

commissioners, acting under the terms of Section 2870, General Code, have made a temporary appointment to fill the vacancy in the old term and a re-appointment to fill the vacancy in the new term, the appointee continues in office until a successor, who is elected at the first general election for that particular office, has qualified for the unexpired term."

In view of the foregoing, it is my opinion that a county surveyor who has been appointed under the provisions of Section 2785, General Code, to fill a vacancy in the office of county surveyor should now continue in office under such appointment until the general election for the office of county surveyor to be held in November, 1932, at which time a successor should be elected to fill the remaining unexpired term between the date of the November, 1932, election and the first Monday in January, 1933.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1973.

CANDIDATE—PROSECUTING ATTORNEY—NOT ELIGIBLE UNLESS AN ATTORNEY AT TIME OF EXECUTING DECLARATION OF CANDIDACY PRIOR TO CIRCULATING HIS PETITION.

SYLLABUS:

Under provisions of Section 2910, General Code, a person is not eligible as a candidate for the office of prosecuting attorney who has not been admitted to practice law in Ohio, at the time of executing his declaration of candidacy prior to circulating his petition as required in Sections 4785-70, 4785-71 and 4785-72, General Code.

COLUMBUS, OHIO, June 12, 1930.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

"I request your opinion on the following proposition: Under Section 2910, G. C., is a person eligible as a candidate for the office of prosecuting attorney who has not been admitted to the bar of this state at the time of filing his Declaration of Candidacy, but expects to take the bar examination in July, 1930? .Could a person under the above circumstances be nominated at the Primary to be held August 5, 1930, before he is duly licensed to practice law in this state?"

The portion of Section 2910, General Code, relative to your inquiries, reads as follows:

"No person shall be eligible as a candidate for the office of prosecuting attorney, or be elected thereto, who is not an attorney and counsellor at law, duly licensed to practice in this state. * * * "

Before undertaking a consideration of your questions, I might say that I have been informed that the coming bar examination will be held on the dates of July 15, 16, and 17, 1930. Past examinations have shown that it has taken some time for the

committee to grade the papers, and that as a result, it is at least a month from the time of the examinations until the successful applicants are sworn in and receive their certificates. Since the 1930 primary occurs on August 12, it is safe to conclude that the primary will occur before results of the examination are known. Thus it is unlikely that the person involved in your communication will be a qualified attorney-at-law, provided that he passes, until after the nominations at the August primaries.

From a reading of the portion of Section 2910, General Code, above quoted, in connection with your inquiries, it is apparent that a person must be duly licensed as an attorney-at-law before he can become a candidate for the office of prosecuting attorney. It is believed that your questions resolve themselves into the following query—when does a person become a candidate for the elective office of prosecuting attorney?

I had occasion to construe the word "candidate" in my Opinion No. 1296, rendered December 14, 1929, and reported in Opinions of the Attorney General for 1929, Vol. III, page 1922. In that opinion, I had before me for interpretation, Section 5092, General Code, which has since been repealed. The pertinent part of said section read:

"No person, being a candidate for an office to be filled at an election, other than for committeeman (committeeman) or delegate or alternate to any convention, shall serve as deputy state supervisor or clerk thereof, or as a judge or clerk of elections, in any precinct at such election. * * * ."

In the opinion, I stated at page 1923:

"The word 'candidate' must be given its popular meaning. Lexicographers usually define a candidate as one who seeks or aspires to some office or privilege, or who offers himself for the same. In *Leonard vs. Com.*, 112 Pa., 607, the court, in discussing what constitutes candidacy for office, said:

'He may in his own mind be in that venturesome state for many years before anyone else is apprised of such intention and in such case his ambition would not make him a candidate, nor does he become such if he merely counsels with friends on the subject. His candidacy must be manifested by some act of his own, the gist of which is that he holds himself out as a candidate.'

* * *

Indeed the word 'candidate' is derived from the Latin word 'candidus', meaning 'white', through an ancient custom of Roman candidates of clothing themselves in a white tunic, which indicated to their countrymen that they sought office."

The Pennsylvania case from which I quoted was construing the following provision of their constitution (Article VIII, Section 9.):

"Any person who shall, while a candidate for office, be guilty of bribery, fraud, or wilful violation of any election law, shall be forever disqualified from holding any office of trust or profit in this Commonwealth; * * * ."

In the course of the opinion, the court said:

"Was the defendant a candidate for office at the time the alleged violation of law occurred? It is not denied that he was nominated and elected, and was therefore unquestionably a candidate for office subsequent to his nomination by the convention. I am now considering the question whether he was a candidate prior to his nomination, and at a time when most of the alleged corrupt offences occurred.

The word 'candidate' in the Constitution is to be understood in its ordinary popular meaning; as the people understood it, whose votes at the polls gave that instrument the force and effect of organic law. Webster defines the word to mean: 'One who seeks or aspires to some office or privilege, or who offers himself for the same.' This is the popular meaning of the word 'candidate'; it is doubtless the meaning which the members of the constitutional convention attached to it, and the sense in which the people regarded it when they came to vote. We therefore say, in every day life, that a man is a candidate for an office when he is seeking such office."

Provisions of our new election law strengthen the conclusion of the Pennsylvania case that a person is a candidate for an office when he seeks that office, before nomination at a primary or convention.

Section 4785-71, General Code, provides the form of declaration of candidacy which must be executed by the party aspiring to office before he circulates his petition. This declaration of the aspirant must state that he is a "candidate". The section provides as follows:

"Such declaration of candidacy accompanied by the necessary petition shall be in substantially the following form:

DECLARATION OF CANDIDATES—PARTY PRIMARY

I, _____, hereby declare that I reside at No. _____ street, in the city of _____ (or in precinct _____ township) county of _____ Ohio, and am a qualified elector therein. I am a member of the _____ party. At the last general election I voted (did not vote) for a majority of the candidates of such party, and intend to vote for a majority of the candidates of such party at the forthcoming election. I hereby declare myself a candidate for nomination to the office of _____ to be made at the primary election to be held on the _____ day of _____, 19____, and hereby request that my name be printed upon the official primary ballot as provided by law as a candidate of the _____ party.

I further declare that if nominated and elected, I will qualify as _____, and that I will support and abide by the principles enunciated by the _____ party in its national and state platform.

Dated this _____ day of _____, 19____

Signature of Candidate.

The State of Ohio }
County of _____ }

Personally appeared before me the undersigned, a candidate for _____ in and for said county, this _____ day of _____, 19____, the above named _____, who acknowledged the signing of the above declaration and declared to me that the statements made therein were true as he verily believed.

Signed _____

Subscribed and sworn to before me this _____ day of _____, 19____.

Signed _____

(Title of officer)"

Section 4785-72, General Code, requires that the petitioners certify that the aspirant is a candidate for the office he seeks. It provides so far as pertinent as follows:

"Attached to each declaration of candidacy shall be a petition signed by the required number of electors, as follows:

PETITION FOR CANDIDATE

We, the undersigned, qualified electors of the State of Ohio, and of the county, (city, district, township, ward and precinct) set opposite our names, and members of the ----- party, hereby certify that ----- who resides at ----- city (or township) of ----- in the county of ----- and who is a candidate for the office (or position) of ----- to be voted for at the primary next hereafter to be held, and whose declaration of candidacy is herewith filed, is a member of the ----- party, and is, in our opinion, well qualified to perform the duties of the office for which he is a candidate. * * * "

Obviously, the Legislature contemplated that when a person circulates his petition, as required in Section 4785-70, General Code, he is a candidate for the office he seeks.

In view of the above considerations, I am of the opinion, in specific answer to your first question, that a person is not eligible as a candidate for the office of prosecuting attorney who has not been admitted to the bar of Ohio at the time of filing his declaration of candidacy. I am further of the opinion, in specific answer to your second question, that a person who expects to take the bar examination on July 15, 16, and 17, 1930, cannot be nominated for the office of prosecuting attorney, at the primary to be held on August 12, 1930.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1974.

CEMETERY—PLATTED AS PART OF VILLAGE AND DEDICATED TO
PUBLIC USE—TITLE IN SAID VILLAGE.

SYLLABUS:

Where a cemetery is duly platted and dedicated to public use, and lies within the limits of an incorporated village and is not owned or under the care of a religious or benevolent society or an incorporated company or an association, the title to said cemetery is vested in the village.

COLUMBUS, OHIO, June 13, 1930.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication in which you present the question as to where the title of a cemetery located within the corporate limits of the village of Greenfield is vested.

From your communication and other data which you submit, it appears that the cemetery under consideration, was platted as a part of the original village of Greenfield, Ohio, and dedicated to public use in 1802. It further appears from the statement in your communication, that the title to such cemetery was never transferred to