

4586.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE BAILEY METER COMPANY OF CLEVELAND, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF METERING EQUIPMENT FOR THE OHIO STATE PENITENTIARY, AT AN EXPENDITURE OF \$4,292.00—SURETY BOND EXECUTED BY THE ALLIANCE CASUALTY COMPANY OF PHILADELPHIA, PA.

COLUMBUS, OHIO, August 31, 1932.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare (Ohio Penitentiary), and the Bailey Meter Company of Cleveland, Ohio. This contract covers the construction and completion of Metering Equipment for the Ohio Penitentiary, Columbus, Ohio, in accordance with the form of proposal dated July 1, 1932. Said contract calls for an expenditure of four thousand two hundred and ninety-two dollars (\$4,292.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the Controlling Board has released the funds, in accordance with Section 8 of House Bill No. 624 of the 89th General Assembly. In addition, you have submitted a contract bond upon which the Alliance Casualty Company of Philadelphia, Pennsylvania, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation act have been complied with. A certificate of the Secretary of State shows that the above contracting foreign corporation is authorized to do business in Ohio.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same to you herewith, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4587.

ELECTION LAW — QUALIFICATION AS A POLITICAL PARTY—
GROUP OF PETITIONERS MAY NOMINATE PRESIDENTIAL
ELECTORS AND NAME OF CANDIDATES MAY APPEAR ON BAL-
LOT—INDEPENDENT CANDIDATES NOT ENTITLED TO EM-
BLEM AT HEAD OF BALLOT.

SYLLABUS:

1. *Upon a petition being filed with the Secretary of State and the signatures being examined and certified, all as provided in Section 4785-61, General Code, a sufficient length of time before any primary election, the group of petitioners*

becomes a political party and is entitled to all privileges with respect to such primary election as are accorded under the law to political parties.

2. *Under the provisions of Section 4785-91, et seq., General Code, a group of petitioners may nominate presidential electors and upon the filing of a petition in the office of the Secretary of State, the names of such presidential electors shall be considered as filed with the Secretary of State and the name of its candidates for President and Vice-President should appear upon the ballots as provided in Section 4785-107, General Code.*

3. *An independent group of candidates which has nominated a list of candidates as provided in Section 4785-91, et seq., General Code, is not entitled to have an emblem at the head of the ballot containing the list of candidates.*

COLUMBUS, OHIO, September 1, 1932.

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

DEAR SIR:—Your letter of recent date is as follows:

“I will appreciate very much your opinion as to the proper interpretation of sections of the General Code of Ohio, relating to the formation of a political party, and the prerogatives of a party thus formed. Also the rights and privileges of groups of candidates nominated by nominating petitions.

In giving such matters our consideration, the following questions arise.

Under the provisions of Section 4785-61 a political party may be a group of voters filing a petition with the Secretary of State, signed by the requisite number of electors declaring their intention to organize a political party. We presume that a party thus formed, if formed a sufficient time before a primary election, would then have the privilege of nominating candidates by declarations of candidacy, elect committeemen and delegates to a state and a national convention. Is this presumption correct?

Can a group of petitioners present a list of candidates as per the provisions of Section 4785-91, et seq., and include among them candidates for president, vice president, presidential electors and for state offices and, if the petition proves to be a qualified one, will the names of all such candidates go upon the ballot?

Would it be right to conclude, under the circumstances, that the list of presidential electors so nominated should be considered as thus ‘filed’ in our office?

Would the fact that a nominating petition containing the names of president, vice president and presidential electors as well as candidates for state offices, compel consideration as a whole, or would it qualify the candidates for state office were the candidates for president and vice president and presidential electors, or either of them, eliminated?

Should the petitioners representing the Socialist, Socialist-Labor, Communist and Prohibition groups present qualifying nominating petitions, would we be authorized to place upon the ballot at the head of the column containing their respective list of candidates the emblem heretofore appearing upon the ballot and representative of such group?”

In your first question, reference is made to Section 4785-61, General Code. This section defines a political party as the term is used in the Election Laws of the State of Ohio and provides the initial steps to be taken when such party is organized by the filing of a petition,—it is as follows:

“A political party within the meaning of this act shall be any group of voters which, at the last preceding general state election, polled for its candidate for governor in the state at least ten per cent of the entire vote cast therein for governor; or which shall have filed with the secretary of state at least ninety days before an election a petition signed by qualified electors equal in number to at least fifteen per cent of the total vote for governor at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding election. Such petition shall be circulated, signed, verified, and the signature thereon examined and certified to in the same manner as is required of referendum petitions. No such group of electors shall assume a name or designation which shall be so similar, in the opinion of the secretary of state, to that of an existing political party as to confuse or mislead the voters at an election. When any political party fails to cast ten per cent of the total vote cast at an election for the office of governor it shall cease to be a political party within the meaning of this act.”

When a political party is sought to be formed by the filing of a petition as provided in the foregoing section, the petitioners are obviously entitled to the benefit of all the provisions conferred by the election law upon political parties after having filed a petition as therein provided and after the signatures have been “examined and certified to in the same manner as is required of referendum petitions.” Section 4785-178, General Code, sets forth the method whereby these signatures shall be examined by the boards of elections of the various counties of the state and thereafter certified to the Secretary of State as chief election officer.

Upon such a petition being filed with the Secretary of State and the signatures being examined and certified, all as provided in Section 4785-61, a sufficient length of time before any primary election, the group of petitioners in my opinion becomes a political party and is entitled to all privileges with respect to such primary election as are accorded under the law to political parties.

You next inquire as to whether or not presidential electors may be nominated by petition under Section 4785-91, General Code, which petition also contains the name of such electors' candidates for President and Vice President. Presidential electors of a political party are nominated by delegate state conventions, the delegates to which are elected at the May primary election in presidential years. Section 4785-74, General Code.

Section 4785-91, General Code, provides for the “nominations of candidates for offices, in addition to the nominations made at party primaries” by petition. In the case of state office, such petition must be signed by not less than one per cent of the qualified electors of the state voting at the next preceding general election for the office of Governor. It is observed that Section 4785-91 does not expressly provide for the nomination of candidates for state office by petition in addition to nominations made at party primaries and also in addition to nominations made by state conventions,—if such were

the case, Section 4785-91 would expressly authorize the nomination of presidential electors by petition. There is no section of the present election law which expressly provides for the nomination of presidential electors by any method other than by state conventions, the delegates to which have been elected at a party primary. Your question then resolves itself into one of whether or not presidential electors may be nominated by a petition as provided in Section 4785-91, General Code, although such electors may not be nominated at party primaries.

A consideration of Section 4785-91, General Code, standing alone, would impel the conclusion that no independent group of petitioners other than a political party could nominate presidential electors or have the name of its candidates for President appear upon the ballot. The Election Law, however, elsewhere clearly recognizes this right. Section 4785-107, General Code, provides as follows:

“The names of candidates for electors of president and vice-president of any political party or group of petitioners, shall not be placed on the ballot; but shall, after nomination, be filed with the secretary of state. In place of their names there shall be printed first on the ballot the names of the candidates for president and vice-president, respectively, of each such party or group of petitioners and they shall be arranged under the title of the office. Before the names of such candidates for president and vice-president of each party or group, a single square shall be printed in front of a bracket in which the voter shall place the cross mark for the candidates of his choice for such offices. A vote for any of such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state.”

The foregoing section was incorporated in the same legislative act as Section 4785-91, General Code, and became effective at the same time. The two sections are in *pari materia* and should be construed together. In *State vs. Smith*, 123 O. S. 237, the first branch of the syllabus is as follows:

“The sections of the criminal code hereafter alluded to were incorporated in the same legislative act and became effective at the same time; being in *pari materia*, they should be construed together.”

It is a cardinal rule of statutory construction that the courts will endeavor wherever possible to give effect to all the language of the legislature. The legislature will not be presumed to have done a vain thing in the enactment of a provision in a statute, and while the courts have no authority to write anything into the law (*Trust Co. vs. Schneider*, 25 O. A. 259, 159 N. E. 338), neither do they have authority to write anything out of the law (*Maxfield vs. Brooks*, 110 O. S. 566). In the last analysis, the purpose of all statutory construction is to ascertain the intent of the legislature. *Barth vs. State, ex rel.* 107 O. S. 154. Section 4785-107, *supra*, in clear and unambiguous language, provides that the names of candidates for presidential electors of any group of petitioners shall be filed with the Secretary of State and that the names of the candidates for President and Vice-President of each group of petitioners shall be printed on the ballot in lieu of the names of candidates for presidential electors of such group of petitioners.

Candidates may be nominated by groups of petitioners only as provided in Section 4785-91, and therefore Section 4785-107 must necessarily broaden the provisions of Section 4785-91 so as to include a method whereby candidates may be nominated by petition not only in addition to the method provided for the nomination of candidates at party primaries but in addition to the method provided for the nomination of candidates by state conventions, the delegates to which have been elected at party primaries. This interpretation harmonizes and gives full effect to both sections,—it is, I believe, the legislative intent.

Specifically answering what I shall consider as your second question, it is my opinion that under the provisions of Section 4785-91, et seq., General Code, a group of petitioners may nominate presidential electors and upon the filing of a petition in the office of the Secretary of State, the names of such presidential electors shall be considered as filed with the Secretary of State and the name of their candidates for President and Vice-President should appear upon the ballots as provided in Section 4785-107, General Code.

You next inquire as to the matter of a combined petition. The Supreme Court has recognized the practice of one nominating petition being filed containing the names of candidates for an entire ticket (*State, ex rel. vs. Butterfield, infra*). It necessarily follows, in view of the foregoing conclusion with respect to your second inquiry, that such petitions may be considered as a whole, the candidates for President, Vice-President and presidential electors not being eliminated.

In what I shall consider your third question, you inquire as to whether or not an independent group of petitioners which has nominated candidates under the provisions of Section 4785-91, et seq., is entitled to have placed upon the ballot at the head of the column containing its list of candidates, an emblem representative of such group. The case of *State, ex rel. vs. Butterfield*, 122 O. S. 618, is dispositive of this inquiry. The per curiam opinion of the court is as follows:

“This cause coming on to be heard upon a demurrer to the amended petition, it is considered and adjudged by this court that said demurrer should be and is overruled, the court being of the opinion that the relators are entitled to partial relief. Under the present Election Code, and especially under the provisions found in Section 4785-100 thereof (113 Ohio Laws, 353), the relators were clearly entitled to have their names placed on the ticket and the designation ‘Citizens Ticket’ placed thereon as well. However, this court is of the opinion that under the provisions of Section 4785-105 of said Election Code, said relators are not entitled to have the circle or device placed over or in the column containing their names. Such device can be used by party organization only. The controversy here presents the construction of a statute only, and is, in our opinion, justifiable.

It is therefore ordered and adjudged that the writ of mandamus issue commanding the respondents to comply with the prayer of the petition with respect to the designation ‘Citizens Ticket,’ but that the relief prayed for in the petition, respecting the placing of the circle on the ticket, is denied.”

It may be noted that under the old law this office held that independent groups which were not political parties were not entitled to the use of an emblem.

The second branch of the syllabus of an opinion appearing in Opinions of the Attorney General for 1917, Vol. II, p. 1833, is as follows:

"2. Inasmuch as the Socialist party had not cast at the last preceding election a sufficient number of votes for governor to qualify it for recognition as a political party under section 4949 G. C., it is not entitled to the use of an emblem under section 5014 G. C."

Neither Section 4785-100 nor Section 4785-105 has been amended since the decision in the case of *State, ex rel. vs. Butterfield, supra*. It is accordingly my opinion that an independent group of candidates which has nominated a list of candidates as provided in Section 4785-91, et seq., General Code, is not entitled to have an emblem at the head of the ballot containing its list of candidates.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4588.

BOARD OF EDUCATION—UNAUTHORIZED TO RENT OR LEASE
SCHOOL PROPERTY—EXCEPTION WHERE SUCH PROPERTY IS
NOT NEEDED FOR SCHOOL PURPOSES.

SYLLABUS:

1. *Except as the power may be implied as being necessary to carry into effect some expressly granted power a board of education is not authorized to rent or lease property held by it for the public school purposes of its district.*

2. *When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to the use of the premises by said third parties would terminate.*

COLUMBUS, OHIO, September 1, 1932.

HON. GEO. W. McDOWELL, *Prosecuting Attorney, Hillsboro, Ohio.*

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

"The School Board of Paint Township, Highland County, Ohio, has consulted me in regard to the purchase by said board of a two story building in said township to be used as a recreation hall, etc., for the school.

The second story could not be utilized by the board except to rent or lease the same to a lodge.