

1081.

APPROVAL, BONDS OF ASHTABULA CITY, ASHTABULA COUNTY,
OHIO—\$56,000.00.

COLUMBUS, OHIO, September 29, 1927.

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

1082.

APPROVAL, BONDS OF MADISON TOWNSHIP RURAL SCHOOL DIS-
TRICT, LICKING COUNTY, OHIO—\$7,000.00.

COLUMBUS, OHIO, September 29, 1927.

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

1083.

APPROVAL, BONDS OF THE VILLAGE OF INDEPENDENCE, CUYAHOGA
COUNTY, OHIO—\$25,300.00.

COLUMBUS, OHIO, September 29, 1927.

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

1084.

CANDIDATES—INDEPENDENT NOT ENTITLED TO BLANK CIRCULAR
SPACE SIMILAR TO THAT ABOVE A PARTY TICKET—SECTION 5003,
GENERAL CODE, DISCUSSED—WHEN TWO GROUPS FILE PETI-
TIONS WITH THE SAME NAME—DUTY OF BOARD OF DEPUTY
STATE SUPERVISORS AND INSPECTORS OF ELECTIONS.

SYLLABUS:

1. *Under the provisions of Section 5003, General Code, candidates nominated by petition without distinctive appellations, are required to be certified as independent candidates. Such list of candidates is not entitled to the blank circular space above the list similar to that above a party ticket.*

2. *Under the provisions of Section 5003, General Code, where a ticket or list of candidates, not containing the names of more candidates for any one office than may be elected is nominated by a petition, and there is designated a proper name or title for such ticket or list of candidates, it is required that such ticket be printed in a separate column on the ballot, to the right of all party tickets, under the name so designated, having printed above such designated name or title, a circular space similar to that above party tickets.*

3. *If more than one petition nominating candidates for municipal offices is filed with the same party or group designation, it becomes a question of fact whether the nomination of such candidates with the same party designation has been done in good faith by the same group of citizens, or citizens seeking the same civic ends. The determination of such question of fact is for the deputy state supervisors of elections with whom the petition is filed after proper hearing thereon. If it be determined that said petitions have been filed in good faith, sponsored by the same group of citizens or citizens seeking the accomplishment of the same ends and it is physically possible to do so, the petitions should be combined and all the candidates so nominated printed on the same ticket headed by the party name which has been selected.*

4. *Where two or more groups of electors file petitions nominating candidates for office with the same distinctive name or title for their ticket or list of candidates and the board of deputy state supervisors and inspectors of elections determines that such groups are antagonistic to each other and represent different principles, such board should determine which group of signers is entitled to the use of the name or title selected, and place the other candidates on the ballot as independent candidates.*

5. *In determining which of two or more antagonistic groups of signers of nominating petitions, who have selected the same distinctive name or title for their ticket or list of candidates, is entitled to such name or title, the board of deputy state supervisors and inspectors of elections should look to the good faith of the signers in adopting such name or title, the aptness of the name or title in describing the principles for which such group stands, the fact as to which group actually and in good faith first selected such name and title, and such other facts and circumstances as may properly bear upon the question to be decided.*

COLUMBUS, OHIO, September 29, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“We are enclosing herewith a letter from the Board of Deputy State Supervisors and Inspectors of Elections for Mahoning County and request your opinion upon the questions therein submitted.”

Accompanying your letter and to which you refer is a letter from the clerk of the board of deputy state supervisors and inspectors of elections of Mahoning County, as follows:

“In line with our phone conversation of this morning, it is our intention to submit to you in minute detail the matter of petitions and candidates as filed in our office for the city of Campbell.

No one filed on the Democratic Ticket either in the primary election or by petition for the coming November election. Several candidates contested for each office in the Republican Primaries, which of course gives the city

of Campbell a complete slate of nominated Republicans. Since the primary election the following people have filed by petition, viz.: Archie E. Edwards for mayor, Henry Turntine for president of council, having filed jointly on a separate Independent petition, while another Independent petition, Xury Wilkins has filed for city solicitor, John Moore for city auditor and John Pruchniewics for councilman at large, (these three men have filed jointly on a separate Independent petition). Aside from those already outlined above, Anthony Julius, for mayor, Joseph E. Julius, (defeated candidate for mayor at the Republican Primaries) for president of council, George Pavicic for treasurer, Nich Ondulak, Mike Szenborn, Ivan Matecic for councilman at large, all jointly or six candidates have filed on a so-called Peoples' Ticket.

Added to the above we have had filed three separate nomination petitions for Andy Osika, Steve Backus and Frank Richards for second, third and fourth ward councilman, respectively, on a petition bearing the name Peoples' Ticket.

Now the question arises and we are extremely desirous of an opinion from the Attorney General as to the exact form of our official ballot. Should all of the candidates who have filed under the Peoples' Ticket, even though four distinct petitions have been filed, be placed under a ticket by the name of 'Peoples' Ticket' and if so are they entitled to a circle at the head of the ticket and whether or not they are entitled to a circle, should a cross at the head of the ticket, or where the circle would ordinarily be placed, if not allowed, count as a vote for each and every candidate on that particular ticket, bearing in mind that this ticket does not contain a candidate for each and every office to be voted for at the coming election, or should all candidates who have filed by petition go under the Independent Ticket, regardless of whether they filed as Independents or some other name.

Since Xury Wilkins and John Moore and John Pruchniewicz filed jointly on a separate Independent petition and that Archie E. Edwards and Henry Turntine filed jointly on a separate Independent petition, should the candidates who have thusly filed be placed together on the Independent ticket and again I refer you to the same question regarding the circle and the method of counting votes as requested in a preceding paragraph of this letter.

There are a few more questions we would like to have your decision upon, but we will secure same from our county prosecuting attorney, but we feel that the above questions as submitted should be decided upon by the offices of the Secretary of State or the Attorney General, and we trust you will favor us with a prompt reply."

Section 5003, General Code, provides as follows :

"Besides containing the names of candidates, all certificates of nomination and nomination papers shall specify as to each candidate :

1. The office for which he is nominated ;
2. The party or political principle which he represents, expressed in not more than three words ;
3. His place of residence, with street and number thereon, if any.

In nominations by petition, the certificate may designate instead of a party or political principle any name or title which the signers may select. Candidates nominated by petition without distinctive appellations shall be certified as independent candidates. In case of electors of president and vice president

of the United States, the names of the candidates for president and vice president shall be added to the party or political appellation."

Section 5021, General Code, providing for the printed form of ballot is as follows :

"The ballot shall be so printed as to give each elector a clear opportunity to designate by a cross mark in a large blank circular space, three-quarters of an inch in diameter, below the device and above the name of the party at the head of the ticket or list of candidates his choice of a party ticket and desire to vote for each and every candidate thereon, and by a cross mark in a blank enclosed space on the left and before the name of each candidate his choice of particular candidates."

Section 5018-1a, General Code, provides as follows :

"Where the names of several persons are grouped together upon the ballots as candidates for the same office, the ballot shall contain, immediately above the names of such candidates the words 'Vote for not more than -----' (filling the blank space with the number of persons who may lawfully be elected to such office)."

In Opinions of the Attorney General for 1915, at page 1840, the syllabus reads as follows :

"Names of independent candidates for council, auditor, treasurer and mayor in cities may be placed upon the ballot in lists to the right of party tickets in the order designated by the Secretary of State, without party or political designation, but no circle may be placed above any such list of independent candidates."

In the case of *Westover vs. Clark*, 32 O. C. A., 417, the second paragraph of the headnotes reads :

"Candidates for office who have not been put forward by any organized party and are running as independent candidates as distinguished from party candidates are not entitled to have a circle three-fourths of an inch in diameter, surrounded by the words printed in heavy nonpareil type 'For a straight ticket mark within circle,' placed at the head of the column containing their names, and failure to place such a circle and lettering over the names of independent candidates does not render the ballot constructively fraudulent or give a court jurisdiction in the matter."

A motion to require the Court of Appeals to certify its record in this case was overruled by the Supreme Court May 6, 1922.

Coming now to the branch of your inquiry concerning the petition bearing the name "Peoples' Ticket," it will be observed that Section 5021, General Code, supra, provides for the blank circular space, three-quarters of an inch in diameter above the name of the party at the head of the ticket.

In an opinion reported in Opinions of the Attorney General for 1916, at page 86, this Department was asked the following question among others :

"Where a ticket is nominated by a single petition as provided by Section 4996, G. C., and such petitioners designate themselves the 'Citizens' Ticket,' as

provided by Section 5003, G. C., is such a ticket or list of candidates entitled to a separate column and a circle over such ticket, on the ballot?"

The third and fourth paragraphs of the syllabus of this Opinion read as follows :

"Where a ticket or list of candidates, not containing the names of more candidates for any one office than may be elected, is nominated by a petition, and there is designated a proper name or title for such ticket or list of candidates, it is required that such ticket be printed in a separate column on the ballot to the right of all party tickets, under the name so designated, having printed above such designated name or title a circular space similar to that above party tickets.

The names of all independent candidates nominated by separate petitions should be placed in a list to the right of party tickets and tickets nominated by petition, without any name, title or designation thereover and without any circular space over the same, and the names of such independent candidates for the several offices to be elected should be placed under the title of such offices in alphabetical order according to surnames."

The question considered in the opinion of 1916, from which the above quotations have been made, arose by reason of a list of candidates the petitioners for which designated themselves the "Citizens' Ticket," having been nominated by a single petition. It should be noted that the conclusions therein reached are confined to a situation "where a ticket is nominated by a single petition."

An entirely different question is presented where candidates for a part of the offices to be filled at an election had been nominated on a petition signed by persons who had adopted a distinctive class appellation, and candidates for several other offices to be filled at the same election were nominated by another petition signed by a different set of persons who might inadvertently or designedly adopt the same party or class designation. The principles or beliefs or objects of the two sets of petitioners might be entirely different or perhaps antagonistic.

It would seem to be a question of fact whether the two sets of petitioners were in reality of the same party or class, or whether their object was the furtherance or promotion of the same set of principles; or whether or not they meant to be associated in the presentation of the entire list of candidates on both petitions. If this were true, they would be entitled to the advantages, if any, of being placed on the one ticket under the heading which they have adopted. If, however, they are in fact representing different principles, whether antagonistic to each other or not, it would be a manifest injustice to the voters and possibly to some of the candidates themselves, to place all their names under one party name or title. In such a case these signers of the petition or petitions, whom the board of deputy state supervisors and inspectors of elections determine to have *first bona fide* adopted the distinctive name or title for their ticket, are entitled to have their ticket printed on the ballot in a separate column to the right of all party ballots, under the name designated, having printed above such designated name or title, a circular space similar to that above party tickets.

The question of whether or not the petitioners on two or more petitions presenting candidates with the same party name or title are of the same group or party, and, in case such signers are different groups and stand for different principles, the question as to which is entitled to the name or title adopted, are within the jurisdiction of the deputy state supervisors of elections to determine, and their decision, in the absence of fraud or abuse of discretion, is final. In determining the latter question the board should look to the good faith of the signers in adopting the name or title and the aptness of the name or title in describing the principles for which such signers stand,

and should take into consideration especially the fact as to which group *first* selected the name and such other facts and circumstances as may bear upon the question to be decided. In this connection, however, it should be pointed out that the mere fact that a certain group was the first to file its petition with the distinctive name or title is not in and of itself dispositive, for it is readily apparent that one group of voters in order to defeat the ends of a second organized group might attempt literally to "steal" the name or title adopted in good faith by the second organization, who had delayed filing its petition.

In the case of *State of Ohio, ex rel. Goodhue vs. Ehrman*, 30 Bull. 319, it is held that:

"The board of deputy state supervisors of elections cannot be interfered with in matters of detail pertaining to the arrangement and printing of the official ballots. * * *

'In the case at bar the plaintiff has the clear legal right to have the ticket printed on the official ballot; but he avers that the ticket is about to be printed according to law and the prayer of the nomination papers, on the official ballot. He complains, however, that the board refuses to print the circular space at the top.

The board has determined, on a hearing had, that a proper construction of the statute precludes the printing of the circular space at the head of this ticket, because this ticket is not a party ticket, but is a ticket containing names of independent candidates as designated in Section 8 and that the list of independent candidates is not entitled to the circular space.'

In *Pugh Printing Company vs. Deputy State Supervisors of Elections*, 22 C. C. 584, it is laid down that:

"Courts cannot be substituted for the Deputy State Supervisors of Elections. Neither can the courts control the supervisors in the exercise of their discretion. It is only when the courts find present some of the equitable grounds of fraud or mistake, or find the decision or award to be wrongful, fraudulent, collusive or arbitrary, that they can be set aside to restrain the conclusion or determination of such a board."

And in *State, ex rel. Gongwer vs. Graves*, 90 O. S. 311-318, it is held that the state supervisor and deputy state supervisors have full and final authority in the matters here referred to, reserving to the courts authority to relieve against abuse of discretion or fraud by such officers.

In the case which you have presented, it is apparent that candidates for ward councilmen could not have been included on the petition for the mayor, auditor and councilmen-at-large. It is possible that the same group of citizens may be backing candidates for mayor, president of council, treasurer and councilmen-at-large who had been nominated on one petition designated as a "People's Ticket" and also the ward councilmen nominated on separate petitions bearing the same name. If this be true they should be printed on one ticket under the heading "People's Ticket." If, however, the group of citizens who have nominated any one or all of the candidates for ward councilmen are of a different group or represent different principles than do those citizens who had nominated the candidate for mayor, president of council, treasurer and councilmen-at-large on the so-called "People's Ticket," then these ward councilmen should be treated as independent candidates.

It is therefore my opinion that such lists of independent candidates are not authorized to be printed under any name or designation, nor are they entitled to any

circular space over said ticket. I think, however, it is the uniform practice to print the names of all candidates for each office in such list of independent candidates in groups to the right of party tickets under the designation or title of the office for which nominated, in alphabetical order, according to surnames, as provided in Section 5028, General Code, for the printing of the names of candidates in townships and municipalities having a population of less than two thousand.

It is also my opinion that where a ticket or list of candidates, not containing the names of more candidates for any one office than may be elected, is nominated by petition and there is designated therein a proper name or title for such ticket or list of candidates, it is required that such ticket be printed in a separate column on the ballot to the right of all party tickets, under the name so designated, having printed above such designated name or title, a circular space similar to that above party tickets.

If, however, there be more than one petition filed nominating candidates for several offices to be filled at an election designating the same name or title for such ticket or list of candidates, it becomes a question of fact, to be determined upon proper hearing by the deputy state supervisors of elections, whether or not the filing of these two or more petitions nominating candidates bearing the same party or group designation, is done in good faith, or whether or not the placing of the candidates nominated by two or more nominating petitions on one ticket under the same party or group heading would cause the clashing of conflicting interests of the group of citizens represented on the said petitions, and the decision of said deputy state supervisors of elections, in the absence of fraud or abuse of discretion is final.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1085.

APPROVAL, LEASES TO MIAMI & ERIE CANAL, OHIO CANAL, HOCKING CANAL, PORTAGE LAKES AND INDIAN LAKE LANDS.

COLUMBUS, OHIO, September 29, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of September 27, 1927, in which you enclose the following leases executed in triplicate for my approval:

<i>Miami and Erie Canal</i>	<i>Valuation</i>
James K. Baker, cottage sites.....	\$1,400 00
Frank M. Gulick, land lease.....	200 00
Lawrence C. Hussey, land lease.....	200 00
W. E. Shade, land lease.....	1,200 00
Henry G. Sherwood, land lease.....	2,000 00
Lizzie C. Yahl, land lease.....	1,000 00
 <i>Ohio Canal</i>	
<i>Valuation</i>	
C. S. Cameron, oil & gas lease, royalty & bonus.....	
C. S. Cameron, oil & gas lease, royalty & bonus.....	
Geo. F. Cappel, land lease.....	\$150 00