted by proceedings of the city in compliance with existing statutes which became effective after the May, 1962 primaries. As a result of the redistricting, a substantial change was made in the boundary lines of the six wards within the city. Thus, parts of what was formerly one ward have been added to and made a part of another.

"Because of these changes, two separate and distinct problems have arisen affecting the duly elected precinct committeemen. On the other hand, we now have committeemen who were elected as committeemen in one ward and now find themselves residing in the same precinct, but with a newly designated number in a different ward.

"Example #1:

"John Doe was elected as a committeeman in 5A Precinct of the 5th Ward. His precinct has been, by redistricting, made a part of the 1st Ward and is now numbered as 1G Precinct.

"Question: What is his status as a committeeman in 1G Precinct or in his previous precinct? Does he have any status as committeeman?

"On the other hand, we now have a more complex situation concerning committeemen whose precincts were modified and revised by the Board of Elections after the May primaries in setting up an equitable distribution of voters in the areas changed by redistricting.

"Example #2:

"Precinct 6G of the 6th Ward is now not only wholly within the 3rd Ward, but the boundary lines have been so changed that the elected committeemen no longer live within the boundary

lines of the new precinct, but find themselves living within the boundary lines of a new precinct in which there also resides other committeemen who were elected to serve in that precinct, but it too has also been changed. Thus, we now have new precincts in which more than the allotted number reside and new precincts in which no committeeman resides. The following questions are raised:

"1. What is the status of the duly elected member who now finds himself residing in a newly created precinct?

"2. What is the status of the duly elected committeeman in newly created precincts wherein more than the allotted number reside?

"Another problem for your attention and opinion concerns the status of committeemen in precincts which are modified, not by redistricting procedures, but by action of the Board of Elections since the May Primary.

"Example: 'A' Precinct of Cross Creek Township has grown and now casts over 800 votes. 'B' Precinct only casts 100 votes. The Board of Elections removed a part of 'A' Precinct and added it to 'B' Precinct so as to equalize the vote strength of 'A' & 'B' Precincts. John Smith, a committeeman, was elected in 'A' Precinct. Mary Smith was elected in 'B' Precinct. Now because of the removal of a part of 'A' Precinct, John Smith, who lives in the part removed, finds himself residing in 'B' Precinct. Thus, both John Smith and Mary Smith now live in 'B' Precinct. 'A' Precinct has no committeeman living within the new boundaries. The following questions are thereby raised:

"1. What is the status of the committeeman, John Smith, insofar as 'A' Precinct is concerned? 'B' Precinct?

"2. Does a vacancy exist in the position of committeeman in 'A' Precinct?

In considering the several specific questions raised in your request, I believe that it is necessary to a determination of each question to ascertain what effect, if any, the rearrangement of precincts by a board of elections and the realignment of wards of a city by the city has upon precinct committeemen who were duly elected by members of their party at a primary election held prior to such rearrangement or realignment.

I assume, for the purpose of this opinion, that the realignment of wards in the city of Steubenville was accomplished pursuant to the provisions of Section 731.06, Revised Code. It appears from your request that the rearrangement of precincts by the board of elections was ac-

complished pursuant to the provisions of Sections 3501.18 and 3501.21, Revised Code. Section 3501.18, Revised Code, reads as follows :

“The board of elections may divide a political subdivision, within its jurisdiction, into precincts and establish, define, divide, rearrange, and combine the several election precincts within its jurisdiction and change the location of the polling place for each precinct as often as is necessary to maintain the requirements as to the number of voters in a precinct and to provide for the convenience of the voters and the proper conduct of elections. Each precinct shall contain as nearly as practicable not more than four hundred nor less than two hundred fifty electors.

“In an emergency the board may provide more than one polling place in a precinct. In order to provide for the convenience of the voters, the board may locate polling places for voting or registration outside the boundaries of precincts, provided that the nearest public school or public building shall be used if the board determines it to be available and suitable for use as a polling place.”

From an examination of the above quoted statutory provisions as well as those found in Section 731.06, Revised Code, it appears that the municipality in question and the board of elections involved herein were acting within their authority in performing the acts set forth in your letter of request. The language of said statutes does not contain provisions which can be used in answering the questions raised in your request. It is apparent from a reading of said statutory provisions, however, that a determination on the part of the municipality with regard to the wards of a city, or of a board of elections concerning the rearrangement of precincts in a county, does not necessarily abrogate the prior election of precinct committeemen in the areas affected.

A question somewhat similar to that here concerned was considered in Opinion No. 1680, Opinions of the Attorney General for 1950, page 240, wherein the syllabus reads as follows :

“1. The requirement in Section 4785-62, General Code, that each member of a controlling committee be a resident and qualified elector of the district, ward or precinct which he is elected to represent is a continuing requirement which the member must meet in order to qualify and to hold such position.

“2. Section 4785-80, General Code, as amended by the 98th General Assembly, prohibits write-ins for the position of controlling committeeman.

“3. If due to action of a county board of elections rearranging, changing or dividing precincts, pursuant to Section 4785-22,

General Code, no qualified person has filed a petition for committeeman from the new district, and, therefore, no election can be held for the position, the controlling committee is authorized by Section 4785-65, General Code, as amended, to fill the vacancy thus created.”

It should be noted that in arriving at the above conclusion, the then Attorney General was treating a fact situation wherein he presumed that the election of precinct committeemen would be held shortly after the rearrangement of the precincts involved, but that said rearrangement would be made by the board of elections after the statutory time for filing of petitions for candidacy for precinct committeeman. At page 243 of said opinion, it is stated:

“Since the board of elections appears to be acting within the scope of its duties in changing or rearranging the precincts and the residence requirement with respect to controlling committeemen is continuing, I can not avoid the conclusion that a person who has filed a petition for controlling committeeman of the district where he is residing at the time loses his eligibility for such position if upon redistricting, in accordance with law, his place of residence is outside the district for which he has filed a nominating position.

“I realize that the situation may result where no qualified person has filed a petition for a newly arranged district; and under a recent amendment of Section 4785-80 of the General Code, prohibiting write-ins for committeemen, a vacancy in the position would thus be created. Though I am reluctant to interpret the law in such a manner as to restrict or limit a voter’s right to a free expression of his choice, I do not feel at liberty to fly in the face of clear and unequivocal statutory language. * * *

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It is, of course, apparent that if it were determined that the action of the board of elections in rearranging the precincts of a county had the effect of removing from office those county central committeemen who were duly elected by the voters in their precincts, an even more serious restriction upon the voter’s right to express his choice would result than that spoken of by my predecessor in the above quote. It is axiomatic that such a result would be repugnant to the public policy of this state and of the United States. Similarly, no citation of authority should be needed for the proposition that the free choice of the electorate should not be impaired or interfered with by the performance of a statutory duty on the part of any public board or officer, and a statutory construction reaching such result should be avoided if possible.

The purpose of having a county central committee is to carry forward the ordinary and routine activities of a political party. 19 Ohio Jurisprudence 2d, 184, Elections, Section 183. Some activities of a political party are best served by a precinct committeeman residing within the precinct wherein he was elected, but the fact that the boundaries of such precinct were changed after his election would not impair his ability to carry out his duty. Similarly, the people who elected him as their committeeman would still have available to them his representation in the county central committee even though they were residing in a geographical area which was, after his election, designated as a different precinct. These functions are controlled by the political party and not by law.

With regard to the election of precinct committeemen, the boundaries of a precinct are of importance in determining the eligibility for election of the candidate for precinct committeeman, and in determining whether a vacancy exists in such office. In this regard, attention is called to Section 3517.02, Revised Code, which reads as follows:

“All members of controlling committees of a political party shall be elected by direct vote of the members of the party, except as otherwise provided in section 3517.05 of the Revised Code. Their names shall be placed upon the official ballot and the persons receiving the highest number of votes for committeemen shall be the members of such controlling committees. *Each member of a controlling committee shall be a resident and qualified elector of the district, ward, or precinct which he is elected to represent.*”
(Emphasis added)

It will be noted from the above emphasized language that a member of the controlling committee is required to be a resident and qualified elector of the precinct which he is elected to represent. Thus, the precinct boundaries which exist at the time a committeeman is elected govern as to his qualifications to hold membership on the controlling committee. Said statutory provision does not require and in accordance with the policy enumerated above should not be interpreted to require, that a committeeman must, to retain his office subsequent to an election, reside in and be a qualified elector in a precinct other than that from which he was elected. The rearrangement of precincts described in your request would constitute, for the individuals elected, precincts other than those from which they were elected, and I am of the opinion that such rearrangement has no effect upon the previous election of a committeeman during the term for which he was elected.

As to a vacancy of a committeeman, Section 3517.05, Revised Code, reads in part as follows :

“All party committees, the selection of which is provided for in sections 3517.02 and 3517.03 of the Revised Code, shall serve until the sixth day after the date of the next party primary in the next even-numbered year. In case of vacancies caused by death, resignation, failure to elect, or *removal from the precinct*, ward, township, or district *from which a committeeman was chosen*, the controlling committee or, if authorized, the executive committee shall fill the vacancy for the unexpired term by a majority vote of the members of such committee.

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(Emphasis added)

As with the election of a precinct committeeman, the above italicized language of Section 3517.05, Revised Code, clearly provides that a vacancy in such office would be caused by the removal of such committeeman from the precinct from which he is chosen. Applying this language to the fact situation set forth in your request, it is clear that no vacancy exists in said situation since the individuals enumerated therein had not removed from the precincts in which they were chosen. The precinct from which said individuals were chosen is, of course, the precinct that existed at the time of their election. Therefore, a rearrangement of precincts subsequent to the election of a precinct committeeman does not have the effect of removing said committeeman from the precinct from which he was chosen and therefore does not constitute a vacancy in such office.

It is my opinion that the realignment of wards of the city under the provisions of Section 731.06, Revised Code, and the rearrangement of precincts in a county under the provisions of Sections 3501.18 and 3501.21, Revised Code, has no legal effect upon county central committeemen who were duly elected and qualified prior to such realignment and rearrangement. It naturally follows that the rearrangement of precincts by a board of elections of a county is not effective as to the election and qualification of county central committeemen until the primary election in the even-numbered year, which next follows such rearrangement, in accordance with Sections 3517.02 and 3517.03, Revised Code.

From the above conclusion, it appears that an answer to the specific questions raised in your request is unnecessary. Suffice it to say that any

county central committeeman who was duly elected from a precinct may retain such office so long as he remains a resident and qualified elector of the geographical area which constituted the precinct at the time he was so elected, and that a rearrangement of said geographical area cannot have the effect of causing him to lose said office. For an analogous question and reasoning, your attention is directed to Opinion No. 2500, Opinions of the Attorney General for 1961, issued September 6, 1961.

In accordance with the above, it is my opinion and you are advised :

1. The action of a municipality in realigning the wards of a city pursuant to Section 731.06, Revised Code, and the action of a board of elections in rearranging the boundaries of the precincts within the county pursuant to Sections 3501.18 and 3501.21, Revised Code, are effective as determining the geographical boundaries of the precincts for the election of county central committeemen at the primary election held in the even-numbered year which next follows said rearrangement.

2. Said rearrangement and realigning has no effect upon the county central committeemen who were duly elected to said positions prior to said boundary changes and does not cause a vacancy to arise in any precinct where, as a result of said boundary change, a county central committeeman does not reside within the boundaries of the new precinct so designated.

Respectfully,

MARK McELROY
Attorney General