Date Printed: 01/14/2009

JTS Box Number:	IFES_24
Tab Number:	4
Document Title:	STATE OF OHIO: ELECTIONS
Document Date:	1992
Document Country:	USA
Document Language:	ENG
IFES ID:	EL00494

3DD81DE9-FF0B-49FA-9967-F5147B6A1B30

STATE OF OHIO
OFFICE OF THE SECRETARY OF STATE

By virtue of the authority vested in me by Ohio Revised Code Section 3501.05(D), I am publishing an updated edition of Ohio's Election Laws. This edition reflects legislative changes and court opinions, both reported and unreported, as of August 1, 1992.

Included are many additional miscellaneous sections of the Ohio Revised Code and of the Ohio Constitution that pertain to elections. The loose-leaf format allows more frequent updates and the added information makes this publication a more complete reference work.

I am proud to make available this comprehensive edition of *Ohio Election Laws.*

Bob Taft

Bob Taft
SECRETARY OF STATE

30 East Broad Street, 14th Floor, Columbus, Ohio 43266-0418 614/466-2585

CONTENTS

OHIO REVISED CODE/TITLE 35—ELECTIONS

Chapter		Page
3501	Election Procedure; Election Officials	1
3503	Voters—Qualifications; Registration	35
3504	Presidential Ballots—Former Residents	53
3505	General and Special Elections—Ballots; Voting	54
3506	Voting and Tabulating Equipment	79
3507	Voting Machines	84
3509	Absent Voter's Ballots	90
3511	Armed Service Absent Voter's Ballots	97
3513	Primaries; Nominations	102
3515	Recount; Contest of Elections	146
3517	Campaigns; Political Parties	156
3519	Initiative; Referendum	183
3521	Congressional Representation	192
3523	Amendments to United States Constitution	201
3599	Offenses and Penalties	204

MISCELLANEOUS SECTIONS/OHIO REVISED CODE

Section		Page
	OFFICERS; OATHS; BONDS	
3.01	Officers to hold office until successors are qualified	1
3.02	Term of appointee to elective office; certificate of appointment	2
3.07	Forfeiture of office for misconduct in office	4
3.08	Procedure for removal of public officers	6
3.11	A person may hold but one of certain offices	8
3.15	Residency requirements	8
3.23	Oath of office of judges and other officers	9
3.24	Elected officials may administer oaths of office	10
	PROCESS; PUBLICATION	
7.10	Rates for legal advertising	10
7.101	Rates and specifications for publishing proposed constitutional amendments	11
7.11	Notices, proclamations, and orders to be published in two newspapers; commercial rate	11
7.12	Newspapers qualified for publication of legal notices; office of publication; general circulation	12

Section		Page
	PUBLIC OFFICERS	
102.01	Definitions	14
102.02	Financial statement to be filed with ethics commission	14
102.021	Disclosure of political contributions by deputy registrars	17
102.03	Restrictions during and after employment; bribery prohibited; honorarium for personal appearance; reimbursement for travel expenses; membership in organizations	17
102.04	Unauthorized compensation prohibited; restricted transactions; exemptions	26
	ETHICS COMMISSION	
102.06	Powers and duties; annual report	28
102.08	Recommendations and opinions of commissions; immunity from prosecution	30
	FINANCIAL DISCLOSURE FORM	
102.09	Financial disclosure; distribution of forms and law; notice to ethics commission of appointments	30
	MISCELLANEOUS PROVISIONS	
102.99	Penalties	31
	GOVERNOR	
107.05	Certain officers ineligible to perform duties until commissioned by governor	31
107.06	Fees for governor's commission	32
107.07	Certificate and fee for commission sent to secretary of state	32
107.08	Vacancy in office of judge	32
	SUNSHINE LAW	
121.22	Meetings of public bodies to be open; exceptions; notice	32
	DEPARTMENT OF ADMINISTRATIVE SERVICES—PERSONNEL	
124.57	Political activity prohibited	39
124.60	Abuse of official power for political reasons prohibited	43
	BOND LAW	
131.23	Bonds for indebtedness and general and disability assistance; authorization in anticipation of tax collection; special election; distribution of proceeds	43
133.18	Submission of question of issuing bonds to electors	44
	FEDERAL AID BONDS	
139.02	Subdivisions may issue bonds to participate in federal aid; limitations; submission to electors; maturity	49
	DOCUMENTS, REPORTS, AND RECORDS	
149.43	Availability of public records; mandamus action	49
	COUNTY RURAL ZONING	
303.11	Zoning plan to be submitted to electors; filing requirements	62
303.12	Amendments to zoning resolution; notices and hearings; referendum; form of petition; filing requirements	63

Section		Page
303.25	County zoning plan repeal in township; procedure	67
	BOARD OF COUNTY COMMISSIONERS—GENERALLY	
305.01	County commissioners; election and term	68
305.02	Filling vacancy	69
305.03	Failure to perform duties; absence; office deemed vacant	71
	COUNTY REFERENDUM PETITIONS	
305.31	Procedure for submitting additional tax resolutions to referendum	72
305.32	Separate petition papers; sufficiency; effective date	73
305.33	Certified copy of resolution filed with county auditor	74
305.34	Warning notice on each part of petition	74
305.35	Filing committee; petition open to public inspection; procedure when resolution repealed or held invalid	74
305.36	Itemized statement of circulator	74
305.37	Prohibitions	74
305.38	Prohibition as to signature	75
305.39	Acceptance of thing of value for signing	75
305.40	Stealing, destroying, or mutilating petition	75
305.41	Influencing or soliciting signatures	75
305.42	Application to petitions	75
305.99	Penalties	75
	REGIONAL TRANSIT AUTHORITY; COUNTY CHARTERS	
306.32	Resolution or ordinance to create authority; filing procedures; referendum; territorial boundaries	75
306.40	General obligations bonds; final judgment bonds; use of proceeds; election; tax levy; anticipatory notes; issuance of obligation without vote	77
306.49	Levy of property tax; purpose	78
306.70	Submission of question of adoption of sales and use tax	79
306.71	Question of reduction of rate of continuing sales and use tax	79
	COUNTY COMMISSIONERS—GENERAL POWERS	
307.696	Sports facility; corporation to operate; revenue bonds; use of county taxes	80
307.697	Tax on spirituous liquor; election; ballot form	81
307.70	County charter commissions; funds; distribution of charts; limit on public officers as members	82
	AUTOMATIC DATA PROCESSING	
307.84	County automatic data processing board; members; county office defined	82
	COMPETITIVE BIDDING ON COUNTY PURCHASES	
307.86	Competitive bidding required; exceptions	83
307.861	Procedure for renewal of lease of electronic equipment	86
307.87	Notice	86
307.88	Bid; bond or deposit; exemption	87
307.89	Performance bond	87

Section		Page
307.90	Awarding of contracts; preference system for Ohio and American products and contractors	88
307.91	Rejection of bids	88
307.92	Definition of contracting authority	89
	PETITION FOR COUNTY CHARTER	
307.94	County charter; petition; alternative methods; verifying signatures	89
307.95	Determining validity of petition; protests; secretary of state determines	89
307.96	Effective date; insufficiency of petition barred; notice	90
307.99	Penalties	90
	COUNTY OFFICERS	
309.01	Prosecuting attorney	91
309.02	Qualifications of candidate for prosecuting attorney	91
309.09	Legal adviser; additional counsel	92
311.01	Election of sheriff; qualifications; basic training; continuing education	95
313.01	Election of coroner; coroner defined	97
313.02	Qualifications for coroner	97
313.04	Disability or absence	98
315.01	County engineer; election and term of office	98
315.02	Eligibility for office of county engineer	99
317.01	County recorder; election and term	99
319.01	County auditor; term of office	100
319.07	Certain officials ineligible to office of auditor	100
321.01	County treasurer; election and term	101
	COUNTY REAL PROPERTY TRANSFER TAX	
322.02	Real property transfer tax; permissive levy by commissioners	101
322.021	Election to repeal emergency permissive tax	102
	COUNTY UTILITIES SERVICES TAX	
324.02	Permissive levy; procedure	102
324.021	Election to repeal emergency permissive tax/	103
	COUNTY MEMORIAL BUILDINGS	
345.05	Approval of tax levy	103
	TOWNSHIPS	
503.07	Conformity of boundaries	103
503.08	Disposition of remainder of township	105
503.09	Petition to erect new township excluding territory of municipal corporation	105
503.24	Vacancy in elective office; trustees to appoint; committee members or probate judge may appoint; term for which appointee serves	106
505.01	Board of township trustees; election and term	108

Section		Page
505.37	Fire regulations; purchase of fire-fighting equipment; establishment of fire districts; additional territory added to district; tax levied; withdrawal of municipal corporation from district; removal of territory from district; issuance of four-year notes; appropriation of land for fire station; licensing of emergency medical service	109
505.48	Township police district; composition; territorial limits; additions to district imposing tax	114
507.01	Township clerk	115
507.051	Duties; notification to board of elections	116
511.01	Town hall	116
511.02	Election for tax levy; bonds may be issued	117
511.27	Tax levy to defray expenses	117
511.28	Procedures for submitting levy	118
513.13	Submission of tax levy for operation expenses to electors	119
513.14	Advertisement of proposed question	120
517.04	Vote on establishment of cemetery	120
517.05	Notice of election; ballots	120
	TOWNSHIP ZONING	
519.11	Zoning plan to be submitted to electors; majority vote required for approval; filing requirements	120
519.12	Amendments to zoning resolution; procedure; referendum; form of petition; filing requirements	121
519.25	Township zoning plan repeal; procedure; referendum	126
	MUNICIPAL CORPORATIONS	
703.01	Classification	127
703.011	Electors as basis for classification	128
703.07	Status of city or village officers and ordinances	128
703.20	Surrender of corporate power by villages	129
703.22	Identical municipal and township boundaries	129
705.92	Removal by recall; procedure	130
707.04	Portion of territory within three miles of existing municipal corporation	131
707.21	Election of officers; special election; term of office	132
709.011	Duties of clerk; notification to board of elections	132
709.17	Election on question of annexation; tax rate	132
709.29	Submission of question of annexation to a vote; procedure	133
709.30	Assent to annexation; election	133
709.31	Election results certified	134
709.39	Petition to submit question of detachment of territory; election; payment	134
709.44	Merger of municipalities; of municipality and unincorporated area of township	135
709.45	Petition; submission to electors; commission to set conditions	136
709.46	Effect of disapproval; procedures after approval; commission to formulate conditions of merger; submission to electors	136
709.47	Effective date; form of government; succession to interests	137

Section		Page
709.48	Suspension of right to file annexation petition while merger considered	137
718.01	Uniform rates; limitation on rate without vote; prohibitions	138
	LEGISLATIVE AUTHORITY—CITY	
731.01	Members of legislative authority; newly incorporated city	139
731.02	Qualifications of members of legislative authority	140
731.03	Election and term of members of legislative authority; election to change length of terms	142
731.04	Officers of legislative authority	143
	LEGISLATIVE AUTHORITY—VILLAGE	
731.09	Members of village legislative authority; terms of office	144
731.11	Vacancy when president pro tempore becomes mayor	144
731.12	Qualifications of members of village legislative authority	145
731.211	Advertising notice of proposed amendments to municipal charter	146
	MUNICIPAL INITIATIVE AND REFERENDUM	
731.28	Ordinances and measures proposed by initiative petition	146
731.29	Ordinances and measures subject to referendum	149
731.30	Application of sections	152
731.31	Presentation of petition; effective date of ordinances	154
731.32	Certified copy of proposed ordinance or measure filed with auditor or clerk	156
731.33	Words which shall be printed in red	157
731.34	Designation of committee filing petition; procedures	157
731.35	Sworn itemized statement by circulator of petition	158
731.36	Prohibited practices relative to petitions	159
731.38	Prohibition against accepting premium for signing	159
731.39	Prohibition against destruction of petition during circulation	159
731.40	Prohibition against threats in securing signatures	159
731.41	Charter municipal corporations	159
	MUNICIPAL OFFICERS	
731.43	Vacancy in office of legislative authority	160
731.49	Failure to take oath or give bond	162
733.02	Mayor of cities; election; term	162
733.08	Vacancy in office of mayor of cities	162
733.09	President of legislative authority in cities; election to change length of term	163
733.10	City auditor	164
733.24	Mayor of village; election; term; qualifications; powers; duties	164
733.25	Vacancy in office of mayor of village	165
733.26	Election, term, and qualifications of village clerk	165
733.261	Combined office of clerk and treasurer	166
733.31	Filling of vacancies in offices	166
733.49	City director of law	167
733.50	Qualifications of city director of law	168
733.68	Qualifications of municipal officers; oaths	168

Section		Page
733.72	Charges against municipal officers filed with probate judge; proceedings	169
735.28	Village board of trustees of public affairs; appointment; election; organization	169
743.24	Municipal corporations may contract for a water supply; contract to be submitted to a vote	170
749.02	Legislative authority may agree with charitable corporation for hospital service	171
749.03	Submission of question to electors	171
755.01	Board of park commissioners; election	171
	PARK DISTRICTS	
1515.24	Assessment procedures; maintenance fund; bonds and notes	172
1515.26	Referendum	173
1515.28	Tax levy outside ten-mill limitation; election	173
1545.041	Conversion of township park district; resolution; election; ballot language; tax levies; board of park commissioners	174
1545.21	Voted tax levy; anticipation bonds	175
1545.36	Dissolution by petition of voters for election	175
	COUNTY AGRICULTURAL SOCIETY	
1711.15	Tax levy for county agricultural society	176
1711.17	County joint ownership	177
1711.18	Issuance of county bonds to pay debts of county society	178
	MUNICIPAL COURT	
1901.02	Territorial jurisdiction; definitions	179
1901.051	Judges of housing divisions and environmental division	183
1901.06	Qualifications and election of judge	184
1901.07	Term of office of judge; nominations	185
1901.08	Election of judges	186
1901.10	Oath of office; vacancy; appointment or election of substitute; additional judges	189
1901.31	Clerks; deputy clerks; powers and duties	191
	COUNTY COURT	
1907.11	Number of judges	196
1907.13	Qualifications of judges; terms; nominations; elections	198
	COURT OF COMMON PLEAS	
2301.01	Courts of common pleas; election of judges	199
2301.02	Number of judges for each county; terms of office	200
2301.03	Judges of the divisions of domestic relations	203
2303.01	Clerk of the court of common pleas	209
	COMMISSIONERS OF JURORS	
2313.06	Poll lists	210
	COURT OF APPEALS	
2501.01	Court of appeals districts	210
2501.011	Districts with additional judges	211

Section		Page
2501.012	Additional judges for eighth, ninth, tenth, eleventh, and twelfth districts	211
2501.013	Additional judges for first, second, third, and fourth districts	212
2501.02	Qualifications and term of judges; jurisdiction; issuance of writs	213
	SUPREME COURT JUSTICES	
2503.01	Number and qualifications of justices	215
2503.02	Chief justice; election; term	215
2503.03	Election of judges; term	216
	JUDGE, REMOVAL OF RESIDENCE	
2701.04	Removal of residence of judge	216
	OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION	
2921.01	Definitions	216
2921.02	Bribery	217
2921.42	Having an unlawful interest in a public contract	220
2921.43	Soliciting or receiving improper compensation	228
2921.431	Soliciting political contributions from public employees	230
	CONVICTED FELONS	
2951.09	Procedure against defendant; rights of citizenship restored; journal entry	230
2961.01	Civil rights of convicted felons	233
2967.16	Final release of paroled prisoners	234
	EDUCATION	
3301.06	Vacancies	235
3301.16	Classifying and chartering schools; definitions	235
3311.052	Election of county board of education; term	237
3311.053	Joint county school districts	237
3311.06	Definitions; territory must be contiguous; procedure when part of district is annexed by municipal corporation; annexation of territory by municipal corporation served by urban school district; division of funds	238
3311.21	Tax levy; notes; renewal levies	243
3311.22	Transfer of territory within county district	245
3311.231	Transfer of local district territory to city, exempted village or adjoining county district	248
3311.26	Creation of new local district	252
3311.261	Consolidation of school districts	256
3311.50	County school financing districts; city, local, or exempted village school district joining or withdrawing from county school district	257
3313.01	Membership of boards of county, local, and exempted village school districts	259
3313.02	Membership of boards in city school districts	260
3313.11	Vacancies in the board	261
3313.261	Duties of treasurer; notification to board of elections	263
3313.85	Probate court or county board shall act when the local board fails to act	263

Section		Page
3318.06	Resolution relative to tax levy in excess of ten-mill limitation; bond issue; submission to electors	264
3318.07	Certification of results of election	265
3354.12	Levies for capital and operating expenses; sources of funds	266
	LIBRARIES	
3375.03	Referendum on proposed territory transfer	267
	HEALTH DISTRICTS	
3709.29	Special levy for general health district	268
	HORSE RACING PERMITS	
3769.04	Application for permit	268
	LIQUOR CONTROL LAW	
4301.01	Definitions	269
4301.32	Local option; distribution of instructions	273
4301.321	Local option election as to premises of permit holder who has been found within one year to have violated liquor laws	274
4301.322	Election as to certain restaurants	274
4301.323	Local option election as to convention center; violation of liquor laws within one year	274
4301.324	Local option election as to convention center; proposed use as convention center	274
4301.325	Local option election as to convention center; previous election held	274
4301.33	Notice of petition; petition for local option election; protest against petition	275
4301.331	Procedures for election as to particular premises	277
4301.332	Procedures for election as to certain restaurants	278
4301.333	Procedure for election as to convention center; violation of liquor laws within one year	278
4301.334	Procedure for election as to convention center; proposed use	279
4301.335	Procedure for election as to convention center; generally	279
4301.34	Petition to contain signatures of electors of only one county	280
4301.35	Choice of questions; expenses; form of ballots	280
4301.351	Sunday sale election; expenses; form of ballots	281
4301.352	Special election to be held	282
4301.353	Conduct of election as to certain restaurants	282
4301.354	Form of ballot for election as to convention center; violation of liquor laws within one year	282
4301.355	Form of ballot for election as to convention center; generally	282
4301.36	Effect of election	283
4301.361	Effect of Sunday sale election	283
4301.362	Effects of special election	284
4301.363	Effect of election as to a certain restaurant	284
4301.364	Effect of election as to convention center; violation of liquor laws within one year	284
4301.365	Effect of election as to convention center; generally	285
4301.37	Local option election effective for four years; exception	285

Section		Page
4301.39	Notification to department of liquor control when petition filed; reissuance of permit; permit in safekeeping	286
4301.391	Enforcement of local option election	287
4301.40	Local option not to affect certain permits	287
4301.401	Permits in annexed territories valid	288
4301.402	Sale at state-owned lodges	288
4301.403	Permits for exhibition premises	288
4303.29	Restrictions on issuance of permits; election on sale of spirituous liquor by the glass; distribution of instructions	289
	BEER	
4305.08	"Beer" defined	292
4305.14	Local option on sale of beer; information provided to and by petitioner; procedure of board of elections; distribution of instructions	292
4305.15	Signatures on local option petition; affidavit of circulator	294
	MOTOR VEHICLES	
4503.032	Solicitation of political contributions from deputy registrars; award or termination of contract not to be affected by political contributions	295
4504.02	Levy; purpose; use; county commissioners' resolution	295
4504.021	Election to repeal emergency permissive tax	296
4504.06	Municipal levy; when authorized; hearing and referendum requirements	297
4504.15	Additional county motor vehicle license tax; hearings; effective date	297
4504.16	Additional motor vehicle license tax for counties currently levying tax authorized in R.C. 4504.15; hearings; effective date	298
4504.17	Additional municipal motor vehicle license tax levied after April 1, 1989; emergency measure prohibited	299
4504.171	Additional municipal motor vehicle license tax levied after April 1, 1991; emergency measure prohibited	299
4504.172	Additional municipal motor vehicle license tax; emergency measure prohibited	299
4504.18	Township motor vehicle license tax for road construction and maintenance; hearings; effective date; referendum	300
4507.06	Form and contents of application for license; provision for anatomical gift; registration of voters	300
	MENTAL ILLNESS OR DISABILITY	
5122.301	Rights of patients and former patients not affected	301
	TAX LEVY LAW	
5705.01	Definitions	302
5705.02	Ten-mill limitation	306
5705.05	Purpose and intent of general levy for current expenses	307
5705.06	Special levies without vote of the people within ten-mill limitation	309
5705.07	Levies in excess of ten-mill limitation	310

Section		Page
	EXCESS AND SPECIAL LEVIES; ANTICIPATION NOTES	
5705.18	Charter prevails over ten-mill limitation; calculation of tax rate	311
5705.19	Resolution relative to tax levy in excess of ten-mill limitation in other than school districts	312
5705.191	Approval of excess levy; issuing notes; emergency medical services levy	320
5705.192	Replacement levies	322
5705.193	Tax anticipation notes on county tax levy for permanent improvements	323
5705.194	Resolution for emergency school levy; election; anticipation notes	323
5705.195	Calculation of millage and years levy shall run	325
5705.196	Election	325
5705.197	Form of ballot; reference to renewal	326
5705.20	Special levies for tuberculosis hospitals and clinics	326
5705.21	School district special levy; initial issuance of anticipation notes for all levies	327
5705.212	Additional original and incremental school district tax levies	329
5705.213	Single additional school district tax levy	330
5705.214	Limitation on number of school district tax levy questions during calendar year	331
5705.215	County school district levy	331
5705.22	Additional levy for county hospitals	332
5705.221	Additional levy for alcohol, drug addiction, and mental health services	332
5705.222	Additional levy for mental retardation and developmental disabilities services	333
5705.23	Special levy for library purposes; submission to electors	334
5705.24	Tax levy for children services; anticipation notes	336
	TAX LEVY ELECTIONS	
5705.25	Submission of proposed levy; notice of election; form of ballot; certification	337
5705.251	Additional school district levies	340
5705.26	Vote necessary for levies	341
5705.261	Levy decrease by a subdivision	342
5705.71	Support of senior citizens services or facilities	342
	COUNTY SALES TAX	
5739.021	County levy of tax; purpose; rate; hearing and referendum requirement; effects of rejection or repeal by electors; reduction of rate	343
5739.022	Election to repeal emergency permissive tax	345
5739.023	Transit authority levy of tax; rates optional; limits	346
5739.026	County sales tax levy for convention facilities authority, transit authority, county general fund, permanent improvements, or emergency telephone system	347
5743.024	Additional sales tax for sports facility or permanent improvements	349
	SCHOOL DISTRICT INCOME TAX	
5748.02	Resolution proposing levy of school district income tax; election	350

MISCELLANEOUS SECTIONS/OHIO REVISED CODE—*continued*

Section		Page
5748.03	Form of ballot; certification of results; effective date	350
5748.04	Repeal may be initiated by petition	351

OHIO CONSTITUTION/SELECTED SECTIONS

Article/Section		Page
	LEGISLATIVE	
II § 1a	Initiative and referendum to amend constitution	1
II § 1b	Initiative and referendum to enact laws	3
II § 1c	Referendum to challenge laws enacted by General Assembly	5
II § 1d	Laws taking immediate effect not subject to referendum	6
II § 1e	Non-uniform tax laws cannot be adopted by initiative and referendum	8
II § 1f	Initiative and referendum in municipalities	9
II § 1g	Requirements for initiative and referendum petitions	12
II § 2	Election of state legislators	16
II § 3	Residence requirements for state legislators	16
II § 4	Dual office and conflict of interest prohibited	17
II § 5	Persons barred from seat in General Assembly; embezzlement or failure to account for public funds	18
II § 11	Filling vacancy in house or senate seat	19
	JUDICIAL	
IV § 13	Filling vacancy in judicial office	20
	ELECTIVE FRANCHISE	
V § 1	Who may vote	21
V § 2	By ballot	23
V § 2a	Office type ballot; laws to provide for reasonable equal position of names on ballot	23
V § 4	Exclusion from franchise	25
V § 6	Idiots or insane persons	25
V § 7	Direct primary elections	26
	COUNTY AND TOWNSHIP ORGANIZATIONS	
X § 4	County charter commission; selection; duties	27
	MISCELLANEOUS	
XV § 4	Officers to be qualified electors	28
	AMENDMENTS	
XVI § 1	Constitutional amendment proposed by joint resolution of General Assembly; procedure	29
	ELECTIONS	
XVII § 1	Times for holding elections; terms of office	32
XVII § 2	Filling vacancies in certain elective offices	33

Article/Section		Page
	MUNICIPAL CORPORATIONS	
XVIII § 7	Municipal charter	34
XVIII § 8	Referenda on whether to frame charter and on adoption of proposed charter	46
XVIII § 9	Amendment of charter; referendum	49
XVIII § 14	Municipal elections	51

INDEX

Index 1

OHIO REVISED CODE
Title XXXV
ELECTIONS

Publisher's Note: References to OJur, AmJur, and ALR were compiled from the *Ohio Code Research Guide* (Lawyers Co-operative Publishing Company).

Chapter 3501

ELECTION PROCEDURE; ELECTION OFFICIALS

GENERAL PROVISIONS

3501.01 Definitions
3501.02 Time for holding elections; selection of officers
3501.03 Notice of elections

CHIEF ELECTION OFFICER

3501.04 Chief election officer
3501.05 Duties and powers of secretary of state
3501.051 Simulated elections for minors

BOARD OF ELECTIONS

3501.06 Board of elections; vacancies
3501.07 Party recommendations; appointment
3501.08 Oath of office
3501.09 Organization of board
3501.091 Replacement of chairman or director; reselection of officers
3501.10 Offices of board
3501.11 Duties of board
3501.12 Compensation of members of board

DIRECTOR AND ELECTION OFFICIALS

3501.13 Duties of director; oath; notice to be posted
3501.14 Compensation of directors, deputy directors, and employees
3501.141 Group medical insurance for employees and board members
3501.15 Election officials as candidates
3501.16 Removal from office
3501.161 Filling vacancy of chairman or director; reselection of officers

EXPENSES AND COSTS

3501.17 Expenses and apportionment of costs

PRECINCTS AND POLLING PLACES ESTABLISHED

3501.18 Establishing precincts and polling places
3501.19 Election precincts; polling place outside precinct—Repealed
3501.20 State or national home may be a precinct

PRECINCT OFFICIALS

3501.21 Change of precinct or polling place; notice
3501.22 Precinct election officials; vacancies
3501.221 Interpreters for non-English speaking voters
3501.23 Precinct officials at special elections
3501.24 Receiving and counting officials; certificate of appointment
3501.25 Qualifications of counting officials; presiding judge
3501.26 Procedure when polls are closed
3501.27 Qualifications of precinct election officials; program of instruction
3501.28 Compensation of precinct election officials

POLLING PLACE EQUIPMENT AND SUPPLIES

3501.29 Polling places for precincts; timetable for compliance; voting at vehicle outside polling place; duties of secretary of state
3501.30 Supplies for polling places
3501.301 Contract for printing and furnishing supplies; when bidding required; procedures
3501.31 Delivery of supplies; challenge of electors; oath of officials

DUTIES OF OFFICIALS AT POLLING PLACE

3501.32 Opening and closing the polls; early closing of island polling places
3501.33 Authority of precinct officers
3501.34 Duty of police
3501.35 No loitering near polls
3501.36 Fee and mileage to precinct official delivering or returning election supplies
3501.37 Return of booths and other equipment

CANDIDACY

3501.38 Declaration of candidacy, nominating petition, other petition requirements; election falsification
3501.39 Unacceptable petitions

CROSS REFERENCES

Misconduct of board of elections, penalty, 3599.16
Election registrars, judges, and clerks are not to neglect duties; penalty, 3599.17

Interference with election and officials forbidden, 3599.24
Elections, O Const Art XVII
Municipal elections to be conducted by election authorities set by law, O Const Art XVIII §14

NOTES ON DECISIONS AND OPINIONS

No. 88-C-54 (7th Dist Ct App, Columbiana, 3-30-89), Gosney v Bd of Elections. The investigation of elections is a discretionary function of a prosecutor; thus, there is no clear legal right to such an investigation and mandamus will not lie to compel such investigation.

60 USLW 4075 (US 1992), Norman v Reed. Citizens' federal right to establish new political parties arises under the First and Fourteenth Amendments and furthers the constitutional interest of likeminded voters to gather and pursue common political ends and thereby enlarge all voters' opportunity to express political preferences; accordingly, new parties' ballot access may be limited by a severe restriction only if narrowly drawn to advance a compelling state interest. Where a state statute allows a new party to field candidates for offices in a large political subdivision only after collecting 25,000 signatures of subdivision voters (the same number needed of state voters to field candidates for state office), and if the subdivision has large separate districts for some offices then 25,000 signatures from each district, a decision of the state supreme court that a party's inability to get enough signatures in one district of a two-district subdivision dooms the party's entire slate in both districts is not the least restrictive means to advance the state's interest in limiting the ballot to parties with demonstrated public support since it requires twice as much support here for candidates in a county as is needed for statewide candidates. (Ed. note: Illinois law construed in light of federal constitution.)

111 SCt 2376, 115 LEd(2d) 379 (1991), Houston Lawyers' Assn v Texas Attorney General. The Voting Rights Act of 1965, 42 USC 1973 et seq., encompasses election of executive officers and trial judges whose responsibilities are exercised independently in an area coextensive with the districts from which they are elected.

111 SCt 2354, 115 LEd(2d) 348 (1991), Chisom v Roemer. Section two of the Voting Rights Act of 1965, 42 USC 1973 et seq., forbidding voting qualifications, standards, and procedures that result in minorities having less opportunity than others to participate and to elect "representatives" of their choice, applies to judicial contests as well as to contests for the position of legislator; the word "representative" is construed to mean someone who has prevailed in a popular election.

842 F(2d) 825 (6th Cir Ohio 1988), Connaughton v Harte Hanks Communications, Inc; affirmed by 491 US 657, 109 SCt 2678, 105 LEd(2d) 562 (1989). The press is not released from liability for reckless or intentional publication of falsehoods simply because it is reporting on an election campaign or possible political misconduct.

839 F(2d) 275 (6th Cir Ohio 1988), Mallory v Eyrich. The Voting Rights Act of 1965, 42 USC 1973 et seq, applies to judicial as well as legislative elections.

707 FSupp 947 (SD Ohio 1989), Mallory v Eyrich. No proof of any intent to discriminate on the basis of race is necessary to establish a violation of the Voting Rights Act of 1965, 42 USC 1973 et seq.

GENERAL PROVISIONS

3501.01 Definitions

As used in the sections of the Revised Code relating to elections and political communications:

(A) "General election" means the election held on the first Tuesday after the first Monday in each November.

(B) "Regular municipal election" means the election held on the first Tuesday after the first Monday in November in each odd-numbered year.

(C) "Regular state election" means the election held on the first Tuesday after the first Monday in November in each even-numbered year.

(D) "Special election" means any election other than those elections defined in other divisions of this section. A special election may be held only on the first Tuesday after the first Monday in February, May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election.

(E) "Primary" or "primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year.

(F) "Political party" means any group of voters meeting the requirements set forth in section 3517.01 of the Revised Code for the formation and existence of a political party.

(1) "Major political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received no less than twenty per cent of the total vote cast for such office at the last preceding regular state election.

(2) "Intermediate political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received less than twenty per cent but not less than ten per cent of the total vote cast for such office at the last preceding regular state election.

(3) "Minor political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received less than ten per cent but not less than five per cent of the total vote cast for such office at the last preceding regular state election or which has filed with the secretary of state, subsequent to any election in which it received less than five per cent of such vote, a petition signed by qualified electors equal in number to at least one per cent of the total vote cast for such office in the last preceding regular state election, except that a newly formed political party shall be known as a minor political party until the time of the first election for governor or president which occurs not less than twelve months subsequent to the formation of such party, after which election the status of such party shall be determined by the vote for the office of governor or president.

(G) "Dominant party in a precinct" or "dominant political party in a precinct" means that political party whose candidate for election to the office of governor at the next preceding regular state election at which a governor was elected received more votes than any other person received for election to said office in such precinct at such election.

(H) "Candidate" means any qualified person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election to be held in this state, or any qualified person who represents himself to be a write-in candidate, or who knowingly assents to such representation by another at either a primary, general, or special election to be held in this state.

(I) "Independent candidate" means any candidate who does not consider himself affiliated with a political party, and who has his name certified on the office-type ballot at a

general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.

(J) "Nonpartisan candidate" means any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

(K) "Party candidate" means any candidate who considers himself a member of a political party, who has his name certified on the office-type ballot at a general or special election through the filing of a declaration of candidacy and petition of candidate, and who has won the primary election of his party for the public office he seeks or is selected by party committee in accordance with section 3513.31 of the Revised Code.

(L) "Officer of a political party" includes, but is not limited to, any member, elected or appointed, of a controlling committee, whether representing the territory of the state, a district therein, a county, township, a city, a ward, a precinct, or other territory, of a major, intermediate, or minor political party.

(M) "Question or issue" means any question or issue certified in accordance with the Revised Code for placement on an official ballot at a general or special election to be held in this state.

(N) "Elector" or "qualified elector" means a person having the qualifications provided by law to entitle him to vote.

(O) "Voter" means an elector who votes at an election.

(P) "Voting residence" means that place of residence of an elector which shall determine the precinct in which he may vote.

(Q) "Precinct" means a district within a county established by the board of elections of such county within which all qualified electors having a voting residence therein may vote at the same polling place.

(R) "Polling place" means that place provided for each precinct at which the electors having a voting residence in such precinct may vote.

(S) "Board" or "board of elections" means the board of elections appointed in a county pursuant to section 3501.06 of the Revised Code.

(T) "Political subdivision" means "county," "township," "city," "village," or "school district."

(U) "Election officer or official" means any of the following:

(1) Secretary of state;

(2) Employees of the secretary of state serving in the division of elections;

(3) Director of a board of elections;

(4) Deputy director of a board of elections;

(5) Employees of a board of elections;

(6) Precinct polling place judges and clerks.

HISTORY: 1987 H 231, eff. 10-5-87
1986 S 185; 1983 S 213; 1981 H 235; 1980 H 1062; 1974 H 662; 1971 S 460; 1969 S 35; 1953 H 1; GC 4785-3

UNCODIFIED LAW

1990 H 247, § 3, eff. 11-30-90, reads:

(A) The legislative authority of a municipal corporation, by the affirmative vote of two-thirds of all of its members, may adopt a resolution proposing to submit to the electors, at a special election held in accordance with division (C) of this section, the question of an additional tax levy, in excess of the ten-mill limitation, for the current expenses of the municipal corporation, if both of the following apply:

(1) A current expenses levy previously was approved by the voters at the November 1985, general election, was extended on the 1986, 1987, 1988, 1989, and 1990 tax lists, and, as a result of its expiration, cannot be extended on the 1991 tax lists.

(2) The municipal corporation failed to timely certify to the board of elections a resolution proposing to submit the question of a current expenses levy to the electors at the November 1990, general election.

(B) A resolution adopted pursuant to division (A) of this section shall state the rate at which the levy is proposed to be levied, which shall not exceed eight mills; state the date on which the election on the question of the levy will be held, which shall be in accordance with division (C) of this section; state the period of time for which the levy will be in effect; and shall otherwise comply with the applicable provisions of Chapter 5705. of the Revised Code. The resolution also shall specify that, if approved, the levy will first be extended for collection on the 1991 tax list and duplicate and will be treated like any other additional tax levy for purposes of collection. Upon its adoption, the resolution shall be certified to the board of elections.

(C) Upon receipt of a resolution that has been adopted and certified pursuant to this section, the board of elections shall take all actions necessary to submit the question of the levy to the electors of the municipal corporation at a special election to be held on the earliest possible date, as determined by the board of elections, but prior to January 1, 1991, notwithstanding division (D) of section 3501.01, section 5705.19, and division (A) of section 5705.25 of the Revised Code. Notice of the election shall be published in a newspaper of general circulation in the municipal corporation once a week for each week prior to the election, not to exceed four weeks, notwithstanding division (A) of section 5705.25 of the Revised Code, but only if the resolution has been certified prior to one week before the date on which the election will be held. The form of the ballot to be used at the special election shall be that set forth in section 5705.25 of the Revised Code. If a majority of the electors voting on the question of the proposed levy votes in favor of the levy, the county auditor shall first extend the levy for collection on the 1991 tax list as if it had been submitted to and approved by the electors at the November 1990, general election.

(D) A levy approved under this section shall be certified to the Tax Commissioner and extended on the tax lists, as required under division (D) of section 5705.25 of the Revised Code.

1971 S 460, §3, eff. 3-23-72, reads: The changes made by this bill shall have no effect upon whether persons 18, 19, and 20 years of age may hold public office or serve on a jury.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.03, 11.04, 27.01, 27.011

Baldwin's Ohio School Law, Text 40.12, 41.09, 41.14, 41.28(E)

CROSS REFERENCES

Afternoon of first Tuesday after first Monday each November is a legal holiday, 5.20

Inclusion of additional subdivisions by amendment, 306.321

Filing petition to incorporate portion of territory within three miles of existing municipal corporation, procedures, 707.04

Referendum, 1515.26

Convicted felon incompetent to be elector or officeholder, 2961.01

Tax levy; notes; replacement levies, 3311.21

Resolution relative to tax levy in excess of ten-mill limitation; bond issue; submission to electors, 3318.06
Creation of community college district, 3354.02
Issuance of bonds; adoption of tax levy, 3357.11
Political party and candidate, defined, 3517.01
Political party fund, only major political parties entitled to share in, 3517.17
Approval of excess levy; issuing notes by taxing authority of subdivision, 5705.191
Resolution for emergency school levy; election; anticipation notes, 5705.194
School district special levy; initial issuance of anticipation notes for all levies, 5705.21
Additional school district tax levies, 5705.212, 5705.213
Special levy for library purposes; submission to electors, 5705.23
Levy of school district income tax, date of election, 5748.02
State officers to be elected at general election, O Const Art III §1
Who may vote, residency, loss of franchise by neglect to exercise, O Const Art V §1
Office ballot, O Const Art V §2a
Felons can be excluded as electors by general assembly, O Const Art V §4
No idiot or insane person is entitled to the privileges of an elector, O Const Art V §6
Elections for state and county officers held the first Tuesday after first Monday in even-numbered years, other elections in odd numbered years, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 20, Counties, Townships, and Municipal Corporations § 432; 37, Elections § 1, 7, 10, 16, 18, 31, 32, 34, 67, 88, 141, 150, 195, 220, 235, 257

Am Jur 2d: 25, Elections § 1 et seq.

Validity of percentage of vote or similar requirements for participation by political parties in primary elections. 70 ALR2d 1162

Validity and construction of enactments requiring public officers or candidates for public office to disclose financial condition and relationships. 37 ALR3d 1338

NOTES ON DECISIONS AND OPINIONS

1. Definitions; qualified elector
2. Regular or general election
3. Primary or special election

1. Definitions; qualified elector

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. Under the provisions of this section, an elector or qualified elector is a person having the qualifications provided by law to entitle him to vote.

43 App(3d) 176, 540 NE(2d) 292 (Lucas 1988), State ex rel Taylor v Lucas County Bd of Elections. Where a candidate, certified by a board of elections prior to a primary election, moves to another precinct within the jurisdiction before the general election without timely notifying the board of elections of her change of residence for purposes of actual eligibility to vote in such election, the candidate retains her status as a "qualified elector" within the meaning of RC 3501.01(N), as that section speaks in terms of possessing the qualifications to be entitled to vote rather than actual eligibility contingent on timely change of address.

38 App(3d) 43, 526 NE(2d) 110 (Summit 1987), State ex rel Moore v Summit County Bd of Elections. A seventeen-year-old person who registers to vote automatically becomes a qualified elector upon his eighteenth birthday without any need to register again and, thus, may validly sign a nominating petition on and after the date of his eighteenth birthday.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. The secretary of state and a county board of elections are required to conduct any municipal election which the laws authorize to be held.

1987 SERB 4-77 (CP, Franklin, 10-7-87), Ohio Historical Society v SERB; reversed by 1988 SERB 4-60 (10th Dist Ct App, Franklin, 6-30-88); 1988 SERB 4-60 affirmed by 48 OS(3d) 45 (1990). The national labor relations board erred when it held the Ohio historical society to be a "political subdivision" of Ohio, since the society neither falls within nor is analogous to any of the categories of subdivisions in RC 3501.01.

OAG 73-100. The question of construction or improvement of a town hall, at a cost greater than ten thousand dollars, may be, and the question of issuance of bonds to meet the cost of construction or improvement of a town hall must be submitted to the electorate by the board of township trustees at any election or at the same election.

OAG 72-035. A political subdivision of the state is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the state, which is a public agency with statewide authority.

OAG 69-129. The phrase "residence district" as used in RC 4301.32 means any two or more contiguous election precincts within a municipal corporation.

OAG 66-136. A university branch district created pursuant to RC Ch 3355 is not required to share the cost, as determined by RC 3501.17, of an election for a levy for said district held pursuant to RC 3355.09; such district is not a "subdivision" as used in RC 3501.01; since the costs of such an election, related to the university branch district, may not be apportioned to said district, such costs must be "paid in the same manner as other county expenses are paid," according to RC 3501.17, and must be borne by the county rather than by any of the subdivisions thereof.

OAG 66-096. A local school district board of education may submit two separate levies in excess of the ten mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, RC 5705.21.

OAG 66-005. A district established by the reapportionment plan is not a "subdivision smaller than a county" within the meaning of RC 3513.05, despite the geographical area included in such district, and all candidates filing declarations of candidacy for nomination for election to the office of representative to the general assembly must file petitions containing sufficient signatures to meet the requirements of that section as they apply to candidates to be elected from a county or a congressional district smaller than a county.

1962 OAG 3383. Every person who has the qualifications of an elector under the provisions of O Const Art V §1, and RC 3503.01 is a qualified elector within the purview of O Const Art X §4, and such person is eligible to sign a county charter commission petition under said §4, and RC 3503.06, requiring that in registration precincts only registered electors may sign certain petitions, does not apply to the signers of such a petition.

1958 OAG 2745. Mobile voting booths drawn on their own wheels to a particular location may serve as a "polling place" for purposes of RC 3501.01 where they are not mobile during the hours of use but are kept in a single location while used as a polling place.

Ethics Op 75-031. A person seeking election to city council who voluntarily withdraws from an election within twenty days after filing his petition of candidacy is no longer a candidate within the purview of RC 102.02(A), and therefore is not required to file a financial disclosure statement.

2. Regular or general election

7 OS(3d) 11, 7 OBR 404, 455 NE(2d) 667 (1983), Hitt v Tressler. RC 3515.14 does not give a court authority to order a new election.

OAG 67-046. The sale of intoxicating liquor is prohibited on any first Tuesday after the first Monday in November in an area in which any election is held; such election is a "general election" and such day is a general election day in such area to which the prohibition of RC 4301.22 applies.

1959 OAG 767. Distribution of copies of proposed county charter or an amendment thereto to each elector of a registration pre-

cinct who registered for the last general election and to each elector of a non-registration precinct who signed the poll book in the last general election is a compliance with O Const Art X §4, but mailing a copy to the occupant of each of a list of house members obtained from a direct mail organization or publication in a newspaper is not.

1948 OAG 2673. By virtue of this section, term "general election" means any election held on first Tuesday after first Monday in November. Such meaning must be ascribed to said term in construing provisions of GC 4831-13 (RC 3311.23).

3. Primary or special election

102 App 425, 128 NE(2d) 865 (1955), State ex rel Horvath v Haber. As used in 3503.11, "primary election" includes a nonpartisan primary election, and the time for registration for such nonpartisan primary election is regulated by such section.

81 App 398, 79 NE(2d) 791 (1947), State ex rel Campbell v Durbin. When an election is called for by a proclamation of governor of state for an election to nominate candidates for office of representative of the United States House of Representatives, such an election is not governed by provisions of GC 4785-39 (RC 3503.11), limiting time for registration of electors, such election being a special election pursuant to GC 4785-97 and 4829 (RC 3513.32 and 3521.03); provisions of GC 4785-39 (RC 3503.11) apply to general election to be held on November 4, 1947, pursuant to GC 4785-3 (RC 3501.01).

22 Misc 48, 257 NE(2d) 914 (CP, Cuyahoga 1969), Jenkins v Porter. An action by a candidate nominated at a partisan primary for an injunction and damages against the executive committee of the same party for its endorsement of a candidate nominated by a nonpartisan petition fails to show irreparable damages and presents only a political issue, so that relief must be denied.

OAG 77-041. Persons who wish to register to vote on the day of a general, primary or special election need not do so at a polling place in the precinct in which they reside, provided the board of elections has located the polling place for voting purposes outside the boundaries of the precinct in which they reside.

OAG 72-025. RC 3503.12, respecting establishment of registration places by board of elections, is ambiguous as to whether or not such places may be established prior to primary elections and, having been consistently construed for many years by secretary of state to prevent establishment prior to such primaries, and such construction not being unreasonable, boards of elections are prevented from establishing such registration places prior to primary elections.

OAG 71-012. The vocational school district is solely responsible for the costs of a special election called at their request and if they are unable to pay the board of elections with current operating funds, then such amount will be subsequently withheld by auditor from moneys payable in future.

OAG 67-046. The sale of intoxicating liquors is prohibited on any first Tuesday after the first Monday in May in an area in which an election is held for the purpose of nominating persons as candidates of political parties or for the purpose of electing persons as members of the controlling committees of political parties or as delegates and alternates to conventions of political parties; such election is a "primary election" and such day is a primary election day in such area, to which the prohibition of RC 4301.22(D) applies.

OAG 67-046. The sale of intoxicating liquor is not prohibited on any first Tuesday after the first Monday in May in an area in which there are contests neither for the purpose of nominating persons as candidates of political parties nor for the purpose of electing persons as members of the controlling committees of political parties nor as delegates or alternates to the conventions of political parties but in which state and local issues are being submitted; such election is a "special election" and such day is a special election day in such area, to which the prohibition of RC 4301.22(D) does not apply.

1963 OAG 17. A proposed transfer of school territory under authority of RC 3311.231 should not be submitted to the voters at primary election time where a primary election on questions set out in RC 3501.01(E) is not otherwise required to be held.

1962 OAG 3472. Where a tax levy is submitted to the voters pursuant to RC 5705.21 the election thereon is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education.

1961 OAG 2451. The provision of RC 4301.22(D) banning sales at retail of intoxicating liquor on a primary or general election day between the hours of 6 a.m. and 7:30 p.m. does not preclude such sales on the dates of special elections held on other than a primary or general election day as defined in RC 3501.01; the provisions of RC 4301.65 as regards sales of intoxicating liquor on election days do not apply to sales of intoxicating liquors under all classes of permits and from state liquor stores.

1961 OAG 2451. Elections held in municipal corporations during the months of August, September, and October, for the purpose of nominating candidates for municipal offices, are special elections, and sales at retail by state liquor stores in such municipal corporations on the days of such elections are not precluded.

1961 OAG 1990. The question of repeal of a township zoning plan may not be submitted for vote on the first Tuesday after the first Monday of May in a year if it would be the sole issue before the electors, since a "primary election" would not be held in the township in such a case.

1960 OAG 1536. Submission to the voters by a board of education of a proposed additional tax levy for school purposes pursuant to RC 5705.21 is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education.

3501.02 Time for holding elections; selection of officers

General elections in the state and its political subdivisions shall be held as follows:

(A) For the election of electors of president and vice-president of the United States, in the year 1932 and every four years thereafter;

(B) For the election of a member of the senate of the United States, in the years 1932 and 1934, and every six years after each of such years; except as otherwise provided for filling vacancies;

(C) For the election of representatives in the congress of the United States and of elective state and county officers, including members of the state board of education, in the even-numbered years; except as otherwise provided for filling vacancies;

(D) For municipal and township officers, members of boards of education, judges and clerks of municipal courts, in the odd-numbered years;

(E) Proposed constitutional amendments or proposed measures submitted by the general assembly or by initiative or referendum petitions to the voters of the state at large may be submitted to the general election in any year occurring at least sixty days, in case of a referendum, and ninety days, in the case of an initiated measure, subsequent to the filing of the petitions therefor. Proposed constitutional amendments submitted by the general assembly to the voters of the state at large may be submitted at a special election occurring on the first Tuesday after the first Monday of May in any year, when a special election on that date is designated by the general assembly in the resolution adopting the proposed constitutional amendment.

No special election shall be held on a day other than the day of a general election, unless a law or charter provides otherwise, regarding the submission of a question or issue to the voters of a county, township, city, village, or school district.

(F) Any question or issue, except a candidacy, to be voted upon at an election shall be certified, for placement upon the ballot, to the board of elections not less than seventy-five days before the day of the election.

HISTORY: 1983 S 213, eff. 10-13-83
1981 H 235; 1980 H 1062; 1975 H 205; 1974 H 662; 1973 S 44; 132 v H 934; 129 v 582; 126 v 655; 1953 H 1; GC 4785-4

UNCODIFIED LAW

1992 H 700, § 4, eff 4-1-92, reads, in part: Notwithstanding sections 3501.02, 5705.19, 5705.191, and any other section of the Revised Code, in 1992 any local question or issue submitted to the electors at a special election held on the first Tuesday after the first Monday in August 1992, shall be certified for placement upon the ballot to the board of elections not later than June 16, 1992.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.04, 27.01, 27.011
Baldwin's Ohio School Law, Text 5.03(A)
Gotherman & Babbit, Ohio Municipal Law, Text 7.62

CROSS REFERENCES

Term of office of state board of education members, 3301.021
State officers to be elected at general election, O Const Art III §1
Election and term, O Const Art IV §6
Charters for counties, O Const Art X §3
Constitutional amendments proposed by general assembly, election, O Const Art XVI §1
Elections for state and county officers held in even-numbered years, other elections in odd-numbered years, O Const Art XVII §1
Charters for municipal corporations, O Const Art XVIII §7 to 9

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 20, Counties, Townships, and Municipal Corporations § 340; 22, Courts and Judges § 187; 37, Elections § 7, 10, 110, 139; 56, Initiative and Referendum § 38; 82, Schools, Universities, and Colleges § 89

Am Jur 2d: 25, Elections § 6 et seq.; 26, Elections § 183 to 201

Injunctive relief against submission of constitutional amendment, statute, municipal charter, or municipal ordinance, on ground that proposed action would be unconstitutional. 19 ALR2d 519

NOTES ON DECISIONS AND OPINIONS

52 OS(2d) 49, 369 NE(2d) 11 (1977), State ex rel English v Geauga County Bd of Elections. The sixty-day certification requirement in RC 3501.02(F) is applicable to the referendum procedure in RC 519.12.

10 OS(2d) 139, 226 NE(2d) 116 (1967), State ex rel Foreman v Brown. RC 3501.02 does not conflict with the action taken by the general assembly in house joint resolution No. 22 in calling a special election on May 2, 1967, for submission of the Ohio bond commission amendment to the constitution.

10 OS(2d) 139 226 NE(2d) 116 (1967), State ex rel Foreman v Brown. By providing that proposed constitutional amendments submitted by the general assembly may be submitted at general elections, RC 3501.02(E) has not prohibited the submission of such a proposed constitutional amendment at a special election.

10 OS(2d) 139, 226 NE(2d) 116 (1967), State ex rel Foreman v Brown. O Const Art I §1, empowers the general assembly to provide for submission of a constitutional amendment, proposed by the general assembly pursuant to that section, at a special election on a certain day; and the general assembly may authorize such election by a joint resolution without enacting a statute.

OAG 82-057. With regard to municipal elections, a county board of elections must observe the certification time requirements for placing municipal issues or questions, other than charter amendments, on the ballot which are set forth in the municipality's charter, rather than the certification time requirements set forth in RC 3501.02(F).

OAG 78-023. A person who is appointed to complete an unexpired term as county auditor after December 6, 1976 shall receive a salary according to the salary schedule contained in RC 325.03 prior to its amendment by 1976 H 784, eff. 12-6-76, plus any increase in that salary allocated by Sec 4 of the amending act; after the calendar year 1978 all county auditors will receive the salary set out in the amended salary schedule, but in no event will salary be less than that received during calendar year 1978.

1964 OAG 850. There is no authority for a special election to be held in a municipal corporation for the election of officers of a village where such village has abandoned one of the optional plans of municipal government authorized by RC Ch 705 and has returned to the form of municipal government authorized by the general provisions of municipal corporation law.

1950 OAG 1364. A special election is permitted to be held only when authorized by statute; there are no provisions for the holding of a special election for the offices of member of a board of education and township trustee; such elections under the provisions of this section are to be held in odd-numbered years.

1946 OAG 958. Successor to a person appointed to fill a vacancy in office of coroner must be elected for unexpired term at next general election at which county officers can be voted for, which occurs more than thirty days after such vacancy was created; each of candidates to be voted on for such unexpired term at such election may be selected by county central committee of his political party; such selections, if made, shall be made by each of said committees at a meeting called for such purpose by chairman of committee by giving to each member of committee at least two days' notice of time, place and purpose of such meeting, and chairman and secretary of meeting shall certify, in writing and under oath, to board of elections of county, not later than the seventy-sixth day before day of election at which person to fill such unexpired term is to be elected, the name of person so selected.

1943 OAG 6101. Unless provisions contained in charter which may have been adopted by it provide otherwise, city which became such in year 1941 by reason of proclamation of secretary of state based on 1940 federal census and issued prior to regular municipal election held in year 1941, was required to elect city auditor at such election to serve for term of four years from first day of January, 1942.

1937 OAG 554. The successor of an appointee appointed to fill a vacancy in the office of county recorder, must be elected at the next general election for county officers as provided for in O Const Art XVII §1, and this section.

3501.03 Notice of elections

At least ten days before the time for holding an election the board of elections shall give public notice by a proclamation, posted in a conspicuous place in the courthouse and city hall, or by one insertion in a newspaper published in the county, but if no newspaper is published in such county, then in a newspaper of general circulation therein.

The board shall have authority to publicize information relative to registration or elections.

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-5

CROSS REFERENCES

Days counted to ascertain time, 1.14

Election proclamations to be published in two newspapers, commercial rate, 7.11
Newspaper of general circulation, 7.12
Notice of special election when person dies or withdraws after filing declaration of candidacy, 3513.301
Notice of special election when nominated candidate dies or withdraws, 3513.312
Vacancy in the senate of the United States, notice of election, 3521.02
Vacancy in office of congressman or member of general assembly, notice of election, 3521.03
Constitution may be amended, informing electors, O Const Art XVI §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 51, 142
Am Jur 2d: 26, Elections § 193 to 199

NOTES ON DECISIONS AND OPINIONS

142 OS 216, 51 NE(2d) 636 (1943), State ex rel Columbus Blank Book Mfg Co v Ayres. Members of boards of elections act under direct control of and are answerable only to secretary of state in his capacity as chief election officer of state; they perform no county functions and are not county officers.

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. Call of a special election was valid although funds for mailing the copy of a proposed charter were not appropriated prior to such mailing, although only 55 days intervened between the submission of the charter to the voters and the special election, and although the proofs of the ballot were not posted nor sureties furnished on the printing contract.

1940 OAG 1696. Notice of special elections of officers of newly incorporated village must be given as provided in this section.

CHIEF ELECTION OFFICER

3501.04 Chief election officer

The secretary of state is the chief election officer of the state, with such powers and duties relating to the registration of voters and the conduct of elections as are prescribed in Title XXXV of the Revised Code. He shall perform these duties, in addition to other duties imposed upon him by law, without additional compensation.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-6

CROSS REFERENCES

Secretary of state, Ch 111

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 16
Am Jur 2d: 25, Elections § 39, 187

NOTES ON DECISIONS AND OPINIONS

154 OS 223, 94 NE(2d) 785 (1950), State ex rel Melvin v Sweeney. Where secretary of state has misdirected the members of the boards of elections as to their duties, the matter may be corrected through the remedy of mandamus.

40 App(2d) 299, 318 NE(2d) 889 (1974), State ex rel Cleveland City Council v Cuyahoga County Bd of Elections. The secretary of state of Ohio's authority in election matters is not limited to voting and breaking two-to-two ties of county boards of elections, and he also has authority to compel observance by election officers of the requirements of election laws, and he performs such other duties as are required by law.

OAG 65-193; overruled by OAG 86-077. Employees of county boards of elections are state employees whose vacation rights are governed by RC 121.161.

3501.05 Duties and powers of secretary of state

The secretary of state shall:
(A) Appoint all members of boards of elections;
(B) Advise members of such boards as to the proper methods of conducting elections;
(C) Prepare rules and instructions for the conduct of elections;
(D) Publish and furnish to the boards from time to time a sufficient number of indexed copies of all election laws then in force;
(E) Edit and issue all pamphlets concerning proposed laws or amendments required by law to be submitted to the voters;
(F) Recommend to boards the form of registration cards, blanks, and records;
(G) Determine and prescribe the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and all forms and blanks required by law for use by candidates, committees, and boards;
(H) Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state;
(I) Certify to the several boards the forms of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues, as they shall appear on the ballot;
(J) Approve ballot language for any local question or issue;
(K) Receive all initiative and referendum petitions on state questions and issues and determine and certify to the sufficiency of such petitions;
(L) Require such reports from the several boards as are provided by law, or as he deems necessary;
(M) Compel the observance by election officers in the several counties of the requirements of the election laws;
(N) Investigate the administration of election laws, frauds, and irregularities in elections in any county, and report violations of election laws to the attorney general or prosecuting attorney, or both, for prosecution;
(O) Make an annual report to the governor containing the results of elections, cost of elections in the various counties, a tabulation of the votes in the several political subdivisions, and such other information and recommendations relative to elections as he deems desirable;
(P) Prescribe and distribute to boards of elections a list of instructions indicating all legal steps necessary to petition successfully for local option elections under sections 4301.32 to 4301.41, 4303.29, 4305.14, and 4305.15 of the Revised Code;
(Q) Perform such other duties as are required by law.

In the performance of his duties as the chief election officer, the secretary of state may administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records, and other evidence and fix the time and place for hearing any matters relating to the administration and enforcement of the election laws.

In any controversy involving or arising out of the adoption of registration or the appropriation of funds therefor the secretary of state may, through the attorney general, bring an action in the name of the state in the common pleas court of the county where the cause of action arose or in an adjoining county thereto, to adjudicate the question.

In any action involving the laws in Title XXXV of the Revised Code wherein the interpretation of those laws is in issue in such a manner that the result of the action will affect the lawful duties of the secretary of state or of any board of elections, the secretary of state may, on his motion, be made a party.

The secretary of state may apply to any court that is hearing a case in which he is a party, for a change of venue as a substantive right and such change of venue shall be allowed, and the case removed to the common pleas court of an adjoining county named in the application, or, where there are cases pending in more than one jurisdiction that involve the same or similar issues, Franklin county.

HISTORY: 1980 H 1062, eff. 3-23-81
1978 H 247; 1969 S 20; 125 v 543; 1953 H 1; GC 4785-7

CROSS REFERENCES

Counties, Title 3
Oaths, 3.20 to 3.24
Attorney general to represent state departments, 109.02
Common pleas court, Title 23
Designation of major political parties by secretary of state, 3517.17
Liquor sales, distribution of instructions for petition for local option election, 4301.32
Local option election as to convention center, instructions for petition, 4301.333, 4301.334, 4301.335
Liquor permit, distribution of instructions for petition for local option election, 4303.29
Sale of beer, distribution of instructions for petition for local option election, 4305.14
Right to be secure against unreasonable searches and seizures, O Const Art I §14
Officers to report to governor before each session of general assembly, O Const Art III §20

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 16, 18, 204; 56, Initiative and Referendum § 29, 33, 40, 44, 45; 61, Intoxicating Liquors § 61
Am Jur 2d: 25, Elections § 39 et seq.; 72, States, Territories and Dependencies § 63

NOTES ON DECISIONS AND OPINIONS

64 OS(3d) 1 (1992), State ex rel Hodges v Taft. The secretary of state is under no duty to compel local boards of election to reject initiative petitions submitted without including the amount of compensation received by the circulators of the petitions.

63 OS(3d) 190 (1992), State ex rel Taft v Franklin County Court of Common Pleas. Since neither the secretary of state nor the elections commission has exclusive jurisdiction over alleged violations of RC 3599.03, a common pleas court may entertain a declaratory judgment action to determine whether an organization constitutes a political action committee.

52 OS(2d) 7, 368 NE(2d) 837 (1977), State ex rel Glass v Brown. Prohibition will not lie to prohibit the secretary of state from placing a proposed constitutional amendment on the ballot.

154 OS 223, 94 NE(2d) 785 (1950), State ex rel Melvin v Sweeney. Where secretary of state has misdirected the members of the boards of elections as to their duties, the matter may be corrected through the remedy of mandamus.

150 OS 18, 80 NE(2d) 436 (1948), State ex rel Mecartney v Hummel. This section, granting power to secretary of state to furnish "other information and recommendations relative to elections as he may deem desirable" is permissive and not mandatory.

144 OS 162, 57 NE(2d) 661 (1944), State ex rel Sagebiel v Montgomery County Bd of Elections. There is no duty resting upon a board of elections (though so ordered by the secretary of state) to prepare a separate ballot for the November 7, 1944, elections with party designations but with the name of no candidate thereon, for the purpose of filling a vacancy in the office of county commissioner caused by the death of an incumbent occurring subsequent to July 20, 1944.

132 OS 206, 6 NE(2d) 1 (1937), State ex rel Struble v Myers. While secretary of state has authority under this section to prescribe rules for the conduct of elections and the proper functioning of election machinery in the state, he has no authority to instruct county boards of elections to refrain from counting ballots.

40 App(2d) 299, 318 NE(2d) 889 (1974), State ex rel Cleveland City Council v Cuyahoga County Bd of Elections. The secretary of state of Ohio's authority in election matters is not limited to voting and breaking two-to-two ties of county boards of elections, and he also has authority to compel observance by election officers of the requirements of election laws, and he performs such other duties as are required by law.

29 App(2d) 133, 279 NE(2d) 624 (1971), Durell v Brown. If there are sufficient presumptively valid signatures in an initiative petition meeting the requirements of O Const Art II §1, there is an absolute duty on the secretary of state to certify the petition to the general assembly irrespective of whether it can be proved that in some way some or all of the signatures contained in the initiative petition are invalid.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. The secretary of state and a county board of elections are required to conduct any municipal election which the laws authorize to be held.

30 Abs 413 (App, Franklin 1939), State ex rel Barry v Griffith. Mandamus action to compel placing name of candidate for judge of municipal court upon ballot should be instituted against county board of elections and not against the secretary of state. (Annotation from former RC 3513.29.)

341 FSupp 1187 (SD Ohio 1972), Gaunt v Brown; affirmed by 409 US 809, 93 SCt 69, 34 LEd(2d) 71 (1972). A state may validly deny voters who are seventeen at the time of primary, but will be eighteen at time of general election, right to vote in primary.

OAG 86-077. Full-time employees of a board of elections, as defined in RC 325.19(G)(1), are entitled to receive vacation leave benefits pursuant to the terms of RC 325.19(A). Part-time employees of a board of elections, as defined in RC 325.19(G)(2), are entitled to participate in any vacation leave benefits that may be provided by a board of county commissioners, by resolution, to part-time county employees under RC 325.19(B).

OAG 65-193; overruled by OAG 86-077. Employees of county boards of elections are state employees whose vacation rights are governed by RC 121.161.

1930 OAG 1423. Under this section, the adoption of such rules, regulations and instructions as will carry out the provisions and principles of the election laws of the state of Ohio, and apply and explain the provisions, intent and purpose of such laws in harmony with the rulings of the courts and opinion of the attorney general, would be within the authority vested in the secretary of state, so long as the laws were not thereby amplified, and such rules, regulations and instructions should be followed and obeyed by county boards of elections and other election officials in the state.

3501.051 Simulated elections for minors

(A) Notwithstanding any other section of the Revised Code, the secretary of state may authorize, in one or more precincts in one or more counties, a program allowing individuals under the age of eighteen to enter the polling place

and vote in a simulated election held at the same time as a general election. Any individual working in or supervising at a simulated election may enter the polling place and remain within it during the entire period the polls are open.

(B) A program established under division (A) of this section shall require all of the following:

(1) That the duties imposed on judges of election and peace officers under section 3501.33 of the Revised Code be performed by those judges and officers in regard to simulated elections and all activities related to simulated elections;

(2) That volunteers provide the personnel necessary to conduct the simulated election, except that employees of the secretary of state, employees or members of boards of elections, and precinct election officials may aid in operating the program to the extent permitted by the secretary of state;

(3) That individuals under the age of fourteen be accompanied to the simulated election by an individual eighteen years of age or over;

(4) Any other requirements the secretary of state considers necessary for the orderly administration of the election process.

HISTORY: 1992 H 471, eff. 7-21-92

BOARD OF ELECTIONS

3501.06 Board of elections; vacancies

There shall be in each county of the state a board of elections consisting of four qualified electors of the county, who shall be appointed by the secretary of state, as his representatives, to serve for the term of four years. On the first day of March in even-numbered years the secretary of state shall appoint two of such board members, one of whom shall be from the political party which cast the highest number of votes for the office of governor at the last preceding regular state election, and the other shall be from the political party which cast the next highest number of votes for the office of governor at such election. All vacancies filled for unexpired terms and all appointments to new terms shall be made from the political party to which the vacating or outgoing member belonged, unless there is a third political party which cast a greater number of votes in the state at the last preceding regular state election for the office of governor than did the party to which the retiring member belonged, in which event the vacancy shall be filled from such third party.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-8

CROSS REFERENCES

Days counted to ascertain time, 1.14
Unclassified and classified civil service, 124.11
Qualifications for public office; convicted felon incompetent to be elector or officeholder, 2961.01, 3503.01; O Const Art II §4, 5, Art V §6, Art XV §4
Misconduct of board of elections, penalty, 3599.16
Qualifications of electors, O Const Art V §1, 4, 6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 18, 21, 22
Am Jur 2d: 25, Elections § 44 to 46

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

368 FSupp 64, 39 Misc 39 (ND Ohio 1973), Pirincin v Cuyahoga County Bd of Elections; affirmed by 414 US 990, 94 SCt 345, 38 LEd(2d) 231 (1973). The Ohio laws regarding the selection of members of county boards of election are valid.

2. In general

115 OS 1, 152 NE 22 (1926), State ex rel Nolan v Brown. The words "qualified electors" as used in former GC 4803 (Repealed), and the words "qualified persons" as used in former GC 4805 (Repealed), GC 4807 (RC 3501.07), mean that the persons referred to must be electors possessing all the rights of electors of the county in general and qualified to exercise such rights, and in addition thereto must be qualified, in all other respects, to properly discharge all duties imposed by law upon deputy state supervisors of elections. State supervisor of elections must exercise sound discretion, in appointing members of boards of deputy state supervisors of elections, concerning the qualifications of persons seeking such appointment, and where the evidence of disqualification is clear and convincing, the appointment may be refused, notwithstanding the recommendation of the political committee. The burden of establishing disqualification is upon the state supervisor of elections.

OAG 90-108. A board of elections member does not serve on a "full-time" basis, as that term is commonly understood.

OAG 90-084. An individual may serve simultaneously as a county elections board member and a member of the board of directors of a port authority operating under RC Ch 4582, provided that such simultaneous service does not violate a local departmental regulation, charter provision, or ordinance.

OAG 74-006. A member of a board of education may also serve as a member of a board of elections if he is not a candidate for an elective office other than those specifically excepted by RC 3501.15.

OAG 66-053. The position of clerk of a local board of education is compatible with the office of member of a board of elections.

1964 OAG 897. A member of a board of elections who is employed as a secretary by a congressman from the same district is not prohibited from exercising the duties of both positions, notwithstanding the fact that board of elections is required to tabulate and count the votes for election of a congressman from that district and that the board member's employer is seeking reelection.

1960 OAG 1086. No person may simultaneously hold the office of director of highway safety and the office of member of a board of elections, so that where a member of a board of elections is appointed and qualified as director of highway safety, such office of member of the board of elections is vacated upon such appointment and qualification.

1959 OAG 926. A deputy clerk of the board of elections may at the same time serve as a deputy sheriff, provided it is physically possible to properly perform the duties of both offices.

1958 OAG 160. The positions of member of the Ohio state racing commission and member of a county board of elections are legally compatible.

1957 OAG 24. The offices of county treasurer and member of a county board of elections are incompatible.

1954 OAG 3930. There is no incompatibility between the offices of assistant prosecuting attorney and member of a county board of elections unless such assistant or the prosecuting attorney whom he serves is currently a candidate for elective office.

1952 OAG 1730. The offices of member of a board of health of a general health district and member of a county board of elections are not incompatible.

1952 OAG 1116. A county service officer may serve as a member of the board of elections.

1934 OAG 2471. A member of a county board of elections may at the same time hold the position of clerk of a city council and that of an employee in the county auditor's office, as distinguished from a deputy in the county auditor's office, if, as an employee in the county auditor's office, he is not in the classified civil service and if it is physically possible to perform the duties of all three positions.

1929 OAG 1342. Under this section, members of boards of deputy state supervisors and inspectors of elections and deputy state supervisors of elections whose terms expire on May 1 of odd numbered years should continue to act and be recognized as such until May 1 of the next even numbered year, when their successors should be appointed by the secretary of state as therein provided.

1929 OAG 1256. Members of boards of deputy supervisors and inspectors of elections who continue in office after January 1, 1930, under this section, as members of the newly created boards of elections, must be compensated on the basis provided in GC 4785-18 (RC 3501.12).

Ethics Op 87-002. Members of a county board of elections are sufficiently "connected" with the county, for purposes of RC 2921.42, that they are forbidden to sell property or services to the county unless the transaction is exempt under RC 2921.42(C).

Ethics Op 75-001. Employees of county boards of elections are not required by RC 102.02(A) to file financial disclosure statements.

Ethics Op 74-007. Members of county boards of election are state officers and RC 102.04 does not prohibit a member of a county board of elections from receiving or agreeing to receive, directly or indirectly, compensation for services rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency of any governmental entity other than the state of Ohio.

Ethics Op 74-003. Members of county boards of elections are not required, by reason of their membership on such board, to file financial disclosure statements under the requirements set out in RC 102.02(A).

3501.07 Party recommendations; appointment

At a meeting held not more than sixty nor less than fifteen days before the expiration date of the term of office of a member of the board of elections, or within fifteen days after a vacancy occurs in the board, the county executive committee of the major political party entitled to the appointment may make and file a recommendation with the secretary of state for the appointment of a qualified elector. The secretary of state shall appoint such elector, unless he has reason to believe that the elector would not be a competent member of such board. In such cases the secretary of state shall so state in writing to the chairman of such county executive committee, with the reasons therefor, and such committee may either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. In such action the burden of proof to show the qualifications of the person so recommended shall be on the committee making the recommendation. If no such recommendation is made, the secretary of state shall make the appointment.

If a vacancy on the board of elections is to be filled by a minor or an intermediate political party, authorized officials of that party may within fifteen days after the vacancy occurs recommend a qualified person to the secretary of state for appointment to such vacancy.

HISTORY: 1971 S 460, eff. 3-23-72
132 v H 64; 1953 H 1; GC 4785-9

CROSS REFERENCES

Days counted to ascertain time, 1.14
Writs of mandamus, Ch 2731
Qualifications of electors, O Const Art V §1, 4, 6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 22, 27
Am Jur 2d: 25, Elections § 41

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

368 FSupp 64, 39 Misc 39 (ND Ohio 1973), Pirincin v Cuyahoga County Bd of Elections; affirmed by 414 US 990, 94 SCt 345, 38 LEd(2d) 231 (1973). The Ohio laws regarding the selection of members of county boards of election are valid.

2. In general

43 OS(3d) 184, 540 NE(2d) 245 (1989), State ex rel Pike County Republican Executive Committee v Brown. Where a nominee for a vacancy on a county board of elections submitted by a county political party's executive committee is rejected by the secretary of state, the county executive committee may either make another recommendation or it may file for a writ of mandamus; however, RC 3501.07 does not allow the committee to make a second recommendation in addition to filing a writ of mandamus and the secretary of state must make an appointment if a writ of mandamus filed in connection with the rejection of the committee's recommended appointee is denied.

50 OS(2d) 329, 364 NE(2d) 275 (1977), State ex rel Hough v Brown. Mandamus will not lie to compel the secretary of state to remove a member of a county board of elections because he has become clerk of the board of county commissioners at a time two commissioners were up for election and because he was treasurer of the county central committee.

39 OS(2d) 157, 314 NE(2d) 376 (1974), State ex rel Democratic Executive Committee v Brown. The secretary of state has discretion in determining the qualifications and competency of persons recommended for appointment to the board of elections.

159 OS 172, 111 NE(2d) 398 (1953), State ex rel Wetecamp v Brown. Mandamus ordering the appointment of an individual as a member of a board of elections will be denied where he would have been retired prior to the date of the action and the secretary of state refused to order him continued in service.

157 OS 368, 105 NE(2d) 643 (1952), State ex rel Boda v Brown. A member of a board of elections is a public employee and according to the provisions of GC 486-33 (RC 145.03), membership in the Public Employees Retirement System is compulsory. An exemption from the retirement system is restricted within narrow confines and such exemption applies only to the particular position in the public service an employee held when he obtained the exemption and does not attach to a new and different office he holds at a later time. The subsequent retirement of a member of a board of elections pursuant to GC 486-32 (RC 145.01) et seq., is a case of an official becoming disqualified by a provision of law from continuing in the office he holds.

157 OS 317, 105 NE(2d) 256 (1952), State ex rel Wetecamp v Brown. In an action of mandamus to appoint to a county board of elections, the person recommended by the county executive committee, that committee is a necessary party.

157 OS 317, 105 NE(2d) 256 (1952), State ex rel Wetecamp v Brown. If the secretary of state refuses to appoint as a member of a board of elections the nominee of a county executive committee, the committee, but not the nominee, may apply for a writ of mandamus ordering such appointment.

146 OS 653, 67 NE(2d) 540 (1946), State ex rel Derwort v Hummel. Under this section, secretary of state exercises quasi-judicial power and in a proper case, writ of prohibition may issue to

prevent him from exceeding such powers; said writ will not issue to prevent secretary of state in exercise of his discretion from appointing member of board of elections under this section, where petition alleges that recommendation made to secretary of state was not made by political party's executive committee, as secretary of state is empowered to appoint any qualified elector where executive committee fails to make a recommendation within time limits.

136 OS 526, 27 NE(2d) 142 (1940), State ex rel O'Neil v Griffith. If a person recommended by a county executive committee of his party is found to be competent, it is the duty of the secretary of state to appoint him, and it is only when conflicting recommendations are made by more than one committee, each claiming to be the rightful executive committee, that the secretary of state is authorized and required to call upon the state central committee of such party to determine and certify which is the rightful county executive committee of such party; GC 4785-9 (RC 3501.07) governs and controls the action of the secretary of state in the matter of appointment of members of county boards of elections; this section and GC 4785-65 (RC 3517.05) are in pari materia and full effect must be given to provisions of both sections if the same can be reconciled.

133 OS 619, 15 NE(2d) 348 (1938), State ex rel Devitt v Kennedy. It was never intended by this section that any group, without slightest color of right, could constitute itself an executive committee, and by mere filing of recommendations with secretary of state compel him to submit matter to state central committee for its determination.

OAG 74-006. A member of a board of education may also serve as a member of a board of elections if he is not a candidate for an elective office other than those specifically excepted by RC 3501.15.

1954 OAG 3930. There is no incompatibility between the offices of assistant prosecuting attorney and member of a county board of elections unless such assistant or the prosecuting attorney whom he serves is currently a candidate for elective office.

Ethics Op 75-001. Employees of county boards of elections are not required by RC 102.02(A) to file financial disclosure statements.

Ethics Op 74-003. Members of county boards of elections are not required by reason of their membership on such board, to file financial disclosure statements under the requirements set out in RC 102.02(A).

3501.08 Oath of office

Before entering upon the duties of his office, each member of the board of elections shall appear before a person authorized to administer oaths and take and subscribe to an oath that he will support the constitutions of the United States and of the state, will perform the duties of the office to the best of his ability, will enforce the election laws, and will protect and preserve the records and property pertaining to elections. Such oath shall be filed with the clerk of the court of common pleas of the county wherein the officer resides within fifteen days from the date of appointment.

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-12

CROSS REFERENCES

Oaths, 3.20 to 3.24
Common pleas court clerk, Ch 2303
Board of elections member violating or preventing enforcement of election laws, penalty, 3599.16

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 21
Am Jur 2d: 25, Elections § 46

3501.09 Organization of board

Biennially, within five days after the appointments to the board of elections are made by the secretary of state, the members of the board shall meet and organize by selecting one of their number as chairman, who shall preside at all meetings. They shall, upon careful consideration of each such person's qualifications, select a resident elector of the county, other than a member of the board, as director, and a resident elector of the county as deputy director. All such officers shall continue in office, at the pleasure of the board, for two years. The balloting for such officers shall commence at or before one p.m. of the day of the convening, and at least one ballot shall be taken every twenty minutes until such organization is effected or five ballots have been cast. The director shall first be selected by the votes of at least three members. If, after five ballots, no person is agreed upon as director, the names of all persons voted for on the fifth ballot, together with the names of the board members who nominated them, shall be certified to the secretary of state, who shall designate therefrom one of such persons to serve as director, unless the secretary of state has reason to believe that no person nominated is qualified. In this case the secretary of state shall so state in writing to the board, and the board shall nominate other persons, in the manner in which the original persons were nominated, and select from those nominated another person as director. If, after five ballots, no person is agreed upon as director, the names of all persons voted for on the fifth ballot, together with the names of the board members who nominated them, shall be certified to the secretary of state, who shall designate therefrom one of such nominees to serve as director and another such nominee to serve as deputy director. If the board fails to nominate another person as director, the office shall be filled in accordance with the procedures of section 3501.16 of the Revised Code.

The director and deputy director shall be of opposite political parties, and each such officer shall have been nominated by a board member of the political party to which he belongs, but the board may decide by the affirmative vote of at least three members that the services of a deputy director are unnecessary and such deputy director then shall not be employed. After the selection of the director and deputy director, the chairman shall be selected from the members of the board of opposite politics to that of the director. If, upon the first ballot, no person is agreed upon as chairman, the member of opposite politics to the director having the shortest term to serve shall be chairman, and shall preside at all meetings. When such organization is perfected, the director shall forthwith report it to the secretary of state.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 131 v S 262; 1953 H 1; GC 4785-10

CROSS REFERENCES

Standard time in Ohio, 1.04
Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 18, 19
Am Jur 2d: 25, Elections § 41 to 42

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, §1, 2, 3, and 4, designated by the secretary of state to take effect 8-30-77, instead took effect immediately because the law contained an appropriation.

138 OS 432, 35 NE(2d) 574 (1941), State ex rel Murphy v Athens County Bd of Elections. GC 4785-10 and 4785-11 (RC 3501.09 and 3501.16) are in pari materia.

1963 OAG 544. Neither the position of clerk of the board of education of a city school district nor that of clerk of the board of elections in the same county is subordinate to or in any way a check upon the other, and therefore, one person may discharge the duties of both; provided that it is not physically impossible to do so which is a factual matter determined by their required time of service in each position.

1959 OAG 926. A deputy clerk of the board of elections may at the same time serve as a deputy sheriff, provided it is physically possible to properly perform the duties of both offices.

3501.091 Replacement of chairman or director; reselection of officers

At any time after the organization of the board of elections is perfected and reported to the secretary of state under section 3501.09 of the Revised Code, the board may decide by the affirmative vote of at least three members to replace the board's present chairman or director with a person belonging to the opposite political party from the one to which the present officer belongs. After such a vote, the members of the board shall reselect all officers of the board in accordance with the procedures set forth in section 3501.09 of the Revised Code. An officer selected through this process shall serve as an officer for the remainder of the term for which the outgoing officer was selected to serve as an officer. A reselection of officers under this section does not increase or decrease the length of any person's term as a member of the board. The director and deputy director shall be of opposite political parties, and the chairman shall be selected from the members of the board of opposite politics from those of the director.

HISTORY: 1991 S 8, eff. 5-21-91

3501.10 Offices of board

(A) The board of elections shall, as an expense of the board, provide suitable rooms for its offices and records and the necessary and proper furniture and supplies for such rooms. The board may lease such offices and rooms, necessary to its operation, for such length of time and upon such terms as the board deems in the best interests of the public, provided that the term of any such lease shall not exceed fifteen years subject to the right of the board of county commissioners by a majority vote within sixty days after the board of county commissioners has been notified in writing of the execution of the lease to void the action of the board of elections.

(B) The board of elections in each county shall keep its offices, or one or more of its branch registration offices, open for the performance of its duties four hours every Saturday for three weeks before the close of registration before a general or primary election and between six p.m. and nine p.m. on one day, other than Saturday, in each week for three weeks before the close of registration before a primary or general election. At all other times during each week, the board shall keep its offices and rooms open for a period of time that such board considers necessary for the performance of its duties.

(C) The board may maintain permanent or temporary branch offices at any place within the county.

HISTORY: 1986 H 555, eff. 2-26-86
1977 S 125; 1974 S 143; 129 v 558; 127 v 741; 1953 H 1; GC 4785-17

CROSS REFERENCES

Days counted to ascertain time, 1.14
Determination of supplies, equipment, and insurance to be purchased, 125.04
County commissioners' provision of offices, 307.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 18, 19
Am Jur 2d: 25, Elections § 39

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, §1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

OAG 72-025. RC 3503.12, respecting establishment of registration places by board of elections, is ambiguous as to whether or not such places may be established prior to primary elections and, having been consistently construed for many years by secretary of state to prevent establishment prior to such primaries, and such construction not being unreasonable, boards of elections are prevented from establishing such registration places prior to primary elections.

OAG 68-042. Pursuant to RC 3501.10, the board of elections may establish more than one temporary branch office in a municipal corporation described in that section and such branch offices may be established prior to a primary election.

1961 OAG 1992. A board of elections may enter into a lease for a building to be used for the storage of voting machines.

1956 OAG 6896. The establishment by a board of elections of a number of "temporary branch offices" as provided in RC 3501.10 does not constitute the provision of "branch registration offices" within the meaning of RC 3503.12, nor does such board, in establishing such temporary branch offices, exhaust one of the alternatives provided in the latter section so as to preclude arrangements each year for registration in each registration precinct.

1930 OAG 1905. Under this section, a board of elections of county containing a municipality in addition to the county seat may not maintain a permanent branch office in such municipality.

3501.11 Duties of board

Each board of elections shall exercise by a majority vote all powers granted to such board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall:

(A) Establish, define, provide, rearrange, and combine election precincts;

(B) Fix and provide the places for registration and for holding primaries and elections;

(C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;

(D) Appoint and remove its director, deputy director, and employees and all registrars, judges, clerks, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;

(E) Make and issue such rules and instructions, not inconsistent with law or the rules established by the secretary of state, as it considers necessary for the guidance of election officers and voters;

(F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;

(G) Provide for the issuance of all notices, advertisements, and publications concerning elections;

(H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;

(I) Cause the polling places to be suitably provided with stalls and other required supplies;

(J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney;

(K) Review, examine, and certify the sufficiency and validity of petitions and nomination papers;

(L) Receive the returns of elections, canvass the returns, make abstracts thereof, and transmit such abstracts to the proper authorities;

(M) Issue certificates of election on forms to be prescribed by the secretary of state;

(N) Make an annual report to the secretary of state, on the form prescribed by him, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, and expenditures made, and such other data as is required by the secretary of state;

(O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;

(P) Perform such other duties as are prescribed by law or the rules of the secretary of state;

(Q) Investigate and determine the residence qualifications of electors;

(R) Administer oaths in matters pertaining to the administration of the election laws;

(S) Prepare and submit to the secretary of state whenever he requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;

(T) Establish and maintain a voter registration of all qualified electors in the county who offer to register;

(U) At least annually, on a schedule and in a format prescribed by the secretary of state, submit to the secretary of state an accurate and current list of all registered voters in the county for the purpose of assisting the secretary of state to maintain a master list of registered voters pursuant to section 3503.27 of the Revised Code;

(V) Prepare and cause the following notice to be displayed in a prominent location in every polling place:

"NOTICE

Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators shall be fined not less than fifty nor more than one thousand dollars or imprisoned not less than one nor more than five years, or both."

In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairman shall submit the matter in controversy to the secretary of state, who shall summarily decide the question and his decision shall be final.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 1977 S 125; 132 v H 1; 131 v S 257; 125 v 713; 1953 H 1; GC 4785-13

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Forms 3.02
Baldwin's Ohio School Law, Forms 5.01, 5.21 to 5.25
Gotherman & Babbit, Ohio Municipal Law, Forms 19.33

CROSS REFERENCES

Oaths, 3.20 to 3.24
Notices, proclamations, and orders to be published in two newspapers, commercial rate, 7.11
Form for filing financial statement, issuance, 102.09
Changes in municipal corporation boundaries, notice by clerk, 709.011
Registration, 3503.08 to 3503.33
Canvass of returns, 3505.32
Precinct officials, rearrangement of precincts, counting stations, 3506.16
Primaries, nomination, Ch 3513
Duties of board of elections when recount is completed, 3515.05
Powers of boards of elections, 3519.18
Board of elections members, neglect to perform or violation of duties punished, 3599.16
Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34
Petition for local option election, protest against petition, 4301.33
Military census, taking, 5917.03
Dissolution of watershed district, 6105.18 to 6105.22
Duties of board of elections, watershed districts, 6105.20
Right to be secure against unreasonable searches and seizures, O Const Art I §14
Residence of electors, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 244, 251; 21, Counties, Townships, and Municipal Corporations § 763; 37, Elections § 19, 20, 24, 62, 104, 106, 130, 144, 194; 56, Initiative and Referendum § 34; 76, Public Funds § 97
Am Jur 2d: 25, Elections § 44 to 45

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Nominations, candidates, applications
4. Precincts, polls, voting equipment

1. Constitutional issues

368 FSupp 64, 39 Misc 39 (ND Ohio 1973), Pirincin v Cuyahoga County Bd of Elections; affirmed by 414 US 990, 94 SCt 345, 38 LEd(2d) 231 (1973). The Ohio laws regarding the selection of members of county boards of election are valid.

2. In general

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. Mandamus will not lie to compel the secretary of state and a local board of elections to impound uncertified local option election results and order the liquor control department director to disregard notice of the results as the election was timely.

39 OS(3d) 292, 530 NE(2d) 869 (1988), State ex rel Williams v Iannucci. A city auditor has no express or implied authority to pronounce judgment on the legality of a proposed ordinance that justifies his refusal to certify to the board of elections the text of an

initiative petition having sufficient signatures; the board of elections has authority under RC 3501.11(K) to review the sufficiency and validity of the petitions.

39 OS(3d) 291, 530 NE(2d) 871 (1988), Barton v Butler County Bd of Elections. Prohibition does not lie to correct an allegedly erroneous exercise of properly assumed quasi-judicial authority by a board of elections in approving referendum petitions for the ballot; rather, injunction is the proper remedy in such a case.

68 OS(2d) 38, 428 NE(2d) 401 (1981), State ex rel Toncray v Summit County Bd of Elections. Prohibition will not lie to prevent a board of elections from placing an issue on the ballot.

61 OS(2d) 298, 401 NE(2d) 445 (1980), Wiss v Cuyahoga County Bd of Elections. There is no requirement of a hearing as a prerequisite to a board of elections holding a candidate's petitions wanting due to his residence outside the territorial area of the office to which he sought election.

60 OS(2d) 188, 398 NE(2d) 777 (1979), State ex rel Celebrezze v Butler County Court of Common Pleas. Prohibition will not lie to bar a common pleas court from enjoining the secretary of state from dismissing the director of a county board of elections.

48 OS(2d) 173, 357 NE(2d) 1079 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections. Where a township zoning commission approved rezoning of three parcels of land and disapproved rezoning of a fourth, a referendum petition seeking to submit the resolution to the electors must fairly show both the approving and disapproving action of the commission.

48 OS(2d) 36, 356 NE(2d) 719 (1976), State ex rel Nolte v Defiance County Bd of Elections. In reviewing a referendum petition a board of elections is not required to review the assessments therein.

165 OS 175, 134 NE(2d) 154 (1956), State ex rel Pucel v Green. Mandamus will lie to compel the board to accept a signature on a nominating petition where the signer testifies that the signature is authentic and there is no evidence contradicting that testimony.

142 OS 216, 51 NE(2d) 636 (1943), State ex rel Columbus Blank Book Mfg Co v Ayres. Contract entered into by board of elections pursuant to this section does not require certificate of any fiscal officer that essential funds are available as provided in GC 5625-33(d) (RC 5705.41).

69 App(2d) 115, 432 NE(2d) 210 (1980), State ex rel Moss v Franklin County Bd of Elections. The determination of a board of elections with respect to a protest against a nominating petition is not appealable.

59 App(2d) 257, 394 NE(2d) 321 (1978), State ex rel Wolfe v Lorain County Bd of Elections. Title 35 and RC 705.12 impose no duty upon a county board of elections to recall the certificate of election of a municipal councilman-at-large who, prior to his election, was employed by the United States post office.

59 App(2d) 175, 392 NE(2d) 1302 (1978), State ex rel Watkins v Quirk. The power of a municipal clerk of council to ascertain the sufficiency of a referendum petition is not co-extensive with that of a board of elections under RC 3501.11(K), and he possesses no judicial or quasi-judicial power in this regard, but is limited to an examination of the face of the petition.

50 App(2d) 1, 361 NE(2d) 477 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections; affirmed by 48 OS(2d) 173, 357 NE(2d) 1079 (1976). Under RC 3501.11 county boards of elections are under a duty to scrutinize referendum petitions to determine their sufficiency and validity prior to placing a referendum issue upon the ballot.

42 App(2d) 56, 327 NE(2d) 789 (1974), State ex rel Diversified Realty v Perry Twp Bd of Trustees. A board of elections has the duty, pursuant to RC 3501.11(K), to review, examine and certify the sufficiency and validity of referendum petitions filed pursuant to RC 519.12.

66 App 482, 35 NE(2d) 474 (1940), State ex rel Farnsworth v McCabe. A decision of the secretary of state made under GC 4785-13 (RC 3501.11) is final, and, in absence of fraud, a court has no power to interfere with such decision and any order attempting to do so is void and of no effect.

35 Misc 4 (CP, Cuyahoga 1973), Carney v Perk. Board of elections has jurisdiction to investigate circulation of petitions seeking amendment of city charter and to bring declaratory judgment action in respect thereto.

24 Misc 135, 263 NE(2d) 586 (CP, Cuyahoga 1970), State ex rel McGovern v Cuyahoga County Bd of Elections. Powers of board of elections as prescribed by RC 3501.11 do not include authority to refuse to place on ballot issue submitted by lawful procedures for vote of electors of municipality because of board's determination that resulting charter amendment would be illegal.

64 Abs 307, 111 NE(2d) 689 (App, Summit 1952), State ex rel McGowan v Summit County Bd of Elections; affirmed by 157 OS 428, 105 NE(2d) 639 (1952). Where the board of elections is granted quasi-judicial powers and in a proper proceeding enters a finding after trial, such finding should end the board's right to retry the same question.

30 Abs 413 (App, Franklin 1939), State ex rel Barry v Griffith. Mandamus action to compel placing name of candidate for judge of municipal court upon ballot should be instituted against county board of elections and not against the secretary of state. (Annotation from former RC 3513.29.)

12 OO(3d) 194 (1979), State ex rel Lima v Havenstein. The board of elections is not required to submit a referendum to electors of the city unless the language of the ballot titled as prepared by the director of law is "a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance, or part thereof."

1964 OAG 897. A member of a board of elections who is employed as a secretary by a congressman from the same district is not prohibited from exercising the duties of both positions, notwithstanding the fact that that board of elections is required to tabulate and count the votes for election of a congressman from that district and that the board member's employer is seeking reelection.

1962 OAG 3196. The duty of determining the sufficiency of the form, content and signatures of a petition or referendum filed under RC 3311.26 is invested in the county board of education.

1932 OAG 4049. In the event of a tie vote by the board of elections of Cuyahoga county upon whether or not a request for challengers and witnesses at the election to be held in Cleveland February 16, 1932, shall be allowed or refused, it is the duty of the secretary of state, as chief election officer, to summarily decide the question when submitted to him by the clerk of such board.

1930 OAG 2046. The actual expenses of members of county boards of elections incurred in attendance upon a meeting of the members of said boards held at Columbus, Ohio, on May 22, 1930, upon the call of the secretary of state, may be paid from the treasury of the county which they represent upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk, upon warrants of the auditor.

1930 OAG 1961. Purchases by the board of elections, in cases other than contracts for the printing of the ballots, are not required to be made in pursuance of advertisement and competitive bidding.

3. Nominations, candidates, applications

64 OS(3d) 12 (1992), State ex rel Shumate v Portage County Bd of Elections. A county board of elections may not rely on a common pleas administrative judge's certification that a candidate for sheriff meets the qualifications of RC 311.01(B).

1 OS(3d) 275, 1 OBR 384, 439 NE(2d) 893 (1982), State ex rel Speck v Licking County Bd of Elections. Where an election board has certified a candidate, the secretary of state has no jurisdiction to take action in respect thereto.

51 OS(2d) 173, 367 NE(2d) 879 (1977), State ex rel Senn v Cuyahoga County Bd of Elections. Court of appeals improperly reversed action of board of elections which denied candidate place on ballot on ground that he had filed his declaration of candidacy the day after he had filed his part-petitions.

46 OS(2d) 37, 346 NE(2d) 283 (1976), State ex rel Kennedy v Cuyahoga County Bd of Elections. Municipal requirement that

clerk of council determine sufficiency of referendum petition did not negate duties imposed on board of elections by RC 3501.11.

20 OS(2d) 41, 252 NE(2d) 641 (1969), State ex rel Sterne v Hamilton County Bd of Elections. Board of elections did not abuse discretion in denying a hearing and ordering that candidate's name appear on ballot in accordance with her registration.

12 OS(2d) 5, 230 NE(2d) 346 (1967), State ex rel Janasik v Sarosy. Even though referendum petitions are retained by the clerk and the initial duty is on such clerk to determine the validity of the petitions, if a protest is made to the board of elections as to the validity of the petitions, it is incumbent on the board to examine them and determine their validity.

173 OS 321, 181 NE(2d) 888 (1962), State ex rel Schwarz v Hamilton County Bd of Elections. Where evidence showed that circulator of nominating petition had sworn that 27 signatures were placed thereon in his presence and 28 signatures were on such petition, and the circulator testified that he had deliberately ignored one signature because it was by a resident of another county, such petition should have been accepted.

165 OS 498, 137 NE(2d) 674 (1956), State ex rel Barklow v Appel. Where a candidate for the office of county engineer was not a registered surveyor at the time he filed his expense account and paid his filing fee, he was not eligible as such candidate, and a decision of a board of elections that was reached as a result of a tie-breaking vote by the secretary of state will be reversed.

164 OS 193, 129 NE(2d) 623 (1955), State ex rel Flynn v Cuyahoga County Bd of Elections. A board of elections is authorized to conduct a hearing on a protest against the nominating petition of a candidate alleged to be ineligible to assume the office and to determine the validity of such petition; and its decision is final and, in the absence of allegations of fraud, corruption, abuse of discretion or a clear disregard of statutes or legal provisions applicable thereto, is not subject to judicial review.

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. Under the provisions of this and cognate sections, a county board of elections is authorized to review, examine and certify the sufficiency and validity of petitions and nominating papers even in the absence of a protest thereto.

149 OS 329, 78 NE(2d) 715 (1948), State ex rel McGinley v Bliss. Provisions of GC 4785-70 (RC 3513.05) relating to notice and hearing apply only where protests are filed against candidacy of any person filing declaration of candidacy and where the candidate is challenging the action of board of elections in rejecting nomination papers for failure to comply with GC 4785-71a (RC 3513.08), candidate is not entitled to notice and hearing and this section does not provide for a hearing.

120 App 64, 197 NE(2d) 412 (1964), State ex rel Cofall v Cuyahoga County Bd of Elections; affirmed by 176 OS 191, 198 NE(2d) 459 (1964). A declaration of candidacy for party nomination at a primary election designating the office sought as "clerk of courts" instead of "clerk of the court of common pleas" satisfies RC 3513.07, and a board of elections does not abuse its discretion in finding such declaration of candidacy and petition valid.

106 App 61, 148 NE(2d) 519 (1958), State ex rel Donnelly v Green. Mandamus would not issue to compel board of elections to omit candidate's name from a ballot where candidate filed for both two and four year terms for the state senate and then withdrew his name from the former race.

101 App 531, 133 NE(2d) 170 (1956), State ex rel Pucel v Green; affirmed by 165 OS 175, 134 NE(2d) 154 (1956). Where a wife signs her husband's name on a nominating petition, at his request and in the presence of the circulator thereof, and where there is not the slightest suggestion of fraud on the part of the husband or on the part of the circulator of the petition in signing the affidavit attached thereto, there is no justification for invalidating the entire petition because of the claim that such affidavit was fraudulently made.

101 App 531, 133 NE(2d) 170 (1956), State ex rel Pucel v Green; affirmed by 165 OS 175, 134 NE(2d) 154 (1956). Where there is no competent evidence contradicting the sworn testimony of an elector that he, by his own hand, signed his name to a nominating petition, a board of elections commits an abuse of discretion in excluding such nominating petition and holding that such signature could not be counted in considering the sufficiency of such nominating petition.

98 App 89, 128 NE(2d) 121 (1954), State ex rel Wiethe v Hamilton County Bd of Elections. The trial court properly denied relator's request for a mandatory injunction ordering his name placed on the ballot as candidate for the central committee from a designated ward where his petition stated that he was a candidate from a precinct of the ward.

74 App 295, 58 NE(2d) 793 (1943), State ex rel Behrens v Hamilton County Bd of Elections. A board of elections must declare a nominating petition void, where such petition does not conform to requirements specified by law, although objections to such petition were not filed before the fifty-fifth day prior to the election.

OAG 77-091. A board of library trustees and a board of elections may enter into a contract whereby library personnel and facilities would be used to conduct voter registration and the library would be reimbursed by the board of elections for the actual costs incurred.

OAG 77-091. Public library funds may not be used for the purpose of voter registration, absent reimbursement by the board of elections to the library for the actual costs incurred.

1958 OAG 2719. When a local option petition has been presented to a board of elections such board has the duty and exclusive jurisdiction to determine the sufficiency of such petition except that under the conditions as specified in RC 3501.11 the question shall be submitted for determination to the secretary of state, whose decision shall be final.

1956 OAG 6919. A board of elections is under a mandatory duty to determine the validity of nominating petitions whether or not a protest is filed against them.

1933 OAG 1491. Where a municipal charter provides that each signer of a nominating petition shall place on the petition after his name his place of residence and give the date when his signature was made, such residence and date are sufficiently indicated by ditto marks under the residence or date written above after the name of another signer.

1932 OAG 4237. Where a person residing in a registration precinct has filed a declaration of candidacy and is not registered as an elector, he is not entitled to have his name appear on the ballot of his party at the primary election as a candidate for coroner. In such a case the board of elections has the authority to reject and refuse to act upon the declaration of candidacy.

4. Precincts, polls, voting equipment

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. The secretary of state and a county board of elections are required to conduct any municipal election which the laws authorize to be held.

67 Abs 170, 117 NE(2d) 227 (CP, Montgomery 1953), Hammond v Young. In a charter city in which all city commissioners are elected at large the commission and not the board of elections has the authority to redivide the city into wards for election purposes.

OAG 77-041. Persons who wish to register to vote on the day of a general, primary or special election need not do so at a polling place in the precinct in which they reside, provided the board of elections has located the polling place for voting purposes outside the boundaries of the precinct in which they reside.

1961 OAG 1992. A board of elections may enter into a lease for a building to be used for the storage of voting machines.

1939 OAG 1036. Expenses of county board of elections for rental of polling places should be paid from county treasury in pursuance of appropriations by county commissioners upon vouchers of board of elections certified to by its chairman or acting chairman and its clerk or deputy clerk, upon warrants of county auditor; moneys so expended for a political subdivision within a county should be charged back to such subdivision for (1) primaries

and elections in odd-numbered years, (2) special elections, and (3) conducting of registration within such subdivision, when required, and amount so charged should be withheld by county auditor from moneys payable thereto at next tax settlement.

3501.12 Compensation of members of board

The annual compensation of members of the board of elections shall be determined on the basis of the population of the county according to the next preceding federal census, and shall be paid monthly out of the appropriations made to the board and upon vouchers or payrolls certified by the chairman, or a member of the board designated by it, and countersigned by the director or in his absence by the deputy director. Upon presentation of any such voucher or payroll, the county auditor shall issue his warrant upon the county treasurer for the amount thereof as in the case of vouchers or payrolls for county offices and the treasurer shall pay such warrant.

The amount of annual compensation of members of the board shall be as follows:

(A) Seventy-five dollars for each full one thousand of the first one hundred thousand population;

(B) Thirty-six dollars for each full one thousand of the second one hundred thousand population;

(C) Twenty dollars for each full one thousand of the third one hundred thousand population;

(D) Six dollars for each full one thousand above three hundred thousand population.

Provided the compensation of a member of the board shall not be less than three thousand dollars and shall not exceed fifteen thousand dollars annually.

For the purposes of this section, members of boards of elections shall be deemed to be appointed and not elected, and therefore not subject to section 20 of article II of the Ohio Constitution.

HISTORY: 1984 H 897, eff. 12-26-84
1980 H 1062; 1976 H 751; 132 v S 517; 131 v H 533; 128 v 461; 126 v 205; 125 v 713; 1953 H 1; GC 4785-18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 18, 20, 21, 23, 24, 28
Am Jur 2d: 25, Elections § 39

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

368 FSupp 64, 39 Misc 39 (ND Ohio 1973), Pirincin v Cuyahoga County Bd of Elections; affirmed by 414 US 990, 94 SCt 345, 38 LEd(2d) 231 (1973). The Ohio laws regarding the selection of members of county boards of election are valid.

2. In general

157 OS 368, 105 NE(2d) 643 (1952), State ex rel Boda v Brown. A member of a board of elections is a public employee and according to the provisions of GC 486-33 (RC 145.03), membership in the public employees retirement system is compulsory. An exemption from the retirement system is restricted within narrow confines and such exemption applies only to the particular position in the public service an employee held when he obtained the exemption and does not attach to a new and different office he holds at a later time. The subsequent retirement of a member of a board of elections pursuant to GC 486-32 (RC 145.01) et seq., is a case of an official becoming disqualified by a provision of law from continuing in the office he holds.

OAG 86-077. The secretary of state may not establish vacation leave benefits or sick leave benefits for members of a board of elections.

OAG 78-064. Pursuant to RC 3501.17, a board of county commissioners is authorized to procure insurance to protect members of the board of elections from liability arising from the exercise of their official duties, but the determination of whether such insurance is a "necessary and proper" expense of the board of elections is within the sound discretion of the board of county commissioners.

1955 OAG 5199. A member of a board of elections may not receive a salary increase based on the population of the registration precincts where the registration requirement is established by discretionary action of the board.

1945 OAG 370. Where a person holding the position of clerk of the board of elections enters the armed services and the board of elections declares the office vacant and appoints a new clerk, the person leaving the office to enter the armed services is not entitled to the compensation of the office of clerk of the board of elections during his period in the armed services.

1944 OAG 6949. A member of board of elections is entitled to receive compensation for that office while in armed forces of United States.

1941 OAG 4042. "Annual" salary based on population as shown by federal census must be computed on year as a whole, which year may not be split up into periods by fluctuations of population which may occur during year; such year extends from March 1st of each calendar year to and including last day of February of following calendar year. Annual salary of members of county boards of elections for years of their respective terms from March 1, 1940 to February 28, 1941, should be computed on basis of the 1930 census, while annual salaries for members of county board of elections and clerks of such boards now in office should be computed for annual period beginning in March, 1941, and for each succeeding annual period during their respective terms of office, on basis of 1940 census. Word "annual" as applied to stated salary or compensation fixed by this section, for members of county boards of elections, and by GC 4785-19 (Repealed), for clerks of county boards of elections, means not calendar years but years of particular officer's term of office according to time of year when term commences.

1931 OAG 3827. The board of elections may not be paid for the acts and duties required by GC 11419-8 (RC 2313.06); their compensation is fixed by this section.

Ethics Op 74-007. Members of county boards of election are state officers and RC 102.04 does not prohibit a member of a county board of elections from receiving or agreeing to receive, directly or indirectly, compensation for services rendered or to be rendered by him personally in any case, proceeding, application or other matter which is before any agency of any governmental entity other than the state of Ohio.

DIRECTOR AND ELECTION OFFICIALS

3501.13 Duties of director; oath; notice to be posted

The director of the board of elections shall keep a full and true record of the proceedings of the board and of all moneys received and expended; file and preserve in its office all orders and records pertaining to the administration of registrations, primaries, and elections; receive and have the custody of all books, papers, and property belonging to the board; and shall perform such other duties in connection with his office and the proper conduct of elections as the board determines.

Before entering upon the duties of his office, the director shall subscribe to an oath that he will support the constitutions of the United States and of this state, perform all the duties of the director to the best of his ability, enforce the election laws, and preserve all records, documents, and other property pertaining to the conduct of elections placed in his custody.

The director may administer oaths to such persons as are required by law to file certificates or other papers with the board, to judges and clerks of elections, to witnesses who are called to testify before the board, and to voters filling out blanks at the board's offices. The records of the board and papers and books filed in its office are public records and open to inspection under such reasonable regulations as shall be established by the board. The following notice shall be posted in a prominent place at each board office:

"Records filed in this office of the board of elections are open to public inspection during normal office hours, pursuant to the following reasonable regulations: (the board shall here list its regulations). Whoever prohibits any person from inspecting the public records of this board is subject to the penalties of section 3599.161 of the Revised Code."

HISTORY: 1980 H 1062, eff. 3-23-81
1977 H 86; 1953 H 1; GC 4785-14

CROSS REFERENCES

Oaths, 3.20 to 3.24
Public records, availability, 149.43
Misconduct of director of board of elections, penalties, 3599.16, 3599.161
Access to public records filed with board of elections; preventing inspection forbidden, 3599.161
Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 18, 20, 21, 23, 24, 28
Am Jur 2d: 25, Elections § 39

NOTES ON DECISIONS AND OPINIONS

OAG 83-090. A director of a county board of elections may also serve as a member of a municipal civil service commission, even though the municipality is located within the county served by the board of elections.

1963 OAG 544. Neither the position of clerk of the board of education of a city school district nor that of clerk of the board of elections in the same county is subordinate to or in any way a check upon the other, and therefore, one person may discharge the duties of both; provided that it is not physically impossible to do so which is a factual matter determined by their required time of service in each position.

1949 OAG 924. The office of clerk of a county board of elections and the position of deputy county treasurer are compatible and may legally be held by one and the same person providing it is physically possible and he is not a candidate for an office to be filled at an election.

3501.14 Compensation of directors, deputy directors, and employees

The board of elections shall, by a vote of not less than three of its members, fix the annual compensation of its director and deputy director who are selected in accordance with section 3501.09 of the Revised Code.

The board may, when necessary, appoint a deputy director, who shall not be a member of the same political party of which the director is a member, and other employees, prescribe their duties, and, by a vote of not less than three of its members, fix their compensation.

The director, deputy director, and other employees of the board are not public officers and shall serve, during their term of office, at the discretion of the board. The board may summarily remove the director or the deputy director by a vote of not less than three of its members and may remove any other employee by a majority vote of its membership.

The deputy director and all other election officials shall take and subscribe to the same oath for the faithful performance of their duties as is required of the director of the board. The deputy director shall have the same power as the director to administer oaths. The board may also employ additional employees, when necessary, for part time only at the prevailing rate of pay for such services.

A tie vote or disagreement in the board on the amount of compensation to be paid to a director, deputy director, or any employee shall not be submitted to the secretary of state.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-15

CROSS REFERENCES

Bond of deputies and clerks, 3.06
Oaths, 3.20 to 3.24
Unclassified and classified service, 124.11
Misconduct of members or employees of board of elections, 3599.16
Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17
Employees of county boards of elections not "public employees" covered by collective bargaining law, 4117.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 18, 20, 21, 23, 24, 28

NOTES ON DECISIONS AND OPINIONS

124 OS 315, 178 NE 266 (1931), State ex rel Reardon v McDonald. Assistant clerk of county board of elections is not a public officer. Quo warranto is not the remedy to try right to such office (GC 4785-13, 4785-15 and 12303 (RC 3501.11, 3501.14 and 2733.01)).

OAG 86-077. The secretary of state may not establish vacation leave benefits for employees of a board of elections, or establish for such board employees vacation leave benefits in excess of those which they may be entitled to receive pursuant to the terms of RC 325.19.

OAG 86-077. A board of elections may adopt its own policy with respect to vacation leave benefits of its employees, provided that the board's policy establishes vacation leave benefits at least as great as any benefits to which such employees may otherwise be entitled by statute.

OAG 84-091. A board of county commissioners may not require a board of elections to use a standard form employment contract for the part-time employees of the board of elections.

OAG 84-009. Pursuant to RC 3501.14 a board of elections is required to fix the annual compensation of its director and deputy director by the concurrent, affirmative votes of not less than three of its four members.

OAG 65-193; overruled by OAG 86-077. Employees of county boards of elections are state employees whose vacation rights are governed by RC 121.161.

1954 OAG 4210. A board of elections has authority to increase the salary of a clerk, deputy clerk, or assistant clerk at any time during the term for which he has been appointed.

1952 OAG 1116. The offices of deputy clerk of a board of elections and member of the soldiers relief commission are not incompatible.

1952 OAG 1068. The salaries of clerks and deputy clerks of boards of elections appointed prior to the amendment of this section by the 99th general assembly may be changed on or after January 1, 1952, the effective date of said amendment.

1952 OAG 1068. A clerk and a deputy clerk of a board of elections are not officers within the meaning of O Const Art II §20.

1931 OAG 4862. The salary of a deputy clerk of a board of elections may not be reduced during his term of office.

1931 OAG 3827. The board of elections, if it employs help for the preparation of lists, may pay such clerical help in the manner provided by this section.

1931 OAG 3262. When a board of elections has appointed an assistant clerk for a definite term, such clerk may be summarily removed by the board at any time prior to the expiration of said term, there being no legal authority for the appointment for a definite term and the board having express authority to remove its assistant clerks.

1931 OAG 3048. The compensation of extra clerks hired by a board of elections to assist in any registration is an item of expense chargeable to the county in which such registration is held.

3501.141 Group medical insurance for employees and board members

(A) The board of elections of any county may contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, or group life insurance, or a combination of any of the foregoing types of insurance or coverage for the full-time employees of such board and their immediate dependents, whether issued by an insurance company, a health or medical care corporation, a dental care corporation, or a health maintenance organization, duly authorized to do business in this state.

(B) The board of elections of any county may procure and pay all or any part of the cost of group hospitalization, surgical, major medical, or sickness and accident insurance or a combination of any of the foregoing types of insurance or coverage for the members appointed to the board of elections under section 3501.06 of the Revised Code and their immediate dependents when each member's term begins, whether issued by an insurance company or a health or medical care corporation, duly authorized to do business in this state.

HISTORY: 1987 S 124, eff. 10-1-87
1979 S 190; 1971 S 17; 1969 S 388

NOTES ON DECISIONS AND OPINIONS

OAG 90-108. A board of elections may not, after a board member's term has begun, authorize the procurement of insurance for that member under RC 3501.141(B) to commence during his term of office.

OAG 78-064. Pursuant to RC 3501.17, a board of county commissioners is authorized to procure insurance to protect members of the board of elections from liability arising from the exercise of their official duties, but the determination of whether such insurance is a "necessary and proper" expense of the board of elections is within the sound discretion of the board of county commissioners.

OAG 70-048. Terms of RC 305.171 do not alter duty of boards of county commissioners, under RC 3501.17, to arrange for payment of costs of insurance programs which may be initiated by boards of elections pursuant to RC 3501.141.

3501.15 Election officials as candidates

No person shall serve as a member, director, deputy director, or employee of the board of elections who is a candidate for any office to be filled at an election, except the office of delegate or alternate to a convention, member of the board of directors of a county agricultural society, presidential elector, or a member of a party committee. No person who is a candidate for an office or position to be voted for by the electors of a precinct, except for a candidate for county central committee who is not opposed by any other candidate in that election and precinct, shall serve as a precinct election officer in said precinct.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 125 v 713; 1953 H 1; GC 4785-16

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 13.08, 13.10
Baldwin's Ohio School Law, Text 45.08(A)

CROSS REFERENCES

Qualifications of precinct officials, program of instruction, 3501.27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 18, 20, 21, 23, 24, 28
Am Jur 2d: 25, Elections § 40

NOTES ON DECISIONS AND OPINIONS

OAG 81-017. RC 3501.15 does not prevent a member of the board of elections from accepting appointment to the office of township trustee; it does prevent him from running for election as a township trustee.

OAG 74-006. A member of a board of education may also serve as a member of a board of elections if he is not a candidate for an elective office other than those specifically excepted by RC 3501.15.

1964 OAG 897. A member of a board of elections who is employed as a secretary by a congressman from the same district is not prohibited from exercising the duties of both positions, notwithstanding the fact that the board of elections is required to tabulate and count the votes for election of a congressman from that district and that the board member's employer is seeking reelection.

1963 OAG 544. Neither the position of clerk of the board of education of a city school district nor that of clerk of the board of elections in the same county is subordinate to or in any way a check upon the other, and therefore, one person may discharge the duties of both; provided that it is not physically impossible to do so which is a factual matter determined by their required time of service in each position.

1963 OAG 103. The office of deputy clerk of the board of elections is compatible with the office of member of the board of education of a local school district, but no person shall serve as a deputy clerk of the board of elections who is a candidate for election to the office of member of a board of education of a local school district.

1960 OAG 1177. There is no incompatibility between the offices of member of a board of elections and county court judge unless the county court judge is currently a candidate for elective office.

1954 OAG 3930. There is no incompatibility between the offices of assistant prosecuting attorney and member of a county board of elections unless such assistant or the prosecuting attorney whom he serves is currently a candidate for elective office.

1952 OAG 1116. A county service officer may serve as a member of the board of elections.

1950 OAG 1420. A person who was elected to the office of village treasurer is not disqualified from holding such office by reason of the fact that he served as a precinct election officer in the election at which he was elected.

1949 OAG 963. The offices of county auditor and clerk of the board of elections are incompatible and may not be held by one and the same person at the same time.

1949 OAG 963. The office of county auditor is incompatible with any and all offices or employments which receive or pay out funds of the county, or where such offices or employments make a certificate to the county auditor for payment of claims, and the county auditor cannot fill a second position when the duties of said second position or office require the incumbent to account for, receive or expend moneys or funds of the county, or to certify claims to the county auditor for payment.

1943 OAG 6568. A person who was elected to office of councilman of a village is not disqualified from holding office by reason of fact that he served as a precinct election officer in the election at which he was elected.

1936 OAG 5294. A coroner who is not a candidate for election may be a member of a county board of elections, if it is physically possible to perform the duties of both offices, but a coroner who is a candidate for election may not at the same time be a member of a county board of elections.

1933 OAG 1992. Where a person who serves as a member, clerk, deputy clerk, assistant clerk, or employee of a board of elections is a candidate for office, and is elected to such office, that fact alone does not make such person ineligible to the office to which he was elected.

1928 OAG 2067. Under former GC 5092 (Repealed), a deputy clerk of the board of deputy state supervisors and inspectors of elections was not prohibited from becoming a candidate while holding such position.

1928 OAG 1577. A candidate, who serves as a judge or clerk of elections of any precinct of a school district, when an election is being held for member of the board of education for the district, is ineligible to the office.

1928 OAG 1565. A judge of elections, whose name was not printed on the ballot, and who was elected a member of a board of education, under former GC 5092 (Repealed), and had been engaged in actively promoting his candidacy for such office, was ineligible. If he did not seek the office he would be eligible, notwithstanding the fact that he had served as a judge of the election in which he was elected.

1927 OAG 1390. A judge or clerk of elections whose name is not printed on the ballot as a candidate for member of council, but whose name is written in, and who is actively promoting his candidacy for such office is also ineligible to the office if elected; such judge or clerk of elections whose name is printed on the ballot at said election as a candidate for member of council, was ineligible to the office if elected, but where votes are cast by writing in for member of council the name of a person who is serving as judge or clerk at the election but who has not been regularly nominated for the office of member of council, and who has not sought or aspired to such office or actively promoted his candidacy, said person is eligible to said office, if elected.

3501.16 Removal from office

The secretary of state may summarily remove any member of a board of elections, or the director, deputy director, or any other employee of the board, for neglect of duty, malfeasance, misfeasance, or nonfeasance in office, for any willful violation of Title XXXV of the Revised Code, or for any other good and sufficient cause. Except as otherwise provided in section 3501.161 of the Revised Code, vacancies in the office of chairman, director, or deputy director shall be filled in the same manner as original selections are made, from persons belonging to the same political party as that to which the outgoing officer belonged. If such vacancies cannot be so filled, they shall be filled by the secretary of state.

HISTORY: 1991 S 8, eff. 5-21-91
1980 H 1062; 1953 H 1; GC 4785-11

CROSS REFERENCES

Forfeiture of office for misconduct in office, 3.07
Secretary of state, Ch 111
Dismissal of board of elections member, director, or employee for misconduct, 3599.16
Aiding unqualified voters or inducing officer to allow their votes, penalty, 3599.25
Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 18, 20, 21, 23, 24, 28

NOTES ON DECISIONS AND OPINIONS

60 OS(2d) 188, 398 NE(2d) 777 (1979), State ex rel Celebrezze v Butler County Court of Common Pleas. Prohibition will not lie to bar a common pleas court from enjoining the secretary of state from dismissing the director of a county board of elections.

50 OS(2d) 329, 364 NE(2d) 275 (1977), State ex rel Hough v Brown. Mandamus will not lie to compel the secretary of state to remove a member of a county board of elections because he has become clerk of the board of county commissioners at a time two commissioners were up for election and because he was treasurer of the county central committee.

138 OS 432, 35 NE(2d) 574 (1941), State ex rel Murphy v Athens County Bd of Elections. This section is applicable to situations where vacancy has been caused by resignation of members from office as well as to situations where vacancy has been created by removal of members from office. GC 4785-10 and 4785-11 (RC 3501.09 and 3501.16) are in pari materia.

113 OS 386, 149 NE 192 (1925), State ex rel Nolan v Brown. It seems that the entire authority to remove, and to remove summarily, was vested in the state supervisor, according to former GC 4810 (RC 3501.16).

62 App(3d) 417, 575 NE(2d) 1186 (Franklin 1989), Hughes v Brown. There is no requirement for a hearing pursuant to RC 3.07 prior to forfeiture of a public office where the officeholder has been convicted of a felony; the appeal of a felony conviction does not operate to negate the conviction.

39 Misc 145, 317 NE(2d) 422 (CP, Richland 1974), Harkins v Timmer. Action of board of elections in removing all precinct judges and clerks over seventy years of age was invalid.

37 Misc 3, 305 NE(2d) 820 (CP, Hamilton 1973), Mann v Hamilton County Bd of Elections. Courts would not order board of elections to realign precincts merely because precincts using voting machines were permitted to include more than 400 electors.

OAG 86-077. Full-time employees of a board of elections, as defined in RC 325.19(G)(1), are entitled to receive vacation leave benefits pursuant to the terms of RC 325.19(A). Part-time employ-

ees of a board of elections, as defined in RC 325.19(G)(2), are entitled to participate in any vacation leave benefits that may be provided by a board of county commissioners, by resolution, to part-time county employees under RC 325.19(B).

OAG 65-193; overruled by OAG 86-077. Employees of county boards of elections are state employees whose vacation rights are governed by RC 121.161.

1929 OAG 1341. The authority vested in the secretary of state by this section, to remove summarily any member of a board of elections, or the clerk, deputy clerk or any other employee of the board for cause as therein provided, does not include precinct officials as may be appointed and removed by boards of elections under GC 4785-13 (RC 3501.11).

3501.161 Filling vacancy of chairman or director; reselection of officers

The board may decide by the affirmative vote of at least three members to fill a vacancy in the office of chairman or director with a person belonging to the opposite political party from that to which the outgoing officer belonged. After such a vote, the vacancy shall be filled and all other officers shall be reselected in accordance with the procedures set forth in section 3501.09 of the Revised Code. An officer filling a vacancy and an officer who becomes or remains an officer after the reselection shall serve as an officer for the remainder of the term for which the outgoing officer was selected to serve as an officer. A reselection of officers under this section does not increase or decrease the length of any person's term as member of the board. The director and deputy director shall be of opposite political parties, and the chairman shall be selected from the members of the board of opposite politics from those of the director.

HISTORY: 1991 S 8, eff. 5-21-91

EXPENSES AND COSTS

3501.17 Expenses and apportionment of costs

The expenses of the board of elections shall be paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in the same manner as other county expenses are paid. If the board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections, such board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. Payments shall be made upon vouchers of the board of elections certified to by its chairman or acting chairman and the director or deputy director, upon warrants of the county auditor. The board of elections shall not incur any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefor to meet such obligations. Such expenses shall be apportioned among the county and the various subdivisions as provided in this section, and the amount chargeable to each subdivision shall be withheld by the auditor from the moneys payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year, the board of elections shall submit to the taxing authority of each subdivision, upon the request of the subdivision, an estimate of the amount to be withheld therefrom during the next fiscal year.

The entire compensation of the members of the board of elections and of the director, deputy director, and other employees in the board's offices; the expenditures for the rental, furnishing, and equipping of the office of the board and for the necessary office supplies for the use of the board; the expenditures for the acquisition, repair, care, and custody of the polling places, booths, guardrails, and other equipment for polling places; the cost of pollbooks, tally sheets, maps, flags, ballot boxes, and all other permanent records and equipment; the cost of all elections held in and for the state and county; and all other expenses of the board which are not chargeable to a political subdivision in accordance with this section shall be paid in the same manner as other county expenses are paid.

The compensation of judges and clerks of elections; the cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof; the cost of printing and delivering ballots, cards of instructions, and other election supplies; and all other expenses of conducting primaries and elections in the odd-numbered years shall be charged to the subdivisions in and for which such primaries or elections are held. The charge for each primary or general election in odd-numbered years for each subdivision shall be determined in the following manner: first, the total cost of all chargeable items used in conducting such elections shall be ascertained; second, the total charge shall be divided by the number of precincts participating in such election, in order to fix the cost per precinct; third, the cost per precinct shall be prorated by the board of elections to the subdivisions conducting elections for the nomination or election of offices in such precinct; fourth, the total cost for each subdivision shall be determined by adding the charges prorated to it in each precinct within the subdivision.

The entire cost of special elections held on a day other than the day of a primary or general election, both in odd-numbered or in even-numbered years, shall be charged to the subdivision. Where a special election is held on the same day as a primary or general election in an even-numbered year, the subdivision submitting the special election shall be charged only for the cost of ballots and advertising. Where a special election is held on the same day as a primary or general election in an odd-numbered year, the subdivision submitting the special election shall be charged for the cost of ballots and advertising for such special election, in addition to the charges prorated to such subdivision for the election or nomination of candidates in each precinct within the subdivision, as set forth in the preceding paragraph. Where a special election is held on the first Tuesday after the first Monday in May for the purpose of submitting to the voters of the state constitutional amendments proposed by the general assembly, the state shall bear the entire cost of printing of ballots and advertising necessary to conduct the special election and shall reimburse the counties for all expenses incurred in opening precincts which are open for the sole purpose of conducting the special election. In precincts which are open for the conducting of any primary or other special election, the cost shall be borne as otherwise provided in this section.

Where a special election is held on the first Tuesday after the first Monday in May for the purpose of submitting to the voters of the state constitutional amendments proposed by the general assembly, and a subdivision conducts

a special election on the same day, the entire cost of the special election shall be divided proportionally between the state and the subdivision based upon a ratio determined by the number of issues placed on the ballot by each. Such proportional division of cost shall be made only to the extent funds are available for such purpose from amounts appropriated by the general assembly to the secretary of state. If a primary election is also being conducted in the subdivision, the costs shall be apportioned as otherwise provided in this section.

The cost of renting, heating, and lighting registration places; the cost of the necessary books, forms, and supplies for the conduct of registration; and the cost of printing and posting precinct registration lists shall be charged to the subdivision in which such registration is held.

HISTORY: 1987 H 231, eff. 10-5-87
1986 S 185, H 555; 1983 S 213; 1980 H 1062; 1975 S 158; 1974 H 662; 1969 H 1; 132 v H 934; 127 v 741; 126 v 205; 125 v 713; 1953 H 1; GC 4785-20

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 27.04
Baldwin's Ohio School Law, Text 27.11

CROSS REFERENCES

County commissioners' powers, Ch 307
Warrants by county auditor on county treasurer, 319.16
Tax settlements by auditor with treasurer, 319.49
Jurisdiction of common pleas court, 2305.01
Public funding of recount, 3515.071

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 21, 144, 194, 195
Am Jur 2d: 25, Elections § 12 et seq., 39

NOTES ON DECISIONS AND OPINIONS

159 OS 114, 111 NE(2d) 255 (1953), State ex rel Ball v Scioto County Bd of County Commrs. The provision in this section that upon action by the common pleas court fixing the sum of money necessary for the expenses of permanent registration, such amount shall be appropriated, is mandatory.

159 OS 114, 111 NE(2d) 255 (1953), State ex rel Ball v Scioto County Bd of County Commrs. Where a board adopts a resolution to establish a county-wide registration and files with the county commissioners a budget including the sum necessary to defray the expenses of such registration, and the county commissioners, having sufficient funds at the time of the budget request, do not appropriate such money; and where the common pleas court, pursuant to GC 4785-20 (RC 3501.17), determines and fixes the amount necessary, such appropriation is mandatory, and such amount shall be appropriated.

159 OS 114, 111 NE(2d) 225 (1953), State ex rel Ball v Scioto County Bd of County Commrs. GC 4785-20 (RC 3501.17), provides in part: "The expenses of the board in each county shall be paid from the county treasury, in pursuance of appropriations by the county commissioners." "If the county commissioners fail to appropriate an amount sufficient to provide for the necessary and proper expenses of the board, the board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated." This provision is mandatory.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. The secretary of state and a county board of elections are required to conduct any municipal election which the laws authorize to be held.

No. CA87-11-017 (12th Dist Ct App, Brown, 5-2-88), State ex rel Ruggles v Howser. Where a board of county commissioners appropriates insufficient funds for a county elections board, the statutory remedy of review by a common pleas court provided in RC 3501.17 precludes the granting of mandamus.

OAG 91-042. When a special election for a tax levy for community mental retardation and developmental disabilities programs and services pursuant to RC Ch 5126 is held under RC 5705.19(L) on the primary election date in an odd-numbered year, the county is the "subdivision submitting the special election" for purposes of RC 3501.17. Accordingly, the board of county commissioners must pay costs relating to the special election as provided in RC 3501.17.

OAG 84-091. A board of county commissioners may not require a board of elections to use a standard form employment contract for the part-time employees of the board of elections.

OAG 83-089. Pursuant to RC 3501.17, the total cost of all chargeable items used in conducting an election for a municipal court judge must be apportioned among the political subdivisions within the territorial jurisdiction of the court in and for which such election is held.

OAG 78-064. Pursuant to RC 3501.17, a board of county commissioners is authorized to procure insurance to protect members of the board of elections from liability arising from the exercise of their official duties, but the determination of whether such insurance is a "necessary and proper" expense of the board of elections is within the sound discretion of the board of county commissioners.

OAG 77-091. A board of library trustees and a board of elections may enter into a contract whereby library personnel and facilities would be used to conduct voter registration and the library would be reimbursed by the board of elections for the actual costs incurred.

OAG 77-091. Public library funds may not be used for the purpose of voter registration, absent reimbursement by the board of elections to the library for the actual costs incurred.

OAG 71-012. The vocational school district is solely responsible for the costs of a special election called at their request and if they are unable to pay the board of elections with current operating funds, then such amount will be subsequently withheld by auditor from moneys payable in future.

OAG 70-048. Terms of RC 305.171 do not alter duty of boards of county commissioners, under RC 3501.17, to arrange for payment of costs of insurance programs which may be initiated by boards of elections pursuant to RC 3501.141.

OAG 69-158. A board of elections is not required to request a board of county commissioners for a transfer of funds within its appropriation from one class to another class of expenditures.

OAG 66-136. A university branch district created pursuant to RC Ch 3355. is not required to share the cost, as determined by RC 3501.17, of an election for a levy for said district held pursuant to RC 3355.09; such district is not a "subdivision" as used in RC 3501.01; since the costs of such an election, related to the university branch district, may not be apportioned to said district, such costs must be "paid in the same manner as other county expenses are paid," according to RC 3501.17, and must be borne by the county rather than by any of the subdivisions thereof.

OAG 65-112. Where current appropriations of the board of county commissioners do not anticipate the expenses of a special election, provision must be made therefor through the procedures established by RC 3501.17.

OAG 65-112. Where a municipality has fully complied with the provisions of O Const Art XVIII §9, with regard to a proposal for amending its charter, and provided that the limiting time provisions of §8 are applicable, it is mandatory for a board of elections to conduct a special election.

1961 OAG 1992. A board of elections may enter into a lease for a building to be used for the storage of voting machines.

1958 OAG 3216. Where a proposal for change of territory of school districts is presented by the state board of education, the cost and expense of submission of such proposal to the electors is to be paid by the subdivisions voting at such election, and apportioned as provided in RC 3501.17 for general and primary elections.

1957 OAG 638. A county school district is not a subdivision within the meaning of RC 3501.17, and there is no authority under the provisions of that section for the county auditor to withhold, from any moneys payable to such district in an ensuing tax settlement, an amount designed to meet the expense of conducting an election in the odd-numbered years at which members of the county board of education are elected.

1957 OAG 24. The offices of county treasurer and member of a county board of elections are incompatible.

1945 OAG 137. When the board of education of a school district which includes territory within a municipal corporation and one or more townships, submits the question of an additional tax levy to the electors of the school district at a primary election held in an odd-numbered year in the municipality and townships, each subdivision should pay the cost of printing and delivering its own ballots, instruction cards and other election supplies, and the compensation of judges and clerks of election and other items of cost referred to in paragraph b of GC 4785-20 (RC 3501.17), should be apportioned on an equitable basis among the school district and the other political subdivisions.

1939 OAG 815. Costs incurred in an action to contest an election shall, if results of such election be set aside, or if ordered by court to be paid by county as other election expenses are paid, be paid from the county treasury, but if such election is only within and for a subdivision of county, amount of costs so paid from county treasury shall be withheld by county auditor from moneys payable to such subdivision at time of next tax settlement.

1935 OAG 4022. Revenue derived from the levies provided in and by GC 4605 and 4621 (RC 741.09 and 741.40) cannot be used for expenses incurred by the tax commission of Ohio under GC 5624-7 (RC 5715.36), expenses incurred by the board of elections under GC 4785-20 (RC 3501.17), and the state examination expenses under GC 288 (RC 117.16).

1933 OAG 1572. A board of elections is not authorized to provide a telephone in the residence or private business office of its clerk.

1932 OAG 4023. County commissioners do not have authority to arbitrarily change the amounts requested and submitted in the budget of the board of elections for the necessary and proper expenses of the board, and substitute their own arbitrary figures in lieu of the amounts requested.

1931 OAG 2846. The rent of a lot for the storage of voting houses and the cost of repair and general maintenance of such houses must, under this section, be paid by the county.

1930 OAG 1566. Such registration expenses as are chargeable to subdivisions under this section should be paid by the county and the amount so paid withheld by the county auditor from the moneys payable to such subdivisions at the time of the next tax settlement. The entire compensation of the deputy clerk and other assistants and employees in the office of the board of elections must be paid by the county in the manner therein provided.

1929 OAG 1137. The election expenses mentioned in paragraph "b" are to be paid in the first instance by the county and charged back to the subdivision, and the same are not required to be paid directly by the subdivision against which such election expenses are charged.

1928 OAG 2489. The expenses incurred in renting a polling place for the use of the electors of a township at the April and August primaries must be paid from the county treasury. Such expense cannot be deducted by the county auditor in making his next settlement with such township.

1928 OAG 2056. The compensation of the assistants to the director of the count, employed by the board of state supervisors and inspectors of election of Hamilton county for the sole purpose of counting the ballots cast at the election for members of the council of the city of Cincinnati, should be charged against and paid solely by such city.

PRECINCTS AND POLLING PLACES ESTABLISHED

3501.18 Establishing precincts and polling places

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 when it 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, provided that no change in the number of precincts or in the boundaries thereof shall be made during the twenty-five days immediately preceding a primary or general election nor between the first day of January and the day on which the members of county central committees are elected in the years in which such committees are elected. 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. Except in an emergency, no change in the number or location of the polling places in a precinct shall be made during the twenty-five days immediately preceding a primary or general election.

HISTORY: 130 v H 367, eff. 1-1-64
129 v 1562; 125 v 713; 1953 H 1; GC 4785-21

CROSS REFERENCES

Use of school property for public functions, board of education to adopt policy, 3313.77
Change in precinct boundaries, 3503.17
Precinct officials, rearrangement of precincts, counting stations, 3506.16

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 31 to 33, 130
Am Jur 2d: 25, Elections § 12 to 16

NOTES ON DECISIONS AND OPINIONS

16 OS(2d) 47, 242 NE(2d) 566 (1968), Canton v Imperial Bowling Lanes. Annexation of township territory to a municipal corporation does not change the local option status of that territory as wet or dry.

11 Misc(2d) 7, 11 OBR 101, 463 NE(2d) 115 (CP, Hamilton 1984), Mirlisena v Fellerhoff. A court may not disturb the choice of a polling place by the board of elections unless the choice is so unreasonable, arbitrary, and capricious as to constitute a clear abuse of discretion.

37 Misc 3, 305 NE(2d) 820 (CP, Hamilton 1973), Mann v Hamilton County Bd of Elections. Courts would not order board of elections to realign precincts merely because precincts using voting machines were permitted to include more than 400 electors.

67 Abs 170, 117 NE(2d) 227 (CP, Montgomery 1953), Hammond v Young. In a charter city in which all city commissioners are elected at large the commission and not the board of elections has the authority to redivide the city into wards for election purposes.

OAG 77-041. Persons who wish to register to vote on the day of a general, primary or special election need not do so at a polling place in the precinct in which they reside, provided the board of elections has located the polling place for voting purposes outside the boundaries of the precinct in which they reside.

OAG 69-129. The phrase "residence district" as used in RC 4301.32 means any two or more contiguous election precincts within a municipal corporation.

OAG 67-013. When a municipality, whose boundaries are coterminous with those of a township, annexes territory in an adjoining county, and then petitions for a change in township lines in that adjoining county to conform to the municipal boundaries, the residents of the annexed portion of the adjoining county who otherwise qualify, remain electors of that county and become electors of the municipality who vote at municipal precinct polling places, but cease to be electors of the township from which the territory which included their residence was annexed, and are not electors for any township offices or issues.

1962 OAG 3295. The action of a municipality in realigning the wards of a city and the action of a board of elections in rearranging the boundaries of the precincts within the county 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, but 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.

3501.19 Election precincts; polling place outside precinct—Repealed

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-22

3501.20 State or national home may be a precinct

The lands used for a state or national home for disabled soldiers shall constitute a separate election precinct, and, if necessary, may be divided and rearranged within such limits as other precincts are arranged and divided.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-23

CROSS REFERENCES

Infirm or disabled soldiers in national soldiers' home may have lawful residence there, 3503.03
Ohio veterans' home, Ch 5907

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 31
Am Jur 2d: 25, Elections § 76

PRECINCT OFFICIALS

3501.21 Change of precinct or polling place; notice

When the board of elections deems it necessary to change, divide, or combine any precinct, or to relocate a polling place, it shall, prior to the next election, notify each of the registrants in the precinct, if a registration precinct, or each of the occupant residents of the precinct, if a nonregistration precinct, of such change by mail.

HISTORY: 1976 H 525, eff. 5-31-76
129 v 1562; 125 v 713; 1953 H 1; GC 4785-24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 33;72, Notice and Notices § 27 to 30, 32
Am Jur 2d: 26, Elections § 228, 229

NOTES ON DECISIONS AND OPINIONS

160 OS 77, 113 NE(2d) 241 (1953), Cross v Lake County Bd of Ed. The provision of this section requiring notice of the change of a polling place to be mailed to registrants does not apply to districts where registration is not required.

68 Abs 242, 118 NE(2d) 692 (CP, Ottawa 1953), In re Election of Council of Oak Harbor. Where a polling place is located beyond the boundary of an adjoining precinct, the election is invalid.

462 US 725, 103 SCt 2653, 77 LEd(2d) 133 (1983), Karcher v Daggett. A state congressional apportionment plan that resulted in the largest district having population less than one per cent greater than population of smallest district is not per se evidence of good faith effort to achieve, as nearly as practicable, absolute population equality, which is appropriate standard for determining compliance with US Const Art I §2; showing that transfer of entire political subdivisions between contiguous districts would have produced districts closer to numerical equality satisfies plaintiffs' burden of showing that apportionment plan does not come as nearly as practicable to population equality; state's failure to show that plan's population disparities were necessary to achieve its purported goal of preserving voting strength of racial minority groups precludes finding that state met its burden of proving that deviations were necessary to achieve consistent, nondiscriminatory legislative policy. (Ed. note: New Jersey law construed in light of federal constitution.)

1962 OAG 3295. The action of a municipality in realigning the wards of a city and the action of a board of elections in rearranging the boundaries of the precincts within the county 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, but 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.

1930 OAG 2219. Under this section, when notice of a combination of precincts containing less than two hundred fifty voters has been given, remonstrances made against such combination and a public hearing held as therein provided, the board of elections has discretionary power to determine whether or not such combination shall be made.

3501.22 Precinct election officials; vacancies

On or before the fifteenth day of September in each year the board of elections by a majority vote shall, after careful examination and investigation as to their qualifications, appoint for each election precinct six competent electors, residents of the county in which the precinct is located, as judges. Such electors shall constitute the election officers of the precinct. Not more than three of the judges shall be members of the same political party. The term of such precinct officers shall be for one year. The board may, at any time, designate any number of election officers, equally divided between the major political parties, to perform

their duties at any precinct in any election. The board may appoint additional officials, equally divided between the two major political parties, when necessary to expedite voting.

Vacancies for unexpired terms shall be filled by the board. When new precincts have been created, the board shall appoint judges for such precincts for the unexpired term. Any judge may be summarily removed from office at any time by the board for neglect of duty, malfeasance, or misconduct in office, or for any other good and sufficient reason.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 125 v 713; 1953 H 1; GC 4785-25

CROSS REFERENCES

Misdemeanors, penalty, 2929.21, 2929.22
Precinct officials, rearrangement of precincts, counting stations, 3506.16
Designating election officials to serve at primary elections, 3513.03
Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17
Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 28
Am Jur 2d: 25, Elections § 39 to 51

NOTES ON DECISIONS AND OPINIONS

39 Misc 145, 317 NE(2d) 422 (CP, Richland 1974), Harkins v Timmer. Action of board of elections in removing all precinct judges and clerks over seventy years of age was invalid.

1931 OAG 3010. A board of elections is not authorized to appoint judges and clerks of elections to serve for a specific election without compensation.

1931 OAG 2943. A city charter provision for the appointment of a different number of precinct election officials from that provided by this section, to serve at a regular municipal election to be held on the first Tuesday after the first Monday in November in the odd-numbered years, is invalid, to the extent that it makes provision at variance with that of the general law.

3501.221 Interpreters for non-English speaking voters

(A) To encourage voting, a board of elections may appoint persons who are fluent in a non-English language to serve as interpreters to assist voters in certain election precincts. If the board determines that the number of non-English-speaking electors in a precinct indicates a need for an interpreter and provision of an interpreter is feasible and practical in terms of the number of such electors, the board may appoint an interpreter for such precinct in the same manner as other precinct election officials are appointed. A person appointed pursuant to this section may only provide to voters such assistance in the non-English language as may be provided by election officials to English speaking voters. All requirements relating to the qualifications of election officials apply to persons appointed under this section. Interpreters shall complete a program of instruction as provided in section 3501.27 of the Revised Code and shall be compensated in the manner and amount as provided by section 3501.28 of the Revised Code for other election officials. A person appointed pursuant to this section may also serve as a precinct election officer; such person shall be compensated as though he served only in the capacity of an election official, and he need not undergo a program of instruction a second time for the same election unless required by the board.

(B) No person appointed under division (A) of this section, while performing the duties of such office, shall:

(1) Wear any badge, sign, or other insignia or thing indicating a preference for any candidate or for any question submitted;

(2) Influence or attempt to influence any voter to vote for or against any candidate or issue submitted at such election.

(C) Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree.

HISTORY: 1975 H 5, eff. 7-25-75

CROSS REFERENCES

Instructions to guide electors shall be in English, 3505.12
Deceiving illiterate elector at poll forbidden, 3599.26
Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 138, 299
Am Jur 2d: 25, Elections § 89

3501.23 Precinct officials at special elections

A board of elections shall, by the adoption of a resolution, provide that, at any special election at which no candidates are to be elected, or at any primary election when only one party primary is to be held for the nomination of candidates for municipal office which is to be held in its county, the precinct officials at any such election shall consist of not more than four judges who shall perform all the duties prescribed for the proper conduct of an election by precinct officials. Such precinct officials shall be well qualified for the performance of their duties and said precinct officials for any special election shall be selected from among those regularly appointed under section 3501.22 of the Revised Code, but the precinct officials for any party primary election shall be selected from among those regularly appointed under such section, provided that such officials shall be equally divided between the two major political parties.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 1979 H 141; 1974 H 662; 132 v S 79; 1953 H 1; GC 4785-25a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 28, 176
Am Jur 2d: 26, Elections § 291 et seq.

3501.24 Receiving and counting officials; certificate of appointment

[1]A board of elections shall by resolution provide for the appointment of precinct election officials, designated as receiving and counting officials, at each primary or general election. Such officials shall be designated by the board from those officials appointed under section 3501.22 of the Revised Code. The board shall determine the number of receiving officials to be appointed in a precinct at each election; provided that the maximum number shall not exceed six judges, and provided that the maximum number

shall be appointed only if the board determines that the maximum number is necessary. Receiving officials shall perform all of the duties provided by law for receiving the ballots and supplies, for opening and closing the polls, for casting of ballots during the time the polls are open, and such other duties as are provided by sections 3501.25 and 3501.26 of the Revised Code. Four judges shall be designated as counting officials and shall count and tally the votes cast, certify the result of the election in such precinct, and perform such other duties as are provided by law. Whenever the total number of candidates to be nominated or elected together with the number of issues to be voted upon exceeds forty, six judges may be designated as counting officials. To expedite the counting of votes the board may appoint additional officials, equally divided between the two major political parties.

A board may assign receiving officials to work in shifts, which shall last not more than ten hours each. Any receiving official assigned to work on a second or subsequent shift may perform the duties of a receiving official or of a counting official, or of both.

The board shall issue a certificate of appointment to each counting official, which certificate shall be presented to the presiding judge of the receiving officials at the time the polls are closed.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 1979 H 141; 125 v 713; 1953 H 1; GC 4785-25b

CROSS REFERENCES

Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 28, 176
Am Jur 2d: 26, Elections § 291 to 296

3501.25 Qualifications of counting officials; presiding judge

The counting officials shall have the qualifications required for precinct election officials, and shall be selected and appointed insofar as practicable from among electors who have had experience in accounting or clerical work. Not more than two judges of such counting officials shall be members of the same political party when four counting officials are provided, and not more than three judges shall be members of the same political party when six counting officials are provided.

The board of elections shall designate one of the judges serving as a counting official as presiding judge, whose duty it is to deliver the returns of the election and all supplies to the office of the board, for which services he shall receive the compensation provided by section 3501.36 of the Revised Code.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 1979 H 141; 1974 H 662; 132 v H 1; 131 v H 536; 125 v 713; 1953 H 1; GC 4785-25d

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 28, 176
Am Jur 2d: 26, Elections § 291 et seq., 299, 300

3501.26 Procedure when polls are closed

When the polls are closed after a primary, general, or special election, the receiving officials shall, in the presence of the counting officials and attending witnesses, proceed as follows:

(A) Count the number of electors who voted, as shown on the poll books.

(B) Count the unused ballots without removing stubs.

(C) Count the soiled and defaced ballots.

(D) Insert the totals of divisions (A), (B), and (C) of this section on the report forms provided therefor in the poll books.

(E) Count the voted ballots. If the number of voted ballots exceeds the number of voters whose names appear upon the poll books, the presiding judge shall enter on the poll books an explanation of such discrepancy, and such explanation, if agreed to, shall be subscribed to by all of the judges. Any judge having a different explanation shall enter it in the poll books and subscribe to it.

(F) Put the unused ballots with stubs attached, and soiled and defaced ballots with stubs attached, in the envelopes or containers provided therefor, and certify the number.

The receiving officials shall deliver to and place in the custody of the counting officials all the supplies provided for the conduct of such election and the ballots which are to be counted and tallied, and take a receipt for same, which receipt shall appear in and be a part of the poll books of such precinct. Having performed their duties, the receiving officials shall immediately depart.

Having receipted for the ballots, the counting officials shall proceed to count and tally the vote as cast in the manner prescribed by section 3505.27 of the Revised Code and certify the result of the election to the board of elections.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 125 v 713; 1953 H 1; GC 4785-25c

CROSS REFERENCES

Misconduct by board of elections counting votes, penalty, 3599.16

Secrecy of ballot; destruction, removal, or false indorsement of ballots forbidden, 3599.20

Ballot tampering, penalty, 3599.26

Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 28, 176
Am Jur 2d: 26, Elections § 291 to 296

3501.27 Qualifications of precinct election officials; program of instruction

(A) All judges of election shall be qualified electors who have completed a program of instruction pursuant to division (B) of this section. No person who has been convicted of a felony, or any violation of the election laws, or who is unable to read and write the English language readily, or who is a candidate for an office to be voted for by the voters of the precinct in which he is to serve shall serve as an election officer. A person when appointed as an election officer shall receive from the board of elections a certificate

of appointment which may be revoked at any time by the board for good and sufficient reasons. Such certificate shall be in such form as the board prescribes and shall specify the precinct, ward, or district in and for which the person to whom it is issued is appointed to serve, the date of appointment, and the expiration of his term of service.

(B) Each board shall establish a program as prescribed by the secretary of state for the instruction of election officers in the rules, procedures, and law relating to elections. In each program, the board shall use training materials prepared by the secretary of state, and may use additional materials prepared by or on behalf of the board. The board may use the services of unpaid volunteers in conducting its program and may reimburse such volunteers for necessary and actual expenses incurred in participating in the program.

The board shall train each new election officer before the new officer participates in his first election in that capacity. The board shall instruct election officials who have been trained previously only when the board or secretary of state considers such instruction necessary, but the board shall reinstruct such persons, other than presiding judges, at least once in every three years and shall reinstruct presiding judges before the primary election in even-numbered years. The board shall schedule any program of instruction within sixty days prior to the election in which the officials to be trained will participate.

(C) The duties of a judge of an election in each polling place shall be performed only by an individual who has successfully completed the requirements of the program, unless such an individual is unavailable after reasonable efforts to obtain such services.

(D) The secretary of state shall establish a program for the instruction of members of boards of elections and employees of boards in the rules, procedures, and law relating to elections. Each member and employee shall complete the training program within six months after his original appointment or employment, and thereafter, each member and employee shall complete a training program to update their knowledge once every four years or more often as determined by the secretary of state.

(E) The secretary of state shall reimburse each county for the cost of programs established pursuant to division (B) of this section, once he has received an itemized statement of expenses for such instruction programs from the county. The itemized statement shall be in a form prescribed by the secretary of state.

HISTORY: 1986 H 555, eff. 5-7-86
1985 H 238; 1975 H 125; 1974 H 662; 125 v 713; 1953 H 1; GC 4785-26

CROSS REFERENCES

Convicted felon incompetent to be elector or officeholder, 2961.01

Election officials as candidates, 3501.15

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 28, 176

Am Jur 2d: 25, Elections § 40; 26, Elections § 291 et seq.

NOTES ON DECISIONS AND OPINIONS

39 Misc 145, 317 NE(2d) 422 (CP, Richland 1974), Harkins v Timmer. Action of board of elections in removing all precinct judges and clerks over seventy years of age was invalid.

1932 OAG 4650. By reason of the provisions of this section no person who has ever been convicted of a crime can be an election official, and a person who has been convicted of a crime, but whose rights of citizenship have been restored by compliance with the provisions of GC 2161, 2162, 13458-1, 13458-2 (Repealed, Repealed, RC 2961.01, 2961.02), is still prevented from becoming an election official.

3501.28 Compensation of precinct election officials

Except as otherwise provided in section 3501.36 of the Revised Code, each judge of an election shall be paid at the same hourly rate, which shall be not less than that established by the "Fair Labor Standards Act of 1938," 52 Stat. 1062, 29 U.S.C.A. 201, as amended, for his services at each general, primary, or special election, provided that no election official shall be paid more than seventy dollars per day. No election official who works less than the full election day shall be paid the maximum amount allowed under this section or the maximum amount as set by the board of elections, whichever is less. For purposes of this section "full election day" means the period of time between the opening of the polls and the completion of the procedures contained in section 3501.26 of the Revised Code.

Beginning with calendar year 1990, no board of elections shall increase the pay of an election official under this section during a calendar year unless the board has given written notice of the proposed increase to the board of county commissioners not later than the first day of October of the preceding calendar year. The board of county commissioners may review and comment upon the proposed increase.

The board of elections may withhold the compensation of any precinct official for failure to obey the instructions of the board or to comply with the law relating to the duties of such precinct judge.

HISTORY: 1989 H 245, eff. 10-26-89
1986 H 555; 1980 H 1062; 1979 H 141; 1974 H 662; 131 v H 536; 130 v H 341; 125 v 713; 1953 H 1; GC 4785-28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 28, 176

Am Jur 2d: 25, Elections § 39; 26, Elections § 291

NOTES ON DECISIONS AND OPINIONS

1941 OAG 4042. Precinct judges and clerks of elections who served as such at the primary or regular elections of 1940, should have been compensated for such services on basis of whether or not county wherein service was rendered had a population of 250,000, according to 1930 census, except in those counties where precinct officials were appointed and election conducted in manner provided by GC 4785-25b, 4785-25c and 4785-25d (RC 3501.24, 3501.26 and 3501.25).

1933 OAG 1602. Boards of elections of counties are unauthorized to establish a lower rate of compensation to be paid to precinct judges and clerks than that provided for by this section.

1930 OAG 2077. Judges and clerks of elections heretofore appointed under GC 4853 (RC 3321.24), in the year 1929, who will serve under such appointment at the August 1920 primary, should be paid the compensation provided in this section.

1928 OAG 2761. In registration cities containing less than three hundred thousand population, the judge of elections, who is selected as the chairman of the meeting for organization, shall receive one dollar for calling for the sealed package of ballots, and he is not entitled to any further compensation for delivering the ballots, etc.

POLLING PLACE EQUIPMENT AND SUPPLIES

3501.29 Polling places for precincts; timetable for compliance; voting at vehicle outside polling place; duties of secretary of state

(A) The board of elections shall provide for each precinct a polling place and provide adequate facilities at each polling place for conducting the election. The board shall provide a sufficient number of screened or curtained voting compartments to which electors may retire and conveniently mark their ballots, protected from the observation of others. Each voting compartment shall be provided at all times with black lead pencils, instructions how to vote, and other necessary conveniences for marking the ballot. The presiding judge shall ensure that the voting compartments at all times are adequately lighted and contain the necessary supplies. The board shall utilize, in so far as practicable, rooms in public schools and other public buildings for polling places. Upon application of the board of elections, the authority which has the control of any building or grounds supported by taxation under the laws of this state, shall make available the necessary space therein for the purpose of holding elections and adequate space for the storage of voting machines, without charge for the use thereof. A reasonable sum may be paid for necessary janitorial service. When polling places are established in private buildings, the board may pay a reasonable rental therefor, and also the cost of liability insurance covering the premises when used for election purposes, or the board may purchase a single liability policy covering the board and the owners of the premises when used for election purposes. When removable buildings are supplied by the board, they shall be constructed under the contract let to the lowest and best bidder, and the board shall observe all ordinances and regulations then in force as to safety. The board shall remove all such buildings from streets and other public places within thirty days after an election, unless another election is to be held within ninety days.

(B) The board shall assure that polling places are free of barriers that would impede ingress and egress of handicapped persons, that the entrances of polling places are level or are provided with a nonskid ramp of not over eight per cent gradient, and that doors are a minimum of thirty-two inches wide. Each county shall comply with these requirements according to the following timetable:

(1) At least fifty per cent of the polling places in each county shall be in compliance by November 1, 1980;

(2) At least seventy-five per cent of the polling places in each county shall be in compliance by November 1, 1981;

(3) All polling places in each county shall be in compliance by November 1, 1982, except those that are specifically exempted by the secretary of state upon certification by a board of elections that a good faith, but unsuccessful, effort has been made to modify, or change the location of, such polling places.

The secretary of state shall conduct a survey of all county boards of elections, to be completed by January 1, 1980, to determine the boards' problems and progress in fulfilling the requirements of this division.

(C) At any polling place that is not in compliance with the requirements of division (B) of this section or is exempted from compliance by the secretary of state, the board of elections shall permit any handicapped elector who travels to his polling place, but who is unable to enter the polling place, to vote, with the assistance of two polling place officials of major political parties, in the vehicle that conveyed him to the polling place, or to receive and cast his ballot at the door of the polling place.

(D) The secretary of state shall:

(1) Work with other state agencies to facilitate the distribution of information and technical assistance to boards of elections to meet the requirements of division (B) of this section;

(2) Work with organizations that represent or provide services to handicapped, disabled, or elderly citizens to effect a wide dissemination of information about the availability of absentee voting, voting in the voter's vehicle or at the door of the polling place, or other election services to handicapped, disabled, or elderly citizens.

(E) As used in this section, "handicapped" means having lost the use of one or both legs, one or both arms, or any combination thereof, or being blind or so severely disabled as to be unable to move about without the aid of crutches or a wheelchair.

HISTORY: 1979 S 225, eff. 1-16-80
1976 S 162; 1970 H 1148; 127 v 741; 126 v 205; 125 v 713; 1953 H 1; GC 4785-117

CROSS REFERENCES

Township financial statements, 507.07

Use of school property for public functions, board to adopt policy, 3313.77

Registration places, entry and exit of handicapped people, 3503.12

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 124, 130, 131, 148

Am Jur 2d: 26, Elections § 228

NOTES ON DECISIONS AND OPINIONS

166 OS 147, 140 NE(2d) 312 (1957), State ex rel Spencer v Montgomery County Bd of Elections. An order requiring the board of elections to furnish one voting machine for every one hundred qualified electors for a particular election is moot after the date of such election. (See also State ex rel Spencer v Bd of Elections of Montgomery County, 102 App 51, 141 NE(2d) 195 (1956).)

102 App 51, 141 NE(2d) 195 (1956), State ex rel Spencer v Bd of Elections of Montgomery County. The term, "voting compartments," as used in RC 3501.29, includes voting machines.

102 App 51, 141 NE(2d) 195 (1956), State ex rel Spencer v Bd of Elections of Montgomery County. RC 3501.29, 3507.06, and 3507.14 are in pari materia and must be construed together; it is the duty of a board of elections to determine the number of voting machines to be used in each precinct by applying the standard laid down in RC 3501.29, one voting machine for every 100 qualified electors, and on the basis of such ratio determine the number of machines necessary to accommodate the number of qualified electors in each precinct.

OAG 66-082. The provision of RC 3501.29 that a board of education must make available necessary space in a schoolhouse for

use as a polling place without charge except for janitor service, prevails over the provision of RC 3313.77 which would authorize a board of education to charge a fee for the use of such building as a polling place.

1963 OAG 55. The authority under RC 3501.29 to pay "the cost of liability insurance covering the premises for the period such premises are used for election purposes" does not encompass purchase of liability insurance by a board of elections.

1958 OAG 2745. The duty of a board of elections under RC 3501.29 to provide a "polling place" for each precinct can be discharged by drawing a mobile voting booth on its own wheels to a particular place and keeping it in a single location during use as a polling place.

3501.30 Supplies for polling places

The board of elections shall provide for each polling place the necessary ballot boxes, official ballots, cards of instructions, registration forms, pollbooks, or poll lists, tally sheets, forms on which to make summary statements, pencils, paper, and all other supplies necessary for casting and counting the ballots and recording the results of the voting at such polling place. Such pollbooks or poll lists shall have certificates appropriately printed thereon for the signatures of all the precinct officials, by which they shall certify that, to the best of their knowledge and belief, said pollbooks or poll lists correctly show the names of all electors who voted in such polling place at the election indicated therein.

A large map of each appropriate precinct shall be included among the supplies to each polling place, which shall be displayed prominently to assist persons who desire to register or vote on election day. Each map shall show all streets within the precinct and contain identifying symbols of the precinct in bold print.

Such supplies shall also include a flag of the United States approximately two and one-half feet in length along the top, which shall be displayed outside the entrance to the polling place during the time it is open for voting. Two or more small flags of the United States approximately fifteen inches in length along the top shall be provided and shall be placed at a distance of one hundred feet from the polling place on the thoroughfares or walkways leading to the polling place, to mark the distance within which persons other than election officials, witnesses, challengers, police officers, and electors waiting to mark, marking, or casting their ballots shall not loiter, congregate, or engage in any kind of election campaigning. Where small flags cannot reasonably be placed one hundred feet from the polling place, the presiding election judge shall place the flags as near to one hundred feet from the entrance to the polling place as is physically possible. Police officers and all election officials shall see that this prohibition against loitering and congregating is enforced. When the period of time during which the polling place is open for voting expires, all of said flags shall be taken into the polling place, and shall be returned to the board together with all other election materials and supplies required to be delivered to such board.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 125 v 713; 1953 H 1; GC 4785-118

CROSS REFERENCES

County commissioner district boundaries map, 302.041
Municipality may punish any suspicious person unable to give a reasonable account of himself, 715.55
Sealed package of ballots, blanks, pollbooks, registration lists not to be opened unlawfully, 3599.19
Penalty for loitering at polling place, 3599.24
Ballot tampering, penalty, 3599.26
False election records, penalty for possession, 3599.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 130, 131, 133
Am Jur 2d: 26, Elections § 230 to 232

3501.301 Contract for printing and furnishing supplies; when bidding required; procedures

A contract involving a cost in excess of ten thousand dollars for printing and furnishing the supplies, other than the official ballots, required in section 3501.30 of the Revised Code, shall not be let until the board of elections has caused notice to be published once in a newspaper of general circulation within the county or upon notice given by mail, addressed to the responsible suppliers within the state. The board of elections may require that each bid be accompanied by a bond, with at least two individual sureties, or a surety company, satisfactory to the board, in a sum double the amount of the bid, conditioned upon the faithful performance of the contract awarded and for the payment as damages by such bidder to the board of any excess of cost over the bid which it may be required to pay for such work by reason of the failure of the bidder to complete the contract. The contract shall be let to the lowest and best bidder.

HISTORY: 1985 H 47, eff. 9-23-85
1982 H 598; 132 v H 428

CROSS REFERENCES

Newspaper of general circulation, 7.12
Printing of ballots contrary to law, penalty, 3599.26

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 20, Counties, Townships, and Municipal Corporations § 267; 37, Elections § 131
Am Jur 2d: 63, Public Funds § 27

3501.31 Delivery of supplies; challenge of electors; oath of officials

The board of elections shall mail to each precinct election official notice of the date, hours, and place of holding each election in his respective precinct at which it desires him to serve. Each of such officials shall notify the board immediately upon receipt of such notice of any inability to serve.

The board shall designate in each precinct one of the judges who is a member of the dominant party to serve as presiding judge. The board may provide that the presiding judge shall call at the office of the board at such time before the day of the election, not earlier than the third day before the day of the election, as the board designates to obtain the ballots, pollbooks, registration forms and lists, and other material to be used in his polling place on election day.

The board may also provide for the delivery of such materials to polling places in a municipal corporation by members of the police department of such municipal corporation; or the board may provide for the delivery of such materials to the presiding judge not earlier than the third

day before the election, in any manner it finds to be advisable.

On Monday preceding each primary or general election the judges of election of each precinct may meet at the polling place in their precinct promptly at seven p.m. and remain in session until seven-thirty p.m. At such meeting any elector may appear and challenge the right of any person whose name appears on the registration list of such precinct to vote. "Challenged" shall be entered by the judges on such registration lists opposite the name of the person whose right to vote is so challenged; and if he offers to vote in such polling place at such election, the judges shall examine him under oath as to his qualifications as an elector in such precinct. If upon such examination a majority of the judges concur in overruling the challenge, the person may vote, but if a majority of the judges concur in sustaining the challenge, the person may not vote.

On election day the precinct election officials shall punctually attend the polling place one-half hour before the time fixed for opening the polls. Each of the precinct election officials shall thereupon make and subscribe to a statement which shall be as follows:

"State of Ohio

"County of_____

I do solemnly swear under the penalty of perjury that I will support the constitution of the United States of America and the constitution of the state of Ohio and its laws; that I have not been convicted of a felony or any violation of the election laws; that I will discharge to the best of my ability the duties of _____ (judge or clerk)_____ of election in and for precinct _____ in the_____ (township) or (ward and city or village)_____ in the county of _____, in the election to be held on the _____ day of _____, 19 __, as required by law and the rules and instructions of the board of elections of said county; and that I will endeavor to prevent fraud in such election, and will report immediately to said board any violations of the election laws which come to my attention, and will not disclose any information as to how any elector voted which is gained by me in the discharge of my official duties.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

(Signatures of precinct election officials)"

If any of the other precinct officials is absent at that time, the presiding judge, with the concurrence of a majority of the precinct election officials present, shall appoint a qualified elector who is a member of the same political party as the political party of which such absent precinct election official is a member to fill the vacancy until the board appoints a person to fill such vacancy and the person so appointed reports for duty at the polling place. The presiding judge shall promptly notify the board of such vacancy by telephone or otherwise. He also shall assign the precinct election officials to their respective duties and shall have general charge of the polling place.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 125 v 713; 1953 H 1; GC 4785-119

CROSS REFERENCES

Voting by unqualified individual forbidden, 3599.12

Offenses and penalties, failure of registrars, judges, and clerks to perform duties, 3599.17

Possession of altered, false, forged, or counterfeit pollbooks, tally sheets, or election return lists forbidden, 3599.29

Qualifications of electors, O Const Art V §1, 4, 6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 29, 30, 66, 130, 131, 133, 136

Am Jur 2d: 25, Elections § 46

NOTES ON DECISIONS AND OPINIONS

20 Abs 611 (App, Cuyahoga 1935), State ex rel Copeland v Cuyahoga County Court of Common Pleas. Prohibition will not be granted to one where petition has been presented to common pleas court setting forth alleged violations of Corrupt Practices Act under this section before hearing on said petition.

1951 OAG 199. Where two candidates for governor receive the highest and an equal number of votes in a precinct, the issue of which party shall be considered "the dominant political party" in that precinct shall be resolved by lot by the chairman of the board of elections according to the procedure established by GC 4785-153 (RC 3505.33), and the board shall then designate one of the judges who is a member of such "dominant political party" to serve as presiding judge in that precinct at the next election.

1929 OAG 1110. Under this section, in either a registration or nonregistration precinct, at a regular November election, the election board will designate one of the election judges of the dominant party as presiding judge.

DUTIES OF OFFICIALS AT POLLING PLACE

3501.32 Opening and closing the polls; early closing of island polling places

(A) Except as otherwise provided in division (B) of this section, on the day of the election the polls shall be opened by proclamation by the presiding judge, or in his absence by a presiding judge chosen by the judges, at six-thirty a.m. and shall be closed by proclamation at seven-thirty p.m. unless there are voters waiting in line to cast their ballots, in which case the polls shall be kept open until such waiting voters have voted.

(B) On the day of the election, any polling place located on an island not connected to the mainland by a highway or a bridge may close earlier than seven-thirty p.m. if all registered voters in the precinct have voted. When a polling place closes under division (B) of this section the presiding judge shall immediately notify the board of elections of the closing.

HISTORY: 1991 S 8, eff. 5-21-91
1986 H 555; 1974 H 662; 1953 H 1; GC 4785-123

CROSS REFERENCES

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 130, 131, 133, 134, 176

Am Jur 2d: 26, Elections § 227, 383 et seq.

Casting of ballots after closing of polls. 41 ALR3d 234

NOTES ON DECISIONS AND OPINIONS

OAG 67-030. The primary election to be held on May 2, 1967, will be governed by public law 89-387, which provides between the last Sunday of April and the last Sunday of October of each year, standard time shall be advanced one hour and such time as so advanced shall be the standard time of such zone during such period.

OAG 67-030. Inasmuch as the election to be held on November 7, 1967, is not between the last Sunday of April and the last Sunday of October, the provisions of RC 1.04 will not be suspended, and the six-thirty a.m. time and six-thirty p.m. time as set forth in RC 3501.32 will therefore be the time as set by RC 1.04.

1927 OAG 1348. The statutory provision fixing the time for opening and closing the polls on election day is directory and not mandatory. A duly qualified elector who presents himself or herself at the polling place and who is within the polling place at the hour for closing the polls is entitled to vote even though the ballot should not be received by the voter at the hour of closing the polls.

3501.33 Authority of precinct officers

All judges of election shall enforce peace and good order in and about the place of registration or election. They shall especially keep the place of access of the electors to the polling place open and unobstructed and prevent and stop any improper practices or attempts tending to obstruct, intimidate, or interfere with any elector in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and may eject from the polling place any such challenger or witness for violation of any provision of Title XXXV of the Revised Code. They shall prevent riots, violence, tumult, or the disorder. In the discharge of these duties they may call upon the sheriff, police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating such title, but such arrest shall not prevent such person from registering or voting if he is entitled to do so. The sheriff, all constables, police officers, and other officers of the peace shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of such title.

HISTORY: 1986 H 555, eff. 2-26-86
1953 H 1; GC 4785-124

CROSS REFERENCES

General powers of sheriff, 311.07
Constables' duties, 509.05
General duties of police, 737.11
Proceedings upon arrest, 2935.13
Misconduct of registrars and police officers, 3599.18
Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 130, 131, 133, 134, 176
Am Jur 2d: 26, Elections § 286, 383 et seq.
Validity of loitering statutes and ordinances. 25 ALR3d 836

NOTES ON DECISIONS AND OPINIONS

1958 OAG 2399. In providing a place of registration a board of elections may not locate such registration facility on the grounds of an organization or agency which charges a fee for admission to such grounds.

3501.34 Duty of police

The officer or authority having command of the police force of any municipal corporation or the sheriff of any county, on requisition of the board of elections or the secretary of state, shall promptly detail for service at the polling place in any precinct of such municipal corporation or county such force as the board or secretary of state considers necessary. On every day of election such officer or authority shall have a special force in readiness for any emergency and for assignment to duty in the precinct polling places. At least one policeman shall be assigned to duty in each precinct on each day of an election, when requested by the board or the secretary of state. Such police officer shall have access at all times to the polling place, and he shall promptly place under arrest any person found violating any provisions of Title XXXV of the Revised Code.

HISTORY: 1977 S 125, eff. 5-27-77
1953 H 1; GC 4785-125

CROSS REFERENCES

Sheriff's general duties, 311.07
General duties of municipal police, 737.11
No police officer shall refuse or needlessly delay or hinder registration, allow false name, or destroy registration card, 3599.18
Law officer to obey presiding judge and enforce elections law; penalty, 3599.31
Law officers on duty shall not try to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 130, 131, 133, 134, 176
Am Jur 2d: 26, Elections § 233, 383 et seq.

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, §1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

3501.35 No loitering near polls

During an election and the counting of the ballots, no person shall loiter or congregate within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place; in any manner hinder or delay an elector in reaching or leaving the place fixed for casting his ballot; within such distance give, tender, or exhibit any ballot or ticket to any person other than his own ballot to the judge of election; exhibit any ticket or ballot which he intends to cast; or solicit or in any manner attempt to influence any elector in casting his vote. No person, not an election official, employee, witness, challenger, or police officer, shall be allowed to enter the polling place during the election, except for the purpose of voting. No more electors shall be allowed to approach the voting shelves at any time than there are voting shelves provided. The judges of election and the police officer shall strictly enforce the observance of this section.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-126

CROSS REFERENCES

Loitering about the polling place prohibited, 3599.24
Congregating at polls, 3599.30
Failure of officer of law to assist election officers, 3599.31

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 130, 131, 133, 134, 176

Am Jur 2d: 26, Elections § 374, 383 et seq.

Validity of loitering statutes and ordinances. 25 ALR3d 836

NOTES ON DECISIONS AND OPINIONS

838 F(2d) 380 (9th Cir Wash 1988), Daily Herald Co v Munro. The public area within 300 feet of the entrance to a polling place is a "public forum" and a state law forbidding the systematic questioning of voters by broadcasters within that area is held to violate the "media's right to gather news" under the First Amendment, because the law is not "narrowly tailored" to advance the state interest in peace, order, decorum, and electoral integrity at the polls.

699 FSupp 241 (D Montana 1988), NBC v Colburg. A state law forbidding any person to ask another within 200 feet of a building where an election is held how he voted is a restriction based on content that is unconstitutional because not "narrowly tailored" to protect the public's right to vote or to preserve order and decorum at the polls; nor will a federal judge create a "25 foot zone" outside the polling place, since that is a matter for the state legislature that is beyond his power.

697 FSupp 1204 (ND Ga 1988), NBC v Cleland. A state law forbidding solicitation of votes, distribution of campaign literature, and questioning of electors about how they voted within 250 feet of any polling place or its exit, to maintain the sanctity and decorum of the polling place and encourage voting, is held not "narrowly tailored" to promote the state's compelling interest in maintaining these conditions and held to violate broadcasting corporations' First Amendment rights insofar as it forbids "exit polling" of voters beyond 25 feet from the exit of a building housing a polling place.

682 FSupp 1536 (MD Fla 1988), Florida Committee for Liability Reform v McMillan. A state law forbidding the soliciting of votes, opinions, and petition signatures within 150 feet of any polling place is too broad and is unconstitutional on its face.

681 FSupp 794 (SD Fla 1988), CBS Inc v Smith. A state law forbidding newspapers and broadcasters to solicit voters' opinions within 150 feet of a polling place is held to restrict the gathering of news in violation of the First Amendment.

3501.36 Fee and mileage to precinct official delivering or returning election supplies

Each precinct election official who before the day of an election in his precinct obtains ballots, pollbooks, or other materials to be used in his polling place on the day of such election and delivers such materials to his polling place on the day of such election as required by section 3501.31 of the Revised Code and the orders of the board of elections, and each precinct election official who delivers such materials and the returns and records of an election from the polling place to the office of the board after an election, as required by section 3505.31 of the Revised Code and the orders of the board, may receive, in addition to the compensation provided under section 3501.28 of the Revised Code, a sum not to exceed five dollars for each trip to the polling place and five dollars for each trip from the polling place to the office of the board, plus mileage for each trip at the rate provided by rules governing travel adopted by the office of budget and management in accordance with Chapter 119. of the Revised Code.

HISTORY: 1989 H 245, eff. 10-26-89
1980 H 1062; 125 v 713; 1953 H 1; GC 4785-150

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 130, 131, 133, 134, 176

Am Jur 2d: 26, Elections § 383 et seq.; 63, Public Officers and Employees § 389

Constitutional provision fixing or limiting salary of public officer as precluding allowance for expenses or disbursements. 5 ALR2d 1182

3501.37 Return of booths and other equipment

After each election, the judges of election of each precinct, except when the board of elections assumes the duty, shall see that the movable booths and other equipment are returned for safekeeping to the township clerk of the township or to the clerk or auditor of the municipal corporation in which the precinct is situated. Such clerk or auditor shall have booths and equipment on hand and in place at the polling places in each precinct before the time for opening the polls on election days, and for this service the board may allow the necessary expenses incurred. In cities this duty shall devolve on the board.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-151

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 27.03, 27.07

CROSS REFERENCES

Township clerk, Ch 507

Municipal auditor, duties, 733.11

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251; 37, Elections § 130, 131, 133, 134, 176

Am Jur 2d: 26, Elections § 232, 383 et seq.

CANDIDACY

3501.38 Declaration of candidacy, nominating petition, other petition requirements; election falsification

All declarations of candidacy, nominating petitions, or other petitions presented to or filed with the secretary of state or a board of elections or with any other public office for the purpose of becoming a candidate for any nomination or office or for the holding of an election on any issue shall, in addition to meeting the other specific requirements prescribed in the sections of the Revised Code relating thereto, be governed by the following rules:

(A) Only electors qualified to vote on the candidacy or issue which is the subject of the petition shall sign a petition. Each signer shall be a registered elector pursuant to section 3503.11 of the Revised Code. The facts of qualification shall be determined as of the date when the petition is filed.

(B) Signatures shall be affixed in ink. Each signer may also print his name, so as to clearly identify his signature.

(C) Each signer shall place on the petition after his name the date of signing and the location of his voting residence, including the street and number if in a municipal corpora-

tion or the rural route number, post office address, or township if outside a municipal corporation. The voting address given on the petition shall be the address appearing in the registration records at the board of elections.

(D) No person shall write any name other than his own on any petition. No person may authorize another to sign for him. Where a petition contains the signature of an elector two or more times, only the first such signature shall be counted.

(E) On each petition paper the circulator shall indicate the number of signatures contained thereon, and shall sign a statement made under penalty of election falsification that he witnessed the affixing of every signature, that all signers were to the best of his knowledge and belief qualified to sign, and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

(F) If a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than his own on a petition paper, that petition paper is invalid; otherwise the signature of a person not qualified to sign shall be rejected but shall not invalidate the other valid signatures on the paper.

(G) The circulator of a petition may, before filing it in a public office, strike from it any signature he does not wish to present as a part of his petition.

(H) Any signer of a petition may remove his signature therefrom at any time before the petition is filed in a public office by striking his name therefrom; no signature may be removed after the petition is filed in any public office.

(I) No alterations, corrections, or additions may be made to a petition after it is filed in a public office.

(J) All declarations of candidacy, nominating petitions, or other petitions under this section shall be accompanied by the following statement in boldface capital letters: THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

(K) All separate petition papers shall be filed at the same time, as one instrument.

HISTORY: 1989 H 7, eff. 9-15-89
1986 H 524, H 555; 1980 H 1062; 1977 S 125; 1974 H 662; 130 v H 370

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 27.05, 27.06, 59.04, 59.14
Baldwin's Ohio School Law, Text 4.10(A)
Gotherman & Babbit, Ohio Municipal Law, Text 3.50, 11.75, 11.76

CROSS REFERENCES

Amendments or supplements to zoning resolution, notices and hearings, referendum, petition, 303.12
County charter, petition by voters, 307.94
County charter, validity of petition by voters, 307.95
Amendments or supplements to zoning resolution, procedure, referendum, petition, 519.12
Municipal corporations, merger petitions, 709.45
Municipal corporations, initiative or referendum petitions, 731.31
Dissolution of park district by petition of voters for election, 1545.36
Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4, 6
Territory transfer petition, 3311.24
Signing declaration of candidacy or nominating petition, 3503.06
Reporting change of address, 3503.16
Declaration of candidacy and petition before primary election, 3513.05
Nominating petitions, 3513.251 to 3513.28
Petitions, offenses, 3599.13 to 3599.15
False signature forbidden, 3599.28
Falsehoods in election documents; fine and imprisonment, 3599.36
Local option election as to particular premises, petitions, 4301.331
Liquor local option petition to contain signatures of electors of only one county, 4301.34
Local option on sale of beer, procedure of board of elections, petitions, 4305.14
Township motor vehicle license tax, petition, 4504.18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 244, 251; 20, Counties, Townships, and Municipal Corporations § 464; 21, Counties, Townships, and Municipal Corporations § 759 to 763; 37, Elections § 80 to 83, 87, 220; 56, Initiative and Referendum § 17, 19, 21, 24 to 26, 28, 29, 31, 50; 61, Intoxicating Liquors § 46, 61; 82, Schools, Universities, and Colleges § 78
Am Jur 2d: 25, Elections § 128 et seq., 156, 171 to 173
Right of signer of petition to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 605

NOTES ON DECISIONS AND OPINIONS

1. Procedure governed by charter
2. Referendum petitions
3. Petition errors

1. Procedure governed by charter

5 OS(3d) 156, 5 OBR 377, 449 NE(2d) 1279 (1983), State ex rel Blackman v Hitte. RC 3501.38(J) does not apply to a recall petition in a home rule municipality.

66 OS(2d) 448, 423 NE(2d) 72 (1981), State ex rel Madison v Cotner. RC 3501.38 has no applicability to petitions which are subject to compliance with the requirements of city charters.

54 OS(2d) 416, 377 NE(2d) 507 (1978), State ex rel Ohio Natl Bank v Lancione. Referendum petitions in charter cities need not comply with RC 731.29 to 731.40.

2. Referendum petitions

40 OS(3d) 136, 532 NE(2d) 715 (1988), State ex rel Fairview Park School Dist Bd of Ed v Rocky River School Dist Bd of Ed. Signers of a territory transfer petition under RC 3311.24 may withdraw their signatures from the petition at any time before the local board of education officially acts on it.

70 OS(2d) 125, 435 NE(2d) 1110 (1982), State ex rel Griffin v Krumholtz. A referendum petition will be rejected where it does not contain the prescribed election falsification statement.

48 OS(2d) 173, 357 NE(2d) 1079 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections. Where a township zoning commission approved rezoning of three parcels of land and disapproved rezoning of a fourth, a referendum petition seeking to submit the resolution to the electors must fairly show both the approving and disapproving action of the commission.

40 OS(2d) 94, 320 NE(2d) 672 (1974), State ex rel Home Federal Savings & Loan Assn v Moser. A petition paper seeking a referendum on a zoning resolution under RC 303.12 is invalid where the circulator's affidavit fails to comply with the requirement of RC 3501.38(E) that the circulator "witnessed the affixing of every signature."

40 OS(2d) 94, 320 NE(2d) 672 (1974), State ex rel Home Federal Savings & Loan Assn v Moser. RC 3501.38 is applicable to all petitions for referendum filed pursuant to RC 303.12.

28 OS(2d) 1, 274 NE(2d) 459 (1971), State ex rel Dennis v Miller. Referendum petition which has been declared valid by

board of elections is not rendered invalid by subsequent addition of another signature.

22 OS(2d) 197, 259 NE(2d) 501 (1970), Markus v Trumbull County Bd of Elections. Requirements of O Const Art II §1g do not apply to referendum zoning petition filed under RC 519.12.

22 OS(2d) 197, 259 NE(2d) 501 (1970), Markus v Trumbull County Bd of Elections. Text of ballot statement resulting from referendum petition must fairly and accurately present question or issue to be decided in order to assure free, intelligent and informed vote by average citizen affected.

18 OS(2d) 66, 247 NE(2d) 481 (1969), State ex rel Stillo v Gwin. RC 3501.38 applies to a referendum on a township zoning resolution, and the petitions therefor require circulators' affidavits.

59 App(2d) 175, 392 NE(2d) 1302 (1978), State ex rel Watkins v Quirk. A municipal clerk of council has no authority to invalidate signatures affixed to a referendum petition in violation of RC 3501.38(F).

50 App(2d) 1, 361 NE(2d) 477 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections; affirmed by 48 OS(2d) 173, 357 NE(2d) 1079 (1976). The requirements for referendum petitions under RC 519.12 are: (1) the petition must contain the number and a full and correct title of the zoning resolution; (2) the petition must contain the affidavit of the person soliciting signatures for the petition certifying that to the best of his or her knowledge and belief each of the signatures is that of the person whose name it purports to be, that he believes such persons are electors of the township, and that such persons signed the petition with knowledge of its contents; and (3) if the petition contains any additional information it must be of such a character as to promote the attempt to fairly and accurately present the question or issue and must not in any way detract from a free, intelligent and informed choice by the average citizen who is requested to make a decision as to whether he should or should not sign such a petition.

45 App(2d) 137, 341 NE(2d) 349 (1975), Northeast Franklin Co v Cooper. Where a referendum petition, circulated pursuant to RC 3501.38, contains language, prominently displayed, warning of criminal penalties, and the language substantially complies with the form set out in division (J) of the statute, such petition will not be declared invalid if no intentional misrepresentation is shown.

42 App(2d) 56, 327 NE(2d) 789 (1974), State ex rel Diversified Realty, Inc v Bd of Trustees, Perry Twp. RC 3501.38 is applicable to all referendum petitions filed pursuant to RC 519.12.

25 Misc 104, 266 NE(2d) 275 (CP, Clermont 1970), Sidwell v Clepper. Original petitions for referendum on township zoning act do not require appointment of a committee to serve on behalf of signers of petitions.

OAG 89-049. RC 305.31 confers no authority on a county auditor to determine the validity of referendum petition papers with respect to the requirements imposed by RC 3501.38(E); such determination must be made by the county board of elections.

OAG 65-1. A referendum petition circulated pursuant to RC 3311.231 is invalid if it does not bear the affidavit of the circulator or circulators as prescribed by RC 3501.38.

3. Petition errors

62 OS(3d) 170 (1991), State ex rel Fite v Saddler. A writ of prohibition to restrain a county board of elections from placing the name of a candidate for city solicitor on the ballot on the ground that the candidate did not make full payment of the nominating petition filing fee as required by the city's charter until the day after the last day for filing a nominating petition will be denied where under the city's charter it is evident that payment of the fee is merely to defray county expenses; therefore, it serves neither the public interest nor a public purpose to enforce literally the requirement to pay the fee at the time of filing a nominating petition when the result would be to stop a free, competitive election.

51 OS(3d) 87, 554 NE(2d) 895 (1990), State ex rel Clinard v Greene County Bd of Elections. Under RC 3501.38(I), petitions cannot be altered once filed.

51 OS(3d) 83, 554 NE(2d) 1288 (1990), State ex rel Green v Casey. By providing that "[n]o . . . corrections . . . may be made to a petition after it is filed in a public office," RC 3501.38(I) implies that some corrections are permitted beforehand.

51 OS(3d) 83, 554 NE(2d) 1288 (1990), State ex rel Green v Casey. The standard for reviewing technical defects in declarations of candidacy and petition papers is whether the defect could cause a signer to be deceived or misled; correcting an arithmetic error after a petition has been signed is such a technical defect and cannot deceive or mislead the signers.

51 OS(3d) 79, 554 NE(2d) 1284 (1990), State ex rel Beck v Casey. Alteration of the date on a declaration of candidacy before the candidate obtained signatures is not material.

63 OS(2d) 323, 410 NE(2d) 762 (1980), State ex rel Nagin v Celebrezze. RC 3513.257 does not require that petitions for an independent candidacy for president, vice-president or senator be filed "as one instrument."

48 OS(2d) 35, 356 NE(2d) 493 (1976), State ex rel Macko v Monzula. Affidavits of petition circulators that failed to state that to the best of circulator's knowledge and belief all signers were qualified to sign were insufficient and rendered petitions defective.

44 OS(2d) 33, 336 NE(2d) 849 (1975), State ex rel Barton v Butler County Bd of Elections. An initiative question may not be placed on the ballot where the petition therefor failed to include a statement of the circulator, made under penalty of election falsification, that he witnessed the affixing of every signature thereto.

24 OS(2d) 70, 263 NE(2d) 567 (1970), State ex rel Carson v Jones. Signing of another's name on election petition, with consent of such person and with knowledge and permission of circulator, invalidates whole part petition.

14 OS(2d) 175, 237 NE(2d) 313 (1968), Stern v Cuyahoga County Bd of Elections. Where, after the board of elections has conducted a public hearing upon a protest, the undisputed facts are that (1) a valid declaration of candidacy has been properly filed, (2) a proper petition containing a valid affidavit of the circulator of each part-petition has been filed, (3) in the jurat following the circulator's affidavit on one part-petition the notary who administered the oath to the circulator inadvertently omitted his handwritten signature and imprinted seal, (4) such jurat is properly dated and bears the name of the notary who administered the oath, the title of his office, the date his notary commission will expire and the limits of his jurisdiction (such matters having been stamped upon jurat by the notary at the time he administered the oath to the circulator), a board of elections does not abuse its discretion when it rules that such part-petition is valid on the ground that there is substantial compliance with the form of the declaration of candidacy and petition.

12 OS(2d) 13, 231 NE(2d) 61 (1967), State ex rel Buchanon v Stillman. Where a board of elections has checked the signatures on petitions and determined that there are a sufficient number thereof that are valid, it may determine that such petitions are valid if the only protest against the petitions is based solely upon the failure of the circulator's affidavit to state "that all signers were to the best of his knowledge and belief qualified to sign."

12 OS(2d) 5, 230 NE(2d) 346 (1967), State ex rel Janasik v Sarosy. RC 3501.38, requiring the affidavit of a circulator of an initiative petition to contain a statement that the signers thereof "signed such petition with knowledge of the contents thereof," must be strictly complied with, and a failure to include such statement will invalidate the petition.

6 OS(2d) 65, 215 NE(2d) 716 (1966), State ex rel Ellis v Sulligan. Nominating petition for common pleas court judge was sufficient even though the name of the county was omitted from the declaration of candidacy.

6 OS(2d) 61, 215 NE(2d) 717 (1966), State ex rel White v Brown. A person other than the signer of a petition may, under the authorization and direction of the signer, write on the petition, after the signer's name, the date of the signing, and the mere fact standing alone, that the date of the signing was written by someone other than the signer will not support a reasonable inference that

such date of signing was not written under the authorization and direction of the signer.

4 OS(2d) 1, 210 NE(2d) 881 (1965), State ex rel Weaver v Wiethe. A candidate for the Cincinnati city council whose petition has insufficient signatures may not withdraw the petition to obtain additional signatures or file supplemental petitions.

176 OS 105, 198 NE(2d) 76 (1964), State ex rel Van Aken v Duffy. A petition for candidate form which contains no space for the signature of the circulator of the petition and which was not in fact signed by the circulator is invalid, even though issued to him by a board of elections.

150 OS 289, 82 NE(2d) 92 (1948), State ex rel Braverman v Vitullo. Board of elections properly rejected petition papers of independent candidate, where such papers contained signatures of electors of more than one county on a single petition paper, and where certain signatures were accompanied by addresses not corresponding with the voting residences appearing on the registration cards filed with the boards of election, such signatures were properly rejected. (Annotation from former RC 3513.27.)

43 App(3d) 189, 541 NE(2d) 80 (Franklin 1988), Olen Corp v Franklin County Bd of Elections. For purposes of RC 3501.38(J), "bold face capital letters" connotes a deviation from normal so that the intensity of the darkness of the letters tends to make them stand out from normal letters.

13 App(3d) 355, 13 OBR 436, 469 NE(2d) 906 (Summit 1983), Ambrose v Cole. Where a petition for the election of a merger commission for the merger of the unincorporated territory of a township and a municipal corporation is filed with the board of elections, such board of elections has a clear legal duty to refuse to accept any annexation petitions for filing until exhaustion of the merger procedure pursuant to one of the conditions set out in RC 709.48.

12 App(3d) 158, 12 OBR 482, 467 NE(2d) 905 (Warren 1983), State ex rel Baldridge v South Lebanon Village Clerk. The circulator of an initiative petition who has signed an affidavit as required by RC 3501.38(E) should not be prosecuted for violations of RC 3501.38(F), nor should the petition be invalidated, unless knowing fraudulent action can be shown on the part of the circulator.

65 App(2d) 160, 416 NE(2d) 626 (1979), State ex rel Hirsch v Lorain County Bd of Elections. RC 731.31 and 3501.38 require that each part of an initiative petition circulated separately shall contain an affidavit of the person soliciting the signatures stating (1) the number who signed each part, (2) his belief that the signatures are the genuine signatures of the persons whose names they purport to be, and (3) his belief that the signers are qualified to sign. The required affidavit cannot be supplied after filing.

27 App(2d) 233, 273 NE(2d) 797 (1971), State ex rel Zahneis v Board of Elections. Circulator's failure to witness affixing of each signature to declaration of candidacy invalidates entire petition and not just signatures he did not personally witness.

21 App(2d) 241, 256 NE(2d) 716 (1969), State ex rel Jeffries v Ryan. Provisions of RC 3501.38(C) do not require specific or express authorization and direction by signer of a petition to place after his name the date of signing, and to complete location of his voting residence by addition, after house number and street, of name of post office address; but authority to accurately fill in such information is inferred merely from act of signing, in absence of evidence that such was done contrary to directions, express or implied, of signer, and to extent that they would be capable of an interpretation that they would require an express or specific authorization by signer to someone else to place such information on petition, are merely directory, and not mandatory, and cannot serve as basis for invalidation of petition which contains required information at time it was filed, even if filled in without specific or express authorization of signer.

4 App(2d) 183, 211 NE(2d) 854 (1965), State ex rel Donofrio v Henderson. RC 3501.38(C) has been complied with when the signer of a nominating petition has personally signed his own name in the presence of the circulator, and the circulator or some other person under the authority and direction of the signer has written in all other information therein required, or when a signer of a nominating petition, or some other person under his authority and direction, uses ditto marks to indicate either the date of the signing or the location of his voting address.

No. 12860 (9th Dist Ct App, Summit, 11-26-86), Macedonia v Summit County Bd of Elections. Where an initiative petition for a proposed ordinance contains a false and misleading statement, the city has standing to enjoin its placement on the ballot and a showing of actual detrimental reliance on the language contained in the petition is unnecessary.

No. C85-7856 (ND, Ohio, 9-19-85), Foster v Lucas County Bd of Elections. Although the signer of a nominating petition is allowed to direct another person to write the date and the signer's residence on the petition under the Ohio rule of State ex rel Patton v Myers, 127 OS 95, 186 NE 872 (1933), the correct information must be written down before the petition is filed or the signature is invalid.

OAG 89-049. When a circulator fails to indicate the number of signatures contained on a petition paper as required by RC 3501.38(E), such petition paper is invalid.

OAG 68-074. A petition of transfer circulated pursuant to RC 3311.231 is invalid if it does not bear the affidavit of the circulator or circulators.

1964 OAG 904. A petition for transfer filed by electors pursuant to RC 3311.231 takes precedence over a later resolution filed by a county board of education under authority of RC 3311.26.

3501.39 Unacceptable petitions

The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(A) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(B) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(C) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.

HISTORY: 1990 H 405, eff. 4-11-91
1986 H 555

Chapter 3503

VOTERS—QUALIFICATIONS; REGISTRATION

QUALIFICATIONS

3503.01 Age and residence; registration for thirty days; assignment of electors to adjoining precinct
3503.011 Minimum age for voting at primary election
3503.02 Rules for determining residence
3503.03 Inmates of soldiers' homes
3503.04 Inmates of public or private institutions
3503.05 Voting residence of students—Repealed

REGISTRATION

3503.06 Registration required for voting or other acts
3503.07 Qualifications to register
3503.08 Supplies and rules for registration
3503.09 Precinct registrars—Repealed
3503.10 Voter registration in high schools and vocational schools; procedures; option of board of education to reject program; requirement of registration by students prohibited
3503.11 Registration at offices; distribution of forms; registration by mail; deputy registrars of motor vehicles; change of residence or name
3503.111 Change of registration
3503.12 Methods of facilitating registration
3503.13 Filing of forms; public inspection of records
3503.14 Contents of registration forms
3503.15 Signing of registration forms
3503.16 Change of residence notice
3503.17 Change in precinct boundaries
3503.18 Reports by health officer, probate judge, and clerk of court of common pleas
3503.19 Notice of change of name by registered elector; notice of change of voting status
3503.20 Annual checkup on registration—Repealed
3503.21 Cancellation for failure to vote
3503.22 Correction of registration records; procedure
3503.23 Official registration lists; notations on election day
3503.24 Correction of registration list; hearing
3503.25 Board may investigate registrations
3503.26 Custody of forms and lists; names may be copied from registration lists; public inspection
3503.27 State-wide file of registered voters
3503.28 and 3503.29 Registration of naturalized voters and disabled persons—Repealed
3503.30 Mistake in registration form
3503.31 Register of hotel guests—Repealed
3503.32 Quadrennial registration—Repealed
3503.33 Prior registration; cancellation authorization

CROSS REFERENCES

Days counted to ascertain time, 1.14

Convicted felon incompetent to be elector or officeholder, 2961.01

Political parties may use public funds for voter registration, 3517.18

Use of unlawful means to induce individual to register or not register made a felony; bribing or coercing elector a felony, 3599.01

Sale of vote or registration forbidden as bribery, 3599.02

Misconduct of board of elections as to registration, penalty, 3599.16

No registrar or police officer shall refuse or needlessly delay or hinder registration, allow false name, or destroy card, 3599.18

Loitering about place for registration forbidden, 3599.24

Aiding unqualified voters or inducing officer to allow their votes, penalty, 3599.25

Hindering or unduly delaying person registering to vote, penalty, 3599.26

Who may vote; residency requirement; loss of franchise for lack of exercise, O Const Art V §1

General assembly may exclude felons from franchise, O Const Art V §4

No idiot or insane person entitled to privileges of an elector, O Const Art V §6

Person elected or appointed to office must be qualified elector, O Const Art XV §4

QUALIFICATIONS

3503.01 Age and residence; registration for thirty days; assignment of electors to adjoining precinct

Every citizen of the United States who is of the age of eighteen years or over and who has been a resident of the state thirty days next preceding the election at which he offers to vote, is a resident of the county and precinct in which he offers to vote, and has been registered to vote for thirty days, has the qualifications of an elector and may vote at all elections in the precinct in which he resides.

When only a portion of a precinct is included within the boundaries of a school district, the board of elections may assign the electors residing in such portion of a precinct to the nearest precinct or portion of a precinct within the boundaries of such school district for the purpose of voting at any special school election held in such school district. In any election in which only a part of the electors in a precinct is qualified to vote, the board may assign voters in such part to an adjoining precinct. Such assignment may be made to an adjoining precinct in another county with the consent and approval of the board of elections of such other county.

The board shall notify all such electors so assigned, at least ten days prior to the holding of any such election, of the location of the polling place where they are entitled to vote at such election.

HISTORY: 1978 H 1209, eff. 11-3-78
1977 S 125; 1975 S 32; 1971 S 460; 129 v 1267; 125 v 713; 1953 H 1; GC 4785-30

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.03, 13.03
Baldwin's Ohio School Law, Text 3.02(A)
Gotherman & Babbit, Ohio Municipal Law, Text 15.11

CROSS REFERENCES

Convicted felon incompetent to be elector or officeholder, 2961.01

Age of majority, 3109.01

Former resident may vote for president, 3504.01

Presidential ballots of former residents, certificate of intent, 3504.02

False registration forbidden; penalty, 3599.11

No registrar or police officer shall refuse or needlessly delay or hinder registration, allow false name, or destroy card, 3599.18

Voter qualifications: age; residence; registration, O Const Art V §1

General assembly may exclude felons from franchise, O Const Art V §4

No idiot or insane person entitled to privileges of an elector, O Const Art V §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Aliens and Citizens § 8; 15, Civil Servants and Other Public Officers and Employees § 46; 22, Courts and Judges § 39; 37, Elections § 34, 40 to 43, 47, 150; 64, Jury § 94

Am Jur 2d: 25, Elections § 52, 63, 66 to 78

Inclusion or exclusion of the day of birth in computing one's age. 5 ALR2d 1143

What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime. 36 ALR2d 1238

Elections: effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303

NOTES ON DECISIONS AND OPINIONS

28 Clev St L Rev 449 (1979). Ohio Residency Law for Student Voters—Its Implications and a Proposal for More Effective Implementation of Residency Statutes, Jonathan D. Reiff.

36 OS(2d) 17, 303 NE(2d) 77 (1973), Kyser v Cuyahoga County Bd of Elections. A post office box number cannot be used to fulfill the requirement of "residence" in RC 3503.01 by a person attempting to register to vote.

171 OS 295, 170 NE(2d) 428 (1960), State ex rel Jeffers v Sowers. Vacancy on the ballot caused by death of a duly nominated candidate for the office of county engineer may be filled by the selection of a person who is a registered professional engineer and a registered surveyor licensed to practice in this state, and who is a resident and elector of this state, but it is not necessary for him to be a resident and elector of the county in which he is selected.

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. Under the provisions of amended statute, any qualified elector who in good faith removes from one precinct to another precinct in the same county at any time subsequent to the fortieth day preceding an election shall have the right to vote at such election in the precinct from which he moved wherein his voting residence had been legally established. (See also State ex rel Woods v Eyrich, 157 OS 326, 105 NE(2d) 393 (1952).)

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. An elector's petition and declaration of candidacy for the office of councilman at large are not invalid by reason of the fact that within forty days preceding the filing thereof the elector has in good faith removed from one precinct to another in the same ward of the municipality without changing his registration at the county board of election.

135 OS 369, 21 NE(2d) 108 (1939), Jolly v Deeds. Family which was evicted from home occupied in village and moved to a farm where they lived for over two years during which time they continued to vote in the village, contrary to law, do not satisfy resident requirements under statute to allow them to vote in precinct of village by leaving the farm and moving back to village nearly a week before an election.

96 OS 172, 117 NE 173 (1917), State ex rel Taylor v French. The qualifications of electors set forth in O Const Art V, §1 control in all elections held to fill offices the constitution has itself provided for and in all elections upon questions submitted to a vote pursuant to provisions of the constitution; these qualifications can be altered only by amending the constitution.

33 App(2d) 52, 291 NE(2d) 775 (1972), Kyser v Board of Elections; reversed by 36 OS(2d) 17, 303 NE(2d) 77 (1973). Once a person acquires the status of an elector in a given precinct, that status is lost only if the person (1) becomes an elector in another precinct in the same county or another county of the state by establishing a permanent residence in that precinct thirty days next preceding an election; or (2) removes to another state with the intention of making such state his residence; or (3) removes to another state with the intention of remaining there an indefinite time and making such state his place of residence, notwithstanding the fact that he may entertain an intention to return at some future period; or (4) goes into another state and while there exercises the right of a citizen by voting.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. RC 3503.05 cannot disfranchise a student or wife of a student who satisfies the qualifications of O Const Art V §1, 4 and 6, and RC 3503.01; otherwise it would be unconstitutional in its application to such cases.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. The factual decision of a board of elections as to the residence of a person seeking to become a voter is subject to judicial review, when such factual decision is arbitrary, unreasonable or constitutes an abuse of discretion.

OAG 75-067. A candidate seeking the office of municipal court judge must, pursuant to O Const Art XV §4, and RC 3503.01, be a resident of this state, of the involved county and of the involved precinct for thirty days immediately preceding the election.

1962 OAG 3383. Where a "Mary Jones" signs a petition "Mrs. John Jones," said Mary Jones also being known as Mrs. John Jones by reason of marriage, the signature is valid if the person in question meets the qualifications of an elector, and there is no fraud.

1962 OAG 3383. Every person who has the qualifications of an elector under the provisions of O Const Art V §1, and RC 3503.01, is a qualified elector within the purview of O Const Art X §4, and such person is eligible to sign a county charter commission petition under said §4, and RC 3503.06, requiring that in registration precincts only registered electors may sign certain petitions, does not apply to the signers of such a petition.

1960 OAG 1187. A member of the military service who is stationed at a military base within this state but who lives off the premises of such base is not prohibited by O Const Art V §5 from being considered a resident of this state for voting purposes if he otherwise meets the requirements of RC 3503.01.

1959 OAG 893. In an election pursuant to RC 3311.26 for the creation of a new local school district, where parts of the school districts involved are located in different counties, a separate certification of the proposal should be made by the county board of education to the board of elections in each county involved, and all electors residing in the area included in the proposed new districts are eligible to vote at such election.

1953 OAG 3183. RC 3503.02 does not authorize a move for temporary purposes within a county.

1944 OAG 6635. A declaration of candidacy for office of county engineer and an accompanying petition presented by or on behalf of person in army of United States may not legally be rejected for filing merely because an order of secretary of war prohibits a person in army of United States from becoming candidate for public office.

1943 OAG 6087. Person living in trailer who is possessed of residence qualifications contained in statute may register and vote in precinct in which such trailer is located if his habitation is fixed in such precinct and if it is his intention to return thereto when he is absent therefrom.

1928 OAG 2582. Electors of a political subdivision for which a bond issue is proposed, otherwise qualified, are entitled to vote on the proposed bond issue regardless of whether or not they were qualified electors of that political subdivision at the time when the legislation for said proposed bond issue was started or completed.

3503.011 Minimum age for voting at primary election

At a primary election every qualified elector who is or will be on the day of the next general election eighteen or more years of age, and who is a member of or is affiliated with the political party whose primary election ballot he

desires to vote, shall be entitled to vote such ballot at the primary election.

HISTORY: 1980 H 1062, eff. 3-23-81

CROSS REFERENCES

Age of majority, 3109.01
Primary elections, Ch 3513

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37 Elections § 40, 259, 260, 290
Am Jur 2d: 25, Elections § 63

3503.02 Rules for determining residence

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

(A) That place shall be considered the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

(B) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

(C) A person shall not be considered to have gained a residence in any county of this state into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

(D) The place where the family of a married man or woman resides shall be considered to be his or her place of residence; except that when the husband and wife have separated and live apart, the place where he or she resides the length of time required to entitle a person to vote shall be considered to be his or her place of residence.

(E) If a person removes to another state with the intention of making such state his residence, he shall be considered to have lost his residence in this state.

(F) If a person removes to another state with the intention of remaining there an indefinite time and making such state his place of residence, he shall be considered to have lost his residence in this state, notwithstanding the fact that he may entertain an intention to return at some future period.

(G) If a person removes out of the county to engage in the services of the United States government, he shall not be considered to have lost his residence in this state during the period of such service, and likewise should he enter the employment of the state, the place where such person resided at the time of his removal shall be considered to be his place of residence.

(H) If a person goes into another state and while there exercises the right of a citizen by voting, he shall be considered to have lost his residence in this state.

HISTORY: 1971 S 460, eff. 3-23-72
127 v 83; 125 v 713; 1953 H 1; GC 4785-31

CROSS REFERENCES

Separation agreement, 3103.06
Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17
Falsehoods in election documents; fine and imprisonment, 3599.36
Commercial driver's licenses, residence defined, 4506.01
Voter qualifications: age; residence; registration, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 36, Domicil § 6, 16, 19; 37, Elections § 42 to 44; 64, Jury § 93
Am Jur 2d: 25, Elections § 67, 68, 70 to 78
State voting rights of residents of federal military establishments. 34 ALR2d 1193
Residence of students for voting purposes. 44 ALR3d 797

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. Temporary removal; government employee
3. Residency or domicile
4. Effect of statutes
5. Separated spouses
6. Students; servicemen

1. Constitutional issues

332 FSupp 1195 (SD Ohio 1971), Anderson v Brown. The statutes applying residence as a test to most voters and residence plus the establishment of a home for permanent residence for students violate the Equal Protection Clause and are unconstitutional.

2. Temporary removal; government employee

161 OS 341, 119 NE(2d) 279 (1954), State ex rel Lakes v Young. Temporary removal of a voter and his family from a township did not constitute a change or abandonment of voting residence.

1953 OAG 3183. RC 3503.02 does not authorize a move for temporary purposes within a county.

1939 OAG 1370. If a person retires from the government service or from the employ of the state and after such retirement remains away from the place from which he removed to enter such service, he must be permitted to vote at the place from which he removed for a period of three years, provided it is his intention to return thereto; however, if absent therefrom for a period in excess of three years, he will have lost his right to vote at the place from which he removed.

1939 OAG 1370. A person who has removed to the District of Columbia or other federal territory, to engage in the government service, or has removed to enter the employment of the state, must, while in such service or employment, be permitted to vote at the place where he resided at the time of such removal, regardless of the length of time such person remains away.

1939 OAG 878. Person who removes from his voting residence for temporary purposes, with intention of returning, and remains away for a continuous period in excess of three years, shall, under provisions of statute, be considered to have lost such residence, unless during such absence he was engaged in service of federal or state government.

3. Residency or domicile

20 OS(3d) 1, 20 OBR 75, 484 NE(2d) 690 (1985) State ex rel Nichols v Vinton County Bd of Elections. Evidence that a person has placed his house for sale, rented it to tenants, moved his furniture from it to a new address, and enrolled his child in the public school system at the new address is sufficient evidence to support a determination by a county board of elections that the person has changed his residence.

7 OS(3d) 20, 7 OBR 487, 455 NE(2d) 1009 (1983), State ex rel Spangler v Cuyahoga County Bd of Elections. Where candidate's wife and minor children lived in one city and candidate owned home and resided with adult son in second city part of the time but was not separated from wife and had no intention of moving to second city, candidate was not a resident of second city.

36 OS(2d) 17, 303 NE(2d) 77 (1973), Kyser v Cuyahoga County Bd of Elections. A post office box number cannot be used to fulfill the requirement of "residence" in RC 3503.01 by a person attempting to register to vote.

157 OS 338, 105 NE(2d) 399 (1952), State ex rel Klink v Eyrich. A finding of the board of elections regarding the voting residence of a candidate will not be disturbed by a court unless the evidence before the board was such as to require as a matter of law a determination that the candidate's voting residence was not as stated in his declaration of candidacy. In other words, if there was substantial evidence to sustain that decision, the decision of the board must be sustained. In such an instance where there is no claim of any fraud or corruption on the part of the board, this court cannot say that the board abused its discretion.

157 OS 338, 105 NE(2d) 399 (1952), State ex rel Klink v Eyrich. A man may have more than one residence although he can have only one domicile.

135 OS 369, 21 NE(2d) 108 (1939), Jolly v Deeds. Voter who for eleven months before an election lived with her husband and children in township outside village and who gave as her reason for voting in the village that she and her family wanted to move back into the village at some future time, resided in the township, which was the place to which, whenever any member of her family was absent, he intended to return, and was mistaken in voting in the village since her husband stated that at both the primary and general elections in year 1938 he voted in the township instead of the village and he testified also that the family would move wherever he could find work.

33 App(2d) 52, 291 NE(2d) 775 (1972), Kyser v Board of Elections; reversed by 36 OS(2d) 17, 303 NE(2d) 77 (1973). Once a person acquires the status of an elector in a given precinct, that status is lost only if the person (1) becomes an elector in another precinct in the same county or another county of the state by establishing a permanent residence in that precinct thirty days next preceding an election; or (2) removes to another state with the intention of making such state his residence; or (3) removes to another state with the intention of remaining there an indefinite time and making such state his place of residence, notwithstanding the fact that he may entertain an intention to return at some future period; or (4) goes into another state and while there exercises the right of a citizen by voting.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. The factual decision of a board of elections as to the residence of a person seeking to become a voter is subject to judicial review, when such factual decision is arbitrary, unreasonable or constitutes an abuse of discretion.

1 Misc 70, 205 NE(2d) 599 (CP, Franklin 1964), State ex rel Metzger v Brown. Where a member of a county executive committee moved out of the county, the committee was justified in naming a successor.

84 Abs 26, 167 NE(2d) 680 (CP, Meigs 1960), Simon v Ervin. "Residence" for purposes of voting is not necessarily residence for purpose of service of summons.

37 F(2d) 818 (DC Cir 1930), Deming v United States ex rel Ward. An applicant for the U.S. civil service examination was declared a resident of Ohio even though as a minor he had moved with his father, who was a federal employee, to Washington, D.C. and had since lived there.

1962 OAG 3108. A person who has moved out of a county to enter employment with the state and has retained his residence for voting purposes is an elector and resident of such precinct and may be appointed a county central committeeman and chairman of the county executive committee of his party in that county.

1962 OAG 2920. A person who lived in a certain place in a county for one year with the intention of making that place his home, and died in that place, was a legal resident of such place within the purview of RC 5113.15 even though at the time of death he may have been receiving poor relief from another county; and such person should have been buried in accordance with the provisions of division (A) of that section.

1962 OAG 2920. The terms "legal resident" and "legal residence" as used in RC 5113.15 are not synonymous with the term "legal settlement" as defined in RC 5113.05.

1950 OAG 1499. Resident qualifications of an elector are a matter of fact and should be determined in accordance with statute.

1943 OAG 6087. Person living in trailer who is possessed of residence qualifications contained in GC 4785-30 (RC 3503.01), may register and vote in precinct in which such trailer is located if his habitation is fixed in such precinct and if it is his intention to return thereto when he is absent therefrom.

1940 OAG 2341. Offer by a world war veteran enrolled in a civilian conservation corps camp to sign an affidavit to the effect that he has no permanent residence other than such camp does not in and of itself fix his permanent residence for voting purposes at the camp.

4. Effect of statutes

157 OS 338, 105 NE(2d) 399 (1952), State ex rel Klink v Eyrich. The mere fact that the ordinary meaning of the provisions of the applicable statutes may give a particular individual a choice of more than one place as his voting residence is no reason for determining that those statutes should be so construed as not to permit that.

1940 OAG 2341. When determining residence under the election laws the intent in regard thereto of a person offering to register or vote must be considered in the light of and supported by surrounding circumstances.

5. Separated spouses

84 App 279, 87 NE(2d) 374 (1948), Cox v Union City. The phrase, "separated and live apart" as used in statute must be given a broad, practical interpretation in order to effectuate the purpose of the law.

84 App 279, 87 NE(2d) 374 (1948), Cox v Union City. Under the provisions of statute where the husband actually lives separate and apart from his wife, although such separation is not due to marital difficulties, the husband may acquire at the place of such actual dwelling a residence for voting purposes.

1954 OAG 3482. A married woman separated from her husband in another state who has resided in a certain county of Ohio for one year without having received poor relief or relief from a private agency which maintains records of relief given, said husband not having during such year received public relief, care or support at the expense of the state of his residence or its subdivisions, has acquired a legal settlement in the county where she has so maintained her residence and if she has had the actual custody of her minor children, and has been their sole support and no order of any court has been made in regard to their custody, the legal settlement of such children for the purpose of poor relief will follow that of the mother.

6. Students; servicemen

28 Clev St L Rev 449 (1979). Ohio Residency Law for Student Voters—Its Implications and a Proposal for More Effective Implementation of Residency Statutes, Jonathan D. Reiff.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. RC 3503.05 cannot disfranchise a student or wife of a student who satisfies the qualifications of O Const Art V §1, 4 and 6, and RC 3503.01; otherwise it would be unconstitutional in its application to such cases.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. A college student has a right to vote at his college residence when his actions and conduct in the school town manifest an intent to make that place his home.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. If a student is forced out by illness, and, although he changed institutions, he resumed his student status at the earliest possible moment, and during the interim has not acquired a new residence, he retains his original voting residence.

1960 OAG 1187. A member of the military service who is stationed at a military base within this state but who lives off the premises of such base is not prohibited by O Const Art V §5, from being considered a resident of this state for voting purposes if he otherwise meets the requirements of RC 3503.01.

3503.03 Inmates of soldiers' homes

Infirm or disabled soldiers who are inmates of a national home for such soldiers, who are citizens of the United States and have resided in this state thirty days next preceding any election, and who are otherwise qualified as to age and residence within the county and township shall have their lawful residence in the county and township in which such home is located.

HISTORY: 1975 S 32, eff. 9-5-75
1971 S 460; 1953 H 1; GC 4785-32

CROSS REFERENCES

State or national home for disabled soldiers is separate election precinct, 3501.20

Ohio veterans' home, Ch 5907

Voter qualifications; age; residence; registration, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 46

Am Jur 2d: 25, Elections § 73, 76

State voting rights of residents of federal military establishment. 34 ALR2d 1193

3503.04 Inmates of public or private institutions

Persons who are inmates of a public or private institution who are citizens of the United States and have resided in this state thirty days next preceding the election, and who are otherwise qualified as to age and residence within the county shall have their lawful residence in the county, city, village and township in which said institution is located provided, that the lawful residence of a qualified elector who is an inmate in such an institution for temporary treatment only, shall be the residence from which he entered such institution.

HISTORY: 1975 S 32, eff. 9-5-75
1971 S 460; 125 v 713; 1953 H 1; GC 4785-33

CROSS REFERENCES

Voter qualifications; age; residence; registration, O Const Art V §1

Idiots and insane persons not entitled to vote, O Const Art V §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 46

Am Jur 2d: 25, Elections § 73

State voting rights of residents of federal military establishment. 34 ALR2d 1193

NOTES ON DECISIONS AND OPINIONS

1952 OAG 1083. A resident of a rest home, receiving aid for the aged, can acquire a voting residence in the county wherein such home is located.

1946 OAG 1399. Inmates of a county home situated on territory sought by a municipality to be annexed are, under statute, legal residents of territory and if they possess other qualifications of electors, are entitled to vote at an election held pursuant to GC 3561-1 (RC 709.17) on question of annexation.

3503.05 Voting residence of students—Repealed

HISTORY: 1971 S 460, eff. 3-23-72
127 v 83; 125 v 314; 1953 H 1; GC 4785-33a

REGISTRATION

3503.06 Registration required for voting or other acts

No person shall be entitled to vote at any election, or to sign any declaration of candidacy or any nominating, initiative, referendum, or recall petition, unless he is registered as an elector.

HISTORY: 1977 S 125, eff. 5-27-77
130 v H 625; 129 v 392; 126 v 205; 125 v 713; 1953 H 1; GC 4785-34

CROSS REFERENCES

False registration, penalty, 3599.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21; 61, Intoxicating Liquors § 48, 49

Am Jur 2d: 25, Elections § 69, 95 to 104, 109 to 111

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

132 OS 18, 4 NE(2d) 397 (1936), State ex rel Hawke v Myers. Former GC 4785-34 and 4785-60 (RC 3503.06 and 3503.32) do not provide an unreasonable classification of cities and the statutes are of uniform operation in those portions of the state to which they apply.

132 OS 18, 4 NE(2d) 397 (1936), State ex rel Hawke v Myers. That portion of statute, which denies nonregistered electors the right to sign nominating petitions, is constitutional.

124 OS 161, 177 NE(2d) 214 (1931), State ex rel Waltz v Michell. O Const Art V §1, defines an elector and enumerates the essential qualifications of an elector. If statute were held to apply to the qualification of electors with reference to their right to sign petitions prior to the time when an opportunity is afforded thereunder to register, it would result in depriving the citizen of a right accorded him by the Constitution. Therefore, maintenance of the constitutional validity of the statute requires the holding that it has no application to the signers of such petitions within the period from January 1, 1930, to October 2, 1930.

2. In general

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

38 App(3d) 43, 526 NE(2d) 110 (Summit 1987), State ex rel Moore v Summit County Bd of Elections. Only a registered elector may sign a nominating petition pursuant to RC 3503.06.

114 App 497, 177 NE(2d) 616 (1961), State ex rel Krupa v Green. Where a woman arranges by antenuptial written contract to retain her maiden name and so notifies the board of elections which notes on her registration card that she "is married" and "will retain her single name," and where, after her marriage, she uses only her single name in all her activities, is known only by such name, and votes thereunder in three elections, a declaration of candidacy and

nominating petition filed by such woman under and using her single name is not for such reason invalid.

1962 OAG 3383. Every person who has the qualifications of an elector under the provisions of O Const Art V §1, and RC 3503.01 is a qualified elector within the purview of O Const Art X §4, and such person is eligible to sign a county charter commission petition under said §4, and RC 3503.06, requiring that in registration precincts only registered electors may sign certain petitions, does not apply to the signers of such a petition.

1960 OAG 1696. When a registration of voters is established in an area pursuant to RC 3503.06, the first general registration of all qualified electors in precincts which become registration precincts should be held in accordance with RC 3503.08, and residents of such precincts may not register at the office of the board of elections until such first general registration has been held.

1959 OAG 767. Distribution of copies of a proposed county charter or an amendment thereto to each elector of a registration precinct who registered for the last general election and to each elector of a nonregistration precinct who signed the poll book in the last general election is a compliance with O Const Art X §4, but mailing a copy to the occupant of each of a list of house numbers obtained from a direct mail organization or publication in a newspaper is not.

1955 OAG 6014. A municipality with less than 16,000 population which has become a registration municipal corporation by ordinance may repeal such ordinance, and such action will be effective upon publication and a lapse of thirty days.

1955 OAG 5199. A member of a board of elections may not receive a salary increase based on the population of the registration precincts where the registration requirement is established by discretionary action of the board.

1951 OAG 973. The statutes relative to registration of electors make no provision for publishing notice of the time or place of registration, and in the absence of such provision any expense incurred for such publication is unauthorized and illegal.

1932 OAG 4272. A signature to a petition of an elector residing in a registration municipality or precinct who is not registered is violative of this section and GC 4785-177 (RC 3519.10), and is therefore invalid.

1930 OAG 1993. Under statute, there is no requirement that provision be made for registration of all qualified electors of a city having a population of less than 16,000, and more than 11,800. Such city may, however, by ordinance elect to become a registration city.

1930 OAG 1872. Under the existing statutes, there is no provision of law to authorize an elector to register by mail.

3503.07 Qualifications to register

Each person who will be of the age of eighteen years or more at the next ensuing November election, who is a citizen of the United States, and who, if he continues to reside in the precinct until the next election, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector shall, unless otherwise disqualified, be entitled to be registered as an elector in such precinct. When once registered, an elector shall not be required to register again unless his registration is canceled.

HISTORY: 1971 S 460, eff. 3-23-72
1953 H 1; GC 4785-35

CROSS REFERENCES

Convicted felon incompetent to be elector or officeholder, 2961.01

Voter qualifications; age; residence; registration, O Const Art V §1

General assembly may exclude felons from franchise, O Const Art V §4

No idiot or insane person entitled to privileges of an elector, O Const Art V §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21

Am Jur 2d: 25, Elections § 58 to 66, 69, 95, 102, 109 to 111

NOTES ON DECISIONS AND OPINIONS

49 OS(3d) 102, 551 NE(2d) 150 (1990), In re Protest Filed with the Franklin County Elections Bd by Citizens for the Merit Selection of Judges, Inc on Behalf of Issue III, Merit Selection of Judges. Although a person may be registered with a board of elections, if that person has moved to a new residence the person cannot be "registered" as an elector unless that person has satisfied the change of residence requirements of RC Ch 3503.

20 OS(3d) 21, 20 OBR 137, 485 NE(2d) 248 (1985), State ex rel Van Auken v Brown. Where a resident submits a voter registration form, the fact that the resident did not appeal an earlier county board of elections decision, deleting her name from the registration list before she became a resident, is not cause to deny the new registration request.

38 App(3d) 43, 526 NE(2d) 110 (Summit 1987), State ex rel Moore v Summit County Bd of Elections. A seventeen-year-old person who registers to vote automatically becomes a qualified elector upon his eighteenth birthday without any need to register again and, thus, may validly sign a nominating petition on and after the date of his eighteenth birthday.

1962 OAG 2856. A person who is nineteen years of age may hold the position of clerk of the board of trustees of public affairs of a village.

1960 OAG 1187. A member of the military service who is stationed at a military base within this state but who lives off the premises of such base is not prohibited by O Const Art V §5, from being considered a resident of this state for voting purposes if he otherwise meets the requirements of RC 3503.01.

3503.08 Supplies and rules for registration

The board of elections shall provide such printed forms, blanks, supplies, and equipment and prescribe such reasonable rules as are necessary to carry out sections 3503.06 to 3503.32 of the Revised Code.

HISTORY: 1977 S 125, eff. 5-27-77
1971 S 460; 129 v 392; 1953 H 1; GC 4785-36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21

Am Jur 2d: 25, Elections § 69, 95, 102, 105, 109 to 111

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

1960 OAG 1696. When a registration of voters is established in an area pursuant to RC 3503.06, the first general registration of all qualified electors in precincts which become registration precincts should be held in accordance with RC 3503.08, and residents of such precincts may not register at the office of the board of elections until such first general registration has been held.

1960 OAG 1696. When a first general registration of voters is held pursuant to RC 3503.08 a person who is qualified to register may register at the board of elections if he will necessarily and unavoidably be absent from his precinct on the day set for the registration and is otherwise qualified.

3503.09 Precinct registrars—Repealed

HISTORY: 1971 S 460, eff. 3-23-72
125 v 713; 1953 H 1; GC 4785-37

3503.10 Voter registration in high schools and vocational schools; procedures; option of board of education to reject program; requirement of registration by students prohibited

(A) As used in this section, "volunteer registrar" means an individual designated by a board of education to perform the duties prescribed by this section and who shall receive no additional compensation for performing such duties.

Every board of education shall provide in each of its high schools and vocational schools a volunteer registrar to assist in the registration of persons qualified to register to vote in the county in which the school is located, in accordance with this chapter. The board of education shall establish a schedule of school days and hours during these days when the volunteer registrar shall provide registration assistance. The board of education shall select the volunteer registrar from the high school's or vocational school's staff members who are required to have a certificate of the type described by any of divisions (D) to (O) of section 3319.22 of the Revised Code and the clerical staff supervised by such certificated staff members. Each volunteer registrar designated pursuant to this section shall be qualified to vote, and shall, prior to performing any duties under this section, sign a statement, as prescribed by the secretary of state, specifying the duties imposed on such a person relating to the registration of voters. The volunteer registrar shall retain a copy of the statement, and the original shall be filed with the board of elections. The board of education shall provide the volunteer registrar, and make available such space as may be necessary, without charge to the county.

The board of elections in each county shall supply each volunteer registrar with whatever training it considers necessary and with a sufficient number of blank registration forms. The registration forms shall be in the form prescribed in section 3503.14 of the Revised Code, and shall be perforated so that a portion may be retained by the applicant as a voter registration application receipt. The volunteer registrar shall be responsible for the return of all completed registration forms to the board of elections by mail, in person, or by other means prescribed by the board of elections.

The secretary of state shall prepare and cause to be displayed in a prominent location in each high school and vocational school a notice that identifies the volunteer registrar, the nature of the volunteer registrar's duties, and where and when the volunteer registrar is available for assisting in the registration of voters.

A board of education may furnish additional supplies and services to disseminate information to increase student and public awareness of the existence of a volunteer registrar in every high school and vocational school operated by a board of education.

This division does not apply to a board of education that adopts a resolution specifically stating that the school district does not desire to provide volunteer registrars for the purpose of registering voters in the secondary and vocational schools of the district.

(B) No board of education or employee or officer of a board of education shall require any pupil of the district to register to vote as a condition of receiving a particular grade in or credit for a school course or class, participating in any curricular or extracurricular activity, receiving any benefit or privilege, or participating in any program or activity otherwise available to pupils enrolled in the district's schools.

This section does not limit any authority a board of education, superintendent, or principal has to allow, sponsor, or promote voluntary election registration programs within a high school or vocational school, including programs in which pupils serve as volunteer registrars, provided that no pupil is required to participate.

HISTORY: 1988 H 439, eff. 3-17-89
1983 S 54

Note: Former 3503.10 repealed by 1971 S 460, eff. 3-23-72; 1953 H 1; GC 4785-38.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 31.09

CROSS REFERENCES

Boards of education, Ch 3313

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

3503.11 Registration at offices; distribution of forms; registration by mail; deputy registrars of motor vehicles; change of residence or name

(A) Persons qualified to register or to change their registration may register or change their registration at the office of the board of elections or at any permanent or temporary branch registration office established by the board, at any time such office is open except that no registration or change in registration shall be made at any temporary branch registration office after nine p.m. of the twenty-ninth day preceding a primary or general election. Any registration or change in registration made at the office of the board of elections or at a permanent registration office later than the thirtieth day preceding a special, primary, or general election, or at a temporary branch registration office later than the thirtieth day preceding a special election or later than the twenty-ninth day preceding a primary or general election, shall be invalid for that election, but shall be valid for any subsequent election for which the registrant qualifies as an elector.

(B)(1) Any person qualified to register may apply, by mail, by telephone, in person, or through another person, for registration forms to the office of the board of elections of the county in which he resides. Any qualified elector who completes the registration forms under division (B)(1), (2), (3), or (4) of this section may return the forms to the board by mail, in person, or through another person.

(2) Every board of elections shall, upon request, supply registration forms to any person who resides in the county and is qualified to vote. Such person may distribute the

registration forms and provide assistance in registration to any other person who resides in the county served by the board from which the forms were received and is qualified to register. Any person who serves as a voter registrar under this paragraph shall, prior to any such distribution or provision of assistance, sign a statement, as prescribed by the secretary of state, specifying the duties imposed on such person by the law relating to the registration of voters and the penalty for the failure to comply with the law. The board may provide by rule for a reasonable fee, not to exceed the cost of printing, for registration forms supplied to any person under this division in a quantity exceeding fifteen.

(3) The board of elections may designate any county office or school governed by a county, city, exempted village, or local board of education to distribute registration forms. Upon its designation, the office or school shall, during its regular office hours and upon request, supply registration forms to any person who resides in the county and who is qualified to register.

(4)(a) The secretary of state and not more than three of his employees designated by him may provide registration forms to any person who resides in this state and is qualified to register as an elector, and may register any such person.

(b) No more than twenty-two persons who are employed by the secretary of state as field staff representatives may provide registration forms to persons who reside in this state and are qualified to register as electors, and may register any such persons. Any such field staff representative may provide such forms and register such qualified persons only within the counties contained in whole or in part in that field staff representative's assigned area of the state, as designated by the secretary of state.

(c) Any member of the general assembly may provide registration forms to any person who resides in this state and is qualified to register as an elector, and may register any such person. Any such member may provide such forms and register such qualified persons only within that member's legislative district.

(d) Any director and any deputy director of a board of elections, and one person who resides in the county, is qualified to vote, and is appointed by the director and one person who resides in the county, is qualified to vote, and is appointed by the deputy director, may provide registration forms to any person who resides in this state and is qualified to register as an elector, and may register any such person. Any such director, deputy director, or appointee may provide such forms and register such qualified persons only within the county in which the board is located.

(e) Except in the case of persons indicating an intention to return the registration forms to their board by mail, in person, or through another person, any person authorized to provide registration forms and register qualified persons under division (B)(4)(a), (b), (c), or (d) of this section shall send or deliver the completed registration forms to the board of elections of the county in which the qualified person resides. The board shall file the registration forms in accordance with section 3503.13 of the Revised Code.

(5) The registration forms must under divisions (B)(1), (2), (3), and (4) of this section be received by the board no later than the thirtieth day preceding a special, primary, or general election. Any form received later than the thirtieth day preceding an election shall be invalid for that election, but shall be valid for any subsequent election for which the registrant qualifies as an elector.

(C) If the board is satisfied as to the truth of the statements made in the registration forms, as required by divisions (B) and (D) of this section, it shall register the applicant and notify him of his registration and the precinct in which he is to vote. Such notification shall be by nonforwardable mail, and in the event the mail is returned to the board, it shall investigate and cause the notification to be delivered to the correct address; or if it determines that the voter is not eligible to vote for residency reasons it shall cancel the registration and notify the registrant, at the last known address, of a need to reregister. If the board does not accept the application for registration, it shall immediately notify the applicant of the reasons for rejection of the application and request the applicant to provide whatever information or verification is necessary to complete the application.

(D) When any person applies for a driver's license, commercial driver's license, a state of Ohio identification card issued under section 4507.50 of the Revised Code, motorcycle operator's license or endorsement, or the renewal or duplicate of any license or endorsement under Chapter 4506. or 4507. of the Revised Code, the registrar of motor vehicles or deputy registrar shall ask the applicant if he is eligible to register as an elector and, in addition, if he is registered. If the applicant replies that he is eligible but not registered, the registrar or deputy registrar shall offer to register him. If the applicant wishes to be registered, the registrar or deputy registrar shall register him and promptly send the completed registration forms to the board of elections of the county in which the applicant resides. The board shall file the registration forms in accordance with section 3503.13 of the Revised Code.

The registrar or deputy registrar shall offer any applicant for a license specified in this section an opportunity to complete a notice of change of residence if the applicant is a registered elector who has changed his residence from one precinct to another within a county or from one county to another and has not filed such a notice. The registrar or deputy registrar shall send the completed notice to the board of elections of the county in which the applicant resides, and the board shall process the notice in accordance with section 3503.16 of the Revised Code.

The board of elections in each county shall supply each deputy registrar with a sufficient number of blank registration forms and blank change of residence notices. The secretary of state shall supply the registrar with a sufficient number of blank registration forms and blank change of residence notices.

(E)(1)(a) Any registered elector who has changed his residence within a precinct and has not filed a notice of change of residence, may present himself on the day of a special, primary, or general election at the polling place in the precinct in which he resides and vote if he first completes a notice of change of residence. The precinct election officers shall send the completed notice to the board of elections with the pollbooks and tally sheets, and the board shall process the notice in accordance with section 3503.16 of the Revised Code.

(b) Any registered elector who moves from one precinct to another in the same county on or prior to the thirty-first day preceding a general, primary, or special election and has not filed a notice of change of residence may vote on

the day of the next succeeding election if he does all of the following:

(i) Presents himself on the day of the election at the office of the board of elections;

(ii) Completes a notice of change of residence and files it with election officials at the board;

(iii) Votes at the board by absent voter's ballots using the address to which he has moved;

(iv) Completes and signs, under penalty of election falsification, a statement attesting that he moved on or prior to the thirty-first day before the election, that he has voted at the office of the board, and that he will not vote or attempt to vote at any other location for that particular election.

A person who votes by absent voter's ballots pursuant to division (E)(1)(b) of this section shall not make written application for the ballots pursuant to Chapter 3509. of the Revised Code. Ballots cast pursuant to division (E)(1)(b) of this section shall be counted during the official canvass of votes in the manner provided for in sections 3505.32 and 3509.06 of the Revised Code insofar as that manner is applicable. The board shall examine the pollbooks to verify that no ballot was cast at the polls by an elector who has voted by absent voter's ballots pursuant to division (E)(1)(b) of this section. Any ballot determined to be insufficient for any of the reasons stated in section 3509.07 of the Revised Code shall not be counted.

(c) Any registered elector who moves from one precinct to another in the same county or from one county to another county within thirty days prior to an election may vote at the next succeeding election in the precinct from which he moved, wherein he was legally registered.

(d) Change of residence forms shall be available at each polling place, and when these forms are completed, noting changes of address, they shall be filed with election officials at the polling place. Election officials shall return completed forms to the board of elections.

The board shall process change of residence forms filed pursuant to division (E) of this section in accordance with section 3503.16 of the Revised Code.

(2) Any registered elector who has changed his name may complete a notice of change of name at the polling place in the precinct in which he votes on the day of a special, primary, or general election. The precinct election officers shall send the completed notice to the board of elections with the pollbooks and tally sheets, and the board shall process the notice in accordance with section 3503.19 of the Revised Code.

HISTORY: 1990 H 237, eff. 7-27-90
1989 H 381; 1983 H 402; 1980 H 1062; 1978 H 1209; 1977 S 125; 1974 S 143; 1971 S 460; 129 v 392; 127 v 741; 126 v 205; 125 v 713; 1953 H 1; GC 4785-39

CROSS REFERENCES

Days counted to ascertain time, 1.14

Change of name, Ch 2717

Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4, 6

Boards of education, Ch 3313

Absent voter's ballots, 3509.02, 3509.03, 3509.04

False registration forbidden; penalty, 3599.11

No registrar or police officer shall refuse or needlessly delay or hinder registration, allow false name, or destroy card, 3599.18

False signature forbidden, 3599.28

Falsehoods in election documents; fine and imprisonment, 3599.36

Motor vehicles registrar, registration of voters, 4507.06

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21

Am Jur 2d: 25, Elections § 69, 95, 102, 105, 109 to 111

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

332 FSupp 1195 (SD Ohio 1971), Anderson v Brown. The requirement that voters register forty days before the election is constitutionally valid.

2. In general

137 Pa L Rev 2361 (June 1989). One Person, One Vote Revisited: The Impending Necessity of Judicial Intervention in the Realm of Voter Registration, Comment.

56 OS(3d) 1, 564 NE(2d) 407 (1990), State ex rel Bennett v Boards of Elections of Ohio Counties. Upon an action seeking a writ of mandamus to require the boards of elections in eighty-eight counties of the state to count "walk-in" ballots that were cast under RC 3503.11(E)(1)(b) as amended by 1990 HB 237, in the election held November 6, 1990, and all other absent voter ballots cast at that election, in a way that will maintain the absolute secrecy of the ballots, it is ordered that the secretary of state and boards of elections proceed to count the ballots in accordance with RC 3509.06, and that they set aside and refrain from opening any ballot that has been challenged.

102 App 425, 128 NE(2d) 865 (1955), State ex rel Horvath v Haber. As used in RC 3503.11, "primary election" includes a nonpartisan primary election, and the time for registration for such nonpartisan primary election is regulated by such section.

102 App 425, 128 NE(2d) 865 (1955), State ex rel Horvath v Haber. For purposes of closing registration a nonpartisan municipal primary election is a primary election and not a special election.

81 App 398, 79 NE(2d) 791 (1947), State ex rel Campbell v Durbin. When a vacancy occurs in a congressional district that requires an election for nomination of candidates for office of representative of the United States House of Representatives at a time other than the time when the General Code provides for regular nominations for members of the United States House of Representatives, such an election is a special election and governed by the pertinent General Code provisions as to a special election rather than the General Code provisions relating to a primary election.

81 App 398, 79 NE(2d) 791 (1947), State ex rel Campbell v Durbin. When an election is called for by a proclamation of the governor of the state for an election to nominate candidates for office of representative of the United States House of Representatives, such an election is not governed by provisions of this section, limiting time for registration of electors, such election being a special election pursuant to GC 4785-97 and 4829 (RC 3513.32 and 3521.03).

No. 84CV-10-5666 (CP, Franklin, 8-7-86), Galbraith v Celeste. A system of voter registration whereby state agencies and employees register voters on request is provided for by RC 3503.11(B)(1) and (B)(2), and the establishment of such a system by Executive Order 84-33 is within the governor's powers and duties under O Const Art III.

11 Misc(2d) 7, 11 OBR 101, 463 NE(2d) 115 (CP, Hamilton 1984), Mirlisena v Fellerhoff. Registration officials are public officers and are considered to be agents of the state rather than agents of the political party that designated them or the applicant for registration.

OAG 87-008. Participants in work-relief projects may be assigned to voter registration duties by their sponsoring agency, and

the county board of elections may direct the project participants in their volunteer registrar duties under RC 3503.11(B)(2).

OAG 77-041. Persons who wish to register to vote on the day of a general, primary or special election need not do so at a polling place in the precinct in which they reside, provided the board of elections has located the polling place for voting purposes outside the boundaries of the precinct in which they reside.

OAG 77-041. RC 3503.11(D) as amended eff. 8-30-77, requires the board of elections to provide separate lines for election day registration and voting at each polling place. In a situation in which a building serves as a polling place location for four precincts, the board of elections need not provide separate lines for registration for each precinct at the polling place.

1960 OAG 1696. When a registration of voters is established in an area pursuant to RC 3503.06, the first general registration of all qualified electors in precincts which become registration precincts should be held in accordance with RC 3503.08, and residents of such precincts may not register at the office of the board of elections until such first general registration has been held.

1956 OAG 6673. Laws limiting the rights of electors to register or change their registration during periods immediately prior to or after election dates are designed for the convenience of the board in the conduct of elections, and where a special election is held on a date in such proximity to the date of a primary or general election that a literal and strict application would, in the judgment of the board of elections, unreasonably or unnecessarily restrain, impair or impede the right of suffrage of electors in the later election, the board of elections should provide for the reception of registrations and changes of registrations during reasonable periods other than the limited periods provided in such section.

1956 OAG 6673. RC 3503.11 confers on electors the legal right to register or change their registration during certain periods but does not forbid the board of elections to receive registrations and changes of registrations by electors at times other than during such limited periods.

1950 OAG 1699. The provision contained in statute, that no registration or change in registration of electors may be made during the period forty days preceding or ten days following a primary or general election is an exception to the general provision that electors may register and make such changes in registration at the office of a board of elections at any time such office is open, and therefore must be strictly construed.

1950 OAG 1699. A special election called, pursuant to the provisions of the charter of the city of Dayton, and therein designated in § 12 of said charter as a "special municipal election" is neither "a primary" nor "general election" within the meaning of statute, and registration and change thereof should be accepted by the board of elections at the office thereof at any time when such office is open, which is more than ten days after the primary election of May 2, 1950 and up to the time for closing such office on the day prior to the said special municipal election.

3503.111 Change of registration

The board of elections of any county shall register or change the registration of any person determined not to be a resident in that county under section 3503.02 of the Revised Code, who is a resident and a qualified elector of another county in this state, on behalf of the county of residence. This registration shall be conducted only with the consent of the registrant and under the authority of section 3503.11 of the Revised Code, provided that this section shall not limit or restrict the right of such a person to personally register in the county of his residence, and the right granted herein shall be subject to the time restrictions of that section regarding elections in the county of residence.

The director of any board of elections registering a person under this section shall send the completed registration form of that person to the director of the board of elections of the county of residence, who shall enter the form in the proper registration files.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 1971 S 460

CROSS REFERENCES

Voter qualifications; age; residence; registration, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 25, Elections § 69, 95, 102, 107, 109 to 111

3503.12 Methods of facilitating registration

All registrations shall be carefully checked, and in case any person is found to have registered more than once, the additional registration forms shall be canceled by the board of elections.

Six weeks prior to the day of a special, primary, or general election, the board shall publish notices in one or more newspapers of general circulation advertising the places, dates, times, methods of registration, and voter qualifications for registration.

The board shall establish a schedule or program to assure to the extent reasonably possible that, on or before November 1, 1980, all registration places shall be free of barriers that would impede the ingress and egress of handicapped persons. Entrances shall be level or shall be provided with a nonskid ramp of not over eight per cent gradient, and doors shall be a minimum of thirty-two inches wide. Registration places located at polling places shall, however, comply with the requirements of section 3501.29 of the Revised Code for the elimination of barriers.

As used in this section, "handicapped" means having lost the use of one or both legs, one or both arms, or any combination thereof, or being blind or so severely disabled as to be unable to move about without the aid of crutches or a wheelchair.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 1976 S 162; 1974 S 143, H 662; 132 v S 81; 127 v 741; 125 v 713; 1953 H 1; GC 4785-40

CROSS REFERENCES

Newspaper of general circulation, 7.12
Knowing registration under more than one name forbidden, 3599.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21; 72, Notice and Notices § 27 to 30, 33, 34
Am Jur 2d: 25, Elections § 69, 95, 102, 105, 109 to 111

NOTES ON DECISIONS AND OPINIONS

OAG 72-025. RC 3503.12, respecting establishment of registration places by board of elections, is ambiguous as to whether or not such places may be established prior to primary elections and, having been consistently construed for many years by secretary of state to prevent establishment prior to such primaries, and such construction not being unreasonable, boards of elections are prevented from establishing such registration places prior to primary elections.

1958 OAG 2745. The "registration place" that a board of elections may provide under RC 3503.12 need not be a branch office,

or even an "office" of any kind: a mobile unit kept in a single location during hours of use each day may be a registration place.

1958 OAG 2399. In providing a place of registration a board of elections may not locate such registration facility on the grounds of an organization or agency which charges a fee for admission to such grounds.

1956 OAG 6896. The establishment by a board of elections of a number of "temporary branch offices" as provided in RC 3501.10 does not constitute the provision of "branch registration offices" within the meaning of RC 3503.12, nor does such board, in establishing such temporary branch offices, exhaust one of the alternatives provided in the latter section so as to preclude arrangements each year for registration in each registration precinct.

3503.13 Filing of forms; public inspection of records

(A) Except as provided in division (D) of this section, registration forms shall consist of original and duplicate cards or loose-leaf pages as prescribed by the secretary of state. When such registration forms have been filled out and filed in the office of the board of elections, the original forms shall be filed together in one file and the duplicate forms shall be filed together in another file. The original forms shall be filed by precincts and shall constitute the precinct register for use in polling places on election day. The duplicate forms shall be filed alphabetically and shall constitute the permanent office record of the board. It shall not be removed from the office of the board except upon the order of a court.

(B) The registration forms that are provided for the purposes of division (B)(4) of section 3503.11 of the Revised Code or that the board of elections provides for distribution under divisions (B), (D), and (E) of section 3503.11 of the Revised Code shall be in the form prescribed in section 3503.14 of the Revised Code and shall be perforated so that a portion of the forms may be retained by the applicant as evidence of his application for registration. Any person, outside an official voter registration place, who helps another person fill out a registration form and is entrusted by that person to return the form to the board of elections shall sign his name on the perforated stub, tear it off, and give it to the person registering. Completed registration forms shall be promptly filed with registration records in accordance with division (A) of this section.

(C) The registration records shall be open to public inspection at all times when the office of the board is open for business, under such regulations as the board adopts, provided that no person shall be permitted to inspect such records except in the presence of an employee of the board.

(D) The board of elections of a county that adopts or has adopted electronic data processing for the registration of qualified electors of the county may use a single registration form complying with the requirements of division (A) of this section. The information contained on the form may be duplicated on punch cards, magnetic tape, discs, diskettes, or such other media as are compatible with the data processing system adopted by the board and may constitute the permanent office record in lieu of the duplicate registration card.

HISTORY: 1989 H 36, eff. 1-1-90
1983 H 402; 1978 H 1209; 1977 S 125, H 86; 1971 S 460; 1953 H 1; GC 4785-41

CROSS REFERENCES

Public records, availability, 149.43
Access to board of elections' records, 3599.161
False election records, penalty for possession, 3599.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21; 72, Notice and Notices § 28; 80, Records and Recording § 15
Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

NOTES ON DECISIONS AND OPINIONS

101 OS 370, 130 NE 29 (1920), State ex rel Klein v Hillenbrand. Former section (102 v 181) requiring the age of the voter to be stated was valid and applied to women enfranchised by the nineteenth amendment to the United States Constitution.

1950 OAG 2042. Microfilm copies of original registration cards, if properly identified according to GC 32-1 (RC 9.01), would have the same force and effect at law as the original cards in handwriting if the original cards were destroyed.

3503.14 Contents of registration forms

All registrations and changes of registration shall be taken on forms prescribed by the secretary of state. Registration forms shall contain the following questions:

(A) What is your full name? (Please print)

_____ First _____ Middle _____ Last

(B) What is your residence? _____ Number Street

_____ City State Zip Code

(If the applicant resides in a hotel, apartment, or tenement house, or institution, or in an incorporated or unincorporated area not identified by the use of road names or house numbers, such additional information shall be included as will give the exact location of such applicant's place of residence.)

(C) What is your birthdate? _____ Day Month Year

(D) Are you a native born citizen? _____
If naturalized, when and in what court were you naturalized?

_____ Date _____ Court

(E) What is your social security number? _____
(Furnishing your social security number on this form is voluntary; its confidentiality cannot be guaranteed.)

(F) Where were you born?

_____ City _____ State _____ Country

(G) What address did you give when you last registered to vote?

_____, _____ Number Street

_____ City, _____ State, _____ Zip Code

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

"I declare under penalty of election falsification that the statements herein contained are true to the best of my knowledge and belief; and that I am legally qualified to vote.

_____
Signature of applicant"[1]

_____
Date

_____
Signature of Registrar
or Deputy Registrar

_____
Date"

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

The registration forms shall also contain spaces for entering thereon subsequent changes in the location of the residence of the applicant.

Each registration form shall also contain spaces for noting thereon at each election whether the elector registered thereon voted or did not vote at such election. Notations showing that the elector voted at a primary election shall indicate the political party whose ballot the elector voted. Such notations shall be made by the precinct election officials on the day of the election. When such spaces on a registration card have been completely filled up, gummed stickers may be attached to the cards, in such a way that none of the information previously shown on the card is covered so as to provide additional spaces for such notations.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 1974 H 662; 1971 S 460; 129 v 1267; 125 v 713; 1953 H 1; GC 4785-42

CROSS REFERENCES

False signature forbidden, 3599.28
Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 106, 109 to 111

NOTES ON DECISIONS AND OPINIONS

49 OS(3d) 102, 551 NE(2d) 150 (1990), In re Protest Filed with the Franklin County Elections Bd by Citizens for the Merit Selection of Judges, Inc on Behalf of Issue III, Merit Selection of Judges. Although a person may be registered with a board of elections, if that person has moved to a new residence the person cannot be "registered" as an elector unless that person has satisfied the change of residence requirements of RC Ch 3503.

3503.15 Signing of registration forms

Any eligible person applying for registration shall answer all questions, provided for in the registration forms, as set forth in section 3503.14 of the Revised Code. Such answers shall be recorded on both the original and the duplicate registration forms, after which said forms shall be compared and all errors corrected, and the applicant shall sign both the original and the duplicate forms under penalty of election falsification. Any applicant who is unable to sign his name shall make a cross, which shall be certified by the signing of the name of the applicant by the person filling out the registration form, who shall add his own signature, and shall also record on such form the date of birth of the applicant and such other information as will aid in his identification.

HISTORY: 1977 S 125, eff. 5-27-77
1953 H 1; GC 4785-43

CROSS REFERENCES

False registration forbidden, 3599.11
False signature forbidden, 3599.28
Election falsification, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 105, 109 to 111

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

3503.16 Change of residence notice

Whenever a registered elector changes his place of residence from one precinct to another within a county or from one county to another, he shall report such change to the board of elections.

The registered elector may make the report required by this section by a written notice by mail, by calling in person at the office of the board of elections or a branch registration office, by appearing on the day of a special, primary, or general election at the polling place in the precinct in which he resides and reregistering, by appearing on the day of a special, primary, or general election at the board of elections pursuant to division (E)(1)(b) of section 3503.11 of the Revised Code, or when applying for a commercial driver's license under section 4506.07 of the Revised Code or driver's license or endorsement under division (A) of section 4507.06 of the Revised Code, or for a renewal or duplicate thereof. The board shall provide change of residence notices in card form to be given out upon request by mail or in person for use by any registered voter who is moving or has moved to a new location. These notices shall be printed upon cards in a form prescribed by the secretary of state.

Upon receipt of a change of residence notice, whether directly from the applicant or from the registrar, deputy registrar, or the precinct election officials under section 3503.11 of the Revised Code, the board shall compare the applicant's signature with the original registration of such applicant, and if such signature appears to be the same, entry of such change of residence on the original registration cards or forms, and on the registration lists, shall be

[1]Prior and current versions differ although no amendment to this punctuation was indicated in 1980 H 1062; these quotation marks were deleted in 1977 S 125.

made. Such registrant shall be immediately notified by the board by mail of the change so made. If the board is not satisfied as to the signature on the request for a change of residence, or if, for any other reason the board is not satisfied that such request should be granted, a notice shall be sent to such registrant by mail directing him to appear in person at the office of the board to answer such questions under oath as are deemed necessary to determine the applicant's place of residence and his eligibility to vote. If a registrant fails to appear within fifteen days, when so requested, and the director has received no notice from the post office of the nondelivery of the registration notice, the applicant's registration forms shall be removed from the registration files and placed in the inactive files until such applicant establishes to the satisfaction of the board that such change of residence has been made. When a voter has been registered by error in a precinct other than the one in which he resides, the board shall correct the error and notify the registrant by mail.

HISTORY: 1990 H 237, eff. 7-27-90
1989 H 381; 1980 H 1062; 1977 S 125; 130 v H 369; 125 v 713; 1953 H 1; GC 4785-44

CROSS REFERENCES

Days counted to ascertain time, 1.14

False registration forbidden, 3599.11

Voter qualifications; age; residence; registration, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21

Am Jur 2d: 25, Elections § 69, 95, 102, 107, 109 to 111

NOTES ON DECISIONS AND OPINIONS

49 OS(3d) 102, 551 NE(2d) 150 (1990), In re Protest Filed with the Franklin County Elections Bd by Citizens for the Merit Selection of Judges, Inc on Behalf of Issue III, Merit Selection of Judges. Although a person may be registered with a board of elections, if that person has moved to a new residence the person cannot be "registered" as an elector unless that person has satisfied the change of residence requirements of RC Ch 3503.

157 OS 326, 105 NE(2d) 393 (1952), State ex rel Woods v Eyrich. Where the card for change of address was not in the form required by the statute, and the required information was received by the board of elections by means of a letter sent by the registrant, the board cannot base its action on its failure to take notice of this information received by it, the information having been substantially that required by the statute to effect a change in registration by mail.

157 OS 326, 105 NE(2d) 393 (1952), State ex rel Woods v Eyrich. An elector who mailed a letter to the board of elections advising them of a change of address and who subsequently had the registration transferred in person complied substantially with the statute although a change-of-registration card which he mailed was not received.

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. An elector's petition and declaration of candidacy for the office of councilman at large are not invalid by reason of the fact that within forty days preceding the filing thereof the elector has in good faith removed from one precinct to another in the same ward of the municipality without changing his registration at the county board of election.

3503.17 Change in precinct boundaries

When a new precinct has been created, or the boundaries thereof have been changed, the election authorities shall correct and transfer the registration forms of registered electors whose voting precincts have thus been changed and shall notify such registrants by mail. The registration of an elector shall not be invalidated by such alteration or transfer nor shall the right of any registered elector to vote be prejudiced by any error in making out the certified list of registered voters.

HISTORY: 1977 S 125, eff. 5-27-77
1953 H 1; GC 4785-45

CROSS REFERENCES

Precincts and polling places, 3501.18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21; 72, Notice and Notices § 27 to 30, 32

Am Jur 2d: 25, Elections § 69, 95, 102, 107, 109 to 111

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

3503.18 Reports by health officer, probate judge, and clerk of court of common pleas

The chief health officer of each political subdivision shall file with the board of elections, at least once each month, the names, dates of birth, dates of death, and residences of all persons, over eighteen years of age, who have died within such subdivision within such month, and the board shall remove all such names appearing upon the registration lists. At least once each month the probate judge shall file with the board the names and residence addresses of all persons over eighteen years of age who have been adjudicated incompetent for the purpose of voting, as provided in section 5122.301 of the Revised Code. At least once each month the clerk of the court of common pleas shall file with the board the names and residence addresses of all persons who have been convicted during the previous month of crimes which would disfranchise such persons under existing laws of the state. The board shall, within thirty days of receipt of the filing, remove from the files and cancel the registration forms of registrants who have died or who are ineligible because of a conviction of these crimes or an adjudication of incompetency for the purpose of voting.

HISTORY: 1977 H 725, eff. 3-16-78
1977 S 125; 1971 S 460; 125 v 713; 1953 H 1; GC 4785-46

PRACTICE AND STUDY AIDS

Eagle, Ohio Mental Health Law (2d Ed.), Text 11.12

CROSS REFERENCES

Common pleas court clerk, Ch 2303

Impersonating or attempting to vote as deceased person forbidden, 3599.12

Boards of health, powers, 3701.01

Idiots and insane persons not entitled to vote, O Const Art V §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21

Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

450 FSupp 4 (ND Ohio 1977), Ball v Brown. RC 3503.18 is not unconstitutional on its face.

2. In general

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

114 App 497, 177 NE(2d) 616 (1961), State ex rel Krupa v Green. Where a woman arranges by antenuptial written contract to retain her maiden name and so notifies the board of elections which notes on her registration card that she "is married" and "will retain her single name," and where, after her marriage, she uses only her single name in all her activities, is known only by such name, and votes thereunder in three elections, a declaration of candidacy and nominating petition filed by such woman under and using her single name is not for such reason invalid.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. Where three persons innocently and not fraudulently were not residents of a school district and voted, a failure to show any dereliction of any duty, or failure to follow any statute on the part of the election officials regarding such three votes, and where the record fails to show that contestants ever appointed challengers or exercised any challenges as provided by statute, the fact that the three votes, regarding them most beneficial to the challengers would make the election uncertain, will not cause the court to void the election.

450 FSupp 4 (ND Ohio 1977), Ball v Brown. Where a woman's registration is cancelled on the basis of her marriage without a determination as to whether she has in fact changed her name, the cancellation is on a basis of change in marital status and is invalid.

3503.19 Notice of change of name by registered elector; notice of change of voting status

(A) When a registered elector changes his name, he shall report the change to the board of elections. The elector may vote under his former name at the next election occurring after his change of name, but he may only vote in the precinct in which he is registered. Thereafter he shall not qualify to vote until he has made the report.

The registered elector may make the report required by this section by a written notice by mail, by appearing in person at the office of the board of elections or a branch registration office, by completing a notice of change in voting status and filing it with the court at the time he changes his name, or by appearing on the day of a special, primary, or general election at the polling place in the precinct in which he votes. The board shall provide change of name notices in card form to be given out upon request by mail or in person for use by any registered voter changing his name. These notices shall be printed upon cards with approximately the following wording:

"NOTICE OF CHANGE OF VOTING STATUS

The board of elections has been notified that you may have changed your name.

To establish or clarify your eligibility to vote, you must notify the board of elections of your current name.

You may:

(1) Appear in person at the board of elections;

(2) Complete the enclosed form and return it to the board of elections;

(3) Complete this form and return it to the court; or

(4) Complete the enclosed form and bring it to the polling place at the next election.

Voter registration and change of address closes thirty days prior to the next election. You also may make a change of address report at the polling place at the next election.

Please check:

_____ I have not changed my name. I will continue to use and be identified by my present name. (Sign below and return)

_____ I have changed my name. Please change your records as indicated. (Complete part A below)

_____ I have changed my address. Please correct your records. (Complete part B below)

Board of elections:

Date _____

(A) I, _____, who am registered from
(Print full former name)

_____, City of _____,
(Street address)

Ohio, have on _____, changed my name to
(Date)

_____, and desire to be registered
(Print full name)

for the purpose of voting under said new name.

(B) If applicant has changed his or her address due to marriage, or otherwise, complete the following:

I, _____, have removed to
(Print full name)

_____, City of _____, County[2]
(Street Address)

Ohio, from which place of residence I desire to be registered for the purpose of voting.

Signed _____
(Present name)

Signed _____
(Former name)

If available:
Phone _____

(B) The board of elections shall provide notice of change in voting status froms [*sic*] to the probate court and the court of common pleas. The court shall provide the forms to any person eighteen years of age or older who changes his name by order of the court or who applies for a marriage license. At least once each month, the court shall forward all completed forms to the board of elections.

---

[2]Prior and current versions differ although no amendment to this punctuation was indicated in 1978 H 1209; "County" appeared as "County," in 1977 S 125.

(C) Upon receipt of a notice of change of name, whether directly from the applicant, from the probate court or court of common pleas, or from precinct election officials under section 3503.11 of the Revised Code, the board shall compare the applicant's signature with the signature on the original registration of such applicant, and if the signature appears to be the same, shall make entry of the change of name on the original registration cards or forms and on the registration lists. The registrant shall be immediately notified by the board by mail of the change so made. If the board is not satisfied as to signature on the request for a change of name, or if, for any other reason, the board is not satisfied that the request should be granted, a notice shall be sent to the applicant by mail directing him to appear in person at the office of the board to answer any questions under oath as are considered necessary to determine the applicant's legal name. If an applicant fails to appear within fifteen days, when so requested, and the director of the board of elections has received no notice from the post office of the nondelivery of the registration notice, said applicant's registration forms shall be removed from the registration files and placed in the inactive files until the applicant establishes to the satisfaction of the board that change of name has been made.

HISTORY: 1978 H 1209, eff. 11-3-78
1977 S 125; 1974 H 662; 1971 S 460

Note: Former 3503.19 repealed by 1971 S 460, eff. 3-23-72; 1953 H 1; GC 4785-47.

CROSS REFERENCES

Days counted to ascertain time, 1.14
Change of name, Ch 2717
Marriage, Ch 3101
Voter qualifications; age; residence; registration, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111; 57, Name § 10 to 16

NOTES ON DECISIONS AND OPINIONS

63 OS(2d) 336, 410 NE(2d) 764 (1980), State ex rel Morrison v Franklin County Bd of Elections. Where candidate changed his name on voter registration lists from Fred C. Morrison to Fred Curly Morrison and thereafter filed a declaration of candidacy under the new name, board of elections properly ruled he should be listed on the ballot under the old name.

114 App 497, 177 NE(2d) 616 (1961), State ex rel Krupa v Green. Where a woman arranges by antenuptial written contract to retain her maiden name and so notifies the board of elections which notes on her registration card that she "is married" and "will retain her single name," and where, after her marriage, she uses only her single name in all her activities, is known only by such name, and votes thereunder in three elections, a declaration of candidacy and nominating petition filed by such woman under and using her single name is not for such reason invalid.

3503.20 Annual checkup on registration—Repealed

HISTORY: 1977 S 125, eff. 5-27-77
1953 H 1; GC 4785-48

3503.21 Cancellation for failure to vote

At the beginning of each calendar year, the board of elections shall cancel the registration of each registered elector who has not voted at least once in the four next preceding calendar years or has not registered a change of name or change of address or otherwise updated his registration during that period. Thirty days prior to the cancellation, the board shall send to each such person at his last known address a printed notice that his eligibility to vote will be canceled by reason of his failure to vote or to update his registration in four calendar years and that he must update his registration in order to be eligible to vote. The notice shall be in the form prescribed by the secretary of state.

HISTORY: 1980 H 1062, eff. 3-23-81
1978 H 1209

Note: Former 3503.21 repealed by 1977 S 125, eff. 5-27-77; 1953 H 1; GC 4785-49.

CROSS REFERENCES

Days counted to ascertain time, 1.14
Voter qualifications; age; residence; registration, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

3503.22 Correction of registration records; procedure

(A) The board of elections may send by mail to any voter whose name appears on the registration records a notice bearing on the front a statement "Do Not Forward" and on the back a statement substantially as follows:

"Date _____

Dear Sir or Madam:

You are hereby notified that your name and address appear on the registration record as shown on the address portion of the card. If there is any mistake in your name or address as shown, present this card at the office of the board of elections for correction. (Identification of Board of Elections by Name and Address)."

The return of such notice because of nondelivery by the post office shall be accepted by the board as evidence on which to challenge the elector's vote on election day.

Upon the return by the post office of any such notice, the director of the board shall check the name and address of any such voter. If such voter is found to have removed from the address as recorded to another address, his registration forms shall be corrected and placed in the proper precinct. If such voter is found to have removed from the county, his registration shall be canceled and his registration forms removed from the active files. If the board is not satisfied as to the correctness of the information, it may order "challenged" to be written on the margin of such person's registration forms. Such person shall be challenged by the presiding judge of the precinct on election day and no person so challenged shall be permitted to vote except by complying with the law applicable to the proving of challenges. If the board finds it advisable, it may send another notice by mail to be forwarded, advising such elector to appear at the office of the board. If the elector does not

respond to the second notice, the board may cancel the registration.

(B) The board shall send by mail the form set forth in division (A) of this section to any voter who on election day has registered or made a change in name or residence.

Upon the return by the post office of any such notice, the director of the board shall check the name and address of any such voter. If such voter is found to have removed from the address as recorded to another address, his registration shall be canceled and his registration forms removed from the active files. If the board is not satisfied as to the correctness of the information, it shall send another notice by mail to be forwarded, advising such voter to appear before the board within a reasonable period of time to answer questions regarding the correctness of information on his registration forms. If the voter does not respond to the second notice or does not respond satisfactorily to questions during his appearance before the board, the board shall cancel the registration and, in the event of an apparent violation of law, report its findings to the appropriate prosecuting authority which shall institute such proceedings as are appropriate.

(C) The board may arrange with the local postmaster to receive notices of all changes in addresses of persons receiving mail through such post office. It may make such arrangement with the water, gas, and electric light companies or departments of all persons receiving such services, and pay a reasonable compensation for the necessary clerical services involved. All such changes shall be checked by the board or its director with the registration forms of such voters, and such voters shall be notified as provided in this section.

(D) Upon the oath or written statement of either an election board official or a member of the controlling committee of a political party to the effect that he has knowledge that a registered voter is either deceased or has removed from the latest address reflected in the records of the board, the board of elections shall initiate a review of that person's eligibility to vote, in accordance with division (A) of this section.

(E) When the board finds under this section that a voter is deceased or has removed from the county or when it is reported to the board under section 3503.18 of the Revised Code that a voter is deceased, the board may, not sooner than four years after its finding under this section or its receipt of information under section 3503.18 of the Revised Code, dispose of that voter's registration forms.

HISTORY: 1991 S 61, eff. 7-16-91
1981 S 99; 1980 H 1062; 1977 S 125; 125 v 713; 1953 H 1; GC 4785-50

CROSS REFERENCES

Days counted to ascertain time, 1.14

Gas, electric, and water companies, Ch 4933

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21

Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

3503.23 Official registration lists; notations on election day

At least fifteen days before an election the board shall cause to be prepared from the registration cards a complete and official registration list for each precinct, containing the names, addresses, and political party whose ballot the elector voted in the most recent primary election within the current year and the next preceding two calendar years, of all qualified registered voters in the precinct. All the names, insofar as practicable, shall be arranged either in alphabetical order, or in geographical order according to streets in the precincts. All the lists shall be prepared in sheet form and on one side of the paper. Each precinct list shall be headed "Register of Voters," and under the heading shall be indicated the district or ward and precinct followed by the statement:

"Any voter of the county on or before the seventh day prior to the election may file with the board of elections at the board's offices located at _____ objections to the registration of any person on this list who, he has reason to believe, is not eligible to vote, or a request for the addition to the list of registered voters whose names have been omitted or who have been erroneously dropped from the registration list of the precinct."

Appended to each precinct list shall be attached the names of the members of the board and the name of the director. A sufficient number of such lists, but not to exceed fifty lists of each precinct, may be provided for distribution to the candidates, political parties, or organized groups which apply therefor. The board shall conspicuously post and display one copy of each precinct list at the polling place in each precinct.

On the day of a general or primary election, precinct election officials shall at 11 a.m. and 4 p.m. place a mark, on the official registration list posted at the polling place, before the name of those registered voters who have voted.

HISTORY: 1986 H 524, eff. 3-17-87
1986 H 555; 1980 H 1062; 1978 H 1209; 1977 S 125; 1974 H 435; 1953 H 1; GC 4785-51

CROSS REFERENCES

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Possession of false registration list, penalty, 3599.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21

Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

3503.24 Correction of registration list; hearing

Application for the correction of any precinct registration list or a challenge of the right to vote of a person named on such list may be made by any qualified voter of the county at the office of the board of elections not later than seven days prior to the election. Such applications or challenges, with the reasons therefor, shall be filed on forms provided by the board for that purpose and shall be attested by the oath of such qualified elector.

The board shall sit for the purpose of hearing applications for changes in such list, or challenges of the right to vote of persons on such list, on the Wednesday preceding an election between the hours of nine a.m. and twelve noon,

and between the hours of one p.m. and five p.m., and such other hours as the board fixes. If all such applications or challenges are not determined on that day, the board shall sit during the same hours on succeeding days until all cases are heard and decided. If the board is unable to hear all such cases within the time specified, it may divide itself into two boards, each composed of a member of each political party, to determine such cases. The board may also appoint one or more boards of two members each of opposite political parties to aid in hearing such applications or challenges, and may allow such persons not to exceed ten dollars per day for each day served. The board may, if the filing time of any such challenge permits, sit for the purpose of the hearing on a day prior to the Wednesday preceding an election, provided that in all instances any person whose right to register has been challenged and any person whose name, it is alleged, has been erroneously omitted from the list shall be given at least two days' written notice of the hearing by registered or certified mail, return receipt requested, sent to his latest address reflected in the records of the board and may appear in person or by counsel. At the request of either party the board shall issue subpoenas to witnesses to appear at such hearing and such witnesses shall be sworn and examined. All cases shall be heard and decided immediately after hearing. If the board decides that any such person is not entitled to have his name on the registration list his name shall be removed therefrom and his registration forms canceled. If the board decides that the name of any such person should appear on such registration list it shall be added thereto, and his registration forms placed in the proper registration files. All such corrections and additions shall be made on a copy of the precinct lists, which shall constitute the poll lists, to be furnished to the respective precincts with other election supplies on the day preceding the election, to be used by the clerks in receiving the signatures of voters and in checking against the registration forms.

HISTORY: 129 v 1562, eff. 8-25-61
1953 H 1; GC 4785-52

CROSS REFERENCES

Standard time in Ohio, 1.04
Oaths, 3.20 to 3.24
Possession of forged, false, or altered registration list forbidden, 3599.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

NOTES ON DECISIONS AND OPINIONS

157 OS 345, 105 NE(2d) 414 (1952), State ex rel Bass v Summit County Bd of Elections. The status of an elector cannot be collaterally attacked.

3503.25 Board may investigate registrations

The board of elections may conduct investigations, summon witnesses, and take testimony under oath regarding the registration of any voter or as to the accuracy of the registration lists in any registration precinct.

HISTORY: 1977 S 125, eff. 5-27-77
128 v 25; 1953 H 1; GC 4785-53

CROSS REFERENCES

False registration forbidden, 3599.11
Falsehoods forbidden in documents and proceedings related to elections; fine and imprisonment, 3599.66

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 107, 109 to 111

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

72 Abs 462, 465, 135 NE(2d) 789 (App, Franklin 1955), State v Roche. An elector whose name is removed from the registration roles for failure to vote is not thereby ineligible to serve as a juror, and service by such a juror does not constitute prejudicial error.

3503.26 Custody of forms and lists; names may be copied from registration lists; public inspection

All registration forms and lists, when not in official use by the registrars or judges of elections, shall be in the possession of the board of elections. Names and addresses of electors may be copied from the registration lists only in the office of the board when it is open for business; but no such copying shall be permitted during the period of time commencing twenty-one days before an election and ending on the eleventh day after an election if such copying will, in the opinion of the board, interfere with the necessary work of the board. The board shall keep in convenient form and available for public inspection a correct set of the registration lists of all precincts in the county.

HISTORY: 1977 S 125, eff. 5-27-77
1953 H 1; GC 4785-54

CROSS REFERENCES

Days counted to ascertain time, 1.14
Public records, availability, 149.43
Possession of false registration list, penalty, 3599.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 51, 69, 95, 102, 109 to 111

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

3503.27 State-wide file of registered voters

In order to efficiently maintain accurate and current lists of registered voters, the secretary of state shall, beginning January 1, 1979, maintain a master file of all regis-

tered voters in this state. The secretary of state shall prescribe by directive the schedule and format by which boards of elections must submit accurate and current lists of all registered voters in their counties.

HISTORY: 1986 H 555, eff. 2-26-86
1977 S 125

Note: Former 3503.27 repealed by 1971 S 460, eff. 3-23-72; 1953 H 1; GC 4785-55.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

3503.28 and 3503.29 Registration of naturalized voters and disabled persons—Repealed

HISTORY: 1977 S 125, eff. 5-27-77
1953 H 1; GC 4785-56, 4785-57

3503.30 Mistake in registration form

When by mistake a qualified elector has caused himself to be registered in a precinct which was not his place of residence, the board of elections, on full and satisfactory proof that such error was committed by mistake, may, on his personal application and proof of his true residence, correct his registration form. The board may correct all errors occurring in the registration of electors when it finds that the errors subject to correction were not of fraudulent intent.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-58

CROSS REFERENCES

Possession of altered, false, forged, or counterfeit registration form forbidden, 3599.29
Purposely stated falsehoods in election documents forbidden; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70; 37, Elections § 20, 43, 51 to 58, 60 to 66, 98, 141; 53, Health and Sanitation § 41; 56, Initiative and Referendum § 21
Am Jur 2d: 25, Elections § 69, 95, 102, 109 to 111

3503.31 Register of hotel guests—Repealed

HISTORY: 1977 S 125, eff. 5-27-77
1971 S 460; 1953 H 1; GC 4785-59

3503.32 Quadrennial registration—Repealed

HISTORY: 1971 S 460, eff. 3-23-72
1953 H 1; GC 4785-60

3503.33 Prior registration; cancellation authorization

If an elector applying for registration is already registered in another state or in another city, village, or other territory within the state of Ohio, he shall so state this fact to the registration officer and shall sign an authorization to cancel the previous registration on a form prescribed by the secretary of state.

The director of the board of elections shall mail all such authorizations to the board of elections or comparable agency of the proper state and county. Upon the receipt of this authorization from the forwarding county, the director of a board of elections in Ohio, upon a comparison of the elector's signature with his signature as it appears on the registration files, shall remove the elector's registration from the files, and place it with the cancellation authorization in a separate file which shall be kept for a period of two calendar years. The board shall notify the elector at the present address as shown on the cancellation authorization that his registration has been canceled.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 129 v 1562; 125 v 713

CROSS REFERENCES

Voter qualifications; age; residence; registration, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 53, 59
Am Jur 2d: 25, Elections § 107 et seq.

Chapter 3504

PRESIDENTIAL BALLOTS—FORMER RESIDENTS

3504.01 Qualifications of former residents
3504.02 Certificate of intent
3504.03 Registration of new resident; segregation of registration card until residence requirement fulfilled—Repealed
3504.04 Delivery of former resident list to polling place; form of signing poll book; absentee ballot permitted
3504.05 Notification of secretary of state of former resident's intention to vote in this state
3504.06 Penalty for false statement or affidavit
3504.07 Delivery of ballot; rejection; challenge—Repealed

CROSS REFERENCES

Challenge of voter at polling place, 3505.20
Misconduct of board of elections as to ballots, penalty, 3599.16
Secrecy of ballot; destruction, removal, or false indorsement forbidden, 3599.20
Printing of ballots, 3599.22
Custody of ballots, 3599.23
All voting to be by ballot, O Const Art V §2

3504.01 Qualifications of former residents

Each citizen of the United States who, on the day of the next succeeding presidential election, will be of the age of eighteen years or over, who has moved his residence from the state of Ohio not more than thirty days prior to the day of such presidential election and who, because of his removal from Ohio is not entitled to vote for the offices of president and vice-president or for presidential and vice-presidential electors in the state of his current residence may be entitled to vote in the state of Ohio, in the precinct in which such person's voting residence is located, for presidential and vice-presidential electors but for no other offices if:

(A) He otherwise possesses the substantive qualifications to vote in this state, except the requirements of residence and registration;

(B) He complies with sections 3504.01 to 3504.06 of the Revised Code.

HISTORY: 1974 H 662, eff. 9-27-74
1971 S 460; 1969 S 51

Note: Former 3504.01 repealed by 1969 S 51, eff. 11-19-69; 128 v 255.

CROSS REFERENCES

Qualifications of electors, 2961.01, 3503.01; O Const Art V §4, 6
Armed services absent voters, ballots for president only, 3511.02, 3511.051
Residence for voting, O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 273 to 275, 287
Am Jur 2d: 25, Elections § 57, 58, 69

3504.02 Certificate of intent

Any citizen who desires to vote in a presidential election under sections 3504.01 to 3504.06, inclusive, of the Revised Code, shall, not later than four p.m. of the thirtieth day prior to the date of such presidential election, complete a certificate of his intent to vote for presidential and vice-presidential electors. The certificate of intent shall be completed in duplicate on a form prescribed by the secretary of state that may be obtained and filed personally in the office of the board of elections of the county in which such person resides, or mailed to such board of elections.

HISTORY: 1971 S 460, eff. 3-23-72

Note: Former 3504.02 repealed by 1971 S 460, eff. 3-23-72; 1969 S 51; prior 3504.02 repealed by 1969 S 51; 128 v 255.

Penalty: 3504.06

CROSS REFERENCES

Standard time in Ohio, 1.04
Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 273 to 275, 287
Am Jur 2d: 25, Elections § 69

3504.03 Registration of new resident; segregation of registration card until residence requirement fulfilled—Repealed

HISTORY: 1974 H 662, eff. 9-27-74
1971 S 460; 1969 S 51; 128 v 255

3504.04 Delivery of former resident list to polling place; form of signing poll book; absentee ballot permitted

On or before election day the director of the board of elections shall deliver to the polling place a list of persons who have filed certificates of intent to vote as former resident voters and who appear, from their voting address, entitled to vote at such polling place. Those persons whose names appear on the list of former resident voters, and who have otherwise complied with sections 3504.01 to 3504.06 of the Revised Code, shall then be entitled to vote for presidential and vice-presidential electors only at their polling place on election day. Such voter shall sign his name in the poll book or poll list followed by, "Former Resident's Presidential Ballot." Qualified former residents shall be entitled to cast an absentee ballot for presidential and vice-presidential electors.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 H 662; 1969 S 51

Note: Former 3504.04 repealed by 1969 S 51, eff. 11-19-69; 128 v 255.

Penalty: 3504.06

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 273 to 275, 287
Am Jur 2d: 25, Elections § 69

3504.05 Notification of secretary of state of former resident's intention to vote in this state

The director of the board of elections shall forward copies of all certificates of intent received from former residents to the secretary of state no later than the twenty-fifth day prior to the day of the election in which such former resident desires to vote. Upon receipt of such certificate the secretary of state shall immediately notify the chief elections officer of the state of each applicant's prior residence of the fact that such applicant has declared his intention to vote for presidential and vice-presidential electors in this state.

HISTORY: 1974 H 662, eff. 9-27-74
1971 S 460; 1969 S 51

Note: Former 3504.05 repealed by 1969 S 51, eff. 11-19-69; 128 v 255.

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 273 to 275, 287
Am Jur 2d: 25, Elections § 69

3504.06 Penalty for false statement or affidavit

Any person who willfully makes a false statement or affidavit under sections 3504.01 to 3504.06 of the Revised Code is guilty of a felony of the third degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1969 S 51

Note: Former 3504.06 repealed by 1969 S 51, eff. 11-19-69; 128 v 255.

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3504.06], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

CROSS REFERENCES

Sentence for felony; degrees, 2929.11 to 2929.14
Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 273 to 275, 287

3504.07 Delivery of ballot; rejection; challenge—Repealed

HISTORY: 1969 S 51, eff. 11-19-69
128 v 255

Chapter 3505

GENERAL AND SPECIAL ELECTIONS—BALLOTS; VOTING

BALLOTS

3505.01 Form of official ballots; certification of names of candidates; supplemental certification
3505.02 Former names to be printed on ballot
3505.021 Candidates with identical names
3505.03 Office type ballot
3505.04 Nonpartisan ballots
3505.05 Selection of judicial candidate for unexpired term—Repealed
3505.06 Ballots on questions and issues
3505.061 Ohio ballot board; creation; organization
3505.062 Duties of board
3505.063 Constitutional amendment proposed by general assembly; preparation and dissemination of arguments for and against
3505.07 Separate ballots permitted
3505.071 Responsibilities of board of elections in most populous county in joint county school district or regional transit authority
3505.08 Ballots provided for elections; sample ballots
3505.09 Separate ballots for each precinct
3505.10 Presidential ballot
3505.11 Ballots in tablets
3505.12 Ballots and instructions
3505.13 Contract for printing ballots; when bidding required; procedures
3505.14 Proofs of ballot
3505.15 Packaging of ballots
3505.16 Ballot boxes and supplies
3505.17 Lost ballots and supplies

VOTING PROCEDURE

3505.18 Voting procedure
3505.19 Registered elector may be challenged
3505.20 Challenge of voter at polling place
3505.21 Challengers and witnesses
3505.22 Impersonating an elector
3505.23 Marking the ballot
3505.24 Assisting voter in marking ballot because of illiteracy, physical infirmity or blindness
3505.25 Unlawful possession of ballots
3505.26 Certificate of vote cast
3505.27 Counting of votes
3505.28 Ballots not counted
3505.29 Counting to be continuous
3505.30 Results of counting
3505.31 Disposition of ballots, pollbooks, poll lists, and tally sheets

CANVASSES

3505.32 Canvass of returns
3505.33 Board of elections to declare the results; tie vote; abstracts and reports; correcting certified abstract
3505.34 Canvass of abstracts of votes for state offices
3505.35 Canvass of abstracts by secretary of state
3505.36 Canvass of abstracts of district candidates
3505.37 Canvass of abstracts by board of elections of county wherein major portion of a subdivision is located

CERTIFICATES OF ELECTION

3505.38 Issuing of certificates of election

PRESIDENTIAL ELECTORS' DUTIES

3505.39 Meeting of presidential electors
3505.40 Presidential electors required to vote for party nominees

CROSS REFERENCES

Ohio ballot board, OAC 111:2

Specifications of ballot cards and write-in ballots, 3506.08
Ballots for use with electronic equipment, 3506.09
Absent voter's ballots, 3509.01
Armed services absent voter's ballot, form, 3511.03
Ballots for primaries and nominations, 3513.13 to 3513.19
Groups propagating treason or sedition or advocating violent overthrow of government barred from ballot, 3517.07
Ballot on amendment to the United States Constitution 3523.05
Misconduct of board of elections as to ballots, penalty, 3599.16
Secrecy of ballot; destruction, removal, or false indorsement forbidden, 3599.20
Printing of ballots, 3599.22
Custody of ballots, 3599.23
Interference with election forbidden, 3599.24
Ballot tampering, penalty, 3599.26
Union of adjacent city health districts to form single city health district, election procedures, 3709.051
Union of several cities with general health district, election procedures, 3709.071
All voting to be by ballot, O Const Art V §2
Office type ballot mandated; names and positions to be reasonably equal, O Const Art V §2a
Constitutional amendment by separate ballot, Ohio ballot board to set language; publication of ballot language, O Const Art XVI §1
Election on whether to choose municipal charter commission, form of ballot, O Const Art XVIII §8

BALLOTS

3505.01 Form of official ballots; certification of names of candidates; supplemental certification

On the sixtieth day before the day of the next general election, the secretary of state shall certify to the board of elections of each county the forms of the official ballots to be used at such general election, together with the names of the candidates to be printed thereon whose candidacy is to be submitted to the electors of the entire state. In the case of the presidential ballot for a general election such certification shall be made on the sixtieth day before the day of the general election. On the seventy-fifth day before a special election to be held on the first Tuesday after the first Monday in May, designated by the general assembly for the purpose of submitting to the voters of the state constitutional amendments proposed by the general assembly, the secretary of state shall certify to the board of elections of each county the forms of the official ballots to be used at such election.

The board of the most populous county in each district comprised of more than one county but less than all of the counties of the state, in which there are candidates whose candidacies are to be submitted to the electors of such district, shall, on the sixtieth day before the day of the next general election, certify to the board of each county in such district the names of such candidates to be printed on such ballots.

The board of a county in which the major portion of a subdivision, located in more than one county, is located shall, on the sixtieth day before the day of the next general election, certify to the board of each county in which other portions of such subdivisions are located the names of candidates whose candidacies are to be submitted to the electors of such subdivision, to be printed on such ballots.

If, subsequently to the sixtieth day before and prior to the tenth day before the day of such general election, a certificate is filed with the secretary of state to fill a vacancy caused by the death of a candidate, the secretary of state shall forthwith make a supplemental certification to the board of each county amending and correcting his original certification provided for in the first paragraph of this section. If within such time such a certificate is filed with the board of the most populous county in a district comprised of more than one county but less than all of the counties of the state, or with the board of a county in which the major portion of the population of a subdivision, located in more than one county, is located, such board with which such a certificate is filed shall forthwith make a supplemental certification to the board of each county in such district or to the board of each county in which other portions of such subdivision are located, amending and correcting its original certification provided for in the second and third paragraphs of this section. If, at the time such supplemental certification is received by a board, ballots carrying the name of the deceased candidate have been printed, such board shall cause strips of paper bearing the name of the candidate certified to fill such vacancy to be printed and pasted on such ballots so as to cover the name of the deceased candidate, except that in voting places using marking devices, the board shall cause strips of paper bearing the revised list of candidates for the office after certification of a candidate to fill such vacancy, to be printed and pasted on such ballot card so as to cover the names of candidates shown prior to the new certification, before such ballots are delivered to electors.

HISTORY: 1983 S 213, eff. 10-13-83
1974 H 662; 1969 H 1; 132 v H 934; 128 v 82; 126 v 1117; 1953 H 1; GC 4785-98

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 35.45

CROSS REFERENCES

Days counted to ascertain time, 1.14
Absent voter's ballot, Ch 3509
Initiative and referendum, O Const Art II §1a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 150, 154, 173
Am Jur 2d: 26, Elections § 202, 205 et seq., 225 to 290

NOTES ON DECISIONS AND OPINIONS

32 OS(2d) 23, 289 NE(2d) 349 (1972), State ex rel Fisher v Brown. With respect to candidates in an election in a county or in a subdivision or district less than a county, the secretary of state is not directly charged with any duty except to prescribe the form of the ballot.

30 OS(2d) 75, 283 NE(2d) 131 (1972), State ex rel Minus v Brown. Where, in a mandamus action instituted in the supreme court, substantial constitutional question involving state-wide special election on a proposed constitutional amendment is presented, and where relator has acted timely and in good faith, and where court finds because of delay by general assembly in adopting resolution proposing constitutional amendment it is impossible for secretary of state to substantially comply with provisions of RC 3505.01, and where court finds further that because of such delay it is impossible for county boards of elections to substantially comply with 3509.01; then, upon such findings by court, it becomes the clear legal duty of secretary of state to strike such proposed constitutional amendment from the ballot, and the court will exercise its jurisdiction.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. The secretary of state and a county board of elections are required to conduct any municipal election which the laws authorize to be held.

1951 OAG 808. The use of pasters bearing the name of a "write-in" candidate which are attached to the official ballot by individual voters is not authorized by law.

1948 OAG 3100. A board of elections is without authority in law to remove or cause to be removed from the ballot to be voted at a primary election the name of a deceased person whose death occurred after the filing of his declaration of candidacy and before date of such primary election.

3505.02 Former names to be printed on ballot

Any former names which have been declared or submitted in accordance with section 3513.06 of the Revised Code shall be printed on the ballot in parentheses directly below the present name of such person. This section applies to both primary and general election ballots.

HISTORY: 127 v 741, eff. 1-1-58
125 v 713; 1953 H 1; GC 4785-98a

CROSS REFERENCES

Change of name, Ch 2717

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 118, 119
Am Jur 2d: 26, Elections § 215 to 218

3505.021 Candidates with identical names

In the event two or more persons with identical given name and surnames run for the same office in a general or special election on the same ballot, the names of the candidates shall be differentiated on the ballot by varying combinations of first and middle names and initials. Immediately after it becomes known that two or more persons with the same given name and surname are to be candidates on the same ballot for the same office, the director of the board of elections for local, municipal, county, general, or special elections, or the director of the board of elections of the most populous county for district, general, or special elections, or the secretary of state for statewide general and special elections shall notify the persons with identical given name and surnames that the names of such persons will be differentiated on the ballot. If one of the candidates is an incumbent who is a candidate to succeed himself for the office he occupies, he shall have first choice of the name by which he is designated on the ballot. If an incumbent does not make a choice within two days after notification or if none of the candidates is an incumbent, the board of elections within three days after notification shall designate the names by which the candidates are identified on the ballot. In case of a district candidate the board of elections in the most populous county of the district shall make the determination. In case of statewide candidates, or in case any board of elections fails to make a designation within three days after notification, the secretary of state shall immediately make the determination.

"Notification" as required by this section shall be by the clerk of the board of elections or secretary of state by special delivery mail or telegram at the candidate's address listed in his declaration of candidacy or petition of candidacy.

HISTORY: 1980 H 1062, eff. 3-23-81
130 v H 66

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 118, 119
Am Jur 2d: 26, Elections § 215 to 218

3505.03 Office type ballot

On the office type ballot shall be printed the names of all candidates for election to offices, except judicial offices, who were nominated at the next preceding primary election as candidates of a political party or who were nominated in accordance with section 3513.02 of the Revised Code, and the names of all candidates for election to offices who were nominated by nominating petitions, except candidates for judicial offices, for member of the state board of education, for member of a board of education, for municipal offices, and for township offices.

The face of such ballot below the stub shall be substantially in the following form:

OFFICIAL OFFICE TYPE BALLOT

(A) To vote for a candidate place "X" in the rectangular space at the left of the name of such candidate.

(B) If you tear, soil, deface, or erroneously mark this ballot, return it to the precinct election officers and obtain another ballot.

USE "X" ONLY IN MARKING BALLOT

The order in which the offices shall be listed on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided that for state, district, and county offices the order from top to bottom shall be as follows: governor and lieutenant governor, attorney general, auditor of state, secretary of state, treasurer of state, United States senator, representative to congress, state senator, state representative, county commissioner, county auditor, prosecuting attorney, clerk of the court of common pleas, sheriff, county recorder, county treasurer, county engineer, and coroner. The offices of governor and lieutenant governor shall be printed on the ballot in a manner that requires a voter to cast one vote jointly for the candidates who have been nominated by the same political party or petition.

The names of all candidates for an office shall be arranged in a group under the title of that office, and, except for absentee ballots or when the number of candidates for a particular office is the same as the number of candidates to be elected for that office, shall be rotated from one precinct to another. On absentee ballots the names of all candidates for an office shall be arranged in a group under the title of that office and shall be so alternated that each name shall appear, insofar as may be reasonably possible, substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs, unless the number of candidates for a particular office is the same as the number of candidates to be elected for that office.

The method of printing the ballots to meet the rotation requirement of this section shall be as follows: The least common multiple of the number of names in each of the several groups of candidates shall be used and the number of changes made in the printer's forms in printing such ballots shall correspond with such multiple. The board of elections shall number all precincts in regular serial sequence. In the first precinct, the names of the candidates in each group shall be listed in alphabetical order. In each succeeding precinct, the name in each group which is listed first in the preceding precinct shall be listed last and the name of each candidate shall be moved up one place. In each precinct using paper ballots, the printed ballots shall then be assembled in tablets.

Under the name of each candidate nominated at a primary election and each candidate certified by a party committee to fill a vacancy under section 3513.31 of the Revised Code shall be printed, in less prominent type face than that in which the candidate's name is printed, the name of the political party by which the candidate was nominated or certified.

Except as provided in this section, no words, designations, or emblems descriptive of a candidate or his political affiliation, or indicative of the method by which the candidate was nominated or certified, shall be printed under or after a candidate's name which is printed on the ballot.

HISTORY: 1986 H 555, eff. 2-26-86
1977 S 115; 1976 S 457, H 1165; 1969 S 17; 128 v 1019; 126 v 655; 125 v 713; 1953 H 1; GC 4785-99

CROSS REFERENCES

Voting machine labels, grouping of names, rotation, political parties, 3507.06

Primaries, rotation of names, duties of secretary of state, 3513.15

Primaries, ballots for delegates and alternates to national convention, 3513.151

Governor and lieutenant governor to be elected jointly, O Const Art III §1a

Elections to be by ballot, O Const Art V §2

Office type ballot mandated; names and positions to be reasonably equal, O Const Art V §2a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 110, 112, 116, 120 to 125, 159, 225, 263

Am Jur 2d: 26, Elections § 205

NOTES ON DECISIONS AND OPINIONS

137 OS 309, 29 NE(2d) 215 (1940), State ex rel Sawyer v Neffner. Separation of state and national party column ballots is required.

137 OS 309, 29 NE(2d) 215 (1940), State ex rel Sawyer v Neffner. Amendment of this section did not directly or by implication repeal express provision of GC 4785-105 (RC 3505.08), which requires a circle at head of party column ballots.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. A petition in mandamus which alleges that relator is a qualified elector and resident of a municipality and a candidate for office therein and that the voting machine type ballot to be used does not meet the requirement of such municipality's charter that "one space shall be left below the printed names of the candidates for each office to be voted for, wherein the voter may write" in the name of any person, and the prayer of which is for a separate paper ballot for use in voting for such office for which there have been no formal nominations, states a cause of action against the board of elections and is good against demurrer.

393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968), Williams v Rhodes. Ohio's election laws which require new political parties seeking ballot position in presidential elections to obtain petitions signed by qualified electors totalling 15% of the number of ballots cast in the last gubernatorial election and to file these petitions early in February of the election year violate the Equal Protection Clause.

290 FSupp 983 (SD Ohio 1968), Socialist Labor Party v Rhodes; modified sub nom Williams v Rhodes, 393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968). Court would not issue injunction compelling state to place name of candidate for president on ballot, but would enjoin state from prohibiting write-in voting.

1954 OAG 4012. Where a county commissioner dies prior to the time for filing declarations of candidacy and where no declaration of candidacy is filed for the unexpired term for such office and no person is nominated for such unexpired term at the primary election by receiving the required number of write-in votes there is no provision of law by which any person may be nominated for such office, and the election for such office should be had at the November general election by providing a blank space on the ballot.

1954 OAG 4012. Where a county commissioner resigns and where, at the next primary election, one political party succeeds in nominating a candidate for the unexpired term of such office and the other political party fails to nominate such a candidate, there is no provision of law by which any other person may be nominated for such office, and no blank space may be provided on the ballot at the November general election.

3505.04 Nonpartisan ballots

On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of the state board of education, office of member of a board of education, municipal or township offices for municipal corporations and townships in which primary elections are not held for nomination of candidates by political parties, and municipal offices of municipal corporations having charters which provide for separate ballots for elections for such municipal offices.

Such ballots shall have printed across the top, and below the stubs, "Official Nonpartisan Ballot."

The order in which the offices are listed on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided that the office of member of the state board of education shall be listed first on the ballot, then state, district, and county judicial offices shall be listed on the ballot in such order, followed by municipal and township offices, and by offices of member of a board of education, in the order stated.

Within the rectangular space within which the title of each judicial office is printed on the ballot and immediately below such title shall be printed the date of the commencement of the term of the office, if a full term, as follows:

"Full term commencing _____ (Date) _____ _____," or the date of the end of the term of the office, if an unexpired term, as follows: "Unexpired term ending _____ (Date) _____"

The secretary of state shall prescribe the information and directions to the voter to be printed on the ballot within the rectangular space in which the title of office of member of the state board of education appears.

Within the rectangular space within which the title of each office for member of a board of education is printed on the ballot shall be printed "For Member of Board of Education," and the number to be elected, directions to the voter as to voting for one, two, or more, and, if the office to be voted for is member of a board of education of a city school district, words shall be printed in said space on the ballot to indicate whether candidates are to be elected from subdistricts or at large.

The names of all nonpartisan candidates for an office shall be arranged in a group under the title of that office, and shall be rotated and printed on the ballot as provided in section 3505.03 of the Revised Code.

No name or designation of any political party nor any words, designations, or emblems descriptive of a candidate or his political affiliation, or indicative of the method by which such candidate was nominated or certified, shall be printed under or after any nonpartisan candidate's name which is printed on the ballot.

HISTORY: 1980 H 1062, eff. 3-23-81
1976 S 457, H 1165; 1969 S 17; 126 v 655; 125 v 713; 1953 H 1; GC 4785-101

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A)

CROSS REFERENCES

Elections, "nonpartisan candidate" defined, 3501.01
Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 67, 110, 112, 116, 120, 225; 82, Schools, Universities, and Colleges § 54, 89
Am Jur 2d: 26, Elections § 208 to 211

NOTES ON DECISIONS AND OPINIONS

32 Ohio St L J 762 (Summer 1971). Ohio Judicial Elections: Nonpartisan Premises With Partisan Results, Kathleen L. Barber.

12 Dayton L Rev 381 (Winter 1986). Merit Selection: Does It Meet the Burden of Proof in Ohio?, Comment.

164 OS 362, 130 NE(2d) 805 (1955), Mullholand v Batt. Where no republican candidate filed for the office of judge of the court of common pleas, the unsuccessful candidate for the democratic nomination was not entitled to run as a write-in candidate, and since there was no blank space on the ballot, votes written in for him should not have been counted.

161 OS 339, 119 NE(2d) 283 (1954), Moore v Thompson. An election for municipal judge will not be set aside upon the grounds that the office appeared at the wrong place on the municipal ballot, there was no indication that the election was for an unexpired term, and the printed proofs of the ballot were not posted.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. A petition in mandamus which alleges that relator is a qualified elector and resident of a municipality and a candidate for office therein and that the voting machine type ballot to be used does not meet the requirement of such municipality's charter that "one space shall be left below the printed names of the candidates for each office to be voted for, wherein the voter may write" in the name of any person, and the prayer of which is for a separate paper ballot for use in voting for such office for which there have been no formal nominations, states a cause of action against the board of elections and is good against demurrer.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. The secretary of state and a county board of elections are required to conduct any municipal election which the laws authorize to be held.

22 Misc 48, 257 NE(2d) 914 (CP, Cuyahoga 1969), Jenkins v Porter. An action by a candidate nominated at a partisan primary for an injunction and damages against the executive committee of the same party for its endorsement of a candidate nominated by a nonpartisan petition fails to show irreparable damages and presents only a political issue, so that relief must be denied.

OAG 78-022. RC 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to RC 503.24, or from seeking that office in a nonpartisan election.

OAG 74-034. A person in the classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by RC 124.57, because that section only prohibits partisan political activity.

OAG 65-7. A nominating petition filed pursuant to RC 1907.051 and 3513.261 is void where it states that the candidate is seeking election at the general election in November to a full term as county court judge and there is no full term for which an election could be held at that time, and a favorable vote cast by the electors for such candidate for a full term as judge of the county court is ineffective.

1958 OAG 2276. Where a probate judge resigns and no political party nominates a candidate for the vacancy in a primary election, there is no legal authority for printing on the general election ballot any candidate's name for the unexpired term, but the electors may vote for candidates whose names they write in the blank ballot space required by RC 3505.04.

1930 OAG 1755. In the event three judges of the court of common pleas are to be elected at the same election, one to fill a term of office commencing on the first day of the next January, one to fill a term of office commencing on the 9th day of the next February, and one to fill a term of office commencing on the first day of the next January as judge of such court, division of domestic relations, candidates for the different terms of office and for the division of domestic relations should designate the term or division sought.

3505.05 Selection of judicial candidate for unexpired term—Repealed

HISTORY: 129 v 1223, eff. 8-10-61
126 v 205; 1953 H 1; GC 4785-101a

3505.06 Ballots on questions and issues

On the questions and issues ballot shall be printed all questions and issues to be submitted at any one election together with the percentage of affirmative votes necessary for passage as required by law. Such ballot shall have printed across the top thereof, and below the stubs, "Official Questions and Issues Ballot."

Questions and issues shall be grouped together on the ballot, from top to bottom, in the following order: state questions and issues, county questions and issues, municipal questions and issues, township questions and issues, and school or other district questions and issues. The particular order in which each of a group of state questions or issues is placed on the ballot shall be determined by, and certified to each board of elections by, the secretary of state. The particular order in which each of a group of county,

municipal, township, or school district questions or issues is placed on the ballot shall be determined by the board providing the ballots.

The printed matter pertaining to each question or issue on the ballot shall be enclosed at the top and bottom thereof by a heavy horizontal line across the width of the ballot. Immediately below such top line shall be printed a brief title descriptive of the question or issue below it, such as "Proposed Constitutional Amendment," "Proposed Bond Issue," "Proposed Annexation of Territory," "Proposed Increase in Tax Rate," or such other brief title as will be descriptive of the question or issue to which it pertains, together with a brief statement of the percentage of affirmative votes necessary for passage, such as "A sixty-five per cent affirmative vote is necessary for passage," "A majority vote is necessary for passage," or such other brief statement as will be descriptive of the percentage of affirmative votes required.

The questions and issues ballot need not contain the full text of the proposal to be voted upon. A condensed text that will properly describe the question, issue, or an amendment proposed by other than the general assembly shall be used as prepared and certified by the secretary of state for statewide questions or issues or by the board for local questions or issues. If other than a full text is used, the full text of the proposed question, issue, or amendment together with the percentage of affirmative votes necessary for passage as required by law shall be posted in each polling place in some spot that is easily accessible to the voters.

Each question and issue appearing on the questions and issues ballot may be consecutively numbered. The question or issue determined to appear at the top of the ballot may be designated on the face thereof by the Arabic numeral "1" and all questions and issues placed below on the ballot shall be consecutively numbered. Such numeral shall be placed below the heavy top horizontal line enclosing such question or issue and to the left of the brief title thereof.

HISTORY: 1974 H 1477, eff. 6-29-74
125 v 713; 1953 H 1; GC 4785-103

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 17.27

CROSS REFERENCES

Bond issues, ballot language, 133.13
Form of question on alternative form of county government, 302.04, 302.041
Township parks, ballot language, 511.22
Plan adoption by municipal corporation, ballot language, 705.03
Plan abandonment by municipal corporation, ballot language, 705.30
Recall of municipal officer, ballot language, 705.92
Incorporation of city, ballot language, 707.04
Merger of municipal corporation or township with municipal corporation, ballot language, 709.45
Joint recreation districts question, ballot language, 755.181
Conversion of township park district, ballot language, 1545.041
County fair bonds, 1711.30
Horse racing, submission of question of prohibiting, ballot language, 3769.14
Liquor control, choice of questions, expenses, form of ballots, 4301.35
Sunday sale election, expenses, form of ballots, 4301.351
Local option election, form of ballots, voting procedures, 4301.352
Liquor control law, conduct of election as to certain restaurants, 4301.353
Local option election as to convention center, ballots, 4301.354, 4301.355
School district tax levies, ballot language, 5705.197
Tax levies, ballot language, 5705.25
Constitutional amendment by separate ballot, O Const Art XVI §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 19, Counties, Townships, and Municipal Corporations § 33; 20, Counties, Townships, and Municipal Corporations § 470; 37, Elections § 110, 112, 116; 56, Initiative and Referendum § 39, 44, 45; 61, Intoxicating Liquors § 48, 49
Am Jur 2d: 26, Elections § 206, 221 et seq.

NOTES ON DECISIONS AND OPINIONS

35 OS(3d) 137, 1988 SERB 4-5, 519 NE(2d) 347 (1988), Jurcisin v Cuyahoga County Elections Bd. A ballot title of a proposed charter amendment consisting of clear, concise statements, without argument, descriptive of the substance of the proposed amendment, is valid.

30 OS(2d) 75, 283 NE(2d) 131 (1972), State ex rel Minus v Brown. Where, in a mandamus action instituted in the supreme court, substantial constitutional question involving statewide special election on a proposed constitutional amendment is presented, and where relator has acted timely and in good faith, and where court finds because of delay by general assembly in adopting resolution proposing constitutional amendment it is impossible for secretary of state to substantially comply with provisions of RC 3505.01, and where court finds further that because of such delay it is impossible for county boards of elections to substantially comply with RC 3509.01; then, upon such findings by court, it becomes the clear legal duty of secretary of state to strike such proposed constitutional amendment from the ballot, and the court will exercise its jurisdiction.

22 OS(2d) 197, 259 NE(2d) 501 (1970), Markus v Trumbull County Bd of Elections. Text of ballot statement resulting from referendum petition must fairly and accurately present question or issue to be decided in order to assure free, intelligent and informed vote by average citizen affected.

18 OS(2d) 61, 247 NE(2d) 463 (1969), State ex rel Graves v Brown. Failure to present question of postponement of effective date of 1967 HJR 42 (which revised O Const Art IV) to the voters in condensed ballot text destroyed efficacy of section (E) of the schedule (132 v 2878).

15 OS(2d) 65, 238 NE(2d) 790 (1968), Euclid v Heaton. A majority of the electors voting on the proposed amendment to the Ohio Constitution submitted at the election held May 7, 1968, having voted in favor of its adoption and the secretary of state having certified to that fact, the amendment is effective as of the date of said election by virtue of O Const Art XVI §1, the proposition contained in said resolutions to postpone the effective date of part of said amendment until January 10, 1970, not having been included in the condensed text of the proposed amendment which appeared on the ballot.

10 OS(2d) 139, 226 NE(2d) 116 (1967), State ex rel Foreman v Brown. The single general object of the proposed Ohio bond commission amendment is the creation of a bond commission to raise funds by issuing bonds; and the fact that the proposal limits the authority of the commission by specifying the purposes for which money may be raised and used does not turn the proposal into a proposal for more than one amendment.

167 OS 71, 146 NE(2d) 28 (1957), State ex rel Commrs of Sinking Fund v Brown. Reference, in text of capital improvements bond issue amendment on ballot, to cigarette tax as source of revenue for payment did not invalidate amendment merely because other funds might also be used as a source of revenue.

162 OS 473, 124 NE(2d) 120 (1955), Beck v Cincinnati. The statement, "If levy passes, there will be no city income tax in 1955

or 1956," in the caption of a ballot submitting the levy to the electors is improper, and its use in the ballot invalidates the election.

152 OS 308, 89 NE(2d) 641 (1949), State ex rel Duffy v Sweeney. Where proposed amendment to Ohio Constitution received favorable majority of votes cast on the issue of adoption, but not a majority of votes cast in the election, it was legally adopted and became effective thirty days after the election despite fact that the schedule to the proposed amendment specified that it would become effective immediately upon certification by the secretary of state that a majority of electors cast a favorable ballot and that the schedule twice stated that a majority of electors voting at the election was necessary for passage.

152 OS 139, 87 NE(2d) 342 (1949), Prosen v Duffy. Where, pursuant to GC 3180-35 (RC 519.11), a zoning plan is submitted to the electors residing in an unincorporated area of a township, the form of the ballot does not require the printing on the ballot of the whole text of the zoning plan or an impracticable digest thereof, but does require the printing of language constituting a topic or theme describing the question or issue submitted.

113 App 302, 178 NE(2d) 101 (1960), Bennett v Diefenbach; affirmed by 172 OS 185, 174 NE(2d) 259 (1961). Inclusion in a petition by freeholders for annexation of territory to a municipality of the phrase "for municipal purposes only" does not invalidate the proceedings of the board of county commissioners incident to the hearing and allowance of such petition by such board.

20 Misc 257, 251 NE(2d) 5 (CP, Hamilton 1969), State v Foster. The only direction for the form of submission of an amendment to the Ohio Constitution is in RC 3505.06 which requires the secretary of state to prepare a condensed text that will properly describe the question, issue or amendment.

19 Misc 67, 250 NE(2d) 106 (CP, Trumbull 1968), Markus v Trumbull County Bd of Elections; affirmed by 22 OS(2d) 197, 259 NE(2d) 501 (1970). A board of elections will be permanently enjoined from placing on the ballot a referendum to a township zoning amendment where the petitions contained neither a copy nor summary of the proposed change, the circulator of the petitions did not state in his affidavit that each signer had knowledge of the proposed amendment, and the ballot contained no statement that only a portion of the landowners' property was to be rezoned or that a buffer strip would be constructed between the adjacent zones.

66 Abs 538, 118 NE(2d) 162 (CP, Franklin 1953), Argo v Kaiser. An election by the voters of a township defeating the rezoning by the county commissioners of a portion of land within the township was not invalidated by the fact that the property was defectively described by lot number where the location, size and ownership of the parcel were correctly described.

12 OO(3d) 194 (1979), State ex rel Lima v Havenstein. The board of elections is not required to submit a referendum to electors of the city unless the language of the ballot titled as prepared by the director of law is "a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance, or part thereof."

OAG 68-110. A judge who is currently holding office and who otherwise would be eligible for re-election is not disqualified from running for re-election in November, 1968, for the reason that he will have attained the age of seventy years by the time he would assume the office for the term to which he was re-elected.

1962 OAG 3196. Where a board of education certifies a proposal to the board of elections, the board of elections has the duty to prepare the ballot to be submitted to the electors, and such ballot should be in accord with RC 3505.06. If more than one county is involved, the board of elections of the county containing the most populous portion of the proposed district should prepare and furnish all necessary ballots.

1961 OAG 2008. The 1959 amendments to O Const Art XVIII §6 are valid.

1940 OAG 1993. Precinct election official shall, upon demand, issue to a qualified elector a bond issue ballot at a primary election without first requiring such elector to state his politics and take a primary ballot.

3505.061 Ohio ballot board; creation; organization

(A) The Ohio ballot board, as authorized by Section 1 of Article XVI, Ohio Constitution, shall consist of the secretary of state and four appointed members. No more than two of the appointed members shall be of the same political party. One of the members shall be appointed by the president of the senate, one shall be appointed by the minorty [*sic*] leader of the senate, one shall be appointed by the speaker of the house of representatives, and one shall be appointed by the minority leader of the house of representatives. The appointments shall be made no later than the last Monday in January in the year in which the appointments are to be made. If any appointment is not so made, the secretary of state, acting in place of the person otherwise required to make the appointment, shall appoint as many qualified members affiliated with the appropriate political party as are necessary.

(B) The initial appointees to the board shall serve until the first Monday in February, 1977. Thereafter, terms of office shall be for four years, each term ending on the first Monday in February. The term of the secretary of state on the board shall coincide with his term of office as secretary of state. Each appointed member of the board shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Any vacancy occurring on the board shall be filled in the manner provided for original appointments. A member appointed to fill a vacancy shall be of the same political party as that required of the member whom he replaces.

(C) Members of the board shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

(D) The secretary of state shall be the chairman of the board and he or his representative shall have a vote equal to that of any other member. The vice-chairman shall act as chairman in the absence or disability of the chairman, or during a vacancy in that office. The board shall meet after notice of at least seven days at a time and place determined by the chairman. At its first meeting the board shall elect a vice-chairman from among its members for a term of two years, and it shall adopt rules for its procedures. After the first meeting, the board shall meet at the call of the chairman or upon the written request of three other members. Three members constitute a quorum. No action shall be taken without the concurrence of three members.

(E) The secretary of state shall provide such technical, professional, and clerical employees as are necessary for the board to carry out its duties.

HISTORY: 1977 S 115, eff. 1-8-79
1974 H 1477

CROSS REFERENCES

Ballot board, OAC 111:2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262

3505.062 Duties of board

The Ohio ballot board shall:

(A) Prescribe the ballot language for constitutional amendments proposed by the general assembly to be printed on the questions and issues ballot, which language shall properly identify the substance of the proposal to be voted upon.

(B) Prepare an explanation of each amendment proposed by the general assembly which may include the purpose and effects of the proposed amendment.

(C) Certify the ballot language and explanation, if any, to the secretary of state no later than seventy-five days before the election at which the proposed question or issue is to be submitted to the voters.

(D) Direct the means by which the secretary of state shall disseminate information concerning proposed amendments to the voters.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 H 1477

CROSS REFERENCES

Initiative and referendum petition requirements and preparation, submission, ballot; language by Ohio ballot board, O Const Art II §1g

Constitutional amendments proposed by general assembly, ballot language by Ohio ballot board, O Const Art XVI §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262

NOTES ON DECISIONS AND OPINIONS

67 OS(2d) 516, 426 NE(2d) 493 (1981), State ex rel Bailey v Celebrezze. Proposed ballot language describing proposed amendment to O Const Art II §35, is invalid.

3505.063 Constitutional amendment proposed by general assembly; preparation and dissemination of arguments for and against

(A) When the general assembly adopts a resolution proposing a constitutional amendment, it shall by resolution designate a group of members who voted in support of the resolution to prepare arguments for the proposed amendment, and a group of members who voted in opposition to the resolution to prepare arguments against the proposed amendment. If no members voted in opposition to the resolution, the Ohio ballot board may prepare arguments against the proposed amendment or designate a group of persons to prepare such arguments. All arguments shall be filed with the secretary of state no later than seventy-five days before the date of the election. No argument shall exceed three hundred words.

(B) The secretary of state shall disseminate information, which may include part or all of the official explanation and arguments concerning proposed amendments, by means of direct mail or other written publication, broadcast, or such other means, or combination of means, as the Ohio ballot board may direct, in order to inform the voters as fully as possible concerning proposed amendments.

HISTORY: 1985 H 201, eff. 7-1-85
1974 H 1477

CROSS REFERENCES

Rates and specifications for publishing proposed constitutional amendments, 7.101

Elections to be by ballot, O Const Art V §2

Constitutional amendments proposed by general assembly, ballot language by Ohio ballot board, O Const Art XVI §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262

3505.07 Separate ballots permitted

If the board of elections, by a unanimous vote of its members, finds it impracticable to place the names of candidates for any office of a minor political subdivision in the county or the wording of any question or issue to be voted upon in such minor political subdivision on the ballots provided in sections 3505.01 to 3505.09, inclusive, of the Revised Code, then such board may provide separate ballots therefor. All such separate ballots shall conform in quality of paper, style of printing, form of ballot, arrangement of names, and in all other ways, in so far as practicable, with the provisions relating to the printing of the general official ballot. Separate ballot boxes shall be provided for each such separate kind of ballot.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-104

CROSS REFERENCES

Names and positions of candidates on office type ballot shall be reasonably equal, O Const Art V §2a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262
Am Jur 2d: 26, Elections § 206

3505.071 Responsibilities of board of elections in most populous county in joint county school district or regional transit authority

In the event that a school district extends into one or more counties, upon the filing of any resolution or candidate's petitions in the county containing the most populous portion of the school district, such county board of elections shall, within ten days after such filing, send to all other boards of elections of counties having territory within the school district, notice of such filing. The county containing the most populous portion of the school district shall furnish all ballots for school questions and issues for the school district.

In the event that a regional transit authority includes territory in more than one county, any resolution, petition, or other action providing for a referendum or other election concerning the transit authority shall be filed with the board of elections of the county containing the most populous portion of the regional transit authority, and such board of elections shall, within ten days after such filing, send to the boards of elections of all other counties having

territory within the regional transit authority notice of such filing and shall furnish all ballots for such election.

HISTORY: 1974 S 544, eff. 6-29-74
126 v 205; 125 v 713

CROSS REFERENCES

Submission of question of adoption of sales and use tax, 306.70
Question of reduction of rate of continuing sales and use tax, 306.71
School districts, tax levy, notes, 3311.21
Transit authority levy of tax, rates optional, limits, 5739.023

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262
Am Jur 2d: 26, Elections § 206

NOTES ON DECISIONS AND OPINIONS

1962 OAG 3196. Where a board of education certifies a proposal to the board of elections, the board of elections has the duty to prepare the ballot to be submitted to the electors, and such ballot should be in accord with RC 3505.06. If more than one county is involved, the board of elections of the county containing the most populous portion of the proposed district should prepare and furnish all necessary ballots.

3505.08 Ballots provided for elections; sample ballots

Ballots shall be provided by the board of elections for all general and special elections. Such ballots shall be printed with black ink on No. 2 white book paper fifty pounds in weight per ream assuming such ream to consist of five hundred sheets of such paper twenty-five by thirty-eight inches in size. Each ballot shall have attached at the top two stubs, each of the width of the ballot and one and three-fourth inches in length. The stubs shall be separated from the ballot and from each other by perforated lines. The top stub shall be known as Stub B and shall have printed on its face "Stub B." The other stub shall be known as Stub A and shall have printed on its face "Stub A." Each stub shall also have printed on its face "Consecutive Number _____." Each ballot of each kind of ballot provided for use in each precinct shall be numbered consecutively beginning with number 1 by printing such number upon both of the stubs attached thereto. On ballots bearing the names of candidates, each candidate's name shall be printed in twelve point boldface upper case type in an enclosed rectangular space and an enclosed blank rectangular space shall be provided at the left thereof. The name of the political party of a candidate nominated at a primary election or certified by a party committee shall be printed in ten point lightface upper and lower case type and shall be separated by a two point blank space. The name of each candidate shall be indented one space within such rectangular space and the name of the political party shall be indented two spaces within such rectangular space. The title of each office on such ballots shall be printed in twelve point boldface upper and lower case type in a separate enclosed rectangular space. A four point rule shall separate the name of a candidate or a group of candidates for the same office from the title of the office next appearing below on the ballot, and a two point rule shall separate the title of the office from the names of candidates and a one point rule shall separate names of candidates. Headings shall be printed in display Roman type. When the names of several candidates are grouped together as candidates for the same office, there shall be printed on such ballots immediately below the title of such office and within the separate rectangular space in which such title is printed "Vote for not more than _____," in six point boldface upper and lower case filling the blank space with that number which will indicate the number of persons who may be lawfully elected to such office.

Columns on ballots shall be separated from each other by a heavy vertical border or solid line at least one-eighth of an inch wide, and a similar vertical border or line shall enclose the left and right side of ballots, and ballots shall be trimmed along the sides close to such lines.

The ballots provided for by this section shall be comprised of four kinds of ballots designated as follows: (A) office type ballot; (B) nonpartisan ballot; (C) questions and issues ballot; (D) presidential ballot.

On the back of each office type ballot shall be printed "Official Office Type Ballot;" on the back of each nonpartisan ballot shall be printed "Official Nonpartisan Ballot;" on the back of each questions and issues ballot shall be printed "Official Questions and Issues Ballot;" and on the back of each presidential ballot shall be printed "Official Presidential Ballot." On the back of every ballot also shall be printed the date of the election at which the ballot is used and the facsimile signatures of the members of the board of the county in which the ballot is used. For the purpose of identifying the kind of ballot, the back of every ballot may be numbered in such order as the board shall determine. Such numbers shall be printed in not less than thirty-six point type above the words "Official Office Type Ballot," "Official Nonpartisan Ballot," "Official Questions and Issues Ballot," or "Official Presidential Ballot," as the case may be. Ballot boxes bearing corresponding numbers shall be furnished for each precinct in which the above described numbered ballots are used.

On the back of every ballot used there shall be a solid black line printed opposite the blank rectangular space that is used to mark the choice of the voter. This line shall be printed wide enough so that the mark in the blank rectangular space will not be visible from the back side of the ballot.

Sample ballots may be printed by the board of elections for all general elections. Such ballots shall be printed on colored paper and "Sample Ballot" shall be plainly printed in boldface type on the face of each ballot. In counties of less than one hundred thousand population, the board may print not more than five hundred sample ballots; in all other counties, it may print not more than one thousand sample ballots. Such sample ballots shall not be distributed by a political party or a candidate nor shall a political party or candidate cause their title or name to be imprinted thereon.

HISTORY: 131 v H 796, eff. 11-11-65
128 v 29; 126 v 205; 125 v 713; 1953 H 1; GC 4785-105

CROSS REFERENCES

Specifications for marking device, 3506.06
Separate ballots for political parties, specifications and contents, 3513.13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262
Am Jur 2d: 26, Elections § 204

NOTES ON DECISIONS AND OPINIONS

137 OS 309, 29 NE(2d) 215 (1940), State ex rel Sawyer v Neffner. Presidential ballot is a party column ballot.

5 App(2d) 19, 195 NE(2d) 606 (1964), Pintaric v McHale. Clear and convincing proof of fraud or of the fact that a mistake of election officers does affect the result of, or render uncertain, an election is required to warrant judicial interference with the result of such election; and the fact that a bag of unused ballots is missing and unavailable for purposes of a recount is not sufficient ground for invalidating such election, in the absence of showing fraud or an attempt to deceive or mislead and that the result of such election is uncertain and affected thereby.

1954 OAG 3732. Upon the dissolution of a school district which does not maintain public schools within its area, it is the duty of the county board of education to select the district or districts to which the territory of such dissolved district is to be joined, and the plan of distribution of territory so made is to be submitted to the electors of such dissolved district for their approval, the form of ballot being governed by RC 3505.08.

1933 OAG 960. It is unlawful to place upon the ballot at a primary or general election, any nickname of a candidate in addition to such candidate's name where there is not such identity of names of two or more candidates to justify some description which will permit the voter to make an intelligent expression of his choice.

1928 OAG 3009. A person whose declaration of candidacy for nomination at a primary election was rejected by the election board, might, nevertheless, have been elected by having his name written in by the voters upon the ballot at the general election, if provision was made therefor by printing the designation of the office and providing a space as provided by former GC 5025 (Repealed).

1928 OAG 1973. On presidential delegate ballots, where there are qualified candidates at least equal to the number to be elected, the secretary of state is not authorized to leave a single blank line or space at the end of the list of candidates.

1928 OAG 1781. Where there are candidates for the office of county commissioner for both a full term and an unexpired term, board of deputy state supervisors of elections must print above the names of such candidates the words "vote for not more than _____ for the full term of four years"; also, to place immediately above the names of candidates for the unexpired term "vote for not more than one for the unexpired term."

3505.09 Separate ballots for each precinct

In election precincts composed of a township or a part thereof, and a municipal corporation or a part thereof, separate ballots for each precinct shall be provided for all elections, so as to enable electors residing in such precincts to cast their votes for the proper candidates in such precincts. Separate ballots shall be provided for each district portion of each precinct which shall contain the names of the candidates for members of the board of education for whom the electors residing in such district are entitled to vote. In the case of overlapping school districts, the ballots shall be so printed as to plainly identify each district for which candidates are to be chosen.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-106

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262
Am Jur 2d: 26, Elections § 205

3505.10 Presidential ballot

On the presidential ballot below the stubs at the top of the face of the ballot shall be printed "Official Presidential Ballot" centered between the side edges of the ballot. Below "Official Presidential Ballot" shall be printed a heavy line centered between the side edges of the ballot. Below the line shall be printed "Instruction to Voters" centered between the side edges of the ballot, and below such words shall be printed the following instructions:

"(A) To vote for the candidates for president and vice-president whose names are printed below, mark "X" in the rectangular space at the left of the names of such candidates. Such "X" mark will be counted as a vote for each of the candidates for presidential elector whose names have been certified to the secretary of state and who are members of the same political party as the nominees for president and vice-president. An "X" mark for independent candidates for president and vice-president shall be counted as a vote for the presidential electors filed by such candidates with the secretary of state.

(B) To vote for candidates for president and vice-president in the blank space below, mark "X" in the left rectangular space and write the names of your choice for president and vice-president under the respective headings provided for those offices. Such write-in will be counted as a vote for the candidates' presidential electors whose names have been properly certified to the secretary of state.

(C) If you tear, soil, deface, or erroneously mark this ballot, return it to the precinct election officers and obtain another ballot."

Below such instructions to the voter shall be printed a single vertical column of enclosed rectangular spaces equal in number to the number of presidential candidates plus one additional space for write-in candidates. Each of such rectangular spaces shall be enclosed by a heavy line along each of its four sides, and such spaces shall be separated from each other by one-half inch of open space.

In each of such enclosed rectangular spaces, except the space provided for write-in candidates, shall be printed the names of the candidates for president and vice-president nominated as such by the national convention of a political party to which delegates and alternates were elected in this state at the next preceding primary election and the names of those independent candidates nominated by petition in accordance with section 3513.257 of the Revised Code. The names of candidates for electors of president and vice-president shall not be placed on the ballot, but shall be certified to the secretary of state as required by sections 3513.11 and 3513.257 of the Revised Code. The names of candidates for president and vice-president may be certified to the secretary of state, for placement on the presidential ballot, by authorized officials of an intermediate or minor political party which has held a state or national convention for the purpose of choosing such candidates, or which may, without convention, certify such candidates in accordance with the procedure authorized by its party rules. Certification to the secretary of state of such candidates shall be made on or before the seventy-fifth day before the day of the general election and shall be accompanied by designation of a sufficient number of presidential electors to satisfy the requirements of law. A vote for any of such candidates for president and vice-president shall be a vote for the electors of such candidates whose names have been certified to the secretary of state.

The arrangement of the printing in each of such enclosed rectangular spaces shall be substantially as follows: Near the top and centered within the rectangular space shall be printed "For President" in ten-point boldface upper and lower case type. Below "For President" shall be printed the name of the candidate for president in twelve-point boldface upper case type. Below the name of the candidate for president shall be printed the name of the political party by which such candidate for president was nominated in eight-point lightface upper and lower case type. Below the name of such political party shall be printed "For Vice-President" in ten-point boldface upper and lower case type. Below "For Vice-President" shall be printed the name of the candidate for vice-president in twelve-point boldface upper case type. Below the name of the candidate for vice-president shall be printed the name of the political party by which such candidate for vice-president was nominated in eight-point lightface upper and lower case type. No political identification or name of any political party shall be printed below the names of presidential and vice-presidential candidates nominated by petition.

The rectangular spaces on the ballot described in this section shall be rotated and printed as provided in section 3505.03 of the Revised Code.

HISTORY: 1987 H 231, eff. 10-5-87
1986 S 185; 1976 S 457, H 1165; 1973 H 1; 1971 S 460; 1969 S 19; 126 v 205; 1953 H 1; GC 4785-107

CROSS REFERENCES

Days counted to ascertain time, 1.14
Presidential ballots for former residents, Ch 3504
Specifications for marking device, 3506.06
Identification envelopes for absentee ballots for presidential elections, 3509.021
Identification envelopes for armed services ballots for presidential elections, 3511.051
Elections to be by ballot, O Const Art V §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262
Am Jur 2d: 26, Elections § 202

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

132 OS 18, 4 NE(2d) 397 (1936), State ex rel Hawke v Myers. US Const Art II §1, vests the legislature with authority to direct the manner in which presidential electors shall be appointed, and as there is no provision in the Ohio Constitution limiting the exercise of that delegated power, GC 4785-107 (RC 3505.10) and 4785-108 (Repealed) are not unconstitutional.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3505.10 is unconstitutional.

2. In general

31 OS(2d) 193, 287 NE(2d) 806 (1972), State ex rel Kay v Brown. If a national convention of an intermediate or minor political party is held, the only candidates which the secretary of state can accept for a place on the ballot are those chosen by such convention.

150 OS 127, 80 NE(2d) 899 (1948), State ex rel Beck v Hummel. Although names of candidates for election to offices of president and vice-president of the United States, who have been nominated as provided in GC 4785-107 (RC 3505.10), are authorized to be placed upon the presidential ballot of this state, no voter casts a direct vote for them and a ballot marked in their favor is counted only as a vote in favor of the electors who have been chosen pursuant to GC 4785-74 (RC 3513.11).

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing RC 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged.

122 FSupp 149, 73 Abs 353 (SD Ohio 1954), State ex rel Hawke v Brown. An action challenging the validity of GC 4785-91 and 4785-107 (RC 3513.27 and 3505.10) cannot be brought by one who has taken no action relative to the nomination and election of independent candidates for elector or other state officers.

OAG 68-013. A political party formed pursuant to RC 3517.01 must have a state convention to nominate its presidential electors pursuant to RC 3513.11, and a national convention to nominate its presidential candidate pursuant to RC 3513.12, in order for its candidate to have a place on the presidential ballot.

1932 OAG 4587. Under the provisions of GC 4785-91 (RC 3513.27) et seq., 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 names of its candidates for president and vice-president should appear upon the ballots.

3505.11 Ballots in tablets

The ballots, with the stubs attached, shall be bound into tablets for each precinct, which tablets shall contain at least one per cent more ballots than the total registration in the precinct. Upon the covers of such tablets shall be written, printed, or stamped the designation of the precinct for which the ballots have been prepared. All official ballots shall be printed uniformly upon the same kind and quality of paper, and shall be of the same shape, size, and type.

HISTORY: 1983 H 402, eff. 3-19-84
1977 S 125; 1953 H 1; GC 4785-111

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262
Am Jur 2d: 26, Elections § 205

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

20 Misc 222, 250 NE(2d) 104 (CP, Fulton 1969), In re Election for Gorham-Fayette Local School Dist. An election, at which there were an insufficient number of ballots available for all electors who sought to vote, violates the rights of those denied their franchise assured by Const Art V §1, and will be declared void upon a petition filed by certain of such electors.

20 Misc 222, 250 NE(2d) 104 (CP, Fulton 1969), In re Election for Gorham-Fayette Local School Dist. In construing RC 3505.11, which was enacted when the governor was elected at each general election, the amendment of O Const Art III §2, granting the governor a term of four years, must now be considered to determine that the last preceding general election at which a governor was elected must be the reference required to determine the appropriate number of ballots to be prepared.

68 Abs 242, 118 NE(2d) 692 (CP, Ottawa 1953), In re Election of Council of Oak Harbor. Where a number of voters were unable to vote in an election for members of city council because of an insufficient number of ballots having been supplied, the election is void.

3505.12 Ballots and instructions

The board of elections shall cause to be printed in English in twelve point type on paper or cardboard instructions as issued by the secretary of state for the guidance of electors in marking their ballots. Such instructions shall inform the voters as to how to prepare the ballots for voting, how to obtain a new ballot in case of accidentally spoiling one, and, in a smaller type, a summary of the important sections of the penal law relating to crimes against the elective franchise. The precinct election officials shall cause to be posted immediately in front of or on the polling place and in each voting shelf one or more of such cards of instructions.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-112

CROSS REFERENCES

Interpreters for voters speaking foreign languages, 3501.221
Improper removal of instructions from poll, penalty, 3599.24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 24, 25; 37, Elections § 19, 110 to 112, 115, 116, 122, 124 to 126, 130, 132, 222, 225, 226, 262
Am Jur 2d: 26, Elections § 257

NOTES ON DECISIONS AND OPINIONS

1934 OAG 3658. Where a candidate for office applies for a recount of the votes cast for said office in certain precincts and his opponent thereafter makes application for a recount in other precincts, and there is no change in the result of the election as a result of the recount of the precinct requested by the latter candidate, he is not entitled to the return of his entire deposit but should be charged with the cost of such recount in those precincts designated by him in which such recount did not establish errors sufficient to change the result in such precinct by at least two per cent of the total votes cast therein for such office, which cost should not be less than five dollars nor more than ten dollars per precinct, although the recount of the precincts requested by the other candidate established sufficient errors to change the result of the election favorable to him.

3505.13 Contract for printing ballots; when bidding required; procedures

A contract for the printing of ballots involving a cost in excess of ten thousand dollars shall not be let until after five days' notice published once in a leading newspaper published in the county or upon notice given by mail by the board of elections, addressed to the responsible printing offices within the state. Except as otherwise provided in this section, each bid for such printing must be accompanied by a bond with at least two sureties, or a surety company, satisfactory to the board, in a sum double the amount of the bid, conditioned upon the faithful performance of the contract for such printing as is awarded and for the payment as damages by such bidder to the board of any excess of cost over the bid which it may be obliged to pay for such work by reason of the failure of the bidder to complete the contract. No bid unaccompanied by such bond shall be considered by the board. The board may, however, waive the requirement that each bid be accompanied by a bond if the cost of the contract is ten thousand dollars or less. The contract shall be let to the lowest responsible bidder in the state. All ballots shall be printed within the state.

HISTORY: 1985 H 47, eff. 9-23-85
1982 H 598; 127 v 741; 1953 H 1; GC 4785-114

CROSS REFERENCES

Days counted to ascertain time, 1.14
Newspaper for publication of legal notices, 7.12
Printing of ballots, offenses, fine and imprisonment, 3599.22

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 267; 37, Elections § 112, 114, 116; 72, Notice and Notices § 27, 29, 30, 33, 34; 78, Public Works and Contracts § 49, 62, 70, 71
Am Jur 2d: 63, Public Funds § 27; 64, Public Works and Contracts § 46, 60

NOTES ON DECISIONS AND OPINIONS

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. Call of a special election was valid although funds for mailing the copy of a proposed charter were not appropriated prior to such mailing, although only 55 days intervened between the submission of the charter to the voters and the special election, and although the proofs of the ballot were not posted nor sureties furnished on the printing contract.

OAG 65-139. A board of elections may in its discretion reject bids on the basis of cost and/or past performance of the bidder on other contracts performed for the board.

OAG 65-139. A board of elections may let a contract for the printing of ballots to a bidder who does not reside in, but does do business in, the county.

1952 OAG 1682. A corporation, in which a principal stockholder is an employee of the auditor of state, may lawfully enter into a contract with a board of elections for the printing of ballots unless said employee, in the performance of his official duties, exercises some of the auditor's duties as chief inspector and supervisor of public offices or exercises some of the auditor's administrative duties over the bureau of inspection. When a board of elections has entered into such a contract and has accepted and used such ballots, the contract can be rescinded and the money recovered only upon a showing that the contract was made fraudulently or in violation of a specific statutory prohibition.

1928 OAG 2635. A board of deputy state supervisors of elections may award a contract for the printing of ballots to the lowest responsible bidder, even though such bidder is not the lowest bidder. Such action of the board will not be disturbed unless a clear showing is made to the courts that its action constitutes an abuse of discretion.

3505.14 Proofs of ballot

After the letting of the contract for the printing of the ballots as provided in section 3505.13 of the Revised Code, the board of elections shall secure from the printer printed proofs of the ballot, and shall notify the chairman of the local executive committee of each party or group represented on the ballot by candidates or issues, and post such proofs in a public place in the office of the board for a period of at least twenty-four hours for inspection and correction of any errors appearing thereon. The board shall cause such proofs to be read with care and after correcting any errors shall return the corrected copy to the printer.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-115

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 114, 116
Am Jur 2d: 64, Public Works and Contracts § 72

NOTES ON DECISIONS AND OPINIONS

161 OS 339, 119 NE(2d) 283 (1954), Moore v Thompson. An election for municipal judge will not be set aside upon the grounds that the office appeared at the wrong place on the municipal ballot, there was no indication that the election was for an unexpired term, and the printed proofs of the ballot were not posted.

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. Call of a special election was valid although funds for mailing the copy of a proposed charter were not appropriated prior to such mailing, although only 55 days intervened between the submission of the charter to the voters and the special election, and although the proofs of the ballot were not posted nor sureties furnished on the printing contract.

3505.15 Packaging of ballots

The board of elections shall make adequate provision for the inspection of the printing of the ballots. The person to whom the contract for printing the ballots is let shall seal them securely in packages, one package for each precinct in the county or civil division in which the election is to be held, place a paper cover over them, and indicate on such cover the number of ballots contained therein with a space to indicate the precinct, and deliver them to the board at such time and place as the board directs. The board, upon receiving such package, shall give a receipt for the ballots indicating the number of ballots in each package and the number of the precinct in each case.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-116

CROSS REFERENCES

Printing of ballots, offenses, fine and imprisonment, 3599.22

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 114, 116
Am Jur 2d: 64, Public Works and Contracts § 105

3505.16 Ballot boxes and supplies

Before the opening of the polls, the package of supplies and the ballot boxes shall be opened in the presence of the precinct officials. The ballot boxes, the package of ballots, registration forms, and other supplies shall at all times be in full sight of the challenger or witnesses, and no ballot box or unused ballots during the balloting or counting shall be removed or screened from their full sight until the counting has been closed and the final returns completed and the certificate signed by the judges and clerks.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-121

CROSS REFERENCES

Sealed ballot package, delivery and opening, offenses, 3599.23

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 131, 132
Am Jur 2d: 26, Elections § 231

3505.17 Lost ballots and supplies

If by accident or casualty the ballots or other required papers, lists, or supplies are lost or destroyed, or in case none are delivered at the polling place, or if during the time the polls are open additional ballots or supplies are required, the board of elections, upon requisition by telephone or in writing and signed by a majority of the election judges of the precinct stating why such additional supplies are needed, shall supply them as speedily as possible.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-122

CROSS REFERENCES

Destruction of lawful ballots forbidden, 3599.20

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 131, 132
Am Jur 2d: 26, Elections § 202 et seq.

VOTING PROCEDURE

3505.18 Voting procedure

When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefor, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark.

The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on such registration form. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to such elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of such ballots. The clerk shall enter such stub numbers opposite the signature of such elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted such ballot.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 125; 125 v 713; 1953 H 1; GC 4785-127

CROSS REFERENCES

Absentee voters, Ch 3509
Armed services absent voter's ballots, Ch 3511

Illegal voting, 3599.12
Interference with conduct of election, 3599.24
Aiding unqualified voters or inducing officer to allow their votes, penalty, 3599.25
False signature forbidden, 3599.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 66, 112, 116, 127, 129, 136, 137, 274
Am Jur 2d: 26, Elections § 233 to 242

NOTES ON DECISIONS AND OPINIONS

80 Abs 228, 155 NE(2d) 267 (CP, Mercer 1958), In re Carthagena Local School Dist. Where precinct election officials failed to pass out proper ballots to some 90 eligible voters they failed in the performance of a mandatory duty, invalidating the election, and the failure is not cured by an attempt to notify either directly or indirectly such voters to return and cast their votes.

3505.19 Registered elector may be challenged

Any person registered as an elector may be challenged by any qualified elector as to his right to vote at any election. Such qualified elector may, at any time during the year, either by appearing in person at the office of the board of elections, or by letter addressed to the board, challenge the right of such registered elector to vote. Any such challenge must state the ground upon which the challenge is made, and must be signed by the challenger giving his address and voting precinct. If, after public hearing, of which both the challenger and challenged shall be notified, the board is satisfied that the challenge is well taken, the director shall so indicate on the registration cards and he shall so notify in writing the judges and clerks of the precinct. If such challenged person offers to vote at such election he shall be examined as in the case of an original challenge. If such person establishes, to the satisfaction of the judges and clerks, that his disabilities have been removed and that he has a right to vote, he shall be permitted to vote.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-128

CROSS REFERENCES

Aiding unqualified voters or inducing officer to allow their votes, penalty, 3599.25

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 66, 112, 116, 127, 129, 136, 137, 274
Am Jur 2d: 26, Elections § 233, 237

3505.20 Challenge of voter at polling place

Any person offering to vote may be challenged at the polling place by any challenger, any elector then lawfully in the polling place, or by any judge or clerk of elections. If the board of elections has ruled on the question presented by a challenge prior to election day, its finding and decision shall be final and the presiding judge shall be notified in writing. If the board has not ruled, the question shall be determined as set forth in this section. If any person is so challenged as unqualified to vote, the presiding judge shall tender him the following oath: "You do swear or affirm that you will fully and truly answer all of the following questions put to you, touching your place of residence and your qualifications as an elector at this election."

(A) If the person is challenged as unqualified on the ground that he is not a citizen, the judges shall put the following questions:

(1) Are you a citizen of the United States?

(2) Are you a native or naturalized citizen?

(3) Where were you born?

If the person offering to vote claims to be a naturalized citizen of the United States, he shall, before the vote is received, either produce for inspection of the judges a certificate of naturalization and declare under oath that he is the identical person named therein, or state under oath when and where he was naturalized, that he has had a certificate of his naturalization, and that it is lost, destroyed, or beyond his power to produce to the judges. If he states under oath that, by reason of the naturalization of his parents or one of them, he has become a citizen of the United States, and when or where his parents were naturalized, the certificate of naturalization need not be produced.

(B) If the person is challenged as unqualified on the ground that he has not resided in this state for thirty days immediately preceding the election, the judges shall put the following questions:

(1) Have you resided in this state for thirty days immediately preceding this election? If so, where have you resided? Name two persons who know of your place of residence.

(2) Have you been absent from this state within the thirty days immediately preceding this election? If yes, then the following questions:

(a) When you left this state, did you leave for a temporary purpose with the design of returning or for the purpose of remaining away?

(b) Did you, while absent, look upon and regard this state as your home?

(c) Did you, while absent, vote in any other state?

(C) If the person is challenged as unqualified on the ground that he is not a resident of the county or precinct where he offers to vote, the judges shall put the following questions:

(1) Do you now reside in this county?

(2) Do you now reside in this precinct?

(3) When you came into this precinct, did you come for a temporary purpose merely or for the purpose of making it your home?

(D) If the person is challenged as unqualified on the ground that he is not of legal voting age, the judges shall put the following question:

Are you eighteen years of age or more to the best of your knowledge and belief?

The presiding judge shall put such other questions to the person challenged under respective heads designated by this section, as are necessary to test his qualifications as an elector at the election. If a person challenged refuses to answer fully any question put to him, is unable to answer the questions as they were answered on the registration form by the person under whose name he offers to vote, refuses to sign his name or make his mark, or if for any other reason a majority of the judges believes he is not entitled to vote, the judges shall refuse him a ballot.

A qualified citizen who has certified his intention to vote for president and vice-president as provided by Chapter 3504. of the Revised Code shall be eligible to receive only the ballot containing presidential and vice-presidential candidates.

The decision of said judges shall be final as to the right of the person challenged to vote at such election.

However, prior to the day of election, any person qualified to vote may challenge the right of any other person to be registered as a voter, or the right to cast an absent voter's ballot, or to make application for such ballot. Such challenge shall be made in writing to the board of elections of the county in which the voting residence of the challenged voter is situated and such board shall make a final determination relative to the legality of such registration or application.

HISTORY: 1988 H 708, eff. 4-19-88
1977 S 125; 1975 S 32; 1974 H 662; 1971 S 460; 125 v 713; 1953 H 1; GC 4785-129

CROSS REFERENCES

Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4, 6

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Misconduct of election judge or clerk at poll, 3599.19

Aiding unqualified voters or inducing officer to allow their votes, penalty, 3599.25

Falsehoods in election papers or documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 66, 112, 116, 127, 129, 136, 137, 274
Am Jur 2d: 26, Elections § 233, 237

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, 4, eff. 5-27-77, took immediate effect because the law contained an appropriation item.

3505.21 Challengers and witnesses

At any primary, special, or general election, any political party supporting candidates to be voted upon at such election and any group of five or more candidates may appoint to any of the polling places in the county or city one person, a qualified elector, who shall serve as challenger for such party or such candidates during the casting of the ballots, and one person, a qualified elector, who shall serve as witness during the counting of the ballots; provided that one such person may be appointed to serve as both challenger and witness. No candidate, no uniformed peace officer as defined by section 2935.01 of the Revised Code, no uniformed state highway patrol trooper, no uniformed member of any fire department, no uniformed member of the armed services, no uniformed member of the organized militia, no person wearing any other uniform and no person carrying a firearm or other deadly weapon shall serve as a witness or challenger nor shall any candidate be represented by more than one challenger and one witness at any one polling place except that a candidate who is a member of a party controlling committee, as defined in section 3517.03 of the Revised Code, may serve as a witness or challenger. Any political party or group of candidates appointing witnesses or challengers shall notify the board of elections of the names and addresses of its appointees and the polling places at which they shall serve. Notification shall take place not less than eleven days before the election on forms prescribed by the secretary of state and may be amended by filing an amendment with the board of elections at any time until four p.m. of the day before the election. The challenger and witness serving on behalf of a political party shall be appointed in writing by the chairman and secretary of the respective controlling party committees. Challengers and witnesses serving for any five or more candidates shall have their certificates signed by such candidates. Challengers and witnesses so appointed may file their certificates of appointment with the presiding judge of the precinct at the meeting on the evening prior to the election, or with the presiding judge of the precinct on the day of the election. Witnesses shall not be admitted to the booths before the closing of the polls except for the purpose of filing their certificates. Upon the filing of a certificate the person named as challenger therein shall be permitted to be in and about the polling place during the casting of the ballots and shall be permitted to watch every proceeding of the judges and clerks of elections from the time of the opening until the closing of the polls. Any such witnesses so appointed may inspect the counting of the ballots in the precinct from the time of the closing of the polls until the counting is completed and the final returns are certified and signed. The judges of elections shall protect such challengers and witnesses in all of the rights and privileges granted to them by Title XXXV of the Revised Code.

No persons other than the judges and clerks of elections, the witnesses, a police officer, other persons who are detailed to any precinct on request of the board of elections, or the secretary of state or his legal representative shall be admitted to the polling place after the closing of the polls until the counting, certifying, and signing of the final returns of each election have been completed.

Not later than eleven days prior to an election at which questions are to be submitted to a vote of the people, any committee which in good faith advocates or opposes a measure may file a petition with the board of any county asking that such petitioners be recognized as the committee entitled to appoint witnesses to the count at such election. If more than one committee alleging themselves to advocate or oppose the same measure file such petitions, the board shall decide and announce by registered mail to each committee not less than three days immediately preceding the election which committee is entitled to appoint such witnesses. Such decision shall not be final, but any aggrieved party may institute mandamus proceedings in the court of common pleas of the county wherein such board has jurisdiction to compel the judges of elections to accept the appointees of such aggrieved party. Any such recognized committee may appoint a challenger and a witness to the count in each precinct. Committees appointing witnesses or challengers shall notify the board of elections of the names and addresses of its appointees and the polling places at which they shall serve. Notification shall take place not less than eleven days before the election on forms prescribed by the secretary of state and may be amended by filing an amendment with the board of elections at any time until four p.m. on the day before the election. A person so appointed shall file his certificate of appointment with the presiding judge in the precinct in which he has been appointed to serve. Witnesses shall file their certificates before the polls are closed. In no case shall more than six such challengers and six witnesses be appointed for any one election in any one precinct. If more than three questions are to be voted on, the committees which have appointed challengers and witnesses may agree upon not to exceed six challengers and six witnesses, and the judges of elections shall appoint such challengers and witnesses. If such com-

mittees fail to agree, the judges of elections shall appoint six challengers and six witnesses from the appointees so certified, in such manner that each side of the several questions shall be represented.

No person shall serve as a witness or challenger at any polling place unless the board of elections of the county in which such witness or challenger is to serve has first been notified of the name, address, and polling place at which such witness or challenger is to serve. Notification to the board of elections shall be given by the political party, group of candidates, or committee appointing such witness or challenger as prescribed in this section. No such challengers and witnesses shall receive any compensation from the county, municipal corporation, or township, and they shall take the following oath, to be administered by one of the judges of elections:

"You do solemnly swear that you will faithfully and impartially discharge the duties as an official challenger and witness, assigned by law; that you will not cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of their qualification as electors; and that you will not disclose or communicate to any person how any elector has voted at such election."

HISTORY: 1991 S 144, eff. 8-8-91
1972 H 336; 1969 H 346; 1953 H 1; GC 4785-120

CROSS REFERENCES

Standard time in Ohio, 1.04
Days counted to ascertain time, 1.14
Oaths, 3.20 to 3.24
Common pleas court jurisdiction, Ch 2305
Mandamus, Ch 2731
Challengers and witnesses, 3506.17
Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17
Misconduct of election judge or clerk at poll, 3599.19
Aiding unqualified voters or inducing officer to allow their votes, penalty, 3599.25
Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 134, 135, 157, 179, 265, 266; 56, Initiative and Referendum § 46, 48
Am Jur 2d: 26, Elections § 233, 237

NOTES ON DECISIONS AND OPINIONS

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. Where three persons innocently and not fraudulently were not residents of a school district and voted, a failure to show any dereliction of any duty, or failure to follow any statute on the part of the election officials regarding such three votes, and where the record fails to show that contestants ever appointed challengers or exercised any challenges as provided by statute, the fact that the three votes, regarding them most beneficial to the challengers would make the election uncertain, will not cause the court to void the election.

1950 OAG 1799. A challenger, judge or clerk of a precinct may not keep lists of persons voting at the elections and furnish them to persons not connected with the board of elections; this should not be interpreted to interfere with the authorized duties of these persons.

1932 OAG 4049. Under authority of the case of State ex rel Witt v Bernon, 11 Abs 318 (App, Cuyahoga 1932), the board of elections of Cuyahoga county may, in its discretion, refuse challengers and witnesses to both candidates for mayor appearing on the ballot at the non-partisan election to be held February 16, 1932, or allow challengers and witnesses to either of the two candidates when so requested, but the board may not allow challengers and witnesses to one of the candidates and refuse challengers and witnesses as to the other candidate.

3505.22 Impersonating an elector

If any precinct officer, challenger, or other elector has reason to believe that a person is impersonating an elector, then such person, before he is given a ballot, shall be questioned as to his right to vote, and shall be required to sign his name or make his mark in ink on a card to be provided therefor. If, in the opinion of a majority of the precinct officers, the signature is not that of the person who signed such name in the registration forms, then such person may be refused a ballot. Such person may appeal to the board of elections and if the board finds that he is eligible to vote, an order instructing the precinct officer to permit him to vote shall be given to such person. Such order shall be recognized by such precinct officers when presented and signed and such person shall be permitted to vote.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-130

CROSS REFERENCES

Illegal voting, penalty, 3599.12
Aiding unqualified voters or inducing officer to allow their votes, penalty, 3599.25
False signature forbidden, 3599.28
Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 136
Am Jur 2d: 26, Elections § 237, 375

3505.23 Marking the ballot

No voter shall be allowed to occupy a voting compartment or use a voting machine more than five minutes when all the voting compartments or machines are in use and voters are waiting to occupy them. Except as otherwise provided by section 3505.24 of the Revised Code, no voter shall occupy a voting compartment or machine with another person or speak to anyone, nor shall anyone speak to him, while he is in a voting compartment or machine.

In precincts that do not use voting machines the following procedure shall be followed:

If a voter tears, soils, defaces, or erroneously marks a ballot he may return it to the precinct election officials and a second ballot shall be issued to him. Before returning a torn, soiled, defaced, or erroneously marked ballot the voter shall fold it so as to conceal any marks he made upon it, but he shall not remove Stub A therefrom. If the voter tears, soils, defaces, or erroneously marks such second ballot he may return it to the precinct election officials and a third ballot shall be issued to him. In no case shall more than three ballots be issued to a voter. Upon receiving a returned torn, soiled, defaced, or erroneously marked ballot the precinct election officials shall detach Stub A therefrom, write "Defaced" on the back of such ballot, and place the stub and the ballot in the separate containers provided therefor.

No elector shall leave the polling place until he returns to the precinct election officials every ballot issued to him

with Stub A on each ballot attached thereto, regardless of whether he has or has not placed any marks upon the ballot.

Before leaving the voting compartment the voter shall fold each ballot marked by him so that no part of the face of the ballot is visible, and so that the printing thereon indicating the kind of ballot it is and the facsimile signatures of the members of the board of elections are visible. He shall then leave the voting compartment, deliver his ballots, and state his name to the judge having charge of the ballot boxes, who shall announce the name, detach Stub A from each ballot, and announce the number on the stubs. The clerks in charge of the poll lists or poll books shall check to ascertain whether the number so announced is the number on Stub B of the ballots issued to such voter, and if no discrepancy appears to exist, the judge in charge of the ballot boxes shall, in the presence of the voter, deposit each such ballot in the proper ballot box and shall place Stub A from each ballot in the container provided therefor. The voter shall then immediately leave the polling place.

No ballot delivered by a voter to the judge in charge of the ballot boxes with Stub A detached therefrom, and only ballots provided in accordance with Title XXXV of the Revised Code, shall be voted or deposited in the ballot boxes.

In marking a presidential ballot the voter shall place "X" in the rectangular space at the left of the names of the candidates for the offices of president and vice-president. Such ballot shall be considered and counted as a vote for each of the candidates for election as presidential elector whose names were certified to the secretary of state by the political party of such nominees for president and vice-president.

In marking an office type ballot or a nonpartisan ballot the voter shall place "X" in the rectangular space at the left of the name of each candidate for whom he desires to vote.

In marking a primary election ballot the voter shall place "X" in the rectangular space at the left of the name of each candidate for whom he desires to vote. If the voter desires to vote for the nomination of a person whose name is not printed on the primary election ballot he may do so by writing such person's name on the ballot in the proper place provided for such purpose.

In marking a questions and issues ballot the voter shall place "X" in the rectangular space provided on the ballot at the left or at the right of "YES" or "NO" or other words of similar import which are printed on the ballot to enable the voter to indicate how he votes in connection with each question or issue upon which he desires to vote.

In marking any ballot on which a blank space has been provided wherein an elector may write in the name of a person for whom he desires to vote, the elector shall write such person's name in such blank space and on no other place on the ballot. Unless specific provision is made by statute, no blank space shall be provided on a ballot for write-in votes, and any names written on a ballot other than in a blank space provided therefor shall not be counted or recorded.

HISTORY: 126 v 205, eff. 1-1-56
125 v 713; 1953 H 1; GC 4785-131

CROSS REFERENCES

Offenses and penalties, Ch 3599
Secrecy of ballot, 3599.20

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 124 to 126, 128, 137, 144, 262, 264

Am Jur 2d: 26, Elections § 257 to 272

Validity of write-in vote where candidate's surname only is written in on ballot. 86 ALR2d 1025

NOTES ON DECISIONS AND OPINIONS

149 OS 498, 79 NE(2d) 662 (1948), King v Kerwin. Erasure of pencil mark before name of candidate or blacking out of mark, and placing new X-marks in squares before names of other candidates, did not constitute soiling or defacing, nor has voter thereby voted for more candidates than there were offices.

133 OS 409, 14 NE(2d) 22 (1938), Whitacre v Waggoner. Provision which requires that all marks on ballot must be made with black lead pencil is mandatory; absent voter's ballot voted by placing cross-mark in ink thereon is invalid and must be rejected.

91 OS 28, 109 NE 526 (1914), Wellsville v Connor. The elector who has caused his ballot to be deposited as provided in former GC 5075 (Repealed), exhausted his privilege.

5 App(2d) 19, 195 NE(2d) 606 (1964), Pintaric v McHale. Clear and convincing proof of fraud or of the fact that a mistake of election officers does affect the result of, or render uncertain, an election is required to warrant judicial interference with the result of such election; and the fact that a bag of unused ballots is missing and unavailable for purposes of a recount is not sufficient ground for invalidating such election, in the absence of showing fraud or an attempt to deceive or mislead and that the result of such election is uncertain and affected thereby.

5 App(2d) 19, 195 NE(2d) 606 (1964), Pintaric v McHale. Election was not rendered invalid by the fact that unused ballots and stubs were missing at time of recount.

35 App 271, 172 NE 391 (1928), Mullen v State. Absent voters' ballots marked with ink were void and incapable of being counted under former GC 5069 (Repealed).

393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968), Williams v Rhodes. Ohio's election laws which require new political parties seeking ballot position in presidential elections to obtain petitions signed by qualified electors totalling 15% of the number of ballots cast in the last gubernatorial election and to file these petitions early in February of the election year violate the Equal Protection Clause.

290 FSupp 983 (SD Ohio 1968), Socialist Labor Party v Rhodes; modified sub nom Williams v Rhodes, 393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968). Court would not issue injunction compelling state to place name of candidate for president on ballot, but would enjoin state from prohibiting write-in voting.

1951 OAG 808. The use of pasters bearing the name of a "write-in" candidate which are attached to the official ballot by individual voters is not authorized by law.

1948 OAG 3785. A presidential ballot marked with an "X" in the circle at the top of either the democratic or republican ticket and also marked with an "X" in the rectangular space before the name of one or more of the twenty-five independent candidates for presidential elector should be counted only as a vote for those independent candidates at the left of whose names such "X" is placed.

1948 OAG 3785. A presidential ballot bearing an "X" in the shaded space at the top of the column in which the names of the twenty-five candidates for presidential elector appear and also an "X" mark in the circular space appearing at the top of either the democratic or republican ticket should be counted as a vote for the twenty-five presidential electors nominated by the democratic or republican state convention as the case may be.

3505.24 Assisting voter in marking ballot because of illiteracy, physical infirmity or blindness

Any elector who declares to the presiding judge of elections that he is unable to mark his ballot by reason of either

illiteracy or physical infirmity may receive the assistance of two election officials of different political parties. If a physical infirmity is apparent to the judges to be sufficient to incapacitate the voter from marking his ballot properly, the elector may upon request be aided by a near relative who shall be admitted to the booth with such elector, or he may receive the assistance in the marking thereof of the two officials of elections belonging to different political parties, and they shall thereafter give no information in regard to this matter; except that a blind person, as defined under section 4511.47 of the Revised Code, may be accompanied in the voting booth and aided by any person of his choice. Any judge may require such declaration of inability to be made by the elector under oath before him. Such assistance shall not be rendered for other causes and no candidate whose name appears on the ballot shall assist any person in marking that person's ballot.

HISTORY: 1980 H 1062, eff. 3-23-81
131 v S 285; 1953 H 1; GC 4785-132

CROSS REFERENCES

Election judge or clerk at poll not to mislead elector needing assistance, 3599.19
Offenses and penalties, secret ballot, 3599.20
Offenses and penalties, tampering with ballots, 3599.26
Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 138
Am Jur 2d: 26, Elections § 238 to 240

NOTES ON DECISIONS AND OPINIONS

154 OS 223, 94 NE(2d) 785 (1950), State ex rel Melvin v Sweeney. Election officers may not give aid to illiterate voters in marking their ballots.

3505.25 Unlawful possession of ballots

No judge or clerk of elections, challenger, or police officer admitted into the polling rooms at the election, at any time while the polls are open, shall have in his possession, distribute, or give out any ballot or ticket to any person on any pretense during the receiving, counting, or certifying of the votes, or have any ballot or ticket in his possession or control, except in the proper discharge of his duty in receiving, counting, or canvassing the votes. This section does not prevent the lawful exercise by a judge or clerk of elections, witness, or challenger of his individual right to vote at such election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-133

CROSS REFERENCES

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17
Misconduct of election judge or clerk at poll, 3599.19
Improper attempt to obtain ballots, penalty, 3599.24
Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 301
Am Jur 2d: 26, Elections § 250 to 252, 292

3505.26 Certificate of vote cast

At the time for closing the polls the presiding judge shall be [*sic*] proclamation announce that the polls are closed.

The judges and clerks shall then in the presence of witnesses proceed as follows:

(A) Count the number of electors who voted, as shown on the pollbooks.

(B) Count the unused ballots without removing stubs.

(C) Count the soiled and defaced ballots.

(D) Insert the totals of (A [*sic*], (B), and (C) on the report forms provided therefor in the pollbook.

(E) Count the voted ballots. If the number of voted ballots exceeds the number of voters whose names appear upon the pollbooks, the presiding judge shall enter on the pollbooks on [*sic*] explanation of such discrepancy, and such explanation, if agreed to, shall be subscribed to by all of the judges and clerks. Any judge or clerk having a different explanation shall enter it in the pollbooks and subscribe to it.

(F) Put the unused ballots with stubs attached, and soiled and defaced ballots with stubs attached, in the envelopes or containers provided therefor, certify the number, and then proceed to count and tally the votes in the manner prescribed by section 3505.27 of the Revised Code and certify the result of the election to the board of elections.

HISTORY: 1980 H 1062, eff. 3-23-81
125 v 713; 1953 H 1; GC 4785-142

CROSS REFERENCES

Receiving and counting officials, 3501.24 to 3501.28
Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17
Misconduct of election judge or clerk at poll, 3599.19
Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 134, 176
Am Jur 2d: 26, Elections § 291, 304

NOTES ON DECISIONS AND OPINIONS

5 App(2d) 19, 195 NE(2d) 606 (1964), Pintaric v McHale. Clear and convincing proof of fraud or of the fact that a mistake of election officers does affect the result of, or render uncertain, an election is required to warrant judicial interference with the result of such election; and the fact that a bag of unused ballots is missing and unavailable for purposes of a recount is not sufficient ground for invalidating such election, in the absence of showing fraud or an attempt to deceive or mislead and that the result of such election is uncertain and affected thereby.

5 App(2d) 19, 195 NE(2d) 606 (1964), Pintaric v McHale. Election was not rendered invalid by the fact that unused ballots and stubs were missing at time of recount.

31 D 130 (CP, Franklin 1919), In re Contest of Election of County Commr, County Recorder and County Treasurer. The provisions of former GC 4931, 5081 (Repealed) as to ascertainment and certification of record of voters in an election precinct, proclamation of such fact, counting of ballots cast and destroying excess ballots, reading ballots to determine result of election, contemporaneous tally by clerks in poll books and certification and transmission of poll books are mandatory, the violation in whole or part of which constitutes a prima-facie case of irregularity or fraud.

1952 OAG 1941. Where a local option petition containing only 4000 signatures is submitted to the board of elections in 1952, under the provisions of GC 1079-14 (RC 3769.14) in a county in which there is no requirement of registration of electors, and where the total number of voters in such county at the November, 1951

general election is 16,821, and where the total number of votes cast for the office of governor in such county in the November, 1950 general election is 26,829, such petition does not meet the 35% test, and is invalid.

1952 OAG 1941. The number of signatures necessary on a petition for the submission of the question of horse racing, pursuant to GC 1079-14 (RC 3769.14), in a non-registration territory, is determined under the provisions of GC 4785-142 (RC 3505.26).

3505.27 Counting of votes

The counting and tallying of all ballots shall be done in the presence and full view of all judges and clerks of elections and witnesses, and shall be conducted as follows:

One of the judges shall take a ballot and shall read aloud distinctly the names of the candidates voted for and the vote on any questions or issues that were submitted. A clerk of the opposite political party shall tally the votes on work sheets furnished by the board of elections. A judge of the same political party as the clerk shall verify the votes so read and tallied. The same procedure shall be followed until all of the ballots have been counted. The clerk shall enter on his work sheet the number of tallies thereon for each candidate and question or issue and shall add thereto the number of tallies for such candidate and question or issue which appear on any other work sheet that has been used so that every work sheet will show the total vote cast for each candidate and question or issue that appears thereon. The presiding judge shall examine the work sheets and when he is satisfied that the tallies have been properly counted and entered he shall sign the same and cause the total vote for each candidate and question or issue to be inserted in each of the pollbooks in the column provided for same. The pollbooks shall then be compared to see that they are alike.

The board may prescribe additional procedure which appears necessary to assure an accurate count.

All work sheets must be preserved and placed inside the pollbooks and returned to the board.

If there is any disagreement as to how a ballot should be counted it shall be submitted to all of the judges. If three of the judges do not agree as to how any part of the ballot shall be counted, that part of such ballot which three of the judges do agree shall be counted and a notation made upon the ballot indicating what part has not been counted, and shall be placed in an envelope provided for that purpose, marked "Disputed Ballots" and returned to the board.

Nothing in this section shall be construed as prohibiting the simultaneous counting and tallying of votes by more than one group of three election officials as above provided.

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-143

CROSS REFERENCES

Receiving and counting officials, 3501.24 to 3501.28

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Misconduct of election judge or clerk at poll, 3599.19

Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 19, 30, 112, 116, 124, 177, 178, 180
Am Jur 2d: 26, Elections § 291 to 295, 304, 305

NOTES ON DECISIONS AND OPINIONS

OAG 74-103. A witness at an election recount may suggest to the judges that a ballot should be challenged and the reason therefor.

OAG 74-103. If three judges do not agree as to how any part of a ballot should be counted, it should be segregated for a later determination.

1949 OAG 1286. In deciding whether a particular write-in vote may be counted, the board of elections may consider only one factor, i.e., is it possible to determine the voter's choice?

3505.28 Ballots not counted

No ballot shall be counted which is marked contrary to law, except that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice. If two or more ballots are found folded together among the ballots removed from a ballot box, they shall be deemed to be fraudulent. Such ballots shall not be counted. They shall be marked "Fraudulent" and shall be placed in an envelope indorsed "Not Counted" with the reasons therefor, and such envelope shall be delivered to the board of elections together with other uncounted ballots.

No ballot shall be rejected because of being marked with ink or by any writing instrument other than one of the pencils provided by the board of elections.

HISTORY: 1976 H 442, eff. 5-13-76
1953 H 1; GC 4785-144

CROSS REFERENCES

Marking ballot to identify forbidden; destruction or mutilation of lawful ballot forbidden, 3599.20

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 19, 30, 112, 116, 124, 177, 178, 180
Am Jur 2d: 26, Elections § 291 et seq., 304, 305

NOTES ON DECISIONS AND OPINIONS

164 OS 362, 130 NE(2d) 805 (1955), Mullholand v Batt. Where no republican candidate filed for the office of judge of the court of common pleas, the unsuccessful candidate for the democratic nomination was not entitled to run as a write-in candidate, and since there was no blank space on the ballot, votes written in for him should not have been counted.

151 OS 485, 86 NE(2d) 722 (1949), Wilson v Kennedy. A name written on a ballot in a blank space provided therefor under the title of the office properly to be voted on at an election shall be counted as a vote for the person whose name is so written for election to the office indicated on the ballot immediately above such blank space.

1950 OAG 1755. An election ballot marked by a check mark, rather than the "X" as directed by law, in the square space opposite a candidate's name, is a technical error only, and is one which does not make it impossible to determine the voter's choice, and such ballot so marked is not thereby invalidated.

1950 OAG 1420. The question of whether or not "write-in" votes which show only a person's last name is sufficient to determine the voter's choice and to be counted is a question of fact when a person of the same last name is also a candidate for another office on the same ballot.

1950 OAG 1420. "Write-in" voting in Ohio has not been abolished by the amendment of this section.

1948 OAG 3785. A ballot which bears any marks other than "X" marks placed thereon by the voter is invalid and the entire ballot should be invalidated and not counted.

1940 OAG 2929. A national party column ballot which bears cross marks in both the blank circular space at the head of a party ticket and also in the square in front of the bracket before the

names of the candidates of another party for president and vice-president of the United States is invalid and may not be counted for the reason that in such case it is impossible to determine the voter's choice.

3505.29 Counting to be continuous

From the time the ballot box is opened and the count of votes begun until the votes are counted and returns are made out, signed, certified and given to the presiding judge for delivery to the board of election's headquarters, the judges and clerks of elections in each precinct shall not separate, nor shall a judge or clerk leave the polling place except from unavoidable necessity. In cases of illness or unavoidable necessity the board may substitute another qualified person for any precinct official so incapacitated.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-145

CROSS REFERENCES

Misconduct of election judge or clerk at poll, 3599.19

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 19, 30, 112, 116, 124, 177, 178, 180
Am Jur 2d: 26, Elections § 291 et seq., 304, 305

3505.30 Results of counting

When the results of the ballots have been ascertained, such results shall be embodied in a summary statement to be prepared by the judges and clerks of elections in duplicate, on forms provided by the board of elections. One copy shall be certified by the judges and clerks and posted on the front of the polling place, and one copy, similarly certified, shall be transmitted without delay to the board in a sealed envelope along with the other returns of the election. The judges shall also, whenever requested by the board, announce the results to the board from the nearest police station or from a telephone or telegraph station if nearer to the polling place. The board shall, immediately upon receipt of such summary statements, compile and prepare an unofficial count and upon its completion shall transmit prepaid, immediately by messenger, telegraph, or telephone, the results of such unofficial count to the secretary of state, or to the board of the most populous county of the district which is authorized to canvass the returns. Such count, in no event, shall be made later than twelve noon on the day following the election. The board shall also, at the same time, certify the results thereof to the secretary of state by registered mail. The board shall remain in session from the time of the opening of the polls, continuously, until the results of the election are received from every precinct in the county and such results are communicated to the secretary of state.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-146

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.01

CROSS REFERENCES

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Possession of altered, false, forged, or counterfeit election returns forbidden, 3599.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 19, 30, 112, 116, 124, 177, 178, 180
Am Jur 2d: 26, Elections § 291 et seq., 304, 305

NOTES ON DECISIONS AND OPINIONS

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. Mandamus will not lie to compel the secretary of state and a local board of elections to impound uncertified local option election results and order the liquor control department director to disregard notice of the results as the election was timely.

3505.31 Disposition of ballots, pollbooks, poll lists, and tally sheets

When the results of the voting in a polling place on the day of an election have been determined and entered upon the proper forms and the certifications thereof have been signed by the precinct officials, such officials, before leaving the polling place, shall place all ballots which they have counted in containers provided for such purpose by the board of elections, and shall seal each such container in such manner that it cannot be opened without breaking the seal or the material of which the container is made. They shall also seal each of the sets of pollbooks, poll lists or signature pollbooks, and tally sheets in such manner that the data contained in such sets cannot be seen without breaking the seals. On the outside of one of such sets they shall plainly indicate that it is to be filed with the board. The other of such sets shall be marked on the outside so that it plainly indicates that it is to be filed with the clerk of the court of common pleas, or the information contained within such sets of pollbooks shall be made available to the clerk of the court of common pleas. The presiding judge shall thereupon forthwith deliver to the board such containers of ballots and the sealed sets of pollbooks, poll lists, and tally sheets, together with all other election reports, materials, and supplies required to be delivered to such board.

The board shall carefully preserve all ballots prepared and provided by it for use in an election, whether used or unused, for sixty days after the day of such election. In the event an election is held within the sixty-day period, the board shall have authority to transfer such ballots to other containers to preserve the same until the sixty-day period has expired. Thereupon such ballots shall be disposed of by said board as wastepaper in such manner as said board orders, or where voting machines have been used the counters may be turned back to zero; provided that the secretary of state may, within such period of sixty days, order such board to preserve such ballots or any part thereof for a longer period of time, in which event said board shall preserve such ballots for such longer period of time.

In counties where voting machines are used, if an election is to be held within the sixty days immediately following a primary, general, or special election or within any period of time within which the ballots have been ordered preserved by the secretary of state or a court of competent jurisdiction, the board, after giving notice to all interested parties and affording them an opportunity to have a representative present, shall open the compartments of the machines and, without unlocking the machine, shall recanvass the vote cast therein as if a recount were being held.

The results shall be certified by the board and this certification shall be filed in the board's office and retained for the remainder of the period for which ballots must be kept. After preparation of the certificate, the counters may be turned back to zero and the machines may be used for the election.

The board shall carefully preserve the sets of pollbooks, poll lists or signature pollbooks, and tally sheets delivered to it from each polling place, and designated for filing with the clerk of the court of common pleas, until it has completed the official canvass of the election returns from all precincts in which electors were entitled to vote at such election, and has prepared and certified the abstracts thereof, as required by law. It shall thereupon deliver to the clerk of the court of common pleas of its county all of such sets of pollbooks, poll lists or signature pollbooks, and tally sheets, or the information contained therein. The board shall not break, or permit anyone to break, the seals upon such sets of pollbooks, poll lists or signature pollbooks, and tally sheets, nor make, or permit any one to make, any changes or notations therein, while such pollbooks, poll lists or signature pollbooks, and tally sheets are in its custody, except as provided by section 3505.32 of the Revised Code. The clerk of the court of common pleas shall carefully preserve all sets of pollbooks, poll lists or signature pollbooks, and tally sheets delivered to him by the board for two years after the day of the election in which they were used. Thereupon he shall dispose of same as wastepaper in such manner as he deems proper.

Pollbooks and poll lists or signature pollbooks of a party primary election delivered to the board from polling places shall be carefully preserved by it for two years after the day of election in which they were used, and shall thereupon be disposed of by said board as wastepaper in such manner as said board orders.

Pollbooks, poll lists or signature pollbooks, tally sheets, summary statements, and other records and returns of an election delivered to it from polling places shall be carefully preserved by the board for two years after the day of the election in which they were used, and shall thereupon be disposed of by said board as wastepaper in such manner as said board orders.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 129 v 1562; 127 v 741; 125 v 713; 1953 H 1; GC 4785-147

CROSS REFERENCES

Days counted to ascertain time, 1.14
Fee and mileage to precinct official delivering or returning election supplies, 3501.36
Absent voter's ballot, 3509.05
Misconduct of election judge or clerk at poll, 3599.19
Destruction or mutilation of lawful ballots forbidden, 3599.20
Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 112, 116, 144, 164, 175, 266
Am Jur 2d: 66, Records and Recording Laws § 2

NOTES ON DECISIONS AND OPINIONS

5 App(2d) 19, 195 NE(2d) 606 (1964), Pintaric v McHale. Clear and convincing proof of fraud or of the fact that a mistake of election officers does affect the result of, or render uncertain, an election is required to warrant judicial interference with the result of such election; and the fact that a bag of unused ballots is missing and unavailable for purposes of a recount is not sufficient ground for invalidating such election, in the absence of showing fraud or an attempt to deceive or mislead and that the result of such election is uncertain and affected thereby.

5 App(2d) 19, 195 NE(2d) 606 (1964), Pintaric v McHale. Election was not rendered invalid by the fact that unused ballots and stubs were missing at time of recount.

1928 OAG 2615. Under former GC 5090 (Repealed), it was the duty of the board of deputy state supervisors of election to count the ballots placed in envelopes for uncounted ballots by the judges and returned to the board of deputy state supervisors with the returns of the election.

1928 OAG 1548. It is the duty of election officers of each precinct not less than five days after an election for members of boards of education to make returns to the clerk of the board of education of the district. All uncounted ballots in such elections are likewise to be returned to the clerk of the board of education of the district. All ballots other than the uncounted ballots are to be returned by the election officers to the board of deputy state supervisors of elections.

1927 OAG 1387. In the absence of a proceeding under the statutes to contest an election, there is no authority under the election laws of Ohio to obtain a recount of the ballots.

1927 OAG 1346. A grand jury has right to require the production of ballots in the custody of election officials in connection with grand jury's investigation of crimes and offenses.

CANVASSES

3505.32 Canvass of returns

Not earlier than the eleventh day nor later than the fifteenth day after a general or special election, the board of elections shall begin to canvass the election returns from the precincts in which electors were entitled to vote at such election. It shall continue such canvass daily until it is completed and the results of the voting in such election in each of such precincts are determined.

The county executive committee of each political party, each committee designated in a petition nominating an independent or nonpartisan candidate for election at such election, each committee designated in a petition to represent the petitioners thereon pursuant to which a question or issue was submitted at such election, and any committee opposing a question or issue submitted at such election and which was permitted by section 3505.21 of the Revised Code to have a qualified elector serve as a witness during the counting of the ballots at each polling place at such election may designate a qualified elector who may be present and may witness the making of such official canvass.

The board shall first open all envelopes containing uncounted ballots and shall count and tally them. The board shall then examine that set of pollbooks, poll lists, and tally sheets received from each polling place for its files, and shall compare the results of the voting in such polling place with the summary statement received from such polling place. If it finds that such records, or any part thereof, are missing, or that they are incomplete, are not properly certified, or are ambiguous, or that the results of the voting in such polling place as shown on the summary statement from such polling place are different from the results of the voting in such polling place as shown by the pollbooks, poll lists, or tally sheets from such polling place, or that there is any other defect in such records, the board may examine that set of pollbooks, poll lists, and tally sheets received from such polling place for filing with the

clerk of the court of common pleas, provided that it shall not break the seal on such set of pollbooks, poll lists, and tally sheets or examine same, except in the presence of the clerk or a deputy clerk of the court of common pleas. Upon request of the board, the clerk of the court of common pleas or one of his deputies designated by him for that purpose shall attend at the office of the board and witness the breaking of such seal and the examination of such set of pollbooks, poll lists, and tally sheets. The board may make such changes in both of said sets of pollbooks, poll lists, and tally sheets as it deems proper to correct errors or defects therein, but no such changes shall be made in the set of pollbooks, poll lists, and tally sheets to be filed with the clerk of the court of common pleas except in the presence of such clerk or his deputy, and, after examining or making any changes in the set of pollbooks, poll lists, and tally sheets which are to be filed with said clerk of the court of common pleas, said set shall be resealed in the presence of such clerk or his deputy.

In connection with its investigation of any apparent or suspected error or defect in the election returns from a polling place, the board may cause subpoenas to be issued and served requiring the attendance before it of the election officials of such polling place, and it may examine them under oath regarding the manner in which the votes were cast and counted in such polling place, or the manner in which the returns were prepared and certified, or as to any other matters bearing upon the voting and the counting of the votes in such polling place at such election.

If a person for whom votes were cast in a polling place at such election, or a member of the board, files with the board, at the time of, or prior to, the canvass of returns a written statement alleging that the board is unable to determine the correct result of the voting at such polling place at such election without opening the sealed container containing the ballots which were counted in such polling place at such election, and requesting that the board open such sealed container and count such ballots, the board, if it has reasonable cause to believe said allegations, upon the order of a majority of its members, shall open such sealed container and count such ballots, during the official canvass, in the presence of all of the members of the board and any other persons who are entitled to witness the official canvass.

HISTORY: 1984 S 79, eff. 7-4-84
1980 H 1062; 129 v 1569; 125 v 903; 1953 H 1; GC 4785-152

CROSS REFERENCES

Days counted to ascertain time, 1.14
Oaths, 3.20 to 3.24
Common pleas court clerk, Ch 2303
Person changing residence prior to thirty-first day before election, voting by absent voter's ballot, 3503.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 181, 182, 185
Am Jur 2d: 25, Elections § 40, 45; 26, Elections § 296 to 303
Injunction against canvassing of votes and declaring result of election. 1 ALR2d 588

NOTES ON DECISIONS AND OPINIONS

65 OS(2d) 40, 417 NE(2d) 1375 (1981), State ex rel Byrd v Summit County Bd of Elections. Mandamus and quo warranto will not lie to compel the withdrawal of a certificate of election issued following an election, and cannot be substituted in lieu of a request for a recount pursuant to RC 3515.02, or a contest of election pursuant to RC 3515.09, since these sections provide the exclusive remedy for a recounting of the votes, or a correction of all errors, frauds, and mistakes which may occur at an election.

32 OS(2d) 23, 289 NE(2d) 349 (1972), State ex rel Fisher v Brown. With respect to candidates in an election in a county or in a subdivision or district less than a county, the secretary of state is not directly charged with any duty except to prescribe the form of the ballot.

171 OS 263, 169 NE(2d) 551 (1960), State ex rel Feighan v Green. Where, in the exercise of its discretionary authority under RC 3505.32 a board of elections opens sealed containers of ballots and "counts" them, and errors are found by it in its declaration of results and abstract previously certified, which errors required the issuance of a corrected declaration and abstract as provided in RC 3513.22, such procedure by the board of elections does not constitute a recount within the meaning of RC 3515.06 authorizing the person not nominated to make application for a recount of additional precincts not theretofore recounted.

66 App 482, 35 NE(2d) 474 (1940), State ex rel Farnsworth v McCabe. Fact that a county board of elections has canvassed and counted the returns from a precinct as made by the precinct officials which on its face shows that the total number of votes cast for the candidates for an office which was listed toward the end of the ballot is substantially less than the total number of votes cast for the candidates for the first office on the ballot does not indicate that the county board has been negligent in canvassing and counting such returns.

66 App 482, 35 NE(2d) 474 (1940), State ex rel Farnsworth v McCabe. This section does not authorize a county board of elections to examine and recount ballots returned by precinct officials.

3505.33 Board of elections to declare the results; tie vote; abstracts and reports; correcting certified abstract

When the board of elections has completed the canvass of the election returns from the precincts in its county, in which electors were entitled to vote at any general or special election, it shall determine and declare the results of the elections determined by the electors of such county or of a district or subdivision within such county. If more than the number of candidates to be elected to an office received the largest and an equal number of votes, such tie shall be resolved by lot by the chairman of the board in the presence of a majority of the members of the board. Such declaration shall be in writing and shall be signed by at least a majority of the members of the board. It shall bear the date of the day upon which it is made, and a copy thereof shall be posted by the board in a conspicuous place in its office. The board shall keep such copy posted for a period of at least five days.

Thereupon the board shall promptly certify abstracts of the results of such elections within its county, in such forms as the secretary of state prescribes. Such forms shall be designated and shall contain abstracts as follows:

Form No. 1. An abstract of the votes cast for the office of president and vice-president of the United States.

Form No. 2. An abstract of the votes cast for the office of governor and lieutenant governor, secretary of state, auditor of state, treasurer of state, and attorney general.

Form No. 3. An abstract of the votes cast for the office of governor and lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, chief justice of the supreme court of Ohio, judge of the supreme court of Ohio, member of the senate of the congress of the United States, member at large of the house of representa-

tives of the congress of the United States, district member of the house of representatives of the congress of the United States, and an abstract of the votes cast upon each question or issue submitted at such election to electors throughout the entire state.

Form No. 4. An abstract of the votes cast for the office of member of the senate of the general assembly, and member of the house of representatives of the general assembly.

Form No. 5. A report of the votes cast for the office of member of the state board of education, judge of the court of appeals, judge of the court of common pleas, judge of the probate court, county commissioner, county auditor, prosecuting attorney, clerk of the court of common pleas, sheriff, county recorder, county treasurer, county engineer, and coroner.

Form No. 6. A report of the votes cast upon all questions and issues other than such questions and issues which were submitted to electors throughout the entire state.

Form No. 7. A report of the votes cast for municipal offices, township offices, and the office of member of a board of education.

One copy of each of these forms shall be kept in the office of the board. One copy of each of these forms shall promptly be sent to the secretary of state, who shall place the records contained in forms No. 1, No. 2, No. 3, and No. 4 in electronic format. One copy of Form No. 2 shall promptly be mailed to the president of the senate of the general assembly at his office in the statehouse. The board shall also at once upon completion of the official count send a certified copy of that part of each of the forms which pertains to an election in which only electors of a district comprised of more than one county but less than all of the counties of the state voted to the board of the most populous county in such district. It shall also at once upon completion of the official count send a certified copy of that part of each of the forms which pertains to an election in which only electors of a subdivision located partly within the county voted to the board of the county in which the major portion of the population of such subdivision is located.

If, after certifying and sending abstracts and parts thereof, a board finds that any such abstract or part thereof is incorrect, it shall promptly prepare, certify, and send a corrected abstract or part thereof to take the place of each incorrect abstract or part thereof theretofore certified and sent.

HISTORY: 1987 H 231, eff. 10-5-87
1982 H 345; 1977 S 115; 126 v 655; 1953 H 1; GC 4785-153

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.70

CROSS REFERENCES

State board of education; election of members, 3301.011
Term of office of state board members, 3301.021
Results of state officer election returns to be declared in general assembly, O Const Art III §3

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 112, 116, 133, 173, 181 to 185; 56, Initiative and Referendum § 46
Am Jur 2d: 26, Elections § 298 et seq., 303 et seq., 315

NOTES ON DECISIONS AND OPINIONS

32 OS(2d) 23, 289 NE(2d) 349 (1972), State ex rel Fisher v Brown. With respect to candidates in an election in a county or in a subdivision or district less than a county, the secretary of state is not directly charged with any duty except to prescribe the form of the ballot.

1962 OAG 3005; overruled on other grounds by OAG 83-095 and OAG 88-020. Where there is a tie vote, and the tie is resolved by lot by the chairman of the board of elections, the loser of the drawing is then in the same position as if he had received the lowest number of votes originally, and cannot be certified as elected even if the winner should later fail to qualify for the office.

1951 OAG 199. Where two candidates for governor receive the highest and an equal number of votes in a precinct, the issue of which party shall be considered "the dominant political party" in that precinct shall be resolved by lot by the chairman of the board of elections according to the procedure established by this section, and the board shall then designate one of the judges who is a member of such "dominant political party" to serve as presiding judge in that precinct at the next election.

3505.34 Canvass of abstracts of votes for state offices

During the first week of the regular session of the general assembly following a regular state election, the president of the senate, in the presence of a majority of the members of each house of the general assembly, shall open, announce, and canvass the abstracts of the votes cast for the offices of governor and lieutenant governor, secretary of state, auditor of state, treasurer of state, and attorney general, as contained in the Form No. 2 sent to him as required by section 3505.33 of the Revised Code, and shall determine and declare the results of such election for such offices. The joint candidates for governor and lieutenant governor and the candidate for each other office who received the largest number of votes shall be declared elected to such office. If two or more candidates for election to the same office, or two or more sets of joint candidates for governor and lieutenant governor, receive the largest and an equal number of votes, one of them, or one set of joint candidates for governor and lieutenant governor, shall be declared elected to such office by a majority of the votes of all of the members of the senate and the house of representatives of the general assembly. If said Form No. 2 has not at such time been received by the president of the senate from the board of elections of any county, the secretary of state, upon request of the president of the senate, shall furnish to him such copies of said Form No. 2 as have not been received by him. When said canvass has been completed and the results of the election declared, the president of the senate shall certify to the secretary of state the names of the persons declared elected together with the title of the office to which each has been elected, and from such certification the secretary of state shall issue a certificate of election to the officials declared elected and so certified to the secretary of state. Thereupon the governor shall forthwith issue a commission to each of the persons elected to such offices upon the payment to the secretary of state of the fee required by section 107.06 of the Revised Code.

HISTORY: 1977 S 115, eff. 3-10-78
1953 H 1; GC 4785-154

CROSS REFERENCES

Results of state officer election returns to be declared in general assembly, O Const Art III §3

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 112, 116, 133, 173, 181 to 185; 56, Initiative and Referendum § 46
Am Jur 2d: 26, Elections § 292 to 303

NOTES ON DECISIONS AND OPINIONS

11 OS(3d) 90, 11 OBR 393, 464 NE(2d) 138 (1984), State ex rel Williamson v Cuyahoga County Bd of Elections. Where a city charter fails to clearly define the number of votes required to elect a law director where there is only one candidate, the general law of RC 3505.34 controls.

1930 OAG 2679. When, under GC 4785-155 (RC 3505.35), the secretary of state has opened the abstracts submitted in accordance with GC 4785-153 (RC 3505.33), showing the votes cast for the offices included in the abstract submitted to the president of the senate, and publicly canvassed these returns, in the event he has reason to believe that material errors may exist in some of the abstracts from the various counties, it is his duty to require the boards of elections of such counties to recheck the abstracts to correct possible errors, thus enabling the president of the senate to have correct abstracts to canvass, as provided in O Const Art III §3, and this section.

3505.35 Canvass of abstracts by secretary of state

When the secretary of state has received from the board of elections of every county in the state Form No. 3, as provided for in section 3505.33 of the Revised Code, he shall promptly fix the time and place for the canvass of such abstracts, and the time fixed shall not be later than ten days after such abstracts have been received by the secretary of state from all counties. He shall notify the governor, auditor of state, attorney general, and the chairman of the state central committee of each political party of the time and place fixed. At such time and in the presence of such of the persons so notified who attend, the secretary of state shall canvass the abstracts contained in said Form No. 3 and shall determine and declare the results of all elections in which electors throughout the entire state voted. If two or more candidates for election to the same office, or two or more sets of joint candidates for governor and lieutenant governor, receive the largest and an equal number of votes, such tie shall be resolved by lot by the secretary of state. Such declaration of results by the secretary of state shall be in writing and shall be signed by him. It shall bear the date of the day upon which it is made, and a copy thereof shall be posted by the secretary of state in a conspicuous place in his office. He shall keep such copy posted for a period of at least five days.

Such declaration of results made by the secretary of state, insofar as it pertains to the offices of governor and lieutenant governor, secretary of state, auditor of state, treasurer of state, and attorney general, is only for the purpose of fixing the time of the commencement of the period of time within which applications for recounts of votes may be filed as provided by section 3515.02 of the Revised Code.

HISTORY: 1977 S 115, eff. 3-10-78
1953 H 1; GC 4785-155

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 112, 116, 133, 173, 181 to 185; 56, Initiative and Referendum § 46; 84, State of Ohio § 105
Am Jur 2d: 26, Elections § 296 to 303, 304 et seq.

NOTES ON DECISIONS AND OPINIONS

1961 OAG 2716. While the amendment to O Const Art III, relating to senate confirmation of appointments by the governor, became a part of the Constitution as of the date of its approval by the voters, Nov 7, 1961, the governor was not required to report appointments made between Nov 7, 1961 and Nov 21, 1961, to the November session of the senate as the canvassing of the abstracts of vote and the declaration of the secretary of state that the amendment had been approved was not made until Dec 1, 1961; however, to comply with the spirit of Art II, § 21, such appointments should be reported to the next session of the senate.

1930 OAG 2523. The canvass of the returns of an election to fill an unexpired term in the office of the treasurer of state should be made by the secretary of state in the manner provided by this section, and the person receiving the highest number of votes should be declared duly elected by the governor.

3505.36 Canvass of abstracts of district candidates

When the board of elections of the most populous county of a district comprised of more than one county but less than all of the counties of the state has received from the board of every county in such district certified copies of parts of abstracts pertaining to an election in which only the electors of such district voted, such board shall canvass such parts of abstracts and determine and declare the results of the elections determined by the electors of such district. If more than the number of candidates to be elected to an office receive the largest number and an equal number of votes, such tie shall be resolved by lot by the chairman of such board in the presence of all of the members of such board. Such declaration of results by such board shall be in writing and shall be signed by at least a majority of the members of such board. It shall bear the date of the day upon which it was made, and a copy thereof shall be posted by the board in a conspicuous place in its office. The board shall keep such copy posted for a period of at least five days.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-156

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 112, 116, 133, 173, 181 to 185; 56, Initiative and Referendum § 46
Am Jur 2d: 26, Elections § 296 et seq., 304 et seq.

3505.37 Canvass of abstracts by board of elections of county wherein major portion of a subdivision is located

When the board of elections of a county in which the major portion of the population of a subdivision located in more than one county is located receives from the boards of each county in which other portions of such subdivision are located parts of abstracts pertaining to an election in which only the electors of such subdivision voted, such board shall canvass such parts of abstracts and determine and declare

the results of the elections determined by the electors of such subdivision. If more than the number of candidates to be elected to an office receive the largest number and an equal number of votes, such tie shall be resolved by lot by the chairman of such board in the presence of a majority of the members of such board. Such declaration of results by such board shall be in writing and shall be signed by at least a majority of the members of such board. It shall bear the date of the day upon which it is made, and a copy thereof shall be posted by such board in a conspicuous place in its office. The board shall keep such copy posted for a period of at least five days.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-157

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 112, 116, 133, 173, 181 to 185; 56, Initiative and Referendum § 46
Am Jur 2d: 26, Elections § 296 et seq., 304 et seq.

CERTIFICATES OF ELECTION

3505.38 Issuing of certificates of election

Election officials who are required to declare the results of a special or general election in which persons were elected to offices shall, unless otherwise provided by law, issue to the persons declared elected by them appropriate certificates of election in such form as is prescribed by the secretary of state. Such certificates of election shall be issued by such election officials after the time within which applications may be made for recounts of votes has expired, and after recounts of votes which have been applied for are completed.

All persons declared to be elected by the president of the senate as provided for in section 3505.34 of the Revised Code shall be issued certificates of election by the secretary of state as provided for in such section and shall be issued commissions for such offices by the governor, upon the payment of the fee required by section 107.06 of the Revised Code, provided that the board of elections required to determine and declare the results of the election for candidates for election to the office of member of the house of representatives of the congress of the United States or member of the state board of education shall, in lieu of issuing a certificate of election, certify to the secretary of state the names of such candidates declared elected, and the secretary of state, from such certification, shall issue to the persons certified to him as elected as a member of the house of representatives of the congress of the United States or member of the state board of education a certificate of his election, signed by the governor, sealed with the great seal of the state, and countersigned by the secretary of state. Certificates of election of members of the house of representatives of the congress of the United States shall be forwarded by registered mail to the clerk of the house of representatives of the congress of the United States, Washington, D.C., and the person elected to such office shall be advised by letter from the secretary of state that his certificate of election has been forwarded to said clerk.

HISTORY: 127 v 741, eff. 1-1-58
1953 H 1; GC 4785-158

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.51

CROSS REFERENCES

Evidence of membership in house of representatives or senate, 101.22
Seal, 121.20
Certificate as to election of certain municipal officers, 733.15
Delegates and party committeemen, certificates of election, 3513.24
Certificate of election to be denied until contributions and expenditures law complied with, 3517.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 112, 116, 133, 173, 181 to 185; 56, Initiative and Referendum § 46
Am Jur 2d: 26, Elections § 298 et seq., 304 to 308

NOTES ON DECISIONS AND OPINIONS

32 OS(2d) 23, 289 NE(2d) 349 (1972), State ex rel Fisher v Brown. With respect to candidates in an election in a county or in a subdivision or district less than a county, the secretary of state is not directly charged with any duty except to prescribe the form of the ballot.

133 OS 608, 15 NE(2d) 132 (1938), Orewiler v Fisher. Where statutory provisions have been followed in determining tie vote, appellate court will not disturb result, in absence of other errors in proceeding.

1954 OAG 4584. A certificate of election is prima-facie evidence of election as state representative and the house of representatives is the judge of such election.

1930 OAG 1363. Where the voters of two or three townships constituting a rural school district were deprived of the right to vote for members of a board of education, the canvassing authority, possessing only ministerial power, must issue certificates of election to the persons who appear elected on the face of the returns, unless enjoined from so doing by a court of competent jurisdiction.

PRESIDENTIAL ELECTORS' DUTIES

3505.39 Meeting of presidential electors

The secretary of state shall immediately upon the completion of the canvass of election returns mail to each presidential elector so elected a certificate of his election and shall notify him to attend, at a place in the state capitol which the secretary of state shall select, at twelve noon on the day designated by the congress of the United States, a meeting of the state's presidential electors for the purpose of discharging the duties enjoined on them by the constitution of the United States. The secretary of state, ten days prior to such meeting, shall by letter remind each such elector of the meeting to be held for casting the vote of the state for president and vice-president of the United States. Each such elector shall give notice to the secretary of state before nine a.m. of that day whether or not he will be present at the appointed hour ready to perform his duties as a presidential elector. If at twelve noon at the place selected by the secretary of state presidential electors equal in number to the whole number of senators and representatives to which the state may at the time be entitled in the congress

of the United States, are not present, the presidential electors present shall immediately proceed, in the presence of the governor and secretary of state, to appoint by ballot such number of persons to serve as presidential electors so that the number of duly elected presidential electors present at such time and place plus the presidential electors so appointed shall be equal in number to the whole number of senators and representatives to which the state is at that time entitled in the congress of the United States; provided, that each such appointment shall be made by a separate ballot, and that all appointments to fill vacancies existing because duly elected presidential electors are not present shall be made before other appointments are made, and that in making each such appointment the person appointed shall be of the same political party as the duly elected presidential elector whose absence requires such appointment to be made. In case of a tie vote the governor shall determine the results by lot. The electors making such appointments shall certify forthwith to the secretary of state the names of the persons so appointed and the secretary of state shall immediately issue to such appointees certificates of their appointment and notify them thereof. All of the state's presidential electors, both those duly elected who are then present and those appointed as herein provided, shall then meet and organize by electing one of their number as chairman and by designating the secretary of state as ex officio secretary and shall then and there discharge all of the duties enjoined upon presidential electors by the constitution and laws of the United States. Each presidential elector shall receive ten dollars for each day's attendance in Columbus as such and mileage at the rate of ten cents per mile for the estimated distance by the usual route from his place of residence to Columbus. Such compensation and mileage shall be upon vouchers issued by the secretary of state, and shall be paid by the treasurer of state out of the general fund.

HISTORY: 127 v 863, eff. 9-16-57
1953 H 1; GC 4785-160

CROSS REFERENCES

Days counted to ascertain time, 1.14
State treasurer, Ch 113

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 15, 112, 116; 84, State of Ohio § 105
Am Jur 2d: 77, United States § 43

NOTES ON DECISIONS AND OPINIONS

1928 OAG 3021. The provisions of former GC 5171 (Repealed), 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, were directory, and it was not the duty of the governor to instruct such electors to be present and give such notice.

3505.40 Presidential electors required to vote for party nominees

A presidential elector elected at a general election or appointed pursuant to section 3505.39 of the Revised Code shall, when discharging the duties enjoined upon him by the constitution or laws of the United States, cast his electoral vote for the nominees for president and vice-president of the political party which certified him to the secretary of state as a presidential elector pursuant to law.

HISTORY: 1969 H 500, eff. 11-14-69

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 15, 112, 116
Am Jur 2d: 77, United States § 43

Chapter 3506

VOTING AND TABULATING EQUIPMENT

MARKING DEVICES

3506.01 Definitions
3506.02 Adoption of marking devices and tabulating equipment
3506.03 Acquisition of marking devices and tabulating equipment
3506.04 Purchase of marking devices in limited number; custody of equipment; experimental use
3506.05 Approval of marking devices and tabulating equipment
3506.06 Specifications for marking device

TABULATING EQUIPMENT AND BALLOT CARDS

3506.07 Specifications for tabulating equipment
3506.08 Specifications of ballot cards and write-in ballots
3506.09 Ballots for use with electronic equipment
3506.10 to 3506.14 Ballot cards—Repealed

ELECTION PROCEDURES WHERE DEVICES USED

3506.15 Procedure at close of polls—Repealed
3506.16 Rearrangement of precincts using marking devices; counting stations
3506.17 Challengers and witnesses
3506.18 Automatic tabulating equipment—Repealed
3506.19 Testing of tabulating equipment; copy of computer program to be filed with secretary of state

CROSS REFERENCES

Board of voting machine and marking device examiners, OAC Ch 111:3-1

Misconduct of board of elections counting votes, 3599.16
Sealed package of marking devices, duties of person entrusted to prepare, hold, or deliver, 3599.23

Removal of pencils or markers from poll, penalty, 3599.24
Ballot tampering, penalty, 3599.26
Improper possession of or tampering with tabulating equipment or marking devices, penalty, 3599.27

MARKING DEVICES

3506.01 Definitions

As used in Chapters 3501., 3503., 3505., 3506., 3507., 3509., 3511., 3513., 3515., 3517., 3519., 3521., 3523., and 3599. of the Revised Code:

(A) "Marking device" means an apparatus operated by a voter to record his choices through the piercing or marking of ballots enabling them to be examined and counted by automatic tabulating equipment.

(B) "Ballot card" and "ballot" may be used interchangeably, and shall include labels containing names of offices and candidates and statements of questions and issues, where such labels form a part of the marking device, and shall also include envelopes of similar content and function. Where appropriate, a ballot shall permit write-in voting.

(C) "Automatic tabulating equipment" means a machine or interconnected or interrelated machines that will automatically examine and count votes recorded on ballots.

(D) "Central counting station" means a location or one of a number of locations, designated by the board of elections for the automatic examining, sorting, or counting of ballots.

HISTORY: 1973 S 291, eff. 11-21-73
129 v 1653; 128 v 82

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154, 156
Am Jur 2d: 26, Elections § 230 to 232

NOTES ON DECISIONS AND OPINIONS

OAG 74-103. Witnesses have a right to see each ballot, including those designed to be counted by automatic tabulating equipment.

3506.02 Adoption of marking devices and tabulating equipment

Marking devices and automatic tabulating equipment, may be adopted for use in elections in any county or municipal corporation in the following manner:

(A) By the board of elections;

(B) By the board of county commissioners of such county or the legislative authority of such municipal corporation on the recommendation of the board of elections;

(C) By the affirmative vote of a majority of the electors of such county or municipal corporation voting upon the question of the adoption of such equipment in such county or municipal corporation.

If a petition signed by two per cent of the electors voting at the last preceding general election held in a county or municipal corporation is filed with the board of elections, such board shall submit to the electors of such county or municipal corporation at the next general election occurring not less than seventy-five days thereafter the question "Shall marking devices and automatic tabulating equipment be adopted in the county (or municipal corporation) of _____?" Upon the filing of such petition, the board of elections shall forthwith notify the board of county commissioners or the legislative authority of such municipal corporation, and such board or such legislative authority shall forthwith determine whether it would prefer to purchase or lease such equipment in whole or in part for cash and if so whether it will be necessary or advisable to issue bonds to provide funds for the purchase of such equipment, if adopted. If the board of county commissioners or legislative authority determines that it is necessary or advisable to issue bonds therefor, it shall by resolution provide for the submission on the same ballot, but as a separate issue, the question of issuing such bonds. The question of issuing such bonds shall be submitted in the manner and form provided in Chapter 133. of the Revised Code, and such bonds, if approved, shall be issued in conformity with and subject to the limitations of such chapter. If a majority of the electors voting on the question so submitted vote in the affirmative, such equipment shall be adopted.

HISTORY: 1989 H 230, eff. 10-30-89
1980 H 1062; 128 v 82

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

County commissioners, Ch 307

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154
Am Jur 2d: 26, Elections § 230 to 232

3506.03 Acquisition of marking devices and tabulating equipment

Upon the adoption of marking devices and automatic tabulating equipment either by the action of the board of elections or by the board of county commissioners or by the legislative authority of a municipal corporation, on the recommendation of the board of elections or by the affirmative vote of a majority of the electors voting on the question of the adoption of such equipment, such board of county commissioners or such legislative authority shall acquire the equipment by any one or by any combination of the following methods:

(A) By purchasing in whole or in part such equipment and paying the purchase price therefor in cash; or out of the proceeds of the issuance and sale of bonds, provided the question of issuing bonds for such purpose was submitted to the vote of the electors of the county or municipal corporation pursuant to section 3506.02 of the Revised Code and provided the issuance of such bonds was approved;

(B) By purchasing in whole or in part such equipment and paying the purchase price in a series of consecutive annual approximately equal installments the number of which shall not exceed the estimated number of years of usefulness of such equipment, as determined by the fiscal officer of the county or municipal corporation and by issuing to the seller negotiable promissory notes of the county or municipal corporation, evidencing the annual installments to become due, specifying the terms of purchase, and bearing interest at a rate not exceeding the rate determined as provided in section 9.95 of the Revised Code, which

notes shall not be subject to Chapter 133. of the Revised Code; provided the legislation authorizing the issuance of such notes shall make provision for levying and collecting annually by taxation amounts sufficient to pay the interest on such notes and to provide for the payment of the principal thereof when due, and provided that the amounts of such tax so levied each year may be reduced by the amount by which revenues available for appropriation for the payment of the expenses of conducting elections are appropriated for, and applied to, the payment of such interest and principal of such notes;

(C) By leasing such equipment in whole or in part under contract of lease which shall provide for the rental, and also may provide for an option to purchase them or parts of them at a fixed price with the rentals paid to be applied to the purchase price, and payments under such contracts of lease may be made by the county or municipal corporation out of funds of the county or municipal corporation not otherwise appropriated; or which may be appropriated by the board of county commissioners or the legislative authority of the municipal corporation, out of funds appropriated by the board of county commissioners to the board of elections for the costs and expenses of elections, with the approval of the board of elections; or out of the funds the board of county commissioners or legislative authority of the municipal corporation is authorized to provide by a levy and collection thereof annually by taxation.

HISTORY: 1989 H 230, eff. 10-30-89
1981 H 95; 1979 H 275; 1969 S 245; 129 v 582; 128 v 82

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154
Am Jur 2d: 26, Elections § 230, 232

3506.04 Purchase of marking devices in limited number; custody of equipment; experimental use

If it is impracticable to supply each election precinct with marking devices for use at the next election following the adoption of such equipment, as many shall be supplied for that election and the next succeeding elections as it is practicable to procure either by purchase or lease, or by a combination of both, and such equipment may be used in election precincts within the county or municipal corporation as the board of elections directs until such time as it is practicable to provide the total number of marking devices necessary to supply all precincts within the county or municipal corporation; provided that the total number of marking devices necessary to supply all precincts shall be procured by purchase or lease, or by a combination of both as soon as practicable after their adoption. Marking devices need not be provided for polling places in unincorporated areas and in villages having less than three hundred voters where it is not feasible in the opinion of the board to provide precincts of sufficient size to permit an economical use of marking devices.

Whenever any municipal corporation has acquired marking devices by purchase or lease, or by a combination of both, and they are later adopted for the entire county, such municipal corporation, if it has already paid in cash the full purchase price, shall be reimbursed by the county to the extent of the appraised value of such equipment. If it has not paid the full purchase price, the county shall take over and assume all future obligations of such municipal corporation under contracts of purchase or lease covering such equipment or reimburse the municipal corporation for all future payments made by it with respect thereto, whereupon such equipment shall become the property of the county.

The board of elections shall be charged with the custody of all equipment acquired by the county or by a municipal corporation within the county, and shall see that all such equipment is kept in proper working order and in good repair. The board of county commissioners of any county or the legislative authority of any municipal corporation, or the board of elections, upon recommendation of the board of elections, may, prior to the adoption of such equipment, acquire by purchase or lease or by loan, for the experimental use in a limited number of precincts, such equipment, and such experimental use shall be valid for all purposes as if such equipment had been formally adopted.

All equipment acquired by any county or municipal corporation by any of the methods provided for in this section shall be exempt from levy and taxation.

HISTORY: 128 v 82, eff. 9-28-59

CROSS REFERENCES

Exempting property and bonds from taxation, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154; 86, Taxation § 578
Am Jur 2d: 26, Elections § 230 to 232

3506.05 Approval of marking devices and tabulating equipment

No marking device and associated automatic tabulating equipment shall be purchased, leased, or used in any county unless they, and a manual of procedures governing their use, have been approved by the secretary of state and unless the local county boards of elections have assured that a demonstration of the use of such equipment has been made available to all interested electors. Whenever approval is sought for a marking device, automatic tabulating equipment, and manual of procedures, the secretary of state shall appoint a board of examiners consisting of one competent and experienced election officer and two persons who are knowledgeable about the operation of such marking devices and tabulating equipment who shall serve during his term. For their services each member of such board shall receive two hundred dollars for each combination of marking device, tabulating equipment, and manual of procedures examined and reported. Neither the secretary of state, the board of examiners, nor any public officer who participates in the authorization, or purchase of such equipment shall have any pecuniary interest in any such equipment. The person having legal right to control use of the marking device, tabulating equipment, and manual of procedures, or his agent, may request the secretary of state to approve such equipment. Such request shall be accompanied by a fee of six hundred dollars and a detailed explanation of the construction and method of operation of the equipment and a full statement of its advantages. Within thirty days after

such request and payment of such fee, the board of examiners shall examine the equipment and file with the secretary of state a written report thereon with its recommendations and its determination whether the equipment can be safely used by the voters at elections under the conditions prescribed in Title XXXV of the Revised Code. If the board finds that the equipment can be used safely and can be depended upon accurately and continuously to record and count the votes of electors, the secretary of state shall approve such equipment and shall notify the board of elections of such approval. Such equipment may then be adopted for use at elections. When such equipment has been approved, any improvement or change, or substitution of one computer for another that does not impair its accuracy, efficiency, or ability to meet such requirements shall not render necessary a re-examination or a reapproval thereof.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 291; 128 v 82

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154
Am Jur 2d: 26, Elections § 230, 232

3506.06 Specifications for marking device

No marking device shall be approved by the board of examiners or the secretary of state, or be purchased, rented, or otherwise acquired, or used, unless it fulfills the following requirements:

(A) It shall permit and require voting in absolute secrecy, and shall be so constructed that no person can see or know for whom any other elector has voted or is voting, except an elector who is assisting a voter as prescribed by section 3505.24 of the Revised Code.

(B) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, whether or not the name of any such person appears on a ballot as a candidate; to vote for as many persons for an office as he is entitled to vote for; and to vote for or against any question upon which he is entitled to vote.

(C) It shall permit each elector to write in the names of persons for whom he desires to vote, whose names do not appear upon the ballot, if such write-in candidates are permitted by law.

(D) It shall permit each elector, at all presidential elections, by one punch or mark to vote for candidates of one party for president, vice president, and presidential electors.

(E) It shall be durably constructed of material of good quality in a neat and workmanlike manner, and in form which shall make it safely transportable.

(F) It shall be so constructed that a voter may readily learn the method of operating it and may expeditiously cast his vote for all candidates of his choice.

HISTORY: 1973 S 291, eff. 11-21-73
129 v 1653; 128 v 82

CROSS REFERENCES

Illiterate, infirm, and blind electors may request assistance voting, 3505.24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154
Am Jur 2d: 26, Elections § 230, 232

TABULATING EQUIPMENT AND BALLOT CARDS

3506.07 Specifications for tabulating equipment

No automatic tabulating equipment shall be approved by the board of examiners or the secretary of state, or be purchased, rented, or otherwise acquired, or used, unless it can be set by election officials, to examine ballots and to count votes accurately for each candidate, question, and issue, excluding any punched or marked contrary to the instructions printed on such ballots; provided that such equipment shall not be required to count write-in votes or the votes on any ballots that have been voted other than at the regular polling place on election day.

HISTORY: 1973 S 291, eff. 11-21-73
129 v 1653; 128 v 82

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154
Am Jur 2d: 26, Elections § 230 to 232, 257 to 259

3506.08 Specifications of ballot cards and write-in ballots

When a marking device designed for use with printed ballot cards has been approved by the secretary of state pursuant to section 3506.05 of the Revised Code, he shall for each election prescribe specifications for the printing of such ballot cards that will present to voters the same information with respect to candidates, offices, questions, and issues obtainable from paper ballots for the same election prepared pursuant to Chapter 3505. of the Revised Code.

Each ballot card shall have attached two stubs, each of the width of the ballot and each at least one inch in length. The stubs shall be separated from the ballot card and from each other by perforated lines. One stub shall be known as Stub A and shall have printed on its face "Stub A" and "Consecutive Number...." The other stub shall be known as Stub B and shall have printed on its face "Stub B" and "Consecutive Number...." and the instructions to the voter which shall be printed in upper and lower case ten point type. Each ballot card of each kind of ballot provided for use in each precinct shall be numbered consecutively by printing such number upon both of the stubs attached thereto. The board of elections may order the ballot type, part, rotation series, and the precinct designation printed and pre-punched at the top of each ballot card. This information shall be separated from the remaining portion of the ballot card.

The secretary of state shall further prescribe the supplementary means, whether paper ballots, ballot envelopes, or

other, by which a voter may write in the names of candidates whose names do not appear on the ballot.

HISTORY: 1973 S 291, eff. 11-21-73

Note: Former 3506.08 repealed by 1973 S 291, eff. 11-21-73; 129 v 1653, 582; 128 v 82.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154
Am Jur 2d: 26, Elections § 230, 254

3506.09 Ballots for use with electronic equipment

Where a marking device designed for use with electronic data processing cards has been approved by the secretary of state pursuant to section 3506.05 of the Revised Code, he shall for each election prescribe for use with such marking device ballot labels that will present to voters the same information with respect to candidates, offices, questions, and issues obtainable from paper ballots for the same election prepared pursuant to Chapter 3505. of the Revised Code.

Each ballot card shall have attached two stubs, each of the width of the ballot and each at least one inch in length. The stubs shall be separated from the ballot card and from each other by perforated lines. One stub shall be known as Stub A and shall have printed on its face "Stub A" and "Consecutive Number...." The other stub shall be known as Stub B and shall have printed on its face "Stub B" and "Consecutive Number...." and the instructions to the voter which shall be printed in upper and lower case ten point type. Each ballot card of each kind of ballot provided for use in each precinct shall be numbered consecutively by printing such number upon both of the stubs attached thereto. The board of elections may order the ballot type, part, rotation series, and the precinct designation printed and pre-punched at the top of each ballot card. This information shall be separated from the remaining portion of the ballot card.

The secretary of state shall further prescribe the supplementary means, whether paper ballots, ballot envelopes, or other, by which a voter may write in the names of candidates whose names do not appear on the ballot.

HISTORY: 1973 S 291, eff. 11-21-73

Note: Former 3506.09 was repealed by 1973 S 291, eff. 11-21-73; 1971 S 460; 128 v 82.

CROSS REFERENCES

Office type ballot, O Const Art V §2a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150 to 154
Am Jur 2d: 26, Elections § 230, 257

3506.10 to 3506.14 Ballot cards—Repealed

HISTORY: 1973 S 291, eff. 11-21-73
128 v 82

ELECTION PROCEDURES WHERE DEVICES USED

3506.15 Procedure at close of polls—Repealed

HISTORY: 1973 S 291, eff. 11-21-73
129 v 1653; 128 v 82

3506.16 Rearrangement of precincts using marking devices; counting stations

The board of elections, in counties where marking devices are in use or are to be used may combine, rearrange, and enlarge precincts and it may assign all or part of the electors of a precinct to an adjoining precinct at an election for purposes of voting; but the board shall arrange for and determine the number of marking devices to accommodate the number of electors in each precinct, considering the number of votes cast in such precinct at the next preceding election, and the number of candidates and issues to be voted upon.

The board of elections, in counties where marking devices or automatic tabulating equipment, or both, have been adopted, shall establish one or more counting stations to receive, after the polling precincts are closed, voted ballots and other precinct election supplies. Such stations shall be under the supervision and direction of the board of elections. Processing and counting of voted ballots, and the preparation of summary sheets shall be done in the presence of witnesses approved by the board of elections. A certified copy of the summary sheet for the precinct shall be immediately posted at each counting station established by the board.

HISTORY: 1986 H 555, eff. 2-26-86
1980 H 1062; 129 v 1653, 582; 128 v 82

CROSS REFERENCES

Precincts and polling places, 3501.18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 31, 156, 157
Am Jur 2d: 25, Elections § 15

NOTES ON DECISIONS AND OPINIONS

OAG 77-041. Persons who wish to register to vote on the day of a general, primary or special election need not do so at a polling place in the precinct in which they reside, provided the board of elections has located the polling place for voting purposes outside the boundaries of the precinct in which they reside.

3506.17 Challengers and witnesses

In precincts where marking devices or tabulating equipment, or both, are used, challengers and witnesses may be appointed as prescribed in section 3505.21 of the Revised Code. The duties and privileges of challengers in such precincts during the hours the polls are open, shall be as provided in section 3505.21 of the Revised Code.

Challengers shall be allowed to remain in the polling place after the polls close and may observe the processing of the ballots and the sealing and signing of the envelopes or containers or both containing the voted ballots.

Witnesses shall not be allowed in the polling place, but shall file their certificates of appointment at the proper counting station after the polls close, and may observe all functions there.

HISTORY: 129 v 1653, eff. 6-29-61
128 v 82

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 31, 156, 157
Am Jur 2d: 26, Elections § 233

3506.18 Automatic tabulating equipment—Repealed

HISTORY: 1973 S 291, eff. 11-21-73
130 v H 714; 129 v 1653

3506.19 Testing of tabulating equipment; copy of computer program to be filed with secretary of state

(A) Prior to the start of the count of the ballots, the board of elections shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all questions and issues. Public notice of the time and place of the test shall be given by proclamation or posting as in the case of notice of elections. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each question and issue, and shall include for each office one or more ballots that have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. In such test a different number of valid votes shall be assigned to each candidate for an office, and for and against each question and issue. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the board before the count is started. The tabulating equipment shall pass the same test at the beginning and conclusion of the election day count before the election returns are approved as official. On completion of the election day count, the programs, test materials, and ballots shall be sealed and retained as provided for paper ballots.

(B) A copy of any computer program needed to direct the reading of ballot cards by automatic equipment shall be filed in the office of the secretary of state prior to the election. The secretary of state may retain the program until the sixtieth day after the election.

HISTORY: 1972 S 452, eff. 6-29-72

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 155
Am Jur 2d: 26, Elections § 232

Chapter 3507

VOTING MACHINES

ADOPTION AND ACQUISITION

3507.01 Adoption of voting machines
3507.02 Acquisition of voting machines
3507.03 Purchase of voting machines in limited number; custody of machines; experimental use

APPROVAL OF VOTING MACHINES

3507.04 Approval of voting machines
3507.05 Requirements of voting machines

USE OF VOTING MACHINES

3507.06 Labels; grouping of names; rotation; political parties
3507.07 to 3507.09 Ballot labels; voting machines; counting votes—Repealed
3507.10 Counting of absent voter's ballots—Repealed
3507.11 to 3507.13 Paper ballots; keys to voting machines; recount—Repealed

MISCELLANEOUS PROVISIONS

3507.14 Size of precincts; number of officials
3507.15 Rules and regulations
3507.16 Issuance of bonds

CROSS REFERENCES

Board of voting machine and marking device examiners, OAC Ch 111:3-1
Misconduct of board of elections counting votes, 3599.16
Improper possession of or tampering with voting machine, penalty, 3599.27
All voting to be by ballot, O Const Art V §2

ADOPTION AND ACQUISITION

3507.01 Adoption of voting machines

Voting machines may be adopted for use in elections in any county or municipal corporation in the following manner:

(A) By the board of county commissioners of such county or the legislative authority of such municipal corporation on the recommendation of the board of elections;

(B) By the affirmative vote of a majority of the electors of such county or municipal corporation voting upon the question of the adoption of voting machines in such county or municipal corporation.

If a petition signed by two per cent of the electors voting at the last preceding general election held in a county or municipal corporation is filed with the board of elections, such board shall submit to the electors of such county or municipal corporation at the next general election occur-

ring not less than seventy-five days thereafter the question "Shall voting machines be adopted in the county (or municipal corporation) of _____?" Upon the filing of such petition, the board of elections shall forthwith notify the board of county commissioners or the legislative authority of the municipal corporation, and such board of county commissioners or the legislative authority of such municipal corporation shall forthwith determine whether it would prefer to purchase such machines in whole or in part for cash and if so whether it will be necessary or advisable to issue bonds to provide funds for the purchase of such voting machines, if adopted. If the board of county commissioners or legislative authority determines that it is necessary or advisable to issue bonds therefor, it shall by resolution provide for the submission on the same ballot, but as a separate issue, of the question of issuing such bonds. The question of issuing such bonds shall be submitted in the manner and form provided in Chapter 133. of the Revised Code, and such bonds, if approved, shall be issued in conformity with and subject to the limitations of such chapter. If a majority of the electors voting on the question so submitted vote in the affirmative, voting machines shall thereby be adopted.

HISTORY: 1989 H 230, eff. 10-30-89
1980 H 1062; 125 v 713; 1953 H 1; GC 4785-161

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis p 5-925

CROSS REFERENCES

Days counted to ascertain time, 1.14
Powers of county commissioners, Ch 307
Municipal legislative authorities, 705.41, 705.52, 705.72
Subdivisions' chief health officers to report deaths monthly to elections board, 3503.18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 144 to 147, 149
Am Jur 2d: 26, Elections § 232, 253

NOTES ON DECISIONS AND OPINIONS

135 OS 458, 21 NE(2d) 467 (1939), State ex rel Fisher v Sherman. Under this section and GC 4785-161a (RC 3507.03), voting machines may be rented only (a) where electors adopted voting machines prior to effective date of this section, (b) where temporarily necessary to equip all precincts until a full quota for a county or municipality can be supplied under contract of purchase, or (c) for experimental use in a limited number of precincts in a county or municipality.

1957 OAG 984. Under the Sandusky city charter the general laws of the state relative to the use of voting machines in municipal elections are applicable, and may be used in the election of a city commissioner.

1942 OAG 5031. Board of county commissioners is under no mandatory duty to adopt voting machines for county merely because board of elections has recommended such adoption.

1929 OAG 1165. There can be no valid election upon the question of the adoption of voting machines by a county, prior to the general election to be held therein on the first Tuesday after the first Monday in November, 1930.

3507.02 Acquisition of voting machines

Upon the adoption of voting machines either by the action of the board of county commissioners or by the legislative authority of a municipal corporation, on the recommendation of the board of elections or by the affirmative vote of a majority of the electors voting on the question of the adoption of voting machines, as provided for in section 3507.01 of the Revised Code, such board of county commissioners or such legislative authority shall acquire the necessary number of one of the makes of voting machines which have been previously approved in the manner provided by law by any one or by any combination of the following methods:

(A) By purchasing such voting machines and paying the purchase price therefor in cash out of the proceeds of the issuance and sale of bonds, provided the question of issuing bonds for such purpose was submitted to the vote of the electors of the county or municipal corporation pursuant to such section and provided the issuance of such bonds was approved;

(B) By purchasing such voting machines and paying the purchase price thereof in a series of consecutive annual approximately equal installments the number of which shall not exceed the estimated number of years of usefulness of such machines, as determined by the fiscal officer of the county or municipal corporation and by issuing to the seller negotiable promissory notes of the county or municipal corporation, evidencing the annual installments to become due, specifying the terms of purchase, and bearing interest at a rate not exceeding the rate determined as provided in section 9.95 of the Revised Code, which notes shall not be subject to Chapter 133. of the Revised Code; provided the legislation authorizing the issuance of such notes shall make provision for levying and collecting annually by taxation amounts sufficient to pay the interest on such notes and to provide for the payment of the principal thereof when due, and provided that the amount of such tax so levied each year may be reduced by the amount by which revenues available for appropriation for the payment of the expenses of conducting elections are appropriated for, and applied to, the payment of such interest and principal of such notes;

(C) By leasing such voting machines under contracts of lease which shall provide for the rental thereof, and also may provide for an option to purchase them or parts thereof at a fixed price with the rentals paid to be applied to the purchase price, and payments under such contracts of lease may be made by the county or municipal corporation out of funds of the county or municipal corporation not otherwise appropriated and which may be appropriated therefor by the board of county commissioners or the legislative authority of the municipal corporation, out of funds theretofore or thereafter appropriated by the board of county commissioners to the board of elections for the costs and expenses of elections, with the approval of the board of elections, and out of the funds the board of county commissioners or legislative authority of the municipal corporation is authorized to provide by a levy and collection thereof annually by taxation.

HISTORY: 1989 H 230, eff. 10-30-89
1981 H 95; 1979 H 275; 1969 S 245; 1953 H 1; GC 4785-161

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 144 to 147, 149
Am Jur 2d: 26, Elections § 232

NOTES ON DECISIONS AND OPINIONS

135 OS 458, 21 NE(2d) 467 (1939), State ex rel Fisher v Sherman. Except where electors of a county voted to adopt voting machines prior to effective date of this section, such statute provides for purchase but not rental of voting machines for an entire county or municipality.

1946 OAG 1118. Under GC 4785-161 (RC 3705.02) as it stands in 1946, the electors of a county may adopt the use of voting machines but they have nothing to say concerning the discontinuance of use of the machines.

1939 OAG 868. Under holding of supreme court of Ohio in case of State ex rel Fisher v Sherman, 135 OS 458, 21 NE(2d) 467 (1939), since board of county commissioners has not authorized purchase of voting machines for entire county, and since there has been no adoption of voting machines by electorate of such county, board of elections may not lawfully enter into a contract or contracts providing for purchase of one or more voting machines for less than entire county and renting of an additional number sufficient to supply the entire county.

3507.03 Purchase of voting machines in limited number; custody of machines; experimental use

If it is impracticable to supply each election precinct with voting machines for use at the next election following the adoption of voting machines, as many shall be supplied for that election and the next succeeding elections as it is practicable to procure either by purchase or lease, or by a combination of both, and such voting machines may be used in such election precincts within the county or municipal corporation as the board of elections directs until such time as it is practicable to provide the total number of voting machines necessary to supply all precincts within the county or municipal corporation; provided that the total number of voting machines necessary to supply all precincts shall be procured by purchase or lease, or by a combination of both, as soon as practicable after their adoption. Voting machines need not be provided for polling places in unincorporated areas and in villages having less than three hundred voters where it is not feasible in the opinion of the board to provide precincts of sufficient size to permit an economical use of voting machines.

Whenever any municipal corporation has acquired voting machines by purchase or lease, or by a combination of both, and voting machines are later adopted for the entire county, such municipal corporation, if it has already paid in cash the full purchase price, shall be reimbursed by the county to the extent of the appraised value of all such machines. If it has not paid the full purchase price, the county shall take over and assume all future obligations of such municipal corporation under contracts of purchase or lease covering such machines or reimburse the municipal corporation for all future payments made by it with respect thereto, whereupon such machines shall become the property of the county.

The board of elections shall be charged with the custody of all voting machines acquired by the county or by a municipal corporation within the county, and shall see that all such machines are kept in proper working order and in good repair. The board of county commissioners of any county or the legislative authority of any municipal corporation, upon recommendation of the board of elections, may, prior to the adoption of voting machines, acquire by purchase or lease or by loan, for the experimental use in a limited number of precincts, any make of voting machines approved in accordance with sections 3507.04 and 3507.05 of the Revised Code, and such experimental use shall be as valid for all purposes as if such voting machines had been formally adopted. The board of elections may consolidate precincts temporarily for the experimental use of such machines.

All voting machines acquired by any county or municipal corporation by any of the methods provided for in this section shall be exempt from levy and taxation.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-161a

CROSS REFERENCES

Exempting property and bonds from taxation, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 144 to 147, 149
Am Jur 2d: 26, Elections § 232

NOTES ON DECISIONS AND OPINIONS

135 OS 458, 21 NE(2d) 467 (1939), State ex rel Fisher v Sherman. Under GC 4785-161 (RC 3507.01, 3507.02) and this section, voting machines may be rented only (a) where electors adopted voting machines prior to effective date of GC 4785-161 (RC 3507.01, 3507.02), (b) where temporarily necessary to equip all precincts until a full quota for a county or municipality can be supplied under contract of purchase, or (c) for experimental use in a limited number of precincts in a county or municipality.

135 OS 458, 21 NE(2d) 467 (1939), State ex rel Fisher v Sherman. Contract for purchase of voting machines by a board of elections for an entire county, without seller providing therewith a satisfactory bond as required by GC 4785-161c (RC 3507.05), is illegal and void.

135 OS 458, 21 NE(2d) 467 (1939), State ex rel Fisher v Sherman. Where, upon recommendation of a board of elections, a board of county commissioners, after giving careful consideration to question of purchase of voting machines, authorizes "acquisition" of voting machines by board of elections for entire county, such authorization is not one for rental but for purchase of voting machines.

26 Abs 129 (CP, Trumbull 1938), State ex rel Fisher v Sherman; reversed by 135 OS 458, 21 NE(2d) 467 (1939). Board of elections may provide for use of voting machines for experimental purposes, without prior necessity either of authorization of board of county commissioners, or vote by majority of electors.

1961 OAG 1992. A board of elections may enter into a lease for a building to be used for the storage of voting machines.

APPROVAL OF VOTING MACHINES

3507.04 Approval of voting machines

No make of voting machine shall be purchased or used in any county unless it has been approved by the secretary of state. Whenever a voting machine is presented for approval, the secretary of state shall appoint a board of voting machine examiners consisting of one competent and experienced election officer and two persons who are knowledgeable about the operation of such equipment who shall serve during his term. For their services each member of such board shall receive two hundred dollars for each machine examined and reported. Neither the secretary of

state nor any public officer who participates in the authorization, examination, or purchase of voting machines shall have any pecuniary interest in any such machines. The owner of any voting machine, or his agent, may submit such machine to the secretary of state for examination and approval. Such submission shall be accompanied by a fee of six hundred dollars and a detailed explanation of the construction and method of operation of the machine and a full statement of its advantages. Within thirty days after such submission and payment of such fee, the board shall examine the machine and file with the secretary of state a written report thereon with its recommendations and its determination of whether the machine can be safely used by the voters at elections under the conditions prescribed in Title XXXV of the Revised Code. If the board finds that the machine can be used safely and can be depended upon accurately and continuously to record the votes of electors, the secretary of state shall approve such make of machines and shall notify boards of elections of such approval. Machines of its make may then be adopted for use at elections. When a machine has been approved, any improvement or change which does not impair its accuracy, efficiency, or ability to meet such requirements shall not render necessary a reexamination or reapproval thereof.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 291; 1953 H 1; GC 4785-161b

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 144 to 147, 149
Am Jur 2d: 26, Elections § 232, 253

3507.05 Requirements of voting machines

No voting machine shall be approved by the board of voting machine examiners or the secretary of state, or be purchased, rented, or otherwise acquired, or used, unless it fulfills the following requirements:

(A) It shall permit and require voting in absolute secrecy, and shall be so constructed that no person can see or know for whom any other elector has voted or is voting, except an elector who is assisting a voter as prescribed by section 3505.24 of the Revised Code.

(B) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, whether or not the name of any such person appears on a ballot label as a candidate; to vote for as many persons for an office as he is entitled to vote for; and to vote for or against any question upon which he is entitled to vote.

(C) It shall preclude each elector from voting for any candidate or upon any question for whom or upon which he is not entitled to vote, from voting for more persons for any office than he is entitled to vote for, and from voting for any candidates for the same office or upon any question more than once.

(D) It shall permit each voter to deposit, write in, or affix, upon devices provided for that purpose, ballots containing the names of persons for whom he desires to vote, whose names do not appear upon the voting machine. Such devices shall be susceptible of identification as to party affiliations when used at a primary election.

(E) It shall permit each elector to change his vote for any candidate or upon any question appearing upon the ballot labels, up to the time he starts to register his vote.

(F) It shall permit each elector, at all presidential elections, by one device to vote for candidates of one party for president, vice-president, and presidential electors.

(G) It shall be capable of adjustment by election officers so as to permit each elector, at a primary election, to vote only for the candidates of the party with which he has declared his affiliation and shall preclude him from voting for any candidate seeking nomination by any other political party; and to vote for the candidates for nonpartisan nomination or election.

(H) It shall have separate voting devices for candidates and questions, which shall be arranged in separate rows or columns. It shall be so arranged that one or more adjacent rows or columns may be assigned to the candidates of each political party at primary elections.

(I) It shall have a counter, or other device, the register of which is visible from the outside of the machine, and which will show at any time during the voting the total number of electors who have voted; and also a protective counter, or other device, the register of which cannot be reset, which will record the cumulative total number of movements of the registering mechanism.

(J) It shall be provided with locks and seals by the use of which, immediately after the polls are closed or the operation of the machine for an election is completed, all movement of the registering mechanism is prevented.

(K) It shall have the capacity to contain the names of candidates constituting the tickets of at least five political parties, and independent groups and such number of questions not exceeding fifteen as the secretary of state shall specify.

(L) It shall be durably constructed of material of good quality in a neat and workmanlike manner, and in form which shall make it safely transportable.

(M) It shall be so constructed that a voter may readily learn the method of operating it, may expeditiously cast his vote for all candidates of his choice, and when operated properly shall register and record correctly and accurately every vote cast.

(N) It shall be provided with a screen, hood, or curtain, which will conceal the voter while voting. During the voting, it shall preclude every person from seeing or knowing the number of votes registered for any candidate or question and from tampering with any of the registering mechanism.

Before any voting machine is purchased, rented, or otherwise acquired, or used, the person or corporation owning or manufacturing such machine must give an adequate guarantee in writing and post a bond, accompanied by satisfactory surety, with the board of county commissioners or the legislative authority of the municipal corporation, guaranteeing and securing that such machines comply fully with the requirements of this section and will correctly, accurately, and continuously register and record every vote cast, and further guaranteeing such machines against defects in workmanship and materials for a period of five years from the date of acquisition thereof.

HISTORY: 129 v 1498, eff. 8-17-61
1953 H 1; GC 4785-161c

CROSS REFERENCES

Sales warranties, express and implied, 1302.26 to 1302.30
Illiterate, infirm, and blind electors may request assistance voting, 3505.24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 144 to 147, 149
Am Jur 2d: 26, Elections § 232

NOTES ON DECISIONS AND OPINIONS

164 OS 189, 129 NE(2d) 468 (1955), State ex rel Benjamin v Brown. A county may acquire voting machines even though such machines will not be usable in proportional representation elections of members of the council of a municipal corporation within the county.

135 OS 458, 21 NE(2d) 467 (1939), State ex rel Fisher v Sherman. Contract for purchase of voting machines by a board of elections for an entire county, without seller providing therewith a satisfactory bond as required by this section, is illegal and void.

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. A petition in mandamus which alleges that relator is a qualified elector and resident of a municipality and a candidate for office therein and that the voting machine type ballot to be used, does not meet the requirement of such municipality's charter that "one space shall be left below the printed names of the candidates for each office to be voted for, wherein the voter may write" in the name of any person, and the prayer of which is for a separate paper ballot for use in voting for such office for which there have been no formal nominations, states a cause of action against the board of elections and is good against demurrer.

USE OF VOTING MACHINES

3507.06 Labels; grouping of names; rotation; political parties

The names of all candidates for an office shall be arranged in a group under the title of the office and printed on labels so that they may be rotated on the voting machine as provided in section 3505.03 of the Revised Code. Under the name of each candidate nominated at a primary election or certified by a party committee to fill a vacancy under section 3513.31 of the Revised Code, the name of the political party that nominated or certified the candidate shall be printed in less prominent type face than that in which the candidate's name is printed.

HISTORY: 1976 S 457, eff. 4-14-76
1976 H 1165

Note: Former 3507.06 repealed by 1973 S 291, eff. 11-21-73; 1953 H 1; GC 4785-161d.

CROSS REFERENCES

Ballot positions to be reasonably equal, O Const Art V §2a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 121, 225

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

170 OS 30, 162 NE(2d) 118 (1959), State ex rel Wesselman v Hamilton County Bd of Elections; overruled on other grounds by 7 OS(2d) 85, 218 NE(2d) 428 (1966), State ex rel Sibarco Corp v Berea. The amendment to RC 3507.07 effective October 15, 1959, with respect to rotating names on ballots is unconstitutional. (Annotation from former RC 3507.07.)

121 OS 301, 168 NE 131 (1929), State ex rel Automatic Registering Machine Co v Green. The constitutional mandate that all elections be by ballot, O Const Art V §2, does not prevent East Cleveland from using voting machines in elections; the term "ballot" designates a method of conducting elections that ensures secrecy, as distinguished from open, viva-voce voting. (Annotation from former RC 3507.07.)

2. In general

39 OS(2d) 130, 314 NE(2d) 172 (1974), State ex rel Roof v Hardin County Bd of Commrs. The provision of O Const Art V §2a, with respect to the rotation of names of candidates is self-executing. (Annotation from former RC 3507.07.)

39 OS(2d) 130, 314 NE(2d) 172 (1974), State ex rel Roof v Hardin County Bd of Commrs. O Const Art V §2a, does not absolutely prohibit the use of voting machines. (Annotation from former RC 3507.07.)

39 OS(2d) 130, 314 NE(2d) 172 (1974), State ex rel Roof v Hardin County Bd of Commrs. When voting machines are used in a general election and there is no rotation of the names of candidates for an office on the voting machines within each precinct for each succeeding voter, but only rotation of the names of candidates on the voting machines precinct by precinct, such precinct-by-precinct rotation does not comply with the requirement of Ohio Constitution, and such rotational procedure is therefore, unconstitutional (satisfactory rotational procedure suggested in opinion). (Annotation from former RC 3507.07.)

66 Abs 130, 116 NE(2d) 317 (CP, Mahoning 1953), Bees v Gilronon. The irregularity in failure to carry out the rotation of names of candidates on a voting machine is not a matter of substance requiring the setting aside of an election. (Annotation from former RC 3507.07.)

1957 OAG 984. Under the Sandusky city charter the general laws of the state relative to the use of voting machines in municipal elections are applicable, and may be used in the election of a city commissioner. (Annotation from former RC 3507.07.)

3507.07 to 3507.09 Ballot labels; voting machines; counting votes—Repealed

HISTORY: 1973 S 291, eff. 11-21-73
132 v S 148; 128 v 27; 126 v 205; 1953 H 1; GC 4785-161e to 4785-161g

Note: See now 3507.06 for annotations from former 3507.07.

3507.10 Counting of absent voter's ballots—Repealed

HISTORY: 1971 S 460, eff. 3-23-72
130 v H 633; 1953 H 1; GC 4785-161h

3507.11 to 3507.13 Paper ballots; keys to voting machines; recount—Repealed

HISTORY: 1973 S 291, eff. 11-21-73
1953 H 1; GC 4785-161h to 4785-161j

MISCELLANEOUS PROVISIONS

3507.14 Size of precincts; number of officials

The board of elections, in counties where voting machines are in use or are to be used, may combine, rearrange, and enlarge precincts; but it shall be the duty of the board to arrange for a sufficient number of voting machines to accommodate the number of electors in each precinct, according to the number of votes cast in such precinct at the next preceding election and taking into consideration the number of candidates and issues to be voted upon. The board shall appoint a sufficient number of precinct officials to each precinct according to the number of voting machines to be used therein.

HISTORY: 1980 H 1062, eff. 3-23-81
125 v 713; 1953 H 1; GC 4785-161k

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 130, 148
Am Jur 2d: 25, Elections § 15

NOTES ON DECISIONS AND OPINIONS

3 Ohio North L Rev 21 (Winter 1973). Are Voting Machines Really One-Armed Bandits?, John Bernazzoli.

102 App 51, 141 NE(2d) 195 (1956), State ex rel Spencer v Montgomery County Bd of Elections. RC 3501.29, 3507.06, and 3507.14 are in pari materia and must be construed together; it is the duty of a board of elections to determine the number of voting machines to be used in each precinct by applying the standard laid down in RC 3501.29, one voting machine for every 100 qualified electors, and on the basis of such ratio determine the number of machines necessary to accommodate the number of qualified electors in each precinct.

3507.15 Rules and regulations

The secretary of state shall provide the board of elections, in any county adopting the voting machine, with rules, regulations, and instructions regarding the examination, testing, and use of the machine, the assignment of duties of booth officials, how to vote on the voting machine, how the vote shall be tallied and reported to the board, and such other rules, regulations, and instructions as are found necessary to insure the adequate care and custody of the machine, and the accurate registering, counting, and canvassing of the votes as required by sections 3507.01 to 3507.16, inclusive, of the Revised Code. The board in such counties shall be charged with the responsibility of providing for the adequate instruction of voters and election officials in the proper use of the voting machine. Such rules and regulations shall comply, in so far as practicable, with sections 3507.01 to 3507.16, inclusive, of the Revised Code. The provisions of Title XXXV of the Revised Code, not inconsistent with the provisions relating to voting machines, apply in any county or municipal corporation using the voting machine.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-161L

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 144, 149
Am Jur 2d: 25, Elections § 44

NOTES ON DECISIONS AND OPINIONS

119 App 363, 200 NE(2d) 668 (1963), State ex rel Rose v Ryan. A petition in mandamus which alleges that relator is a qualified elector and resident of a municipality and a candidate for office therein and that the voting machine type ballot to be used, does not meet the requirement of such municipality's charter that "one space shall be left below the printed names of the candidates for each office to be voted for, wherein the voter may write" in the name of any person, and the prayer of which is for a separate paper ballot for use in voting for such office for which there have been no formal nominations, states a cause of action against the board of elections and is good against demurrer.

3507.16 Issuance of bonds

The board of elections of any county may, by resolution, request that the board of county commissioners of such county submit to the electors of the county, in accordance with section 133.18 of the Revised Code, the question of issuing bonds for the following purposes:

(A) Purchase of voting machines;

(B) Acquisition of real estate and construction thereon of a suitable building with necessary furniture and equipment for the proper administration of the duties of the board of elections.

The resolution declaring the necessity for such bond issue shall relate to only one purpose.

If fifty-five per cent of the electors vote favorably on the question of issuing such bonds for either of the purposes set forth in this section, the board of county commissioners may issue such bonds in accordance with Chapter 133. of the Revised Code, and the debt service levies for such bonds shall be outside all limitations on the tax rate.

HISTORY: 1989 H 230, eff. 10-30-89
1980 H 1062; 1953 H 1; GC 4785-161m

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 145
Am Jur 2d: 64, Public Securities and Obligations § 131 to 179

Chapter 3509

ABSENT VOTER'S BALLOTS

3509.01 Absent voter's ballots
3509.02 Who may vote absent voter's ballot
3509.021 Identification envelopes for presidential ballots
3509.03 Submission of written application; single application for several elections
3509.031 Procedure for absentee voting for member of militia on active duty in Ohio
3509.032 Presidential ballots—Repealed
3509.04 Delivery of ballots to voter; identification envelope; return envelope
3509.05 Voting procedure; outside United States on election day
3509.06 Counting of ballots
3509.061 Processing of new resident's absentee ballots—Repealed
3509.07 Rejection of absentee vote
3509.08 Disabled electors; medical emergencies
3509.081 Certificate of permanent disability—Repealed
3509.09 Master of vessel may administer oath—Repealed

CROSS REFERENCES

Person changing residence prior to thirty-first day before election, voting by absent voter's ballot, 3503.11
Armed services absent voter's ballot, Ch 3511
Misconduct of board of elections counting votes, 3599.16
Secrecy of ballot; destruction, removal, or false indorsement forbidden, 3599.20
Offenses concerning absent voters' ballots, 3599.21
Printing ballots, offenses and penalties, 3599.22
Improper attempt to obtain ballots, penalty, 3599.24
Ballot tampering, penalty, 3599.26
All voting to be by ballot, O Const Art V §2

3509.01 Absent voter's ballots

The board of elections of each county shall provide absent voter's ballots for use at every primary and general election, or special election to be held on the first Tuesday after the first Monday in May, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state. Such ballots shall be the same size, shall be printed on the same kind of paper and in the same form as has been approved for use at the election for which such ballots are to be voted; except that in counties using marking devices, ballot cards may be used for absent voter's ballots, and such absent voters may be instructed to mark said ballot cards with an "X" as in the use of paper ballots. The rotation of names of candidates shall be substantially complied with within the limitation of time allotted. Such ballots shall be designated as "Absent Voter's Ballots" and shall be printed and ready for use on the thirty-fifth day before the day of the election.

Absent voter's ballots provided for use at a general or primary election, or special election to be held on the first Tuesday after the first Monday in May, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state, shall include only such questions, issues, and candidacies as have been lawfully ordered submitted to the electors voting at such election.

Absent voter's ballots for special elections held on days other than the day on which general or primary elections are held, shall be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of such special election.

A copy of the absent voter's ballots shall be forwarded by the director of the board in each county to the secretary of state at least twenty-five days before the election.

HISTORY: 1983 S 213, eff. 10-13-83
1980 H 1062; 1974 H 662; 1973 S 44; 132 v H 934; 129 v 1653; 128 v 82; 125 v 713; 1953 H 1; GC 4785-113

CROSS REFERENCES

Armed services absent voter's ballot, 3511.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150, 158, 159; 57, Insurance § 147
Am Jur 2d: 26, Elections § 243 to 252
Validity of absentee voter's laws. 97 ALR2d 218

NOTES ON DECISIONS AND OPINIONS

30 OS(2d) 75, 283 NE(2d) 131 (1972), State ex rel Minus v Brown. Where, in a mandamus action instituted in the supreme court, substantial constitutional question involving state-wide special election on a proposed constitutional amendment is presented, and where relator has acted timely and in good faith, and where court finds because of delay by general assembly in adopting resolution proposing constitutional amendment it is impossible for secretary of state to substantially comply with provisions of RC 3505.01, and where court finds further that because of such delay it is impossible for county boards of elections to substantially comply with RC 3509.01; then, upon such findings by court, it becomes the clear legal duty of secretary of state to strike such proposed constitutional amendment from the ballot, and the court will exercise its jurisdiction.

154 OS 471, 96 NE(2d) 412 (1951), State ex rel Meurer v Eyrich. Writ of prohibition is not available to prevent board of elections from using certain "absent voter's ballots" which were not "printed and ready for use thirty days before the date of the election" as required by this section as such use would be a purely ministerial act.

3509.02 Who may vote absent voter's ballot

Any qualified elector who is sixty-two years of age or over, or who will be absent from his polling place on the day of an election due to his entry into a hospital for medical or surgical treatment, or due to his confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor, or who will be unable to vote on the day of an election on account of observance of his religious belief, or any qualified elector who will be absent from the county in which his voting residence is located on the day of an election, or any qualified elector who has a physical disability, illness, or infirmity may vote absent voter's ballots at an election. Any qualified elector who is a member of the organized militia, serving on active duty within the state of Ohio and who will be unable to vote on election day on account of such active duty may vote absent voter's ballots at such election. Any qualified elector

who moves from one precinct to another in the same county on or prior to the thirty-first day preceding a general, primary, or special election and has not filed a notice of change of residence may vote absent voter's ballots at the next succeeding election as specified in division (E)(1)(b) of section 3503.11 of the Revised Code.

The secretary of state, an employee of the secretary of state, a member or employee of the board of elections, or polling place official, who is a qualified elector may vote by absentee ballot. Application shall be made to the board of elections of the county where his voting residence is situated.

HISTORY: 1990 H 237, eff. 7-27-90
1980 H 1062; 1974 S 237, S 429; 1973 H 73; 1970 S 591; 1969 S 51; 132 v S 102; 127 v 741; 1953 H 1; GC 4785-134

CROSS REFERENCES

Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4

Armed services absent voter's ballot, Ch 3511

Illegal voting, 3599.12

Impersonating another or conniving to obtain absent voter's ballot forbidden, 3599.21

Aiding unqualified voters or inducing officer to accept their votes, penalty, 3599.25

Ballot tampering, penalty, 3599.26

Idiots and insane persons not entitled to vote, O Const Art V §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158

Am Jur 2d: 26, Elections § 247

Validity of absentee voters' laws. 97 ALR2d 218

NOTES ON DECISIONS AND OPINIONS

3 Capital L Rev 245 (1974). The Voting Booth with Steel Bars: Prisoners Voting Rights and O'Brien v. Skinner, Note.

60 App 54, 19 NE(2d) 531 (1938), Portmann v Bd of Elections of Stark County. GC 4785-134 (RC 3509.02) et seq., providing for absent voter's ballots, confers a privilege and not an absolute right, and an elector who casts an absent voter's ballot prior to the proper submission of an issue cannot complain that he has been disfranchised as to such issue.

1928 OAG 2766. Under former GC 5078-1 (Repealed), an elector found by the clerk of the board of deputy state supervisors of elections to be properly qualified in all other respects, was entitled to receive an absent voter's ballot upon the applicant's own statement that he found that he would be unavoidably absent from his own precinct on the day of election.

1928 OAG 2766. Where an applicant who is otherwise qualified, makes application for an absent voter's ballot and states that he will be unavoidably absent from his home precinct on the day of election, the clerk has no authority to refuse the applicant a ballot on the ground that he doubts the applicant's statement as to whether or not he will be unavoidably absent. That is a question that the applicant alone is to determine. It is the duty of a clerk in the first instance when application is made for an absent voter's ballot, to satisfy himself of the qualifications of the voter offering to vote, as to his residence in the precinct and his legal qualifications to vote. Finding these present, it is his duty at once to issue upon proper application the absent voter's ballot. If he is in doubt as to applicant's qualifications, it is his duty to satisfy himself upon that question by proper investigation without unnecessary delay.

3509.021 Identification envelopes for presidential ballots

Except as provided in section 3509.031 of the Revised Code all identification envelopes containing absent voter's ballots for former resident voters who are entitled to vote for presidential and vice-presidential electors only, shall have printed or stamped thereon the words, "Presidential Ballot."

HISTORY: 1975 H 1, eff. 6-13-75
1974 H 662; 1971 S 460; 1970 S 591; 1969 S 51

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158, 160 to 166

Am Jur 2d: 25, Elections § 75; 26, Elections § 246, 248, 250 to 252

3509.03 Submission of written application; single application for several elections

Except as provided in division (E)(1)(b) of section 3503.11, section 3509.031, or division (B) of section 3509.08 of the Revised Code any person desiring to vote absent voter's ballots at an election shall make written application for such ballots to the director of elections of the county in which such person's voting residence is located. The application need not be in any particular form but shall contain words which, liberally construed, indicate the request for ballots, the election for which such ballots are requested, and, if the request is for primary election ballots, the person's party affiliation. The application for such ballots shall state that the person requesting the ballots is a qualified elector, and the reason for the person's absence from the polls on election day. The application shall include sufficient information to enable the director to determine the precinct in which the applicant's voting residence is located. If the applicant desires ballots to be mailed to him, the application shall state the mailing address.

A voter who will be outside the United States on the day of any election during a calendar year may use a single federal post card application to apply for absent voter's ballots. Such ballots shall be sent to the voter for use at the primary and general elections in that year and any special election to be held on the first Tuesday after the first Monday in May in that year, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state unless the voter reports a change in his voting status to the board of elections or his intent to vote in any such election in the precinct in this state where he is registered to vote. Such an application shall be processed by the board of elections pursuant to section 3509.04 of the Revised Code the same as if the voter had applied separately for absent voter's ballots for each election. When mailing absent voter's ballots to a voter who applied for them by single federal post card application, the board shall enclose notification to the voter that he must report to the board subsequent changes in his voting status or his subsequent intent to vote in any such election in the precinct in this state where he is registered to vote. Such notification shall be in a form prescribed by the secretary of state. As used in this section, "voting status" means the voter's name at the time he applied for absent voter's ballots by single federal post

card application and the voter's address outside the United States to which he requested that such ballots be sent.

Each application for absent voter's ballots shall be delivered to the director not earlier than the first day of January of the year of the elections for which the absent voter's ballots are requested or not earlier than ninety days before the day of the election at which the ballots are to be voted, whichever is earlier, and not later than twelve noon of the third day before the day of the election at which such ballots are to be voted.

HISTORY: 1990 H 237, eff. 7-27-90
1987 H 23; 1974 H 662, S 237, S 429; 1973 H 73; 1971 S 460; 1970 S 591; 1969 S 51; 132 v S 102; 127 v 741; 126 v 205; 125 v 713; 1953 H 1; GC 4785-135

CROSS REFERENCES

Days counted to ascertain time, 1.14
Misrepresentation to obtain absent voter's ballot forbidden, 3599.21
Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158, 160 to 166
Am Jur 2d: 25, Elections § 75; 26, Elections § 248, 250 to 252

NOTES ON DECISIONS AND OPINIONS

176 OS 91, 197 NE(2d) 801 (1964), State ex rel Schwartz v Brown. Where the secretary of state refused to accept and certify a nominating petition for judge of the supreme court on February 13, relator filed a petition for writ of mandamus on February 25, respondent filed an answer on March 14 and relator a demurrer to the answer on March 23, with a brief in support thereof on March 31, relator's lack of diligence will bar relief in mandamus.

35 App 271, 172 NE 391 (1928), Mullen v State. Absent voter must be in community where attesting officer knows him to be person represented or knows some creditable person who proves identity of voter.

1928 OAG 2756. An application for an absent voter's ballot must be made in writing and state that the applicant is a qualified elector in the precinct in the county in which he desires to vote and will be unavoidably absent from such precinct on election day and request that he receive the absent voter's ballot and bear the signature of said applicant.

3509.031 Procedure for absentee voting for member of militia on active duty in Ohio

Any qualified elector who is a member of the organized militia called to active duty within the state of Ohio and who will be unable to vote on election day on account of such active duty may make written application for absent voter's ballots to the director of elections for the county in which his voting residence is located. He may personally deliver such application to the director or may mail or otherwise send it to the director. Such application need not be in any particular form. It need only contain words which, liberally construed, indicate the request for ballots, the election for which such ballots are requested and, if the request is for primary election ballots, the party affiliation of the applicant. The applicant should indicate that he is a qualified elector, and that he is a member of the organized militia serving on active duty within the state of Ohio. Sufficient information should be included to enable the director to determine the precinct in which his voting residence is located. If the applicant desires that such ballots be mailed to him, the application shall state the address to which they shall be mailed.

Application to have such ballots mailed to such person may be made by the spouse of the militia member, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole blood or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of such person. Such application shall be in writing upon a blank form furnished only by the director. The form of such application shall be prescribed by the secretary of state. The director shall furnish such blank form to any of the relatives specified in this section, desiring to make such application, only upon the request of such relative in person at the office of the board or upon the written request of such relative mailed to the office of the board. Such application, subscribed and sworn to by such applicant, shall contain:

(1) Full name of person for whom ballots are requested;

(2) Statement that such person is a qualified elector and that such person has a residence in the county and information as to the location of such voting residence;

(3) Statement that such person is a member of the organized militia serving on active duty within the state of Ohio;

(4) Statement that applicant bears a relationship to such person as specified in this section;

(5) Election for which ballots are requested, and, if for a primary election, party affiliation of persons for whom ballots are requested;

(6) Address to which ballots shall be mailed;

(7) Signature and address of person making the application.

Applications to have absent voter's ballots mailed shall not be valid if dated, postmarked, or received by the director prior to the ninetieth day before the day of the election for which ballots are requested or if delivered to such director later than twelve noon of the third day preceding the day of such election. If, after the ninetieth day and before four p.m. of the day before the day of an election, a valid application for absent voter's ballots is delivered to the director of elections at the office of the board by a militia member making such application in his own behalf the director shall forthwith deliver to such militia member all absent voter's ballots then ready for use, together with an identification envelope. Such militia member shall then vote such ballots in the manner provided in section 3509.05 of the Revised Code.

HISTORY: 1974 H 662, eff. 9-27-74
1974 S 429; 1970 S 591

CROSS REFERENCES

Armed services absent voter's ballot, Ch 3511
False signature forbidden, 3599.28
Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 26, Elections § 244, 248, 250 to 252

3509.032 Presidential ballots—Repealed

HISTORY: 1974 S 429, eff. 7-26-74
1973 H 73; 1971 S 460

3509.04 Delivery of ballots to voter; identification envelope; return envelope

Upon receipt by the director of elections of an application for absent voter's ballots, as provided by sections 3509.03 and 3509.031 of the Revised Code, the director, if he finds that the applicant is a qualified elector and is entitled to vote absent voter's ballots as applied for in the application, shall deliver to the applicant in person or mail directly to him by special delivery mail, air mail, or regular mail, postage prepaid, proper absent voter's ballots. The director shall give proper absent voter's ballots to any qualified elector who presents himself to vote on the day of an election at the office of the board of elections as provided in division (E)(1)(b) of section 3503.11 of the Revised Code. The director shall give, deliver, or mail with the ballots an unsealed identification envelope upon the face of which shall be printed a form substantially as follows:

"Identification Envelope
Statement of Voter

I, the undersigned voter, declare under penalty of election falsification that the within ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in said envelope.

My voting residence in Ohio is

_____
(Street and Number, if any, or Rural Route and Number)
of _____ (City, Village, or Township)
Ohio, which is in Ward _____ Precinct _____ in said city, village, or township.

_____I am a qualified elector of the state of Ohio. (Applicant must check the true statement concerning his reason for voting by absent voter's ballots)

_____I shall be absent from the county on the day of the election.

_____I shall be outside the United States on the day of the election. (Applicants who check this statement must also check the appropriate box on the enclosed return envelope to indicate that they will be outside the United States.)

_____I shall be absent from my polling place on the day of the election due to my entry into a hospital for medical or surgical treatment.

_____I shall be absent from my polling place on the day of the election due to physical illness, disability, or infirmity.

_____I shall be absent from my polling place on the day of the election because I am on active duty with the organized militia in the state of Ohio.

_____I shall be unable to vote on election day because of observance of my religious belief.

I am (check one):

_____The secretary of state;

_____An employee of the secretary of state;

_____A member of the board of elections;

_____An employee of the board of elections;

_____A polling place official.

_____I shall be absent from my polling place on the day of the election due to my confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor.

_____I am sixty-two years of age or older.

_____I moved from one precinct to another in the same county on or prior to the thirty-first day preceding an election and did not file a notice of change of residence.

The primary election ballots, if any, within this envelope are primary election ballots of the _____ Party.

Ballots contained herein are to be voted at the _____ (general, special, or primary) election to be held on the _____ day of _____ 19____.

I hereby declare, under penalty of election falsification, that the statements above are true, as I verily believe.

_____
(Signature of Voter)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH."

The director shall mail with the ballots and the unsealed identification envelope that he mails an unsealed return envelope upon the face of which shall be printed the official title and post-office address of such director. In the upper left corner on the face of such envelope several blank lines shall be printed upon which the voter may write his name and return address, and beneath these lines there shall be printed a box beside the words "check if out-of-country." The voter shall check this box if he will be outside the United States on the day of the election. The return envelope shall be of such size that the identification envelope can be conveniently placed within it for returning such identification envelope to the director.

HISTORY: 1990 H 237, eff. 7-27-90
1984 S 79; 1980 H 1062; 1979 S 225; 1975 H 1; 1974 H 662, S 237, S 429; 1973 H 73; 1971 S 460; 1970 S 591; 1969 S 51; 127 v 741; 125 v 713; 1953 H 1; GC 4785-136

CROSS REFERENCES

Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158, 160 to 166
Am Jur 2d: 25, Elections § 75; 26, Elections § 248, 250 to 252

NOTES ON DECISIONS AND OPINIONS

1928 OAG 2766. An absent voter's ballot and accompanying supplies may and should be delivered to an applicant entitled thereto in person, or by sending same by registered mail.

3509.05 Voting procedure; outside United States on election day

(A) When an absent voter's ballot, pursuant to his application or request therefor, is received by the elector, he shall, before placing any marks thereon, note whether there are any voting marks on the ballot. In the event there are any voting marks, the ballot shall be returned immediately to the board of elections; otherwise he shall cause the ballot to be marked, folded in such manner that the stub thereon and the indorsements and facsimile signatures of the members of the board of elections on the back thereof are visible, and placed and sealed within the identification envelope received from the director of elections for that purpose. Then the elector shall cause the statement of voter on the outside of the identification envelope to be completed and signed, under penalty of election falsification.

The elector shall then mail the identification envelope to the director from whom it was received in the return envelope, postage prepaid, or he may personally deliver it to the director, or the spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector may deliver it to the director, but the return envelope shall be transmitted to the director in no other manner, except as provided in section 3509.08 of the Revised Code.

Each elector who will be outside the United States on the day of the election shall check the box on the return envelope indicating this fact.

When absent voter's ballots are delivered to an elector at the office of the board, the elector may retire to a voting compartment provided by the board and there mark the ballots. Thereupon he shall fold them, place them in the identification envelope provided, seal the identification envelope, fill in and sign the statement thereon under penalty of election falsification, and deliver the envelope to the director of the board.

Except as otherwise provided in division (B) of this section, all other envelopes containing marked absent voter's ballots, shall be delivered to the director not later than the close of the polls on the day of an election. Absent voter's ballots delivered to the director later than the times specified shall not be counted, but shall be kept by the board in the sealed identification envelopes in which they are delivered to the director, until the time provided by section 3505.31 of the Revised Code for the destruction of all other ballots used at the election for which ballots were provided, at which time they shall be destroyed.

(B) Any return envelope that indicates that the voter will be outside the United States on the day of the election shall be delivered to the director prior to the eleventh day after the election. Ballots delivered in such envelopes that are received after the close of the polls on election day through the tenth day thereafter shall be counted on the eleventh day at the board of elections in the manner provided in divisions (C) and (D) of section 3509.06 of the Revised Code. Any such ballots that are signed or postmarked after the close of the polls on the day of the election or that are received by the director later than the tenth day following the election shall not be counted, but shall be kept by the board in the sealed identification envelopes as provided in division (A) of this section.

HISTORY: 1990 H 237, eff. 7-27-90
1984 S 79; 1980 H 1062; 1974 H 662, S 429; 1971 S 460; 1970 S 591; 125 v 713; 1953 H 1; GC 4785-137

CROSS REFERENCES

Days counted to ascertain time, 1.14
Ballot tampering, penalty, 3599.26

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158, 160 to 166
Am Jur 2d: 25, Elections § 75; 26, Elections § 248, 250 to 252

NOTES ON DECISIONS AND OPINIONS

135 OS 369, 21 NE(2d) 108 (1939), Jolly v Deeds. Error on part of board of elections in preparing an affidavit does not excuse voter from definite duty to supply complete information and to read affidavit before signing it, and casting of an absentee voter's ballot which does not meet the plain and material requirements of statute is invalid since it is important that every ballot be cast in the proper precinct.

3509.06 Counting of ballots

(A) The board of elections shall determine whether absent voter's ballots shall be counted in each precinct, at the office of the board, or at some other location designated by the board, and shall proceed accordingly under division (B) or (C) of this section.

(B) When the board of elections determines that absent voter's ballots shall be counted in each precinct, the director shall deliver to the presiding judge of each precinct on election day identification envelopes purporting to contain absent voter's ballots of electors whose voting residence appears from the statement of voter on the outside of each of such envelopes, to be located in such presiding judge's precinct, and which were received by the director not later than the close of the polls on election day. The director shall deliver to such presiding judge a list containing the name and voting residence of each person whose voting residence is in such precinct to whom absent voter's ballots were mailed.

(C) When the board of elections determines that absent voter's ballots shall be counted at the office of the board of elections or at another location designated by the board, special election judges shall be appointed by the board for that purpose having the same authority as is exercised by precinct judges. The votes so cast shall be added to the vote totals by the board, and the absentee ballots shall be preserved separately by the board, in the same manner and for the same length of time as provided by section 3505.31 of the Revised Code.

(D) Each of the envelopes purporting to contain absent voter's ballots delivered to the presiding judge of the precinct or the special judge appointed by the board of elections shall be handled as follows: The judge shall announce the name of the elector who appears to have signed the statement of voter on the outside of such envelope. In counties in which absent voter's ballots are counted in each precinct, the signature of the elector on the outside of such envelope shall be compared with the signature of such elector on his registration form. Any appointed challenger or any of the precinct officials may challenge the right of the elector named on such identification envelope to vote such absent voter's ballots upon the ground that the signature on such envelope is not the same as the signature on such registration form, or upon any other of the grounds upon which the right of persons to vote may be lawfully challenged. If no such challenge is made, or if such a challenge is made and not sustained, the presiding judge shall open the envelope without defacing the statement of voter and without mutilating the ballots therein, and shall remove the ballots contained therein and proceed to count them.

The name of each person voting who is entitled to vote only an absent voter's presidential ballot shall be entered in a pollbook or poll list or signature pollbook followed by the words "Absentee Presidential Ballot." The name of each person voting an absent voter's ballot, other than such persons entitled to vote only a presidential ballot, shall be entered in the pollbook or poll list or signature pollbook and his registration card marked to indicate that he has voted.

The date of such election shall also be entered on the elector's registration form. If any such challenge is made

and sustained, the identification envelope of such elector shall not be opened and shall be endorsed "Not Counted" with the reasons therefor, and shall be delivered to the board.

Special election judges or employees or members of the board of elections shall not disclose the count or any portion of the count of absent voter's ballots prior to the time of the closing of the polling places.

HISTORY: 1984 S 79, eff. 7-4-84
1980 H 1062; 1977 S 125; 1974 S 237, S 429; 1971 S 460; 125 v 713; 1953 H 1; GC 4785-138

CROSS REFERENCES

Person changing residence prior to thirty-first day before election, voting by absent voter's ballot, 3503.11

Disposition of armed services absent voter's ballots received by board, 3511.11

Recount of absentee ballots, 3515.01

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158, 160 to 166

Am Jur 2d: 25, Elections § 75; 26, Elections § 48, 250 to 252

NOTES ON DECISIONS AND OPINIONS

56 OS(3d) 1, 564 NE(2d) 407 (1990), State ex rel Bennett v Boards of Elections of Ohio Counties. Upon an action seeking a writ of mandamus to require the boards of elections in eighty-eight counties of the state to count "walk-in" ballots that were cast under RC 3503.11(E)(1)(b) as amended by 1990 HB 237, in the election held November 6, 1990, and all other absent voter ballots cast at that election, in a way that will maintain the absolute secrecy of the ballots, it is ordered that the secretary of state and boards of elections proceed to count the ballots in accordance with RC 3509.06, and that they set aside and refrain from opening any ballot that has been challenged.

35 App 271, 172 NE 391 (1928), Mullen v State. Absent voter's ballot was subject to right to challenge until after ballot had been opened at primary election (former GC 4866, 5073, 5078-5 (RC 3347.03, 3505.23, 3509.06)).

1930 OAG 1461. In the event a board of deputy state supervisors of elections failed to deliver to a precinct before the close of the polls the absent voters' ballots as provided in former GC 5078-5 (RC 3509.06) as in force and effect prior to January 1, 1930, and such absent voters' ballots, which were accordingly not counted, appear to have been such as to change the result of the election of one of the members of a board of education of a rural school district, any relief to one who feels himself entitled to the office should be secured through a court action in mandamus, quo warranto, or otherwise, there being no provision for a reconsideration by a board of education after such board has canvassed the vote.

1924 OAG p 667. Under the provisions of former GC 5078-5 (RC 3509.06), absent voters' ballots received by the deputy state supervisors of elections after the closing of the polls on election day cannot be counted.

1922 OAG p 905. An elector cannot vote absent voter's ballot and then go to polls on election day and withdraw it; the same safeguards surrounding the casting of an ordinary ballot should be employed by election officials to prevent fraudulent voting in the case of a so-called absent voter's ballot.

3509.061 Processing of new resident's absentee ballots—Repealed

HISTORY: 1971 S 460, eff. 3-23-72
1971 H 1; 1969 S 51

3509.07 Rejection of absentee vote

If it is found that the statement accompanying an absent voter's ballot or absent voter's presidential ballot is insufficient, that the signatures do not correspond with his registration signature, that the applicant is not a qualified elector in the precinct, that the ballot envelope contains more than one ballot of any one kind, or any voted ballot which such elector is not entitled to vote, such vote shall not be accepted or counted. Whenever it appears to the judges of election by sufficient proof that any elector who has marked and forwarded his ballot as provided in section 3509.05 of the Revised Code has died, then the ballot of such deceased voter shall not be counted. The vote of any absent voter may be challenged for cause in the same manner as other votes are challenged, and the judges shall determine the legality of such ballot. Every such ballot not counted shall be indorsed on the back thereof "Not Counted" with reasons therefor, and shall be enclosed and returned to or retained by the board of elections along with the contested ballots.

HISTORY: 1974 S 429, eff. 7-26-74
1971 S 460; 1953 H 1; GC 4785-139

CROSS REFERENCES

Person changing residence prior to thirty-first day before election, voting by absent voter's ballot, 3503.11

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158, 160 to 166

Am Jur 2d: 25, Elections § 75; 26, Elections § 248, 250 to 252

3509.08 Disabled electors; medical emergencies

(A) Any qualified elector, who, on account of his own personal illness, physical disability, or infirmity, or on account of his confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial on a felony or misdemeanor, will be unable to travel from his home or place of confinement to the voting booth in his precinct on the day of any general, special, or primary election may make application in writing for an absent voter's ballot to the director of the board of elections of his county stating the nature of his illness, physical disability, or infirmity, or the fact that he is confined in a jail or workhouse and his resultant inability to travel to the election booth in his precinct on election day. The application shall not be valid if it is delivered to the clerk before the ninetieth day or after twelve noon of the third day before the day of the election at which such ballots are to be voted.

The[1] absentee ballots may be mailed directly to the applicant at his voting residence or place of confinement as stated in his application, or the board may designate two board employees belonging to the two major political parties, for the purpose of delivering the ballots to the disabled or confined elector and returning them to the board, unless the applicant is confined to a public or private institution within the county, in which case the board shall designate two such employees for the purpose of delivering the ballots to the disabled or confined elector and returning them to the board. In all other instances, the ballots shall be returned to the office of the board in the manner prescribed in section 3509.05 of the Revised Code.

Any disabled or confined elector who declares to the two employees that he is unable to mark his ballot by reason of physical infirmity, and such physical infirmity is apparent to the employees to be sufficient to incapacitate the voter from marking his ballot properly, may upon request, receive the assistance of the two employees in marking his ballot and they shall thereafter give no information in regard to this matter. Such assistance shall not be rendered for any other cause.

When two board employees deliver ballots to a disabled or confined elector, each of the employees shall be present when the ballots are delivered, when assistance is given, and when the ballots are returned to the office of the board, and shall subscribe to the declaration on the identification envelope.

The secretary of state shall prescribe the form of application for absent voter's ballots under division (A) of this section.

Chapter 3509. of the Revised Code applies to disabled and confined absent voter's ballots except as otherwise provided in this section.

(B) Any qualified elector who is unable to travel to the voting booth in his precinct on the day of any general, special, or primary election because of being confined in a hospital as a result of an accident or unforeseeable medical emergency occurring not more than six days before the election, may apply to the director of the board of elections of the county where he is a qualified elector to vote in the election by absent voter's ballot. This application shall be made in writing and shall be delivered to the director not later than three p.m. on the day of the election. The application shall indicate the hospital where the applicant is confined, the date of his admission to the hospital, the offices for which he is qualified to vote, and, if he is requesting to vote in a primary election, his party affiliation. The applicant may also request that a member of his family, as listed in section 3509.05 of the Revised Code, deliver the absent voter's ballot to the applicant. The director, after establishing to his satisfaction the validity of the circumstances claimed by the applicant, shall supply an absent voter's ballot to be delivered to the applicant. When the applicant is in a hospital in the county where he is a qualified elector and no request is made for a member of the family to deliver the ballot, the director shall arrange for the delivery of an absent voter's ballot to the applicant, and for its return to the office of the board, by two employees according to the procedures prescribed in division (A) of this section. When the applicant is in a hospital outside the county where he is a qualified elector and no request is made for a member of the family to deliver the ballot, the director shall arrange for the delivery of an absent voter's ballot to the applicant by mail, and the ballot shall be returned to the office of the board in the manner prescribed in section 3509.05 of the Revised Code.

HISTORY: 1982 H 388, eff. 7-6-82
1980 H 1062; 1977 S 125; 1974 S 429, H 662; 1973 H 73; 1971 S 460; 1969 H 205; 129 v 1579; 127 v 741; 125 v 713; 1953 H 1; GC 4785-140

CROSS REFERENCES

Days counted to ascertain time, 1.14
Convicted felon cannot vote, 2961.01
Residency to vote; 3503.01
Qualifications of electors, O Const Art V §1, 4, 6

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 26, Elections § 238 to 240, 247, 248, 250 to 252

NOTES ON DECISIONS AND OPINIONS

47 Misc 37, 353 NE(2d) 919 (CP, Richland 1976), Martin v Porter. 3509.08 authorizes the clerk of the board of elections to establish to his satisfaction the validity of the circumstances under which a disabled voter may vote at a place other than a designated polling place, and in the absence of fraud his decision is final and will not be disturbed by a reviewing court.

47 Misc 37, 353 NE(2d) 919 (CP, Richland 1976), Martin v Porter. RC 3509.08, as amended in 1974, does not require the deputy clerks of a board of elections who take the votes of an ill or disabled voter to sign their names on the identification envelope unless it is necessary that they physically assist the voter in casting his ballot.

3509.081 Certificate of permanent disability—Repealed

HISTORY: 1974 S 429, eff. 7-26-74
1969 H 205

3509.09 Master of vessel may administer oath—Repealed

HISTORY: 1974 S 429, eff. 7-26-74
128 v 923

[1]Prior and current versions differ although no amendment to this language was indicated in 1982 H 388; "The" was deleted by 1980 H 1062.

Chapter 3511

ARMED SERVICE ABSENT VOTER'S BALLOTS

ELIGIBILITY

3511.01 Eligibility

BALLOTS

3511.02 Application for ballot
3511.03 Form of ballots
3511.04 Mailing of ballots
3511.05 Identification envelope; return envelope
3511.051 Marking of envelopes containing presidential ballots
3511.06 Size and quality of envelopes
3511.07 Precautionary measures for mailing
3511.08 Record of ballots distributed

VOTING PROCEDURE

3511.09 Procedure for voting
3511.10 Voting in office of board of elections

DUTIES OF OFFICIALS

3511.11 Disposition of ballots received by board
3511.12 Counting of ballots

CROSS REFERENCES

Militiaman's absent voter's ballot, 3509.02, 3509.031
Misconduct of board of elections counting votes, 3599.16
Secrecy of ballot; destruction, removal, or false indorsement forbidden, 3599.20
Offenses concerning absent voters' ballots, 3599.21
Printing ballots, offenses and penalties, 3599.22
Improper attempt to obtain ballots, penalty, 3599.24
Ballot tampering, penalty, 3599.26
All voting to be by ballot, O Const Art V §2

ELIGIBILITY

3511.01 Eligibility

Any section of the Revised Code to the contrary notwithstanding, any person serving in the armed forces of the United States, or the spouse or dependent of any person serving in the armed forces of the United States who resides outside this state for the purpose of being with or near such service member, who will be eighteen years of age or more on the day of a general or special election and who is a citizen of the United States, may vote armed service absent voter's ballots in such general or special election as follows:

(A) If the service member is the voter, he may vote only in the precinct in which he has a voting residence in the state, and that voting residence shall be that place in the precinct in which he resided immediately preceding the commencement of such service, provided that the time during which he continuously resided in the state immediately preceding the commencement of such service plus the time subsequent to such commencement and prior to the day of such general, special, or primary election is equal to or exceeds thirty days.

(B) If the spouse or dependent of a service member is the voter, he may vote only in the precinct in which he has a voting residence in the state, and that voting residence shall be that place in the precinct in which he resided immediately preceding the time of leaving the state for the purpose of being with or near the service member, provided that the time during which he continuously resided in the state immediately preceding the time of leaving the state for the purpose of being with or near the service member plus the time subsequent to such leaving and prior to the day of such general, special, or primary election is equal to or exceeds thirty days.

(C) If the service member or his spouse or dependent establishes a permanent residence in a precinct other than the precinct in which he resided immediately preceding the commencement of his service, the voting residence of both the service member and his spouse or dependent shall be the precinct of such permanent residence, provided that the time during which he continuously resided in the state immediately preceding the commencement of such service plus the time subsequent to such commencement and prior to the day of such general, special, or primary election is equal to or exceeds thirty days.

HISTORY: 1987 H 23, eff. 10-20-87
1975 S 32; 1971 S 460, H 677; 1969 S 51; 129 v 360; 1953 H 1; GC 4785-141

CROSS REFERENCES

Days counted to ascertain time, 1.14
Aiding unqualified voters or inducing officer to accept their votes, penalty, 3599.25

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 150, 167
Am Jur 2d: 26, Elections § 243 to 247
State voting rights of residents of military establishment. 34 ALR2d 1193
Validity of absentee voters' laws. 97 ALR2d 218
Construction and effect of absentee voters' laws. 97 ALR2d 257

BALLOTS

3511.02 Application for ballot

Any section of the Revised Code to the contrary notwithstanding, whenever any person applies for registration as a voter on a form adopted in accordance with federal regulations relating to the "Uniformed and Overseas Citizens Absentee Voting Act," 100 Stat. 924, 42 U.S.C.A. 1973ff (1986), this application shall be sufficient for voter registration and as a request for an absentee ballot. Armed service absent voter's ballots may be obtained by any person meeting the requirements of section 3511.01 of the Revised Code by applying to the director of the board of elections of the county in which the person's voting residence is located, in one of the following ways:

(A) Such person may make written application for such ballots. He may personally deliver such application to the director or may mail or otherwise send it to the director.

Such application need not be in any particular form. It need only contain words which, liberally construed, indicate the request for ballots; the election for which such ballots are requested, and, if the request is for primary election ballots, his party affiliation; that he is serving in the armed forces of the United States or that he is the spouse or dependent of such person; and the length of residence in the state immediately preceding the commencement of service, or immediately preceding the date of leaving to be with or near the service member, as the case may be, and sufficient information to enable the director to determine the precinct in which the residence is located. If he desires that such ballots be mailed to him, such application shall state the address to which they shall be mailed.

A voter or any relative of a voter listed in division (B) of this section may use a single federal post card application to apply for armed service absent voter's ballots for use at the primary and general elections in a given year and any special election to be held on the first Tuesday after the first Monday in May in that year, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state. Such an application shall be processed by the board of elections pursuant to section 3511.04 of the Revised Code the same as if the voter had applied separately for armed service absent voter's ballots for each election.

(B) Application to have such ballots mailed to such person may be made by the spouse when the person is a service member, or by the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole blood or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of such person. Such application shall be in writing upon a blank form furnished only by the director or on a single federal post card as provided in division (A) of this section. The form of such application shall be prescribed by the secretary of state. The director shall furnish such blank form to any of the relatives specified in this section, desiring to make such application, only upon the request of such relative made in person at the office of the board or upon the written request of such relative mailed to the office of the board. Such application, subscribed and sworn to by such applicant, shall contain:

(1) Full name of person for whom ballots are requested;

(2) Statement that such person is serving in the armed forces of the United States or that such person is a spouse or dependent of a person serving in the armed forces of the United States who resides outside this state for the purpose of being with or near such service member;

(3) Statement that such person has a residence in the county, and information as to the precinct in which it is located and length of residence in the state immediately preceding the commencement of service, or immediately preceding the date of leaving to be with or near a service member, as the case may be;

(4) Statement that applicant bears a relationship to such person as specified in this section;

(5) Election for which ballots are requested, and, if for a primary election, party affiliation of persons for whom ballots are requested;

(6) Address to which ballots shall be mailed;

(7) Signature and address of person making the application.

Each application for armed service absent voter's ballots shall be delivered to the director not earlier than the first day of January of the year of the elections for which the armed service absent voter's ballots are requested or not earlier than ninety days before the day of the election at which the ballots are to be voted, whichever is earlier, and not later than twelve noon of the third day preceding the day of the election.

(C) If the voter for whom the application is made is entitled to vote for presidential and vice-presidential electors only, the applicant shall submit to the director in addition to the requirements of divisions (A) and (B) of this section, a statement to the effect that the voter is qualified to vote for presidential and vice-presidential electors and for no other offices.

HISTORY: 1987 H 23, eff. 10-20-87
1984 S 79; 1980 H 1062; 1969 S 51; 129 v 360; 1953 H 1; GC 4785-141

CROSS REFERENCES

Former resident may vote for president, 3504.01
False signature forbidden, 3599.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 168
Am Jur 2d: 26, Elections § 243, 244, 247, 248

3511.03 Form of ballots

The board of elections of each county shall provide armed service absent voter's ballots for use at each election. Such ballots for general or primary elections shall be prescribed on the sixtieth day before the day of such elections and shall be the same as provided for absent voters in section 3509.01 of the Revised Code.

HISTORY: 1987 H 23, eff. 10-20-87
125 v 713; 1953 H 1; GC 4785-141

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 248, 250, 251

NOTES ON DECISIONS AND OPINIONS

176 OS 91, 197 NE(2d) 801 (1964), State ex rel Schwartz v Brown. Where the secretary of state refused to accept and certify a nominating petition for judge of the supreme court on Feb 13, relator filed a petition for writ of mandamus on Feb 25, respondent filed an answer on March 14 and relator a demurrer to the answer on March 23, with a brief in support thereof on March 31, relator's lack of diligence will bar relief in mandamus.

3511.04 Mailing of ballots

No later than the thirty-fifth day before the day of each general or primary election, and at the earliest possible time before the day of a special election held on a day other than the day on which a general or primary election is held, the director of the board of elections shall mail armed service absent voter's ballots then ready for use as provided for in section 3511.03 of the Revised Code and for which he has received valid applications prior to such time. Thereafter,

and until twelve noon of the third day preceding the day of election, the director shall promptly, upon receipt of valid applications therefor, mail to the proper persons all armed service absent voter's ballots then ready for use.

If, after the sixtieth day before the day of a general or primary election, any other question, issue, or candidacy is lawfully ordered submitted to the electors voting at such general or primary election, the board shall promptly provide a separate official issue, special election, or other election ballot for submitting such question, issue, or candidacy to such electors, and the director shall promptly mail each such separate ballot to each person to whom he has previously mailed other armed service absent voter's ballots.

In mailing armed service absent voter's ballots, the director shall use the fastest mail service available, but he shall not mail them by certified mail.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 H 662; 1953 H 1; GC 4785-141

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 243, 244, 247, 250, 251

3511.05 Identification envelope; return envelope

The director of the board of elections shall place armed service absent voter's ballots in an unsealed identification envelope, gummed ready for sealing, which shall have printed on its face a form as follows:

IDENTIFICATION ENVELOPE

Armed Service Absent Voter's Ballots—
Election _____
(Day of week and date)

Information Concerning Voter

1. What is your full name? _____
(Name must be printed)
2. What is the date of your birth? _____
3. Are you a citizen of the United States? _____
4. Where were you born? _____
5. If a naturalized citizen, when and in what court were you naturalized? _____
6. Are you serving in the armed forces of the United States, or are you the spouse of a person serving in the armed forces of the United States? (Indicate which one) _____
7. What was the date at the commencement of your service, or the date you left the state of Ohio to be with or near your service member spouse? _____
8. Did you reside in the state of Ohio at the time of the commencement of your service, or the time you left the state of Ohio to be with or near your service member spouse? _____
If so: What street and street number? _____
What city or village? _____
What township? _____
What county? _____
What is your present Ohio address? _____
9. How long had you continuously resided in Ohio immediately preceding the commencement of your service, or immediately preceding the date you left the state of Ohio to be with or near your service member spouse? _____
10. Will you be outside the United States on the day of the election? _____
(Applicants who answer "yes" to this question must also check the appropriate box on the enclosed return envelope to indicate that they will be outside the United States.)

I hereby declare, under penalty of election falsification, that the answers to the questions above set out are true and correct to the best of my knowledge and belief, and that I am not claiming, for the purpose of voting, a voting residence in any other state.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

_____
(Voter must WRITE his usual signature here.)

If the identification envelope is for use in a primary election, it shall contain an additional question as follows:

11. With what political party are you affiliated? _____

The director shall also mail with the ballots and the unsealed identification envelope an unsealed return envelope, gummed, ready for sealing, for use by the voter in returning his marked ballots to the director. The return envelope shall have two parallel lines, each one quarter of an inch in width, printed across its face paralleling the top, with an intervening space of one quarter of an inch between such lines. The top line shall be one and one-quarter inches from the top of the envelope. Between the parallel lines shall be printed: "OFFICIAL ELECTION ARMED SERVICE ABSENT VOTER'S BALLOTS—VIA AIR MAIL." Three blank lines shall be printed in the upper left corner on the face of the envelope for the use by the voter in placing his complete military, naval, or mailing address thereon, and beneath these lines there shall be printed a box beside the words "check if out-of-country." The voter shall check this box if he will be outside the United States on the day of the election. The official title and the post-office address of the director to whom the envelope shall be returned shall be printed on the face of such envelope in the lower right portion below the bottom parallel line. All printing on the envelope shall be in red ink.

On the back of each identification envelope and each return envelope shall be printed the following:

"Instructions to voter:

If the flap on this envelope is so firmly stuck to the back of the envelope when received by you as to require forcible opening in order to use it, open the envelope in the manner least injurious to it, and, after marking your ballots and enclosing same in the envelope for mailing them to the director of the board of elections, reclose the envelope in the most practicable way, by sealing or otherwise, and sign the blank form printed below.

The flap on this envelope was firmly stuck to the back of the envelope when received, and required forced opening before sealing and mailing.

_____
(Signature of voter)"

HISTORY: 1984 S 79, eff. 7-4-84
1980 H 1062; 1974 H 662, S 429; 129 v 360; 125 v 713; 1953 H 1; GC 4785-141

CROSS REFERENCES

Falsehoods in election documents; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

3511.051 Marking of envelopes containing presidential ballots

All identification envelopes containing absent voter's ballots for voters who are entitled to vote for presidential and vice-presidential electors only shall have printed or stamped thereon the words, "Presidential Ballots Only."

HISTORY: 1971 S 460, eff. 3-23-72
1969 S 51

CROSS REFERENCES

Former resident may vote for president, 3504.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

3511.06 Size and quality of envelopes

The identification envelope provided for in section 3511.05 of the Revised Code shall be a No. 10, 24-lb. white official envelope, four and one-eighth inches by nine and one-half inches in size. The return envelope provided for in such section shall be a No. 11, 24-lb. white official envelope, four and one-half inches by ten and three-eighth inches in size. The envelope in which the two envelopes and the armed service absent voter's ballots are mailed to the elector shall be a No. 12, 24-lb. white official envelope, four and three-quarter inches by eleven inches in size, and it shall have two parallel lines, each one quarter of an inch in width, printed across its face, paralleling the top, with an intervening space of one-quarter of an inch between such lines. The top line shall be one and one-quarter inches from the top of the envelope. Between the parallel lines shall be printed: "official armed service absent voter's balloting material—via air mail."[4] The appropriate return address of the director of the board of elections shall be printed in the upper left corner on the face of such envelope. Several blank lines shall be printed on the face of such envelope in the lower right portion, below the bottom parallel line, for writing in the name and address of the elector to whom such envelope is mailed. All printing on such envelope shall be in red ink.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-141

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

3511.07 Precautionary measures for mailing

When mailing unsealed identification envelopes and unsealed return envelopes to persons, the director of the board of elections shall insert a sheet of waxed paper or other appropriate insert between the gummed flap and the back of each of such envelopes to minimize the possibility that the flap may become firmly stuck to the back of the envelope by reason of moisture, humid atmosphere, or other conditions to which they may be subjected. If the flap on either of such envelopes should be so firmly stuck to the back of the envelope when it is received by the voter as to require forcible opening of the envelope in order to use it, the voter shall open such envelope in the manner least injurious to it, and, after marking his ballots and enclosing them in the envelope for mailing to the director, he shall reclose such envelope in the most practicable way, by sealing it or otherwise, and shall sign the blank form printed on the back of such envelope.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 S 429; 1953 H 1; GC 4785-141

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

3511.08 Record of ballots distributed

The director of the board of elections shall keep a record of the name and address of each person to whom he mails or delivers armed service absent voter's ballots, the kinds of ballots so mailed or delivered, and the name and address of the person who made the application for such ballots. After he has mailed or delivered such ballots he shall not mail or deliver additional ballots of the same kind to such person pursuant to a subsequent request unless such subsequent request contains the statement that an earlier request had been sent to the director prior to the thirtieth day before the election and that the armed service absent voter's ballots so requested had not been received by such person prior to the fifteenth day before the election, and provided that the director has not received an identification envelope purporting to contain marked armed service absent voter's ballots from such person.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 H 662; 1953 H 1; GC 4785-141

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

[4]Prior and current versions differ although no amendment to this capitalization was indicated in 1980 H 1062; quoted material was capitalized in 1953 H 1.

VOTING PROCEDURE

3511.09 Procedure for voting

Upon receiving his armed service absent voter's ballots, the elector shall cause the questions on the face of the identification envelope to be answered and, by writing his usual signature in the proper place thereon, he shall declare under penalty of election falsification that the answers to those questions are true and correct to the best of his knowledge and belief. Then he shall note whether there are any voting marks on the ballot. In the event there are any voting marks the ballot shall be returned immediately to the board of elections; otherwise he shall cause the ballot to be marked, folded separately so as to conceal the markings thereon, and deposited in the identification envelope, and securely sealed in the envelope. He shall then cause the identification envelope to be placed within the return envelope, sealed in the return envelope, and mailed to the director of the board of elections to whom it is addressed. Each elector who will be outside the United States on the day of the election shall check the box on the return envelope indicating this fact.

Every armed services absent voter's ballot identification envelope shall be accompanied by the following statement in bold face capital letters: THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

HISTORY: 1984 S 79, eff. 7-4-84
1980 H 1062; 1974 H 662, S 429; 125 v 713; 1953 H 1; GC 4785-141

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 243, 244, 247, 250, 251

3511.10 Voting in office of board of elections

If, after the thirty-fifth day and before the close of the polls on the day of a general or primary election, a valid application for armed service absent voter's ballots is delivered to the director of the board of elections at the office of the board by a person making the application in his own behalf, the director shall forthwith deliver to the person all armed service absent voter's ballots then ready for use, together with an identification envelope. The person shall then immediately retire to a voting booth in the office of the board, and mark the ballots. He shall then fold each ballot separately so as to conceal his markings thereon, and deposit all of the ballots in the identification envelope and securely seal it. Thereupon he shall fill in answers to the questions on the face of the identification envelope, and by writing his usual signature in the proper place thereon, he shall declare under penalty of election falsification that the answers to those questions are true and correct to the best of his knowledge and belief. He shall then deliver the identification envelope to the director. If thereafter, and before the third day preceding such election, the board provides additional separate official issue or special election ballots, as provided for in section 3511.04 of the Revised Code, the director shall promptly, and not later than twelve noon of the third day preceding the day of election, mail such additional ballots to such person at the address specified by him for that purpose.

In the event any person serving in the armed forces of the United States is discharged after the closing date of registration, and he or his spouse, or both, meets all the other qualifications set forth in section 3511.01 of the Revised Code, he or she shall be permitted to vote prior to the date of the election in the office of the board in his county, as set forth in this section.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 H 662, S 429; 129 v 360; 125 v 713; 1953 H 1; GC 4785-141

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

DUTIES OF OFFICIALS

3511.11 Disposition of ballots received by board

Upon receipt of any envelope bearing the designation "Official Election Armed Service Absent Voter's Ballot" prior to the eleventh day after the day of election, the director of the board of elections shall open it but shall not open the identification envelope therein contained. If upon so opening such outer envelope the director finds ballots therein which are not enclosed in the identification envelope properly sealed, he shall not look at the markings upon such ballots and shall promptly place them within the identification envelope and promptly seal it. If upon so opening such outer envelope the director finds that the ballots are within the identification envelope, but that it is not properly sealed, he shall not look at the markings upon the ballots and shall promptly seal the identification envelope.

Armed service absent voter's ballots delivered to the director not later than the close of the polls on election day shall be counted in the manner provided in section 3509.06 of the Revised Code. Any armed service absent voter's ballots that are received after the close of the polls on election day through the tenth day thereafter and that are delivered in a return envelope that indicates that the voter will be outside the United States on the day of the election shall be counted on the eleventh day at the office of the board of elections in the manner provided in divisions (C) and (D) of section 3509.06 of the Revised Code. Any such ballot postmarked or signed after the close of the polls on election day, however, shall not be counted.

Envelopes bearing the designation "Official Election Armed Service Absent Voter's Ballots" that are received by the director after the close of the polls on the day of the election, and any such envelopes that have been checked to indicate that the voter will be outside the United States on the day of the election that are signed or postmarked after the close of the polls on the day of election or that are received after the tenth day following the election, shall not be opened or counted, but shall be preserved in such envelopes unopened for a period of forty days after the day of election. Thereafter they may be destroyed on the order of

the board unless the secretary of state orders them preserved for a longer period of time.

HISTORY: 1984 S 79, eff. 7-4-84
1980 H 1062; 1974 S 237; 1971 S 460; 1953 H 1; GC 4785-141

CROSS REFERENCES

Ballot tampering, penalty, 3599.26
Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

3511.12 Counting of ballots

In counting armed service absent voter's ballots pursuant to section 3511.11 of the Revised Code, the name of each voter, followed by "Armed Service Absent Voter's Ballot," shall be written in the poll book or poll list together with such notations as will indicate the kinds of ballots the envelope contained. If any challenge is made and sustained, the identification envelope of such voter shall not be opened and shall be indorsed "Not Counted" with the reasons therefor.

HISTORY: 1984 S 79, eff. 7-4-84
1971 S 460

Note: Former 3511.12 repealed by 1971 S 460, eff. 3-23-72; 1953 H 1; GC 4785-141.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 169 to 172
Am Jur 2d: 26, Elections § 250, 251

Chapter 3513

PRIMARIES; NOMINATIONS

GENERAL PROVISIONS

3513.01 Holding of primary elections; changing to primary election method of nomination; changing to nonpartisan method of nomination
3513.02 Certificates of nomination issued when no primary is held
3513.03 Primary election officers

CANDIDATE AND CANDIDACY

3513.04 Designation of candidates; joint candidates for governor and lieutenant governor
3513.041 Write-in space required; declaration of intent of write-in candidate; joint candidates for governor and lieutenant governor
3513.05 Declarations of candidacy; certification of form of ballots on nominations; treatment of joint candidates
3513.06 Effect of change of name on declaration of candidacy
3513.07 Form of declaration of candidacy; petition for candidate
3513.08 Declaration of candidacy for judge, county commissioner; candidate for any unexpired term
3513.09 Signature and affidavit of candidate
3513.10 Filing fees of candidates

DELEGATES TO CONVENTIONS

3513.11 State conventions of major political parties
3513.12 National convention delegates and alternates
3513.121 Alternative method of selecting delegates and alternates
3513.122 Intermediate and minor party convention delegates

BALLOTS

3513.13 Separate ballots for political parties; specifications and contents
3513.131 Candidates with identical names
3513.14 Form of ballot
3513.15 Rotation of names; duties of secretary of state
3513.151 Ballots for delegates to national convention; adoption of political party rules
3513.16 Primary ballot to designate term for judge of court of common pleas; exception
3513.17 Death of candidate

CONDUCT OF ELECTION AND CANVASS

3513.18 Conduct of primary election; special election on same day
3513.19 Challenges
3513.191 Qualification for candidacy
3513.20 Statement required of person challenged; content; refusal of ballot
3513.21 Counting votes; disputed ballots
3513.22 Canvass and certification of votes cast; certificates of nomination or election
3513.23 Names written on ballot; number of votes required for nomination
3513.24 Party committee members

NOMINATION AND INDEPENDENT CANDIDATES

3513.25 Nominations of certain candidates shall be by petition—Repealed
3513.251 Nominating petitions in municipalities of under two thousand; nonpartisan municipal candidates; primary elections
3513.252 Independent candidates in municipality of more than two thousand population—Repealed
3513.253 Nominations of candidates for township officers to be by petition
3513.254 Nominations of candidates for boards of education to be by petition
3513.255 Nomination for member of county board of education
3513.256 Independent candidates for county office—Repealed
3513.257 Independent candidate's petition for nomination at primary elections; treatment of joint candidates
3513.258 Independent candidates for state office, president and vice-president of the United States, United

States senator, and representative at large to congress—Repealed
3513.259 Nomination of candidates for state board of education; filing of petitions
3513.26 Effect of change of name by person seeking nomination by petition—Repealed
3513.261 Form of nominating petition; filing fee; penalty for election falsification; treatment of joint candidates
3513.262 Filing of nominating petitions; written protests
3513.263 Processing of nominating petitions; protests
3513.27 Independent candidates nominated by petition; filing fee—Repealed
3513.271 Requirements where name changed; exceptions
3513.28 Nominating petitions for judge and candidate for any unexpired term
3513.29 Filing of nominating petitions; validity of signatures; certification; protests—Repealed
3513.291 Withdrawal of names from petitions—Repealed

WITHDRAWAL OF CANDIDATE

3513.30 Withdrawal of candidacy
3513.301 Special election when person dies or withdraws after filing declaration of candidacy
3513.31 Vacancy by withdrawal or death of nominee; selection of candidate for unexpired term; independent candidates
3513.311 Filling vacancy in candidacy for governor or lieutenant governor
3513.312 Special election when nominated candidate dies or withdraws

PRIMARIES FOR SPECIAL ELECTIONS

3513.32 Primaries for special elections

NOTICE OF UNFAIR CAMPAIGNING LAW

3513.33 Copy of unfair political campaign activities law to be furnished to candidates

CROSS REFERENCES

Election procedure, unacceptable petitions, 3501.39
Groups propagating treason and sedition or advocating violent overthrow of government barred from ballot, 3517.07
Bribery grounds for forfeiture of nomination, 3599.01
Misconduct by board of elections respecting duties, penalty, 3599.16
Interference with election forbidden, 3599.24
Possession of false election records, penalty, 3599.29
Direct primaries or petitions required for nominations, O Const Art V §7

NOTES ON DECISIONS AND OPINIONS

78 Ky L J 311 (1989-90). Regulating Our Mischievous Factions: Presidential Nominations and the Law, Andrew Pierce.

489 US 214, 109 SCt 1013, 103 LEd(2d) 271 (1989), Eu v San Francisco County Democratic Central Committee. A state election law forbidding the official governing bodies of political parties to endorse or oppose candidates, punishing candidates who claim a party endorsement, restricting organization and composition of the governing bodies, limiting terms of office, and requiring rotation of office between residents of two different state sections is invalid under US Const Am 1 and 14; state regulation of internal political party affairs is justified only when shown necessary to ensure that elections are orderly, fair, and honest. (Ed. note: California law construed in light of federal constitution.)

873 F(2d) 957 (6th Cir Ohio 1989), Zielasko v Ohio. American citizens have no "fundamental right" to seek elective office and, as a result, an age limit on judges such as that imposed by O Const Art IV § 6 need only be rationally related to a legitimate state interest: this relation does exist, because the age limit prevents the harm some older, incompetent judges might cause, provides part-time judges to ease crowded dockets, and makes room for younger judges on the bench.

GENERAL PROVISIONS

3513.01 Holding of primary elections; changing to primary election method of nomination; changing to nonpartisan method of nomination

(A) Except as otherwise provided in this section, on the first Tuesday after the first Monday in May of each year, primary elections shall be held for the purpose of nominating persons as candidates of political parties for election to offices to be voted for at the next succeeding general election.

(B) The manner of nominating persons as candidates for election as officers of a municipal corporation having a population of two thousand or more, as ascertained by the next preceding federal census, shall be the same as the manner in which candidates were nominated for election as officers in the municipal corporation in 1989 unless the manner of nominating such candidates is changed under division (C), (D), or (E) of this section.

(C) Primary elections shall not be held for the nomination of candidates for election as officers of any township, or any municipal corporation having a population of less than two thousand persons, unless a majority of the electors of any such township or municipal corporation, as determined by the total number of votes cast in such township or municipal corporation for the office of governor at the next preceding regular state election, files with the board of elections of the county within which such township or municipal corporation is located, or within which the major portion of the population thereof is located, if the municipal corporation is situated in more than one county, not later than one hundred five days before the day of a primary election, a petition signed by such electors asking that candidates for election as officers of such township or municipal corporation be nominated as candidates of political parties, in which event primary elections shall be held in such township or municipal corporation for the purpose of nominating persons as candidates of political parties for election as officers of such township or municipal corporation to be voted for at the next succeeding regular municipal election. In a township or municipal corporation where a majority of the electors have filed a petition asking that candidates for election as officers of the township or municipal corporation be nominated as candidates of political parties, the nomination of candidates for a nonpartisan election may be reestablished in the manner prescribed in division (E) of this section.

(D)(1) The electors in a municipal corporation having a population of two thousand or more, in which municipal officers were nominated in the most recent election by nominating petition and elected by nonpartisan election, may place on the ballot in the manner prescribed in division (D)(2) of this section the question of changing to the primary-election method of nominating persons as candidates for election as officers of the municipal corporation.

(2) The board of elections of the county within which the municipal corporation is located, or, if the municipal corporation is located in more than one county, of the county within which the major portion of the population of the

municipal corporation is located, shall, upon receipt of a petition signed by electors of the municipal corporation equal in number to at least ten per cent of the vote cast at the last regular municipal election, submit to the electors of the municipal corporation the question of changing to the primary-election method of nominating persons as candidates for election as officers of the municipal corporation. The ballot language shall be substantially as follows:

"Shall candidates for election as officers of _____ (name of municipal corporation) in the county of _____ (name of county) be nominated as candidates of political parties?

_____ Yes

_____ No"

The question shall be placed on the ballot at the next general election in an even-numbered year occurring at least seventy-five days after the petition is filed with the board. If a majority of the electors voting on the question vote in the affirmative, candidates for election as officers of the municipal corporation shall thereafter be nominated as candidates of political parties in primary elections, under division (A) of this section, unless a change in the manner of nominating persons as candidates for election as officers of the municipal corporation is made under division (E) of this section.

(E)(1) The electors in a township or municipal corporation in which the township or municipal officers are nominated as candidates of political parties in a primary election may place on the ballot, in the manner prescribed in division (E)(2) of this section, the question of changing to the nonpartisan method of nominating persons as candidates for election as officers of the township or municipal corporation.

(2) The board of elections of the county within which the township or municipal corporation is located, or, if the municipal corporation is located in more than one county, of the county within which the major portion of the population of the municipal corporation is located, shall, upon receipt of a petition signed by electors of the township or municipal corporation equal in number to at least ten per cent of the vote cast at the last regular township or municipal election, as appropriate, submit to the electors of the township or municipal corporation, as appropriate, the question of changing to the nonpartisan method of nominating persons as candidates for election as officers of the township or municipal corporation. The ballot language shall be substantially as follows:

"Shall candidates for election as officers of _____ (name of the township or municipal corporation) in the county of _____ (name of county) be nominated as candidates by nominating petition and be elected only in a nonpartisan election?

_____ Yes

_____ No"

The question shall appear on the ballot at the next general election in an even-numbered year occurring at least seventy-five days after the petition is filed with the board. If a majority of electors voting on the question vote in the affirmative, candidates for officer of the township or municipal corporation shall thereafter be nominated by nominating petition and be elected only in a nonpartisan election, unless a change in the manner of nominating persons as candidates for election as officers of the township or municipal corporation is made under division (C) or (D) of this section.

HISTORY: 1991 S 61, eff. 7-16-91
1983 S 213; 1974 H 662; 1953 H 1; GC 4785-67

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 27.02

CROSS REFERENCES

Days counted to ascertain time, 1.14

Political party, controlling committees, election at primaries, 3517.03

State officers to be elected at general election, O Const Art III §1

Direct primary for township, or municipality under 2000 population, only by majority petition, O Const Art V §7

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 96, 107, 108, 150, 224, 226, 233, 257, 258, 263

Am Jur 2d: 25, Elections § 3, 6, 128, 129, 132, 147 to 152

NOTES ON DECISIONS AND OPINIONS

OAG 73-094. When no primary is held, because on the basis of declarations of candidacy filed there are no contested races, a board of elections should refuse to accept the filing of declarations of intent to be write-in candidates.

1961 OAG 1990. The question of repeal of a township zoning plan may not be submitted for vote on the first Tuesday after the first Monday of May in a year if it would be the sole issue before the electors, since a "primary election" would not be held in the township in such a case.

1958 OAG 2276. Where a probate judge elected to a six-year term beginning February 9, 1955 resigns March 1, 1958, the vacancy for the unexpired term must be filled at the general election in November 1958 under O Const Art IV §13; as a result, a primary election in May 1958 is called for by RC 3513.01 to nominate candidates of political parties for the office.

1957 OAG 616. Where the legislative authority of a village of a population of less than two thousand persons, holding no primary election, determines, by a majority vote, to combine the duties of clerk and treasurer into one office to be known as clerk-treasurer, under RC 733.261, such legislative authority shall file certification of such action with the board of elections of the county in which such municipal corporation is located not less than 105 days before the second Tuesday of May preceding the regular municipal election at which such clerk-treasurer shall be elected.

1953 OAG 2710. No primaries may be held for nomination of township officers, unless petitions for such primary have been duly filed.

1951 OAG 217. Where two or more candidates for nomination as a party nominee for member of a city council from one ward, or two or more party candidates for nomination for any other office to be filled at a municipal election, have duly filed their declarations of candidacy, the board of elections would not be authorized by GC 4785-67a (RC 3513.02), to dispense with a primary election for that party, but must hold such primary election for that party for the nomination of members of council and all other offices that are to be filled at the next general election, as required by this section.

1949 OAG 410. Where a municipality has been created since the last federal census and no petition has been filed under the terms of statute, asking for a primary election, unless otherwise provided by law, such municipality is required to hold a primary election.

1939 OAG 888. Whenever total number of candidates, taking into consideration all political parties who have filed declarations of candidacy for offices to be voted upon at a primary election in an odd numbered year exceeds total number of candidates to be nominated by all political parties at such primary, provisions of statute do not apply and a primary election must be conducted in the usual manner.

3513.02 Certificates of nomination issued when no primary is held

If, in any odd-numbered year, no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to any of the offices to be voted for at the general election to be held in such year, or if the number of persons filing such declarations of candidacy for nominations as candidates of one political party for election to such offices does not exceed, as to any such office, the number of candidates which such political party is entitled to nominate as its candidates for election to such office, then no primary election shall be held for the purpose of nominating party candidates of such party for election to offices to be voted for at such general election and no primary ballots shall be provided for such party. If, however, the only office for which there are more valid declarations of candidacy filed than the number to be nominated by a political party, is the office of councilman in a ward, a primary election shall be held for such party only in the ward or wards in which there is a contest, and only the names of the candidates for the office of councilman in such ward shall appear on the primary ballot of such political party.

The election officials whose duty it would have been to provide for and conduct the holding of such primary election, declare the results thereof, and issue certificates of nomination to the persons entitled thereto if such primary election had been held shall declare each of such persons to be nominated as of the date of the seventy-fifth day before the primary election, issue appropriate certificates of nomination to each of them, and certify their names to the proper election officials, in order that their names may be printed on the official ballots provided for use in the next succeeding general election in the same manner as though such primary election had been held and such persons had been nominated at such election.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 H 662; 126 v 205; 1953 H 1; GC 4785-67a

CROSS REFERENCES

Days counted to ascertain time, 1.14
Municipal court judges, term, nomination, 1901.07
Akron municipal court clerk, 1901.31
Office type ballot, 3505.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 108, 224, 233, 257
Am Jur 2d: 25, Elections § 141

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

118 App 161, 193 NE(2d) 540 (1963), State ex rel Rose v Ryan. The provisions of the charter of the city of Columbus establishing deadlines or cut-off dates for the filing of petitions for election to municipal offices are not an unreasonable limitation and are constitutional.

2. In general

20 OS(2d) 29, 252 NE(2d) 289 (1969), State ex rel Flex v Gwin. Where a declared candidate for public office is found to be ineligible there is, in effect, an involuntary withdrawal, a withdrawal by operation of law, and under RC 3513.31, another candidate may be appointed by a county district central committee to take his place.

433 F(2d) 989 (6th Cir Ohio 1970), Bennett v Cleveland; cert denied 400 US 827, 91 SCt 53, 27 LEd(2d) 56 (1970). A federal complaint seeking a declaration that a municipal charter is unconstitutional under US Const Am 14 presents no substantial federal question and is properly dismissed where the challenged charter section provides that (1) the two primary candidates for a council seat who receive the most votes shall be the candidates for council, and (2) if a primary candidate receives a majority of votes cast he shall be the candidate at the regular election, unless no more than two people file petitions for the office, in which case those individuals shall be the candidates at the regular election and no primary election will be held.

OAG 73-094. When no primary is held, because on the basis of declarations of candidacy filed there are no contested races, a board of elections should refuse to accept the filing of declarations of intent to be write-in candidates.

OAG 69-080. If for any reason a political party candidate for public office withdraws, dies, or is incapacitated to hold office at any time, not excluded by the time limits specified in RC 3513.31, such candidate vacancy may be filled pursuant to such section.

1951 OAG 217. Where two or more candidates for nomination as a party nominee for member of a city council from one ward, or two or more party candidates for nomination for any other office to be filled at a municipal election, have duly filed their declarations of candidacy, the board of elections would not be authorized by statute to dispense with a primary election for that party, but must hold such primary election for that party for the nomination of members of council and all other offices that are to be filled at the next general election, as required by GC 4785-67 (RC 3513.01).

1949 OAG 410. When the number of persons filing declarations of candidacy for the same office at a primary election does not exceed the number of candidates which such political party shall be entitled to nominate for such office, the board of elections of such county is required by virtue of the provisions of statute to issue certificates of nomination and to place the names of such candidates for such office on the official ballots at the general election.

3513.03 Primary election officers

The board of elections shall have all the powers and perform all the duties in connection with primary elections which are imposed by the provisions of Title XXXV of the Revised Code governing general elections. The election officials for primary elections shall be designated from those appointed under section 3501.22 of the Revised Code, and shall have the same powers, perform the same duties, and be subject to the same penalties as are provided by such title for the conduct of general elections.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-68

CROSS REFERENCES

Days counted to ascertain time, 1.14
Duties of board of elections, 3501.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 224, 233, 261
Am Jur 2d: 25, Elections § 153

CANDIDATE AND CANDIDACY

3513.04 Designation of candidates; joint candidates for governor and lieutenant governor

Candidates for party nominations to state, district, county, and municipal offices or positions, for which party nominations are provided by law, and for election as members of party controlling committees shall have their names printed on the official primary ballot by filing a declaration of candidacy and paying the required filing fee, except that the joint candidates for party nomination to the offices of governor and lieutenant governor shall, for the two of them, file one declaration of candidacy and pay one filing fee.

The secretary of state shall not accept for filing the declaration of candidacy of a candidate for party nomination to the office of governor unless the declaration of candidacy also shows a joint candidate for the same party's nomination to the office of lieutenant governor, shall not accept for filing the declaration of candidacy of a candidate for party nomination to the office of lieutenant governor unless the declaration of candidacy also shows a joint candidate for the same party's nomination to the office of governor, and shall not accept for filing a declaration of candidacy that shows a candidate for party nomination to the office of governor or lieutenant governor who has already been shown as a candidate for party nomination to the office of governor or lieutenant governor on a declaration of candidacy previously filed and accepted for the same primary election.

No person who seeks party nomination for an office or position at a primary election by declaration of candidacy shall be permitted to become a candidate at the following general election for any office by nominating petition or by write-in.

HISTORY: 1977 S 115, eff. 3-10-78
1976 H 1165; 127 v 741; 126 v 205; 1953 H 1; GC 4785-69

CROSS REFERENCES

Municipal court, term of office of judge, nomination, 1901.07
Declaration of candidacy, nominating petition and other petition requirements, election falsification, 3501.38
Governor and lieutenant governor to be elected jointly, O Const Art III §1a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 71, 77, 90, 108, 224, 233, 262
Am Jur 2d: 25, Elections § 174 to 182

NOTES ON DECISIONS AND OPINIONS

20 OS(3d) 19, 20 OBR 136, 485 NE(2d) 247 (1985), State ex rel Busch v Brown. The refusal of a board of elections to accept a declaration of intent to be a write-in candidate from an incumbent mayor who had been defeated in his party's primary election is not improper where the governing municipal charter permits write-in votes only where there is but one candidate for an office or where a nominated candidate is disqualified.

175 OS 238, 193 NE(2d) 270 (1963), State ex rel Gottlieb v Sulligan. A person selected as a party candidate for an office in a primary election who withdraws his candidacy for that office is eligible for selection as a party candidate by the party committee to fill a vacancy in the nomination for another office created by the withdrawal of the candidate originally nominated.

140 OS 339, 44 NE(2d) 263 (1942), State ex rel Anderson v Hyde. One who unsuccessfully seeks nomination for political office at primaries, either by filing a declaration of candidacy or by conducting a write-in campaign, may not become an independent candidate at ensuing election for identical office by filing petition.

69 App(2d) 115, 432 NE(2d) 210 (1980), State ex rel Moss v Franklin County Bd of Elections. A person who seeks election to the office of member of a party central committee at a primary election does not seek party nomination for an office or position at a primary election within the meaning of RC 3513.04.

69 App(2d) 115, 432 NE(2d) 210 (1980), State ex rel Moss v Franklin County Bd of Elections. RC 3513.04 does not preclude a person from being an independent candidate at the general election for the office of state representative because he sought election to the office of member of a party central committee at the primary election.

53 App(2d) 213, 373 NE(2d) 1274 (1977), Foster v Cuyahoga County Bd of Elections. Pursuant to RC 3513.04, any person who seeks any public office or position at a party primary election by declaration of candidacy is prohibited from becoming a candidate for any public office by nominating petition or by write-in at the following general election.

53 App(2d) 213, 373 NE(2d) 1274 (1977), Foster v Cuyahoga County Bd of Elections. The limitations on candidacy set forth in RC 3513.04 do not conflict with rights protected by US Const Am 1 or 14.

104 App 418, 149 NE(2d) 576 (1957), State ex rel Mazaris v Gaylord. RC 3513.191 and 3513.23 are in pari materia and "candidate" as used in RC 3513.191 applies to RC 3513.23 and embraces not only one who seeks office, but includes one who is chosen by others as a contestant for office.

104 App 418, 149 NE(2d) 576 (1957), State ex rel Mazaris v Gaylord. An elector who voted in the democratic primary election in 1953, did not vote in any primary election in 1954, and voted in the republican primary elections in 1955, 1956 and 1957, is disqualified to be nominated as a candidate of the republican party by write-in votes cast for him in the primary election of 1957 notwithstanding he filed no declaration of candidacy and did nothing to promote or encourage such write-in vote.

OAG 73-094. When no primary is held, because on the basis of declarations of candidacy filed there are no contested races, a board of elections should refuse to accept the filing of declarations of intent to be write-in candidates.

1963 OAG 478. RC 3513.04 prohibits a candidate who runs and loses in the primary election from running in the following general election for a different office on a nonpartisan ticket.

1960 OAG 1787. A person who seeks a party nomination for an office or position at a primary election by declaration of candidacy is not eligible to be certified as the candidate of a political party at the following general election to fill the unexpired term of a person who holds an elective office and who dies subsequently to the one-hundredth day before the day of a primary election and prior to the fortieth day before the day of the next general election.

1958 OAG 2479. Where an individual has unsuccessfully sought his party's nomination for the office of county commissioner in the May 1958 primary, the provisions of RC 3513.04 forbid his candidacy in the 1958 general election for "any office" whether a primary election is provided by law to choose candidates therefor or whether nomination is achieved only by petition as in the case of county judge elections.

1949 OAG 1286. Statute prohibits a person who seeks party nomination for an office or position at a primary election to become a candidate at the following election for the same office by petition; it does not prohibit such person from becoming a "write-in" candidate.

1932 OAG 4595. An elector who was defeated in the primary as a candidate for the office of county commissioner may become a candidate by petition for the office of county commissioner for an unexpired term which it is necessary to fill at the following general election due to the death of the incumbent after the primaries.

3513.041 Write-in space required; declaration of intent of write-in candidate; joint candidates for governor and lieutenant governor

A write-in space shall be provided on the ballot for every office, but write-in votes shall not be counted for any candidate who has not filed a declaration of intent to be a write-in candidate pursuant to this section. A qualified person who has filed a declaration of intent may receive write-in votes at either a primary or general election. Any candidate, except one whose candidacy is to be submitted to electors throughout the entire state, shall file a declaration of intent to be a write-in candidate before four p.m. of the fortieth day preceding the election at which such candidacy is to be considered. If the election is to be determined by electors of a county or a district or subdivision within the county, such declaration shall be filed with the board of elections of that county. If the election is to be determined by electors of a subdivision located in more than one county, such declaration shall be filed with the board of elections of the county in which the major portion of the population of such subdivision is located. If the election is to be determined by electors of a district comprised of more than one county but less than all of the counties of the state, such declaration shall be filed with the board of elections of the most populous county in such district. Any candidate for an office to be voted upon by electors throughout the entire state shall file a declaration of intent to be a write-in candidate with the secretary of state before four p.m. of the fortieth day preceding the election at which such candidacy is to be considered. In addition, candidates for president and vice-president of the United States shall also file with the secretary of state by said fortieth day a slate of presidential electors sufficient in number to satisfy the requirements of the United States constitution.

No person shall file a declaration of intent to be a write-in candidate for the office of governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of lieutenant governor. No person shall file a declaration of intent to be a write-in candidate for the office of lieutenant governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of governor. No person shall file a declaration of intent to be a write-in candidate for the office of governor or lieutenant governor if he has previously filed a declaration of intent to be a write-in candidate to the office of governor or lieutenant governor at the same primary or general election. A write-in vote for the two candidates who file such a declaration shall be counted as a vote for them as joint candidates for the offices of governor and lieutenant governor.

The secretary of state shall not accept for filing the declaration of intent to be a write-in candidate of a person for the office of governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of lieutenant governor, shall not accept for filing the declaration of intent to be a write-in candidate of a person for the office of lieutenant governor unless the declaration also shows the intent of another person to be a write-in candidate for the office of governor, and shall not accept for filing the declaration of intent to be a write-in candidate of a person to the office of governor or lieutenant governor if that person has already been shown, on a declaration of intent previously filed and accepted for the same primary or general election, to be a write-in candidate to the office of governor or lieutenant governor.

The secretary of state shall prescribe the form of the declaration of intent to be a write-in candidate.

HISTORY: 1977 S 115, eff. 3-10-78
1976 H 1164; 1969 S 17

CROSS REFERENCES

Standard time in Ohio, 1.04
Days counted to ascertain time, 1.14
Declaration of candidacy, nominating petition and other petition requirements, election falsification, 3501.38
Governor and lieutenant governor to be elected jointly, O Const Art III §1a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 128, 178, 224, 233
Am Jur 2d: 26, Elections § 213, 268 et seq.

NOTES ON DECISIONS AND OPINIONS

53 App(2d) 213, 373 NE(2d) 1274 (1977), Foster v Cuyahoga County Bd of Elections. Where there is no provision in any state statute or in any local rule for a protest procedure before the board of elections to challenge the validity of a write-in candidacy, the initial approval or disapproval by the board is final absent allegations of fraud, corruption, abuse of discretion, or clear disregard of statutes or applicable legal provisions.

OAG 73-094. When no primary is held, because on the basis of declarations of candidacy filed there are no contested races, a board of elections should refuse to accept the filing of declarations of intent to be write-in candidates.

OAG 70-011. It is not necessary to provide write-in spaces on primary election ballots for offices of member of state central committee of a political party in Ohio, or delegate or alternate to national convention of a political party, but such write-in space must be provided for office of member of county central committee and such office must appear on ballot even though no candidate has qualified to have his name printed on ballot for the office, in order that votes cast for eligible write-in candidates may be counted.

3513.05 Declarations of candidacy; certification of form of ballots on nominations; treatment of joint candidates

Each person desiring to become a candidate for a party nomination or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor, shall, not later than four p.m. of the seventy-fifth day before the day of the primary election, file a declaration of candidacy and petition and pay the fee required by section 3513.10 of the Revised Code. The declaration of candidacy and all separate petition papers shall be filed at the same time as one instrument. When the offices are to be voted for at a primary election, persons desiring to become joint candidates for the offices of governor and lieutenant governor shall, not later than four p.m. of the seventy-fifth day before the day of the primary election, comply with section 3513.04 of the Revised Code. The prospective joint candidates' declaration of candidacy and all separate petition papers of candidacies shall be filed at the same time, as one instrument.

If the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the entire state, the petition, including a petition for joint candidates for the offices of governor and lieutenant governor, shall be signed by at least one thousand qualified electors who are

members of the same political party as the candidate or joint candidates and the declaration of candidacy and petition shall be filed with the secretary of state; provided that the secretary of state shall not accept or file any such petition appearing on its face to contain signatures of more than three thousand electors.

Except as otherwise provided in this paragraph, if the declaration of candidacy is of one that is to be submitted only to electors within a district, political subdivision, or portion thereof, the petition shall be signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member. If the declaration of candidacy is for party nomination as a candidate for member of the legislative authority of a municipal corporation elected by ward, the petition shall be signed by not less than twenty-five qualified electors who are members of the political party of which the candidate is a member.

No such petition, except the petition for a candidacy that is to be submitted to electors throughout the entire state, shall be accepted for filing if it appears to contain on its face signatures of more than three times the minimum number of signatures. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures on petitions when the number of verified signatures equals the minimum required number of qualified signatures.

If the declaration of candidacy declares a candidacy for party nomination or for election as a candidate of an intermediate or minor party, the minimum number of signatures on such petition is one-half the minimum number provided in this section, except that when the candidacy is one for election as a member of the state central committee or the county central committee of a political party the minimum number shall be the same for an intermediate or minor party as for a major party.

If a declaration of candidacy is one for election as a member of the state central committee or the county central committee of a political party, the petition shall be signed by five qualified electors of the district, county, ward, township, or precinct within which electors may vote for such candidate. The electors signing such petition shall be members of the same political party as the political party of which the candidate is a member.

For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if he voted in that party's primary election within the preceding two calendar years, or if he did not vote in any other party's primary election within the preceding two calendar years.

If the declaration of candidacy is of one that is to be submitted only to electors within a county, or within a district or subdivision or part thereof smaller than a county, the petition shall be filed with the board of elections of the county. If the declaration of candidacy is of one that is to be submitted only to electors of a district or subdivision or part thereof that is situated in more than one county, the petition shall be filed with the board of elections of the county within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located.

A petition shall consist of separate petition papers, each of which shall contain signatures of electors of only one county. Petitions or separate petition papers containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions or separate petition papers containing signatures of electors of more than one county are filed, the board shall determine the county from which the majority of signatures came, and only signatures from such county shall be counted. Signatures from any other county shall be invalid.

Each separate petition paper shall be circulated by one person only, who shall be the candidate or a joint candidate or a member of the same political party as the candidates, and each separate petition paper shall be governed by the rules set forth in section 3501.38 of the Revised Code.

The secretary of state shall promptly transmit to each board such separate petition papers of each petition accompanying a declaration of candidacy filed with him as purport to contain signatures of electors of the county of such board. The board of the most populous county of a district shall promptly transmit to each board within such district such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the county of each such board. The board of a county within which the major portion of the population of a subdivision, situated in more than one county, is located, shall promptly transmit to the board of each other county within which a portion of such subdivision is located such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the portion of such subdivision in the county of each such board.

All petition papers so transmitted to a board and all petitions accompanying declarations of candidacy filed with such board shall, under proper regulations, be open to public inspection until four p.m. of the seventieth day before the day of the next primary election. Each board shall, not later than the sixty-eighth day before the day of such primary election, examine and determine the validity or invalidity of the signatures on the petition papers so transmitted to or filed with it and shall return to the secretary of state all petition papers transmitted to it by the secretary of state, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such board, together with its certification of its determination as to the validity or invalidity of the signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

Protests against the candidacy of any person filing a declaration of candidacy for party nomination or for election to an office or position, as provided in this section, may be filed by any qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy he objects to, or by the controlling committee of such party. Such protest must be in writing, and must be filed not later than four p.m. of the sixty-fourth day before the day of the primary election. Such protest shall be filed with the election officials with whom the declaration of candidacy and petition was filed. Upon the filing of such protest the election officials with whom it

is filed shall promptly fix the time for hearing it, and shall forthwith mail notice of the filing of such protest and the time fixed for hearing to the person whose candidacy is so protested. They shall also forthwith mail notice of the time fixed for such hearing to the person who filed the protest. At the time fixed such election officials shall hear the protest and determine the validity or invalidity of the declaration of candidacy and petition. If they find that such candidate is not an elector of the state, district, county, or political subdivision in which he seeks a party nomination or election to an office or position, or has not fully complied with this chapter, his declaration of candidacy and petition shall be determined to be invalid and shall be rejected, otherwise it shall be determined to be valid. Such determination shall be final.

A protest against the candidacy of any persons filing a declaration of candidacy for joint party nomination to the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the candidacy of any person filing a declaration of candidacy by himself.

The secretary of state shall, on the sixtieth day before the day of a primary election, certify to each board in the state the forms of the official ballots to be used at such primary election, together with the names of the candidates to be printed thereon whose nomination or election is to be determined by electors throughout the entire state and who filed valid declarations of candidacy and petitions.

The board of the most populous county in a district comprised of more than one county but less than all of the counties of the state shall on the sixtieth day before the day of a primary election, certify to the board of each county in the district the names of the candidates to be printed on the official ballots to be used at such primary election, whose nomination or election is to be determined only by electors within such district and who filed valid declarations of candidacy and petitions.

The board of a county within which the major portion of the population of a subdivision smaller than the county and situated in more than one county is located shall, on the sixtieth day before the day of a primary election, certify to the board of each county in which a portion of such subdivision is located the names of the candidates to be printed on the official ballots to be used at such primary election, whose nomination or election is to be determined only by electors within such subdivision and who filed valid declarations of candidacy and petitions.

HISTORY: 1992 H 700, § 9, eff. 6-30-92
1990 H 237, § 1, 3; 1989 H 36, § 1, 3; 1986 S 45, § 1, 3; 1985 H 160, § 1, 3; 1984 S 358, § 1, 3; 1980 H 1062; 1979 H 142; 1977 S 115; 1974 H 662; 1971 S 460

Note: 1992 H 700, § 9, eff. 4-1-92, suspended the operation of the amendment of this section by 1990 H 237, § 3, eff. 5-31-92, from 5-31-92 to 6-30-92.

Note: Former 3513.05 repealed by 1971 S 460, eff. 3-23-72; 130 v H 422; 127 v 45; 125 v 713; 1953 H 1; GC 4785-70.

CROSS REFERENCES

Campaign reporting, candidate for more than one office in reporting period needs separate committees, accounts, and reports, OAC Ch 111-1

Campaign expense reporting law, copy and explanation given to each candidate filing petition or other candidacy papers, OAC 111-5-02

Standard time in Ohio, 1.04

Days counted to ascertain time, 1.14

Akron municipal court clerk, 1901.31

Declaration of candidacy, nominating petition and other petition requirements, election falsification, 3501.38

Unqualified person signing petition, penalty; threats concerning petitions punished, 3599.13

Offenses as to petitions, 3599.14, 3599.15

Governor and lieutenant governor to be elected jointly, O Const Art III §1a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 84, 86 to 90, 93 to 95, 108, 205, 224, 233, 262, 264, 268

Am Jur 2d: 25, Elections § 156, 174 et seq.

NOTES ON DECISIONS AND OPINIONS

1. Declaration or certification of candidate
2. Eligibility; protest
3. Residency questions
4. Petition requirements

1. Declaration or certification of candidate

51 OS(2d) 173, 367 NE(2d) 879 (1977), State ex rel Senn v Cuyahoga County Bd of Elections. Court of appeals improperly reversed action of board of elections which denied candidate place on ballot on ground that he had filed his declaration of candidacy the day after he had filed his part-petitions.

29 OS(2d) 233, 281 NE(2d) 186 (1972), State ex rel Loss v Lucas County Bd of Elections. RC 3513.05 demands that a petition circulator affirm the validity of signatures under oath and that the signatures be made in the presence of both the circulator and the notary.

26 OS(2d) 169, 270 NE(2d) 649 (1971), State ex rel Capers v Cuyahoga County Bd of Elections. Until candidate's nominating petition is filed with board of elections, no duty with respect thereto, enforceable by writ of mandamus, is incumbent upon such board.

22 OS(2d) 61, 258 NE(2d) 111 (1970), State ex rel Kucinich v Duffy. Signature of a candidate on his own nominating petition, as signer of that petition, cannot be included in determining whether such petition contains minimum number of signatures required by law.

4 OS(2d) 16, 212 NE(2d) 420 (1965), State ex rel Svete v Geauga County Bd of Elections. Advice by a deputy clerk that nominating petitions appeared to be in proper order does not estop the board of elections from declaring such petitions to be invalid.

176 OS 191, 198 NE(2d) 459 (1964), State ex rel Cofall v Cuyahoga County Bd of Elections. "Clerk of courts" is sufficient on a nominating petition for clerk of the court of common pleas.

176 OS 91, 197 NE(2d) 801 (1964), State ex rel Schwartz v Brown. Where the secretary of state refused to accept and certify a nominating petition for judge of the supreme court on February 13, relator filed a petition for writ of mandamus on February 25, respondent filed an answer on March 14 and relator a demurrer to the answer on March 23, with a brief in support thereof on March 31, relator's lack of diligence will bar relief in mandamus.

175 OS 237, 193 NE(2d) 269 (1963), State ex rel Keyse v Sarosy. Rejection of a petition because the affidavit says there are seventeen signatures when the petition contains (1) two signatures that are crossed out for a person who signed both before and after registering to vote and (2) fifteen other signatures, is an abuse of discretion.

173 OS 321, 181 NE(2d) 888 (1962), State ex rel Schwarz v Hamilton County Bd of Elections. Where a petition has twenty-eight signatures while the circulator's affidavit says twenty-seven signatures were made in his presence because he knew one signature was invalid because the signer resides in another county, rejection of the petition is too technical and is an abuse of discretion.

173 OS 317, 181 NE(2d) 890 (1962), State ex rel Ferguson v Brown; overruled by 22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. The election laws contemplate essentially one declaration of candidacy which shall be uniform and complete in accordance with the statutory mandates, which may be an original one at the head of each petition paper circulated, signed by the candidate individually and sworn to, or there may be a single complete original declaration with identical copies thereof heading all other separate nominating petition papers placed in circulation, but there may not be a number of declarations varying in substance and form and with material omissions.

170 OS 511, 166 NE(2d) 759 (1960), State ex rel Higgins v Brown. Prohibition is an appropriate proceeding to prevent a board of elections from placing a candidate's name on a ballot where such name may not lawfully be placed thereon, and in such a prohibition proceeding a court may in effect reverse such a decision where the undisputed facts are such as to require a different decision as a matter of law.

170 OS 9, 161 NE(2d) 891 (1959), State ex rel Hanna v Milburn. Where a board of elections furnished nominating petitions which failed to state that the circulators were qualified electors of the state of Ohio, it was not an abuse of discretion for such board to find that such petitions were valid.

165 OS 139, 133 NE(2d) 369 (1956), State ex rel Clampitt v Brown. As used in RC 3513.05 "most populous county of such district" refers to a county not wholly situated in the district where the portion in the district is most populous.

154 OS 207, 94 NE(2d) 1 (1950), Cooper v Kosling. Where, in action to contest election proceeding brought under the provisions of GC 4785-166 (RC 3515.08), the petition alleges that at the primary election contestee's name was on the ballot although he was not a qualified elector, that he got his name on the ballot by fraud and perjury and that therefore he received no legal vote, the petition fails to state a cause of action to contest election; contestor's remedy was an action to determine validity of declaration of candidacy brought under this section.

149 OS 484, 79 NE(2d) 219 (1948), State ex rel Lane v Montgomery County Bd of Elections. Where petition and declaration of candidacy as originally filed contained more than 5 signatures of qualified electors and prior to final filing date the petitioner requested removal of excess signatures, which were so removed with knowledge of the members of board of elections, no protests were filed and board later certified nomination papers as valid, the board abused its discretion by thereafter, without notice to candidate, but after public hearing, finding petitioner had not qualified, and mandamus will issue to have candidate's name placed on ballot.

149 OS 193, 78 NE(2d) 352 (1948), State ex rel Burgstaller v Franklin County Bd of Elections. Where candidate files more than one petition form at the same time for election as member of county central committee of a political party, and the petition forms in the aggregate contain more than five names, candidate has not complied with statute.

131 OS 90, 1 NE(2d) 614 (1936), State ex rel Rowe v Schirmer. Provisions of GC 4785-70 and 4785-75 (RC 3513.05, 3513.12) require a minimum of one hundred names of electors upon the petition of a delegate to a national party convention from a congressional district less than a county.

131 OS 90, 1 NE(2d) 614 (1936), State ex rel Rowe v Schirmer. Term "subdivision" as employed in statute does not embrace a congressional district smaller than a county.

122 OS 278, 171 NE 315 (1930), State ex rel Thompson v Montgomery County Bd of Elections. A petition accompanying the declaration of a candidate for election as a member of a state central committee is sufficient if signed by five electors of the candidate's political party who are residents of the district.

122 OS 278, 171 NE 315 (1930), State ex rel Thompson v Montgomery County Bd of Elections. A petition of a candidate for an office to be voted for by the electors of the county or district larger than a county and less than a state, signed either by one hundred electors of the candidate's political party or by five per cent of the electors who voted for the party candidate for governor at the next preceding regular state election, meets the requirements of statute.

91 OS 36, 109 NE 590 (1914), State ex rel Murphy v Graves. A nominee must be affiliated with the party nominating him.

112 App 4, 167 NE(2d) 112 (1960), State ex rel Kay v Cuyahoga County Bd of Elections. Where a board of elections concludes that a declaration of candidacy preceded and was printed and executed on the petition papers before the signing thereof by those supporting such candidacy, it may disregard an erroneous date typewritten thereon as the date of the acknowledgment thereof by the notary public.

110 App 543, 161 NE(2d) 243 (1959), State ex rel Bailey v Cuyahoga County Bd of Elections. Where a candidate was advised by the board of elections at the time of the filing of his nominating petitions that there was nothing further to sign and where he had signed each petition twice, his failure to sign the acceptance on the front of the petition did not justify a rejection of the petitions.

106 App 61, 148 NE(2d) 519 (1958), State ex rel Donnelly v Green. Mandamus would not issue to compel board of elections to omit candidate's name from a ballot where candidate filed for both two and four year terms for the state senate and then withdrew his name from the former race.

97 App 43, 120 NE(2d) 898 (1954), State ex rel Bouse v Cickelli. One who votes a party ballot at a party primary becomes affiliated with that party, and such status continues until he changes his status by an affirmative act.

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

OAG 66-005. A district established by the reapportionment plan is not a "subdivision smaller than a county" within the meaning of RC 3513.05, despite the geographical area included in such district, and all candidates filing declarations of candidacy for nomination for election to the office of representative to the general assembly must file petitions containing sufficient signatures to meet the requirements of that section as they apply to candidates to be elected from a county or a congressional district smaller than a county.

1948 OAG 2922. A person cannot lawfully file, in connection with the same primary election, declarations of candidacy to become candidate for nomination to two or more incompatible offices; and, consequently, a board of elections should reject second declaration of candidacy of person who has already filed a declaration of candidacy in connection with the same primary election, if such second declaration of candidacy is for nomination to an office which is incompatible with the one designated in the first.

1940 OAG 1983. Person desiring to become a party candidate for a county office by the method of declaration must accompany such declaration of candidacy with a petition signed by at least one hundred electors of his party, or, by at least five per cent of the vote cast within the county for his party candidate for governor at the next preceding state election, whichever number is the smaller.

1932 OAG 4237. Where a person residing in a registration precinct has filed a declaration of candidacy and is not registered as an elector, he is not entitled to have his name appear on the ballot of his party at the primary election as a candidate. In such a case the board of elections has the authority to reject and refuse to act upon the declaration.

1930 OAG 1763. Signatures to a petition accompanying a declaration of candidacy for an office to be voted for by the electors of a district larger than a county and less than the state may be secured in any one county within such district, since there is no statutory provision as to the territorial distribution of such petitioners.

2. Eligibility; protest

17 OS(3d) 61, 17 OBR 64, 477 NE(2d) 623 (1985), Chevalier v Brown. Where the secretary of state's office erroneously schedules an election to fill an unexpired mayoral term for a noncharter

municipality, and where individuals relying upon the error file petitions for the mayoral election instead of for council elections, mandamus does not lie to compel election officials to either hold the erroneously scheduled mayoral election or accept late petitions for council seats.

56 OS(2d) 70, 381 NE(2d) 1129 (1978), State ex rel Lippitt v Cuyahoga County Bd of Elections. Mandamus will not lie to declare a candidacy void where the relator has failed to file a written protest within the time specified.

22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. That a declaration of candidacy is executed by more than one notary does not mislead or defraud the signers of the part-petitions.

14 OS(2d) 175, 237 NE(2d) 313 (1968), Stern v Cuyahoga County Bd of Elections. Where, after the board of elections has conducted a public hearing upon a protest, the undisputed facts are that (1) a valid declaration of candidacy has been properly filed, (2) a proper petition containing a valid affidavit of the circulator of each part-petition has been filed, (3) in the jurat following the circulator's affidavit on one part-petition the notary who administered the oath to the circulator inadvertently omitted his handwritten signature and imprinted seal, (4) such jurat is properly dated and bears the name of the notary who administered the oath, the title of his office, the date his notary commission will expire and the limits of his jurisdiction (such matters having been stamped upon the jurat by the notary at the time he administered the oath to the circulator), a board of elections does not abuse its discretion when it rules that such part-petition is valid on the ground that there is substantial compliance with the form of the declaration of candidacy and petition.

4 OS(2d) 16, 212 NE(2d) 420 (1965), State ex rel Svete v Geauga County Bd of Elections. The mere failure of an election board to declare a nominating petition void within the time prescribed by RC 3513.263 does not render the petition valid.

167 OS 323, 148 NE(2d) 229 (1958), Maranze v Montgomery County Bd of Elections. A mandamus action to declare null and void certain certificates of nomination cannot be brought by a complainant who has failed to file a protest to the nominating petitions.

164 OS 193, 129 NE(2d) 623 (1955), State ex rel Flynn v Cuyahoga County Bd of Elections. A board of elections is authorized to conduct a hearing on a protest against the nominating petition of a candidate alleged to be ineligible to assume the office and to determine the validity of such petition; and its decision is final and, in the absence of allegations of fraud, corruption, abuse of discretion or a clear disregard of statutes or legal provisions applicable thereto, is not subject to judicial review.

153 OS 372, 92 NE(2d) 4 (1950), Pierce v Brushart. In the absence of fraud or bad faith, the courts may not override a finding of a board of elections, having jurisdiction of the subject matter, to the effect that a declaration of candidacy and petition of a candidate for nomination to a public office is valid, where no protest against such declaration and petition was filed with such board within the time required by statute.

149 OS 329, 78 NE(2d) 715 (1948), State ex rel McGinley v Bliss. Provisions of statute relating to notice and hearing apply only where protests are filed against candidacy of any person filing declaration of candidacy; and where the candidate is challenging the action of board of elections in rejecting nomination papers for failure to comply with GC 4785-71a (RC 3513.08), candidate is not entitled to notice and hearing and GC 4785-13 (RC 3501.11) does not provide for a hearing.

53 App(2d) 213, 373 NE(2d) 1274 (1977), Foster v Cuyahoga County Bd of Elections. Where there is no provision in any state statute or in any local rule for a protest procedure before the board of elections to challenge the validity of a write-in candidacy, the initial approval or disapproval by the board is final absent allegations of fraud, corruption, abuse of discretion, or clear disregard of statutes or applicable legal provisions.

112 App 4, 167 NE(2d) 112 (1960), State ex rel Kay v Cuyahoga County Bd of Elections. There is no manner prescribed by statute in which a board of elections must conduct a hearing on a protest to a declaration of candidacy and petition for nomination at a primary election; any reasonable investigation conducted in good faith satisfies the statutory requirements therefor.

68 Abs 539, 119 NE(2d) 84 (App, Cuyahoga 1954), Marlin v Cuyahoga County Bd of Elections. A challenge to the candidacy of a person for nomination must be filed with the board of elections before an action can be brought for an injunction to restrain the board from placing such candidate on the ballot, unless fraud or bad faith on the part of the board is alleged.

479 US 189, 107 SCt 533, 93 LEd(2d) 499 (1986), Munro v Socialist Workers Party. State election laws denying a place on the ballot to independent and minor party candidates who received less than one per cent of all the votes cast in the primary election violate neither the First nor the Fourteenth Amendment. (Ed. note: Washington statute construed in light of federal constitution.)

873 F(2d) 957 (6th Cir Ohio 1989), Zielasko v Ohio. American citizens have no "fundamental right" to seek elective office and, as a result, an age limit on judges such as that imposed by O Const Art IV § 6 need only be rationally related to a legitimate state interest: this relation does exist, because the age limit prevents the harm some older, incompetent judges might cause, provides part-time judges to ease crowded dockets, and makes room for younger judges on the bench.

1964 OAG 1261. A person who falls within the prohibition in RC 3513.191 cannot lawfully be nominated as a candidate or elected at a party primary and the board of elections is without legal authority to place such person's name as a candidate for election on the ballot to be used in the general election in November.

3. Residency questions

1 OS(3d) 275, 1 OBR 384, 439 NE(2d) 893 (1982), State ex rel Speck v Licking County Bd of Elections. Where an election board has certified a candidate, the secretary of state has no jurisdiction to take action in respect thereto.

170 OS 511, 166 NE(2d) 759 (1960), State ex rel Higgins v Brown. Where a candidate states under oath in his declaration of candidacy that his voting residence is in a particular registration precinct and that he is a qualified elector in such precinct, when at the time of such sworn statement the candidate is not residing in such precinct, has not resided there for 40 or more days and has not even attempted to register as an elector therein, there is such a failure to fully comply with RC 3513.05 and 3513.07 as to require, at a hearing on a protest against the candidacy of such candidate, a determination that his declaration of candidacy be rejected.

167 OS 449, 150 NE(2d) 43 (1958), State ex rel Ford v Pickaway County Bd of Elections. Action of a board of elections in sustaining a protest to a candidate's petition on the ground that he was a nonresident of the county will not be set aside in the absence of fraud or gross irregularity.

157 OS 428, 105 NE(2d) 639 (1952), State ex rel McGowan v Summit County Bd of Elections. A protest against a candidacy will not be sustained where the sole ground therefor is that the candidate falsely stated in registration in 1930 that she was born in the United States and such statement was her honest belief at that time, and when it further appeared that she had become a citizen by a parent's naturalization at an early age.

157 OS 345, 105 NE(2d) 414 (1952), State ex rel Bass v Summit County Bd of Elections. When a petition of a candidate for convention delegate is circulated by a registered elector and properly filed, the petition cannot thereafter be rejected and the candidate disqualified upon a decision by the board upon collateral attack that the circulator had misrepresented her birthplace and citizenship, when such misrepresentation was unknown to the candidate.

157 OS 338, 105 NE(2d) 399 (1952), State ex rel Klink v Eyrich. A finding of the board of elections regarding the voting residence of a candidate will not be disturbed by a court unless the evidence before the board was such as to require as a matter of law a determination that the candidate's voting residence was not as stated in his declaration of candidacy. In other words, if there was substantial

evidence to sustain that decision, the decision of the board must be sustained. In such an instance where there is no claim of any fraud or corruption on the part of the board, this court cannot say that the board abused its discretion.

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. An elector's petition and declaration of candidacy for the office of councilman-at-large are not invalid by reason of the fact that within forty days preceding the filing thereof the elector has in good faith removed from one precinct to another in the same ward of the municipality without changing his registration at the county board of elections.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. The factual decision of a board of elections as to the residence of a person seeking to become a voter is subject to judicial review, when such factual decision is arbitrary, unreasonable or constitutes an abuse of discretion.

OAG 84-025. Pursuant to RC 3513.05 and 3513.261, a board of elections may not certify as valid the petition of a candidate for county office who does not reside in the county in which he seeks office.

4. Petition requirements

157 OS 345, 105 NE(2d) 414 (1952), State ex rel Bass v Summit County Bd of Elections. Where the circulator of a candidate's petition is registered with the board of elections and the records of the board of elections represent such circulator to be a qualified elector, the qualifications of such circulator as a qualified elector cannot be attacked collaterally in a proceeding before the board of elections based upon a protest to the petition so circulated for and filed by such candidate. (Annotation from former RC 3513.27.)

3513.06 Effect of change of name on declaration of candidacy

If any person desiring to become a candidate for public office has changed his name within five years next preceding the filing of his declaration of candidacy, his declaration of candidacy and petition must both contain, immediately following his present name, his former names. Any person who has been elected under his changed name, without submission of his former name, shall be immediately suspended from the office and the office declared vacated, and shall be liable to the state for any salary he has received while holding such office. The attorney general in the case of candidates for state offices, the prosecuting attorney of the most populous county in a district in the case of candidates for district offices, and the prosecuting attorney of the county in the case of all other candidates shall institute necessary action to enforce this section.

This section does not apply to a change of name by reason of marriage; to a candidate for a state office who has once complied with this section and who has previously been elected to a state office; to a candidate for a district office who has once complied with this section and who has previously been elected to a state or district office; to a candidate for a county office who has once complied with this section and has previously been elected to a state, district, or county office; to a candidate for a municipal office who has once complied with this section and has previously been elected to a municipal office; or to a candidate for a township office who has once complied with this section and has previously been elected to a township office; provided that such previous election was one at which his candidacy complied with this section.

HISTORY: 1980 H 946, eff. 8-4-80
1953 H 1; GC 4785-70a

CROSS REFERENCES

Change of name, Ch 2717
Former names to be printed on ballot, 3505.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 393; 37, Elections § 77, 78, 84, 224, 233
Am Jur 2d: 25, Elections § 174

NOTES ON DECISIONS AND OPINIONS

51 OS(3d) 83, 554 NE(2d) 1288 (1990), State ex rel Green v Casey. Name changes "by reason of marriage" excepted by RC 3513.06 include reversions to maiden names.

63 OS(2d) 336, 410 NE(2d) 764 (1980), State ex rel Morrison v Franklin County Bd of Elections. Where candidate changed his name on voter registration lists from Fred C. Morrison to Fred Curly Morrison and thereafter filed a declaration of candidacy under the new name, board of elections properly ruled he should be listed on the ballot under the old name.

20 OS(2d) 41, 252 NE(2d) 641 (1969), State ex rel Sterne v Hamilton County Bd of Ed. Refusal of a board of elections to print a candidate's "nickname" on the ballot instead of or along with the individual's name as it appears on a birth certificate, deed, voter registration, and driver's license is not an abuse of discretion.

153 OS 372, 92 NE(2d) 4 (1950), Pierce v Brushart. Where a person, in the signing of a declaration of candidacy and petition for nomination to a public office, used a name which he had adopted and by which he had been generally known in the community in which he resided, for many years both before and after the enactment of GC 4785-70a and 4785-90a (RC 3513.06, 3513.26), and for more than 10 years before the filing of such declaration of candidacy and petition, the fact that during the same period of time he used another name on certain occasions does not make such signing a change of name within the purview and meaning of such sections.

114 App 497, 177 NE(2d) 616 (1961), State ex rel Krupa v Green. Where a woman arranges by antenuptial written contract to retain her maiden name and so notifies the board of elections which notes on her registration card that she "is married" and "will retain her single name," and where, after her marriage, she uses only her single name in all her activities, is known only by such name, and votes thereunder in three elections, a declaration of candidacy and nominating petition filed by such woman under and using her single name is not for such reason invalid.

1941 OAG 4026. Where person whose identity is not questioned and who is commonly known as "Frank H. Kearns" signs acceptance of candidacy for office of councilman of city of Columbus as "Frank H. Kearns," nominating petition of such person, if regular in all other respects, is valid, even though such person is registered in name of "Francis H. Kearns," and name which is to appear on ballot in ensuing primary election should be "Frank H. Kearns."

3513.07 Form of declaration of candidacy; petition for candidate

The form of declaration of candidacy and petition of a person desiring to be a candidate for a party nomination or a candidate for election to an office or position to be voted for at a primary election shall be substantially as follows:

"DECLARATION OF CANDIDACY
PARTY PRIMARY ELECTION

I, _____ (Name of Candidate), the undersigned, hereby declare under penalty of election falsification that my voting residence is in _____ precinct of the _____ (Township) or (Ward and City or Village) in the county of _____, Ohio; that my postoffice address is _____ (Street and Number, if any, or Rural Route and Number) of the _____

(City or Village, or Postoffice) of _____, Ohio: that I am a qualified elector in the precinct in which my voting residence is located. I am a member of the _____ Party. I hereby declare that I desire to be _____ (a candidate for nomination as a candidate of the _____ Party for election to the office of _____) (a candidate for election to the office or position of _____) for the _____ in the state, district, (Full term or unexpired term ending _____) county, city, or village of _____, at the primary election to be held on the _____ day of _____, 19___, and I hereby request that my name be printed upon the official primary election ballot of the said _____ Party as a candidate for _____ (such nomination) or (such election) as provided by law.

I further declare that, if elected to said office or position, I will qualify therefor, and that I will support and abide by the principles enunciated by the _____ Party.

Dated this _____ day of _____, 19___.

_____

(Signature of candidate)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

PETITION OF CANDIDATE

We, the undersigned, qualified electors of the state of Ohio, whose voting residence is in the county, city, village, ward, township, or school district, and precinct set opposite our names, and members of the _____ Party, hereby certify that _____ (Name of candidate) whose declaration of candidacy is filed herewith, is a member of the _____ Party, and is, in our opinion, well qualified to perform the duties of the office or position to which he desires to be elected.

Signature	Street and Number	City, Village or Township	Ward	Precinct	County	Date

(Must use address on file with the board of elections)

_____(Name of circulator of petition), declares under penalty of election falsification that he is a qualified elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is a member of the _____ Party; that he is the circulator of the foregoing petition paper containing _____ (Number) signatures; that he witnessed the affixing of every signature, that all signers were to the best of his knowledge and belief qualified to sign, and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____

(Signature of circulator)

_____

(Address of circulator)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH."

The secretary of state shall prescribe a form of declaration of candidacy and petition, which shall be substantially similar to the declaration of candidacy and petition set forth in this section, that will be suitable for joint candidates for the offices of governor and lieutenant governor.

The petition provided for in this section shall be circulated only by a member of the same political party as the candidate.

HISTORY: 1989 H 7, eff. 9-15-89
1980 H 1062; 1977 S 115; 1974 H 662; 130 v H 370; 125 v 713; 1953 H 1; GC 4785-71

CROSS REFERENCES

Akron municipal court clerk, 1901.31
Convicted felon incompetent to be elector or hold office, 2961.01
Declaration of candidacy, nominating petition and other petition requirements, election falsification, 3501.38
Residency to vote, 3503.01
Unqualified person signing petition, penalty; threats concerning petitions punished, 3599.13
Offenses as to petitions, 3599.14, 3599.15
General assembly member cannot hold office under United States, Ohio, or subdivisions, O Const Art II §4
Embezzler of public funds cannot hold office, O Const Art II §5
Who may vote, residency requirement, O Const Art V §1
General assembly may exclude felons from voting or holding office, O Const Art V §4
No idiot or insane person is entitled to the privileges of an elector, O Const Art V §6
Only qualified electors can be elected or appointed to any office, O Const Art XV §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 72, 77, 84 to 87, 89, 92, 108, 122, 207, 224, 227, 233, 257 to 259, 268; 44, Evidence and Witnesses § 695, 734
Am Jur 2d: 25, Elections § 164, 174 to 182
Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604

NOTES ON DECISIONS AND OPINIONS

1. In general; petition problems
2. Irregularities in circulation

1. In general; petition problems

51 OS(3d) 79, 554 NE(2d) 1284 (1990), State ex rel Beck v Casey. Alteration of the date on a declaration of candidacy before the candidate obtained signatures is not material.

51 OS(3d) 79, 554 NE(2d) 1284 (1990), State ex rel Beck v Casey. Subscribing different dates to forms of a declaration of candidacy does not destroy the essential unity of the declaration.

68 OS(2d) 39, 428 NE(2d) 402 (1981), Hill v Cuyahoga County Bd of Elections. Part-petitions were not invalidated by virtue of fact petitions contained wrong date for election.

22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. Nominating petitions are not invalidated by fact that the declaration of candidacy was executed before two different notaries.

22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. That a declaration of candidacy is executed by more than one notary does not mislead or defraud the signers of the part-petitions.

22 OS(2d) 61, 258 NE(2d) 111 (1970), State ex rel Kucinich v Duffy. Signature of a candidate on his own nominating petition, as signer of that petition, cannot be included in determining whether

such petition contains minimum number of signatures required by law.

6 OS(2d) 67, 215 NE(2d) 719 (1966), State ex rel Wolson v Kelly. Nominating petitions were not invalidated by candidate's failure to state precinct of residence where he did set forth his correct residential address.

6 OS(2d) 66, 215 NE(2d) 698 (1966), State ex rel Reese v Tuscarawas County Bd of Elections. Failure of some nominating petitions to specify number of persons signing and party affiliation of candidate justified rejection thereof.

6 OS(2d) 65, 215 NE(2d) 716 (1966), State ex rel Ellis v Sulligan. Nominating petition for common pleas judge was sufficient even though the name of the county was omitted from the declaration of candidacy.

176 OS 191, 198 NE(2d) 459 (1964), State ex rel Cofall v Cuyahoga County Bd of Elections. "Clerk of courts" is sufficient on a nominating petition for clerk of the court of common pleas.

176 OS 93, 197 NE(2d) 797 (1964), State ex rel Chatfield v Hamilton County Bd of Elections. A typed signature on a declaration of candidacy is insufficient.

173 OS 317, 181 NE(2d) 890 (1962), State ex rel Ferguson v Brown; overruled by 22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. The election laws contemplate essentially one declaration of candidacy which shall be uniform and complete in accordance with the statutory mandates, which may be an original one at the head of each petition paper circulated, signed by the candidate individually and sworn to, or there may be a single complete original declaration with identical copies thereof heading all other separate nominating petition papers placed in circulation, but there may not be a number of declarations varying in substance and form and with material omissions.

170 OS 511, 166 NE(2d) 759 (1960), State ex rel Higgins v Brown. Where a candidate states under oath in his declaration of candidacy that his voting residence is in a particular registration precinct and that he is a qualified elector in such precinct, when at the time of such sworn statement the candidate is not residing in such precinct, has not resided there for 40 or more days and has not even attempted to register as an elector therein, there is such a failure to fully comply with RC 3513.05 and 3513.07 as to require, at a hearing on a protest against the candidacy of such candidate, a determination that his declaration of candidacy be rejected.

170 OS 9, 161 NE(2d) 891 (1959), State ex rel Hanna v Milburn. Where a public office is of such a nature that in accurately describing it it is necessary to state not only the title but also the time of its commencement, then failure to accurately state the date of commencement of the term will invalidate a nominating petition, but where the office is of such a nature that it may be accurately described without pinpointing the date of the commencement of the term, a slight error in the insertion of the date which does not mislead the signers of the petition does not invalidate the petition.

165 OS 175, 134 NE(2d) 154 (1956), State ex rel Pucel v Green. Mandamus will lie to compel the board to accept a signature on a nominating petition where the signer testifies that the signature is authentic and there is no evidence contradicting that testimony.

164 OS 178, 129 NE(2d) 632 (1955), State ex rel Leslie v Duffy. Where an independent candidate, prior to the circulation of his nominating petition, completely fills out the entire statement of candidacy down to the date of his signature, as well as the entire preamble of the petition preceding the signatures of electors, and where prior to filing such petition, the candidate signs the statement of candidacy and swears to the same, and such petition at the time of filing is complete, a board of elections is not authorized to reject the petition.

161 OS 344, 119 NE(2d) 278 (1954), State ex rel Patton v Bazzell. The signers of a nomination petition for member of the county central committee must be members of the same party as the nominee, but need not declare their party affiliation in the petition.

161 OS 281, 118 NE(2d) 840 (1954), State ex rel Halpin v Hamilton County Bd of Elections. Where in a declaration of candidacy the notary's name rather than the candidate's name is erroneously inserted as the party sworn, the declaration of candidacy is in substantial compliance with the law.

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. Under the provisions of statute the terms "voting residence" and "post office address" are not synonymous.

149 OS 211, 78 NE(2d) 368 (1948), State ex rel Lemert v Muskingum County Bd of Elections. Where relator failed to properly designate the precinct from which he sought election, on his declaration of candidacy as member of party county central committee, his declaration and petition were properly rejected under provisions of statute.

125 OS 251, 181 NE 107 (1932), Koehler v Butler County Bd of Elections. When a declaration of candidacy or a petition is void under GC 4785-70, 4785-71 or 4785-72 (RC 3513.05, 3513.07, 3513.09), because of lack of subscription, oath or affirmation, it cannot be cured subsequent to the statutory date for filing the same, and the board of elections must reject such declaration or petition.

120 App 64, 197 NE(2d) 412 (1964), State ex rel Cofall v Cuyahoga County Bd of Elections; affirmed by 176 OS 191, 198 NE(2d) 459 (1964). A declaration of candidacy for party nomination at a primary election designating the office sought as "clerk of courts" instead of "clerk of the court of common pleas" satisfies RC 3513.07, and a board of elections does not abuse its discretion in finding such declaration of candidacy and petition valid.

110 App 543, 161 NE(2d) 243 (1959), State ex rel Bailey v Cuyahoga County Bd of Elections. Where a candidate was advised by the board of elections at the time of the filing of his nominating petitions that there was nothing further to sign and where he had signed each petition twice, his failure to sign the acceptance on the front of the petition did not justify a rejection of the petitions.

98 App 89, 128 NE(2d) 121 (1954), State ex rel Wiethe v Hamilton County Bd of Elections. The trial court properly denied relator's request for a mandatory injunction ordering his name placed on the ballot as candidate for the central committee from a designated ward where his petition stated that he was a candidate from a precinct of the ward.

69 App 59, 42 NE(2d) 1009 (1941), State ex rel Raines v Tobin; affirmed by 138 OS 468, 35 NE(2d) 779 (1941). Provisions of statute are mandatory and failure of person who desires to become candidate at primaries to sign declaration of candidacy at end of declaration, although candidate did sign oath and acknowledgment thereto, is not merely a technical defect.

65 App 158, 29 NE(2d) 432 (1940), State ex rel Latimer v Leonard. Candidate for member of county central committee of a political party must reside at the address stated by him in his declaration of candidacy and be a qualified elector in the ward and precinct in which such address is located when he signs and swears to the declaration as required by statute.

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

1941 OAG 4013. Person otherwise qualified who will attain the age of 21 years on or before the date of the next general election, may be a candidate in the party primary for that election.

1932 OAG 4158. Where a person has registered as "John A. Smith" and signs a nominating petition and a declaration as "Albert Smith," if there is no question about his identity and he is commonly known as "Albert Smith," his signature on the nominating petition can be counted and the declaration of candidacy is valid, provided said papers are in all other respects regular.

2. Irregularities in circulation

29 OS(2d) 233, 281 NE(2d) 186 (1972), State ex rel Loss v Lucas County Bd of Elections. Failure to insert in the jurat of nominating petition the number of signatures appearing thereon renders petition insufficient.

14 OS(2d) 175, 237 NE(2d) 313 (1968), Stern v Cuyahoga County Bd of Elections. Where, after the board of elections has

conducted a public hearing upon a protest, the undisputed facts are that (1) a valid declaration of candidacy has been properly filed, (2) a proper petition containing a valid affidavit of the circulator of each part-petition has been filed, (3) in the jurat following the circulator's affidavit on one part-petition the notary who administered the oath to the circulator inadvertently omitted his handwritten signature and imprinted seal, (4) such jurat is properly dated and bears the name of the notary who administered the oath, the title of his office, the date his notary commission will expire and the limits of his jurisdiction (such matters having been stamped upon the jurat by the notary at the time he administered the oath to the circulator), a board of elections does not abuse its discretion when it rules that such part-petition is valid on the ground that there is substantial compliance with the form of the declaration of candidacy and petition.

176 OS 105, 198 NE(2d) 76 (1964), State ex rel Van Aken v Duffy. A petition for candidate form which contains no space for the signature of the circulator of the petition and which was not in fact signed by the circulator is invalid, even though issued to him by a board of elections.

175 OS 237, 193 NE(2d) 269 (1963), State ex rel Keyse v Sarosy. Board of elections improperly rejected petition on grounds that affidavit attached thereto was false where affidavit referred to 17 signatures and two signatures on petition were crossed off, leaving 15 signatures.

173 OS 321, 181 NE(2d) 888 (1962), State ex rel Schwarz v Hamilton County Bd of Elections. Where evidence showed that circulator of nominating petition had sworn that 27 signatures were placed thereon in his presence and 28 signatures were on such petition, and the circulator testified that he had deliberately ignored one signature because it was by a resident of another county, such petition should have been accepted.

151 OS 197, 84 NE(2d) 910 (1949), State ex rel Kroeger v Leonard. Under the provisions of statute it is essential that the circulator of a nominating petition for candidacy for political office include in his oath to such petition a designation of the political party in which he holds membership; in the absence of such a declaration by the circulator in his oath, a board of elections does not act unlawfully in refusing to accept and validate such petition.

4 App(2d) 183, 211 NE(2d) 854 (1965), State ex rel Donofrio v Henderson. RC 3501.38(C) has been complied with when the signer of a nominating petition has personally signed his own name in the presence of the circulator, and the circulator or some other person under the authority and direction of the signer has written in all other information therein required, or when a signer of a nominating petition, or some other person under his authority and direction, uses ditto marks to indicate either the date of signing or the location of his voting address.

1952 OAG 1203. If the affidavit of a circulator of a petition contains a knowingly false statement, the petition should be rejected, but if signatures are invalid for reasons unknown to the circulator, the petition and valid signatures can be accepted.

3513.08 Declaration of candidacy for judge, county commissioner; candidate for any unexpired term

Each person filing a declaration of candidacy for nomination at a primary election as a candidate for election to the office of judge of the supreme court, court of appeals, court of common pleas, probate court, and such other courts as are established by law, in addition to designating in such declaration the office for election to which he seeks such nomination, shall, if two or more judges of the same court are to be elected at any one election, designate the term of the office for election to which he seeks such nomination by stating therein, if a full term, the date of the commencement of such term as follows: "Full term commencing _____(Date) _____," or by stating therein, if an unexpired term, the date on which such unexpired term will end as follows: "unexpired term ending _____(Date)_____."

Each person filing a declaration of candidacy for nomination at a primary election as a candidate for election to the office of county commissioner, in addition to designating in the declaration the office for election to which he seeks the nomination, shall, if two or more commissioners of the same county are to be elected at any one election, designate the term of the office for election to which he seeks the nomination by stating therein, if a full term, the date of the commencement of the term, as follows: "Full term commencing _____(Date)_____," or by stating therein, if an unexpired term, the date on which the unexpired term will end, as follows: "unexpired term ending _____(Date)_____."

Each person filing a declaration of candidacy for nomination at a primary election as a candidate for the unexpired term of any office shall designate in such declaration the date on which such unexpired term will end.

HISTORY: 1980 H 1062, eff. 3-23-81
125 v 713; 1953 H 1; GC 4785-71a

CROSS REFERENCES

Declaration of candidacy, nominating petition and other petition requirements, election falsification, 3501.38

Election, appointment, and filling vacancies, O Const Art II §27

Election, term, and compensation of judges; age limit; assignment of retired judges, O Const Art IV §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 72, 77, 84 to 87, 89, 92, 108, 122, 207, 224, 227, 233, 257 to 259, 268; 44, Evidence and Witnesses § 695, 734

Am Jur 2d: 25, Elections § 164, 182; 46, Judges § 10

NOTES ON DECISIONS AND OPINIONS

51 OS(3d) 87, 554 NE(2d) 895 (1990), State ex rel Clinard v Greene County Bd of Elections. RC 3513.08 mandates that the declaration of candidacy state the commencement date of the term sought.

36 OS(3d) 164, 522 NE(2d) 49 (1988), State ex rel Calhoun v Scioto County Bd of Elections. A declaration of candidacy form must include the term for which a primary candidate for judicial office seeks nomination and the language set forth in RC 3513.08 is mandatory; thus, a declaration of candidacy form for a judgeship nomination which states the nomination is sought for the "full term ending 2/8/95" rather than the "full term commencing 2/9/89" is invalid.

6 OS(2d) 65, 215 NE(2d) 716 (1966), State ex rel Ellis v Sulligan. Nominating petition for common pleas judge was sufficient even though the name of the county was omitted from the declaration of candidacy.

149 OS 440, 79 NE(2d) 126 (1948), State ex rel Newdick v O'Leary. Provisions of statute relative to declaration of candidacy designating term of office are mandatory and failure to designate such term renders declaration of candidacy invalid.

1931 OAG 3236. Statute has no effect upon the election of municipal judges except in cases where it is provided that such judges shall be elected in the same manner as is provided for the election of judges of the court of common pleas.

1928 OAG 2683. Where a vacancy occurs in the office of judge of the court of common pleas, a successor should be elected at the first general election occurring in an even numbered year more than thirty days after such vacancy may have occurred.

3513.09 Signature and affidavit of candidate

If the petition, required by section 3513.07 of the Revised Code to be filed with a declaration of candidacy, consists of more than one separate petition paper, the declaration of candidacy of the candidate named need be signed by the candidate on only one of such separate petition papers, but the declaration of candidacy so signed shall be copied on each other separate petition paper before the signature of electors are placed thereon.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 115; 1953 H 1; GC 4785-72

PRACTICE AND STUDY AIDS

Baldwin's Ohio Civil Practice, Text 21.12(C)

CROSS REFERENCES

False signature forbidden, 3599.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 72, 77, 84 to 87, 89, 92, 108, 122, 207, 224, 227, 233, 257 to 259, 268; 44, Evidence and Witnesses § 695, 734
Am Jur 2d: 25, Elections § 147, 164, 182

NOTES ON DECISIONS AND OPINIONS

22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. Nominating petitions are not invalidated by fact that the declaration of candidacy was executed before two different notaries.

173 OS 317, 181 NE(2d) 890 (1962), State ex rel Ferguson v Brown; overruled by 22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. The election laws contemplate essentially one declaration of candidacy which shall be uniform and complete in accordance with the statutory mandates, which may be an original one at the head of each petition paper circulated, signed by the candidate individually and sworn to, or there may be a single complete original declaration with identical copies thereof heading all other separate nominating petition papers placed in circulation, but there may not be a number of declarations varying in substance and form and with material omissions.

164 OS 178, 129 NE(2d) 632 (1955), State ex rel Leslie v Duffy. Where an independent candidate, prior to the circulation of his nominating petition, completely fills out the entire statement of candidacy down to the date of his signature, as well as the entire preamble of the petition preceding the signatures of electors, and where prior to filing such petition, the candidate signs the statement of candidacy and swears to the same, and such petition at the time of filing is complete, a board of elections is not authorized to reject the petition.

153 OS 208, 90 NE(2d) 869 (1950), State ex rel Marshall v Sweeney. Each separate petition paper filed with a declaration of candidacy and petition, must have the completed affidavit of the candidate copied thereon in full before the signatures of electors are placed thereon.

125 OS 251, 181 NE 107 (1932), Koehler v Butler County Bd of Elections. A declaration of candidacy or a petition for a candidate which is not subscribed and sworn to or affirmed, as required by the statute, is void.

4 App(2d) 183, 211 NE(2d) 854 (1965), State ex rel Donofrio v Henderson. Statements of candidacy on six of fifty-three petitions, which are identical in all other respects, are not invalidated by reason of the fact that they were notarized by a different notary public.

1940 OAG 1983. Elector may sign the petition which accompanies a declaration of candidacy of more than one candidate of such person's political party for a particular county office.

1930 OAG 1627. A person desiring to become a party candidate by the method of declaration may sign the petition provided in statute, circulate such petition personally, and execute the oath provided at the end of the signatures thereto.

3513.10 Filing fees of candidates

At the time of filing a declaration of candidacy for nomination for any office, or a declaration of intent to be a write-in candidate, each candidate, except joint candidates for governor and lieutenant governor, shall pay a fee as follows:

For statewide office	$ 100
For court of appeals judge	$ 50
For court of common pleas judge	$ 50
For county court judge	$ 50
For municipal court judge	$ 50
For district office including member of the general assembly	$ 50
For county office	$ 50
For city office	$ 20
For village office	$ 10
For township office	$ 10
For member of state board of education	$ 20
For member of local, city, county, or exempted village board of education	$ 10

At the time of filing a declaration of candidacy or a declaration of intent to be a write-in candidate for the offices of governor and lieutenant governor, the joint candidates shall jointly pay to the secretary of state a fee of one hundred dollars. No fee shall be required of candidates filing for the office of delegate or alternate to the national convention of political parties, member of the state central committee, or member of the county central committee. All such fees shall forthwith be paid by the officer receiving them into the state treasury, in the case of fees received by the secretary of state, and into the county treasury to the credit of the county general fund, in the case of fees received by a board of elections. In no case shall the filing fee be returned to a candidate.

HISTORY: 1991 S 8, eff. 5-21-91
1989 H 36; 1977 S 115; 1969 S 17; 125 v 713; 1953 H 1; GC 4785-73

CROSS REFERENCES

Filing fees not campaign "expenditures" for purposes of reporting requirements, not counted against spending limits, OAC 111-3-06

State treasury, 113.05
County treasurer, Ch 321

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 72, 77, 84 to 87, 89, 92, 108, 122, 207, 224, 227, 233, 257 to 259, 268; 44, Evidence and Witnesses § 695, 734
Am Jur 2d: 25, Elections § 164, 182

NOTES ON DECISIONS AND OPINIONS

1951 OAG 705. Provision that no filing fee shall be returned to a candidate specifically prohibits the return of filing fees paid to a board of elections by persons filing declarations of candidacy or petitions for election to a term of office not authorized by law.

DELEGATES TO CONVENTIONS

3513.11 State conventions of major political parties

In the year 1952 and in each second year thereafter, each major political party in the state may hold a state convention. If a major political party holds a state convention, it shall comply with the requirements of this section. A state convention of a major political party shall be composed of delegates who are its candidates for election to state offices, except judicial offices; its candidates for election to the office of member of the senate of the United States, member of the house of representatives of the United States, and member of the general assembly of Ohio; the members of its state central and executive committees, and the chairman of its county central and executive committees; and five hundred delegates to be apportioned by the state central committee of the respective parties among the several counties of the state in proportion to its party's vote for governor cast in the several counties at the last preceding general election; provided that in any even-numbered year in which no election is to be held to elect successors to incumbents of any of the offices mentioned in this section, except judicial offices, each such incumbent shall also be a delegate to the state convention of his political party. The delegates to such convention apportioned to each county by the state central committee of the respective parties shall be selected by the county executive committees of the respective parties.

At each convention of a major political party the state platform of such party for such year shall be formulated.

The state central committee of each political party shall fix the time and place for holding the convention of its party.

At the state convention of each major political party held in 1952, and in each fourth year thereafter, persons shall be nominated as candidates for election as presidential electors to be voted for at the next succeeding general election. Within five days after the holding of each such convention the chairman and secretary thereof shall certify in writing to the secretary of state the names of all persons nominated at such convention as candidates for election as presidential electors.

HISTORY: 1989 S 6, eff. 10-30-89
1971 S 460; 125 v 713; 1953 H 1; GC 4785-74

CROSS REFERENCES

Days counted to ascertain time, 1.14
Presidential ballot, certification, 3505.10
Convention delegates and alternates shall not give proxies, 3599.35
Certain nominations to be by direct primary elections, O Const Art V §7

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 72, 77, 84 to 87, 89, 92, 108, 122, 207, 224, 227, 233, 257 to 259, 268; 44, Evidence and Witnesses § 695, 734
Am Jur 2d: 25, Elections § 164 to 167, 182

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3513.11 is unconstitutional.

2. In general

150 OS 127, 80 NE(2d) 899 (1948), State ex rel Beck v Hummel. Although names of candidates for election to offices of president and vice-president of the United States, who have been nominated as provided in GC 4785-107 (RC 3505.10), are authorized to be placed upon the presidential ballot of this state, no voter casts a direct vote for them and a ballot marked in their favor is counted only as a vote in favor of the electors who have been chosen pursuant to statute.

150 OS 127, 80 NE(2d) 899 (1948), State ex rel Beck v Hummel. Statute provides for nomination of candidates for election as presidential electors for those political parties which have nominated candidates for president and vice-president in national conventions to which delegates and alternates of this state have been elected at primary elections in presidential years; GC 4785-107 (RC 3505.10) provides for placing of names upon the presidential ballot in this state of candidates for president and vice-president of the United States who have been nominated as such by national conventions of those political parties to which delegates and alternates were elected at the next preceding primary election; the names of no other candidates for election to the offices of president and vice-president of the United States are authorized to be placed upon the presidential ballot in Ohio.

393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968), Williams v Rhodes. Ohio's election laws which require new political parties seeking ballot position in presidential elections to obtain petitions signed by qualified electors totalling fifteen per cent of the number of ballots cast in the last gubernatorial election and to file these petitions early in February of the election year violate the Equal Protection Clause.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing RC 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged.

290 FSupp 983 (SD Ohio 1968), Socialist Labor Party v Rhodes; modified sub nom Williams v Rhodes, 393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968). Court would not issue injunction compelling state to place name of candidate for president on ballot, but would enjoin state from prohibiting write-in voting.

OAG 68-013. A political party formed pursuant to RC 3517.01 must have a state convention to nominate its presidential electors pursuant to RC 3513.11, and a national convention to nominate its presidential candidate pursuant to RC 3513.12, in order for its candidate to have a place on the presidential ballot.

3513.12 National convention delegates and alternates

At a primary election which shall be held on the first Tuesday after the first Monday in May in the year 1988, and similarly in every fourth year thereafter, delegates and alternates to the national conventions of the different major political parties shall be chosen by direct vote of the electors as provided in this chapter. Candidates for delegate and alternate shall be qualified and the election shall be conducted in the manner prescribed in this chapter for the nomination of candidates for state and district offices, except as provided in section 3513.151 of the Revised Code and except that whenever any group of candidates for delegate at large or alternate at large, or any group of candidates for delegates or alternates from districts, file with the secretary of state statements as provided by this section, designating the same persons as their first and second choices for president of the United States, such a group of

candidates may submit a group petition containing a declaration of candidacy for each of such candidates. The group petition need be signed only by the number of electors required for the petition of a single candidate. No group petition shall be submitted except by a group of candidates equal in number to the whole number of delegates at large or alternates at large to be elected or equal in number to the whole number of delegates or alternates from a district to be elected.

Each person seeking to be elected as delegate or alternate to the national convention of his political party shall file with his declaration of candidacy and certificate a statement in writing signed by him in which he shall state his first and second choices for nomination as the candidate of his party for the presidency of the United States. The secretary of state shall not permit any declaration of candidacy and certificate of a candidate for election as such delegate or alternate to be filed unless accompanied by such statement in writing. The name of a candidate for the presidency shall not be so used without his written consent.

A person who is a first choice for president of candidates seeking election as delegates and alternates shall file with the secretary of state, prior to the day of the election, a list indicating the order in which certificates of election are to be issued to delegate or alternate candidates to whose candidacy he has consented, if fewer than all of such candidates are entitled under party rules to be certified as elected. Each candidate for election as such delegate or alternate may also file along with his declaration of candidacy and certificate a statement in writing signed by him in the following form:

"Statement of Candidate For Election as _____ (Delegate) (Alternate) to the _____ (name of political party) National Convention

I hereby declare to the voters of my political party in the State of Ohio that, if elected as _____ (delegate) (alternate) to their national party convention, I shall, to the best of my judgment and ability, support that candidate for President of the United States who shall have been selected at this primary by the voters of my party in the manner provided in Chapter 3513. of the Ohio Revised Code, as their candidate for such office.

_____

(name), Candidate for _____

(Delegate) (Alternate)"

The procedures for the selection of candidates for delegate and alternate to the national convention of a political party set forth in this section and in section 3513.121 of the Revised Code are alternative procedures, and if the procedures of this section are followed, the procedures of section 3513.121 of the Revised Code need not be followed.

HISTORY: 1992 S 286, eff. 2-5-92
1987 H 231; 1986 S 185; 1983 S 213; 1976 H 1165; 1974 H 662; 1971 S 460; 131 v S 53; 1953 H 1; GC 4785-75

CROSS REFERENCES

Elections, definitions, 3501.01

Convention delegates and alternates shall not give proxies, 3599.35

Direct primary elections, O Const Art V §7

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 72, 77, 84 to 87, 89, 92, 108, 122, 207, 224, 227, 233, 257 to 259, 268; 44, Evidence and Witnesses § 695, 734

Am Jur 2d: 25, Elections § 120, 164, 182

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3513.12 is unconstitutional.

2. In general

165 OS 175, 134 NE(2d) 154 (1956), State ex rel Pucel v Green. On the evidence the board of elections was not justified in rejecting a nominating petition and such rejection constituted an abuse of discretion.

150 OS 127, 80 NE(2d) 899 (1948), State ex rel Beck v Hummel. Candidate for presidential elector in this state is a candidate for election to an office; statute provides for nomination of independent candidates for election to office; where independent candidates have prima facie complied with all provisions of such section, secretary of state is required to process their nominating petitions pursuant to GC 4785-92 (RC 3513.29); if, as a result of such processing, it is ascertained that compliance of the independent presidential-elector candidates with statute is fully complete, they are entitled to have their names printed upon the presidential ballot as such candidates. (Annotation from former RC 3513.27 and 3513.29.)

393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968), Williams v Rhodes. Ohio's election laws which require new political parties seeking ballot position in presidential elections to obtain petitions signed by qualified electors totalling fifteen per cent of the number of ballots cast in the last gubernatorial election and to file these petitions early in February of the election year violate the Equal Protection Clause.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing RC 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged.

290 FSupp 983 (SD Ohio 1968), Socialist Labor Party v Rhodes; modified sub nom Williams v Rhodes, 393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968). Court would not issue injunction compelling state to place name of candidate for president on ballot, but would enjoin state from prohibiting write-in voting.

OAG 68-013. A political party formed pursuant to RC 3517.01 must have a state convention to nominate its presidential electors pursuant to RC 3513.11, and a national convention to nominate its presidential candidate pursuant to RC 3513.12, in order for its candidate to have a place on the presidential ballot.

1948 OAG 2629. Delegates and alternates-at-large to the national conventions of the different political parties and delegates and alternates to such conventions from districts within this state are to be elected in the year 1948, and in every fourth year thereafter, at the primary election to be held on the first Tuesday after the first Monday in May of such years.

3513.121 Alternative method of selecting delegates and alternates

(A) Any candidate for the presidency of the United States who is eligible to receive payments under the "Presidential Primary Matching Payment Account Act," 88 Stat. 1297 (1974), 26 U.S.C.A. 9031, et seq., as amended, may file with the secretary of state a declaration of candidacy not later than four p.m. of the seventy-fifth day before the

presidential primary election held in the same year the candidate is eligible to receive such payments. The candidate shall indicate on his declaration of candidacy the congressional districts in this state where his candidacy is to be submitted to the electors. Any candidate who files a declaration of candidacy pursuant to this division shall also file, or shall cause to be filed by a person authorized in writing to represent him, not later than four p.m. of the seventy-fifth day before the same primary election, a list of candidates for district delegate and alternate to the national convention of his political party who have been selected in accordance with rules adopted by the state central committee of his political party. The candidates for district delegate and alternate whose names appear on this list shall be represented on the ballot in accordance with section 3513.151 of the Revised Code in every congressional district that the presidential candidate named in his declaration of candidacy, provided that such candidates meet the other requirements of this section.

(B) Candidates for delegate at large and alternate at large to the national convention of a political party for a presidential candidate who submits a declaration of candidacy in accordance with division (A) of this section shall be selected in accordance with rules adopted by the state central committee of the presidential candidate's political party.

(C) Each candidate for district delegate and alternate to the national convention of a political party selected pursuant to division (A) of this section shall file or shall cause to be filed with the secretary of state, not later than four p.m. of the seventy-fifth day before the presidential primary election in which he is a candidate, both of the following:

(1) A declaration of candidacy in the form prescribed in section 3513.07 of the Revised Code, but not the petition prescribed in that section;

(2) A statement in writing signed by the candidate in which he states his first and second choices for nomination as the candidate of his party for the presidency of the United States.

(D) A declaration of candidacy filed pursuant to division (A) of this section shall be in substantially the form prescribed in section 3513.07 of the Revised Code except that the secretary of state shall modify that form to include spaces for a presidential candidate to indicate in which congressional districts he wishes his candidacy to be submitted to the electors and shall modify it in any other ways necessary to adapt it to use by presidential candidates. A candidate who files a declaration of candidacy pursuant to division (A) of this section shall not file the petition prescribed in section 3513.07 of the Revised Code.

(E) Section 3513.151 of the Revised Code applies in regard to candidates for delegate and alternate to the national convention of a political party selected pursuant to this section. The state central committee of the political party of any presidential candidate who files a declaration of candidacy pursuant to division (A) of this section shall file with the secretary of state the rules of its political party in accordance with division (E) of section 3513.151 of the Revised Code.

(F) The procedures for the selection of candidates for delegate and alternate to the national convention of a political party set forth in this section and in section 3513.12 of the Revised Code are alternative procedures, and if the procedures of this section are followed, the procedures of section 3513.12 of the Revised Code need not be followed.

HISTORY: 1992 S 286, eff. 2-5-92

Note: Former 3513.121 recodified as 3513.122 by 1992 S 286, eff. 2-5-92; 1974 H 1061; 1971 S 460.

3513.122 Intermediate and minor party convention delegates

Political parties shall be eligible to elect delegates and alternates to national conventions or conferences of their respective political parties, other than conventions provided for in section 3513.12 of the Revised Code, if they notify the secretary of state that they will elect such delegates. Such notification must be made prior to the ninetieth day before the day of the primary election which occurs in any year at which national convention or conference delegates and alternates are elected.

Petitions of candidacy for such delegates shall be filed in the form and manner provided by the secretary of state.

Any political party electing delegates to a national convention or conference under this section in an odd-numbered year in which a statewide primary election is not otherwise required shall pay all expenses of that election.

HISTORY: 1992 S 286, eff. 2-5-92

Note: 3513.122 is former 3513.121, recodified by 1992 S 286, eff. 2-5-92; 1974 H 1061; 1971 S 460.

CROSS REFERENCES

Days counted to ascertain time, 1.14
Direct primary elections, O Const Art V §7

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 72, 77, 84 to 87, 89, 92, 108, 122, 207, 224, 227, 233, 257 to 259, 268; 44, Evidence and Witnesses § 695, 734
Am Jur 2d: 25, Elections § 164, 182

BALLOTS

3513.13 Separate ballots for political parties; specifications and contents

Separate primary election ballots shall be provided by the board of elections for each political party having candidates for nomination or election in a primary election. Section 3505.08 of the Revised Code governing the kind of paper, the kind of ink, and the size and style of type to be used in the printing of ballots for general elections shall apply in the printing of ballots for primary elections.

Primary election ballots shall have printed on the back thereof "Official _____ (name of party) _____ primary ballot," the date of the election, and the facsimile signatures of the members of the board.

Such ballots shall have stubs attached at the top thereof as required on ballots for general elections.

On the back of every ballot used there shall be a solid black line printed opposite the blank rectangular space that is used to mark the choice of the voter. This line shall be printed wide enough so that the mark in the blank rectangular space will not be visible from the back side of the ballot.

Such ballots shall have printed at the top thereof, and below the stubs "Official _____ (name of party) _____ primary ballot" and instructions to the voter to the effect that to vote for a candidate he must place "X" in the rectangular space at the left of the name of such candidate, except as provided in section 3513.151 of the Revised Code, and that if he tears, soils, defaces, or erroneously marks the ballot he may return it to the precinct election officers and obtain another ballot.

Except as provided in section 3513.151 of the Revised Code, primary election ballots shall contain the names of all persons whose declarations of candidacy and petitions have been determined to be valid. The name of each candidate for nomination for, or election to, an office or position shall be printed in an enclosed rectangular space at the left of which an enclosed blank rectangular space shall be provided. The names of candidates shall be printed on the ballot immediately below the title of the office or position for nomination or election to which the candidate seeks nomination or election. The order in which offices and positions shall be listed on the ballot shall be prescribed by and shall be certified to each board by the secretary of state, and shall be the same, to the extent the secretary of state deems practicable, as is provided for the listing of offices on general election ballots.

HISTORY: 1976 H 1165, eff. 4-5-76
131 v H 796; 1953 H 1; GC 4785-80

CROSS REFERENCES

General and special elections ballots, Ch 3505
False official indorsement on ballot forbidden, 3599.20
Printing of ballots, offenses, fine and imprisonment, 3599.22
Ballot tampering, penalty, 3599.26

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 392, 405; 37, Elections § 77, 224, 225, 233, 262, 271
Am Jur 2d: 26, Elections § 206

NOTES ON DECISIONS AND OPINIONS

12 Dayton L Rev 381 (Winter 1986). Merit Selection: Does It Meet the Burden of Proof in Ohio?, Comment.

3513.131 Candidates with identical names

In the event two or more persons with identical surnames run for the same office in a primary election on the same ballot, the names of the candidates shall be differentiated on the ballot by varying combinations of first and middle names and initials. Within twenty-four hours after the final date for filing declarations of candidacy or petitions for candidacy, the director of the board of elections for local, municipal, county, general, or special elections, or the director of the board of elections of the most populous county for district, general, or special elections, or the secretary of state for state-wide general and special elections shall notify the persons with identical given names and surnames that the names of such persons will be differentiated on the ballot. If one of the candidates is an incumbent who is a candidate to succeed himself for the office he occupies, he shall have first choice of the name by which he is designated on the ballot. If an incumbent does not make a choice within two days after notification or if none of the candidates is an incumbent, the board of elections within three days after notification shall designate the names by which the candidates are identified on the ballot. In case of a district candidate the board of elections in the most populous county shall make the determination. In case of state-wide candidates, or in the case[5] any board of elections fails to make a designation within three days after notification, the secretary of state shall immediately make the determination.

"Notification" as required by this section shall be by the director of the board of elections or secretary of state by special delivery or telegram at the candidate's address listed in his declaration or petition of candidacy.

HISTORY: 1980 H 1062, eff. 3-23-81
130 v H 66

CROSS REFERENCES

General and special elections ballots, Ch 3505

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 123, 183, 224, 226, 233, 262 to 264, 271
Am Jur 2d: 26, Elections § 218

3513.14 Form of ballot

Immediately below the title of each office for which nominations are to be made and the names of candidates for such nomination printed thereunder, there shall be provided on each primary election ballot as many blank spaces as, but not more than, the number of nominations to be made for such office, in which the voter may write the names of persons for whose nomination he desires to vote, provided that inasmuch as candidates for the office of delegate and alternate to the national and state conventions, member of the state central committee, and member of the county central committee are elected at the primary election no blank space shall be left on the ballot after the names of the candidates for such office, and no vote shall be counted for any person whose name has been written in on said ballot for any of such offices. If no person files and qualifies as a candidate for the office of member of the state central committee or member of the county central committee such office shall not appear on the ballot.

The face of the ballot below the stub shall be substantially in the following form:

OFFICIAL _____(name of party) _____
PRIMARY BALLOT

(A) To vote for a candidate place "X" in the rectangular space at the left of the name of such candidate.

(B) If you tear, soil, deface, or erroneously mark this ballot return it to the election officials and obtain another.

[5]Prior and current versions differ although no amendment to this language was indicated in 1980 H 1062; "the case" appeared as "case" in 130 v H 66.

For Governor and Lieutenant Governor (Vote not more than once.)	
	For Governor: JOHN SMITH For Lieutenant Governor: PAUL POE
	For Governor: WILLIAM J. BURKE For Lieutenant Governor: MARY DOE
	For Governor: RICHARD ROE For Lieutenant Governor: PAULINE POE

HISTORY: 1978 S 409, eff. 4-20-78
1977 S 115; 125 v 713; 1953 H 1; GC 4785-80

CROSS REFERENCES

General and special elections ballots, Ch 3505
Secrecy of ballot; marking ballot to identify forbidden, 3599.20
Printing of ballots, offenses, fine and imprisonment, 3599.22

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 123, 183, 224, 226, 233, 262 to 264, 271
Am Jur 2d: 26, Elections § 205

NOTES ON DECISIONS AND OPINIONS

77 Abs 570, 143 NE(2d) 879 (CP, Montgomery 1957), Dayton v Horstman. Where a city charter expressly prohibits write-in votes on a ballot for city commissioners, the court will not order a municipal primary to be held solely for the purpose of permitting write-in votes.

393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968), Williams v Rhodes. Ohio's election laws which require new political parties seeking ballot position in presidential elections to obtain petitions signed by qualified electors totalling fifteen per cent of the number of ballots cast in the last gubernatorial election and to file these petitions early in February of the election year violate the Equal Protection Clause.

290 FSupp 983 (SD Ohio 1968), Socialist Labor Party v Rhodes; modified sub nom Williams v Rhodes, 393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968). Court would not issue injunction compelling state to place name of candidate for president on ballot, but would enjoin state from prohibiting write-in voting.

OAG 70-011. It is not necessary to provide write-in spaces on primary election ballots for offices of member of state central committee of a political party in Ohio, or delegate or alternate to national convention of a political party, but such write-in space must be provided for office of member of county central committee and such office must appear on ballot even though no candidate has qualified to have his name printed on ballot for the office, in order that votes cast for eligible write-in candidates may be counted.

1958 OAG 2276. Discussion of procedure for nominating and electing probate judge where incumbent resigns subsequent to the one hundredth day before the primary election and prior to the fortieth day before the general election.

3513.15 Rotation of names; duties of secretary of state

The names of the candidates in each group of two or more candidates seeking the same nomination or election at a primary election, except delegates and alternates to the national convention of a political party, shall be rotated and printed as provided in section 3505.03 of the Revised Code, except that no indication of membership in or affiliation with a political party shall be printed after or under the candidate's name. When the names of the first choices for president of candidates for delegate and alternate are not grouped with the names of such candidates, the names of the first choices for president shall be rotated in the same manner as the names of candidates. The specific form and size of the ballot shall be prescribed by the secretary of state in compliance with this chapter.

It shall not be necessary to have the names of candidates for member of a county central committee printed on the ballots provided for absentee voters, and the board may cause the names of such candidates to be written on said ballots in the spaces provided therefor.

The secretary of state shall prescribe the procedure for rotating the names of candidates on the ballot and the form of the ballot for the election of delegates and alternates to the national convention of a political party in accordance with section 3513.151 of the Revised Code.

HISTORY: 1982 H 419, eff. 10-8-82
1977 H 1; 1976 S 457, H 1165; 127 v 741; 125 v 713; 1953 H 1; GC 4785-80

CROSS REFERENCES

General and special elections ballots, Ch 3505
Office type ballot, placement of names to be reasonably equal, O Const Art V §2a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 123, 183, 224, 226, 233, 262 to 264, 271
Am Jur 2d: 26, Elections § 207

NOTES ON DECISIONS AND OPINIONS

156 OS 147, 101 NE(2d) 289 (1951), State ex rel Russell v Bliss. The provision of O Const Art V §2a, that "the names of all candidates for an office at any general election shall be arranged in a group under the title of that office, and shall be so alternated that each name shall appear (in so far as may be reasonably possible) substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs" is self-executing.

3513.151 Ballots for delegates to national convention; adoption of political party rules

(A) Candidates for delegate and alternate to the national convention of a political party shall be represented on the ballot, or their names shall appear on the ballot, in accordance with this section, but only in a manner that enables an X to be marked in the space provided therefor by the name of the first choice for president so that the X is counted as a vote cast for each candidate for delegate or alternate who has declared such person as his first choice for president.

(B) The names of candidates for delegate at large and alternate at large to the national convention of a political party shall not appear on the ballot. Such candidates shall be represented on the ballot by their stated first choice for president.

(C) The state central committee of each major political party, through its chairman, not later than seventy-five days prior to the date of the primary election, shall file with the secretary of state a statement that stipulates, in accordance with rules adopted by each state central committee at a meeting open to all members of the committee's party, whether or not the names of candidates for district delegate

and district alternate to the national convention of his party are to be printed on the ballot. The secretary of state shall prescribe the form of the ballot for the election of district delegates and district alternates of each political party in accordance with such statement. If the state central committee of a political party fails to so provide such statement, the secretary of state shall prescribe a form of ballot on which the names of candidates for delegate and alternate to such national convention do not appear on the ballot. Only the names of the presidential first choices of such candidates for delegates and alternates shall appear on the ballot. If only the names of presidential first choices are printed, the ballot shall provide the opportunity for an X to be marked in the appropriate space provided beside such names and such a vote cast shall be counted as a vote for each candidate for delegate and alternate who has declared such person as his first choice for president.

If the number of candidates for district delegate or for district alternate to the national convention of a political party exceeds the number to be elected, the names of such candidates, when required to appear on the ballot, shall not be rotated, but shall be printed in a group on the ballot in alphabetical order immediately below or beside first choice for president. This form of the ballot shall be prescribed by the secretary so that an X marked in the space provided beside the name of such choice for president shall be a vote for each candidate whose name is included in the grouping.

(D) Candidates, grouped by first choice for president, shall be rotated in the same manner as though each grouping were a separate candidate. As many series of ballots shall be printed as the number of groups to be rotated, with the total number of ballots to be printed divided by the number of series to be printed in order to determine the number of ballots to be printed of each series. On the first series of ballots the candidates shall be alphabetically grouped by their first choice for president. On each succeeding series, the group of candidates which was the first in the preceding series shall be last and each of the other groups shall be moved up one place. The ballots shall be rotated and printed as provided in section 3505.03 of the Revised Code, except that no indication of membership in or affiliation with a political party shall be printed after or under the candidate's name.

(E) The state central committee of each major political party, through its chairman, not later than the fifteenth day prior to the date of the primary election, shall file with the secretary of state the rules of its political party adopted by the state central committee at a meeting open to all members of the committee's party, which affect the issuance of certificates of election to candidates for delegate or alternate to its party nominating convention, and the secretary of state shall issue certificates of election in accordance with such rules.

(F) If party rules prescribe that fewer than all such candidates for delegate and alternate are to be elected, certificates of election shall be issued in the order preferred by the first choice for president and in such numbers that the number of delegates and alternates certified as elected reflects, as nearly as possible, the proportion to be elected under the party rules.

(G) If the state central committee of a political party fails to file the rules with the secretary of state pursuant to this section, certificates of election shall be issued to the candidates for delegate and alternate receiving the highest number of votes.

HISTORY: 1987 H 231, eff. 10-5-87
1986 S 185; 1982 H 419; 1977 H 1; 1976 S 457, H 1165; 1972 S 465

CROSS REFERENCES

General and special elections ballots, Ch 3505

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 123, 183, 224, 226, 233, 262 to 264, 271

3513.16 Primary ballot to designate term for judge of court of common pleas; exception

When two or more judges of the court of common pleas are to be elected in a county at any one election, the name of each candidate shall be placed upon the primary ballot under the designation of the term for which he is a candidate. Such designation shall correspond to that required by section 3513.08 of the Revised Code. The candidates for each term so designated shall be candidates for that term only, unless two or more new judgeships have been created, in which case from all candidates for a newly-created judgeship those receiving the highest number of votes shall be nominated.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-80a

CROSS REFERENCES

General and special elections ballots, Ch 3505

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 77, 224, 233, 262
Am Jur 2d: 26, Elections § 206 to 207, 214

NOTES ON DECISIONS AND OPINIONS

13 App 259, 31 CC(NS) 511 (1920), Brower v State. Former GC 4976 (Repealed) recognized by inference the right of a candidate to withdraw his name, but a retraction or withdrawal of a withdrawal was not so recognized, and may be disregarded by the deputy state supervisors of elections, who cannot be compelled by mandamus to place the name of such person on the ballot.

1950 OAG 1680. Statute as amended by the 98th general assembly prohibits write-ins for the position of controlling committeeman.

3513.17 Death of candidate

If a person who has filed a declaration of candidacy, whose candidacy is to be submitted at a primary election to the electors of the entire state, dies prior to the tenth day before the day of such primary election, the secretary of state, upon proof of the death of such candidate, shall make certification of such death to the boards of elections of the state, and the name of such deceased candidate shall not appear on the ballots.

If a person who has filed a declaration of candidacy, whose candidacy is to be submitted at a primary election to the electors of a district comprised of more than one county but less than all the counties of the state, dies prior to the tenth day before the day of such primary election, the board

of the most populous county of such district shall, upon proof of the death of such candidate, make certification of such death to the boards of such district, and the name of such deceased candidate shall not appear on the ballots.

If a person who has filed a declaration of candidacy, whose candidacy is to be submitted at a primary election to the electors of a subdivision smaller than a county but situated in more than one county, dies prior to the tenth day before the day of such primary election, the board of the county in which the major portion of the population of such subdivision is located shall, upon proof of the death of such candidate, make certification of such death to the boards of the other counties in which portions of the population of such subdivision are located, and the name of such deceased candidate shall not appear on the ballots.

If a person who has filed a declaration of candidacy, whose candidacy is to be submitted at a primary election to the electors of a county, or district or subdivision within a county, dies prior to the fifth day before the day of such primary election, upon proof of the death of such candidate to the board, the name of such deceased candidate shall not appear on the ballots.

If, at the time such certification or proof of death of a candidate is received by a board, ballots carrying the name of the deceased candidate have been printed, such board shall cause strips of paper to be pasted on such ballots so as to cover the name of the deceased candidate before such ballots are delivered to electors; except that in voting places using marking devices, the board shall cause strips of paper bearing the revised list of candidates for the office, after eliminating the deceased candidate's name, to be pasted on such ballot cards so as to cover the name or names formerly shown, before such ballot cards are delivered to the electors.

In no case shall votes cast for a deceased candidate be counted or recorded.

HISTORY: 128 v 82, eff. 9-28-59
1953 H 1; GC 4785-80b

CROSS REFERENCES

General and special elections ballots, Ch 3505

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 137 et seq., 144 et seq., 174 et seq.

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

39 OS(3d) 115, 529 NE(2d) 896 (1988), State ex rel Ashbrook v Brown. Where a candidate in an uncontested primary election dies on election day, all absentee votes cast before the death of the candidate may be counted and recorded and the deceased will be considered a nominee and a substitute candidate for the general election may be selected pursuant to RC 3513.31, because the prohibition against counting and recording votes cast for a deceased candidate found in RC 3513.17 applies only to votes cast after a candidate dies.

CONDUCT OF ELECTION AND CANVASS

3513.18 Conduct of primary election; special election on same day

Party primaries shall be held at the same place and time, but there shall be separate pollbooks, tally sheets, and ballot boxes provided at each polling place for each party participating in the election, and the ballot of each voter shall be placed in the ballot box of the party with which he is affiliated. Each ballot box shall be plainly marked with the name of the political party whose ballots are to be placed therein, by letters pasted or printed thereon or by a card attached thereto, or both, and so placed that the designation may be easily seen and read by the voter.

If a special election on a question or issue is held on the day of a primary election, there shall be provided in the pollbooks pages on which shall be recorded the names of all electors voting on said question or issue and not voting in such primary. It shall not be necessary for electors desiring to vote only on the question or issue to declare their political affiliation.

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-81

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 3, 137 et seq., 144 et seq., 155, 174 et seq.

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

479 US 208, 107 SCt 544, 93 LEd(2d) 514 (1986), Tashjian v Connecticut Republican Party. A state law allowing only members of a particular political party to vote in that party's primary election impermissibly burdens the right of the party and its members under the First and Fourteenth Amendments to let independent voters take part in the primary. (Ed. note: Connecticut statute construed in light of federal constitution.)

3513.19 Challenges

(A) It is the duty of any witness or challenger and of any judge or clerk of elections and the right of any elector, whenever he doubts that a person attempting to vote at a primary election is legally entitled to vote at such election, to challenge the right of such person to vote. The right of a person to vote at a primary election may be challenged upon the following grounds:

(1) That the person whose right to vote is challenged is not a legally qualified elector;

(2) That he has received or has been promised some valuable reward or consideration for his vote;

(3) That he is not affiliated with or is not a member of the political party whose ballot he desires to vote. Such party affiliation shall be determined by examining the elector's voting record for the current year and the next two preceding calendar years as shown on the voter's registration card, using the standards of affiliation specified in division (D) of section 3513.05 of the Revised Code.

(B) When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section,

membership in or political affiliation with a political party shall be determined by the person's statement, made under penalty of election falsification, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.

HISTORY: 1986 H 524, eff. 3-17-87
1986 H 555; 1981 S 36; 1980 H 1062; 1974 H 662; 1971 S 460; 1953 H 1; GC 4785-82

CROSS REFERENCES

Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4, 6

Candidates of new parties exempted at first primary, 3517.014

Signers of declarations of candidacy for new party deemed members regardless of prior political affiliation, 3517.015

Any elector may vote the new party ballot at its first primary election, 3517.016

Offenses and penalties, illegal voting, 3599.12

Misconduct of election judge or clerk at poll, 3599.19

Aiding unqualified voters or inducing officer to accept their votes, penalty, 3599.25

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 137 et seq., 144 et seq., 174 et seq.; 26, Elections § 233

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

368 FSupp 64, 39 Misc 39 (ND Ohio 1973), Pirincin v Cuyahoga County Bd of Elections; affirmed by 414 US 990, 94 SCt 345, 38 LEd(2d) 231 (1973). The Ohio laws regarding the selection of members of county boards of election are valid.

2. In general

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. Where vacancy occurs in party nomination under conditions prescribed by RC 3513.31, appropriate committee of political party which made nomination, as designated by that statute, may fill vacancy by selecting a person without regard to his voting record or participation in any previous party primary election.

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. Membership in or affiliation with political party of an elector who has voted in previous regular state elections can only be proved by his sworn statement that at next preceding election at which he voted, he voted for a majority of candidates of that political party of which he claims to be member and with which he claims to be affiliated.

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. Membership in or affiliation with political party of a person who has never voted at regular state election is that which he desires it to be from time to time.

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. The voting record of an elector in a previous primary election is not conclusive in determining his political affiliation thereafter.

54 App 34, 5 NE(2d) 1022 (1936), Holding v Corey. A voter is entitled to vote a given party ticket at a primary election, provided that he voted for a majority of the candidates of such party at the preceding general election, and precinct officials, rather than the county board of elections, have the final authority to determine such voter's qualification.

54 App 34, 5 NE(2d) 1022 (1936), Holding v Corey. A voter does not have a cause of action for damages against election officials for refusing to allow him to vote a party ticket at a primary election, where his claim is not predicated on personal or property damage.

35 App 271, 172 NE 391 (1928), Mullen v State. Right to challenge absent voter's ballot must remain open until after ballot has been opened at primary election to determine whether voter was previously affiliated with party.

68 Abs 539, 119 NE(2d) 84 (App, Cuyahoga 1954), Marlin v Cuyahoga County Bd of Elections. A challenge to the candidacy of a person for nomination must be filed with the board of elections before an action can be brought for an injunction to restrain the board from placing such candidate on the ballot, unless fraud or bad faith on the part of the board is alleged.

479 US 208, 107 SCt 544, 93 LEd(2d) 514 (1986), Tashjian v Republican Party of Connecticut. A state law forbidding a political party to allow independent electors to vote in its party primary election for candidates seeking congressional and statewide office violates the First Amendment. (Ed. note: Connecticut statute construed in light of federal constitution.)

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

1940 OAG 1993. Precinct election official shall, upon demand, issue to a qualified elector a bond-issue ballot at a primary election without first requiring such elector to state his politics and take a primary ballot.

3513.191 Qualification for candidacy

No person shall be a candidate for nomination or election at a party primary if he voted as a member of a different political party at any primary election within the current year and the next preceding two calendar years.

HISTORY: 1986 H 524, eff. 3-17-87
1986 H 555; 126 v 205; 125 v 713

CROSS REFERENCES

Candidates of new parties exempted for four years, 3517.013

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 137 et seq., 144 et seq., 155, 174 et seq.

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

97 App 43, 120 NE(2d) 898 (1954), State ex rel Bouse v Cickelli. RC 3513.191 applies to primaries held after January 1, 1954, and is constitutional.

424 FSupp 588 (SD Ohio 1976), Kay v Brown. Although the state's legitimate interests of prohibiting candidacies prompted by short-range goals, rather than demonstrated loyalty to a party, support a waiting period, they do not support a four-year prohibition where the prospective candidate is effectively locked into a party which no longer exists; therefore, RC 3513.191 is unconstitutional as applied to a plaintiff who voted in the now-defunct Independent party primary of 1972 and who wishes to become a Democratic candidate in 1976.

424 FSupp 588 (SD Ohio 1976), Kay v Brown. Statute which barred candidate from filing in primary election because within four prior years he had voted in the primary of another party was unconstitutional as applied to candidate whose former party no longer had legal status in Ohio.

Secy of State Directive 84-12. RC 3513.191, barring individuals who vote in a primary election as members of one party from being candidates in any other party's primary during the next four years, cannot constitutionally be applied as written, and boards of election are directed to bar candidacies under that statute for a period no longer than two years.

2. In general

60 OS(2d) 123, 397 NE(2d) 1204 (1979), State ex rel Graham v Board of Elections. RC 3513.191 applies to Lakewood city elections.

22 OS(2d) 57, 258 NE(2d) 227 (1970), State ex rel Bible v Board of Elections. The four-year requirement contained in RC 3513.191 is valid.

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. Where vacancy occurs in party nomination under conditions prescribed by RC 3513.31, appropriate committee of political party which made nomination, as designated by that statute, may fill vacancy by selecting a person without regard to his voting record or participation in any previous party primary election.

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. Membership in or affiliation with political party of an elector who has voted in previous regular state elections can only be proved by his sworn statement that at next preceding election at which he voted, he voted for a majority of candidates of that political party of which he claims to be member and with which he claims to be affiliated.

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. The voting record of an elector in a previous primary election is not conclusive in determining his political affiliation thereafter.

18 OS(2d) 63, 247 NE(2d) 461 (1969), State ex rel Gareau v Stillman. As used in RC 3513.191 "calendar year" means January 1 through December 31.

165 OS 191, 134 NE(2d) 834 (1956), State ex rel Bouse, Jr v Cickelli. A voter who voted in the republican primary in 1952 is ineligible to run in the democratic primary in 1956, and application of amended RC 3513.191, effective January 1, 1956, does not constitute retroactive legislation.

104 App 418, 149 NE(2d) 576 (1957), State ex rel Mazaris v Gaylord. RC 3513.191 and 3513.23 are in pari materia and "candidate" as used in RC 3513.191 applies to RC 3513.23 and embraces not only one who seeks office, but includes one who is chosen by others as a contestant for office.

104 App 418, 149 NE(2d) 576 (1957), State ex rel Mazaris v Gaylord. An elector who voted in the democratic primary election in 1953, did not vote in any primary election in 1954, and voted in the republican primary elections in 1955, 1956 and 1957, is disqualified to be nominated as a candidate of the republican party by write-in votes cast for him in the primary election of 1957 notwithstanding he filed no declaration of candidacy and did nothing to promote or encourage such write-in vote.

424 FSupp 588 (SD Ohio 1976), Kay v Brown. Where an election law provides that a person who voted in a primary election as a member of a different political party within four calendar years preceding that person's attempt to become a candidate for nomination in a party primary is barred from candidacy for that party, the fact that more than four 365-day periods would have passed between the May 1972 primary in which the plaintiff voted as an Independent party member and the June 1976 Democratic primary does not save the plaintiff from disqualification under the statute, which specifies calendar years.

341 FSupp 1187 (SD Ohio 1972), Gaunt v Brown; affirmed by 409 US 809, 93 SCt 69, 34 LEd(2d) 71 (1972). A state may validly deny voters who are seventeen at the time of primary, but will be eighteen at time of general election, right to vote in primary.

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

OAG 72-024. Under RC 3513.191 an individual is eligible to be a candidate at a party primary if he has not voted as a member of a different party at any primary within the next preceding four calendar years; and the term, "calendar years," as used in the section, means the period from January 1 to December 31.

1964 OAG 1261. A person who falls within the prohibition in RC 3513.191, cannot lawfully be nominated as a candidate or elected at a party primary and the board of elections is without legal authority to place such person's name as a candidate for election on the ballot to be used in the general election in November.

3513.20 Statement required of person challenged; content; refusal of ballot

Before any challenged person shall be allowed to vote at a primary election he shall make a statement, under penalty of election falsification, before one of the precinct officials, blanks for which shall be furnished by the board of elections, giving name, age, residence, length of residence in the precinct, county, and state; stating that the person desires to be affiliated with and supports the principles of the political party whose ballot the person desires to vote; and giving all other facts necessary to determine whether he is entitled to vote in such primary election. Such statement shall be returned to the office of the board with the pollbooks and tally sheets.

If a person challenged refuses to make such statement under penalty of election falsification, he shall be refused a ballot. If a majority of the precinct officials finds that the statements of a person challenged or his voting record or other evidence shows that he lacks any of the qualifications required to make him a qualified elector at such primary election or that he is not affiliated with or is not a member of the political party whose ballot he desires to vote, he shall be refused a ballot.

HISTORY: 1981 S 36, eff. 10-20-81
1953 H 1; GC 4785-83, 4785-84

CROSS REFERENCES

Aiding unqualified voters or inducing officer to accept their votes, penalty, 3599.25

Ballot tampering, penalty, 3599.26

Falsehoods in election documents; fine and imprisonment, 3599.36

Election officials not to influence voters, 3599.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 137 et seq., 144 et seq., 174 et seq.; 26, Elections § 237

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

55 Cin L Rev 799 (1987). Settling Voter Qualifications for State Primary Elections: Reassertion of the Right of State Political Parties to Self-Determination, Comment.

3513.21 Counting votes; disputed ballots

At the close of the polls in a primary election, the judges and clerks of election shall proceed without delay to canvass the vote, sign and seal it, and make returns thereof to the board of elections forthwith on the forms to be provided by the board. The provisions of Title XXXV of the Revised Code relating to the accounting for and return of all ballots at general elections apply to primary ballots.

If there is any disagreement as to how a ballot should be counted it shall be submitted to all of the judges. If three of the judges do not agree as to how any part of the ballot shall be counted, that part of such ballot which three of the judges do agree shall be counted and a notation made upon the ballot indicating what part has not been counted, and shall be placed in an envelope provided for that purpose, marked "Disputed Ballots" and returned to the board. When the board has, by the adoption of a resolution, provided that the officials at a party primary election when only one party primary is to be held for the nomination of candidates for municipal office, shall be two judges and two clerks, the clerks shall be considered judges for the purposes of this section.

The board shall, on the day when the vote is canvassed, open such sealed envelopes, determine what ballots and for whom they should be counted, and proceed to count and tally the votes on such ballots.

HISTORY: 129 v 1267, eff. 9-28-61
125 v 713; 1953 H 1; GC 4785-85

CROSS REFERENCES

Counting and canvass of general and special election ballots, 3505.27 to 3505.37

Voting machines, Ch 3507

Absent voters' ballots, Ch 3509, Ch 3511

Election registrars, judges, and clerks not to neglect duties; penalty, 3599.17

Misconduct of election judge or clerk at poll, 3599.19

Ballot tampering, penalty, 3599.26

Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 137 et seq., 144 et seq., 174 et seq.; 26, Elections § 291

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

35 App 271, 172 NE 391 (1928), Mullen v State. Absent voters' ballots not cast at primary election were not disputed ballots, and hence county board had no power to count such ballots and could not be mandamused to do so.

35 App 271, 172 NE 391 (1928), Mullen v State. Uncounted or disputed ballots, which county board may count, were votes actually placed in box but imperfectly marked or absent voters' ballots not reaching officials.

35 App 271, 172 NE 391 (1928), Mullen v State. Power to count votes must be derived from statute, and cannot be conferred by acts of omission or commission on part of local judges.

3513.22 Canvass and certification of votes cast; certificates of nomination or election

Not earlier than the eleventh day nor later than the fifteenth day after a primary election the board of elections shall begin to canvass the election returns from the precincts in which electors were entitled to vote at such election and shall continue such canvass daily until it is completed.

The county executive committee of each political party which participated in the election, and each committee designated in a petition to represent the petitioners thereon pursuant to which a question or issue was submitted at such election, may designate a qualified elector who may be present at and may witness the making of such canvass. Each person for whom votes were cast in such election may also be present at and witness the making of such canvass.

When the canvass of the election returns from all of the precincts in the county in which electors were entitled to vote at such election has been completed, the board shall determine and declare the results of the elections determined by the electors of such county or of a district or subdivision within such county. If more than the number of persons to be nominated for or elected to an office received the largest and an equal number of votes, the tie shall be resolved by lot by the chairman of the board in the presence of a majority of the members of the board. Such declaration shall be in writing and shall be signed by at least a majority of the members of the board. It shall bear the date of the day upon which it is made, and a copy thereof shall be posted by the board in a conspicuous place in its office. The board shall keep such copy posted for a period of at least five days.

The board shall thereupon promptly certify abstracts of the results of such elections within its county upon such forms as the secretary of state prescribes. One certified copy of each abstract shall be kept in the office of the board, and one certified copy of each abstract shall promptly be sent to the secretary of state. The board shall also promptly send a certified copy of that part of such abstract which pertains to an election in which only electors of a district comprised of more than one county but less than all of the counties of the state voted to the board of the most populous county in such district. It shall also promptly send a certified copy of that part of such abstract which pertains to an election in which only electors of a subdivision located partly within the county voted to the board of the county in which the major portion of the population of such subdivision is located.

If, after certifying and sending abstracts and parts thereof, a board finds that any such abstract or part thereof is incorrect, it shall promptly prepare, certify, and send a corrected abstract or part thereof to take the place of each incorrect abstract or part thereof theretofore certified and sent.

When certified copies of abstracts are received by the secretary of state, he shall canvass such abstracts and determine and declare the results of all elections in which electors throughout the entire state voted. If more than the number of persons to be nominated for or elected to an office received the largest and an equal number of votes, the tie shall be resolved by lot by the secretary of state in the presence of the governor, the auditor of state, and the attorney general, who at the request of the secretary of state shall assemble to witness the drawing of such lot. Such declaration of results by the secretary of state shall be in

writing and shall be signed by him. It shall bear the date of the day upon which it is made, and a copy thereof shall be posted by the secretary of state in a conspicuous place in his office. He shall keep such copy posted for a period of at least five days.

When certified copies of parts of abstracts are received by the board of the most populous county in a district from the boards of all of the counties in the district, the board receiving such abstracts shall canvass them and determine and declare the results of the elections in which only electors of the district voted. If more than the number of persons to be nominated for or elected to an office received the largest and equal number of votes, the tie shall be resolved by lot by the chairman of such board in the presence of a majority of the members of the board. Such declaration of results by such board shall be in writing and shall be signed by at least a majority of the members of such board. It shall bear the date of the day upon which it is made and a copy thereof shall be posted by such board in a conspicuous place in its office. The board shall keep such copy posted for a period of at least five days.

When certified copies of parts of abstracts are received by the board of a county in which the major portion of the population of a subdivision located in more than one county is located from the boards of each county in which other portions of such subdivision are located, the board receiving such abstracts shall canvass them and determine and declare the results of the elections in which only electors of such subdivision voted. If more than the number of persons to be nominated for or elected to an office received the largest and an equal number of votes, the tie shall be resolved by lot by the chairman of such board in the presence of a majority of the members of the board. Such declaration of results by such board shall be in writing and shall be signed by at least a majority of the members of such board. It shall bear the date of the day upon which it is made and a copy thereof shall be posted by such board in a conspicuous place in its office. The board shall keep such copy posted for a period of at least five days.

Election officials, who are required to declare the results of primary elections, shall issue to each person declared nominated for or elected to an office, an appropriate certificate of nomination or election, provided that the boards required to determine and declare the results of the elections for candidates for nomination to the office of representative to congress from a congressional district shall, in lieu of issuing a certificate of nomination, certify to the secretary of state the names of such candidates nominated, and the secretary of state upon receipt of such certification shall issue a certificate of nomination to each person whose name is so certified. Certificates of nomination or election issued by boards to candidates and certifications to the secretary of state shall not be issued before the expiration of the time within which applications for recounts of votes may be filed or before recounts of votes, which have been applied for, are completed.

HISTORY: 1984 S 79, eff. 7-4-84
1953 H 1; GC 4785-86

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.51

CROSS REFERENCES

Certificate of nomination to be denied until contributions and expenditures law complied with, 3517.11

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 25, Elections § 6, 128 to 132, 137 et seq., 144 et seq., 174 et seq.

NOTES ON DECISIONS AND OPINIONS

171 OS 263, 169 NE(2d) 551 (1960), State ex rel Feighan v Green; overruled by 7 OS(2d) 85, 218 NE(2d) 428 (1966), State ex rel Sibarco Corp v Berea. The issuance by a board of elections of an appropriate certificate of nomination or election as provided in RC 3513.22 after the expiration of the time within which applications for recounts of votes may be filed is a ministerial duty which may be compelled by mandamus.

171 OS 263, 169 NE(2d) 551 (1960), State ex rel Feighan v Green; overruled by 7 OS(2d) 85, 218 NE(2d) 428 (1966), State ex rel Sibarco Corp v Berea. Where, in the exercise of its discretionary authority under RC 3505.32 a board of elections opens sealed containers of ballots and "counts" them, and errors are found by it in its declaration of results and abstract previously certified, which errors required the issuance of a corrected declaration and abstract as provided in RC 3513.22, such procedure by the board of elections does not constitute a recount within the meaning of RC 3515.06 authorizing the person not nominated to make application for a recount of additional precincts not theretofore recounted.

134 OS 352, 16 NE(2d) 946 (1938), State ex rel Snyder v Secretary of State. Secretary of state is not required by this section, or any other provision of law, to certify to the several boards of elections the names of candidates for county offices.

134 OS 348, 16 NE(2d) 944 (1938), State ex rel Ward v Kennedy. Mandamus will not lie to compel secretary of state to determine the legality of votes cast in Trumbull county, since no duty is specifically enjoined upon the secretary to make that determination.

69 App(2d) 115, 432 NE(2d) 210 (1980), State ex rel Moss v Franklin County Bd of Elections. RC 3513.04 does not preclude a person from being an independent candidate at the general election for the office of state representative because he sought election to the office of member of a party central committee at the primary election.

28 App(2d) 281, 277 NE(2d) 448 (1968), State ex rel Cullinan v Trumbull County Bd of Elections. Where the real object of a proceeding in mandamus is for an injunction, action will be dismissed by appellate court for want of jurisdiction.

1964 OAG 1261. A person who falls within the prohibition in RC 3513.191 cannot lawfully be nominated as a candidate or elected at a party primary and the board of elections is without legal authority to place such person's name as a candidate for election on the ballot to be used in the general election in November.

1959 OAG 708. If a person who was a candidate in a primary election fails to file the statement of contributions and expenditures or of no expenditures required by RC 3517.10 within the time prescribed, the disqualification provision of RC 3517.11 becomes operative and that person is barred from receiving a certificate of nomination and from becoming a candidate in the general election.

1956 OAG 6623. The eligibility of an individual, under the provisions of RC 315.02, for nomination as a party candidate for the office of county engineer is a matter for judicial rather than administrative determination, and a board of elections is without authority to make such determination by omitting from the ballot in the general election the name of an individual receiving the highest number of votes for such office in a party primary.

3513.23 Names written on ballot; number of votes required for nomination

If an elector voting at a primary election writes in a blank space provided therefor on the ballot of one political party under the title of an office for which a nomination is to be made the name of a person other than the persons whose names are printed on the ballot as candidates for such nomination, and if such elector places "X" in the rectangular space at the left of the name written, such ballot shall be counted as a vote for the nomination of the person whose name is written thereon, but in no event shall a person, whose name is written on a primary election ballot, be nominated as a candidate for election to an office if the name of no person living on the day of such primary election is printed on such ballot as a candidate for such nomination, unless the total number of votes cast for the person whose name is written on the ballot is not less than that number of petition signatures that would have been required for the printing of the person's name on the primary ballot pursuant to section 3513.05 of the Revised Code.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-87

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 137 et seq., 144 et seq., 156, 162, 174 et seq.

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

32 OS(2d) 17, 288 NE(2d) 816 (1972), State ex rel McIntyre v Mininni. RC 3513.23, to the extent that it requires write-in candidates at primary elections to receive that number of votes which is equal to fifteen per cent of the total number of electors who vote such primary election ballot, creates invidious distinctions between write-in candidates and candidates whose names are printed on the ballot.

2. In general

144 OS 162, 57 NE(2d) 661 (1944), State ex rel Sagebiel v Montgomery County Bd of Elections. There is no duty resting upon a board of elections (though so ordered by the secretary of state) to prepare a separate ballot for the November 7, 1944, elections with party designations but with the name of no candidate thereon, for the purpose of filling a vacancy in the office of county commissioner caused by the death of an incumbent occurring subsequent to July 20, 1944.

104 App 418, 149 NE(2d) 576 (1957), State ex rel Mazaris v Gaylord. RC 3513.191 and 3513.23 are in pari materia and "candidate" as used in RC 3513.191 applies to RC 3513.23 and embraces not only one who seeks office, but includes one who is chosen by others as a contestant for office.

104 App 418, 149 NE(2d) 576 (1957), State ex rel Mazaris v Gaylord. An elector who voted in the democratic primary election in 1953, did not vote in any primary election in 1954, and voted in the republican primary elections in 1955, 1956 and 1957, is disqualified to be nominated as a candidate of the republican party by write-in votes cast for him in the primary election of 1957 notwithstanding he filed no declaration of candidacy and did nothing to promote or encourage such write-in vote.

1958 OAG 2276. Discussion of procedure for nominating and electing probate judge where incumbent resigns subsequent to the one hundredth day before the primary election and prior to the fortieth day before the general election.

1954 OAG 4012. Where a county commissioner resigns and where, at the next primary election, one political party succeeds in nominating a candidate for the unexpired term of such office and the other political party fails to nominate such a candidate, there is no provision of law by which any other person may be nominated for such office, and no blank space may be provided on the ballot at the November general election.

1954 OAG 4012. Where a county commissioner dies prior to the time for filing declarations of candidacy and where no declaration of candidacy is filed for the unexpired term for such office and no person is nominated for such unexpired term at the primary election by receiving the required number of write-in votes there is no provision of law by which any person may be nominated for such office, and the election for such office should be had at the November general election by providing a blank space on the ballot.

1951 OAG 476. The use of pasters bearing the name of a "write-in" candidate, attached to the official ballot by individual voters, is not authorized by law.

3513.24 Party committee members

When members of party committees are elected at a primary election, the returns shall be made and canvassed in the same manner as for the election of state, district, and county offices. The election authorities shall issue and deliver to each person who is elected a certificate of his election. A list of such party committeemen who are chosen shall be filed and kept in the office of the secretary of state and the board of elections for a period of two years.

HISTORY: 1976 H 1165, eff. 4-5-76
125 v 713; 1953 H 1; GC 4785-88

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.51

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 79, 185, 224, 231, 233, 259, 260, 264 to 269, 272; 42, Evidence and Witnesses § 30

Am Jur 2d: 25, Elections § 120 to 122, 137 et seq., 144 et seq., 174 et seq.

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOMINATION AND INDEPENDENT CANDIDATES

3513.25 Nominations of certain candidates shall be by petition—Repealed

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-90

Note: See now 3513.251 to 3513.255 for provisions analogous to former 3513.25.

3513.251 Nominating petitions in municipalities of under two thousand; nonpartisan municipal candidates; primary elections

Nominations of candidates for election as officers of a municipal corporation having a population of less than two thousand as ascertained by the next preceding federal census shall be made only by nominating petition and their election shall occur only in nonpartisan elections, unless a majority of the electors of such municipal corporation have petitioned for a primary election. Nominations of candidates for election as officers of a municipal corporation having a population of two thousand or more shall be made either by primary election in conjunction with a partisan general election or by nominating petition in conjunction with a nonpartisan general election, as determined under section 3513.01 of the Revised Code.

The nominating petitions of nonpartisan candidates for election as officers of a municipal corporation having a population of less than two thousand, as ascertained by the next preceding federal census, shall be signed by not less than twenty-five qualified electors of the municipal corporation. Any nominating petition filed under this section shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the general election, provided that no such nominating petition shall be accepted for filing if it appears to contain signatures aggregating in number more than three times the minimum number of signatures required by this section. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures when the number of verified signatures on a petition equals the minimum required number of qualified signatures.

Nomination of nonpartisan candidates for election as officers of a municipal corporation having a population of two thousand or more, as ascertained by the next preceding federal census, shall be made only by nominating petition. Nominating petitions of nonpartisan candidates for election as officers of a municipal corporation having a population of two thousand or more but less than five thousand, as ascertained by the next preceding federal census, shall be signed by not less than fifty qualified electors of the municipal corporation or ward thereof in the case of the nominating petition of a candidate for election as councilman from such ward. Nominating petitions of nonpartisan candidates for election as officers of a municipal corporation having a population of five thousand or more, as ascertained by the next preceding federal census, shall be signed by not less than one hundred qualified electors of the municipal corporation or ward thereof in the case of the nominating petition of a candidate for election as councilman from such ward.

HISTORY: 1991 S 61, eff. 7-16-91
1989 H 36; 1986 S 45; 1980 H 1062; 1976 H 925; 1971 S 460; 125 v 713

UNCODIFIED LAW

1991 S 61, § 3, eff. 7-16-91, reads: In a municipal corporation having a population of two thousand or more, as ascertained by the most recent federal census, in which persons were nominated as candidates for election as officers of the municipal corporation by nominating petition for a nonpartisan election in 1989 but in which candidates filed nominating petitions as independent candidates by May 6, 1991, the election of officers in that municipal corporation in 1991 shall be by nonpartisan election. In such a municipal corporation, any candidate who filed a nominating petition as an independent candidate by May 6, 1991, shall be deemed to have filed a nominating petition as a nonpartisan candidate in accordance with section 3513.251 of the Revised Code.

CROSS REFERENCES

Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38
False signature forbidden, 3599.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 67, 77, 96, 99, 101, 103, 140, 224, 233, 257
Am Jur 2d: 25, Elections § 150
Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604

NOTES ON DECISIONS AND OPINIONS

167 OS 323, 148 NE(2d) 229 (1958), Maranze v Bd of Elections of Montgomery County. A mandamus action to declare null and void certain certificates of nomination cannot be brought by a complainant who has failed to file a protest to the nominating petitions.

164 OS 211, 129 NE(2d) 807 (1955), State ex rel Ascherl v Ujhelyi. Candidate ruled off ballot by board of elections who brought mandamus action 37 days later was not guilty of laches.

1964 OAG 1512. Members of a commission selected to frame a municipal charter as provided by O Const Art XVIII §8, are not municipal officers, and candidates for election to such commission are not candidates for nomination for an elective municipal office within the meaning of Ohio Const Art V §7, and there is no requirement in law that such candidates file petitions in accordance with RC 3513.251 and 3513.252.

1957 OAG 616. Where the legislative authority of a village of a population of less than two thousand persons, holding no primary election, determines by a majority vote to combine the duties of clerk and treasurer into one office to be known as clerk-treasurer, under RC 733.261, such legislative authority shall file certification of such action with the board of elections of the county in which such municipal corporation is located not less than 105 days before the second Tuesday of May preceding the regular municipal election at which such clerk-treasurer shall be elected.

1955 OAG 4846. Where a village subject to the provisions of RC 731.13 has a population of less than 2,000 and has not been required to hold a primary election, the meeting to fix the compensation for all offices must be held not later than five days prior to four pm of the 90th day before the day of the general election.

3513.252 Independent candidates in municipality of more than two thousand population—Repealed

HISTORY: 1991 S 61, eff. 7-16-91
1986 H 524; 1980 H 1062; 1974 H 662; 1971 S 460; 1969 S 19; 125 v 713

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

629 FSupp 1335 (ND Ohio 1985), Cripps v Seneca County Bd of Elections. RC 3513.252, establishing a date for the filing of nominating petitions by independent candidates earlier than the

date for party candidates, violates US Const Am 1 where applied to disqualify an individual who will not become a naturalized citizen qualified for the position until after the filing date has passed.

2. In general

1964 OAG 1512. Members of a commission selected to frame a municipal charter as provided by O Const Art XVIII §8, are not municipal officers, and candidates for election to such commission are not candidates for nomination for an elective municipal office within the meaning of O Const Art V §7, and there is no requirement in law that such candidates file petitions in accordance with RC 3513.251 and 3513.252.

3513.253 Nominations of candidates for township officers to be by petition

Nominations of candidates for election as officers of a township shall be made only by nominating petitions, unless a majority of the electors of such township have petitioned for a primary election. The nominating petitions of nonpartisan candidates for township trustee and township clerk shall be signed by not less than twenty-five qualified electors of the township. Such petition shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the general election, provided that no such nominating petition shall be accepted for filing if it appears to contain signatures aggregating in number more than three times the minimum number of signatures required by this section. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures when the number of verified signatures on a petition equals the minimum required number of qualified signatures.

HISTORY: 1989 H 36, eff. 1-1-90
1986 S 45; 1980 H 1062; 129 v 582; 125 v 713

Note: 3513.253 is analogous to former 3513.25, repealed by 125 v 713, eff. 1-1-54.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 27.02, 27.05, 27.06

CROSS REFERENCES

Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38
Unqualified person signing petition, penalty; threats concerning petitions punished, 3599.13
Offenses as to petitions, 3599.14, 3599.15
False signature forbidden, 3599.28
Township nominations by direct primary only upon petition by majority, O Const Art V §7

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 67, 77, 96, 99, 101, 103, 140, 224, 233, 257
Am Jur 2d: 25, Elections § 168 to 173

NOTES ON DECISIONS AND OPINIONS

OAG 89-022. An individual who holds a position of assistant auditor of state pursuant to RC 117.09 is prohibited from simultaneously holding the position of township clerk if the election for township clerk is a partisan election as provided in RC 3513.253 and the duties of the assistant auditor include participating in or supervising the audit of that township.

OAG 78-022. RC 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to RC 503.24, or from seeking that office in a nonpartisan election.

3513.254 Nominations of candidates for boards of education to be by petition

The name of each candidate for member of a city, local, or exempted village board of education or for member of a county board of education described in section 3311.051 of the Revised Code shall appear on the nonpartisan ballot. Nominating petitions of candidates for member of a board of education of a local or exempted village school district or for member of a county board of education described in section 3311.051 of the Revised Code shall be signed by twenty-five qualified electors of the school district. Nominating petitions for candidates for member of a board of education of a city school district having a population of less than twenty thousand, as ascertained by the next preceding federal census, shall be signed by twenty-five qualified electors of the school district. Nominating petitions for candidates for member of a board of education of a city school district having a population of twenty thousand or more but less than fifty thousand, as ascertained by the next preceding federal census, shall be signed by seventy-five qualified electors of the school district. Nominating petitions for candidates for member of a board of education of a city school district having a population of fifty thousand or more but less than one hundred thousand, as ascertained by the next preceding federal census, shall be signed by one hundred fifty qualified electors of the school district. Nominating petitions for candidates for member of a board of education of a city school district having a population of one hundred thousand or more, as ascertained by the next preceding federal census, shall be signed by three hundred qualified electors of the school district. Nominating petitions shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the general election, provided that no such petition shall be accepted for filing if it appears to contain signatures aggregating in number more than three times the minimum number of signatures required by this section. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying petitions when the number of verified signatures equals the minimum required number of qualified signatures.

HISTORY: 1991 H 267, eff. 11-20-91
1989 H 36; 1986 S 45; 1980 H 1062; 1976 H 1207; 125 v 713

Note: 3513.254 is analogous to former 3513.25, repealed by 125 v 713, eff. 1-1-54.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A); Forms 5.22, 5.24

CROSS REFERENCES

Election of county board of education, term, 3311.052

Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 67, 77, 96, 99, 101, 103, 140, 224, 233, 257; 82, Schools, Universities, and Colleges § 89
Am Jur 2d: 25, Elections § 168 to 173

NOTES ON DECISIONS AND OPINIONS

OAG 74-034. A person in the classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by RC 124.57, because that section only prohibits partisan political activity.

3513.255 Nomination for member of county board of education

This section does not apply to candidates for election to a county board of education described in section 3311.051 of the Revised Code. The name of each candidate for election as a member of a county board of education shall appear on the nonpartisan ballot. Each nominating petition shall be signed by one hundred fifty qualified electors of the school districts over which the county board of education has jurisdiction, and be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the general election, provided that no such petition shall be accepted for filing if it appears to contain signatures aggregating in number more than three times the minimum number of signatures required by this section. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum signatures required. A board of elections may discontinue verifying petitions when the number of verified signatures equals the minimum required number of qualified signatures.

HISTORY: 1991 H 267, eff. 11-20-91
1989 H 36; 1986 S 45; 1980 H 1062; 1976 H 1207; 125 v 713

Note: 3513.255 is analogous to former 3513.25, repealed by 125 v 713, eff. 1-1-54.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.21, 5.23

CROSS REFERENCES

Joint county school districts, nominating petitions for candidates for member of board of education, 3311.053
Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 67, 77, 96, 99, 101, 103, 140, 224, 233, 257; 82, Schools, Universities, and Colleges § 89
Am Jur 2d: 25, Elections § 168 to 173

NOTES ON DECISIONS AND OPINIONS

OAG 74-034. A person in the classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by RC 124.57, because that section only prohibits partisan political activity.

3513.256 Independent candidates for county office—Repealed

HISTORY: 1971 S 460, eff. 3-23-72
1969 S 19; 132 v H 653; 126 v 205; 125 v 713

3513.257 Independent candidate's petition for nomination at primary elections; treatment of joint candidates

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, except persons desiring to become independent joint candidates for the offices of governor and lieutenant governor and for the offices of president and vice-president of the United States, shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code. Persons desiring to become independent joint candidates for the offices of governor and lieutenant governor shall file, not later than four p.m. of the day before the day of the primary election, one statement of candidacy and one nominating petition for the two of them. Persons desiring to become independent joint candidates for the offices of president and vice-president of the United States shall file, not later than four p.m. of the seventy-fifth day before the day of the general election at which the president and vice-president are to be elected, one statement of candidacy and one nominating petition for the two of them. The prospective independent joint candidates' statement of candidacy shall be filed with the nominating petition as one instrument.

The statement of candidacy and separate petition papers of each candidate or pair of joint candidates shall be filed at the same time as one instrument.

The nominating petition shall contain signatures of qualified electors of the district, political subdivision, or portion of a political subdivision in which the candidacy is to be voted on in an amount to be determined as follows:

(A) If the candidacy is to be voted on by electors throughout the entire state, the nominating petition, including the nominating petition of independent joint candidates for the offices of governor and lieutenant governor, shall be signed by no less than five thousand qualified electors, provided that no petition shall be accepted for filing if it purports to contain more than fifteen thousand signatures.

(B) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which less than five thousand electors voted for the office of governor at the next preceding election for that office, the nominating petition shall contain signatures of not less than twenty-five qualified electors of the district, political subdivision, or part thereof, or a number of qualified signatures equal to at least five per cent of that vote, if this number is less than twenty-five.

(C) If the candidacy is to be voted on by electors in any district, political subdivision, or part thereof in which five thousand or more electors voted for the office of governor at the next preceding election for that office, the nominating petition shall contain a number of signatures equal to at least one per cent of those electors.

All nominating petitions of candidates for offices to be voted on by electors throughout the entire state shall be

filed in the office of the secretary of state. No nominating petition for the offices of president and vice-president of the United States shall be accepted for filing unless there is submitted to the secretary of state, at the time of filing the petition, a slate of presidential electors sufficient in number to satisfy the requirement of the United States Constitution. The secretary of state shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of lieutenant governor, shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of lieutenant governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of governor, and shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate to the office of governor or lieutenant governor who has already been shown as an independent candidate for governor or lieutenant governor on a statement of candidacy previously filed and accepted during the filing period preceding the same primary election.

Nominating petitions of candidates for offices to be voted on by electors within a district or political subdivision comprised of more than one county but less than all counties of the state shall be filed with the boards of elections of that county or part of a county within the district or political subdivision which had a population greater than that of any other county or part of a county within the district or political subdivision according to the last federal decennial census.

Nominating petitions for offices to be voted on by electors within a county or district smaller than a county shall be filed with the board of elections for such county.

No petition other than the petition of a candidate whose candidacy is to be considered by electors throughout the entire state shall be accepted for filing if it appears on its face to contain more than three times the minimum required number of signatures. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures when the number of verified signatures on a petition equals the minimum required number of qualified signatures.

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot. The deadline, one day prior to the primary election, is the least drastic or restrictive means of protecting these state interests. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state's purpose of ensuring fair and honest elections while leaving unimpaired the political, voting, and associational rights secured by the first and fourteenth amendments to the United States constitution.

HISTORY: 1986 H 555, eff. 2-26-86
1986 S 45; 1984 H 406; 1980 H 1062; 1977 S 115; 1974 H 662; 1971 S 460

Note: Former 3513.257 repealed by 1971 S 460, eff. 3-23-72; 1969 S 19; 132 v H 653; 127 v 45; 126 v 205; 125 v 713

CROSS REFERENCES

Standard time in Ohio, 1.04
Days counted to ascertain time, 1.14
Elections, independent candidate defined, 3501.01
Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38
Presidential ballot, 3505.10
Unqualified person signing petition, penalty; threats as to petitions punished, 3599.13
Offenses as to petitions, 3599.14, 3599.15
False signature forbidden, 3599.28
Citizens may alter, reform, or abolish their government, O Const Art I §2
Governor and lieutenant governor to be elected jointly, O Const Art III §1a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 67, 77, 96, 99, 101, 103, 140, 224, 233, 257
Am Jur 2d: 26, Elections § 216

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

460 US 780, 103 SCt 1564, 75 LEd(2d) 547 (1983), Anderson v Celebrezze. The Ohio statute imposing a March deadline for the filing of nominating petitions as an independent candidate for president places an unconstitutional burden on voting and associational rights of supporters of independent candidates.

499 FSupp 121 (SD Ohio 1980), Anderson v Celebrezze; affirmed by 460 US 780, 103 SCt 1564, 75 LEd(2d) 547 (1983). Ohio statute requiring independent candidate to file nomination papers seventy-five days before the primary election in June is unconstitutional.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3513.257 is unconstitutional.

No. C-1-84-791 (SD, Ohio, 8-31-84), Ray v South. Requiring independent candidates' petitions to be signed by 1% of the number of electors voting in the next preceding gubernatorial election, as RC 3513.257(C) does, is not a violation of a potential candidate's constitutional rights, nor is it improper to make independent candidates produce more signatures than partisan candidates must.

No. C-1-84-791 (SD, Ohio, 8-31-84), Ray v South. The "injury" voters suffer because of the early filing deadline imposed on independent judicial candidates by RC 3513.257 differs in kind from that caused by imposition of the same deadline on legislative and executive posts, since judicial candidates campaign on the basis of personality rather than their positions on public issues; the state's interest in political stability is compelling, and the burden imposed on independent judicial candidates is constitutional because reasonably necessary to the promotion of that interest.

No. C-1-84-531 (SD, Ohio, 8-30-84), Denny v Eyrich. The command of RC 3513.357 that certain independent candidates file nominating petitions seventy-five days before the primary election is not justified as preventing independent campaigns by primary

losers or party-changers, since it also applies to people who have never been affiliated with a political party; application of the deadline to a congressional candidate is an unconstitutional restriction of access to the ballot.

2. In general

15 Tol L Rev 363 (Fall 1983). *Anderson v Celebrezze*: The Ascendency of the First Amendment in Ballot Access Cases, Note.

12 Nor Ky L Rev 137 (1985). Ballot Access Restrictions—*Anderson v Celebrezze*, 460 U. S. 780 (1983), Note.

63 OS(2d) 323, 410 NE(2d) 762 (1980), State ex rel Nagin v Celebrezze. RC 3513.257 does not require that petitions for an independent candidacy for president, vice-president or senator be filed "as one instrument."

113 App 55, 177 NE(2d) 300 (1960), State ex rel Lynch v Chesney. RC 3513.31 provides the only method for selection of a candidate for the unexpired term of an incumbent judge of the court of appeals who dies after the primary election but more than forty days before the day of the next general election.

396 US 41, 90 SCt 206, 24 LEd(2d) 209 (1969), Brockington v Rhodes. Mandamus action to compel placing of plaintiff's name on ballot as an independent candidate for the house of representatives pursuant to petition bearing only one per cent of the voters became moot when the election was over.

629 FSupp 1335 (ND Ohio 1985), Cripps v Seneca County Bd of Elections. Establishing a date for the filing of nominating petitions by independent candidates that is earlier than the date for party candidates, as the general assembly has done in RC 3513.252, violates US Const Am 1 where applied to disqualify someone who will not be a naturalized citizen qualified for a position until after the filing date has passed.

318 FSupp 1262, 29 Misc 211 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing those portions of RC 3513.257 and 3513.258 which deprive plaintiffs of constitutionally guaranteed rights.

OAG 66-005. Nominating petitions filed pursuant to RC 3513.256 by independent candidates for election to the office of representative to the general assembly must contain the number of signatures required by that section and the signers of such petition must be electors of the district from which such candidate may be elected.

3513.258 Independent candidates for state office, president and vice-president of the United States, United States senator, and representative at large to congress—Repealed

HISTORY: 1971 S 460, eff. 3-23-72
1969 S 19; 125 v 713

3513.259 Nomination of candidates for state board of education; filing of petitions

Nominations of candidates for the office of member of the state board of education shall be made only by nominating petition. The nominating petition of a candidate for the office of member of the state board of education shall be signed by not less than one per cent of the number of electors who voted for governor at the next preceding regular state election for the office of governor in the district, or five hundred electors, whichever is the lesser number.

No such nominating petition shall be accepted for filing if it appears on its face to contain signatures aggregating in number more than three times the minimum number of signatures required by this section. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures when the number of verified signatures equals the minimum required number of signatures. Such petition shall be filed with the board of elections of the most populous county in such district not later than four p.m. of the seventy-fifth day before the day of the general election at which state board of education members are elected.

Each nominating petition shall be signed by qualified electors residing in the district in which the candidate designated therein would be a candidate for election to the office of member of the state board of education. Each candidate shall be a qualified elector residing in the district in which he seeks election to such office.

As the word "district" is used in this section, it refers to a district created under section 3301.011 of the Revised Code.

HISTORY: 1986 S 45, eff. 5-2-86
1980 H 1062; 126 v 655

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.25

CROSS REFERENCES

State board of education; election of members, 3301.011
Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38
Unqualified person signing petition, penalty; threats as to petitions punished, 3599.13
Offenses as to petitions, 3599.14, 3599.15
False signature forbidden, 3599.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 67, 77, 96, 99, 101, 103, 140, 224, 233, 257; 82, Schools, Universities, and Colleges § 54
Am Jur 2d: 68, Schools § 10

3513.26 Effect of change of name by person seeking nomination by petition—Repealed

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-90a

3513.261 Form of nominating petition; filing fee; penalty for election falsification; treatment of joint candidates

A nominating petition may consist of one or more separate petition papers, each of which shall be substantially in the form prescribed in this section. If the petition consists of more than one separate petition paper, the statement of candidacy of the candidate or joint candidates named need be signed by the candidate or joint candidates on only one of such separate petition papers, but the statement of candidacy so signed shall be copied on each other separate petition paper before the signatures of electors are placed thereon. Each nominating petition containing signatures of electors of more than one county shall consist of separate petition papers each of which shall contain signatures of electors of only one county; provided that petitions containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions containing

signatures of electors of more than one county are filed, the board of elections shall determine the county from which the majority of the signatures came, and only signatures from this county shall be counted. Signatures from any other county shall be invalid.

All signatures on nominating petitions shall be written in ink or indelible pencil.

At the time of filing a nominating petition, the candidate designated therein, and joint candidates for governor and lieutenant governor, shall pay to the election officials with whom it is filed the fee specified for the office by section 3513.10 of the Revised Code. Such fees shall be disposed of by such election officials in the same manner as is provided in section 3513.10 of the Revised Code for the disposition of other fees, and in no case shall a filing fee be returned to a candidate.

Candidates or joint candidates whose names are written on the ballot, and who are elected, shall pay the same fee as candidates who file nominating petitions. Payment of this fee shall be a condition precedent to the granting of their certificates of election.

Each nominating petition shall contain a statement of candidacy which shall be signed by the candidate or joint candidates named therein. Such statement of candidacy shall contain a declaration made under penalty of election falsification that the candidate desires to be a candidate for the office named therein, and that he is an elector qualified to vote for the office he seeks.

The form of the nominating petition and statement of candidacy shall be substantially as follows:

STATEMENT OF CANDIDACY

I, _____ (Name of candidate), the undersigned, hereby declare under penalty of election falsification that my voting residence is in _____ Precinct of the _____ (Township) or (Ward and City, or Village) in the county of _____, Ohio; that my post-office address is _____ (Street and Number, if any, or Rural Route and Number) of the _____ (City, Village, or post office) of _____, Ohio; that I am a qualified elector in the precinct in which my voting residence is located. I hereby declare that I desire to be a candidate for election to the office of _____ in the _____ (State, District, County, City, Village, Township, or School District) for the _____ (Full term or unexpired term ending _____) at the General Election to be held on the _____ day of _____, 19____.

I further declare that I am an elector qualified to vote for the office I seek. Dated this _____ day of _____, 19____.

_____

(Signature of candidate)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS.

I, _____, hereby constitute the persons named below a committee to represent me:

Name Residence

_____

_____

_____

_____

_____

NOMINATING PETITION

We, the undersigned, qualified electors of the state of Ohio, whose voting residence is in the County, City, Village, Ward, Township or Precinct set opposite our names, hereby nominate _____ as a candidate for election to the office of _____ in the _____ (State, District, County, City, Village, Township, or School District) for the _____ (Full term or unexpired term ending _____) to be voted for at the general election next hereafter to be held, and certify said person is, in our opinion, well qualified to perform the duties of the office or position to which he desires to be elected.

Signature	Street Address or R.F.D (must use address on file with the board of elections)	City, Village or Township	Ward	Precinct	County	Date of Signing

_____, declares under penalty of election falsification that he is a qualified elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing petition paper containing _____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____

(Signature of circulator)

_____

(Address)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

The secretary of state shall prescribe a form of nominating petition for a group of candidates for the office of member of a board of education, township office, and for offices of municipal corporations of under two thousand population.

The secretary of state shall prescribe a form of statement of candidacy and nominating petition, which shall be substantially similar to the form of statement of candidacy and nominating petition set forth in this section, that will be suitable for joint candidates for the offices of governor and lieutenant governor.

If such petition nominates a candidate whose election is to be determined by the electors of a county or a district or subdivision within the county, it shall be filed with the board of such county. If the petition nominates a candidate whose election is to be determined by the voters of a subdivision located in more than one county, it shall be filed with the board of the county in which the major portion of the population of such subdivision is located.

If the petition nominates a candidate whose election is to be determined by the electors of a district comprised of more than one county but less than all of the counties of the

state, it shall be filed with the board of elections of the most populous county in such district. If the petition nominates a candidate whose election is to be determined by the electors of the state at large, it shall be filed with the secretary of state.

HISTORY: 1989 H 36, eff. 1-1-90
1989 H 7; 1977 S 115; 1974 H 662; 1971 S 460; 130 v H 370; 127 v 741; 126 v 205; 125 v 713

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 27.06
Baldwin's Ohio School Law, Forms 5.21 to 5.25

CROSS REFERENCES

Filing fees not campaign "expenditures" for purposes of reporting requirements, not counted against spending limits, OAC 111-3-06

Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38
Unqualified person signing petition, penalty; threats as to petitions punished, 3599.13
Offenses as to petitions, 3599.14, 3599.15
False signature forbidden, 3599.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 77, 96, 97, 100 to 102, 224, 233; 82, Schools, Universities, and Colleges § 89
Am Jur 2d: 25, Elections § 140, 141, 168 to 173, 182
Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604
Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR2d 864

NOTES ON DECISIONS AND OPINIONS

1. In general; petition problems
2. Irregularities in circulation

1. In general; petition problems

62 OS(3d) 214 (1991), State ex rel Phillips v Lorain County Bd of Elections. Appointment of a committee to represent candidates under RC 3513.261 is not mandatory.

33 OS(3d) 53, 514 NE(2d) 709 (1987), State ex rel Maurer v Franklin County Bd of Elections. Where nominating petitions and statements of candidacy are in substantial compliance with RC 3513.261, a board of elections that has rejected them will be ordered to place a petitioner's name on the ballot.

68 OS(2d) 39, 428 NE(2d) 402 (1981), Hill v Cuyahoga County Bd of Elections. Part-petitions were not invalidated by virtue of fact petitions contained wrong date for election.

63 OS(2d) 323, 410 NE(2d) 762 (1980), State ex rel Nagin v Celebrezze. RC 3513.257 does not require that petitions for an independent candidacy for president, vice-president or senator be filed "as one instrument."

28 OS(2d) 4, 274 NE(2d) 563 (1971), State ex rel Hawkins v Cuyahoga County Bd of Elections. Where candidate for office fails to file at least one petition containing original and notarized statement of candidacy, mandamus will not lie to compel that his name be placed on ballot.

22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. Nominating petitions are not invalidated by fact that the declaration of candidacy was executed before two different notaries.

22 OS(2d) 61, 258 NE(2d) 111 (1970), State ex rel Kucinich v Duffy. Signature of a candidate on his own nominating petition, as signer of that petition, cannot be included in determining whether such petition contains minimum number of signatures required by law.

6 OS(2d) 67, 215 NE(2d) 719 (1966), State ex rel Wolson v Kelly. Nominating petitions were not invalidated by candidate's failure to state precinct of residence where he did set forth his correct residential address.

6 OS(2d) 66, 215 NE(2d) 698 (1966), State ex rel Reese v Tuscarawas County Bd of Elections. Failure of some nominating petitions to specify number of persons signing and party affiliation of candidate justified rejection thereof.

6 OS(2d) 65, 215 NE(2d) 716 (1966), State ex rel Ellis v Sulligan. Nominating petition for common pleas judge was sufficient even though the name of the county was omitted from the declaration of candidacy.

4 OS(2d) 29, 211 NE(2d) 830 (1965), State ex rel Haffey v Miller. A city charter provision providing that nominating petitions for city council may include the names of more than one candidate is valid.

4 OS(2d) 16, 212 NE(2d) 420 (1965), State ex rel Svete v Geauga County Bd of Elections. Advice by a deputy clerk that nominating petitions appeared to be in proper order does not estop the board of elections from declaring such petitions to be invalid.

4 OS(2d) 7, 211 NE(2d) 54 (1965), State ex rel Cline v Henderson. The entering by a notary public (through mistake or inadvertence) of a date in a jurat different from the date upon which such notary actually administered the oath will not invalidate the entire nominating petition and result in the disqualification of the candidate named in that part-petition paper from becoming a candidate for the office he seeks.

176 OS 93, 197 NE(2d) 797 (1964), State ex rel Chatfield v Hamilton County Bd of Elections. A typed signature on a declaration of candidacy is insufficient.

175 OS 249, 193 NE(2d) 390 (1963), State ex rel Andrews v Medina County Bd of Elections. Failure of the notary to attach his signature and seal to a nominating petition constitutes a lack of substantial compliance with RC 3513.261.

173 OS 317, 181 NE(2d) 890 (1962), State ex rel Ferguson v Brown; overruled by 22 OS(2d) 63, 258 NE(2d) 112 (1970), State ex rel Saffold v Timmins. The election laws contemplate essentially one declaration of candidacy which shall be uniform and complete in accordance with the statutory mandates, which may be an original one at the head of each petition paper circulated, signed by the candidate individually and sworn to, or there may be a single complete original declaration with identical copies thereof heading all other separate nominating petition papers placed in circulation, but there may not be a number of declarations varying in substance and form and with material omissions.

170 OS 17, 161 NE(2d) 777 (1959), State ex rel Troy v Lake County Bd of Elections. The failure of a candidate to file a written acceptance of the nomination for the municipal office he seeks does not make his nominating petition insufficient.

170 OS 9, 161 NE(2d) 891 (1959), State ex rel Hanna v Milburn. Where a public office is of such a nature that in accurately describing it it is necessary to state not only the title but also the time of its commencement, then failure to accurately state the date of commencement of the term will invalidate a nominating petition, but where the office is of such a nature that it may be accurately described without pinpointing the date of the commencement of the term, a slight error in the insertion of the date which does not mislead the signers of the petition does not invalidate the petition.

167 OS 19, 145 NE(2d) 666 (1957), State ex rel Schulman v Cuyahoga County Bd of Elections. Where certain candidates for public office paid the filing fee requested by the board of elections, and it was subsequently discovered on the final day of filing that the salary had been increased and the candidates paid the additional amount requested a few days thereafter, mandamus will not issue to strike such candidates from the ballot.

164 OS 178, 129 NE(2d) 632 (1955), State ex rel Leslie v Duffy. Where an independent candidate, prior to the circulation of his nominating petition, completely fills out the entire statement of candidacy down to the date of his signature, as well as the entire

preamble of the petition preceding the signatures of electors, and where prior to filing such petition, the candidate signs the statement of candidacy and swears to the same, and such petition at the time of filing is complete, a board of elections is not authorized to reject the petition.

155 OS 99, 97 NE(2d) 671 (1951), State ex rel Ehring v Bliss. Under the provisions of statute the terms "voting residence" and "post office address" are not synonymous.

150 OS 289, 82 NE(2d) 92 (1948), State ex rel Braverman v Vitullo. Board of elections properly rejected petition papers of independent candidate, where such papers contained signatures of electors of more than one county on a single petition paper, and where certain signatures were accompanied by addresses not corresponding with the voting residences appearing on the registration cards filed with the boards of election, such signatures were properly rejected. (Annotation from former RC 3513.27.)

125 OS 251, 181 NE 107 (1932), Koehler v Butler County Bd of Elections. When a declaration of candidacy or a petition is void under GC 4785-70, 4785-71 or 4785-72 (RC 3513.05, 3513.07, 3513.09), because of lack of subscription, oath or affirmation, it cannot be cured subsequent to the statutory date for filing the same, and the board of elections must reject such declaration or petition.

27 App(3d) 280, 27 OBR 324, 500 NE(2d) 905 (Lorain 1985), State ex rel Yacobozzi v Lorain County Bd of Elections. RC 3513.261 does not require candidates to date their signatures on nominating petitions, and a board of elections abuses its discretion by rejecting petitions on which the date of the signature was entered after the petitions had been circulated; the candidate is entitled to a writ of mandamus ordering the board to certify the petitions and place his name on the ballot.

66 App(2d) 102, 421 NE(2d) 162 (1979), State ex rel Taylor v Franklin County Bd of Elections. Although RC 3513.261 requires that a candidate for office name a committee to represent him on his nominating petitions, it does not require that a committee of five be named on the petitions, and so it should be interpreted, consistent with the principle favoring choices in elections, as permitting a committee of three acting unanimously to constitute "a majority of a committee of five" who are entitled to fill a vacancy created by the death of a candidate.

12 App(2d) 87, 231 NE(2d) 81 (1967), State ex rel Smith v Johnson. Where a candidate who is required to file nominating petitions pursuant to RC 3513.261 appears before a notary public and knowingly signs his statement of candidacy on a petition that follows the form prescribed by RC 3513.261, the law is complied with although no oral oath is administered.

120 App 64, 197 NE(2d) 412 (1964), State ex rel Cofall v Cuyahoga County Bd of Elections; affirmed by 176 OS 191, 198 NE(2d) 459 (1964). A declaration of candidacy for party nomination at a primary election designating the office sought as "clerk of courts" instead of "clerk of the court of common pleas" satisfies RC 3513.07, and a board of elections does not abuse its discretion in finding such declaration of candidacy and petition valid.

110 App 543, 161 NE(2d) 243 (1959), State ex rel Bailey v Cuyahoga County Bd of Elections. Where a candidate for public office files his nominating petitions, which petitions are proper in every respect except that such candidate failed to sign the acceptance of nomination, with the board of elections and is told by a clerk of such board that he has nothing else to sign, and the board fails to notify him of any claimed deficiency in such petition papers until two weeks after the discovery thereof, subsequent to the expiration of the time for filing such petitions, and where the signature of such candidate appears twice on each petition paper (a total of 12 times), signifying his desire and intention to become a candidate for the office sought, such candidate has substantially complied with all the requirements of law, and the board of elections is estopped from claiming a defect in the petition papers as filed.

110 App 543, 161 NE(2d) 243 (1959), State ex rel Bailey v Cuyahoga County Bd of Elections. Where a candidate was advised by the board of elections at the time of the filing of his nominating petitions that there was nothing further to sign and where he had signed each petition twice, his failure to sign the acceptance on the front of the petition did not justify a rejection of the petitions.

103 App 527, 145 NE(2d) 149 (1957), State ex rel Schulman v Cuyahoga County Bd of Elections; affirmed by 167 OS 19, 145 NE(2d) 666 (1957). Where a candidate for an elective office files his nominating petition and pays the fee determined by the board of elections to be then required, and the salary for the office has been previously increased effective with the commencement of the term of office for which such candidate seeks election, and the board of elections subsequently notifies such candidate that he must pay an increased fee due to the salary increase and the candidate pays the fee increase after the last day for filing nominating petitions for such office, the board of elections is afforded a "legal excuse" for, and is justified in, receiving the petition.

69 App 59, 42 NE(2d) 1009 (1941), State ex rel Raines v Tobin; affirmed by 138 OS 468, 35 NE(2d) 779 (1941). Provisions of statute are mandatory and failure of person who desires to become candidate at primaries to sign declaration of candidacy at end of declaration, although candidate did sign oath and acknowledgment thereto, is not merely a technical defect.

88 Abs 140, 179 NE(2d) 182 (CP, Montgomery 1961), State ex rel Jackson v Horstman. The candidate for office of municipal judge in the charter city of Dayton is required by paragraph two of RC 1901.07 to file for nomination in 1961 in the same manner as that which the charter provides for nomination and election of the city commissioners according to sections 7, 8 and 9 of that charter.

OAG 84-025. Pursuant to RC 3513.05 and 3513.261, a board of elections may not certify as valid the petition of a candidate for county office who does not reside in the county in which he seeks office.

OAG 65-7. A nominating petition filed pursuant to RC 1907.051 and 3513.261 is void where it states that the candidate is seeking election at the general election in November to a full term as county court judge and there is no full term for which an election could be held at that time, and a favorable vote cast by the electors for such candidate for a full term as judge of the county court is ineffective.

1962 OAG 3383. The fact that signatures affixed to a county charter commission petition under O Const Art X §4, have been written with a lead pencil does not render such signatures invalid.

1956 OAG 6919. An individual who seeks to qualify as a candidate for office by filing a nominating petition in the form prescribed in RC 3513.261 has an interest in such petition sufficient to disqualify him from administering the oath therein required to a circulator of such petition, and the act of such candidate in purporting to administer such oath renders such petition invalid.

2. Irregularities in circulation

2 OS(3d) 1, 2 OBR 102, 440 NE(2d) 801 (1982), State ex rel Schmelzer v Cuyahoga County Bd of Elections. Board of elections properly disqualified nominee where necessary petition signatures were obtained by a circulator who was not a qualified elector.

29 OS(2d) 233, 281 NE(2d) 186 (1972), State ex rel Loss v Lucas County Bd of Elections. Failure to insert in the jurat of nominating petition the number of signatures appearing thereon renders petition insufficient.

20 OS(2d) 8, 251 NE(2d) 606 (1969), State ex rel Williams v Sulligan. Nominating petitions on which the circulator's affidavit is notarized by the candidate are invalid.

176 OS 105, 198 NE(2d) 76 (1964), State ex rel Van Aken v Duffy. A petition for candidate form which contains no space for the signature of the circulator of the petition and which was not in fact signed by the circulator is invalid, even though issued to him by a board of elections.

175 OS 237, 193 NE(2d) 269 (1963), State ex rel Keyse v Sarosy. Board of elections improperly rejected petition on grounds that affidavit attached thereto was false where affidavit referred to 17 signatures and two signatures on petition were crossed off, leaving 15 signatures.

173 OS 321, 181 NE(2d) 888 (1962), State ex rel Schwarz v Hamilton County Bd of Elections. Where evidence showed that circulator of nominating petition had sworn that 27 signatures were placed thereon in his presence and 28 signatures were on such

petition, and the circulator testified that he had deliberately ignored one signature because it was by a resident of another county, such petition should have been accepted.

170 OS 19, 161 NE(2d) 896 (1959), State ex rel Allen v Lake County Bd of Elections. The fact that a candidate takes the acknowledgment of his circulator renders such acknowledgment insufficient and makes the petition invalid, and such defect cannot be cured subsequent to the filing date.

170 OS 9, 161 NE(2d) 891 (1959), State ex rel Hanna v Milburn. Where a board of elections furnished nominating petitions which failed to state that the circulators were qualified electors of the state of Ohio, it was not an abuse of discretion for such board to find that such petitions were valid.

165 OS 483, 137 NE(2d) 560 (1956), State ex rel Reed v Malrick. Where the candidate named in a nominating petition notarizes the circulator's affidavit regarding the signing thereof, the affidavit is insufficient and hence the petition is invalid.

151 OS 197, 84 NE(2d) 910 (1949), State ex rel Kroeger v Leonard. Under the provisions of GC 4785-71 (RC 3513.07), it is essential that the circulator of a nominating petition for candidacy for political office include in his oath to such petition a designation of the political party in which he holds membership. In the absence of such a declaration by the circulator in his oath, a board of elections does not act unlawfully in refusing to accept and validate such petition.

4 App(2d) 183, 211 NE(2d) 854 (1965), State ex rel Donofrio v Henderson. RC 3501.38(C) has been complied with when the signer of a nominating petition has personally signed his own name in the presence of the circulator, and the circulator or some other person under the authority and direction of the signer has written in all other information therein required, or when a signer of a nominating petition, or some other person under his authority and direction, uses ditto marks to indicate either the date of signing or the location of his voting address.

107 App 460, 160 NE(2d) 294 (1957), Clawson v Wilgus. A nominating petition erroneously signed by a person as the circulator thereof who deposes that all names thereon were signed in his presence but who did not circulate such petition and intended to sign only as an elector is invalid.

87 Abs 594, 177 NE(2d) 687 (App, Cuyahoga 1961), Simon v Cuyahoga County Bd of Elections. Board of elections abused its discretion in holding nomination petitions valid although undisputed evidence showed some signatures were not affixed in presence of circulators and although some petitions contained signatures affixed in same handwriting (in respect to which only such signatures were disallowed).

3513.262 Filing of nominating petitions; written protests

The nominating petitions of all candidates required to be filed before four p.m. of the day before the day of the primary election immediately preceding the general election shall be processed as follows:

If such petition is filed with the secretary of state, he shall, not later than the fifteenth day of June following the filing of such petition, transmit to each board such separate petition papers as purport to contain signatures of electors of the county of such board. If such petition is filed with the board of the most populous county of a district or of a county in which the major portion of the population of a subdivision is located, such board shall, not later than such fifteenth day of June, transmit to each board within such district such separate petition papers of the petition as purport to contain signatures of electors of the county of such board.

All petition papers so transmitted to a board and all nominating petitions filed with a board shall, under proper regulations, be open to public inspection from the fifteenth day of June until four p.m. of the thirtieth day of that month. Each board shall, not later than the next fifteenth day of July, examine and determine the sufficiency of the signatures on the petition papers transmitted to or filed with it, and the validity of the petitions filed with it, and shall return to the secretary of state all petition papers transmitted to it by him, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such other board, as provided in this section, together with its certification of its determination as to the validity or invalidity of signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

Written protests against nominating petitions may be filed by any qualified elector eligible to vote for the candidate whose nominating petition he objects to, not later than four p.m. of the thirtieth day of July. Such protests shall be filed with the election officials with whom the nominating petition was filed. Upon the filing of such protest, the election officials with whom it is filed shall promptly fix the time and place for hearing it, and shall forthwith mail notice of the filing of such protest and the time and place for hearing it to the person whose nomination is protested. They shall also forthwith mail notice of the time and place fixed for the hearing to the person who filed the protest. At the time fixed, such election officials shall hear the protest and determine the validity or invalidity of the petition. Such determination shall be final.

A protest against the nominating petition filed by joint candidates for the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the nominating petition of a candidate who files by himself.

HISTORY: 1986 H 524, eff. 3-17-87
1980 H 1062; 1974 H 662; 125 v 713

CROSS REFERENCES

Standard time in Ohio, 1.04
Days counted to ascertain time, 1.14
Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 96, 103, 105, 106, 224, 233
Am Jur 2d: 25, Elections § 140, 168 to 173

NOTES ON DECISIONS AND OPINIONS

26 OS(2d) 169, 270 NE(2d) 649 (1971), State ex rel Capers v Cuyahoga County Bd of Elections. Until candidate's nominating petition is filed with board of elections, no duty with respect thereto, enforceable by writ of mandamus, is incumbent upon such board.

167 OS 323, 148 NE(2d) 229 (1958), Maranze v Montgomery County Bd of Elections. A mandamus action to declare null and void certain certificates of nomination cannot be brought by a complainant who has failed to file a protest to the nominating petitions.

164 OS 193, 129 NE(2d) 623 (1955), State ex rel Flynn v Cuyahoga County Bd of Elections. A board of elections is authorized to conduct a hearing on a protest against the nominating petition of a candidate alleged to be ineligible to assume the office and to determine the validity of such petition; and its decision is final and, in the absence of allegations of fraud, corruption, abuse of

discretion or a clear disregard of statutes or legal provisions applicable thereto, is not subject to judicial review.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. The factual decision of a board of elections as to the residence of a person seeking to become a voter is subject to judicial review, when such factual decision is arbitrary, unreasonable or constitutes an abuse of discretion.

12 App(2d) 87, 231 NE(2d) 81 (1967), State ex rel Smith v Johnson. An elector who files a protest with a board of elections pursuant to RC 3513.262, which protest is overruled by such board of elections, can appeal to the common pleas court pursuant to RC Ch 2506; if such an appeal is filed, a candidate whose petitions are being challenged is a necessary party to such an appeal and must be joined as a party defendant.

114 App 497, 177 NE(2d) 616 (1961), State ex rel Krupa v Green. Where a woman arranges by antenuptial written contract to retain her maiden name and so notifies the board of elections which notes on her registration card that she "is married" and "will retain her single name," and where, after her marriage, she uses only her single name in all her activities, is known only by such name, and votes thereunder in three elections, a declaration of candidacy and nominating petition filed by such woman under and using her single name is not for such reason invalid.

1956 OAG 6919. A board of elections is under a mandatory duty to determine the validity of nominating petitions whether or not a protest is filed against them.

3513.263 Processing of nominating petitions; protests

The nominating petitions of all candidates required to be filed before four p.m. of the seventy-fifth day before the day of the general election, shall be processed as follows:

If such petition is filed with the secretary of state, he shall promptly transmit to each board such separate petition papers as purports [*sic*] to contain signatures of electors of the county of such board.

If such petition is filed with the board of a county in which the major portion of the population of a subdivision is located, such board shall promptly transmit to the board of each county in which other portions of such subdivision are located such separate petition papers of the petition as purport to contain signatures of electors of such county.

All petition papers so transmitted to a board of elections, and all nominating petitions filed with a board of elections shall, under proper regulation, be open to public inspection until four p.m. of the seventieth day before the day of such general election. Each board shall, not later than the sixty-eighth day before the day of such general election examine and determine the sufficiency of the signatures on the petition papers transmitted to or filed with it and the validity or invalidity of petitions filed with it, and shall return to each other board all petition papers transmitted to it by such other board, together with its certification of its determination as to the validity or invalidity of signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the board with whom such petition papers were filed.

Written protests against such nominating petitions may be filed by any qualified elector eligible to vote for the candidate whose nominating petition he objects to, not later than the sixty-fourth day before the general election. Such protests shall be filed with the election officials with whom the nominating petition was filed. Upon the filing of such protests, the election officials with whom it is filed shall promptly fix the time and place for hearing it, and shall forthwith mail notice of the filing of such protest and the time and place for hearing it to the person whose nomination is protested. They shall also forthwith mail notice of the time and place fixed for the hearing to the person who filed the protest. At the time and place fixed, such election officials shall hear the protest and determine the validty [*sic*] or invalidity of the petition. Such determination shall be final.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 115; 1969 S 19; 125 v 713

Note: 3513.263 is analogous to former 3513.29, repealed by 125 v 713, eff. 1-1-54.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.21 to 5.26

CROSS REFERENCES

Declaration of candidacy, nominating petition, and other petition requirements, election falsification, 3501.38

Refusal to appear, produce materials, or answer questions at election proceeding; penalty, 3599.37

Redress in courts, O Const Art I §16

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 96, 103, 105, 106, 224, 233
Am Jur 2d: 25, Elections § 142

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

368 FSupp 999 (SD Ohio 1973), Headlee v Franklin County Bd of Elections. Statutory requirement that candidates in village elections be residents of the village for one year prior to the date of the election is invalid.

2. In general

56 OS(2d) 70, 381 NE(2d) 1129 (1978), State ex rel Lippitt v Cuyahoga County Bd of Elections. Mandamus will not lie to declare a candidacy void where the relator has failed to file a written protest within the time specified.

14 OS(2d) 175, 237 NE(2d) 313 (1968), Stern v Cuyahoga County Bd of Elections. Where, after the board of elections has conducted a public hearing upon a protest, the undisputed facts are that (1) a valid declaration of candidacy has been properly filed, (2) a proper petition containing a valid affidavit of the circulator of each part-petition has been filed, (3) in the jurat following the circulator's affidavit on one part-petition the notary who administered the oath to the circulator inadvertently omitted his handwritten signature and imprinted seal, (4) such jurat is properly dated and bears the name of the notary who administered the oath, the title of his office, the date his notary commission will expire and the limits of his jurisdiction (such matters having been stamped upon the jurat by the notary at the time he administered the oath to the circulator), a board of elections does not abuse its discretion when it rules that such part-petition is valid on the ground that there is substantial compliance with the form of the declaration of candidacy and petition.

4 OS(2d) 16, 212 NE(2d) 420 (1965), State ex rel Svete v Geauga County Bd of Elections. The mere failure of an election board to declare a nominating petition void within the time prescribed by RC 3513.263 does not render the petition valid.

167 OS 449, 150 NE(2d) 43 (1958), State ex rel Ford v Pickaway County Bd of Elections. Action of a board of elections in sustaining a protest to a candidate's petition on the ground that he was a nonresident of the county will not be set aside in the absence of fraud or gross irregularity.

160 OS 189, 115 NE(2d) 154 (1953), State ex rel Haffner v Green. Where a city charter fixes a final day by which nominating

petitions must be filed with the board of elections but sets no hour deadline on that day, a candidate is entitled to file his nominating petition at any time until midnight of the final day for filing. (Annotation from former RC 3513.29.)

157 OS 338, 105 NE(2d) 399 (1952), State ex rel Klink v Eyrich. A finding of the board of elections regarding the voting residence of a candidate will not be disturbed by a court unless the evidence before the board was such as to require as a matter of law a determination that the candidate's voting residence was not as stated in his declaration of candidacy. In other words, if there was substantial evidence to sustain that decision, the decision of the board must be sustained. In such an instance where there is no claim of any fraud or corruption on the part of the board, this court cannot say that the board abused its discretion. (Annotation from former RC 3513.29.)

149 OS 329, 78 NE(2d) 715 (1948), State ex rel McGinley v Bliss. Provisions of statute relating to notice and hearing apply only where protests are filed against candidacy of any person filing declaration of candidacy and where the candidate is challenging the action of board of elections in rejecting nomination papers for failure to comply with GC 4785-71a (RC 3513.08), candidate is not entitled to notice and hearing and GC 4785-13 (RC 3501.11) does not provide for a hearing.

142 OS 186, 50 NE(2d) 991 (1943), State ex rel Cassidy v Zaller. Under former section which permits objections to nominating petitions to be filed during period of inspection of at least five days prior to fifty-fifth day preceding election, objections filed on fifty-fifth day before election are not filed within time provided by statute, and board of elections may refuse to consider them. (Annotation from former RC 3513.29.)

140 OS 339, 44 NE(2d) 263 (1942), State ex rel Anderson v Hyde. Decision of board of elections on objections to nominating petition for county office is final. (Annotation from former RC 3513.29.)

53 App(2d) 213, 373 NE(2d) 1274 (1977), Foster v Cuyahoga County Bd of Elections. Where there is no provision in any state statute or in any local rule for a protest procedure before the board of elections to challenge the validity of a write-in candidacy, the initial approval or disapproval by the board is final absent allegations of fraud, corruption, abuse of discretion, or clear disregard of statutes or applicable legal provisions.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. The factual decision of a board of elections as to the residence of a person seeking to become a voter is subject to judicial review, when such factual decision is arbitrary, unreasonable or constitutes an abuse of discretion.

112 App 4, 167 NE(2d) 112 (1960), State ex rel Kay v Cuyahoga County Bd of Elections. There is no manner prescribed by statute in which a board of elections must conduct a hearing on a protest to a declaration of candidacy and petition for nomination at a primary election; any reasonable investigation conducted in good faith satisfies the statutory requirements therefor.

97 App 91, 114 NE(2d) 513 (1953), State ex rel Haffner v Green; affirmed by 160 OS 189, 115 NE(2d) 154 (1953). Where under a city charter the time within which candidates for councilman must file nominating petitions is fixed as the fortieth day prior to the primary election, without fixing an hour or time of day of the fortieth day within which such petitions must be filed, a candidate has until midnight of the fortieth day within which to file his nominating petitions. (Annotation from former RC 3513.29.)

74 App 295, 58 NE(2d) 793 (1943), State ex rel Behrens v Hamilton County Bd of Elections. A board of elections must declare a nominating petition void, where such petition does not conform to requirements specified by law, although objections to such petition were not filed before the fifty-fifth day prior to the election. (Annotation from former RC 3513.29.)

68 Abs 539, 119 NE(2d) 84 (App, Cuyahoga 1954), Marlin v Cuyahoga County Bd of Elections. A challenge to the candidacy of a person for nomination must be filed with the board of elections before an action can be brought for an injunction to restrain the board from placing such candidate on the ballot, unless fraud or bad faith on the part of the board is alleged.

42 Abs 334, 60 NE(2d) 629 (App, Greene 1944), Adams v Long. Petition for injunction to enjoin board of elections from distributing ballots containing names of candidates whose nominating petitions contained a number of forged signatures, so that there remained insufficient valid signatures, does not state a cause of action where it does not allege that objections were filed within the time limit provided in statute, even though it did allege that the forgeries were not discovered until after such time. (Annotation from former RC 3513.29.)

457 US 957, 102 SCt 2836, 73 LEd(2d) 508 (1982), Clements v Fashing. State laws making state, federal, and foreign officers ineligible for the legislature during their terms of office and deeming certain state and county officeholders to have resigned their posts if they become candidates for other state or federal offices do not violate the First or Fourteenth Amendment. (Ed. Note: Texas statutes construed in light of federal constitution.)

660 F(2d) 166 (6th Cir Ohio 1981), Akron v Bell. A state law and city charter that allow individuals to be city council candidates only after one year's residence in the city is constitutional; the charter may also call for one year's residence in the ward the candidate seeks to represent.

No. 87-7516 (ND, Ohio, 7-24-89), Speer v City of Oregon. Denial of certification as a candidate for city council to an individual who has not resided in the city two years as the charter demands does not unlawfully discriminate against new residents in violation of the Fourteenth Amendment.

No. C87-7523 (ND, Ohio, 8-26-87), Kaczala v Lucas County Bd of Elections. A board of elections will not be enjoined from rejecting the primary election petitions of an individual seeking a seat on a city council who lacks the three years of residence required for council candidates by the city charter; the residency rule is reasonably necessary to promote the city's interest in having candidates who are familiar with the city and voters who are familiar with the candidates.

OAG 75-067. A candidate seeking the office of municipal court judge must, pursuant to O Const Art XV §4, and RC 3503.01, be a resident of this state, of the involved county and of the involved precinct for thirty days immediately preceding the election.

1949 OAG 1070. A board of elections is without authority to accept nominating petitions at a time later than that prescribed in statute. (Annotation from former RC 3513.29.)

3513.27 Independent candidates nominated by petition; filing fee—Repealed

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-91

Note: See now 3513.251 et seq. for provisions analogous to former 3513.27.

3513.271 Requirements where name changed; exceptions

If any person desiring to become a candidate for public office has changed his name within five years next preceding the filing of his statement of candidacy, both his statement of candidacy and nominating petition must contain, immediately following his present name, his former names. Any person who has been elected under his changed name, without submission of his former name, shall be immediately suspended from the office and the office declared vacated, and shall be liable to the state for any salary he has received while holding such office. The attorney general in the case of candidates for state offices, the prosecuting attorney of the most populous county in a district in the case of candidates for district offices, and the prosecuting

attorney of the county in the case of all other candidates shall institute necessary action to enforce this section.

This section does not apply to a change of name by reason of marriage; to a candidate for a state office who has once complied with this section and who has previously been elected to a state office; to a candidate for a district office who has once complied with this section and who has previously been elected to a state or district office; to a candidate for a county office who has once complied with this section and has previously been elected to a state, district, or county office; to a candidate for a municipal office who has once complied with this section and has previously been elected to a municipal office; or to a candidate for a township office who has once complied with this section and has previously been elected to a township office; provided that such previous election was one at which his candidacy complied with this section.

HISTORY: 1980 H 946, eff. 8-4-80
125 v 713

CROSS REFERENCES

Attorney general, Ch 109
County prosecutor, Ch 309
Change of name, Ch 2717

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 393; 37, Elections § 77, 78, 96, 224, 233
Am Jur 2d: 26, Elections § 215, 218

NOTES ON DECISIONS AND OPINIONS

114 App 497, 177 NE(2d) 616 (1961), State ex rel Krupa v Green. Where a woman arranges by antenuptial written contract to retain her maiden name and so notifies the board of elections which notes on her registration card that she "is married" and "will retain her single name," and where, after her marriage, she uses only her single name in all her activities, is known only by such name, and votes thereunder in three elections, a declaration of candidacy and nominating petition filed by such woman under and using her single name is not for such reason invalid.

3513.28 Nominating petitions for judge and candidate for any unexpired term

Each independent candidate for election to the office of judge of the supreme court, court of appeals, court of common pleas, probate court, and such other courts as are established by law, in addition to designating in such nominating petition the office to which he seeks such nomination shall, if two or more judges of the same court are to be elected at any one election, designate the term of the office for election to which he seeks such nomination by stating therein, if a full term, the date of the commencement of such term as follows: "Full term commencing _____ (Date) _____," or by stating therein, if an unexpired term, the date on which such unexpired term will end as follows: "Unexpired term ending _____ (Date) _____," and such candidate shall be nominated only for the term so designated.

Each independent candidate for the unexpired term of any office shall designate in his statement of candidacy the date on which such unexpired term will end.

HISTORY: 1980 H 1062, eff. 3-23-81
125 v 713; 1953 H 1; GC 4785-91a

CROSS REFERENCES

"Independent candidate" defined, 3501.01
Election, appointment, and filling of vacancies, O Const Art II §27
Election, term, and age limit for judges; assignment of retired judges, O Const Art IV §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 34; 37, Elections § 77, 96, 224, 233
Am Jur 2d: 25, Elections § 174 to 176

NOTES ON DECISIONS AND OPINIONS

1958 OAG 2276. Discussion of procedure for nominating and electing probate judge where incumbent resigns subsequent to the one hundredth day before the primary election and prior to the fortieth day before the general election.

3513.29 Filing of nominating petitions; validity of signatures; certification; protests—Repealed

HISTORY: 125 v.713, eff. 1-1-54
1953 H 1; GC 4785-92

Note: See now 3513.263 for provisions analogous to former 3513.29.

3513.291 Withdrawal of names from petitions—Repealed

HISTORY: 130 v H 370, eff. 1-1-64
125 v 713

WITHDRAWAL OF CANDIDATE

3513.30 Withdrawal of candidacy

Where only one valid declaration of candidacy is filed for nomination as a candidate of a political party for an office and such candidate dies prior to the tenth day before the primary election, the vacancy so created may be filled by said political party by the same committee in the same manner as provided in the first five paragraphs of section 3513.31 of the Revised Code for the filling of similar vacancies created by withdrawals after the primary election, except that the certification, when filling a vacancy created by death of a candidate prior to the primary election, may not be filed with the secretary of state, or with a board of the most populous county of a district, or with the board of a county in which the major portion of the population of a subdivision is located, later than four p.m. of the tenth day before the day of such primary election, or with any other board later than four p.m. of the fifth day before the day of such primary election.

Any person filing a declaration of candidacy may withdraw as such candidate at any time prior to four p.m. of the sixty-fifth day before the primary election. If such candidate's declaration of candidacy was filed with the secretary of state, his statement of withdrawal shall be addressed to and filed with the secretary of state. If such candidate's declaration of candidacy was filed with a board of elections, his statement of withdrawal shall be addressed to and filed with such board.

A person who is the first choice for president of the United States by a candidate for delegate or alternate to a national convention of a political party may withdraw his consent for his selection as such first choice no later than four p.m. of the thirtieth day before the day of the primary election. Withdrawal of consent shall be for the entire slate of candidates for delegates and alternates who named such person as their presidential first choice and shall constitute withdrawal from the primary election by such delegates and alternates. The withdrawal shall be made in writing and delivered to the secretary of state. The boards of elections shall remove both the name of the withdrawn first choice and the names of such withdrawn candidates from the ballots to the extent practicable in the time remaining before the election and according to the directions of the secretary of state. If such names are not removed from all ballots before the day of the election, the votes for the withdrawn first choice or candidates are void and shall not be counted.

Any person nominated in a primary election or by nominating petition as a candidate for election at the next general election may withdraw as such candidate at any time prior to the sixty-fifth day before the day of such general election. Such withdrawal may be effected by the filing of a written statement by such candidate announcing his withdrawal and requesting that his name not be printed on the ballots. If such candidate's declaration of candidacy or nominating petition was filed with the secretary of state, his statement of withdrawal shall be addressed to and filed with the secretary of state. If such candidate's declaration of candidacy or nominating petition was filed with a board of elections, his statement of withdrawal shall be addressed to, and filed with such board.

HISTORY: 1987 H 231, eff. 10-5-87
1986 S 185; 1976 H 1245; 1974 H 662; 126 v 205; 1953 H 1; GC 4785-93

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.27

CROSS REFERENCES

Standard time in Ohio, 1.04
Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 68, 77, 96, 108, 224, 233
Am Jur 2d: 26, Elections § 217

NOTES ON DECISIONS AND OPINIONS

64 OS(2d) 5, 412 NE(2d) 393 (1980), State ex rel Smart v McKinley. Where a registered Democrat filed as a candidate for a new seat on the court and then withdrew her candidacy as a Democrat to file as an independent for such seat, the common pleas court improperly restrained the secretary of state from including the candidate's name on the ballot.

32 OS(2d) 23, 289 NE(2d) 349 (1972), State ex rel Fisher v Brown. Where it is not claimed in the pleadings that the facts relied upon to support a claim of ineligibility of a candidate for a particular office were not known or were not reasonably discoverable for more than three months prior to the last day provided by statute for the withdrawal of such candidate, an action challenging such candidacy commenced after the last day for withdrawal will be dismissed for lack of diligence.

168 OS 249, 153 NE(2d) 393 (1958), State ex rel Peirce v Stark County Bd of Elections. Where a relator files an action in prohibition challenging the qualifications of a candidate for common pleas judge after the date on which the candidate could voluntarily withdraw and after the time during which the vacancy could have been filled, his unexplained dilatoriness will deprive him of the relief sought.

106 App 61, 148 NE(2d) 519 (1958), State ex rel Donnelly v Green. Mandamus would not issue to compel board of elections to omit candidate's name from a ballot where candidate filed for both two and four year terms for the state senate and then withdrew his name from the former race.

3513.301 Special election when person dies or withdraws after filing declaration of candidacy

(A) Notwithstanding section 3513.30 of the Revised Code, if only one person has filed a valid declaration of candidacy for the office of representative to congress and that person withdraws as a candidate or dies at any time before the primary election, a special election shall be held to nominate that party's candidate for congress in accordance with division (B) of this section.

(B) The boards of elections of all the counties contained in whole or in part within the congressional district for which a special election is being held under division (A) of this section shall, as soon as reasonably practicable, conduct the special election and give notice of the time and places of holding such election as provided in section 3501.03 of the Revised Code. Such election shall be held and conducted and returns thereof made as in the case of a primary election.

(C) The state shall pay all costs of any special election held pursuant to this section.

HISTORY: 1985 H 238, eff. 7-1-85

3513.31 Vacancy by withdrawal or death of nominee; selection of candidate for unexpired term; independent candidates

If a person nominated in a primary election as a candidate for election at the next general election, whose candidacy is to be submitted to the electors of the entire state, withdraws as such candidate prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created may be filled by the state central committee of the major political party which made such nomination at said primary election, at a meeting called for such purpose. Such meeting shall be called by the chairman of such committee, who shall give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of such committee are present at such meeting, a majority of those present may select a person to fill the vacancy. The chairman and secretary of such meeting shall certify in writing and under oath to the secretary of state, not later than the seventy-sixth day before the day of such general election, the name of the person selected to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is certified. A vacancy which may be filled by an intermediate or minor political party shall be filled in accordance with such party's rules by authorized officials of such party. Certification must be made as in the manner provided for a major political party.

If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district

comprised of more than one county but less than all of the counties of the state, withdraws as such candidate prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created may be filled by a district committee of the major political party which made such nomination at said primary election, at a meeting called for such purpose. Such district committee shall consist of the chairman and secretary of the county central committee of such political party in each county in such district. Such district committee shall be called by the chairman of the county central committee of such political party of the most populous county in such district, who shall give each member of such district committee at least two days' notice of the time, place, and purpose of such meeting. If a majority of the members of such district committee are present at such district committee meeting, a majority of those present may select a person to fill the vacancy. The chairman and secretary of such meeting shall certify in writing and under oath to the board of elections of the most populous county in such district, not later than four p.m. of the seventy-sixth day before the day of such general election, the name of the person selected to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is certified. A vacancy which may be filled by an intermediate or minor political party shall be filled in accordance with such party's rules by authorized officials of such party. Certification must be made as in the manner provided for a major political party.

If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a county, withdraws as such candidate prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created may be filled by the county central committee of the major political party which made such nomination at said primary election, or by the county executive committee if so authorized, at a meeting called for such purpose. Such meeting shall be called by the chairman of such committee who shall give each member of the committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of such committee are present at such meeting, a majority of those present may select a person to fill the vacancy. The chairman and secretary of such meeting shall certify in writing and under oath to the board of such county, not later than four p.m. of the seventy-sixth day before the day of such general election, the name of the person selected to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is certified. A vacancy which may be filled by an intermediate or minor political party shall be filled in accordance with such party's rules by authorized officials of such party. Certification must be made as in the manner provided for a major political party.

If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district within a county, withdraws as such candidate prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created may be filled by a district committee consisting of those members of the county central committee in such county of the major political party which made such nomination at said primary election who represent the precincts or the wards and townships within such district, at a meeting called for such purpose. Such district committee meeting shall be called by the chairman of such county central committee who shall give each member of such district committee at least two days' notice of the time, place, and purpose of such meeting. If a majority of the members of such district committee are present at such district committee meeting, a majority of those present may select a person to fill the vacancy. The chairman and secretary of such district committee meeting shall certify in writing and under oath to the board of such county, not later than four p.m. of the seventy-sixth day before the day of such general election, the name of the person selected to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is certified. A vacancy which may be filled by an intermediate or minor political party shall be filled in accordance with such party's rules by authorized officials of such party. Certification must be made as in the manner provided for a major political party.

If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a subdivision within a county, withdraws as such candidate prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created may be filled by a subdivision committee consisting of those members of the county central committee in such county of the major political party which made such nomination at said primary election who represent the precincts or the wards and townships within such subdivision, at a meeting called for such purpose.

Such subdivision committee meeting shall be called by the chairman of such county central committee who shall give each member of such subdivision committee at least two days' notice of the time, place, and purpose of such meeting. If a majority of the members of such subdivision committee are present at such subdivision committee meeting, a majority of those present may select a person to fill the vacancy. The chairman and secretary of such subdivision committee meeting shall certify in writing and under oath to the board of such county, not later than four p.m. of the seventy-sixth day before the day of such general election, the name of the person selected to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is certified. A vacancy which may be filled by an intermediate or minor political party shall be filled in accordance with such party's rules by authorized officials of such party. Certification must be made as in the manner provided for a major political party.

If a person nominated in a primary election as a party candidate for election at the next general election dies, the vacancy so created may be filled by the same committee in the same manner as provided in this section for the filling of similar vacancies created by withdrawals, except that the certification, when filling a vacancy created by death, may not be filed with the secretary of state, or with a board of the most populous county of a district, or with the board of a county in which the major portion of the population of a subdivision is located, later than four p.m. of the tenth day before the day of such general election, or with any other board later than four p.m. of the fifth day before the day of such general election.

If a person nominated by petition as an independent or nonpartisan candidate for election at the next general elec-

tion dies prior to the tenth day before the day of such general election, the vacancy so created may be filled by the committee of five designated in such nominating petition to represent the candidate named therein. To fill such vacancy the members of such committee, or a majority of them, shall not later than four p.m. of the fifth day before the day of such general election, file with the election officials with whom the petition nominating such person was filed, a certificate signed and sworn to under oath by each of them, designating the person they select to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is so certified.

If a person holding an elective office dies or resigns subsequent to the one-hundredth day before the day of a primary election and prior to the fortieth day before the day of the next general election, and if, under the laws of this state, a person may be elected at such general election to fill the unexpired term of the person who has died or resigned, the appropriate committee of each political party, acting as in the case of a vacancy in a party nomination, as provided in the first four paragraphs of this section, may select a person as the party candidate for election for such unexpired term at such general election, and certify his name to the appropriate election official not later than four p.m. on the tenth day following the day on which the vacancy occurs. When the vacancy occurs fewer than six days before the fortieth day before the general election, the deadline for filing shall be four p.m. on the thirty-sixth day before the general election. Thereupon such name shall be printed as such candidate under proper titles and in the proper place on the proper ballots for use at such election. In the event that a person has been nominated in a primary election, the authorized committee of that political party shall not select and certify a person as the party candidate.

Each person desiring to become an independent candidate to fill the unexpired term shall file a statement of candidacy and nominating petition, as provided in section 3513.261 of the Revised Code, with the appropriate election official not later than four p.m. on the tenth day following the day on which the vacancy occurs, provided that when the vacancy occurs fewer than six days before the fortieth day before the general election, the deadline for filing shall be four p.m. on the thirty-sixth day before the general election. The nominating petition shall contain at least seven hundred fifty signatures and no more than one thousand five hundred signatures of qualified electors of the district, political subdivision, or portion of a political subdivision in which the office is to be voted upon, or the amount provided for in section 3513.257 of the Revised Code, whichever is less.

HISTORY: 1983 H 397, eff. 3-19-84
1982 H 428; 1980 H 1062; 1971 S 460; 129 v 1223; 126 v 205; 125 v 713; 1953 H 1; GC 4785-94

CROSS REFERENCES

Days counted to ascertain time, 1.14
Vacancies in state board of education, 3301.06
Elections, definitions, 3501.01
Office type ballot, 3505.03
Filling vacancies in house and senate, O Const Art II §11
Election, appointment, and filling vacancies, O Const Art II §27
Vacancy in office of governor; line of succession, O Const Art III §15
Vacancy in office of both governor and lieutenant governor; election, O Const Art III §17
Vacancies in certain state offices to be filled by governor, O Const Art III §18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 157; 37, Elections § 67, 77, 96, 107 to 109, 121, 140, 224, 233, 264
Am Jur 2d: 25, Elections § 3, 137, 186

NOTES ON DECISIONS AND OPINIONS

62 OS(3d) 214 (1991), State ex rel Phillips v Lorain County Bd of Elections. Appointment of a committee to represent candidates under RC 3513.261 is not mandatory.

39 OS(3d) 115, 529 NE(2d) 896 (1988), State ex rel Ashbrook v Brown. Where a candidate in an uncontested primary election dies on election day, all absentee votes cast before the death of the candidate may be counted and recorded and the deceased will be considered a nominee and a substitute candidate for the general election may be selected pursuant to RC 3513.31, because the prohibition against counting and recording votes cast for a deceased candidate found in RC 3513.17 applies only to votes cast after a candidate dies.

14 OS(3d) 8, 14 OBR 314, 471 NE(2d) 148 (1984), State ex rel Giuliani v Cuyahoga County Bd of Elections. Where a candidate for a county judicial office is nominated at a primary election and later withdraws from the general election, the county central committee of the party which made the nomination may fill the vacancy so created pursuant to the provisions of RC 3513.31 pertaining to party candidates, notwithstanding the definitions of party candidates and nonpartisan candidates in RC 3501.01(J) and 3501.01(K).

64 OS(2d) 5, 412 NE(2d) 393 (1980), State ex rel Smart v McKinley. Where a registered Democrat filed as a candidate for a new seat on the court and then withdrew her candidacy as a Democrat to file as an independent for such seat, the common pleas court improperly restrained the secretary of state from including the candidate's name on the ballot.

38 OS(2d) 15, 309 NE(2d) 860 (1974), State ex rel Cain v Kay. The right and title to the office of chairman of the state central committee of a political party may not be questioned by an individual claimant in quo warranto.

32 OS(2d) 23, 289 NE(2d) 349 (1972), State ex rel Fisher v Brown. Where it is not claimed in the pleadings that the facts relied upon to support a claim of ineligibility of a candidate for a particular office were not known or were not reasonably discoverable for more than three months prior to the last day provided by statute for the withdrawal of such candidate, an action challenging such candidacy commenced after the last day for withdrawal will be dismissed for lack of diligence.

21 OS(2d) 253, 257 NE(2d) 389 (1970), State ex rel Young v Gasser. Where vacancy occurs in party nomination under conditions prescribed by RC 3513.31, appropriate committee of political party which made nomination, as designated by that statute, may fill vacancy by selecting a person without regard to his voting record or participation in any previous party primary election.

20 OS(2d) 29, 252 NE(2d) 289 (1969), State ex rel Flex v Gwin. Where a declared candidate for public office is found to be ineligible there is, in effect, an involuntary withdrawal, a withdrawal by operation of law, and, under 3513.31, another candidate may be appointed by a county district central committee to take his place.

175 OS 238, 193 NE(2d) 270 (1963), State ex rel Gottlieb v Sulligan. A person selected as a party candidate for an office in a primary election who withdraws his candidacy for that office is eligible for selection as a party candidate by the party committee to fill a vacancy in the nomination for another office created by the withdrawal of the candidate originally nominated.

171 OS 295, 170 NE(2d) 428 (1960), State ex rel Jeffers v Sowers. Vacancy on the ballot caused by death of a duly nominated candidate for the office of county engineer may be filled by the

selection of a person who is a registered professional engineer and a registered surveyor licensed to practice in this state, and who is a resident and elector of this state, but it is not necessary for him to be a resident and elector of the county in which he is selected.

168 OS 249, 153 NE(2d) 393 (1958), State ex rel Peirce v Stark County Bd of Elections. Where a relator files an action in prohibition challenging the qualifications of a candidate for common pleas judge after the date on which the candidate could voluntarily withdraw and after the time during which the vacancy could have been filled, his unexplained dilatoriness will deprive him of the relief sought.

66 App(2d) 102, 421 NE(2d) 162 (1979), State ex rel Taylor v Franklin County Bd of Elections. Although RC 3513.261 requires that a candidate for office name a committee to represent him on his nominating petitions, it does not require that a committee of five be named on the petitions, and so it should be interpreted, consistent with the principle favoring choices in elections, as permitting a committee of three acting unanimously to constitute "a majority of a committee of five" who are entitled to fill a vacancy created by the death of a candidate.

113 App 55, 177 NE(2d) 300 (1960), State ex rel Lynch v Chesney. RC 3513.31 provides the only method for selection of a candidate for the unexpired term of an incumbent judge of the court of appeals who dies after the primary election but more than forty days before the day of the next general election.

37 Misc 45 (CP, Cuyahoga 1973), Gilbert v Cleveland. Where candidate placing second in Cleveland mayoralty primary withdrew after said primary but before the general election, members of his committee may name a replacement candidate, and if they fail to do so, ballot should be submitted with only name of leading candidate on it.

OAG 69-080. If for any reason a political party candidate for public office withdraws, dies, or is incapacitated to hold office at any time, not excluded by the time limits specified in RC 3513.31, such candidate vacancy may be filled pursuant to such section.

1960 OAG 1787. A person who seeks a party nomination for an office or position at a primary election by declaration of candidacy is not eligible to be certified as the candidate of a political party at the following general election to fill the unexpired term of a person who holds an elective office and who dies subsequently to the one hundredth day before the day of a primary election and prior to the fortieth day before the day of the next general election.

1959 OAG 691. If an incumbent judge holding an unexpired term dies subsequent to the one hundredth day prior to the primary election and prior to the fortieth day before the election at which his successor could be elected, election must be held to fill such vacancy and the appropriate committee of each political party may select such party's candidate in the next general election.

1958 OAG 2276. Discussion of procedure for nominating and electing probate judge where incumbent resigns subsequent to the one hundredth day before the primary election and prior to the fortieth day before the general election.

1954 OAG 4012. Where a county commissioner dies prior to the time for filing declarations of candidacy and where no declaration of candidacy is filed for the unexpired term for such office and no person is nominated for such unexpired term at the primary election by receiving the required number of write-in votes there is no provision of law by which any person may be nominated for such office, and the election for such office should be had at the November general election by providing a blank space on the ballot.

1953 OAG 2382. There is no authority by which vacancies caused either by withdrawal or by the death of a person nominated by a nominating petition may be filled.

1952 OAG 1241. If a person holding an elective office dies on the sixty-sixth day before the day of a primary election and the unexpired term is required by law to be filled at the next general election, the title of said office and the length of the unexpired term shall be printed on the primary election ballot. Such primary election ballot shall provide a blank space in which a voter may write the name of a person for whose nomination he desires to vote for said unexpired term. If the voters of a party fail to nominate a person to fill said unexpired term at the primary election, the appropriate committee of said party, acting pursuant to the provisions of GC 4785-94 (RC 3513.31), may select a candidate for election for said unexpired term at the general election.

1948 OAG 3100. A board of elections is without authority in law to remove or cause to be removed from the ballot to be voted at a primary election name of a deceased person whose death occurred after the filing of his declaration of candidacy and before date of such primary election.

3513.311 Filling vacancy in candidacy for governor or lieutenant governor

(A) If a candidate for lieutenant governor dies, withdraws, or is disqualified as a candidate prior to the sixtieth day before the day of a primary election, the vacancy on the ballot shall be filled by appointment by the joint candidate for the office of governor. Such candidate for governor shall certify in writing and under oath to the secretary of state not later than the fifty-fifth day before the day of such election the name and residence address of the person selected to fill such vacancy.

(B) If a candidate for governor dies, withdraws, or is disqualified as a candidate prior to the sixtieth day before the day of a primary election, the vacancy on the ballot shall be filled by appointment by the joint candidate for the office of lieutenant governor. Such candidate for lieutenant governor shall certify in writing and under oath to the secretary of state not later than the fifty-fifth day before the day of such election the name and residence address of the person selected to fill such vacancy.

(C) If a candidate for the office of lieutenant governor dies on or after the sixtieth day, but prior to the tenth day, before a primary election, the vacancy so created shall be filled by appointment by the joint candidate for the office of governor. Such candidate for governor shall certify in writing and under oath to the secretary of state not later than the fifth day before the day of such election the name and residence address of the person selected to fill such vacancy.

(D) If a candidate for the office of governor dies on or after the sixtieth day, but prior to the tenth day, before a primary election, the vacancy so created shall be filled by appointment by the joint candidate for the office of lieutenant governor. Such candidate for lieutenant governor shall certify in writing and under oath to the secretary of state not later than the fifth day before the day of such election the name and residence address of the person selected to fill such vacancy.

(E) If a person nominated in a primary election as a candidate for election to the office of governor or lieutenant governor at the next general election withdraws as such candidate prior to the eightieth day before the day of the general election or dies prior to the tenth day before the day of such general election, the vacancy so created shall be filled in the manner provided for by section 3513.31 of the Revised Code.

(F) If a person nominated by petition as a candidate for election to the office of governor or lieutenant governor withdraws as such candidate prior to the eightieth day before the day of the general election or dies prior to the tenth day before the day of such general election, the vacancy so created shall be filled by the candidates' committee in the manner provided for, as in the case of death, by section 3513.31 of the Revised Code, except that, in the

case of withdrawal of candidacy, the name and residence address of the replacement candidate shall be certified in writing and under oath to the secretary of state not later than the seventy-sixth day before the day of the general election.

(G) If the vacancy in a joint candidacy for governor and lieutenant governor can be filled in accordance with this section and is not so filled, the joint candidacy which has not been vacated shall be invalidated and shall not be presented for election.

(H) Any replacement candidate appointed or selected pursuant to this section shall be one who has the qualifications of an elector.

HISTORY: 1978 S 409, eff. 4-20-78

CROSS REFERENCES

Days counted to ascertain time, 1.14
Election, appointment, and filling vacancies, O Const Art II §27
Governor and lieutenant governor to be elected jointly, O Const Art III §1a
Vacancy in office of governor; line of succession, O Const Art III §15
Vacancy in office of both governor and lieutenant governor, O Const Art III §17

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 68, 77, 96, 107 to 109, 224, 233

3513.312 Special election when nominated candidate dies or withdraws

(A) Notwithstanding section 3513.31 of the Revised Code, if a person nominated in a primary election as a party candidate for the office of representative to congress for election at the next general election withdraws as such candidate prior to the eightieth day before the day of such general election, or dies prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created shall be filled by a special election held in accordance with division (B) of this section.

(B) The boards of elections of all the counties contained in whole or in part within the congressional district in which a vacancy occurs as described in division (A) of this section shall, as soon as reasonably practicable, conduct the special election and give notice of the time and places of holding such election as provided in section 3501.03 of the Revised Code. Such election shall be held and conducted and returns thereof made as in the case of a primary election.

(C) The state shall pay all costs of any special election held pursuant to this section.

HISTORY: 1985 H 238, eff. 7-1-85

CROSS REFERENCES

Days counted to ascertain time, 1.14

PRIMARIES FOR SPECIAL ELECTIONS

3513.32 Primaries for special elections

When a special election is found necessary to fill a vacancy, the date of the primary election shall be fixed at the same time and in the same manner as that of the election, by the authority calling such special election. The primary election shall be held at least fifteen days prior to the time fixed for such special election. Declaration of candidacy and certificates for such primary shall be filed and fees shall be paid at least ten days before the date for holding such primary election.

A primary election preceding a special election to fill a vacancy in an office shall be eliminated if no valid declaration of candidacy is filed for such office, or if the number of persons filing such declarations of candidacy as candidates of one political party does not exceed the number of candidates which such political party is entitled to nominate for election to such office.

HISTORY: 125 v 713, eff. 1-1-54
1953 H 1; GC 4785-97

CROSS REFERENCES

Days counted to ascertain time, 1.14
Election, appointment, and filling vacancies, O Const Art II §27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 96, 141, 224, 233, 257, 258
Am Jur 2d: 25, Elections § 137

NOTES ON DECISIONS AND OPINIONS

81 App 398, 79 NE(2d) 791 (1947), State ex rel Campbell v Durbin. When a vacancy occurs in congressional district that requires an election for nomination of candidates for office of representative of the United States House of Representatives at a time other than the time when the General Code provides for regular nominations for such members, such an election is a special election and governed by the pertinent GC provisions as to a special election rather than the GC provisions relating to a primary election.

81 App 398, 79 NE(2d) 791 (1947), State ex rel Campbell v Durbin. When an election is called for by a proclamation of the governor of the state for an election to nominate candidates for office of representative of the United States House of Representatives, such an election is not governed by provisions of GC 4785-39 (RC 3503.11), limiting time for registration of electors, such election being a special election pursuant to GC 4785-97 and 4829 (RC 3513.32, 3521.03).

1954 OAG 4584. A certificate of election is prima-facie evidence of election as state representative, and the house of representatives is the judge of such election.

NOTICE OF UNFAIR CAMPAIGNING LAW

3513.33 Copy of unfair political campaign activities law to be furnished to candidates

At the time a person files a declaration of candidacy, nominating petition, or declaration of intent to be a write-in candidate, the secretary of state or the board of elections shall furnish him with a copy of section 3599.091 of the Revised Code. Each person who receives the copy shall acknowledge its receipt in writing.

HISTORY: 1976 H 804, eff. 10-1-76

CROSS REFERENCES

Offenses and penalties, 3599.09 et seq.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 90, 96, 101, 128, 224, 233

Chapter 3515

RECOUNT; CONTEST OF ELECTIONS

RECOUNT

3515.01 Persons eligible to apply for recount
3515.011 Recount when winning margin less than one-half per cent of total vote
3515.02 Filing of application for recount
3515.03 Recount; deposit required; notice; witnesses; losing candidate may stop recount
3515.04 Procedure for recount; stopping recount
3515.05 Duties of board of elections when recount is completed
3515.06 Application for recount in precincts not recounted
3515.07 Charges for recount
3515.071 Public funding of recount

CONTEST OF ELECTION

3515.08 Contest of election
3515.09 Filing contest petition
3515.10 Court shall fix time for trial
3515.11 Trial proceedings
3515.12 Court powers and procedure in hearing contest petition
3515.13 Contest involving recount
3515.14 Judgment of court
3515.15 Appeal on questions of law to supreme court
3515.16 Testimony in supreme court

CROSS REFERENCES

Officer retains office until successor elected and qualifies, 3.01

Misconduct by board of elections counting votes, penalty, 3599.16

Destruction or mutilation of lawful ballot forbidden, 3599.20

Interference with election and officials forbidden, 3599.24

Aiding unqualified voters or inducing officer to accept their votes, penalty, 3599.25

Ballot tampering, penalty, 3599.26

Fraudulent altering or destroying of cast ballots or election records forbidden, 3599.33, 3599.34

Falsehoods in proceedings relating to elections; fine and imprisonment, 3599.36

General assembly is judge of elections, returns, and qualifications of its members, O Const Art II §6

Trial of contested elections, procedure established by general assembly, O Const Art II §21

NOTES ON DECISIONS AND OPINIONS

49 Ohio St L J 773 (1988). Protecting the Democratic Process: Voter Standing to Challenge Abuses of Incumbency, Erwin Chemerinsky.

RECOUNT

3515.01 Persons eligible to apply for recount

Any person for whom votes were cast in a primary election for nomination as a candidate for election to an office who was not declared nominated may file with the board of elections of a county a written application for a recount of the votes cast at such primary election in any precinct in such county for all persons for whom votes were cast in such precinct for such nomination.

Any person who was a candidate at a general, special, or primary election for election to an office or position who was not declared elected may file with the board of a county a written application for a recount of the votes cast at such election in any precinct in such county for all candidates for election to such office or position.

Any group of five or more qualified electors may file with the board of a county a written application for a recount of the votes cast at an election in any precinct in such county upon any question or issue, provided that the members of such group shall state in such application either that they voted "Yes" or in favor of such question or issue and that such question or issue was declared defeated or rejected, or that they voted "No" or against such question or issue and that such question or issue was declared carried or adopted. Such group of electors shall, in such application, designate one of the members of the group as chairman, and shall indicate therein the voting residence of each member of such group. In all such applications the person designated as chairman is the applicant for the purposes of sections 3515.01 to 3515.07 of the Revised Code, and all notices required by section 3515.03 of the Revised Code to be given to an applicant for a recount shall be given to such person.

In the recount of absentee ballots that are tallied by county instead of by precinct, as provided in section 3509.06 of the Revised Code, the county shall be considered a separate precinct for purposes of recounting such absentee ballots.

HISTORY: 1974 S 237, eff. 9-23-74
126 v 392; 1953 H 1; GC 4785-162

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 158, 164, 173, 185, 267
Am Jur 2d: 26, Elections § 295 et seq., 355 et seq.

NOTES ON DECISIONS AND OPINIONS

126 OS 582, 186 NE 446 (1933), State ex rel Fowler v Fulton County Bd of Elections. Under this section a candidate, in order to be entitled to a recount must file a written application therefor not later than the fifth day after the certificate of the official count has been made, and tender with the application a cash deposit of ten dollars per precinct or a bond which will secure the cost of the recount up to an equal amount.

126 OS 582, 186 NE 446 (1933), State ex rel Fowler v Fulton County Bd of Elections. Strict compliance with statute respecting application for recount and giving security by cash deposited or bond for cost thereof is mandatory and jurisdictional.

66 App 482, 35 NE(2d) 474 (1940), State ex rel Farnsworth v McCabe. Only authority for a county board of elections opening and recounting ballots from a precinct is, (1) under GC 4785-149 (Repealed) "on written demand of any candidate" made while canvass of returns of that precinct is being made; and (2) under RC 3515.01, on timely application of any candidate or of five electors who voted at such election, recount of votes for that candidate or other candidates for the same office may be had on compliance with conditions prescribed in RC 3515.01 and following sections.

3515.011 Recount when winning margin less than one-half per cent of total vote

If the number of votes cast in any county or municipal election for the declared winning nominee, candidate, question, or issue does not exceed the number of votes cast for the declared defeated nominee, candidate, question, or issue by a margin of one-half of one per cent or more of the total vote, the appropriate board of elections shall order a recount which shall be conducted as provided in sections 3515.04 and 3515.05 of the Revised Code.

If the number of votes cast in any district election for the declared winning nominee, candidate, question, or issue does not exceed the number of votes cast for the declared defeated nominee, candidate, question, or issue by a margin of one-half of one per cent or more of the total vote, the secretary of state shall order a recount which shall be conducted as provided in sections 3515.04 and 3515.05 of the Revised Code.

If the number of votes cast in any statewide election for the declared winning nominee, candidate, question, or issue does not exceed the number of votes cast for the declared defeated nominee, candidate, question, or issue by a margin of one-fourth of one per cent or more of the total vote, the secretary of state shall order a recount which shall be conducted as provided in sections 3515.04 and 3515.05 of the Revised Code.

HISTORY: 1984 S 79, eff. 7-4-84
1979 H 111; 1974 H 662

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267
Am Jur 2d: 26, Elections § 295, 356
Admissibility of parol evidence of election officials to impeach election return. 46 ALR2d 1385

3515.02 Filing of application for recount

If the nomination or the candidacy for election, or the question or issue, concerning which a recount is applied for was submitted only to electors within a county, the application for recount shall be filed within five days after the day upon which the board of elections of such county declares the results of such election.

If the nomination or the candidacy for election, or the question or issue, concerning which a recount is applied for was submitted only to electors of a district comprised of more than one county but less than all of the counties of the state, the application shall be filed within five days after the day upon which the board of the most populous county in such district declares the results of such election.

If the nomination or the candidacy for election, or the question or issue, concerning which a recount is applied for was submitted to electors throughout the entire state, the application shall be filed within five days after the day upon which the secretary of state declares the results of such election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-162

CROSS REFERENCES

Notification to department of liquor control when recount petition filed, 4301.39

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267
Am Jur 2d: 26, Elections § 356

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

65 OS(2d) 40, 417 NE(2d) 1375 (1981), State ex rel Byrd v Summit County Bd of Elections. There is no constitutional violation where the general assembly has provided exclusive remedies with specific limitations for the recount of votes in RC 3515.02 or the contest of elections in RC 3515.09 which are applicable to all candidates for elective office; RC 3515.02 and 3515.09 are constitutional.

2. In general

65 OS(2d) 40, 417 NE(2d) 1375 (1981), State ex rel Byrd v Summit County Bd of Elections. Mandamus and quo warranto will not lie to compel the withdrawal of a certificate of election issued following an election, and cannot be substituted in lieu of a request for a recount pursuant to RC 3515.02, or a contest of election pursuant to RC 3515.09, since these sections provide the exclusive remedy for a recounting of the votes, or a correction of all errors, frauds, and mistakes which may occur at an election.

11 App(3d) 277, 11 OBR 457, 464 NE(2d) 610 (Cuyahoga 1983), Walt's Friendly Tavern v Liquor Control Dept. A permit holder whose permit is cancelled pursuant to a local-option election may resort to only two remedies; the permit holder may either: (1) file a petition for recount within five days after certification of the election results under RC 3515.02; or (2) file an election contest within fifteen days after certification of the election results under RC 3515.09.

66 App 482, 35 NE(2d) 474 (1940), State ex rel Farnsworth v McCabe. On a recount of votes made on an application filed under this section, if errors in the returns from a precinct are discovered in the votes for candidates not specified in the application for recount, the county board is without authority to change its count made on such returns to correct the error so discovered.

3515.03 Recount; deposit required; notice; witnesses; losing candidate may stop recount

Each application for recount shall separately list each precinct as to which a recount of the votes therein is requested, and the person filing an application shall at the same time deposit with the board of elections ten dollars in currency, bank money order, bank cashier's check, or certified check for each precinct so listed in such application as security for the payment of charges for making the recount therein applied for, which charges shall be fixed by the board as provided in section 3515.07 of the Revised Code.

Upon the filing of an application, or upon declaration by the board or secretary of state that the number of votes cast in any election for the declared winning nominee, candidate, question, or issue does not exceed the number of votes

cast for the defeated nominee, candidate, question, or issue, by the margins set forth in section 3515.011 of the Revised Code, the board shall promptly fix the time, method, and the place at which the recount will be made, which time shall be not later than ten days after the day upon which such application is filed or such declaration is made. In the event that the recount involves a candidate for election to an office comprising more than one county, the director of the board shall promptly mail notice of the time and place for such recount to the board of the most populous county of the district. If the contest involves a state office, the director shall promptly notify the secretary of state of the filing for such recount.

The director of the board shall mail notice of the time and place so fixed to any applicant and to each person for whom votes were cast for such nomination or election. Such notice shall be mailed by registered mail not later than the fifth day before the day fixed for the commencement of the recount. Persons entitled to have such notice mailed to them may waive their right to have it mailed by filing with the director a written waiver to that effect. Each person entitled to receive such notice may attend and witness the recount and may have any person whom he designates attend and witness the recount. At any time after a winning nominee or candidate is declared but before the time for a recount pursuant to section 3515.011 of the Revised Code commences, the declared losing nominee or candidate may file with the board a written request to stop the recount from commencing. In the case of more than one declared losing candidate or nominee, each of whom is entitled to a recount pursuant to section 3515.011 of the Revised Code, each such declared losing candidate or nominee must file with the board such written request to stop the recount from commencing. The board shall grant such request and shall not commence the recount.

In the case of a recount of votes cast upon a question or issue, any group of five or more qualified electors, who voted upon such question or issue and whose votes were in opposition to the votes of the members of the group of electors who applied for such recount, or for whom such recount was required by section 3515.011 of the Revised Code, may file with the board a written statement to that effect, shall designate therein one of their number as chairman of such group and may appoint an attorney at law as their legal counsel, and may request that the persons so designated be permitted to attend and witness the recount. Thereupon the persons so designated may attend and witness the recount.

HISTORY: 1984 S 79, eff. 7-4-84
1980 H 1062; 128 v 582; 125 v 713; 1953 H 1; GC 4785-162

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267
Am Jur 2d: 26, Elections § 356, 364

NOTES ON DECISIONS AND OPINIONS

165 OS 185, 134 NE(2d) 839 (1956), State ex rel Babcock v Perkins. Where a defeated candidate applying for a recount deposits with the board of elections a bank money order instead of a certified check, he may not successfully prosecute an action in mandamus to compel the board to accept the money order and proceed with the recount.

126 OS 582, 186 NE 446 (1933), State ex rel Fowler v Fulton County Bd of Elections. Candidate having failed to deposit bond or cash in proper amount, his petition for mandamus to compel recount was demurrable.

86 App 14, 89 NE(2d) 666 (1949), Grossglaus v Stark County Bd of Elections. This section is mandatory; a demand for a recount which does not list separately each precinct as to which a recount is requested and which is not accompanied with a cash deposit of ten dollars for each such precinct is insufficient to authorize such recount; a check may not be accepted in lieu of a cash deposit.

45 App 34, 186 NE 17 (1932), State ex rel Fowler v Fulton County Bd of Elections; affirmed by 126 OS 582, 186 NE 446 (1933). Bond required of candidate seeking recount must be in sum equal to $10 for each precinct in which recount is desired.

45 App 34, 186 NE 17 (1932), State ex rel Fowler v Fulton County Bd of Elections; affirmed by 126 OS 582, 186 NE 446 (1933). Strict compliance with statute respecting application for recount and giving security by cash deposit or bond for cost thereof is mandatory and jurisdictional. Candidate having failed to deposit bond or cash in proper amount, his petition for mandamus to compel recount was demurrable.

37 Misc 3, 305 NE(2d) 820 (CP, Hamilton 1973), Mann v Hamilton County Bd of Elections. Courts would not order board of elections to realign precincts merely because precincts using voting machines were permitted to include more than 400 electors.

1935 OAG 4974. When an application for recount of the votes cast in one or more precincts has been filed pursuant to the provisions of this section, there is no authority whereby the applicant may thereafter withdraw such application and receive a refund of moneys deposited in accordance with such section to defray the cost of such recount.

3515.04 Procedure for recount; stopping recount

At the time and place fixed for making a recount, the board of elections, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount them. Ballots shall be handled only by the members of the board or by the director or other employees of the board. Witnesses shall be permitted to see the ballots but they shall not be permitted to touch them, and the board shall not permit the counting or tabulation of votes shown on the ballots for any nomination, or for election to any office or position, or upon any question or issue, other than the votes shown on such ballots for the nomination, election, or question or issue concerning which a recount of ballots was applied for.

At any time before the ballots from all of the precincts listed in an application for the recount or involved in a recount pursuant to section 3515.011 of the Revised Code have been recounted, the applicant or declared losing candidate or nominee or each of the declared losing candidates or nominees entitled to file a request prior to the commencement of a recount, as provided in section 3515.03 of the Revised Code, may file with the board a written request to stop the recount and not recount the ballots from the precincts so listed and which have not been recounted prior to the time of such request. If, upon such request, the board finds that results of the votes in the precincts recounted, if substituted for the results of the votes in such precincts as shown in the abstract of the votes in such precincts, would not cause the applicant, if a person for whom votes were cast for nomination or election, to be declared nominated or elected or if an election upon a question or issue would not cause a result contrary to the result thereof as declared prior to such recount, it shall grant such request and shall not recount the ballots of the precincts listed in the application for recount which have not been recounted prior to such time. If the board finds otherwise, it shall deny such

request and shall continue to recount ballots until the ballots from all of the precincts listed in the application for recount have been recounted; provided that if such request is denied it may be renewed from time to time. Upon any such renewal the board shall consider and act upon the request in the same manner as provided in this section in connection with an original request.

HISTORY: 1984 S 79, eff. 7-4-84
1980 H 1062; 1953 H 1; GC 4785-162

CROSS REFERENCES

Ballot tampering, penalty, 3599.26

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267
Am Jur 2d: 26, Elections § 355 to 356

NOTES ON DECISIONS AND OPINIONS

86 App 14, 89 NE(2d) 666 (1949), Grossglaus v Stark County Bd of Elections. The intervention of a court of equity may be invoked to restrain a county board of elections from conducting a recount of votes cast at an election, if such board is proceeding to act without authority.

OAG 74-103. Witnesses have a right to see each ballot, including those designed to be counted by automatic tabulating equipment.

OAG 74-103. A witness at an election recount may suggest to the judges that a ballot should be challenged and the reason therefor.

3515.05 Duties of board of elections when recount is completed

Upon completion of the recount of the ballots of all precincts listed in an application for a recount, or upon stopping the recount prior to such time, or in the case of a recount as provided in section 3515.011 of the Revised Code, the board of elections shall promptly prepare and certify an amended abstract showing the votes cast in each precinct in its county in which the nomination, election, or question or issue was submitted to electors, which amended abstract shall embody the votes of the precincts, the ballots of which were recounted, as shown by such recount. Copies of such certified amended abstracts shall be mailed to such other boards or election officials as required in the case of the original abstract which such amended abstract amends.

If the nomination, election, or question or issue concerning which such recount was made was submitted only to electors within a county, the board shall make an amended declaration of the result of such election in the same manner required in the making of its original declaration of the result of such election.

If the nomination, election, or question or issue concerning which a recount was made was submitted only to electors of a district comprised of more than one county but less than all of the counties of the state, the board of the most populous county in such district shall canvass the amended abstracts received from the board of each county in such district in which a recount was made, and shall make an amended declaration of the results of such election in such district in the same manner required in the making of its original declaration of the result of such election.

If the nomination, election, or question or issue concerning which a recount was made was submitted only to electors of a subdivision located in more than one county, the board of the county in which the major portion of the population of such subdivision is located shall canvass the amended abstracts received from the board of each county in which a portion of the population of such subdivision is located and in which a recount was made, and shall make an amended declaration of the results of such election in such subdivision in the same manner required in the making of its original declaration of the result of such election.

If the nomination, election, or question or issue concerning which a recount was made was submitted to electors throughout the entire state, the secretary of state shall canvass all amended abstracts received from the board of each county in the state in which a recount was made, and shall make an amended declaration of the results of such election throughout the entire state in the same manner required in the making of his original declaration of the result of such election.

HISTORY: 1974 H 662, eff. 9-27-74
1953 H 1; GC 4785-162

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267
Am Jur 2d: 26, Elections § 356

3515.06 Application for recount in precincts not recounted

If, pursuant to section 3515.04 of the Revised Code, a person was declared nominated as a candidate for election to an office or elected to an office or position in an election and if it subsequently appears by the amended declaration of the results of such election made following a recount of votes cast in such election that such person was not so nominated or elected, such person may, within five days after the date of such amended declaration of the results of such election, file an application with the board of elections for a recount of the votes cast at such election for such nomination or election in any precinct, the ballots of which have not been recounted.

If, following a recount of votes cast in an election upon any question or issue, the amended declaration of the results of such election shows the result of such election to be contrary to the result thereof as declared in the original declaration of the results thereof, any group of five or more qualified electors which has filed a statement with the board as provided in the third paragraph of section 3515.03 of the Revised Code may, within five days after the date of the amended declaration, file an application with the board for a recount of the votes cast at such election upon such question or issue in any precinct of the county, the votes of which have not been recounted.

Sections 3515.01 and 3515.02 to 3515.05 of the Revised Code are applicable to any application provided for in this section and to the recount had pursuant thereto.

HISTORY: 1984 S 79, eff. 7-4-84
1953 H 1; GC 4785-162

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267

Am Jur 2d: 26, Elections § 355, 356

NOTES ON DECISIONS AND OPINIONS

171 OS 263, 169 NE(2d) 551 (1960), State ex rel Feighan v Green. Where, in the exercise of its discretionary authority under RC 3505.32 a board of elections opens sealed containers of ballots and "counts" them, and errors are found by it in its declaration of results and abstract previously certified, which errors required the issuance of a corrected declaration and abstract as provided in RC 3513.22, such procedure by the board of elections does not constitute a recount within the meaning of RC 3515.06 authorizing the person not nominated to make application for a recount of additional precincts not theretofore recounted.

3515.07 Charges for recount

The charges for making a recount of votes of precincts listed in an application for a recount filed with the board of elections shall be fixed by the board and shall include all expenses incurred by such board because of such application other than the regular operating expenses which the board would have incurred if the application had not been filed. The total amount of charges so fixed divided by the number of precincts listed in such application, the votes of which were recounted, shall be the charge per precinct for the recount of the votes of the precincts listed in such application, the votes of which were recounted; provided that the charges per precinct so fixed shall not be more than ten nor less than five dollars for each precinct the votes of which were recounted.

Such charge per precinct shall be deducted by the board from the money deposited with the board by the applicant for the recount at the time of filing his application, and the balance of the money so deposited shall be returned to such applicant; provided that no such charge per precinct shall be deducted by the board from the money deposited for a recount of votes cast for a nomination or for an election to an office or position in any precinct, if the total number of votes cast in such precinct for the applicant, as recorded by such recount, is more than four per cent larger than the number of votes for such applicant in such precinct recorded in the original certified abstract thereof, nor shall any charge per precinct be deducted for a recount of votes cast in any precinct upon a question or issue if the total number of votes in such precinct on the same side of such question or issue as the side represented by the applicant, as recorded by such recount, is more than four per cent larger than the number of votes in such precinct on the same side of such question or issue recorded in the original certified abstract thereof. No such charge per precinct shall be deducted if upon the completion of a recount concerning a nomination or election the applicant is declared nominated or elected, or if upon the completion of a recount concerning a question or issue the result of such election is declared to be opposite to the original declaration of the result of such election. All moneys deposited with a board by an applicant shall be deposited in a special depository fund with the county treasurer. The expenses of the recount and refunds shall be paid from said fund upon order of the board of elections. Any balance remaining in such fund shall be paid into the general fund of the county.

HISTORY: 126 v 205, eff. 1-1-56
1953 H 1; GC 4785-162

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267
Am Jur 2d: 26, Elections § 355, 356

NOTES ON DECISIONS AND OPINIONS

1944 OAG 7035. In a recount of votes conducted pursuant to provisions of this section, petitioner for such recount is entitled to refund of deposit made for each precinct in which he succeeds in establishing error sufficient to change results by at least two per cent of total vote cast for the office in question, regardless of whether or not a change in relative position of the candidates for such office was effected.

1936 OAG 5171. Where there has been a recount in accordance with this section, the petitioner for such recount is not entitled to a refund of the cost thereof deposited by him where, as a result of such recount, he has not established error sufficient to change the result of the election or to change the result in any precinct by at least two per cent of the total vote cast for the office involved, even though a later action to contest said election did change the result thereof.

1935 OAG 4074. Where there is a recount of votes cast at an election in pursuance of this section, the board of elections may, if it deems it advisable, employ guards necessary to protect the ballots until said ballots are recounted when it finds there is no other method of adequate protection, and pay the cost thereof from the county treasury out of its appropriation. If the recount is of votes cast at an election in an odd numbered year, such cost should then be charged to the subdivision for which the election is held. The cost of such guards is properly a part of the cost of such recount and should be taken out of the deposit made by the person demanding the recount, except where the deposit is refunded.

1932 OAG 3947. The actual cost of a recount, pursuant to this section, must be disregarded when such cost is less than $5 per precinct, such minimum cost being fixed by statute at $5 per precinct.

1932 OAG 3947. When the result of the election is not changed by the recount, the amount to be refunded to a candidate requiring such recount is determined by returning the entire deposit for any precinct in which an error of two per cent of the total vote cast concerning an issue or office is found; but in all other precincts in which the error does not amount to two per cent of the total of such recount and does not change the result of the election even though the cost is less than $5 per precinct, there should be deducted from the deposit the sum of $5 for each precinct in which a recount is required and the remainder of such excess deposit returned to the candidate.

3515.071 Public funding of recount

If the board of elections in a county orders a recount in any county or municipal election pursuant to section 3515.011 of the Revised Code, the expense of the recount shall be paid from the county treasury in the same manner as other expenses of the board under section 3501.17 of the Revised Code.

If the secretary of state orders a recount as provided in section 3515.011 of the Revised Code, the expense of the recount shall be paid from funds appropriated to the secretary of state, who may apply to the controlling board for funds to avert any deficiency that thereby would be created in current appropriations.

HISTORY: 1985 H 201, eff. 7-1-85
1974 H 662

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 186, 267
Am Jur 2d: 26, Elections § 355, 356

CONTEST OF ELECTION

3515.08 Contest of election

The nomination or election of any person to any public office or party position or the approval or rejection of any issue or question, submitted to the voters, may be contested by qualified electors of the state or a political subdivision.

In the case of an office to be filled or an issue to be determined by the voters of the entire state, or for the offices of members of congress, or for judicial offices higher than that of court of common pleas, or for an office to be filled or an issue to be determined by the voters of a district larger than a county, said contest shall be heard and determined by the chief justice of the supreme court or a justice of the supreme court assigned for that purpose by the chief justice; except that in a contest for the office of chief justice of the supreme court, such contest shall be heard by a justice of such court designated by the governor.

In the case of all other offices or issues, except judicial offices, such contests shall be heard and determined by a judge of the court of common pleas of the county in which the contest arose. In the case of a contest for a judicial office within a county, such contest shall be heard by the court of appeals of the district in which such county is located. If any contestant alleges prejudice on the part of the judges of the court of appeals or the court of common pleas, assigned to hear such appeal, then the chief justice of the supreme court, upon application of any such contestants and for good cause shown, may assign judges from another court to hear such contest.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-166

Note: Guidelines for Assignment of Judges were announced by the Chief Justice of the Ohio Supreme Court on 5-24-88, but not adopted as rules pursuant to O Const Art IV §5. For the full text, see 37 OS(3d) xxxix, 61 OBar A-2 (6-13-88).

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 9.09

CROSS REFERENCES

Common pleas court jurisdiction, 2305.01
Court of appeals, Ch 2501
Trial of contested elections, O Const Art II §21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196 to 198, 203, 204, 219, 229, 267; 56, Injunctions § 72
Am Jur 2d: 26, Elections § 316 to 322
State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320

NOTES ON DECISIONS AND OPINIONS

62 OS(3d) 1 (1991), In re Election of November 6, 1990 for the Office of Attorney General of Ohio. Civ R 54(D) and RC 2323.51 are not applicable to election contests given the exclusivity of the election contest procedures in RC 3515.08, since relief can only be afforded as provided therein.

4 OS(3d) 174, 4 OBR 453, 447 NE(2d) 1299 (1983), Hitt v Tressler. O Const Art II §21, empowers the general assembly to determine before what authority and in what manner election contests shall be had.

4 OS(3d) 174, 4 OBR 453, 447 NE(2d) 1299 (1983), Hitt v Tressler. A court of common pleas has jurisdiction to hear a contest of an election for city council.

2 OS(3d) 37, 2 OBR 581, 442 NE(2d) 758 (1982), In re Election of Swanton Twp. There must be an affirmative showing that enough votes were affected by alleged irregularities to change the result of an election.

1 OS(3d) 85, 1 OBR 122, 438 NE(2d) 410 (1982), MacDonald v Bernard. An election contest proceeding conducted pursuant to RC 3515.08 is not a proper forum for determining whether violation of RC 3599.091 or 3599.01 has occurred.

56 OS(2d) 67, 381 NE(2d) 1128 (1978), Modarelli v Carney. RC 3515.15 does not authorize a review of the rulings of the chief justice of the Supreme Court in an election contest proceeding heard pursuant to RC 3515.08.

169 OS 50, 157 NE(2d) 351 (1959), McCall v Brown County Bd of Ed. Where it is apparent that the hearing of an election contest was not set in compliance with the statute, that no request for the setting of such hearing was made, and that no copy of the petition was served or was requested to be served on the contestee, the judge with whom the petition was filed has no alternative but to dismiss the same, on motion of the contestee, for lack of jurisdiction and authority to proceed.

167 OS 71, 146 NE(2d) 287 (1957), State ex rel Commrs of Sinking Fund v Brown. Reference, in text of capital improvements bond issue amendment on ballot, to cigarette tax as source of revenue for payment did not invalidate amendment merely because other funds might also be used as source of revenue.

161 OS 339, 119 NE(2d) 283 (1954), Moore v Thompson. An election for municipal judge will not be set aside upon the grounds that the office appeared at the wrong place on the municipal ballot, there was no indication that the election was for an unexpired term, and the printed proofs of the ballot were not posted. (Annotation from former RC 3505.05.)

154 OS 207, 94 NE(2d) 1 (1950), Cooper v Kosling. Where, in action to contest election proceeding brought under this section, the petition alleges that at the primary election contestee's name was on the ballot although he was not a qualified elector, that he got his name on the ballot by fraud and perjury and that therefore he received no legal vote, the petition fails to state a cause of action to contest election; contestor's remedy was an action to determine validity of declaration of candidacy brought under GC 4785-70 (RC 3513.05).

138 OS 324, 34 NE(2d) 781 (1941), McClintock v Sweitzer. To establish fraud in an election contest case the degree of proof required is clear and convincing evidence.

135 OS 70, 19 NE(2d) 281 (1939), Smith v Polk. Ohio supreme court does not have jurisdiction of a proceeding to contest an election of representative in congress, since a decision of the supreme court would not be binding upon the House of Representatives in respect to the title to office.

135 OS 70, 19 NE(2d) 281 (1939), Smith v Polk. Certificate of election issued by secretary of state to a representative to congress is not binding on the house of representatives, since under US Const Art I §5, full power is granted to congress to be the judge of the elections and qualifications of its members.

130 OS 243, 199 NE 74 (1935), Foraker v Perry Twp Rural School Dist Bd of Ed. The procedure prescribed by the general assembly for the determination of election contests is within the power conferred upon it by the Constitution, and is exclusive.

13 App(2d) 46, 233 NE(2d) 600 (1967), Korn v Dunahue. Where a referendum election has not been challenged directly by an election contest, its validity may not be collaterally attacked.

13 Misc(2d) 10, 13 OBR 217, 468 NE(2d) 791 (CP, Cuyahoga 1984), In re Petition of Concerned Citizens of Ward 17, Precinct L. In deciding the merits of an election contest, a court must apply a two-step test: (1) did fraud or irregularity exist in the subject election; and (2) where fraud or irregularity existed, was it so substantial and flagrant as to render the election results questionable.

11 Misc(2d) 7, 11 OBR 101, 463 NE(2d) 115 (CP, Hamilton 1984), Mirlisena v Fellerhoff. In order to prevail; the petitioner in an election contest is required to show affirmatively that the number of votes affected by the charged irregularities is sufficient to alter the result of the election.

11 Misc(2d) 7, 11 OBR 101, 463 NE(2d) 115 (CP, Hamilton 1984), Mirlisena v Fellerhoff. A court may not disturb the choice of a polling place by the board of elections unless the choice is so unreasonable, arbitrary, and capricious as to constitute a clear abuse of discretion.

22 Misc 254, 255 NE(2d) 587 (CP, Franklin 1970), Whitt v Cook. Exercise of purported right to issue liquor permits allegedly resulting from election held in precincts not eligible to become a liquor control district under RC 4303.29 may be restrained by injunction, although no challenge by election contest was filed pursuant to RC 3515.08.

68 Abs 240, 118 NE(2d) 692 (CP, Ottawa 1953), In re Election of Council of Oak Harbor. The court of common pleas has jurisdiction to hear and determine questions involving the contests of elections of the offices of city council.

1934 OAG 2295. The question of whether or not an election is void for irregularities can be determined only in a proceeding to contest the election where the law makes provision for such a contest.

1930 OAG 1363. There being no statutory provision for a recount or an election contest with respect to members of a board of education, quo warranto may be invoked.

3515.09 Filing contest petition

A contest of election shall be commenced by the filing of a petition with the clerk of the appropriate court signed by at least twenty-five voters who voted at the last election for or against a candidate for the office or for or against the issue being contested, or by the defeated candidate for said nomination or election, within fifteen days after the results of any such nomination or election have been ascertained and announced by the proper authority, or if there is a recount, within ten days after the results of the recount of such nomination or election have been ascertained and announced by the proper authority. Such petition shall be verified by the oath of at least two such petitioners, or by the oath of the defeated candidate filing the petition, and shall set forth the grounds for such contest.

Said petition shall be accompanied by a bond with surety to be approved by the clerk of the appropriate court in a sum sufficient, as determined by him, to pay all the costs of the contest. The contestor and the person whose right to the nomination or election to such office is being contested, to be known as the contestee, shall be liable to the officers and witnesses for the costs made by them respectively; but if the results of the nomination or election are confirmed or the petition is dismissed or the prosecution fails, judgment shall be rendered against the contestor for the costs; and if the judgment is against the contestee or if the results of the nomination or election are set aside, the county shall pay the costs as other election expenses are paid.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-167

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 35.55

CROSS REFERENCES

Oaths, 3.20, 3.21
Election on question of issuing bonds, contestability, 133.18
Notification to department of liquor control when petition to recount local option election filed, reissuance of permit, permit in safekeeping, 4301.39
Trial of contested elections, O Const Art II §21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196, 197, 200, 202, 204 to 208, 210, 213, 214, 216, 218, 267
Am Jur 2d: 26, Elections § 336 et seq., 350 et seq.

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

65 OS(2d) 40, 417 NE(2d) 1375 (1981), State ex rel Byrd v Summit County Bd of Elections. There is no constitutional violation where the general assembly has provided exclusive remedies with specific limitations for the recount of votes in RC 3515.02 or the contest of elections in RC 3515.09 which are applicable to all candidates for elective office; RC 3515.02 and 3515.09 are constitutional.

2. In general

62 OS(3d) 1 (1991), In re Election of November 6, 1990 for the Office of Attorney General of Ohio. A contestee in an election contest may recover as "costs" attributable to "officers and witnesses" against a contestor the charges of a court reporter and videotape technician and fees and mileage of witnesses, but he may not recover as costs any litigation expenses he has incurred.

4 OS(3d) 174, 4 OBR 453, 447 NE(2d) 1299 (1983), Hitt v Tressler. Under RC 3515.09, a defeated candidate has signed a petition to contest an election when he attaches his signature to the petition with the intent to authenticate it, even though the same signature is used also for purposes of verification.

65 OS(2d) 40, 417 NE(2d) 1375 (1981), State ex rel Byrd v Summit County Bd of Elections. Mandamus and quo warranto will not lie to compel the withdrawal of a certificate of election issued following an election, and cannot be substituted in lieu of a request for a recount pursuant to RC 3515.02, or a contest of election pursuant to RC 3515.09, since these sections provide the exclusive remedy for a recounting of the votes, or a correction of all errors, frauds, and mistakes which may occur at an election.

60 OS(2d) 5, 395 NE(2d) 493 (1979), Monnette v Malone. Delivery of $500 cash to the clerk of courts and its receipt as a surety bond for court costs met the requirements of RC 3515.09.

52 OS(2d) 199, 371 NE(2d) 536 (1977), State ex rel Daoust v Smith. Mandamus will lie to compel the clerk-treasurer of the school board to sign tax anticipation notes following adoption of a tax levy once the time limit for challenging the election authorizing such levy has passed.

142 OS 467, 52 NE(2d) 858 (1944), Williams v O'Neill. Under mandate of this section, it is necessary that a petition to contest an election be filed within ten days after results of a recount of votes have been ascertained and announced, "signed by at least twenty-five voters or by the defeated candidate," to give a court jurisdiction over the proceeding.

138 OS 449, 35 NE(2d) 838 (1941), Hannah v Roche. Where the record shows that a bond given to secure costs in an election contest case was executed in presence of clerk of court, who signed it as a witness, received it for filing and stamped it "filed," parol evidence is admissible to support an inference from the record that clerk did in fact determine the amount of the bond and approve its surety, as required by this section.

138 OS 449, 35 NE(2d) 838 (1941), Hannah v Roche. Under this section it is the duty of clerk of court to approve the surety upon and determine the amount of the bond required to secure the costs of a contest of election, but there is nothing in that section, or in the statutes defining generally the duties of the clerk, or in the inherent nature of the clerk's functions, which requires such approval and determination by him to be in written form.

136 OS 279, 25 NE(2d) 458 (1940), In re Contest of Special Election. In event of failure of contestors to comply with this section, court is without jurisdiction to hear or determine a controversy contesting a constitutional referendum election.

136 OS 279, 25 NE(2d) 458 (1940), In re Contest of Special Election. Under this section the petition shall be accompanied by a bond with surety to be approved by the clerk of the appropriate court in a sum sufficient, as determined by him, to pay all the costs of the contest.

119 OS 558, 165 NE 44 (1929), Price v State. Under former GC 5162 (renumbered GC 4785-166 (RC 3515.08)) et seq., when the notice of election contest, specifying the points on which the contest shall be based, did not as a matter of law set forth allegations sufficient, if proved, to invalidate the election, a decision rendered by the jury of freeholders upon such points of contest was void.

11 App(3d) 277, 11 OBR 457, 464 NE(2d) 610 (Cuyahoga 1983), Walt's Friendly Tavern v Liquor Control Dept. A permit holder whose permit is cancelled pursuant to a local-option election may resort to only two remedies; the permit holder may either: (1) file a petition for recount within five days after certification of the election results under RC 3515.02; or (2) file an election contest within fifteen days after certification of the election results under RC 3515.09.

16 Misc 255, 242 NE(2d) 563 (Chief Justice, Election Contest 1968), Cullinan v Hoose. A petition to contest an election must be signed by the contestor to create the necessary jurisdiction in the court.

16 Misc 255, 242 NE(2d) 563 (Chief Justice, Election Contest 1968), Cullinan v Hoose. A petition to contest an election must be filed within ten days after the results of a recount of votes have been ascertained and announced to give a court jurisdiction over the proceeding.

1961 OAG 2008. The 1959 amendments to O Const Art XVIII §6 are valid.

1939 OAG 815. Costs incurred in an action to contest an election, if results of such election be set aside, or if ordered by court to be paid by county as other election expenses are paid, shall be paid from the county treasury, but if such election is only within and for a subdivision of county, amount of costs so paid from county treasury shall be withheld by county auditor from moneys payable to such subdivision at time of next tax settlement.

1935 OAG 4580. Where there was a mistake in one of the initials of name of candidate as it appeared on the ballot, a certificate of election was issued, and where no demand for a recount was made and no suit was filed to contest his election and said candidate, duly qualified for said office, has since said election been performing the duties of said office, the question of his right to said office by reason of said error cannot be raised.

3515.10 Court shall fix time for trial

The court with which a petition to contest an election is filed shall fix a suitable time for hearing such contest, which shall be not less than fifteen nor more than thirty days after the filing of the petition. Such court shall have a copy of the contestor's petition served upon the contestee or upon the chairman of the committee taking the other side in advocacy of or opposition to any issue, in the same manner as a summons in a civil action. The contestee shall have ten days from the time service has been made upon him in which to answer the petition, and the contestor shall have five days in which to reply to the answer of the contestee. All parties may be represented by counsel and the hearing shall proceed at the time fixed, unless postponed by the judge hearing the case for good cause shown by either party by affidavit or unless the judge adjourns to another time, not more than thirty days thereafter, of which adjournment the parties interested shall take notice.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-168

CROSS REFERENCES

Days counted to ascertain time, 1.14
Trial of contested elections, O Const Art II §21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196, 197, 200, 204 to 208, 210, 213, 214, 218, 267
Am Jur 2d: 26, Elections § 329, 336 et seq., 350 et seq.

NOTES ON DECISIONS AND OPINIONS

169 OS 50, 157 NE(2d) 351 (1959), McCall v Brown County Bd of Ed. Where it is apparent that the hearing of an election contest was not set in compliance with the statute, that no request for the setting of such hearing was made, and that no copy of the petition was served or was requested to be served on the contestee, the judge with whom the petition was filed has no alternative but to dismiss the same, on motion of the contestee, for lack of jurisdiction and authority to proceed.

157 OS 186, 105 NE(2d) 58 (1952), Jenkins v Hughes. In view of the provisions of GC 4785-168 and 4785-169 (RC 3515.10, 3515.11), requiring the court in an election contest to fix a time for hearing the contest not more than thirty days after the filing of the petition, contesters who file dilatory pleas to the answer of the contestees, acquiesce in the continuance of the proceeding and fail to request the court to fix a date for such hearing within the time required by statute are not entitled to a reversal of a judgment sustaining a motion to dismiss the contest for lack of prosecution rendered more than one hundred days after the filing of the petition, where no action is taken on the merits of the case.

3515.11 Trial proceedings

The proceedings at the trial of the contest of an election shall be similar to those in judicial proceedings, in so far as practicable, and shall be under the control and direction of the court which shall hear and determine the matter without a jury, with power to order or permit amendments to the petition or proceedings as to form or substance. Such court may allow adjournments for not more than thirty days, for the benefit of either party, on such terms as to costs and otherwise as seem reasonable to the court, the grounds for such adjournment being shown by affidavit. The hearing shall proceed expeditiously and the total of such adjournments shall not exceed thirty days after the date set for the original hearing.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-169

CROSS REFERENCES

Days counted to ascertain time, 1.14
Refusal to appear, produce materials, or answer questions at election proceeding; penalty, 3599.37
Trial of contested elections, O Const Art II §21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196, 197, 200, 204 to 208, 210, 213, 214, 218, 267
Am Jur 2d: 26, Elections § 336 et seq., 350 to 354

NOTES ON DECISIONS AND OPINIONS

62 OS(3d) 1 (1991), In re Election of November 6, 1990 for the Office of Attorney General of Ohio. RC 3515.11 does not incorporate Civ R 54(D) and RC 2323.51 into election contest proceedings although the statute incorporates some rules and statutes into election contest proceedings, since the incorporation is limited to those rules and statutes that would pertain "at the trial of the contest."

11 Misc(2d) 7, 11 OBR 101, 463 NE(2d) 115 (CP, Hamilton 1984), Mirlisena v Fellerhoff. In election contests, circumstantial evidence may be used in reaching a decision.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. The reference of RC 3515.11 to adjournments of not more than thirty days refers to that requested by affidavit, and does not refer to any adjournments on continuance on the court's motion.

3515.12 Court powers and procedure in hearing contest petition

The court with which a petition to contest an election is filed may summon and compel the attendance of witnesses, including officers of such election, and compel the production of all ballot boxes, marking devices, lists, books, ballots, tally sheets, and other records, papers, documents, and materials which may be required at the hearing. The style and form of summons and subpoenas and the manner of service and the fees of officers and witnesses shall be the same as are provided in other cases, in so far as the nature of the proceedings admits. The court may require any election officer to answer any questions pertinent to the issue relating to the conduct of the election or the counting of the ballots and the making of the returns. Any witness who voted at the election may be required to answer touching his qualification as a voter and for whom he voted.

HISTORY: 129 v 1653, eff. 6-29-61
1953 H 1; GC 4785-170

CROSS REFERENCES

Fees of officers, 311.17, 311.18, 311.22, 2335.07

Fees of witnesses, 2335.05, 2335.06

Qualifications of electors, 2961.01, 3503.01; O Const Art v §1, 4, 6

Falsehoods in proceedings relating to elections; fine and imprisonment, 3599.36

Trial of contested elections, O Const Art II §21

Summons, Civ R 4

Serving summons, Civ R 4.1 to 4.6

Serving pleadings and papers after complaint, Civ R 5

Subpoenas, form and service, Civ R 45

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196, 197, 200, 204 to 208, 210, 213, 214, 218, 267

Am Jur 2d: 26, Elections § 316 to 322, 336 et seq., 342 to 349, 350 et seq.

NOTES ON DECISIONS AND OPINIONS

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. As applied to legal voters, that provision of RC 3515.12 which provides that any witness who voted at an election may be required to answer touching his qualifications as a voter and for whom he voted is unconstitutional.

3515.13 Contest involving recount

If any contest of election involves a recount of the ballots in any precincts, the court shall immediately order the ballots of the precincts in which the recount is demanded to be sent to the court in such manner as the court designates, and such court may appoint two master commissioners of opposite political parties to supervise the making of the recount. The attorneys representing the contestor and the prosecuting attorney of the county or the attorney general or one of his assistants representing the contestee shall be present at all hearings on such recount. Such commissioners shall receive ten dollars each per day and their actual traveling expenses when approved by the presiding judges. The compensation of such clerks as are deemed necessary by the court shall be determined by the court on the basis of similar compensation in other public offices for like work. Both the contestor and contestee may appoint one inspector who shall be allowed to see all ballots and tally sheets and witness the recount. If the court finds that the difference in the count from the original count by the election authorities was the result of fraud, gross negligence, or willfulness on the part of any election officer or other person, such court shall forthwith transmit a copy of its decision and of the evidence to the prosecuting attorney of the county wherein such fraud or gross negligence was found with directions to present the same to the next grand jury in the county or to the attorney general, in the case of state or federal offices, with directions to prosecute the cases on behalf of the state.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-174

CROSS REFERENCES

Attorney general, Ch 109
County prosecutor, Ch 309
Trial of contested elections, O Const Art II §21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 392, 405; 37, Elections § 185, 196, 197, 214, 267
Am Jur 2d: 26, Elections § 355 to 356

3515.14 Judgment of court

Upon completion of the trial of a contest of election, the court shall pronounce judgment as to which candidate was nominated or elected or whether the issue was approved or rejected by the voters; except that in the case of the contest of election of a member of the general assembly such judgment shall not be pronounced by the court but a transcript of all testimony taken and all evidence adduced in such contest shall be filed with the clerk or executive secretary of the branch of the legislative body to which the contestee was declared elected, which shall determine the election and qualification of its own members.

Any person declared nominated or elected by the court shall be entitled to his certificate of nomination or election. A certified copy of the order of such court constitutes such certificate. If the judgment is against the contestee or incumbent and he has already received a certificate of nomination or election, the judgment of the court shall work a cancellation of such certificate.

If the court decides that the election resulted in a tie vote, such decision shall be certified to the board of elec-

tions having jurisdiction and said board shall publicly determine by lot which of such persons shall be declared elected. If the court finds that no person was elected, the judgment shall be that the election be set aside.

HISTORY: 1969 H 121, eff. 11-19-69
1953 H 1; GC 4785-171

CROSS REFERENCES

Each house of General Assembly is judge of its own elections, returns, and members' qualifications, O Const Art II §6
Trial of contested elections, O Const Art II §21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196, 197, 210, 214, 216, 217, 219, 267
Am Jur 2d: 26, Elections § 316, 357 et seq.

NOTES ON DECISIONS AND OPINIONS

58 OS(3d) 103, 569 NE(2d) 447 (1991), In re Election of November 6, 1990 for Office of Ohio Attorney General. A contestor of an election held in Ohio must prove two facts by clear and convincing evidence to prevail: (1) that one or more irregularities occurred, and (2) that the irregularity or irregularities affected enough votes to change or make uncertain the result of the election.

7 OS(3d) 11, 7 OBR 404, 455 NE(2d) 667 (1983), Hitt v Tressler. RC 3515.14 does not give a court authority to order a new election.

155 OS 366, 98 NE(2d) 812 (1951), Otworth v Bays. Where irregularities in an election are so great and so flagrant in character as to render it impossible to separate the illegal from the legal votes and raise a doubt as to how the election would have resulted had such irregularities not occurred, they must be deemed fatal to the validity of the election and warrant the rejection of the entire vote of the election district.

155 OS 366, 98 NE(2d) 812 (1951), Otworth v Bays. Where, in an election contest, it appears that certain electors, in number several times greater than the plurality of votes awarded by the election authorities to the winning candidate over his opponent, were each delivered two identical ballots; that each such elector voted both ballots so delivered to him thus causing such ballots to be illegally cast; and that such illegal ballots were not subject to identification and rejection; such irregular and illegal voting is of such magnitude as to require the court to declare such election void and to set it aside.

133 OS 395, 14 NE(2d) 15 (1938), Mehling v Moorehead. Since definite remedy in contest of election is provided by this section, resort to proceedings in quo warranto is not proper.

131 OS 13, 1 NE(2d) 146 (1936), Heffner v State. Where the remedy for contest of election under the statute providing the procedure therefor is not available, an action in quo warranto may be maintained.

131 OS 13, 1 NE(2d) 146 (1936), Heffner v State. The names of H and K were on the ballot as candidates for justice of the peace at the November 1933 election. Although there were two such positions open, the only notice the electors had was to the effect that one justice of the peace was to be elected; the notice of proclamation of election contained no information on the subject; and on the ballot, printed immediately above the names of the candidates, were the words, "Vote for not more than one." The count disclosed that 529 votes had been cast at that election; and that K had received 349 votes, H 80, and E, whose name had been written in the blank space on the ballot, 24 votes. No voter had voted for more than one candidate. A certificate of election was issued to H as well as to K, and, pursuant thereto, a commission; and thereafter H gave bond and assumed the office. Held: (1) H is not entitled to the office; (2) title to such office may be challenged by action in quo warranto.

125 OS 440, 181 NE 868 (1932), Stratton v Moore. Under this section, when the court of common pleas finds, in an election contest, that no person was duly elected, the judgment shall be that the election be set aside.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. Where three persons innocently and not fraudulently were not residents of a school district and voted, a failure to show any dereliction of any duty, or failure to follow any statute on the part of the election officials regarding such three votes, and where the record fails to show that contestants ever appointed challengers or exercised any challenges as provided by statute, the fact that the three votes, regarding them most beneficial to the challengers would make the election uncertain, will not cause the court to void the election.

80 Abs 373, 159 NE(2d) 807 (CP, Clark 1959), Leffel v Brown. On the evidence local option election should be set aside as a result of unqualified voters erroneously voting on certain issues due to mistakes in use of voting machines.

3515.15 Appeal on questions of law to supreme court

The person against whom judgment is rendered in a contest of election may appeal on questions of law, within twenty days, to the supreme court; but such appeal shall not supersede the execution of the judgment of the court. Such appeal takes precedence over all other causes upon the calendar, and shall be set down for hearing and determination at the earliest convenient date. The laws and rules of the court governing appeals apply in the appeal of contested election cases. If the judgment of the lower court is affirmed, the supreme court shall order the judgment of such lower court to be enforced, if the party against whom the judgment is rendered is in possession of the office.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-172

PRACTICE AND STUDY AIDS

Whiteside, Ohio Appellate Practice, Text 8.01

CROSS REFERENCES

Days counted to ascertain time, 1.14
Supreme court docket, order of cases, 2503.37, 2503.38
Trial of contested elections, O Const Art II §21
Supreme court rules of practice, SCt R 1 to 15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196, 197, 210, 214, 216, 217, 219, 267
Am Jur 2d: 26, Elections § 358 to 362

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

135 OS 369, 21 NE(2d) 108 (1939), Jolly v Deeds. Former GC 4785-172 (RC 3515.15) is a valid exercise of grant of legislative power expressed in O Const Art II §21, and direct appeals from court of common pleas to the supreme court are procedurally proper inasmuch as they are addressed to the political rather than the judicial power of the supreme court in cases contesting the validity of elections.

2. In general

56 OS(2d) 67, 381 NE(2d) 1128 (1978), Modarelli v Carney. An appeal of an election contest filed pursuant to RC 3515.15 will be dismissed by the supreme court when the appellant has not been granted permission to appeal and no debatable constitutional question is presented.

56 OS(2d) 67, 381 NE(2d) 1128 (1978), Modarelli v Carney. RC 3515.15 does not authorize a review of the rulings of the chief justice of the Supreme Court in an election contest proceeding heard pursuant to RC 3515.08.

159 OS 186, 111 NE(2d) 395 (1953), Bees v Gilronan. Unless leave is granted to appeal an election contest to the supreme court on questions of law, the appeal will be dismissed on motion.

159 OS 184, 111 NE(2d) 394 (1953), Young v Fiedler. Contested election may not be appealed directly to the supreme court without its leave.

146 OS 4, 63 NE(2d) 438 (1945), State ex rel Wilson v Court of Common Pleas. Section provides an adequate remedy at law to one whose contest of an election is dismissed in trial court on jurisdictional grounds, and mandamus will not lie to compel trial court to hear issues on the merits.

130 OS 243, 199 NE 74 (1935), Foraker v Perry Twp Rural School Dist Bd of Ed. By virtue of this section, a petition in error from a common pleas court to the supreme court in such case may not be filed without the leave of the supreme court or a judge thereof.

52 App 474, 3 NE(2d) 923 (1935), Davis v Watts; affirmed by 130 OS 243, 199 NE 74 (1935), Foraker v Perry Twp Rural School Dist Bd of Ed. Since Ohio courts have no jurisdiction over election contests apart from statute, this court has no jurisdiction to review the judgment of the court of common pleas in such a contest, as this section, providing that a person in an election contest against whom a judgment is rendered may prosecute error within twenty days to the supreme court, gives no jurisdiction to the court of appeals.

3515.16 Testimony in supreme court

In a contest of election in the supreme court, all testimony shall be in the form of depositions. The contestor shall take and file his testimony within twenty days from the date of filing the petition, unless further time is allowed by the court or judge hearing the contest. The contestee or the committee defending the issue shall file its testimony within twenty days from the expiration of the contestor's time, unless such court or judge allows further time. The court may render such judgments and make such orders as the law and facts warrant, including judgment of ouster and induction, and the judgment of the supreme court shall be decisive of the contest.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-173

CROSS REFERENCES

Days counted to ascertain time, 1.14
Falsehoods in proceedings relating to elections; fine and imprisonment, 3599.36
Refusal to appear, produce materials, or answer questions at election proceeding; penalty, 3599.37
Trial of contested elections, O Const Art II §21
Depositions, Civ R 27 to 31

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 185, 196, 197, 210, 214, 216, 217, 219, 267
Am Jur 2d: 26, Elections § 357 to 362

Chapter 3517

CAMPAIGNS; POLITICAL PARTIES

DEFINITIONS

3517.01 Definitions

FORMATION OF NEW POLITICAL PARTY

3517.011 Form of petition
3517.012 Legal existence of new party
3517.013 Candidates of new parties exempted for four years
3517.014 Candidates of new parties exempted at first primary
3517.015 Signers of declarations of candidacy for new party deemed members regardless of prior political affiliation
3517.016 Any elector may vote the new party ballot at its first primary election

COMMITTEES

3517.02 Election of controlling committees; filing of constitution and bylaws, and list of members
3517.03 Party controlling committees
3517.04 Meetings and organization of major party central committees
3517.05 Term of committee members; vacancies; rightful county central or executive committee
3517.06 Lists of members of party committees filed; report of changes

UN-AMERICAN ACTIVITIES OF PARTY

3517.07 Parties or groups engaged in un-American activities barred from ballot

RECEIPTS AND EXPENDITURES; ELECTIONS COMMISSION

3517.08 Matters not considered contribution or expenditure
3517.081 Campaign committee; designation of treasurer; filing statements
3517.082 Corporation establishing political action committee or campaign fund; employee contributions
3517.09 Solicitations forbidden
3517.091 Door-to-door solicitations for contributions
3517.10 Times for filing statement of contributions and expenditures; contents
3517.101 Gifts to political parties for office facilities
3517.11 Procedures relating to reports of contributions and expenditures; fines; appeals
3517.12 Report of receipts and expenditures on initiative and referendum petitions
3517.13 Prohibited activities
3517.14 Elections commission; appointment; terms; compensation; conflict of interest; meetings; staff provided
3517.15 Rules; investigations; alternate procedures in case commission finds violation; advisory opinions

POLITICAL PARTY FUND

3517.16 Deposit of moneys into fund

3517.17 Division of moneys in fund among political parties
3517.18 Purposes for which moneys from fund may be used by political parties

SALE OF LISTS TO FINANCIAL INSTITUTIONS

3517.19 Sale of contributor, membership, or mailing lists to financial institutions

PENALTIES

3517.99 Penalties
3517.991 Commission to establish schedule of fines

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 15.69

CROSS REFERENCES

Elections, candidacy, contributions and expenditures, OAC Ch 111-1 to 111-5, 111:1-1

Regulation of legislative agents, exceptions, 101.76

Financial statement of public officer to be filed with ethics commission, 102.02

Operations improvement task force, compensation, 107.40

Lobbying, solicitation or acceptance of political contributions or expenditures not affected by law governing, 121.66

Party recommendations for board of elections vacancy, appointment, 3501.07

Offenses and penalties, political communications must be identified, 3599.09

NOTES ON DECISIONS AND OPINIONS

60 USLW 4075 (US 1992), Norman v Reed. Citizens' federal right to establish new political parties arises under the First and Fourteenth Amendments and furthers the constitutional interest of likeminded voters to gather and pursue common political ends and thereby enlarge all voters' opportunity to express political preferences; accordingly, new parties' ballot access may be limited by a severe restriction only if narrowly drawn to advance a compelling state interest. Where a state statute allows a new party to field candidates for offices in a large political subdivision only after collecting 25,000 signatures of subdivision voters (the same number needed of state voters to field candidates for state office), and if the subdivision has large separate districts for some offices then 25,000 signatures from each district, a decision of the state supreme court that a party's inability to get enough signatures in one district of a two-district subdivision dooms the party's entire slate in both districts is not the least restrictive means to advance the state's interest in limiting the ballot to parties with demonstrated public support since it requires twice as much support here for candidates in a county as is needed for statewide candidates. (Ed. note: Illinois law construed in light of federal constitution.)

489 US 214, 109 SCt 1013, 103 LEd(2d) 271 (1989), Eu v San Francisco County Democratic Central Committee. A state election law forbidding the official governing bodies of political parties to endorse or oppose candidates, punishing candidates who claim a party endorsement, restricting organization and composition of the governing bodies, limiting terms of office, and requiring rotation of office between residents of two different state sections is invalid under US Const Am 1 and 14; state regulation of internal political party affairs is justified only when shown necessary to ensure that elections are orderly, fair, and honest. (Ed. note: California law construed in light of federal constitution.)

842 F(2d) 825 (6th Cir Ohio 1988), Connaughton v Harte Hanks Communications, Inc; affirmed by 491 US 657, 109 SCt 2678, 105 LEd(2d) 562 (1989). The press is not released from liability for reckless or intentional publication of falsehoods simply because it is reporting on an election campaign or possible political misconduct.

DEFINITIONS

3517.01 Definitions

(A) A political party within the meaning of Title XXXV of the Revised Code is any group of voters which, at the last preceding regular state election, polled for its candidate for governor in the state or nominees for presidential electors at least five per cent of the entire vote cast for such office or which filed with the secretary of state, subsequent to any election in which it received less than five per cent of such vote, a petition signed by qualified electors equal in number to at least one per cent of the total vote for governor or nominees for presidential electors 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 primary election, held in even-numbered years, that occurs more than one hundred twenty days after the date of filing. No such group of electors shall assume a name or designation that is 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 five per cent of the total vote cast at an election for the office of governor or president it shall cease to be a political party.

(B) Notwithstanding the definitions found in section 3501.01 of the Revised Code, as used in sections 3517.08 to 3517.15 and section 3517.99 of the Revised Code:

(1) "Campaign committee" means a candidate or a combination of two or more persons authorized by a candidate under section 3517.081 of the Revised Code to receive contributions and make expenditures.

(2) "Campaign treasurer" means an individual appointed by a candidate under section 3517.081 of the Revised Code.

(3) "Candidate" has the same meaning as in division (H) of section 3501.01 of the Revised Code and also includes any person who, at any time before or after an election, receives contributions or makes expenditures or other use of contributions, has given consent for another to receive contributions or make expenditures or other use of contributions, or appoints a campaign treasurer, for the purpose of bringing about his nomination or election to public office. When two persons jointly seek the offices of governor and lieutenant governor, "candidate" means the pair of candidates jointly. "Candidate" does not include candidates for election to the offices of member of a county or state central committee, presidential elector, and delegate to a national convention or conference of a political party.

(4) "Continuing association," as used in section 3517.08 of the Revised Code, means an association, other than a campaign committee or political party, which is intended to be a permanent organization which has a primary purpose other than supporting or opposing specific candidates, political parties, or ballot issues, and which functions on a regular basis throughout the year.

(5) "Contribution" means a loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, transfer of funds or transfer of anything of value, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, which contribution is made, received, or used for the purpose of influencing the results of an election. "Contribution" does not include:

(a) Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a person;

(b) Ordinary home hospitality;

(c) The personal expenses of a volunteer paid for by that volunteer campaign worker;

(d) Any gift given to a state or county political party pursuant to section 3517.101 of the Revised Code. As used in division (B)(5)(d) of this section, "political party" means only a major political party.

(6) "Expenditure" means the disbursement or use of a contribution for the purpose of influencing the results of an election or of making a charitable donation under division (G) of section 3517.08 of the Revised Code.

(7) "Personal expenses" include, but are not limited to, ordinary expenses for accommodations, clothing, food, personal motor vehicle or airplane, and home telephone.

(8) "Political action committee" means a combination of two or more persons the primary or incidental purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election, and that is neither a political party nor a campaign committee.

(9) "Public office" means any state, county, municipal, township, and district office, except an office of a political party, that is filled by an election and the offices of United States senator and congressman.

(10) "Anything of value" has the same meaning as in section 1.03 of the Revised Code.

(11) "Beneficiary of a campaign fund" means a candidate, a public official or employee for whose benefit a campaign fund exists, and any other person who has ever been a candidate or public official or employee and for whose benefit a campaign fund exists.

(12) "Campaign fund" means money or other property, including contributions.

(13) "Public official or employee" has the same meaning as in section 102.01 of the Revised Code.

HISTORY: 1989 S 6, eff. 10-30-89
1986 H 428, H 300, H 639; 1974 S 46; 1971 S 460; 1969 S 24; 1953 H 1; GC 4785-61

CROSS REFERENCES

"Cash" defined, OAC 111-5-11

Candidate's contributions to own campaign must be reported, OAC 111-5-13

Public officials and employees, campaign contributions, 102.03

Soliciting or receiving improper compensation, 2921.43

Elections, political party defined, 3501.01

Contributions from medicaid provider, 3599.45

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 29, Criminal Law § 2365; 37, Elections § 220, 225, 231, 234, 235, 241, 243, 244

Am Jur 2d: 25, Elections § 116 et seq.

Validity of percentage of vote or similar requirements for participation by political parties in primary elections. 70 ALR2d 1162

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3517.01 is unconstitutional.

2. In general

31 OS(2d) 193, 287 NE(2d) 806 (1972), State ex rel Kay v Brown. If a national convention of an intermediate or minor political party is held, the only candidates which the secretary of state can accept for a place on the ballot are those chosen by such convention.

393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968), Williams v Rhodes. Ohio election laws with respect to new political party obtaining place on presidential ballot deny equal protection of laws.

424 FSupp 588 (SD Ohio 1976), Kay v Brown. Statute which barred candidate from filing in primary election because within four prior years he had voted in the primary of another party was unconstitutional as applied to candidate whose former party no longer had legal status in Ohio.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing RC 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged.

290 FSupp 983 (SD Ohio 1968), Socialist Labor Party v Rhodes; modified sub nom Williams v Rhodes, 393 US 23, 89 SCt 5, 21 LEd(2d) 24 (1968). Court would not issue injunction compelling state to place name of candidate for president on ballot, but would enjoin state from prohibiting write-in voting.

OAG 75-068. RC Ch 3517 requires a candidate's campaign committee to report all contributions and expenditures, which are in excess of twenty-five dollars, regardless of who made the contributions or expenditures.

OAG 75-068. The changes to RC Ch 3517, effected by 1974 S 46, have no effect upon the identification requirements contained in RC 3599.09, which apply to published campaign materials whether they are designed to defeat or to promote a candidate or an issue.

OAG 75-017. The general assembly did not intend to exclude all candidates who are members of a multi-member public body, such as a board of county commissioners, from the provisions of RC 3517.10(C).

OAG 74-075. The requirement in RC 3517.10(A)(1) of a preelection statement of campaign contributions and expenditures is, pursuant to RC 3517.12, applicable to a political committee which is organized solely for the advocacy of, or opposition to, a proposition or issue submitted to the voters.

OAG 68-013. A political party formed pursuant to RC 3517.01 must have a state convention to nominate its presidential electors pursuant to RC 3513.11, and a national convention to nominate its presidential candidate pursuant to RC 3513.12, in order for its candidate to have a place on the presidential ballot.

OAG 67-039. RC 3517.01 requires that the signatures on the petition be examined and certified in the same manner as referendum petitions and it does not require full compliance with all of the statutes in RC Ch 3519.

1932 OAG 4587. Upon a petition being filed with the secretary of state and the signatures being examined and certified, all as provided in this section, 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.

1930 OAG 1855. The only method provided for the creation of a new party which is entitled to have its name placed upon the ticket is that method provided in this section.

Elections Op 89-5. The balance of a candidate's federal campaign committee fund and of a candidate's state central committee fund may be transferred to the candidate's committee for state or local office, with no limitation on the amount transferred, but the funds to be transferred may not have been received from a source prohibited by the Revised Code; by virtue of the transfers, the federal committee and state central committee are transformed into campaign committees under RC 3517.01(B)(1) and must comply with the reporting requirements for candidate campaign committees. To conform with RC 3517.081, which prohibits individuals to

have more than one campaign committe, only one transfer may be made, the entire balance must be transferred or otherwise distributed, and the donor committee must be terminated at the time its balance is transferred to the candidate's state or local campaign committee.

Elections Op 86-1. Since the terms "board" and "commission" are used in RC Ch 3517 but are not defined there or in any other generally applicable section of the Revised Code, the Ohio elections commission will follow the definitions given by Black's Law Dictionary.

Ethics Op 75-031. A person seeking election to city council who voluntarily withdraws from an election within twenty days after filing his petition of candidacy is no longer a candidate within the purview of section 102.02(A), and therefore is not required to file a financial disclosure statement.

FORMATION OF NEW POLITICAL PARTY

3517.011 Form of petition

The petition required in section 3517.01 of the Revised Code shall be on a form prescribed by the secretary of state. The petition may be presented in separate parts but each part shall contain a full and correct copy of the declaration. Such petition or part petition shall be circulated and signed as required by section 3501.38 of the Revised Code.

HISTORY: 1974 H 662, eff. 9-27-74
1969 S 24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 220, 231, 257, 260, 268, 270
Am Jur 2d: 25, Elections § 6, 116 to 119

3517.012 Legal existence of new party

When a petition meeting the requirements of section 3517.01 of the Revised Code declaring the intention to organize a political party is filed with the secretary of state, the new party comes into legal existence on the date of filing and is entitled to hold a primary election as set out in section 3513.01 of the Revised Code, at the primary election, held in even-numbered years that occurs more than one hundred twenty days after the date of filing.

HISTORY: 1969 S 24, eff. 10-30-69

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 220, 231, 257, 260, 268, 270
Am Jur 2d: 25, Elections § 118 et seq., 123 to 125

3517.013 Candidates of new parties exempted for four years

Section 3513.191 of the Revised Code does not apply to persons desiring to become candidates for party nomination of a newly formed political party meeting the requirements of sections 3517.011 and 3517.012 of the Revised Code for a period of four calendar years from the date of the party formation.

HISTORY: 1969 S 24, eff. 10-30-69

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 220, 231, 257, 260, 268, 270
Am Jur 2d: 25, Elections § 116 to 125

NOTES ON DECISIONS AND OPINIONS

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

3517.014 Candidates of new parties exempted at first primary

Those provisions of section 3513.19 of the Revised Code relating to the determination of membership in or political affiliation with a party do not apply to persons desiring to become candidates for party nomination of a newly formed political party meeting the requirements of sections 3517.011 and 3517.012 of the Revised Code at the first primary held by that party in the even-numbered year occurring subsequent to the formation of that party.

HISTORY: 1969 S 24, eff. 10-30-69

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 220, 231, 257, 260, 268, 270
Am Jur 2d: 25, Elections § 116 to 125

NOTES ON DECISIONS AND OPINIONS

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

3517.015 Signers of declarations of candidacy for new party deemed members regardless of prior political affiliation

Qualified electors who signed declarations of candidacy of persons desiring to become candidates for party nomination of a newly formed political party meeting the requirements of sections 3517.011 and 3517.012 of the Revised Code at the first primary election held by that party in the even-numbered year subsequent to the party formation are not subject to section 3513.19 of the Revised Code and shall, for the purpose of signing said declarations of candidacy, be deemed members of the newly formed political party regardless of prior political affiliations.

HISTORY: 1969 S 24, eff. 10-30-69

CROSS REFERENCES

False signature forbidden, 3599.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 220, 231, 257, 260, 268, 270
Am Jur 2d: 25, Elections § 116 to 125

NOTES ON DECISIONS AND OPINIONS

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

3517.016 Any elector may vote the new party ballot at its first primary election

At the first primary election held by a newly formed political party meeting the requirements of sections 3517.011 and 3517.012 of the Revised Code, any qualified elector who desires to vote the new party primary ballot is not subject to section 3513.19 of the Revised Code and shall be allowed to vote the new party primary ballot regardless of prior political party affiliation.

HISTORY: 1969 S 24, eff. 10-30-69

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 220, 231, 257, 260, 268, 270
Am Jur 2d: 25, Elections § 117 et seq.

NOTES ON DECISIONS AND OPINIONS

337 FSupp 1405 (ND Ohio 1971), Lippitt v Cipollone; affirmed by 404 US 1032, 92 SCt 729, 30 LEd(2d) 725 (1972). Ohio statutes seeking to prevent "raiding" of one party by members of another party and to preclude candidates from "altering their political party affiliations for opportunistic reasons" are valid.

COMMITTEES

3517.02 Election of controlling committees; filing of constitution and bylaws, and list of members

All members of controlling committees of a major or intermediate 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 such controlling committee shall be a resident and qualified elector of the district, ward, or precinct which he is elected to represent. All members of controlling committees of a minor political party shall be determined in accordance with party rules.

Each political party shall file with the office of the secretary of state a copy of its constitution and bylaws, if any, within thirty days of adoption or amendment. Each such party shall also file with the office of the secretary of state a list of members of its controlling committees, and other party officials within thirty days of their election or appointment.

HISTORY: 1992 H 700, § 10, eff. 6-30-92
1985 H 160, § 1, 3; 1984 S 358, § 1, 3; 1971 S 460; 1953 H 1; GC 4785-62

Note: 1992 H 700, § 10, eff. 4-1-92, suspended the operation of the amendment of this section by 1984 S 358, § 3, as subsequently amended by 1985 H 160, § 3, to take effect 5-31-92, from 5-31-92 to 6-30-92.

CROSS REFERENCES

Days counted to ascertain time, 1.14
Members of legislative authority may hold political party posts, 705.12
Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4, 6
Members of board of tax appeals and employees not to serve on political party committee, 5703.03
Prohibition against political activity by certain tax officials, 5715.51

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 116, 227, 229, 230, 231, 262
Am Jur 2d: 25, Elections § 123 et seq., 127

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3517.02 is unconstitutional.

2. In general

14 OS(2d) 129, 237 NE(2d) 133 (1968), State ex rel Bargahiser v Richland County Bd of Elections. Candidates for state central committee who knew that the board of elections had refused to certify their names as of February 17, were barred by laches upon bringing a mandamus action on April 15 to require their names to be placed on a primary ballot for a May 7 election.

161 OS 341, 119 NE(2d) 279 (1954), State ex rel Lakes v Young. Temporary removal of a voter and his family from a township did not constitute a change or abandonment of voting residence.

111 OS 353, 145 NE 324 (1924), State ex rel Wing v Farrell. A voluntary political organization whose controlling committees were elected in the prescribed manner was not entitled to witnesses, challengers and inspectors at polling places.

49 App 103, 195 NE 262 (1934), State ex rel Schroer v Schirmer. A candidate for county central committeeman for a certain ward is not entitled to have his name placed upon the ballot for the office covered by his declaration of candidacy when, at the time his declaration of candidacy was filed, he was a resident of such ward but was not duly registered as an elector thereof, although he transferred his registration to such ward four days after filing his declaration of candidacy. (See also State ex rel Patterson v Schirmer, 129 OS 143, 194 NE 13 (1934).)

1 Misc 70, 205 NE(2d) 599 (CP, Franklin 1964), State ex rel Metzger v Brown. Where a member of a county executive committee moved out of the county, the committee was justified in naming a successor.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing RC 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged.

1962 OAG 3295. The action of a municipality in realigning the wards of a city and the action of a board of elections in rearranging the boundaries of the precincts within the county 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, but 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.

1962 OAG 3108. A person who has moved out of a county to enter employment with the state and has retained his residence for voting purposes is an elector and resident of such precinct and may

be appointed a county central committeeman and chairman of the county executive committee of his party in that county.

1950 OAG 1680. A requirement 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.

3517.03 Party controlling committees

The controlling committees of each major political party or organization shall be a state central committee consisting of two members, one a man and one a woman, representing either each congressional district in the state or each senatorial district in the state, as the outgoing committee determines; a county central committee consisting of one member from each election precinct in the county, or of one member from each ward in each city and from each township in the county, as the outgoing committee determines; and such district, city, township, or other committees as the rules of the party provide.

All the members of such committees shall be members of the party and shall be elected for terms of either two or four years, as determined by party rules, by direct vote at the primary held in an even-numbered year. Candidates for election as state central committee members shall be elected at primaries in the same manner as provided in sections 3513.01 to 3513.32 of the Revised Code, for the nomination of candidates for office in a county. Candidates for election as members of the county central committee shall be elected at primaries in the same manner as provided in such sections for the nomination of candidates for county offices.

Each major party controlling committee shall elect an executive committee which shall have such powers as are granted to it by the party controlling committee, and as are provided by law. When a judicial, senatorial, or congressional district is comprised of more than one county, the chairman and secretary of the county central committee from each county in such district shall constitute the judicial, senatorial, or congressional committee of such district. When a judicial, senatorial, or congressional district is included within a county, the county central committee shall constitute the judicial, senatorial, or congressional committee of such district.

The controlling committee of each intermediate political party or organization shall be a state central committee consisting of two members, one a man and one a woman, from each congressional district in the state. All members of such committee shall be members of the party and shall be elected by direct vote at the primary held in the even-numbered years. Candidates for election shall be elected at the primary in the same manner as provided in sections 3513.01 to 3513.32 of the Revised Code. An intermediate political party may have such other party organization as its rules provide. Each intermediate party shall file the names and addresses of its officers with the secretary of state.

A minor political party may elect controlling committees at a primary election in the even-numbered year by filing a plan for party organization with the secretary of state on or before the ninetieth day before the day of the primary election. Such plan shall specify which offices are to be elected and provide the procedure for qualification of candidates for such offices. Candidates to be elected pursuant to such plan shall be required to be designated and qualified on or before the ninetieth day before the day of the election. Such parties may, in lieu of electing a controlling committee or other officials, choose such committee or other officials in accordance with party rules. Each such party shall file the names and addresses of members of its controlling committee and party officers with the secretary of state.

HISTORY: 1992 H 700, § 11, eff. 6-30-92
1989 S 6, § 1, 3; 1985 H 160, § 1, 3; 1984 S 358, § 1, 3; 1971 S 460; 1953 H 1; GC 4785-63

Note: 1992 H 700, § 11, eff. 4-1-92, suspended the operation of the amendment of this section by 1989 S 6, § 3, eff. 5-31-92, from 5-31-92 to 6-30-92.

CROSS REFERENCES

Public officers—ethics, certain political party officers and employees not "public employees", 102.01
Filling of village office vacancies, 733.31
General and special election, challengers and witnesses, service of committee member, 3505.21
Primary elections, Ch 3513
Designation of candidates, 3513.04
Party committeemen shall not give proxies, 3599.35
When limitation of membership by sex forbidden, 4112.02
Government instituted for equal protection and benefit of the people, O Const Art I §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 229 to 231, 233, 257, 258
Am Jur 2d: 25, Elections § 123 et seq.

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3517.03 is unconstitutional.

2. In general

14 OS(2d) 129, 237 NE(2d) 133 (1968), State ex rel Bargahiser v Richland County Bd of Elections. Candidates for state central committee who knew that the board of elections had refused to certify their names as of February 17, were barred by laches upon bringing a mandamus action on April 15 to require their names to be placed on a primary ballot for a May 7 election.

161 OS 341, 119 NE(2d) 279 (1954), State ex rel Lakes v Young. Temporary removal of a voter and his family from a township did not constitute a change or abandonment of voting residence.

143 OS 604, 56 NE(2d) 167 (1944), State ex rel Humker v Hummel. Secretary of state has no right to investigate and determine whether county executive committee making recommendation of person for appointment to county board of elections was constituted in accordance with law, where such committee was sole group functioning as such committee and was universally recognized as such executive committee, and mandamus will lie to compel secretary of state to appoint person recommended.

133 OS 619, 15 NE(2d) 348 (1938), State ex rel Devitt v Kennedy. In absence of rules of central committee to contrary, presumption is that members of executive committee appointed under this section continue to serve from their election until next primary election unless they resign, die or are removed for cause.

9 App(2d) 280, 224 NE(2d) 353 (1967), State ex rel McCurdy v DeMaioribus. In the absence of a specific statute to the contrary, there is no requirement that the chairman of a county central committee of a political party be an elected member thereof.

98 App 89, 128 NE(2d) 121 (1954), State ex rel Wiethe v Bd of Elections of Hamilton County. The trial court properly denied relator's request for a mandatory injunction ordering his name placed on the ballot as candidate for the central committee from a designated ward where his petition stated that he was a candidate from a precinct of the ward.

80 App 70, 74 NE(2d) 759 (1946), State ex rel Pfeifer v Stoneking. This section, prescribing that outgoing party county central committee shall determine whether representation on such committee shall be by wards and townships or by precincts being silent as to when that action shall be taken, court will not fix time for determination, such being matter of policy to be settled by members of party.

80 App 70, 74 NE(2d) 759 (1946), State ex rel Pfeifer v Stoneking. Where petitions for candidates for membership on party county central committee from precincts are circulated and acknowledged prior to last day for filing nominating petitions, on which day outgoing committee lawfully adopts and files with county board of elections a resolution providing for representation on committee by precincts, and are filed with board on that day shortly after time of such filing of resolution, they are valid, speaking from time of their filing, and action of board in accepting them is not arbitrary or illegal.

75 App 194, 58 NE(2d) 483 (1944), Fifty West Broad Street, Inc v Poulson. A chairman of the state executive committee of a political party, who executes a lease on behalf of the committee for office space which was thereafter occupied by the committee, is, in the absence of any agreement to the contrary, not personally liable for the rent under such lease.

37 Misc 3, 305 NE(2d) 820 (CP, Hamilton 1973), Mann v Hamilton County Bd of Elections. Courts would not order board of elections to realign precincts merely because precincts using voting machines were permitted to include more than 400 electors.

1 Misc 70, 205 NE(2d) 599 (CP, Franklin 1964), State ex rel Metzger v Brown. Where a member of a county executive committee moved out of the county, the committee was justified in naming a successor.

67 Abs 170, 117 NE(2d) 227 (CP, Mongtomery 1953), Hammond v Young. In a charter city in which all city commissioners are elected at large the commission and not the board of elections has the authority to redivide the city into wards for election purposes.

707 FSupp 323 (SD Ohio 1989), Banchy v Hamilton County Republican Party; affirmed by 898 F(2d) 1192 (6th Cir Ohio 1990). While RC 3517.03 commands the selection of an executive committee, it does not set forth the manner of selecting its members, which may therefore be established by a party's constitution; the party's act of designating a manner of selection, and the actual selection of members at a primary election, are not "state action" for purposes of 42 USC 1983.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing RC 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged.

1962 OAG 3295. The action of a municipality in realigning the wards of a city and the action of a board of elections in rearranging the boundaries of the precincts within the county 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, but 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.

1935 OAG 3978. The removal of the chairman of a county central committee from the precinct from which he was elected creates a vacancy in the office of chairman of such county central committee, since such person thereby ceases to be a member of such committee.

3517.04 Meetings and organization of major party central committees

The members-elect of each major political party state central committee shall, except as otherwise provided in this section, meet following the declaration of the results by the boards of elections of the election of members of the state central committees, at a suitable place and time to be designated by the retiring chairman of the committee in accordance with party rules. In the case of a county central committee, the meeting shall be held not earlier than six nor later than fifteen days following the declaration of the results by the board of elections of the election of members of county central committees in that county. Notice of any meeting held pursuant to this section, giving the place and time, shall be sent to each member-elect by the retiring secretary of the committee by mail and a copy of the notice shall be posted in the office of the secretary of state or board of elections, as the case may be, at least five days prior to any such meeting. The meeting shall be called to order by the retiring chairman or secretary or if there is no such officer, or if such officer is absent, then by a member of such committee designated by the secretary of state in the case of the state committees, and by a member of the board of elections of the same political party, designated by the board, in the case of county committees. A temporary chairman and secretary shall be chosen and the committee shall proceed to organize by the election of a chairman, vice-chairman, treasurer, secretary, and such other officers as the rules provide.

HISTORY: 1989 S 6, eff. 10-30-89
1986 H 555; 1978 H 655; 1971 S 460; 1953 H 1; GC 4785-64

CROSS REFERENCES

Days counted to ascertain time, 1.14
Party committeemen shall not give proxies, 3599.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 223, 229 to 232, 268
Am Jur 2d: 25, Elections § 123 to 125

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3517.04 is unconstitutional.

2. In general

9 App(2d) 280, 224 NE(2d) 353 (1967), State ex rel McCurdy v DeMaioribus. In the absence of a specific statute to the contrary, there is no requirement that the chairman of a county central committee of a political party be an elected member thereof.

75 App 194, 58 NE(2d) 483 (1944), Fifty West Broad Street, Inc v Poulson. A chairman of the state executive committee of a political party, who executes a lease on behalf of the committee for office space which was thereafter occupied by the committee, is, in the absence of any agreement to the contrary, not personally liable for the rent under such lease.

1 Misc 70, 205 NE(2d) 599 (CP, Franklin 1964), State ex rel Metzger v Brown. Where a member of a county executive committee moved out of the county, the committee was justified in naming a successor.

60 USLW 4075 (US 1992), Norman v Reed. Citizens' federal right to establish new political parties arises under the First and

Fourteenth Amendments and furthers the constitutional interest of likeminded voters to gather and pursue common political ends and thereby enlarge all voters' opportunity to express political preferences; accordingly, new parties' ballot access may be limited by a severe restriction only if narrowly drawn to advance a compelling state interest. Where a state statute allows a new party to field candidates for offices in a large political subdivision only after collecting 25,000 signatures of subdivision voters (the same number needed of state voters to field candidates for state office), and if the subdivision has large separate districts for some offices then 25,000 signatures from each district, a decision of the state supreme court that a party's inability to get enough signatures in one district of a two-district subdivision dooms the party's entire slate in both districts is not the least restrictive means to advance the state's interest in limiting the ballot to parties with demonstrated public support since it requires twice as much support here for candidates in a county as is needed for statewide candidates. (Ed. note: Illinois law construed in light of federal constitution.)

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. State officials enjoined from enforcing RC 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged.

3517.05 Term of committee members; vacancies; rightful county central or executive committee

All party committees, the selection of which is provided for in sections 3517.02 and 3517.03 of the Revised Code, shall, except as otherwise provided in this section, serve until the date of the organizational meeting provided for in section 3517.04 of the Revised Code. A county central committee shall serve until the sixth day after the date of the declaration of the results by the board of elections of the primary election in that county. 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.

If more than one organized group claims to be the rightful county central or executive committee, each such group shall file a list of its officers and members as provided in section 3517.06 of the Revised Code, and the board of elections with which such lists are filed shall certify them to the state central committee of the party concerned. The state central committee shall meet within thirty days after receipt of such certification and forthwith determine and certify which committee shall be recognized as the rightful county central or executive committee.

HISTORY: 1978 H 655, eff. 10-19-78
1953 H 1; GC 4785-65

CROSS REFERENCES

Days counted to ascertain time, 1.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 223, 229 to 232, 268
Am Jur 2d: 25, Elections § 123 to 125

NOTES ON DECISIONS AND OPINIONS

136 OS 526, 27 NE(2d) 142 (1940), State ex rel O'Neil v Griffith. If a person recommended by a county executive committee of his party is found to be competent, it is the duty of the secretary of state to appoint him, and it is only when conflicting recommendations are made by more than one committee, each claiming to be the rightful executive committee, that the secretary of state is authorized and required to call upon the state central committee of such party to determine and certify which is the rightful county executive committee of such party.

136 OS 526, 27 NE(2d) 142 (1940), State ex rel O'Neil v Griffith. GC 4785-9 (RC 3501.07) and this section are in pari materia and full effect must be given to provisions of both sections if the same can be reconciled.

1962 OAG 3295. The action of a municipality in realigning the wards of a city and the action of a board of elections in rearranging the boundaries of the precincts within the county 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, but 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.

1962 OAG 3108. A person who has moved out of a county to enter employment with the state and has retained his residence for voting purposes is an elector and resident of such precinct and may be appointed a county central committeeman and chairman of the county executive committee of his party in that county.

1950 OAG 1680. If due to action of a county board of elections rearranging, changing or dividing precincts, 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 to fill the vacancy thus created.

3517.06 Lists of members of party committees filed; report of changes

A list of the names and addresses of the members and officers of the county central committee and the county executive committee of each political party shall be filed by the secretary of each committee in the office of the board of elections of the county in which such committee exists and in the office of the secretary of state promptly after the organization of each of such committees. A list of the names and addresses of the members of the state central committee and the state executive committee of each political party shall be filed by the secretary of each committee in the office of the secretary of state promptly after the organization of each of such committees.

All changes occurring in the membership of a county central or executive committee after such filing shall be reported promptly by the secretary of such committee to the board and to the secretary of state. All changes occurring in the membership of a state central or executive committee after such filing shall be reported promptly by the secretary of such committee to the secretary of state. All such lists shall be open to public inspection at all times when the offices in which they are filed are open for business.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-66

CROSS REFERENCES

Public records, availability, 149.43

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 223, 229 to 232, 268
Am Jur 2d: 25, Elections § 123

UN-AMERICAN ACTIVITIES OF PARTY

3517.07 Parties or groups engaged in un-American activities barred from ballot

No political party or group which advocates, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or which carries on a program of sedition or treason by radio, speech, or press or which has in any manner any connection with any foreign government or power or which in any manner has any connection with any group or organization so connected or so advocating the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press shall be recognized or be given a place on the ballot in any primary or general election held in the state or in any political subdivision thereof.

Any party or group desiring to have a place on the ballot shall file with the secretary of state and with the board of elections in each county in which it desires to have a place on the ballot an affidavit made by not less than ten members of such party, not less than three of whom shall be executive officers thereof, under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government; that it does not carry on any program of sedition or treason by radio, speech, or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press.

Said affidavit shall be filed not less than six nor more than nine months prior to the primary or general election in which the party or group desires to have a place on the ballot. The secretary of state shall investigate the facts appearing in the affidavit and shall within sixty days after the filing thereof find and certify whether or not this party or group is entitled under this section to have a place on the ballot.

Any qualified member of such party or group or any elector of this state may appeal from the finding of the secretary of state to the supreme court of Ohio.

This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-100a, 4785-100b

CROSS REFERENCES

Days counted to ascertain time, 1.14
County treasurer, Ch 321
False signature forbidden, 3599.28
Citizens may alter, reform, or abolish their government, O Const Art I §2
Freedom of speech and press; limits, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 223, 229 to 232, 268
Am Jur 2d: 25, Elections § 141, 175
Validity of governmental requirement of oath of allegiance or loyalty. 18 ALR2d 268

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

42 Abs 40, 59 NE(2d) 238 (App, Franklin 1944), State ex rel Berry v Hummel. GC 4785-100 (Repealed) is not unconstitutional as being in derogation of any provision of our state or federal constitutions.

406 US 583, 92 SCt 1716, 32 LEd(2d) 317 (1972), Socialist Labor Party v Gilligan. Supreme court will not pass on constitutionality of requirement that political party file an affidavit that party is not engaged in an attempt to overthrow government by force or violence, is not associated with a group making such an attempt, and does not carry on a program of sedition or treason as defined by criminal law.

318 FSupp 1262, 29 Misc 111 (SD Ohio 1970), Socialist Labor Party v Rhodes. RC 3517.07, narrowly construed to require an oath that (1) the party is not engaged in an attempt to overthrow the government by force or violence, (2) the party does not carry on a program of sedition or treason as defined by the criminal law and (3) the party is not knowingly associated with a group attempting to overthrow the government by force or violence, is constitutional.

2. In general

150 OS 127, 80 NE(2d) 899 (1948), State ex rel Beck v Hummel. Although ordinarily this court will not substitute its judgment for that of secretary of state as to inferences to be drawn from facts developed from his investigation, if he finds and certifies that the party of group on whose behalf the affidavit is made is not entitled to have a place on the ballot, such finding and certification will be reversed and set aside where it appears in record of his investigation that there is no substantial evidence to controvert the truth or the good faith of the affidavit filed.

140 OS 279, 43 NE(2d) 239 (1942), Johnson v Sweeney. This section authorizes an appeal to the supreme court from a finding by the secretary of state.

414 US 441, 94 SCt 656, 38 LEd(2d) 635 (1974), Communist Party of Indiana v Whitcomb. Indiana Statute 29-3812, which requires any existing or newly organized political party to file an affidavit stating that it does not advocate the overthrow of local, state, or national government by violence before its candidates' names will be printed on the ballot, violates US Const Am 1 and 14. (Editor's note: Indiana law construed in light of federal constitution.)

RECEIPTS AND EXPENDITURES; ELECTIONS COMMISSION

3517.08 Matters not considered contribution or expenditure

(A) The personal expenses of a candidate paid for by the candidate, from his personal funds, shall not be considered as a contribution by or expenditure by the candidate, and shall not be reported under section 3517.10 of the Revised Code.

(B) An expenditure by any political action committee or political party shall not be considered a contribution by the political action committee or political party or an expenditure by or on behalf of the candidate if the purpose of the expenditure is to inform only its members by means of mailed publications or other direct communication of its activities or endorsements.

(C) An expenditure by a continuing association or political party shall not be considered a contribution to any campaign committee or an expenditure by or on behalf of any

campaign committee if the purpose of the expenditure is for the staff and maintenance of the continuing association's or political party's headquarters, or for a political poll, survey, index, or other type of measurement not on behalf of a specific candidate.

(D) The expenses of maintaining a constituent office paid for, from his personal funds, by a candidate who is a member of the general assembly at the time of the election shall not be considered a contribution by or an expenditure by or on behalf of the candidate, and shall not be reported, if the constituent office is not used for any candidate's campaign activities.

(E) Expenditures made by any person for a social or fund-raising activity shall not be considered an expenditure by or on behalf of a campaign committee. The net contribution of each such activity shall be calculated by totaling all contributions to the activity minus the expenditures made for the activity.

(F) An expenditure which purchases goods or services shall be attributed to an election when the disbursement of funds is made, rather than at the time the goods or services are used. The secretary of state shall, under the procedures of Chapter 119. of the Revised Code, establish rules for the attribution of expenditures to a candidate when he is a candidate for more than one office during a reporting period and for expenditures made in a year in which no election is held. He shall further define by rule those expenditures which are or are not by or on behalf of a candidate.

(G) An expenditure for the purpose of a charitable donation may be made if it is made to an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), (501)(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code or is approved by advisory opinion of the Ohio elections commission as a legitimate charitable organization. Each such expenditure shall be separately itemized on reports made pursuant to section 3517.10 of the Revised Code.

HISTORY: 1986 H 300, eff. 9-17-86
1986 H 639; 1976 H 1379; 1975 H 205, H 1; 1974 S 46

Note: Former 3517.08 repealed by 1974 S 46, eff. 7-23-74; 130 v H 331; 127 v 165; 125 v 713; 1953 H 1; GC 4785-184.

CROSS REFERENCES

Candidate for more than one office during reporting period, separate campaign committee, accounts, and reports required; expenditures in non-election years, OAC Ch 111-1

Any expenditure under RC 3517.08 to promote, benefit, or endorse more than one candidate is contribution to each candidate in proportion to use; exception, OAC 111-3-01, 111-3-02

Expenditures by others for candidate without his consent, not reported, OAC 111-3-04

Filing fees are not "expenditures" for reporting purposes, not counted against spending limits, OAC 111-3-06

Candidate's contributions to own campaign must be reported, OAC 111-5-13

Offenses and penalties, contributions for illegal purposes, 3599.04

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46

Am Jur 2d: 25 Elections § 182; 26, Elections § 287 to 290, 371.5, 381

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 ALR4th 702

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

NOTES ON DECISIONS AND OPINIONS

119 OS 558, 165 NE 44 (1929), Price v State. A promise made by candidates for the board of trustees of public affairs of a village which owns and operates a public water works, to "furnish without charge, clean wholesome well-water for the community swimming pool during the few summer months it is used rather than compel the children of our town to swim in filtered creek water," did not constitute a corrupt practice under former GC 5175-26 (renumbered GC 4785-184 (RC 3517.08)).

424 US 1, 96 SCt 612, 46 LEd(2d) 659 (1976), Buckley v Valeo. Provisions of federal campaign act limiting individual contributions to political campaigns and requiring their disclosure upheld; however, expenditures by or on behalf of a candidate cannot be limited without abridging First Amendment rights.

111 SCt 1807, 114 LEd(2d) 307 (1991), McCormick v United States. Legislators do not commit the federal crime of extortion under 18 USC 1951, the Hobbs Act, by acting for constituents' benefit or supporting legislation furthering constituents' interests shortly before or after they solicit or receive campaign contributions from those constituents; property is extorted within the comprehension of the Hobbs Act only when an official asserts that his official conduct will be controlled by the terms of the promise or undertaking.

OAG 75-068. RC Ch 3517 requires a candidate's campaign committee to report all contributions and expenditures, which are in excess of twenty-five dollars, regardless of who made the contributions or expenditures.

1957 OAG 1415. RC 3517.08, 3517.10 and 3517.11 do not apply to write-in candidates who did not solicit votes.

1957 OAG 1415. Certificates of election should be issued to candidates who file expense statements within a reasonable time after the election.

1930 OAG 2206. The limitations as to the amount a candidate for public office may spend, are not applicable to amounts which may be spent by a committee or person other than a candidate in order to secure the election or defeat of a candidate, but all such expenditures must be accounted for in an itemized statement.

1930 OAG 2116. Contributions which a candidate may make to a party controlling committee need not be considered in ascertaining the limitations upon the amounts candidates may spend, set forth in this section.

1930 OAG 2006. A candidate for the office of judge of common pleas, probate or insolvency court, may not expend more than five hundred dollars. This section, authorizing an additional expenditure by candidates of five dollars for each one hundred electors in excess of five thousand who voted for governor at the last preceding state election, relates only to candidates for other public offices to be voted for by the qualified electors of a county, city, township or village, or any part thereof, than those limited in clauses "(a)" to "(f)", both inclusive, of this section.

1928 OAG 2493. The limitation on expenditures by candidates for public office contained in the corrupt practice act related to the total amount expended for election, including that which was expended to secure the nomination to such office, whether such nomination was by petition or at a primary election.

3517.081 Campaign committee; designation of treasurer; filing statements

Each candidate shall have no more than one campaign committee for purposes of receiving contributions and making expenditures. No campaign committee shall receive any contribution or make any expenditure other than through the campaign treasurer. The campaign treasurer shall file all statements required of a candidate or campaign committee under section 3517.10 of the Revised Code.

The candidate shall designate himself or a member of his campaign committee as his campaign treasurer as required by division (D) of section 3517.10 of the Revised Code. The campaign treasurer may appoint deputy campaign treasurers as required. Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer when specifically authorized to do so by the campaign treasurer or the candidate.

Each candidate shall file a written statement, as required by division (D) of section 3517.10 of the Revised Code, setting forth the full name and address of the campaign treasurer and also of each deputy treasurer. Each candidate shall file supplemental statements giving the full name and address of each deputy treasurer at the time of appointment.

A candidate may remove the campaign treasurer or any deputy campaign treasurer at any time. In the case of death, resignation, or removal of the treasurer or deputy treasurer before compliance with all obligations of a campaign treasurer, the candidate shall fill the vacancy thus created in the same manner as provided in the case of an original appointment.

HISTORY: 1986 H 428, eff. 12-23-86
1986 H 639; 1974 S 46

Prohibition: 3517.13

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A); Forms 5.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46

Am Jur 2d: 26, Elections § 287 et seq., 381

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

NOTES ON DECISIONS AND OPINIONS

OAG 75-068. RC Ch 3517 requires a candidate's campaign committee to report all contributions and expenditures, which are in excess of twenty-five dollars, regardless of who made the contributions or expenditures.

Elections Op 90-3. The funds of a campaign committee may be used to pay legal expenses incurred by another campaign committee of the same candidate in connection with defending charges against the second committee before the Ohio elections commission only when the first committee's balance is transferred to the second committee and the first committee is terminated.

Elections Op 89-5. The balance of a candidate's federal campaign committee fund and of a candidate's state central committee fund may be transferred to the candidate's committee for state or local office, with no limitation on the amount transferred, but the funds to be transferred may not have been received from a source prohibited by the Revised Code; by virtue of the transfers, the federal committee and state central committee are transformed into campaign committees under RC 3517.01(B)(1) and must comply with the reporting requirements for candidate campaign committees. To conform with RC 3517.081, which prohibits individuals to have more than one campaign committee, only one transfer may be made, the entire balance must be transferred or otherwise distributed, and the donor committe must be terminated at the time its balance is transferred to the candidate's state or local campaign committee.

Elections Op 89-5. A prospective candidate for state or local office may establish a campaign committee without stating on the "Designation of Treasurer" form what office is being sought, but only when the candidate is truly undecided between alternate offices; the "Designation of Treasurer" form must be amended to indicate the specific office being sought immediately upon the decision to seek a specific office, which may be evidenced by the first written or oral public statement (including solicitations for contributions) in which a specific office is named.

Elections Op 87-7. An individual who is or may be a candidate for more than one public office may establish a separate campaign committee for each candidacy, provided each committee is distinct, is established and run in good faith, pays only the expenses of the one candidacy it espouses, has a name reflecting the office sought, and has a treasurer and deputy treasurers who do not hold like positions on the other committee.

3517.082 Corporation establishing political action committee or campaign fund; employee contributions

(A) Any corporation engaged in business in this state or any nonprofit corporation may establish, administer, and solicit contributions from the persons listed in division (B) of this section, to either or both of the following:

(1) A political action committee of the corporation with respect to state and local elections;

(2) A separate segregated fund pursuant to the "Federal Election Campaign Act of 1971," 86 Stat. 11, 2 U.S.C.A. 431, et. seq., as amended.

(B)(1) A corporation engaged in business in this state and a nonprofit corporation may solicit contributions from its stockholders, officers, directors, trustees that are not corporations, and employees.

(2) A nonprofit corporation also may solicit contributions from:

(a) Its members that are not corporations;

(b) Officers, directors, trustees that are not corporations, and employees of any members of the nonprofit corporation.

(C) A corporation shall report to a political action committee, or to a separate segregated fund with respect to state and local elections, the following costs expended by the corporation that are associated with establishing, administering, and soliciting contributions to the political action committee or separate segregated fund pursuant to division (A) of this section:

(1) Mailing and printing expenses for direct solicitation of contributions pursuant to division (D) of this section;

(2) The portion of an employee's salary or wages attributable to time he spends in activities related to establishing, administering, and soliciting contributions to a political action committee or separate segregated fund, if such time

exceeds during a reporting period fifty per cent of the time for which the employee is compensated by the corporation;

(3) The cost associated with the purchase, lease, operation, and use of equipment for activities related to establishing, administering, and soliciting contributions to a political action committee or separate segregated fund if during a reporting period more than fifty per cent of the use of the equipment is for such activities;

(4) Professional fees paid by the corporation for establishing, administering, and soliciting contributions to a political action committee or separate segregated fund.

The political action committee shall itemize the amounts and purposes of such costs expended by the corporation and file them as part of the report required of political action committees under division (A) of section 3517.10 of the Revised Code on a form prescribed by the secretary of state. The separate segregated fund with respect to state and local elections shall file with the secretary of state a copy of the portion of each report and statement required under the "Federal Election Campaign Act of 1971," 86 Stat. 11, 2 U.S.C. 431, et seq., as amended, that applies to state and local elections at the same time that the entire original report is filed in accordance with that act.

(D) Solicitations of contributions pursuant to division (A) of this section from employees other than executive and administrative employees shall be in writing, shall be sent by mail addressed to the employee's residence, and shall not be made more than twice during each calendar year. Any person who solicits any employee of a corporation for a contribution to a political action committee established or administered by the corporation under division (A)(1) of this section shall inform the employee at the time of the solicitation that he may refuse to make a contribution without suffering any reprisal.

HISTORY: 1987 H 354, eff. 9-22-87

Note: Former 3517.082 repealed by 1986 H 300, eff. 9-17-86; 1978 S 465.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Illustrative Forms 7.01 (FT-1120), 7.011 (FT-1120-S)

CROSS REFERENCES

FSL and corporate political action committees; RC 3517.082 corporation defined; soliciting; reports, OAC Ch 111-4

Fines by the election commission for erroneous designation of treasurer, late reports, OAC 111:1-1-10

Corporations, Ch 1701 to Ch 1703

Corporation funds shall not be used to aid political organization, exceptions, 3599.03

Deduction of political contribution from employee's wages, 3599.031

Employer not to influence employees' political actions; penalty, 3599.05

Public utilities taxation, affidavit denying payments to political parties, 5727.61

Corporation's affidavit to tax commissioner denying illegal payments to political organizations, 5733.27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46

Am Jur 2d: 19, Corporations § 2095; 26, Elections § 371.5, 381, 382

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

NOTES ON DECISIONS AND OPINIONS

2 Ohio Law 22 (November/December 1988). Ohio's New Corporate PAC Law, William D. Kloss and Bradley K. Sinnott.

3517.09 Solicitations forbidden

No person or committee shall solicit, ask, invite, or demand, directly or indirectly, orally or in writing, any contribution, subscription, or payment from any candidate for nomination or election or from any campaign committee of any such candidate; nor shall any person solicit, ask, invite, or demand that any such candidate or campaign committee subscribe to the support of any club or organization or buy tickets to any entertainment, ball, supper, or other meeting or pay for space in any book, program, or publication; provided that this section does not apply to regular advertisements in periodicals having an established circulation or to regular payments to civic, political, fraternal, social, charitable, or religious organizations of which the candidate was a member or contributor six months before his candidacy. This section does not apply to the regular party assessments made by a party against its own candidates.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-185

CROSS REFERENCES

Fine for unlawful solicitation of candidate, OAC 111:1-1-10

Party committeemen shall not give proxies, 3599.35

Penalties, 3599.40

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46

Am Jur 2d: 26, Elections § 287 et seq., 381

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

3517.091 Door-to-door solicitations for contributions

(A) Except as otherwise provided in division (E)[6] of this section, any person or organization that makes door-to-door solicitations for contributions to influence legislation, for contributions to influence the actions of any regulatory agency, or for contributions to support or oppose the campaign of any candidate for political office shall report in writing to the secretary of state by the thirty-first day of July of each year with regard to actions taken during the first six months of that calendar year, and by the thirty-first day of January of each year with regard to actions taken during the second six months of the previous calendar year, all of the following:

(1) The name and address of the solicitor and of the organization, if any, for which the solicitation is made, and the name and address of the organization's director or chief executive officer;

(2) The name and address of each person or organization from which it received one or more contributions, and the amount and date of each such contribution;

(3) A complete list of all receipts and expenditures it has made to influence legislation, to influence the actions of any regulatory agency, or to support or oppose the campaign of any candidate for political office.

(B) Before making any solicitation described in division (A) of this section, the solicitor shall give the person being solicited a written notice that contains all of the following:

(1) The information described in division (A)(1) of this section;

(2) A list of any purposes for which money contributed might be used;

(3) The amount of compensation, if any, being paid to the solicitor;

(4) A statement that the person being solicited may refuse to make a contribution without suffering any reprisal.

(C) No person or organization shall fail to comply with the requirements of division (A) or (B) of this section.

(D) This section does not apply to the solicitation activities of any charitable organization as defined in division (H) of section 2915.01 of the Revised Code.

HISTORY: 1987 H 231, eff. 10-5-87

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

NOTES ON DECISIONS AND OPINIONS

No. C87-2379 (ND, Ohio, 2-22-88), Ohio Public Interest Campaign v Brown. RC 3517.091 is unconstitutional and enforcement of the statute is enjoined.

[6]So in original; should this read "division (D)"?

3517.10 Times for filing statement of contributions and expenditures; contents

(A) Except as otherwise provided in this division, every campaign committee, political action committee, and political party which made or received a contribution or made an expenditure in connection with the nomination or election of any candidate or in connection with any ballot issue or question at any election held or to be held in this state shall file, on a form prescribed under this section, a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures, no later than four p.m. of the following dates:

(1) The twelfth day before the election to reflect contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the twentieth day before the election;

(2) The thirty-eighth day after the election to reflect the contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the seventh day before the filing of the statement;

(3) The last business day of January of every year to reflect the contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the last day of December of the previous year.

A campaign committee shall only be required to file the statements prescribed under divisions (A)(1) and (2) of this section in connection with the nomination or election of the committee's candidate.

The statement required under division (A)(1) of this section shall not be required of any campaign committee, political action committee, or political party which has received contributions of less than one thousand dollars and has made expenditures of less than one thousand dollars at the close of business on the twentieth day before the election. Such contributions and expenditures shall be reported in the statement required under division (A)(2) of this section.

If an election to select candidates to appear on the general election ballot is held within sixty days before a general election, the campaign committee of a successful candidate in the earlier election may file the statement required by division (A)(1) of this section for the general election instead of the statement required by division (A)(2) of this section for the earlier election if the pre-general election statement reflects the status of contributions and expenditures for the period twenty days before the earlier election to twenty days before the general election.

If a person becomes a candidate less than twenty days before an election, his campaign committee is not required to file the statement required by division (A)(1) of this section.

No statement under division (A)(3) of this section shall be required for any year in which a campaign committee, political action committee, or political party is required to file a post-general election statement under division (A)(2) of this section. However, such a statement may be filed, at the option of the campaign committee, political action committee, or political party.

No statement under division (A)(3) of this section shall be required if the campaign committee, political action committee, or political party has no contributions which it has received and no expenditures which it has made since the last date reflected in its last previously filed statement. However, the campaign committee, political action committee, or political party shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, on the date required in division (A)(3) of this section.

If a campaign committee or political action committee has no balance on hand and no outstanding obligations and desires to terminate itself, it shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, with the official with whom it files a statement under division (A) of this section after filing a final statement of contributions and a final statement of expenditures, if contributions have been received or expenditures made since the period reflected in its last previously filed statement.

(B) Each statement required by division (A) of this section shall contain the following information:

(1) The full name and address of each campaign committee, political action committee, or political party, including any treasurer thereof, filing a contribution and expenditure statement;

(2) In the case of a campaign committee, the candidate's full name and address;

(3) The date of the election and whether it was or will be a general, primary, or special election;

(4) A statement of contributions received, which shall include:

(a) The month, day, and year of the contribution;

(b) The full name and address of each person, political party, campaign committee, or political action committee from whom contributions are received. The requirement of filing the full address does not apply to any statement filed by a state or local committee of a political party, to a finance committee of such committee, or to a committee recognized by a state or local committee as its fund-raising auxiliary. Notwithstanding division (F) of this section, the requirement of filing the full address shall be considered as being met if the address filed is the same address the contributor provided under division (E) of this section.

(c) A description of the contribution received, if other than money;

(d) The value in dollars and cents of the contribution;

(e) All contributions and expenditures shall be itemized separately regardless of the amount except a receipt of a contribution from a person in the sum of twenty-five dollars or less at one social or fund-raising activity. An account of the total contributions from each such social or fund-raising activity shall be listed separately, together with the expenses incurred and paid in connection with such activity. No continuing association which makes a contribution from funds which are derived solely from regular dues paid by members of the association shall be required to list the name or address of any members who paid such dues.

(5) A statement of expenditures which shall include:

(a) The month, day, and year of expenditure;

(b) The full name and address of each person, political party, campaign committee, or political action committee to whom the expenditure was made;

(c) The object or purpose for which the expenditure was made;

(d) The amount of each expenditure.

(C) The statement of contributions and expenditures must be signed by the person completing the form.

The person filing the statement shall, under penalty of election falsification, include with it a list of each anonymous contribution, the circumstances under which it was received, and the reason it cannot be attributed to a specific donor.

Each statement of a campaign committee of a candidate who holds public office shall contain a designation of each contributor who is an employee in any unit or department under the candidate's direct supervision and control. In a space provided in the statement the person filing the statement shall affirm that each such contribution was voluntarily made.

A campaign committee which did not receive contributions or make expenditures in connection with the nomination or election of its candidate shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, on the date required in division (A)(2) of this section.

The campaign committee of any person who attempts to become a candidate and who, for any reason, does not become certified in accordance with Title XXXV of the Revised Code for placement on the official ballot of a primary, general, or special election to be held in this state, and who, at any time prior to or after an election, receives contributions or makes expenditures, or has given consent for another to receive contributions or make expenditures, for the purpose of bringing about the person's nomination or election to public office, shall file the statement or statements prescribed by this section and a termination statement, if applicable. This paragraph does not apply to any person with respect to an election to the offices of member of a county or state central committee, presidential elector, or delegate to a national convention or conference of a political party.

The statements shall specify the balance in the hands of the campaign committee, political action committee, or political party and the disposition intended to be made thereof. The form for all statements to be filed under this section shall be prescribed by the secretary of state, and furnished to the boards of elections in the several counties, and such boards shall supply printed copies of such forms without charge.

(D) Prior to receiving any contribution or making any expenditure, every campaign committee, political action committee, or political party shall appoint a treasurer and shall file, on a form prescribed by the secretary of state, a designation of such appointment including the full name and address of the treasurer and of the campaign committee, political action committee, or political party. Such designation shall be filed with the official with whom the campaign committee, political action committee, or political party is required to file statements under section 3517.11 of the Revised Code. The treasurer shall keep a strict account of all contributions, from whom received and the purpose for which they were disbursed. Every expenditure in excess of twenty-five dollars shall be vouched for by a receipted bill, stating the purpose of the expenditures, which shall be filed with the statement of expenditures. A canceled check with a notation of the purpose of the expenditure is a receipted bill for purposes of this section. The secretary of state or the board of elections, as the case may be, shall issue a receipt for each such statement filed and preserve a

copy of such receipt for a period of at least six years. All such statements shall be open to public inspection in the office where they are filed, and shall be carefully preserved for a period of at least six years after the year in which they are filed.

(E) Any person, political party, campaign committee, or political action committee that makes a contribution in connection with the nomination or election of any candidate or in connection with any ballot issue or question at any election held or to be held in this state shall provide its full name and address to the recipient of the contribution at the time the contribution is made.

(F) As used in this section, "address" means all of the following if they exist: apartment number, street, road, or highway name and number, rural delivery route number, city or village, and state as used in a person's post-office address, but not zip code or post-office box. Where an address is required in this section, a post-office box and office, room, or suite number may be included in addition to but not in lieu of an apartment, street, road, or highway name and number, and a zip code may be used. Where an address is required in this section, a campaign committee, political action committee, or political party may use the business or residence address of its treasurer or deputy treasurer. The post-office box number of the campaign committee, political action committee, or political party may be used in addition to such address.

HISTORY: 1988 H 708, eff. 4-19-88
1986 H 428, H 524, H 300, H 639; 1980 H 1062; 1975 H 124; 1974 S 46

Note: Former 3517.10 repealed by 1974 S 46, eff. 7-23-74; 1970 H 1040; 127 v 741; 126 v 205; 125 v 713; 1953 H 1; GC 4785-186.

Prohibition: 3517.13

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A); Forms 5.32 to 5.37, 5.45

CROSS REFERENCES

Report of expenditures in year without election, OAC 111-1-03

Statement in lieu of annual report where no obligations, balance, contributions, or expenditures, OAC 111-5-07

Submission of photocopy satisfies need under RC 3517.10 for check or receipt from expenditure, OAC 111-5-12

Candidate's contributions to own campaign must be reported, OAC 111-5-13

Fines for late, inaccurate, unfiled reports, OAC 111:1-1-10

Days counted to ascertain time, 1.14

Public records, availability, 149.43

County commissioners, election and term, 305.01

Corporate funds used to promote or oppose ballot issue, 3599.03

Falsehoods in election documents; fine and imprisonment; warning to be given, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46

Am Jur 2d: 26, Elections § 287 to 290, 381

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

Validity and construction of enactments requiring public officers of candidates for office to disclose financial condition and relationships. 37 ALR3d 1338

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 ALR4th 702

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS § 431 to 454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

368 FSupp 1340 (SD Ohio 1974), Lukens v Brown. RC 3517.10 and 3517.11 are constitutional.

2. In general

49 OS(2d) 291, 361 NE(2d) 244 (1977), State ex rel Halak v Cebula. Where the candidate receiving the highest number of votes is ineligible to election, the candidate receiving the next highest number of votes for the same office is not elected, and therefore is ineligible to bring a quo warranto action challenging the former's right to office.

20 OS(2d) 13, 251 NE(2d) 862 (1969), State ex rel Jedlicka v Cuyahoga County Bd of Elections. The failure of a board of elections to perform its obligation under RC 3517.11 to notify a candidate for public office of his duty to file a statement of receipts and expenses imposed by RC 3517.10 does not excuse a candidate's failure to perform that duty.

20 OS(2d) 13, 251 NE(2d) 862 (1969), State ex rel Jedlicka v Cuyahoga County Bd of Elections. The penalty imposed by RC 3517.11 disqualifying a person from becoming a candidate for public office in any future election for a period of five years for that person's failure to file a candidate's statement of receipts and expenses required by RC 3517.10 does not impinge upon a fundamental right secured by the constitution nor is it so grossly unreasonable as to subject it to judicial interference.

50 App(2d) 334, 363 NE(2d) 744 (1976), State ex rel Halak v Cebula; affirmed by 49 OS(2d) 291, 361 NE(2d) 244 (1977). Where there are five candidates in an election for three positions as city councilmen-at-large, the disqualification of the candidate receiving the third highest number of votes does not result in the election of the candidate receiving the fourth highest number of votes; rather, if the position is declared vacant a new councilman is selected as provided for under city charter.

102 App 566, 136 NE(2d) 772 (1956), Brewer v DeMaioribus. Where a candidate for office files with the board of elections a statement of expenditures within the time prescribed by RC 3517.10, and is informed by the board after the time for filing that the statement has apparently been mislaid in the board's office and a duplicate statement is then filed, and where a second candidate is erroneously informed by the board that it is too late to mail his statement and such candidate then files his statement in person 14 minutes after the time prescribed by RC 3517.10, it is within the sound discretion of the board to conclude in each case that there was substantial compliance with the terms of the statute.

102 App 566, 136 NE(2d) 772 (1956), Brewer v DeMaioribus. RC 3517.11 and 3517.10 make the filing of a statement of expenditures mandatory, but the time within which it is to be filed merely directory.

78 Abs 263, 152 NE(2d) 355 (App, Mahoning 1957), State ex rel Vasvari v Rickert. Failure to file an account of expenditures incurred in candidacy for precinct committeeman is a violation of RC 3517.10, and will disqualify the candidate for subsequent office within the provisions of RC 3517.11.

459 US 87, 103 SCt 416, 74 LEd(2d) 250 (1982), Brown v Socialist Workers '74 Campaign Committee (Ohio). US Const Am 1 prohibits a state from compelling disclosures of addresses of cam-

paign contributors and recipients of campaign funds of a minor political party, where the disclosures will subject the party to threats and harassment; therefore, Ohio's campaign disclosure law, RC 3517.01 et seq., cannot be applied to the socialist workers party. (Ed. note: Ohio law construed in light of federal constitution.)

OAG 75-068. RC Ch 3517 requires a candidate's campaign committee to report all contributions and expenditures, which are in excess of twenty-five dollars, regardless of who made the contributions or expenditures.

OAG 75-068. The changes to RC Ch 3517, effected by 1974 S 46, eff. 7-23-74, have no effect upon the identification requirements contained in RC 3599.09, which apply to published campaign materials whether they are designed to defeat or to promote a candidate or an issue.

OAG 75-017. The general assembly did not intend to exclude all candidates who are members of a multi-member public body, such as a board of county commissioners, from the provisions of RC 3517.10(C).

OAG 75-017. Under the provisions of the new campaign expense reporting act, a candidate who holds the office of county commissioner must report, pursuant to RC 3517.10(C), the name of every contributor who is a county employee appointed or employed by the board of county commissioners.

OAG 74-087. The investigative procedures set forth in 1974 S 46, eff. 7-23-74, are applicable to an investigation, after the effective date of that act, of an alleged violation which occurred before its effective date, in order to determine whether the election laws as they read on such earlier date were violated.

OAG 74-075. The requirement in RC 3517.10(A)(1) of a preelection statement of campaign contributions and expenditures is, pursuant to RC 3517.12, applicable to a political committee which is organized solely for the advocacy of, or opposition to, a proposition or issue submitted to the voters.

OAG 65-162. The provision of RC 3517.11 barring a candidate who has failed to file a timely statement of expenses, as required by RC 3517.10 and 3517.11, from seeking any office for a period of years, has no application to any person other than a candidate for office who so defaults.

1963 OAG 485. Notification of candidates by ordinary mail is sufficient to meet the requirement of RC 3517.11.

1963 OAG 485. A candidate in a primary election who fails to file his statement of receipts and expenditures in accordance with RC 3517.11 shall not be disqualified from running in the following general election if the board of elections has failed to give the notice required by this section.

1962 OAG 3494. A candidate who fails to file a statement of expenditures within the time prescribed by RC 3517.10 is barred from becoming a candidate in any future election for a period of five (or seven) years, but is not, by reason of such failure, barred from being appointed to a public office such as a member of the legislative authority of a village, and from serving in such capacity.

1962 OAG 2875. A candidate for office who fails to file a statement of expenditures within the time prescribed by RC 3517.10 is subject to the specific penalty provided in RC 3517.11, but is not subject to the penalty provision of RC 3599.40, but where a candidate fails to file at any time, he may be prosecuted for such failure and the penalty provided by RC 3599.40 may be imposed.

1960 OAG 1147. The requirement of RC 3517.11 that candidates shall be notified on or before the twentieth day after the election of the requirements of RC 3517.10 and 3517.11 is mandatory; and, where a candidate who is not so notified fails to file his statement of expense within the time specified, such candidate is not disqualified from becoming a candidate in any future election.

1959 OAG 708. If a person who was a candidate in a primary election fails to file the statement of contributions and expenditures or of no expenditures required by RC 3517.10 within the time prescribed the disqualification provision of RC 3517.11 becomes operative and that person is barred from receiving a certificate of nomination and from becoming a candidate in the general election.

1957 OAG 1415. All candidates in the November 1957 election who did not file expense statements within the prescribed thirty day period are disqualified for candidacy for office for a period of five years.

1957 OAG 1415. A candidate who received no contributions and made no contributions in connection with his candidacy need not file a statement thereof within the prescribed thirty day period, but he should file an affidavit to that effect.

1957 OAG 1415. RC 3517.08, 3517.10 and 3517.11 do not apply to write-in candidates who did not solicit votes.

1957 OAG 1415. Certificates of election should be issued to candidates who file expense statements within a reasonable time after the election.

1957 OAG 535. The requirement in RC 3517.10 that a statement of contributions and expenditures be filed by a candidate at any election is mandatory, but the requirement therein that such statement be filed "not later than four p.m. of the thirtieth day after such election" is directory only. A candidate who has failed to file such statement within such period is under a continuing obligation to do so, and the board of elections, or the secretary of state, as the case may be, is under a continuing obligation to receive and file such statement.

1956 OAG 6211. As to the November 1955 election, the ten day requirement of RC 3517.10 is directory rather than mandatory, and certificates of election may be issued to successful candidates for justice of the peace who file such statements within a reasonable time and prior to the filling of the vacancy under RC 1907.04.

1956 OAG 6211. Prior to January 1, 1956, RC 3517.10 did not require the filing of a statement of receipts and expenditures where none were involved, and an affidavit to this effect need not be filed within the ten day period.

1952 OAG 1666. Where the board of elections determines that the facts in its possession indicate a probability that a candidate subscribed and swore to a statement of expenditures, knowing the same to be false, it is the duty of such board, to report such facts promptly to the prosecuting attorney for such action as may be appropriate, and the board would be warranted in refusing to issue a certificate of nomination on the basis of an amended or corrected statement of expenditures pending an investigation by the prosecuting attorney of such matter.

Elections Op 90-4. Funds received and payments made for legal expenses incurred in bringing a complaint before the Ohio elections commission are reportable as contributions and expenditures to the extent required by RC 3517.10.

Elections Op 90-3. Funds received and payments made for legal fees incurred in defending charges brought before the commission related to seeking nomination or election to public office must be reported by the candidate's campaign committee pursuant to RC 3517.10.

Elections Op 90-2. A charitable contribution is not for the purpose of promoting a present or future candidacy when an officeholder who is statutorily barred from seeking re-election (1) has filed a final report, (2) has not indicated an intention of seeking any other elected office, and (3) does not intend to do so. Such a contribution need not be reported pursuant to RC 3517.10.

Elections Op 90-1. An officeholder who makes a charitable contribution from his personal funds to a charity is not required to report such an expenditure in compliance with RC 3517.10(A) when the contribution is not made in whole or in part for the purpose of promoting a present or possible future candidacy, as determined by the following factors including but not limited to whether: (1) the officeholder has control or significant input over the publicity resulting from the contribution; (2) the title by which the officeholder is listed in the publicity is an honorific title and not the title to a specific office; (3) the officeholder has a history of charitable giving to the same charity; (4) the officeholder or the charity initiated the contribution; and (5) the timing of the contribution is significant in relation to the election at which the officeholder will seek election.

Elections Op 89-4. An officer who uses personal funds purchasing pencils, rulers, emery boards, and similar items with his name and office printed on them and who distributes this merchandise to promote a possible future candidacy, or who buys advertisements in various organizations and publications for the same purpose, must report these expenditures in accordance with RC 3517.10.

Elections Op 87-1. A political party is required by RC 3517.10 to file reports under that section as a single reporting entity; all contributions received and expenditures made by the party in its own name or the name of a fundraising committee or organization of the party during a reporting period must be included.

Elections Op 87-1. A political party that receives a contribution or makes an expenditure in connection with an election during the pre-election reporting period is required to file the report prescribed by RC 3517.10(A)(1); a political party that receives a contribution or makes an expenditure in connection with an election during the post-election reporting period is required to file the report prescribed by RC 3517.10(A)(2).

3517.101 Gifts to political parties for office facilities

(A) As used in this section:

(1) "Gift" means a gift, subscription, loan, advance, or deposit of money or anything of value, given to a state or county political party, that is specifically designated and used to defray any cost incurred on or after the effective date of this section for the construction, renovation, or purchase of any office facility that is not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for any office.

(2) "Address" has the meaning given in division (F) of section 3517.10 of the Revised Code.

(3) "Political party" means only a major political party.

(B) Any person, including a corporation engaged in business in this state but not including a public utility, may make a gift to a state or county political party if the gift is specifically designated and used to defray any cost incurred on or after the effective date of this section for the construction, renovation, or purchase of any office facility that is not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for any office and, if it is a gift of money from a corporation engaged in business in this state, if the gift does not exceed ten per cent of the cost of the construction, renovation, or purchase. Such gift shall not be considered a contribution or expenditure prohibited by any section of the Revised Code.

(C)(1) Each state or county political party that receives a gift pursuant to this section shall file on a form prescribed by the secretary of state, a full, true, and itemized statement describing the gift received and how it was disbursed. The statement shall be made under penalty of election falsification and shall be filed not later than four p.m. of the last day of January of every year to reflect gifts received and disbursed during the immediately preceding calendar year.

(2) Each statement required under division (C)(1) of this section shall contain all of the following information:

(a) The full name and address of the state or county political party filing the statement, including its treasurer;

(b) A description of each gift received, which shall include:

(i) The month, day, and year on which the gift was received;

(ii) The full name and address of each person from whom or from which the gift was received;

(iii) The nature of the gift, if other than money;

(iv) The value of the gift in dollars and cents.

Each gift received shall be itemized separately regardless of its amount or value.

(c) An itemization of how each gift was disbursed;

(d) The total value of gifts received and gifts disbursed during each reporting period;

(e) The total cost of the construction, renovation, or purchase of any office facility for which a gift is used.

(D)(1) All monetary gifts and all income from the lease or rental of an office facility for which a gift is used shall be deposited in an account separate from other funds and maintained in that separate account. Except as provided in division (D)(2) of this section, moneys in the account shall be used only for the construction, renovation, or purchase of an office facility as described in division (B) of this section.

(2) Any moneys remaining in an account under division (D)(1) of this section after the construction, renovation, or purchase of an office facility shall be used only for the maintenance and repair of the facility or for the construction, renovation, or purchase of another office facility as described in division (B) of this section and shall not be used for operating costs of the facility or for any other purpose.

(3) When a state or county political party sells an office facility that was constructed, renovated, or purchased in whole or in part from monetary gifts, the party shall deposit in the account under division (D)(1) of this section an amount that is the same percentage of the total proceeds of the sale as the monetary gifts used in the construction, renovation, or purchase of the facility were of the total cost of that construction, renovation, or purchase. Proceeds deposited in the account shall be used only for the construction, renovation, or purchase of another office facility as described in division (B) of this section.

(E) A state political party shall file a statement required under this section with the secretary of state and a county political party shall file a statement required under this section with the board of elections of the county in which the party is located.

(F)(1) No state or county political party shall fail to file a statement required to be filed under this section.

(2) No state or county political party shall knowingly fail to report, or shall knowingly misrepresent, a gift required to be reported on a statement required to be filed under this section.

(G) No state or county political party shall expend or use a gift for a purpose other than to defray any cost incurred on or after the effective date of this section for the construction, renovation, or purchase of an office facility as described in division (B) of this section or for the maintenance and repair of such a facility as provided in division (D)(2) of this section.

(H) Prior to receiving any gift under this section, every political party shall appoint a treasurer and file, on a form prescribed by the secretary of state, a designation of the appointment, including the full name and address of the political party. The designation shall be filed with the official with whom the political party is required to file statements under division (E) of this section. The treasurer shall keep a strict account of all gifts required to be reported under this section. The secretary of state or board of elections, as the case may be, shall, if requested, issue a receipt for each statement filed under this section and preserve a record of the filing for at least six years. All such statements

shall be open to public inspection in the office where they are filed, and shall be carefully preserved for a period of at least six years after the year in which they are filed.

HISTORY: 1989 S 6, eff. 10-30-89

Penalty: 3517.99(D)(1)

CROSS REFERENCES

Corporate funds not to be used to aid political organizations, exemptions, 3599.03

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 26, Elections § 381

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

3517.11 Procedures relating to reports of contributions and expenditures; fines; appeals

(A)(1) Campaign committees of candidates for statewide offices or the state board of education, political action committees that make contributions to campaign committees of candidates that must file the statements prescribed by section 3517.10 of the Revised Code with the secretary of state, political action committees that make contributions to campaign committees of candidates for member of the general assembly, political action committees that make contributions to state and national political parties, political action committees that receive contributions or make expenditures in connection with a statewide ballot issue, political action committees that make contributions to other political action committees, political parties, and campaign committees, except as set forth in division (A)(3) of this section, and state and national political parties shall file the statements prescribed by section 3517.10 of the Revised Code with the secretary of state.

(2) Campaign committees of candidates for all other offices shall file the statements prescribed by section 3517.10 of the Revised Code with the board of elections where their candidates are required to file their petitions or other papers for nomination or election.

(3) Political action committees that only contribute to a county political party, contribute to campaign committees of candidates whose nomination or election is to be submitted only to electors within a county, subdivision, or district, excluding candidates for member of the general assembly, and receive contributions or make expenditures in connection with ballot questions or issues to be submitted only to electors within a county, subdivision, or district, shall file the statements prescribed by section 3517.10 of the Revised Code with the board of elections in that county or in the county contained in whole or part within the subdivision or district having a population greater than that of any other county contained in whole or part within that subdivision or district, as the case may be.

(4) County political parties shall file the statements prescribed by section 3517.10 of the Revised Code with the board of elections of their respective counties.

(B) The official with whom petitions and other papers for nomination or election to public office are filed shall furnish each candidate at the time of such filing a copy of section 3517.01, sections 3517.08 to 3517.11, sections 3517.13 to 3517.991, and section 3599.03 of the Revised Code and such other materials as the secretary of state may require. Each candidate receiving the materials shall acknowledge their receipt in writing. Each board of elections shall send a copy of each statement filed with it for member of the general assembly to the secretary of state.

On or before the tenth day before the dates on which statements are required to be filed by section 3517.10 of the Revised Code, every candidate subject to the provisions of this section and section 3517.10 of the Revised Code shall be notified of the requirements and applicable penalties of those sections. The secretary of state shall, by certified mail with return receipt requested, notify all candidates required to file such statements with his office. The board of elections of every county shall notify by first class mail any candidate who has personally appeared at the office of the board on or before the tenth day before the statements must be filed and signed a form, to be provided by the secretary of state, attesting that the candidate has been notified of his obligations under the campaign finance law. The board shall forward the completed form to the secretary of state. The board shall use certified mail with return receipt requested to notify all other candidates required to file such statements with it.

Any statement required to be filed under sections 3517.081 to 3517.17 of the Revised Code which is found to be incomplete or inaccurate by the officer to whom it is submitted shall be accepted on a conditional basis, and the person who filed it shall be notified by certified mail as to the incomplete or inaccurate nature of the statement. Within four days after receipt of notice, in the case of a pre-election statement prescribed by section 3517.10 of the Revised Code, and seven days, in the case of a post-election or annual statement prescribed by section 3517.10 or 3517.101 of the Revised Code, the recipient shall file an addendum to the statement providing the information necessary to complete or correct the statement.

The secretary of state or the board of elections shall examine all statements for compliance with sections 3517.08 to 3517.17 of the Revised Code. The examination shall be conducted by a person qualified therefor. The results of the examination shall be available to the public.

(C)(1) In the event of a failure to file or a late filing of a statement required to be filed under sections 3517.081 to 3517.17 of the Revised Code or if a filed statement or any addendum to the statement, if an addendum is required to be filed, is incomplete or inaccurate, or appears to disclose a violation of law, the official whose duty it is to examine the statement shall promptly report such facts to the Ohio elections commission, which shall investigate and, if the commission finds a violation, it shall do only one of the following:

(a) Impose a fine not to exceed the fine specified pursuant to section 3517.991 of the Revised Code;

(b) Report its findings to the appropriate prosecuting authority which shall institute such civil or criminal proceedings as are appropriate;

(c) Enter a finding that good cause has been shown for the commission not to impose a fine or report its findings to the appropriate prosecuting authority.

(2) Any person adversely affected by the action of the commission under division (C)(1)(a) of this section may appeal from such action in accordance with section 119.12 of the Revised Code.

(D) No certificate of nomination or election shall be issued to a person, nor shall a person elected to an office enter upon the performance of the duties of such office

until he has fully complied with this section and sections 3517.08, 3517.081, 3517.10, and 3517.13 of the Revised Code.

HISTORY: 1989 S 6, eff. 10-30-89
1988 H 708; 1986 H 524, H 639; 1984 H 722; 1974 S 46; 1970 H 1040; 130 v H 331; 129 v 1182; 127 v 741, 45, 119; 126 v 205; 1953 H 1; GC 4785-187

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.01, 5.33

CROSS REFERENCES

Days counted to ascertain time, 1.14
Certificate of election, 3505.38
Certificate of nomination, 3513.22

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46; 82, Schools, Universities, and Colleges § 96

Am Jur 2d: 26, Elections § 287 et seq., 381

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

34 OS(2d) 257, 298 NE(2d) 132 (1973), State ex rel Lukens v Brown. RC 3517.11 is constitutional.

20 OS(2d) 13, 251 NE(2d) 862 (1969), State ex rel Jedlicka v Cuyahoga County Bd of Elections. The penalty imposed by RC 3517.11 disqualifying a person from becoming a candidate for public office in any future election for a period of five years for that person's failure to file a candidate's statement of receipts and expenses required by RC 3517.10 does not impinge upon a fundamental right secured by the Constitution nor is it so grossly unreasonable as to subject it to judicial interference.

368 FSupp 1340 (SD Ohio 1974), Lukens v Brown. RC 3517.10 and 3517.11 are constitutional.

2. In general

49 OS(2d) 291, 361 NE(2d) 244 (1977), State ex rel Halak v Cebula. Where the candidate receiving the highest number of votes is ineligible to election, the candidate receiving the next highest number of votes for the same office is not elected, and therefore is ineligible to bring a quo warranto action challenging the former's right to office.

32 OS(2d) 145, 290 NE(2d) 575 (1972), State ex rel Roseboro v Franklin County Bd of Elections. To the extent that administrative practice departs from the strict terms of RC 3517.11 so as to consider as valid a filing one day late simply because the document to be filed was deposited in the mail on the appointed day, and to deny as valid a filing actually made twenty-four minutes late on the appointed day, a clear denial of equal protection occurs.

20 OS(2d) 13, 251 NE(2d) 862 (1969), State ex rel Jedlicka v Cuyahoga County Bd of Elections. The failure of a board of elections to perform its obligation under RC 3517.11 to notify a candidate for public office of his duty to file a statement of receipts and expenses imposed by RC 3517.10 does not excuse a candidate's failure to perform that duty.

50 App(2d) 334, 363 NE(2d) 744 (1976), State ex rel Halak v Cebula; affirmed by 49 OS(2d) 291, 361 NE(2d) 244 (1977). Where there are five candidates in an election for three positions as city councilmen-at-large, the disqualification of the candidate receiving the third highest number of votes does not result in the election of the candidate receiving the fourth highest number of votes; rather, if the position is declared vacant a new councilman is selected as provided for under city charter.

102 App 566, 136 NE(2d) 772 (1956), Brewer v DeMaioribus. RC 3517.11 and 3517.10 make the filing of a statement of expenditures mandatory, but the time within which it is to be filed merely directory.

78 Abs 263, 152 NE(2d) 355 (App, Mahoning 1957), State ex rel Vasvari v Rickert. Failure to file an account of expenditures incurred in candidacy for precinct committeeman is a violation of RC 3517.10, and will disqualify the candidate for subsequent office within the provisions of RC 3517.11.

78 Abs 263, 152 NE(2d) 355 (App, Mahoning 1957), State ex rel Vasvari v Rickert. Where a board of elections rejects a candidates petition, basing its action on RC 3517.11, and when it construed the statute with its natural and fundamental meaning, its action is final.

459 US 87, 103 SCt 416, 74 LEd(2d) 250 (1982), Brown v Socialist Workers '74 Campaign Committee (Ohio). US Const Am 1 prohibits a state from compelling disclosures of addresses of campaign contributors and recipients of campaign funds of a minor political party, where the disclosures will subject the party to threats and harassment; therefore, Ohio's campaign disclosure law, RC 3517.01 et seq., cannot be applied to the socialist workers party. (Ed. note: Ohio law construed in light of federal constitution.)

OAG 65-162. The provision of RC 3517.11 barring a candidate who has failed to file a timely statement of expenses, as required by RC 3517.10 and 3517.11, from seeking any office for a period of years, has no application to any person other than a candidate for office who so defaults.

1963 OAG 485. A candidate in a primary election who fails to file his statement of receipts and expenditures in accordance with RC 3517.11 shall not be disqualified from running in the following general election if the board of elections has failed to give the notice required by this section.

1963 OAG 485. Notification of candidates by ordinary mail is sufficient to meet the requirement of RC 3517.11.

1962 OAG 3494. A candidate who fails to file a statement of expenditures within the time prescribed by RC 3517.10 is barred from becoming a candidate in any future election for a period of five (or seven) years, but is not, by reason of such failure, barred from being appointed to a public office such as a member of the legislative authority of a village, and from serving in such capacity.

1962 OAG 2875. A candidate for office who fails to file a statement of expenditures within the time prescribed by RC 3517.10 is subject to the specific penalty provided in RC 3517.11, but is not subject to the penalty provision of RC 3599.40, but where a candidate fails to file at any time, he may be prosecuted for such failure and the penalty provided by RC 3599.40 may be imposed.

1960 OAG 1147. The requirement of RC 3517.11 that candidates shall be notified on or before the twentieth day after the election of the requirements of RC 3517.10 and 3517.11 is mandatory; and, where a candidate who is not so notified fails to file his statement of expense within the time specified, such candidate is not disqualified from becoming a candidate in any future election.

1959 OAG 708. If a person who was a candidate in a primary election fails to file the statement of contributions and expenditures or of no expenditures required by RC 3517.10 within the time prescribed the disqualification provision of RC 3517.11 becomes operative and that person is barred from receiving a certificate of nomination and from becoming a candidate in the general election.

1957 OAG 1415. Certificates of election should be issued to candidates who file expense statements within a reasonable time after the election.

1957 OAG 1415. RC 3517.08, 3517.10 and 3517.11 do not apply to write-in candidates who did not solicit votes.

1957 OAG 1415. All candidates in the November 1957 election who did not file expense statements within the prescribed thirty day period are disqualified for candidacy for office for a period of five years.

1957 OAG 535. The provision in RC 3517.11 that "failure of any candidate to file a statement of expenditures shall disqualify said person from becoming a candidate in any future election for a period of five years" is operative during a period of five years following the thirty-day period provided for in RC 3517.10, provided the "failure of any candidate to file a statement of expenditures" should that long continue, but where, during such period, a candidate actually files such statement the disqualification provided in this section is terminated.

1956 OAG 6211. Prior to January 1, 1956, RC 3517.10 did not require the filing of a statement of receipts and expenditures where none were involved, and an affidavit to this effect need not be filed within the ten day period.

1956 OAG 6211. As to the November 1955 election, the ten day requirement of RC 3517.10 is directory rather than mandatory, and certificates of election may be issued to successful candidates for justice of the peace who file such statements within a reasonable time and prior to the filling of the vacancy under RC 1907.04.

1952 OAG 1666. Where a successful candidate for nomination for a county office files within the ten day period a statement of expenditures with the board of elections and such board determines that such statement is incorrect in that such candidate failed to list all of his campaign expenditures, but further determines that such omission was inadvertent and not made willfully, the board may accept an amended or corrected statement of expenditures, even after the ten day period, and if such amended or corrected statement is found to contain a full, true and itemized statement of such expenditures, issue to such candidate a certificate of nomination.

1952 OAG 1666. Where the board of elections determines that the facts in its possession indicate a probability that a candidate subscribed and swore to a statement of expenditures, knowing the same to be false, it is the duty of such board, to report such facts promptly to the prosecuting attorney for such action as may be appropriate, and the board would be warranted in refusing to issue a certificate of nomination on the basis of an amended or corrected statement of expenditures pending an investigation by the prosecuting attorney of such matter.

3517.12 Report of receipts and expenditures on initiative and referendum petitions

The circulator or the committee in charge of an initiative or referendum petition, or supplementary petition for additional signatures, for the submission of a constitutional amendment, proposed law, section, or item of any law shall, within thirty days after such petition papers are filed, file with the secretary of state, on a form prescribed by the secretary of state, an itemized statement, made under penalty of election falsification, showing in detail:

(A) All money or things of value paid, given, or promised for circulating such petitions;

(B) All appointments, promotions, or increases in salary, in positions which were given or promised, or to obtain which assistance was given or promised as a consideration for work done in circulating petitions;

(C) Full names and addresses, including street, city, and state, of all persons to whom such payments or promises were made;

(D) Full names and addresses, including street, city, and state, of all persons who contributed anything of value to be used in circulating such petitions;

(E) Time spent and salaries earned while soliciting signatures to petitions by persons who were regular salaried employees of some person or whom said employer authorized to solicit as part of their regular duties.

If no money or things of value were paid or if no promises were made or received as a consideration for work done in circulating such petition, the statement shall contain words to that effect.

HISTORY: 1986 H 639, eff. 7-24-86
1980 H 1062; 1970 H 1040; 129 v 1267; 126 v 205; 1953 H 1; GC 4785-188

Prohibition: 3517.13

CROSS REFERENCES

"Anything of value" defined, 1.03
Days counted to ascertain time, 1.14
Initiative and referendum, Ch 3519
Offenses and penalties, contributions for illegal purposes, 3599.04
Falsehoods in election documents; fine and imprisonment; warning to be given, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 239, 241, 243 to 251, 253, 256; 56, Initiative and Referendum § 46
Am Jur 2d: 26, Elections § 287 et seq., 381
Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137
State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944
Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237
Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

NOTES ON DECISIONS AND OPINIONS

169 OS 42, 157 NE(2d) 331 (1959), State ex rel Corrigan v Cleveland-Cliffs Iron Co. A corporation may lawfully contribute to a committee organized and conducted merely for the purposes of advocating the adoption of a constitutional amendment and the passage of bond issues and tax levies.

79 Abs 232, 152 NE(2d) 1 (App, Cuyahoga 1958), State ex rel Corrigan v Cleveland-Cliffs Iron Co; reversed by 169 OS 42, 157 NE(2d) 331 (1959). Corporations may not contribute funds for the purpose of supporting or opposing issues or propositions submitted to the voters.

459 US 87, 103 SCt 416, 74 LEd(2d) 250 (1982), Brown v Socialist Workers '74 Campaign Committee (Ohio). US Const Am 1 prohibits a state from compelling disclosures of addresses of campaign contributors and recipients of campaign funds of a minor political party, where the disclosures will subject the party to threats and harassment; therefore, Ohio's campaign disclosure law, RC 3517.01 et seq., cannot be applied to the socialist workers party. (Ed. note: Ohio law construed in light of federal constitution.)

OAG 74-075. The requirement in RC 3517.10(A)(1) of a preelection statement of campaign contributions and expenditures is, pursuant to RC 3517.12, applicable to a political committee which is organized solely for the advocacy of, or opposition to, a proposition or issue submitted to the voters.

OAG 65-162. The provision of RC 3517.11 barring a candidate who has failed to file a timely statement of expenses, as required by

RC 3517.10 and 3517.11, from seeking any office for a period of years, has no application to any person other than a candidate for office who so defaults.

3517.13 Prohibited activities

(A) No campaign committee for a candidate whose candidacy for nomination or election was submitted to electors throughout the entire state shall fail to file a statement required under division (A)(1) of section 3517.10 of the Revised Code.

(B) No campaign committee for a candidate whose candidacy for nomination or election was submitted to electors within a county or district shall fail to file a statement required under division (A)(1) of section 3517.10 of the Revised Code.

(C) No campaign committee shall fail to file a statement required under division (A)(2) of section 3517.10 of the Revised Code.

(D) No campaign committee shall fail to file a statement required under division (A)(3) of section 3517.10 of the Revised Code.

(E) No person other than a campaign committee shall knowingly fail to file a statement required under section 3517.10 of the Revised Code.

(F) No person shall make cash contributions to any person totaling more than one hundred dollars in each primary, special, or general election.

(G) No person shall knowingly conceal or misrepresent contributions given or received or expenditures made in connection with an election.

(H) No person within this state, publishing a newspaper or other periodical, shall charge a campaign committee for political advertising a rate in excess of the rate such person would charge if the campaign committee were a general rate advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office which the candidate of the campaign committee is seeking. The rate shall take into account the amount of space used, as well as the type of advertising copy submitted by or on behalf of the campaign committee. All discount privileges otherwise offered by a newspaper or periodical to general rate advertisers shall be available upon equal terms to all campaign committees.

No person within this state, operating a radio or television station or network of stations in this state, shall charge a campaign committee for political broadcasts a rate which exceeds:

(1) During the forty-five days preceding the date of a primary election and during the sixty days preceding the date of a general or special election in which the candidate of the campaign committee is seeking office, the lowest unit charge of the station for the same class and amount of time for the same period;

(2) At any other time, the charges made for comparable use of such station by other users thereof.

(I) Subject to divisions (K), (L), (M), and (N) of this section, no agency or department of this state or any political subdivision shall award any contract, other than one let by competitive bidding or a contract incidental to such contract or which is by force account, for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to any individual, partnership, association, including, without limitation, a professional association organized under Chapter 1785. of the Revised Code, estate, or trust if the individual has made or his spouse has made, or any partner, shareholder, administrator, executor, or trustee, or the spouses of any of them has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of one thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to his campaign committee.

(J) Subject to divisions (K), (L), (M), and (N) of this section, no agency or department of this state or any political subdivision shall award any contract, other than one let by competitive bidding or a contract incidental to such contract or which is by force account, for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to a corporation or business trust, except a professional association organized under Chapter 1785. of the Revised Code, if an owner of more than twenty per cent of the corporation or business trust or the spouse of such person, has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of such period, one or more contributions totaling in excess of one thousand dollars to the holder of a public office having ultimate responsibility for the award of the contract or to his campaign committee.

(K) For purposes of divisions (I) and (J) of this section, if a public officer who is responsible for the award of a contract is appointed by the governor, whether or not the appointment is subject to the advice and consent of the senate, excluding members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities appointed by the governor, the office of the governor is considered to have ultimate responsibility for the award of the contract.

(L) For purposes of divisions (I) and (J) of this section, if a public officer who is responsible for the award of a contract is appointed by the elected chief executive officer of a municipal corporation, or appointed by the elected chief executive officer of a county operating under an alternative form of county government or county charter, excluding members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities appointed by the chief executive officer, the office of the chief executive officer is considered to have ultimate responsibility for the award of the contract.

(M)(1) Divisions (I) and (J) of this section do not apply to contracts awarded by the board of commissioners of the sinking fund, municipal legislative authorities, boards of education, boards of county commissioners, boards of township trustees, or other boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities created by law, by the supreme court or courts of appeals, by county courts consisting of more than one judge, courts of common pleas consisting of more than one judge, or municipal courts consisting of more than one judge, or by a division of any court if the division consists of more than one judge. Division (M)(1) of this section shall apply to the specified entity only if the members of the entity act collectively in the award of a contract for goods or services.

(2) Divisions (I) and (J) of this section do not apply to actions of the controlling board.

(N)(1) Divisions (I) and (J) of this section apply to contributions made to the holder of a public office having ultimate responsibility for the award of a contract, or to his

campaign committee, during the time the person holds the office and during any time such person was a candidate for the office. These divisions do not apply to contributions made to, or to the campaign committee of, a candidate for or holder of the office other than the holder of the office at the time of the award of the contract.

(2) Divisions (I) and (J) of this section do not apply to contributions of a partner, shareholder, administrator, executor, trustee, or owner of more than twenty per cent of a corporation or business trust made before the person held any of those positions or after the person ceased to hold any of those positions in the partnership, association, estate, trust corporation, or business trust whose eligibility to be awarded a contract is being determined, nor to contributions of the person's spouse made before the person held any of those positions, after the person ceased to hold any of those positions, before the two were married, or after the granting of a decree of divorce, dissolution of marriage, or nullity, or the granting of an order in an action brought solely for legal separation. These divisions do not apply to contributions of the spouse of an individual whose eligibility to be awarded a contract is being determined made before the two were married, or after the granting of a decree of divorce, dissolution of marriage, or nullity, or the granting of an order in an action brought solely for legal separation.

(O) No beneficiary of a campaign fund shall convert or accept for personal or business use, and no person shall knowingly give to a beneficiary of a campaign fund, for the beneficiary's personal or business use, anything of value from the beneficiary's campaign fund, including, without limitation, payments to a beneficiary for services the beneficiary personally performs, except as reimbursement for any of the following:

(1) Legitimate and verifiable prior campaign expenses incurred by the beneficiary;

(2) Legitimate and verifiable, ordinary, and necessary prior expenses incurred by the beneficiary in connection with duties as the holder of a public office, including, without limitation, expenses incurred through participation in nonpartisan or bipartisan events where the participation of the holder of a public office would normally be expected;

(3) Legitimate and verifiable ordinary and necessary prior expenses incurred by the beneficiary while:

(a) Engaged in activities in support of or opposition to a candidate other than the beneficiary, political party, or ballot issue;

(b) Raising funds for a political party, political action committee, campaign committee, or other candidate;

(c) Participating in the activities of a political party, political action committee, or campaign committee; or

(d) Attending a political party convention or other political meeting.

For purposes of this division, an expense is incurred whenever a beneficiary has either made payment or is obligated to make payment, as by the use of a credit card or other credit procedure or by the use of goods or services received on account.

(P) No beneficiary of a campaign fund shall knowingly accept, and no person shall knowingly give to the beneficiary of a campaign fund, reimbursement for an expense under division (O) of this section to the extent that the expense previously was reimbursed or paid from another source of funds. If an expense is reimbursed under division (O) of this section and is later paid or reimbursed, wholly or in part, from another source of funds, the beneficiary shall repay the reimbursement received under division (O) of this section to the extent of the payment made or reimbursement received from the other source.

(Q) No candidate or public official or employee shall accept for personal or business use anything of value from a political party, political action committee, or campaign committee other than the candidate's or public official or employee's own campaign committee, and no person shall knowingly give to a candidate or public official or employee anything of value from a political party, political action committee, or such a campaign committee, except for the following:

(1) Reimbursement for legitimate and verifiable, ordinary, and necessary prior expenses not otherwise prohibited by law incurred by the candidate or public official or employee while engaged in any legitimate activity of the political party, political action committee, or such campaign committee. Without limitation, reimbursable expenses under this division include those incurred while:

(a) Engaged in activities in support of or opposition to another candidate, political party, or ballot issue;

(b) Raising funds for a political party, campaign committee, or another candidate; or

(c) Attending a political party convention or other political meeting.

(2) Compensation not otherwise prohibited by law for actual and valuable personal services rendered under a written contract to the political party, political action committee, or such campaign committee for any legitimate activity of the political party, political action committee, or such campaign committee.

Reimbursable expenses under this division do not include, and it is a violation of this division for a candidate or public official or employee to accept, or for any person to knowingly give to a candidate or public official or employee from a political party, political action committee, or campaign committee other than the candidate's or public official or employee's own campaign committee, anything of value for activities primarily related to the candidate's or public official or employee's own campaign for election, except for contributions to the candidate's or public official or employee's campaign committee.

For purposes of this division, an expense is incurred whenever a candidate or public official or employee has either made payment or is obligated to make payment, as by the use of a credit card or other credit procedure, or by the use of goods or services on account.

(R)(1) Division (O) or (P) of this section does not prohibit a campaign committee from making direct advance or post payment from contributions to vendors for goods and services for which reimbursement is permitted under division (O) of this section, except that no campaign committee shall pay its candidate or other beneficiary for services personally performed by the candidate or other beneficiary.

(2) When any expense that may be reimbursed under division (O), (P), or (Q) of this section is part of other expenses that may not be paid or reimbursed, the separation of the two types of expenses for the purpose of allocating for payment or reimbursement those expenses that may be paid or reimbursed may be by any reasonable accounting method, considering all of the surrounding circumstances.

(3) For purposes of divisions (O), (P), and (Q) of this section, mileage allowance at a rate not greater than that allowed by the internal revenue service at the time the

travel occurs may be paid instead of reimbursement for actual travel expenses allowable.

HISTORY: 1990 H 514, eff. 1-1-91
1990 H 390; 1986 H 1053, H 300; 1976 H 1379; 1974 S 46

Note: Former 3517.13 repealed by 1974 S 46, eff. 7-23-74; 1953 H 1; GC 4785-189.

Penalty: 3517.99(G)

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A)

CROSS REFERENCES

"Cash" defined, OAC 111-5-11
Fines by the election commission, OAC 111:1-1-10

Days counted to ascertain time, 1.14
Officer making contract without authority is personally liable, 3.12
Consulting services are not bid, 9.36
Lobbying, executive agency decision defined, 121.60
County group health insurance, when bidding not necessary, 305.71
County contracts, when competitive bidding not necessary, 307.86
Municipal purchase of natural gas, bidding unnecessary, 715.07
Municipal contracts and purchases under $5,000, bidding unnecessary, 735.05
Emergency municipal contracts, bidding unnecessary, 735.051
Campaign contributions from medicaid contractor to attorney general or county prosecutor unacceptable, 3599.45
Freedom of speech and of the press, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 51, 52; 22, Courts and Judges § 147, 157; 37, Elections § 234, 235, 237, 238, 241, 253, 255, 294
Am Jur 2d: 26, Elections § 280 et seq., 287, 288
Validity and construction of enactment requiring public officials or candidates for office to disclose financial condition and relationship. 37 ALR3d 1338

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. Definitions of terms
3. Controls on use of campaign funds
4. Restrictions on awarding of contracts

1. Constitutional issues

26 Misc 47, 265 NE(2d) 345 (CP, Cuyahoga 1970), In re Metzenbaum. RC 3517.13 purports to assign powers of the executive department of state government to the judiciary and is unconstitutional and void. (Annotation from former RC 3517.13.)

2. Definitions of terms

Elections Op 89-3. Under RC 3517.13, campaign funds may be used to pay for furniture for the office of a public officeholder, so long as the expenditures serve a purpose related to performance of the duties of the officeholder and are reasonable in cost and form.

Elections Op 86-4. That an officeholder's campaign committee "returns" the portion of a contribution in excess of $1000 does not change the fact that the contribution was made and received for purposes of RC 3517.13.

Elections Op 86-1. Since the terms "board" and "commission" are used in RC Ch 3517 but are not defined there or in any other generally applicable section of the Revised Code, the Ohio elections commission will follow the definitions given by Black's Law Dictionary.

Elections Op 86-1. Whether a group of individuals constitutes a "board" or "commission" depends not on the name assigned to it, but on the nature of its authority and the manner of its exercise; the Ohio building authority is a "board" or "commission" of public officers because (1) it is created by statute, (2) it is empowered to perform essential state duties, (3) its members may act only as a group, and (4) the members are not subordinate to the governor but appointed for fixed terms, and are removable only for cause.

3. Controls on use of campaign funds

424 US 1, 96 SCt 612, 46 LEd(2d) 659 (1976), Buckley v Valeo. Provisions of federal campaign act limiting individual contributions to political campaigns and requiring their disclosure upheld; however, expenditures by or on behalf of a candidate cannot be limited without abridging First Amendment rights.

OAG 74-087. Neither O Const Art II §28, nor any other constitutional provision prohibits the elections commission from taking jurisdiction of an alleged violation of the election laws which occurred prior to the effective date of 1974 S 46, which established the commission.

Bd of Commrs on Grievances & Discipline Op 88-017 (8-12-88). Nothing in the code of judicial conduct forbids the campaign committee of a judge or a candidate for judge to contribute to other candidates for public office, regardless of whether the individual who has the committee is seeking election in the year the contribution is made; a judicial candidate may contribute to his own political party, however, only in the years that he is not a candidate.

Elections Op 91-1. A public officeholder may not use campaign funds to pay administrative and travel expenses relating to participation in an exchange program when the purposes of that program are not truly related to the performance of the officeholder's public duties.

Elections Op 90-4. A candidate who files a complaint with the Ohio elections commission regarding a matter related to his campaign may use his or her campaign funds to pay legitimate legal expenses incurred in filing the complaint.

Elections Op 88-1. An individual who wants to be a candidate for public office may use campaign funds to pay for legal counsel to determine his right to appear on the ballot.

Elections Op 87-15. A candidate may use campaign funds to pay legal fees incurred defending himself against charges brought before the Ohio elections commission; a political party or political action committee may also pay these fees.

Elections Op 87-14. A state representative may use funds from his campaign committee for the expense of a bona fide fact-finding journey outside the country to gather information on matters that are or may be the subjects of legislation.

Elections Op 87-13. Pursuant to RC 3517.13(O), campaign funds may be used to pay for: (1) gifts for employees of an officeholder (e.g., birthdays, weddings, and retirements); (2) flowers given due to the illness or death of an employee or employee's family member; (3) Christmas cards sent to an officeholder's staff and campaign contributors; (4) Christmas parties for an officeholder's staff; and (5) an officeholder's inauguration party, so long as such expenditures are reasonable in cost and form and relevant to a campaign or the duties of the office.

Elections Op 87-12. A state representative may use his campaign fund to pay the cost of a video camera to be used to influence legislation and in connection with his campaign for election.

Elections Op 87-12. The purchase of a video camera for use in an election campaign may be made directly from campaign funds, if the camera will be used exclusively for purposes set forth in RC 3517.13(O); if the camera will also be used for other purposes, then a percentage of the cost may be paid directly from campaign funds to the extent it is possible to determine with reasonable certainty the percentage of time the camera will be used for statutory purposes. Otherwise, campaign funds may be used only to reimburse the candidate, officeholder, or other person who purchased the camera in an amount equal to the proportionate usage of the camera for purposes specified in RC 3517.13(O).

Elections Op 87-9. A public officeholder cannot use campaign funds to pay for legal counsel to defend himself against criminal charges of tampering with records, theft in office, falsification, and bribery.

Elections Op 87-6. A candidate or public officer may pay for an automotive telephone with campaign funds where the telephone is used solely for the purposes set forth in RC 3517.13(O); where the telephone is used in part for other purposes, the individual can be reimbursed for an amount reflecting the cost of use for purposes stated in the statute, but cannot be paid directly from campaign funds.

Elections Op 87-4. A state representative may pay another individual from campaign funds for secretarial services legitimately related to the representative's campaign or duties as a state representative.

Elections Op 87-3. Campaign funds may be used to pay the expenses of purchasing or leasing and operating a car only to the extent the car is used for the purposes set forth in RC 3517.13(O) or other purposes authorized by the Revised Code, by reimbursement to the beneficiary of the campaign fund or by direct payments to vendors. In lieu of reimbursement for actual expenses, or if the car is also used for purposes not authorized by the Revised Code, a beneficiary of a campaign fund may be reimbursed for authorized uses on a per mile basis at a rate not to exceed that permitted by the internal revenue service at the time of the travel.

Elections Op 87-3. If an expense, previously paid or reimbursed from campaign funds, is later paid or reimbursed from another source, including a governmental entity, the amount previously paid or reimbursed must be refunded to the campaign fund.

Elections Op 87-3. For purposes of reimbursing car expenses from campaign funds, recordkeeping should include the date of travel, point of origin, destination, number of miles traveled, travel purpose and the odometer readings at the beginning and end of a reimbursement period.

Elections Op 87-3. Car expenses for campaign travel may be shared by two campaign funds, but car expenses for travel related to the performance of official duties may not be shared by two officeholders' campaign funds.

4. Restrictions on awarding of contracts

OAG 83-034. RC 3517.13(J) does not operate to prohibit the department of development from awarding a contract to a corporation in a situation in which the spouse of an owner of more than twenty per cent of the corporation (who had been an owner for the two previous calendar years), within the two previous calendar years, made a contribution in excess of one thousand dollars to a candidate for governor who subsequently became governor, or to such individual's campaign committee.

OAG 83-034. The governor does not have "ultimate responsibility" for the awarding of a contract by the department of development, as that term is used in RC 3517.13(J).

OAG 83-034. A contract for personal services may be let by competitive bidding, absent applicable statutory provisions, if reasonable action is taken to provide all qualified persons with the opportunity to submit proposals, and if the contract is awarded on the basis of the merit of the proposals.

OAG 83-034. RC 3517.13(J) does not apply to contracts which are let by competitive bidding.

OAG 83-034. RC 3517.13(J), which prohibits an agency or department of the state or any political subdivision from awarding contracts in certain instances, applies only if a contribution in excess of one thousand dollars was made to the holder of a public office or to such person's campaign committee, and not if such a contribution was made to an individual, or to the campaign committee of an individual, who was merely a candidate for public office, and not the holder of a public office, at the time of the contribution.

Elections Op 88-2. For purposes of RC 3517.13(I) and 3517.13(J), contributions to a "federal nonconnected political committee" will also be considered contributions to the holder of a public office who (1) is closely identified with the committee, (2) influences decisions of the committee, and (3) benefits substantially from contributions received by the committee.

Elections Op 87-11. Under a method by which county contracts for unique or professional services are awarded that involves actual awarding of the contracts by a board of control, with a purely advisory role reserved for the county executive and department heads, the office of the county executive is not considered to have ultimate responsibility for the award of such contracts for purposes of divisions (I) and (J) of RC 3517.13.

Elections Op 87-8. Contributions to a campaign for federal office conducted by a state or local officeholder are to be considered in determining whether RC 3517.13 forbids a contract award by an agency, department, or subdivision for whose contracts the officeholder has ultimate responsibility; the Federal Election Campaign Act of 1971, 2 USC 453, does not preempt RC 3517.13(I) or 3517.13(J).

Elections Op 87-5. The words "two previous calendar years" in RC 3517.13 mean the two preceding periods of January 1 through December 31; thus, the "two . . . years" previous to June 1986 are 1985 and 1984 in their entirety, not June 1984 to June 1985 and June 1985 to June 1986.

Elections Op 87-5. In a county having a charter and a "county executive" as chief officer, where county contracts exceeding $500 are awarded by a board of control consisting of the executive, council president, prosecutor, engineer, and budget director, this board is among the "other such entities" referred to by RC 3517.13(M).

Elections Op 87-2. RC 3517.13(I) and 3517.13(J) are not applicable to provider agreements entered into by the Ohio department of health's bureau of crippled children's services, communicative and sensory disorders unit, and women, infants and children coupon merchants program so long as the department continues to administer these programs by entering into provider agreements with all qualified provider applicants.

Elections Op 86-5. Amended RC 3517.13(K), under which the governor is deemed ultimately responsible for the award of contracts by public officers he appointed, does not apply to contracts awarded to campaign contributors who gave money before September 17, 1986.

Elections Op 86-3. RC 3517.13(I) and 3517.13(J), which forbid the state and its political subdivisions to contract except after competitive bidding with certain contributors to the campaign of the official ultimately responsible for awarding the contract, do not apply to contracts "awarded" under RC 5111.21(A)(1), since the state's action in that regard is purely ministerial.

Elections Op 86-2. RC 3517.13(I) and 3517.13(J), which forbid state agencies and departments to contract except after competitive bidding with certain contributors to the campaign of the official ultimately responsible for awarding the contract, cannot apply to purchases of spirits by the department of liquor control, since it is required to either stock or order on request every brand of spirit available.

3517.14 Elections commission; appointment; terms; compensation; conflict of interest; meetings; staff provided

(A) There is hereby created the Ohio elections commission consisting of five members, four of whom shall be appointed by the secretary of state with the advice and consent of the senate. Of the initial appointments by the secretary of state to the commission, one shall be for a term ending July 23, 1975, one shall be for a term ending July 23, 1976, one shall be for a term ending July 23, 1977, and one shall be for a term ending July 23, 1978. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. The length of the term of office of each

of the secretary of state's initial appointees to membership on the commission shall be determined by lot at the initial organizational meeting of the commission.

(B) In making the initial appointments to the commission, the secretary of state shall appoint two persons each from a list of five names submitted by the chairmen of the state central committee of each of the two political parties having the highest total vote cast at the previous election for the office of governor. The four members of the commission so appointed shall by a majority vote appoint a fifth member who is to serve as a member and as chairman of the commission for five years from July 23, 1974. Thereafter, the term of office of the chairman of the commission shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds.

(C) Each member of the commission shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

(D) A vacancy in the Ohio elections commission may be caused by death, resignation, or three absences from commission meetings in a calendar year, provided such absences are caused by reasons declared insufficient by a majority vote of the remaining members of the commission. Any vacancy in the position of chairman of the commission shall be filled by a majority vote of the four other appointed members of the commission. Upon any other vacancy occurring on the commission, the secretary of state shall appoint a successor from a list of five names submitted by the chairman of the central committee of the political party from whose list of names the member being replaced was appointed.

(E) Each member of the commission while in the performance of the business of the commission shall be entitled to receive compensation at the rate of fifty dollars per day and shall be reimbursed for expenses actually and necessarily incurred in the performance of his duties.

(F) No member of the commission shall serve more than one full term.

(G) No person may hold or be a candidate for any public office or serve on a committee supporting or opposing any issue or proposition at the time he takes office or during the time he serves as a member of the commission.

(H) The commission shall meet at the call of the chairman or upon the written request of a majority of the members. The commission shall adopt rules for its procedures. A majority of the members constitutes a quorum. No action shall be taken without the concurrence of a majority of the members.

(I) The secretary of state shall provide such technical, professional, and clerical employees as are necessary, and any funding that is necessary, for the commission to carry out its duties.

HISTORY: 1987 H 231, eff. 10-5-87
1980 S 251; 1974 S 46

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A)

CROSS REFERENCES

Elections commission, exchange of documents and witness lists; depositions, OAC 111:1-1-20, 111:1-1-21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 252 to 254, 256
Am Jur 2d: 25, Elections § 39

NOTES ON DECISIONS AND OPINIONS

OAG 74-087. The elections commission has statutory authority to investigate a statement of expenditures which was filed on June 19, 1974.

3517.15 Rules; investigations; alternate procedures in case commission finds violation; advisory opinions

(A) The secretary of state shall, under the procedures of Chapter 119. of the Revised Code, adopt those rules necessary for the administration and enforcement of sections 3517.08 to 3517.14 and 3517.18 of the Revised Code and provide each candidate, political action committee, and political party with written instructions and explanations in order to insure compliance with the provisions of sections 3517.08 to 3517.13, 3517.17, and 3517.18 of the Revised Code.

(B) Upon presentation to the Ohio elections commission of an affidavit of any person, made on personal knowledge and subject to the penalties for perjury, setting forth any failure to comply with or any violation of sections 3517.08 to 3517.13, 3517.17, or 3517.18 of the Revised Code, the commission shall proceed to an investigation of the charges made in the affidavit.

If the commission finds a violation, it shall do only one of the following:

(1) Impose a fine not to exceed the fine specified pursuant to section 3517.991 of the Revised Code;

(2) Report its findings to the appropriate prosecuting authority, which shall institute such civil or criminal proceedings as are appropriate;

(3) Enter a finding that good cause has been shown for the commission not to impose a fine or report its findings to the appropriate prosecuting authority.

Any person adversely affected by the action of the commission under division (B)(1) of this section may appeal from such action in accordance with section 119.12 of the Revised Code.

(C) The secretary of state and boards of elections shall furnish such information as the commission requests pursuant to an investigation under division (C) of section 3517.11 of the Revised Code or division (B) of this section. The commission or a member of the commission may administer oaths, and the commission may issue subpoenas to any person in the state compelling the attendance of witnesses and the production of relevant papers, books, accounts, and reports. Section 101.42 of the Revised Code governs the issuance of subpoenas insofar as applicable. Upon refusal of any person to obey a subpoena or to be sworn or to answer as a witness, the commission may apply to the court of common pleas of Franklin county under section 2705.03 of the Revised Code. The court shall hold proceedings in accordance with Chapter 2705. of the Revised Code.

(D) The commission may recommend legislation and render advisory opinions concerning sections 3517.08, 3517.13, and 3517.18 of the Revised Code for persons over

whose acts it has or may have jurisdiction. When the commission renders an advisory opinion relating to a specific set of circumstances involving sections 3517.08, 3517.13, and 3517.18 of the Revised Code stating that there is no violation of those sections, the person to whom the opinion is directed or any person who is similarly situated may reasonably rely on the opinion and is immune from criminal prosecutions and civil actions, including, without limitation, civil actions for removal from public office or employment, based on facts and circumstances covered by the opinion.

HISTORY: 1987 H 512, eff. 10-20-87
1986 H 300; 1984 H 722; 1974 S 46

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A)

CROSS REFERENCES

Secretary of state to furnish campaign expense reporting law copy and explanation to candidate, OAC 111-5-02
Referrals to elections commission; complaints, OAC 111:1-1-01, 111:1-1-02
Hearings at elections commission, OAC 111:1-1-04, 111:1-1-05
Evidence before elections commission, OAC 111:1-1-06
Subpoenas by elections commission, OAC 111:1-1-07
Legal counsel allowed in elections commission proceedings, OAC 111:1-1-08
Fines by elections commission, OAC 111:1-1-10
Elections commission can order violator to cease and desist, OAC 111:1-1-11
Filing of frivolous complaint with elections commission, order to pay costs allowed, OAC 111:1-1-18

Oaths, 3.20, 3.21
Unfair political campaign activities, power of Ohio elections commission to investigate, 3599.091

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 252 to 254, 256
Am Jur 2d: 25, Elections § 39 to 46

NOTES ON DECISIONS AND OPINIONS

2 Ohio Law 22 (November/December 1988). Ohio's New Corporate PAC Law, William D. Kloss and Bradley K. Sinnott.

OAG 74-087. The elections commission has statutory authority to investigate a statement of expenditures which was filed on June 19, 1974.

POLITICAL PARTY FUND

3517.16 Deposit of moneys into fund

There is hereby created in the state treasury the Ohio political party fund. All moneys received as a result of individuals exercising the checkoff option on their state income tax returns provided for in section 5747.081 of the Revised Code shall be deposited in this fund. The tax commissioner shall pay money from the fund only to political parties qualifying for it under division (B) of section 3517.17 of the Revised Code.

HISTORY: 1987 H 512, eff. 10-20-87

CROSS REFERENCES

State treasury, 113.05

Tax commissioner adopting rules for administration of political party fund, 5703.05

Treasurer of state crediting amounts of tax revenue to political party fund, 5747.03

3517.17 Division of moneys in fund among political parties

(A) At the beginning of each calendar quarter, moneys that have accrued in the Ohio political party fund during the previous quarter shall be divided equally among all qualified political parties in the following manner. Of the public moneys to which a party is entitled:

(1) One-half shall be paid to the treasurer of the state executive committee of the party;

(2) One-half shall be distributed to the treasurer of each county executive committee of the various counties in accordance with the ratio that the number of checkoffs in each county bears to the total number of checkoffs, as determined by the tax commissioner.

Each party treasurer receiving public moneys from the Ohio political party fund shall maintain such moneys in an account separate from all other assets of the political party and shall file statements of contributions and expenditures as required by sections 3517.10 and 3517.11 of the Revised Code. Each treasurer of a state executive committee who files such a statement shall file it with the secretary of state and each treasurer of a county executive committee who files such a statement shall file it with the appropriate board of elections. All such statements filed shall clearly indicate the amounts of public moneys received and the manner of their expenditure. The auditor of state shall annually audit the statements of the state committee of a political party that has received public moneys collected during the previous year, to ascertain that such moneys are expended in accordance with law. The auditor of state shall audit the statements of each county committee of such a political party at the time of the public office audit of that county under Chapter 117. of the Revised Code.

(B) Only major political parties, as defined in section 3501.01 of the Revised Code, may apply for public moneys from the Ohio political party fund. At the end of each even-numbered calendar year the secretary of state shall announce the names of all such political parties, indicating that they may apply to receive such moneys during the ensuing two years. Any political party named at this time may, not later than the last day of January of the ensuing odd-numbered year, make application with the tax commissioner to receive public moneys. No political party that fails to make a timely application shall receive public moneys during that two-year period. The tax commissioner shall prescribe an appropriate application form. Moneys from the fund shall be provided during the appropriate two-year period to each political party that makes a timely application in accordance with this division.

HISTORY: 1991 H 298, eff. 7-26-91
1987 H 512

CROSS REFERENCES

Tax commissioner adopting rules for administration of political party fund, 5703.05

3517.18 Purposes for which moneys from fund may be used by political parties

(A) A political party receiving moneys from the Ohio political party fund may expend the moneys only for the following purposes:

(1) The defraying of operating and maintenance costs associated with political party headquarters, including rental or leasing costs, staff salaries, office equipment and supplies, postage, and the purchase, lease, or maintenance of computer hardware and software;

(2) The organization of voter registration programs and get-out-the-vote campaigns;

(3) The administration of party fund-raising drives;

(4) Paid advertisements in the electronic or printed media, sponsored jointly by two or more qualified political parties, to publicize the Ohio political party fund and to encourage taxpayers to support the income tax checkoff program;

(5) Direct mail campaigns or other communications with the registered voters of a party that are not related to any particular candidate or election;

(6) The preparation of reports required by law.

(B) Moneys from the Ohio political party fund shall not be used for any of the following purposes:

(1) To further the election or defeat of any particular candidate or to influence directly the outcome of any candidate or issue election;

(2) To pay party debts incurred as the result of any election;

(3) To make a payment clearly in excess of the market value of that which is received for the payment.

(C) Any designated agent of a political party receiving moneys from the Ohio political party fund may, if there is a question about the legitimacy of a party expenditure of public moneys, ask the Ohio elections commission for an advisory opinion on the matter prior to making such an expenditure. The commission shall afford the highest priority to such a request.

HISTORY: 1987 H 512, eff. 10-20-87

Penalty: 3517.99(H)

NOTES ON DECISIONS AND OPINIONS

Elections Op 92-001. Money from the Ohio political party fund may not be used to pay for the publication and distribution of a yearbook of the members of a county party who are serving in county government where the yearbook features the members of that party who are candidates for public office or is distributed to other than registered voters of that party.

Elections Op 91-002. Ohio political party fund money may not be used to pay for costs associated with giving a dinner in honor of people who have made a significant contribution to a political party of either financial support or volunteer work.

Elections Op 89-6. Money from the Ohio political party fund may be used to pay for administrative expenses associated with a party fund-raising drive including expenses related to the management of the event or activity such as staff salaries, supplies, equipment, and the costs of food, entertainment, decorations, invitations, and rental of a facility; but the funds raised by the drive may not be used for any purpose prohibited by RC 3517.18(B) and may not be commingled with funds used by the party for supportive or opposing candidates or ballot issues.

Elections Op 89-6. Monies from the Ohio political party fund may be transferred from the county executive committee to the state party, but only to the state party's segregated public funds account, and such transferred funds may be used only for the purposes permitted by RC 3517.18(A).

Elections Op 89-2. Money from the Ohio political party fund may not be used to pay for booth space at a county fair that will be used to promote the party's candidates and officeholders.

Elections Op 89-2. Money from the Ohio political party fund may be used to pay for booth space at an event for voter registration and party fundraising if neither the space nor the funds is used for a purpose prohibited by RC 3517.18.

Elections Op 89-1. Money from the Ohio political party fund may be used to defray costs associated with maintaining and operating a permanent or temporary party headquarters.

Elections Op 88-5. Money from the Ohio political party fund cannot be used to pay for production or distribution of candidate slate cards.

Elections Op 88-4. Money from the Ohio political party fund cannot be used to pay for "walking lists" of registered voters if the lists will be used by a political party or its candidates solely to promote the election of the party's candidates.

Elections Op 88-4. Money from the Ohio political party fund may be used to pay for partisan voter registration activities conducted by a political party, so long as they are not conducted in conjunction with the promotion by name of particular candidates.

Elections Op 88-4. Money from the Ohio political party fund cannot be used to pay costs associated with a rally promoting political party's candidates.

Elections Op 88-3. Moneys from the Ohio political party fund may be used to defray the costs associated with a permanent or temporary political party headquarters, but only to the extent that such costs in whole or in part are unrelated to furthering the election or defeat of a candidate or group of candidates or influencing directly the outcome of any candidate or issue election.

SALE OF LISTS TO FINANCIAL INSTITUTIONS

3517.19 Sale of contributor, membership, or mailing lists to financial institutions

(A) As used in this section:

(1) "Financial institution" means a bank, savings and loan association, or credit union with its principal office in this state.

(2) "Political party" means only a major political party.

(B) A state political party may sell or lease its contributor, membership, or mailing lists, or any other lists upon which the party and a financial institution may agree, to any financial institution for either or both of the following purposes:

(1) Allowing the financial institution to use the name or logo of the political party on credit cards that it issues to persons identified on or through the contributor, membership, mailing, or other lists;

(2) Allowing the financial institution to use the name and goodwill of the political party in marketing its credit card program to persons identified on or through the contributor, membership, mailing, or other lists.

HISTORY: 1989 S 6, eff. 10-30-89

CROSS REFERENCES

Corporate funds not to be used to aid political organizations, exemptions, 3599.03

PENALTIES

3517.99 Penalties

(A) Any candidate whose campaign committee violates division (A) of section 3517.13 of the Revised Code shall be fined one thousand dollars for each day of violation.

(B) Any candidate whose campaign committee violates division (B) of section 3517.13 of the Revised Code, any political party that violates division (F)(1) of section 3517.101 of the Revised Code, or any person who violates division (E) of section 3517.13 of the Revised Code shall be fined one hundred dollars for each day of violation.

(C) Any candidate whose campaign committee violates division (C) or (D) of section 3517.13 of the Revised Code shall be fined twenty-five dollars for each day of violation.

(D) Whoever violates division (F)(2) of section 3517.101 or division (G) of section 3517.13 of the Revised Code shall be fined not more than ten thousand dollars, or if the offender is a person who was elected to public office, he shall forfeit his nomination or the office to which he was elected, or both.

(E) Whoever violates division (F) of section 3517.13 of the Revised Code shall be fined an amount equal to three times the amount contributed.

(F) Whoever violates division (H) of section 3517.13 of the Revised Code is guilty of a minor misdemeanor.

(G) Whoever violates division (O), (P), or (Q) of section 3517.13 of the Revised Code is guilty of a misdemeanor of the first degree.

(H) Any state or county committee of a political party that violates division (B) of section 3517.18 of the Revised Code shall be fined an amount equal to twice the amount of the improper expenditure.

(I) Any state or county political party that violates division (G) of section 3517.101 of the Revised Code shall be fined an amount equal to twice the amount of the improper expenditure or use.

HISTORY: 1989 S 6, eff. 10-30-89
1987 H 512; 1986 H 1053, H 300; 1976 H 1379; 1974 S 46

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 235, 294
Am Jur 2d: 26, Elections § 371 to 394

3517.991 Commission to establish schedule of fines

The Ohio elections commission shall establish a schedule of fines to be levied under division (C)(1)(a) of section 3517.11, division (B)(1) of section 3517.15, and division (C)(1) of section 3599.09 of the Revised Code. Fines imposed under division (C)(1)(a) of section 3517.11 and division (B)(1) of section 3517.15 of the Revised Code for violations occurring before an election shall be at least twice the amount of those for violations occurring after an election. In establishing the schedule of fines pursuant to this section, the commission shall take into account the need for different levels of penalties depending on the level of office being sought. The fines in the schedule established pursuant to this section shall not exceed the fines for the same offenses specified in section 3517.99 of the Revised Code, or if not so specified shall not exceed one thousand dollars. Fines imposed by the commission shall be paid into the general revenue fund.

HISTORY: 1984 H 722, eff. 4-4-85

CROSS REFERENCES

Fines by the election commission, OAC 111:1-1-10

Political communications must be identified, penalty, 3599.09

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 234, 256

Chapter 3519

INITIATIVE; REFERENDUM

PETITION COMMITTEE; PETITION APPROVAL

3519.01 Attorney general's approval of petition required; duties of secretary of state regarding petitions
3519.02 Committee for petitioners
3519.03 Committee to prepare arguments
3519.04 Estimate of proposed annual expenditures and annual yield of proposed taxes

PETITION

3519.05 Form of petition
3519.06 Verification of part-petition
3519.07 to 3519.09 Part-petitions; solicitors and records for petitions and part-petitions—Repealed
3519.10 Signer must be qualified elector; information to be given; each petition to contain signatures of electors of only one county
3519.11 Withdrawal of name from petition—Repealed
3519.12 and 3519.13 Void and outstanding part-petitions—Repealed
3519.14 Petition may not be filed with insufficient signatures
3519.15 Part-petitions sent to boards of elections; procedure by boards
3519.16 Protest against board's findings; establishing of sufficiency or insufficiency of signatures; supplementary petition
3519.17 False or irregular signature shall not invalidate entire petition—Repealed
3519.18 Power of boards of elections
3519.19 and 3519.20 Publicity pamphlets—Repealed

MISCELLANEOUS PROVISIONS

3519.21 Ballot title of propositions or issues
3519.22 Validity of petitions

CROSS REFERENCES

Petition relating to new county or county seat, 301.01 to 301.04
Alternative form of county government, petition to adopt, 302.03
Amendments or supplements to county zoning resolution, notices and hearings, referendum, 303.12
County zoning plan repeal in township, petition, 303.25
Procedure for submitting additional tax resolutions to referendum, 305.31 to 305.42
Resolution or ordinance to create regional transit authority, filing procedures, referendum, territorial boundaries, 306.32
Repeal of county sediment control rule, petition, 307.791
County charter, petition, alternative methods, verifying signatures, 307.94
Real property transfer tax, permissive levy by petitioners, 322.02
Election to repeal emergency permissive tax, petition, 322.021, 324.021
Utilities services tax, permissive levy, referendum available, 324.02
Establishment of district tuberculosis hospital, petition, 339.21
Township building codes, procedure for adoption, petition, 505.75
Petition for sale of township park lands, 511.25
Amendments or supplements to township zoning resolutions, procedure, referendum, 519.12
Township zoning plan repeal, procedure, referendum, 519.25
Plans of municipal government, petition, 705.01 to 705.06, 705.91
Incorporation of village, petition, 707.04
Annexation of one municipal corporation to another, petition, 709.24 to 709.34
Petition to submit question of detachment of village territory, election, payment, 709.39
Ordinances and measures proposed by initiative petition, 731.28 to 731.40
Initiative and referendum for municipal corporations adopting its own charter, 731.41
Park commissioners, establishment of municipal board, petition, 755.01
Dissolution of park district, petition for election, 1545.36
Combining probate and common pleas courts, petition, 2101.43
Petition of referendum against school district transfer, 3301.161
Assignment of school district to membership in a joint school district, referendum, 3313.911
Referendum on proposed library territory transfer, 3375.03
Reports of receipts and expenditures on initiative and referendum petitions mandated, 3517.12
Offenses and penalties, Ch 3599
Union of adjacent city health districts to form single city health district, petition, 3709.051
Union of several cities with general health district, petition, 3709.071
County motor vehicle license tax, subject to referendum, 4504.02
Levy decrease by a subdivision, initiative petition, 5705.261
Prohibition against political activity by certain tax officials, including petition circulation, 5715.51
County levy of sales tax, purpose, rate, hearing and referendum requirement, 5739.021
Watershed district, referendum on dissolution, 6105.18
People reserve power to propose, adopt, or reject laws and constitutional amendments by referendum, O Const Art II §1
Initiative and referendum, O Const Art II §1a to 1c
Emergency laws not subject to referendum, O Const Art II §1d
Initiative and referendum powers, discriminatory property tax laws forbidden, O Const Art II §1e
Municipal electors have right to use referendum and initiative, O Const Art II §1f
Petition, requirements and preparation, submission, ballot, language by Ohio ballot board, O Const Art II §1g
Public school district in city, use of referendum to determine board of education, O Const Art VI §3
Transfer of municipal or township powers to county, subject to initiative and referendum, O Const Art X §1
County charters, vote upon, O Const Art X §3
Municipal corporation's ownership of public utility, referendum, O Const Art XVIII §5
Municipal corporations, charter referendum, O Const Art XVIII §8

NOTES ON DECISIONS AND OPINIONS

53 Cin L Rev 541 (1984). The Current Use of the Initiative and Referendum in Ohio and Other States, Comment.

486 US 414, 108 SCt 1886, 100 LEd(2d) 425 (1988), Meyer v Grant. A state law making the payment of money to people circulating petitions needed to put a proposed constitutional amendment on the general election ballot abridges the right to engage in political speech secured by the First and Fourteenth Amendments to the federal constitution. (Ed. note: Colorado statute construed in light of federal constitution.)

PETITION COMMITTEE; PETITION APPROVAL

3519.01 Attorney general's approval of petition required; duties of secretary of state regarding petitions

(A) Whoever seeks to propose a law or constitutional amendment by initiative petition shall, by a written petition signed by one hundred qualified electors, submit the proposed law or constitutional amendment and a summary of it to the attorney general for examination. If in the opinion of the attorney general the summary is a fair and truthful statement of the proposed law or constitutional amendment, he shall so certify. A verified copy of the proposed law or constitutional amendment, together with the summary and the attorney general's certification, shall then be filed with the secretary of state.

(B)(1) Whoever seeks to file a referendum petition against any law, section, or item in any law shall, by a written petition signed by one hundred qualified electors, submit the measure to be referred and a summary of it to the secretary of state and, on the same day or within one business day before or after that day, submit a copy of the petition, measure, and summary to the attorney general.

(2) Not later than ten business days after receiving the petition, measure, and summary, the secretary of state shall do both of the following:

(a) Have the validity of the signatures on the petition verified;

(b) After comparing the text of the measure to be referred with the copy of the enrolled bill on file in his office containing the law, section, or item of law, determine whether the text is correct and, if it is, so certify.

(3) Not later than ten business days after receiving a copy of the petition, measure, and summary, the attorney general shall examine the summary and, if in his opinion the summary is a fair and truthful statement of the measure to be referred, so certify.

HISTORY: 1989 H 7, eff. 9-15-89
1974 S 238; 1953 H 1; GC 4785-175

CROSS REFERENCES

Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4, 6
Initiative and referendum petitions, O Const Art II §1a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 244; 37, Elections § 150; 56, Initiative and Referendum § 5, 14, 15, 38, 47, 48

Am Jur 2d: 42, Initiative and Referendum § 21 to 40

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

No. 87AP-596 (10th Dist Ct App, Franklin, 6-28-88), State ex rel Alexander v Brown. The right of referendum granted by O Const Art II §1c is not infringed by the circumstance that the time to obtain signatures on the referendum petition is reduced by the time the attorney general and secretary of state use performing their duties under RC 3519.01 and 3519.05.

2. In general

51 OS(2d) 169, 365 NE(2d) 887 (1977), State ex rel Barren v Brown. Mandamus would lie to compel attorney general to certify that summary of legislation in referendum petition was a fair and truthful statement of the measures to be referred; whether the matters in the petition are subject to referendum is irrelevant to the attorney general's certification of the summary.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By virtue of the provisions of O Const Art II §1a and 1g, the terms of a proposed constitutional amendment are determined by reference to the text of such proposal as contained on the initiative petition and part-petitions signed by the requisite number of electors; and any discrepancy between such text and the text of the preliminary petition submitted to the attorney general and filed with the secretary of state, under RC 3519.01, does not affect the duty of the secretary of state, prescribed in O Const Art II §1a, to submit such a proposal to the vote of the electorate if such proposal has been signed by ten per cent of the electorate.

29 OS(2d) 235, 281 NE(2d) 187 (1972), State ex rel Tulley v Brown. Where attorney general has advised proponents of constitutional amendment that he finds the summary of proposed amendment to be sufficient, mandamus will lie to compel attorney general so to certify it.

165 OS 495, 137 NE(2d) 749 (1956), State ex rel Lautz v Diefenbach. Where a city charter provides that the city council shall fix the compensation of all city employees, an ordinance fixing the working hours and compensation of the division of police is not properly submissible under initiative and referendum provisions.

51 App(3d) 26, 554 NE(2d) 125 (Franklin 1988), State ex rel Alexander v Brown. In election cases, time is a critical factor and extreme diligence and promptness are required to assert an alleged violation of the state's election laws.

63 App(2d) 125, 409 NE(2d) 1044 (1979), State ex rel Durell v Celebrezze. Where the attorney general of Ohio determines that the summary of a second initiative petition qualifies for certification to the secretary of state under RC 3519.01 and submits such with a copy of the signatures obtained on the first petition, procedural error by the attorney general in so doing does not affect the validity of part-petitions which are thereafter circulated and filed with the secretary of state in reliance upon the attorney general's certification.

OAG 72-010. The summary of proposed constitutional amendment (O Const Art XII §8) does not contain a fair and truthful statement of proposed amendment because it is not a fair, accurate and clear summary of amendment and does not contain an explanation of character and effect of proposed amendment as required by RC 3519.01.

3519.02 Committee for petitioners

The petitioners shall designate in any initiative, referendum, or supplementary petition and on each of the several parts of such petition a committee of not less than three nor more than five of their number who shall represent them in all matters relating to such petitions. Notice of all matters or proceedings pertaining to such petitions may be served on said committee, or any of them, either personally or by registered mail, or by leaving such notice at the usual place of residence of each of them.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-180

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 16, 40, 41
Am Jur 2d: 42, Initiative and Referendum § 21

NOTES ON DECISIONS AND OPINIONS

63 OS(2d) 326, 410 NE(2d) 1249 (1980), State ex rel Carter v Celebrezze. Initiative petitions for constitutional amendment rejected where one sentence of existing language was inadvertently omitted from the text of the proposed amendment which accompanied some of the petitions.

63 App(2d) 125, 409 NE(2d) 1044 (1979), State ex rel Durell v Celebrezze. Where the attorney general of Ohio determines that the summary of a second initiative petition qualifies for certification to the secretary of state under RC 3519.01 and submits such with a copy of the signatures obtained on the first petition, procedural error by the attorney general in so doing does not affect the validity of part-petitions which are thereafter circulated and filed with the secretary of state in reliance upon the attorney general's certification.

25 Misc 104, 266 NE(2d) 275 (CP, Clermont 1970), Sidwell v Clepper. Original petitions for referendum on township zoning act do not require appointment of a committee to serve on behalf of signers of petitions.

3519.03 Committee to prepare arguments

The committee named in an initiative petition may prepare the argument or explanation, or both, in favor of the measure proposed and the committee named in a referendum petition may prepare the argument or explanation, or both, against any law, section, or item of law. The persons who prepare the argument or explanation, or both, in opposition to the initiated proposal, or the argument or explanation, or both, in favor of the measure to be referred shall be named by the general assembly, if in session, and if not in session, then by the governor. Such argument or explanation, or both, shall not exceed three hundred words, and shall be filed with the secretary of state at least seventy-five days prior to the date of the election at which the measure is to be voted upon.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-180a

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 42, Initiative and Referendum § 22

NOTES ON DECISIONS AND OPINIONS

52 OS(2d) 7, 368 NE(2d) 837 (1977), State ex rel Glass v Brown. Prohibition will not lie to prohibit the secretary of state from placing a proposed constitutional amendment on the ballot.

48 OS(2d) 17, 356 NE(2d) 296 (1976), State ex rel O'Grady v Brown. The placing of issues on ballots and tabulating the votes cast thereon do not constitute the exercise of quasi-judicial power by the secretary of state, and therefore prohibition will not lie to prevent such action.

138 OS 574, 37 NE(2d) 584 (1941), Bigelow v Brumley. Whether persons officially appointed by governor or general assembly, under O Const Art II §1g, and GC 4785-180a and 4785-180b (RC 3519.03, 3519.19), to prepare official argument to be distributed by secretary of state to electors of state, in opposition to proposed "Bigelow Amendments" to Ohio Constitution, be absolutely privileged against liability for defamation for statement made in argument, and pertinent to occasion of privilege, that sponsor of proposed amendments was "paid lobbyist for Single Tax Movement," such absolute privilege does not extend to person who enjoys no such official capacity, but is only alleged to have conspired with official appointees to defame plaintiff by combining with official appointees in preparation of argument published over names of appointees.

138 OS 574, 37 NE(2d) 584 (1941), Bigelow v Brumley. Statement in official argument opposing proposed constitutional amendment, that sponsor of amendment is "paid lobbyist for Single Tax Movement" is not defamatory per se.

3519.04 Estimate of proposed annual expenditures and annual yield of proposed taxes

Upon receipt of the verified copy of a proposed state law or constitutional amendment proposing the levy of any tax or involving a matter which will necessitate the expenditure of any funds of the state or any political subdivision thereof, the secretary of state shall request of the tax commissioner an estimate of any annual expenditure of public funds proposed and the annual yield of any proposed taxes. The tax commissioner on receipt of such request shall prepare the estimate and file it in the office of the secretary of state. The secretary of state shall distribute copies of such estimate with the pamphlets prescribed in section 3519.19 of the Revised Code.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-175a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 16, 40, 41
Am Jur 2d: 42, Initiative and Referendum § 21

PETITION

3519.05 Form of petition

If the measure to be submitted proposes a constitutional amendment, the heading of each part of the petition shall be prepared in the following form, and printed in capital letters in type of the approximate size set forth:

INITIATIVE PETITION

Number _____

Issued to _____

(Name of solicitor)

Date of issuance _____

Amendment to the Constitution
Proposed by Initiative Petition

To be submitted directly to the electors

"Amendment" printed in fourteen-point black face type shall precede the title, which shall be briefly expressed and printed in eight-point type. The summary shall then be set forth printed in ten-point type, and then shall follow the certification of the attorney general, under proper date, which shall also be printed in ten-point type. The petition shall then set forth the names and addresses of the committee of not less than three nor more than five to represent the petitioners in all matters relating to the petition or its circulation.

Immediately above the heading of the place for signatures on each part of the petition the following notice shall be printed in red:

NOTICE

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a qualified voter, is liable to prosecution.

In consideration of his services in soliciting signatures to this petition the solicitor has received or expects to receive _____
from _____.
(Whose address is) _____

Before any elector signs the part-petition, the solicitor shall completely fill in the above blanks if the solicitor has received or will receive any consideration and if the solicitor has not received and will not receive any consideration he shall insert "nothing."

The heading of the place for signatures shall be substantially as follows:

(Sign with ink or indelible pencil. Your name, residence, and date of signing must be given.)

Signature	County	Township	Rural Route or other Postoffice address	Month	Day	Year

(Voters who do not live in a municipal corporation should fill in the information called for by headings printed above.)

(Voters who reside in municipal corporations should fill in the information called for by headings printed below.)

Signature	County	City or Village	Street and Number	Ward	Precinct	Month	Day	Year

The text of the proposed amendment shall be printed in full, immediately following the place for signatures, and shall be prefaced by "Be it resolved by the people of the State of Ohio." Immediately following the text of the proposed amendment must appear the following form:

_____, declares under penalty of election falsification that he is the circulator of the foregoing petition paper containing the signatures of _____ electors, that the signatures appended hereto were made and appended in his presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be, and that the electors signing this petition did so with knowledge of the contents of same.

(Signed) _____ (Solicitor)
(Address) _____

The penalty for election falsification is imprisonment for not more than six months, or a fine of not more than one thousand dollars, or both.

If the measure proposes a law, the heading of each part of the petition shall be prepared as follows:

INITIATIVE PETITION

Number _____

Issued to _____

(Name of Solicitor)

Date of issuance _____

Law proposed by initiative petition first to be submitted to the General Assembly.

In all other respects the form shall be as provided for the submission of a constitutional amendment, except that the text of the proposed law shall be prefaced by "Be it enacted by the people of the state of Ohio."

The form for a supplementary initiative petition shall be the same as that provided for an initiative petition, with the exception that "supplementary" shall precede "initiative" in the title thereof.

The general provisions set forth in this section relative to the form and order of an initiative petition shall be, so far as practical, applicable to a referendum petition, the heading of which shall be as follows:

REFERENDUM PETITION

Number _____

Issued to _____

(Name of Solicitor)

Date of issuance _____

To be submitted to the electors for their approval or rejection

The title, which follows the heading, shall contain a brief legislative history of the law, section, or item of law to be referred. The text of the law so referred shall be followed by the certification of the secretary of state, in accordance with division (B)(2)(b) of section 3519.01 of the Revised Code, that it has been compared with the copy of the enrolled bill, on file in his office, containing such law, section, or item of law, and found to be correct.

HISTORY: 1989 H 7, eff. 9-15-89
1974 H 662; 1953 H 1; GC 4785-176

CROSS REFERENCES

Unqualified person signing petition, offenses and penalties, 3599.13
Prohibitions as to petitions, 3599.14
False signature forbidden, 3599.28
Election falsification, 3599.36
Initiative and referendum petitions, O Const Art II §1a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 19, 24, 26, 27, 31
Am Jur 2d: 26, Elections § 188 to 192; 42, Initiative and Referendum § 22 to 26, 32 et seq.

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

No. 87AP-596 (10th Dist Ct App, Franklin, 6-28-88), State ex rel Alexander v Brown. The right of referendum granted by O Const Art II §1c is not infringed by the circumstance that the time to obtain signatures on the referendum petition is reduced by the time the attorney general and secretary of state use performing their duties under RC 3519.01 and 3519.05.

2. In general

64 OS(3d) 1 (1992), State ex rel Hodges v Taft. The secretary of state is under no duty to compel local boards of election to reject initiative petitions submitted without including the amount of compensation received by the circulators of the petitions.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By virtue of the provisions of O Const Art II §1a and 1g, the terms of a proposed constitutional amendment are determined by reference to the text of such proposal as contained on the initiative petition and part-petitions signed by the requisite number of electors; and any discrepancy between such text and the text of the preliminary petition submitted to the attorney general and filed with the secretary of state, under 3519.01, does not affect the duty of the secretary of state, prescribed in O Const Art II, § 1a, to submit such a proposal to the vote of the electorate if such proposal has been signed by ten percent of the electorate.

31 OS(2d) 188, 287 NE(2d) 630 (1972), State ex rel Tulley v Brown. There is no duty on the part of the secretary of state to transmit improperly verified part-petitions to boards of elections, and prohibition will not lie to prevent the boards from determining the validity of signatures of part-petitions.

124 OS 24, 176 NE 664 (1931), State ex rel Hubbell v Bettman. An initiated petition may propose several separate and distinct amendments to the Constitution of Ohio, even though they do not all relate to the same subject-matter, provided the same are so separated and distinguished from each other in the petitions that the electors may appreciate and understand that they are proposing distinct and unrelated propositions, and further provided that when the same are printed upon the ballot the individual voters may vote separately upon each separate proposal.

51 App(3d) 26, 554 NE(2d) 125 (Franklin 1988), State ex rel Alexander v Brown. In election cases, time is a critical factor and extreme diligence and promptness are required to assert an alleged violation of the state's election laws.

63 App(2d) 125, 409 NE(2d) 1044 (1979), State ex rel Durell v Celebrezze. Where the attorney general of Ohio determines that the summary of a second initiative petition qualifies for certification to the secretary of state under RC 3519.01 and submits such with a copy of the signatures obtained on the first petition, procedural error by the attorney general in so doing does not affect the validity of part-petitions which are thereafter circulated and filed with the secretary of state in reliance upon the attorney general's certification.

1930 OAG 1854. Before the attorney general may execute the certificates provided in statute, to be printed upon an initiative or referendum petition, there should be submitted to him a petition signed by one hundred or more qualified electors of the state requesting such certifications.

1930 OAG 1626. Under this section, the synopsis of an amendment or law, together with the attorney general's certification thereof, should be printed on each part of an initiative or referendum petition in capital letters.

1930 OAG 1626. Notice of the penalty for falsely signing an initiative or referendum petition should, under statute, be printed in red immediately above the place for signatures upon each part of such petition, and such notice need be printed in no other place thereon.

1930 OAG 1499. In the event an initiative petition proposing an amendment to the Constitution has been circulated in the year 1929, and a number of signatures then secured thereto, such signatures if secured in accordance with the laws then in force and effect may be considered sufficient and counted in determining the requisite number of signatures upon such petition when filed in 1930.

3519.06 Verification of part-petition

No initiative or referendum part-petition is properly verified if it appears on the face thereof, or is made to appear by satisfactory evidence:

(A) That the statement required by section 3519.05 of the Revised Code is not properly filled out;

(B) That the statement is not properly signed;

(C) That the statement is altered by erasure, interlineation, or otherwise;

(D) That the statement is false in any respect;

(E) That any one person has affixed more than one signature thereto.

HISTORY: 1974 H 662, eff. 9-27-74
1974 S 238; 1953 H 1; GC 4785-176c

CROSS REFERENCES

False statement for verifying initiative or referendum petition; fine and imprisonment; warning, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 18, 27
Am Jur 2d: 42, Initiative and Referendum § 30

NOTES ON DECISIONS AND OPINIONS

59 App(2d) 175, 392 NE(2d) 1302 (1978), State ex rel Watkins v Quirk. A municipal clerk of council does have authority to invalidate all signatures affixed to referendum part-petitions where the part-petition on its face violates RC 3519.06(C).

3519.07 to 3519.09 Part-petitions; solicitors and records for petitions and part-petitions—Repealed

HISTORY: 1974 S 238, eff. 5-15-74
1953 H 1; GC 4785-175b, 4785-176a, 4785-176b

3519.10 Signer must be qualified elector; information to be given; each petition to contain signatures of electors of only one county

Each signer of any initiative or referendum petition must be a qualified elector of the state. He shall place on such petition after his name the date of signing and the location of his voting residence, including the street and number in which such voting residence is located, if in a municipal corporation, and the rural route or other post-office address and township in which such voting residence is located, if outside a municipal corporation. Each signer may also print his name so as to clearly identify his signature. Each part-petition which is filed shall contain signatures of electors of only one county. Petitions containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions containing signatures of electors of more than one county are filed, the secretary of state shall determine the county from which the majority of signatures came, and only signatures from such county shall be counted. Signatures from any other county shall be invalid.

HISTORY: 1986 H 524, eff. 3-17-87
1986 H 555; 1974 S 238; 1953 H 1; GC 4785-177

CROSS REFERENCES

Qualifications of electors, 2961.01, 3503.01; O Const Art V §1, 4, 6
Registration, 3503.06
Unqualified person signing petition, penalty; threats as to petitions punished, 3599.13
Offenses as to petitions, 3599.14, 3599.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 23, 25, 28
Am Jur 2d: 42, Initiative and Referendum § 27 et seq.
Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604

NOTES ON DECISIONS AND OPINIONS

49 OS(3d) 102, 551 NE(2d) 150 (1990), In re Protest Filed with the Franklin County Elections Bd by Citizens for the Merit Selection of Judges, Inc on Behalf of Issue III, Merit Selection of Judges. The requirement of RC 3519.10 that a signer of an initiative petition place the address of the signer's voting residence on the petition is not in conflict with O Const Art II §1g.

49 OS(3d) 102, 551 NE(2d) 150 (1990), In re Protest Filed with the Franklin County Elections Bd by Citizens for the Merit Selection of Judges, Inc on Behalf of Issue III, Merit Selection of Judges. A board of elections may disqualify a signature on an initiative petition circulated pursuant to RC Ch 3519 where the residence indicated by a signer is not the same as the residence on record with the board of elections for this signer.

108 App 37, 160 NE(2d) 366 (1957), Stevens v Henry County Bd of Elections. An elector may revoke his previous withdrawal of his signature to a referendum petition and reinstate his signature on such petition until action is taken thereon.

1949 OAG 783. Each part-petition, in case of initiative, referendum or supplemental petitions, at the time it is filed with the secretary of state, is permitted to bear signatures of electors of one and only one county, by the express provisions of statute.

1949 OAG 783. Where the reason for the withdrawal of the signature of an elector is that he resides in a county other than that of the other signers of the part-petition, such withdrawal must take place prior to the time such part-petition is filed with the secretary of state.

1932 OAG 4272. The failure to place the date of signing on an initiative petition for a constitutional amendment invalidates the signature of such petitioner.

1932 OAG 4272. Where signer to an initiative petition resided in a municipality, failure to state thereon any information as to ward and precinct in which his residence is located invalidates the signature of such petitioner.

3519.11 Withdrawal of name from petition—Repealed

HISTORY: 130 v H 370, eff. 1-1-64
1953 H 1; GC 4785-177a

3519.12 and 3519.13 Void and outstanding part-petitions—Repealed

HISTORY: 1974 S 238, eff. 5-15-74
1953 H 1; GC 4785-177b, 4785-177c

3519.14 Petition may not be filed with insufficient signatures

The secretary of state shall not accept for filing any initiative or referendum petition which does not purport to contain at least the minimum number of signatures required for the submission of the amendment, proposed law, or law to be submitted under the initiative or referendum power.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-177d

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 17, 22, 33 to 35
Am Jur 2d; 26, Elections § 192; 42, Initiative and Referendum § 27, 32, 37 et seq., 42 et seq.

NOTES ON DECISIONS AND OPINIONS

63 OS(2d) 326, 410 NE(2d) 1249 (1980), State ex rel Carter v Celebrezze. Initiative petitions for constitutional amendment rejected where one sentence of existing language was inadvertently omitted from the text of the proposed amendment which accompanied some of the petitions.

3519.15 Part-petitions sent to boards of elections; procedure by boards

Whenever any initiative or referendum petition has been filed with the secretary of state, he shall forthwith separate the part-petitions by counties and transmit such part-petitions to the boards of elections in the respective counties. The several boards shall proceed at once to ascertain whether each part-petition is properly verified, and whether the names on each part-petition are on the registration lists of such county, or whether the persons whose names appear on each part-petition are eligible to vote in such county, and to determine any repetition or duplication of signatures, the number of illegal signatures, and the omission of any necessary details required by law. The boards shall make note opposite such signatures and submit a report to the secretary of state indicating the sufficiency or insufficiency of such signatures and indicating whether or not each part-petition is properly verified, eliminating, for the purpose of such report, all signatures on any part-petition that are not properly verified.

In determining the sufficiency of such a petition, only the signatures of those persons shall be counted who are electors at the time the boards examine the petition.

HISTORY: 1981 H 1, eff. 8-5-81
1977 S 125; 1953 H 1; GC 4785-178

CROSS REFERENCES

Misconduct of board of elections as to petitions, penalty, 3599.16

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 17, 22, 33 to 35
Am Jur 2d: 42, Initiative and Referendum § 35, 37 et seq., 42 et seq.

NOTES ON DECISIONS AND OPINIONS

58 OS(2d) 395, 390 NE(2d) 829 (1979), Cappelletti v Celebrezze. Secretary of state, upon receipt of initiative petitions containing signatures of more than three per cent of voters, properly submitted part-petitions to county board of elections for verification of signatures.

31 OS(2d) 188, 287 NE(2d) 630 (1972), State ex rel Tulley v Brown. There is no duty on the part of the secretary of state to transmit improperly verified part-petitions to boards of elections, and prohibition will not lie to prevent the boards from determining the validity of signatures of part-petitions.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. GC 4785-178 and 4785-179 (RC 3519.15, 3519.16) do not limit or restrict operation of the powers of the initiative and referendum.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. Secretary of state has authority to reject part of petition not verified as required by O Const Art II §1g.

29 App(2d) 133, 279 NE(2d) 624 (1971), Durell v Brown. If there are sufficient presumptively valid signatures in an initiative petition meeting the requirements of Const Art II §1, there is an absolute duty on the secretary of state to certify the petition to the general assembly irrespective of whether it can be proved that in some way some or all of the signatures contained in the initiative petition are invalid.

No. 87AP-933 (10th Dist Ct App, Franklin, 6-7-88), In re Protest on Behalf of Issue III, Merit Selection of Judges; reversed by 49 OS(3d) 102 (1990). The signers of an initiative petition, who were as of the date of signature registered voters on the permanent list of the Franklin county board of elections, were eligible to sign the initiative petition despite the fact that they listed Franklin county residence addresses different than that found on the permanent registration list.

OAG 72-082. The filing of additional signatures, after an initial finding and notification of insufficient signatures by the secretary of state, does not cause the postponement of the issue to a later election.

OAG 72-082. As a matter of practice, the secretary of state may find, and give notice of insufficient signatures on an original petition, proposing a constitutional amendment under O Const Art II §1a and 1g, at any time reports from the counties are received by him and he is able to determine the insufficiency, but in no event may he make a general finding of insufficiency later than the fortieth day prior to the election, at which the issue is to appear on the ballot.

OAG 67-039. RC 3517.01 requires that the signatures on the petition be examined and certified in the same manner as referendum petitions and it does not require full compliance with all of the statutes in RC Ch 3519.

1939 OAG 1203. If total number of valid signatures to referendum petition is less than the number required by the Constitution, the secretary of state may not transmit the petition or any parts thereof to the various boards of elections.

1939 OAG 1203. With respect to a referendum petition the secretary of state may not reject and must consider valid (a) all signatures which appear on a part-petition where the signature on the circulator's affidavit is in different handwriting than that on the statement with respect to moneys received by the circulator; (b) all signatures which are dated later in point of time than the date of the circulator's affidavit; (c) the signatures of persons signing, who claim that the part-petition was not presented to them by the person who executed the circulator's affidavit; (d) the signatures of persons signing who claim that the circulator was not present when they signed the part-petition; (e) the signatures of all persons who claim they did not sign any petition.

1939 OAG 1203. When a referendum petition is filed with the secretary of state within ninety days after filing of a law by the governor in the office of the secretary of state, it is the duty of the secretary of state to ascertain whether or not such petition contains the required number of signatures valid on the face thereof, and in so doing he must reject (1) the names of all signers written in black or colored lead pencil; (2) all signatures which appear on a part-petition, where the affidavit attached to said part-petition was not signed by the circulator thereof; (3) all signatures which appear on a part-petition where the notary failed to sign his name on the circu-

lator's affidavit; (4) all signatures which appear on a part-petition, where the circulator failed to sign his name on the statement of "what money, if any, he received for circulating the petition."

3519.16 Protest against board's findings; establishing of sufficiency or insufficiency of signatures; supplementary petition

If the circulator of any part-petition, the committee interested therein, or any elector files with the board of elections a protest against the board's findings made pursuant to section 3519.15 of the Revised Code, then the board shall proceed to establish the sufficiency or insufficiency of the signatures and of the verification thereof in an action before the court of common pleas in the county. Such action must be brought within three days after the protest has been filed, and the case shall be heard forthwith by a judge of such court whose decision shall be certified to the board. The signatures which are adjudged sufficient or the part-petitions which are adjudged properly verified shall be included with the others by the board, and those found insufficient and all those part-petitions which are adjudged not properly verified shall not be included. The properly verified part-petitions, together with the report of the board, shall be returned to the secretary of state not less than fifty days before the election, provided that in the case of an initiated law to be presented to the general assembly the boards shall promptly check and return the petitions together with their report. The secretary of state shall notify the chairman of the committee in charge of the circulation as to the sufficiency or insufficiency of the petition and the extent of the insufficiency. If the petition is found insufficient because of an insufficient number of valid signatures, such committee shall be allowed ten additional days after such notification by the secretary of state for the filing of additional signatures to such petition. The part-petitions of the supplementary petition which appear to the secretary of state to be properly verified, upon receipt thereof by the secretary of state, shall forthwith be forwarded to the boards of the several counties together with the part-petitions of the original petition which have been properly verified, and shall be immediately examined and passed upon as to the validity and sufficiency of the signatures thereon by each of such boards and returned within five days to the secretary of state with the boards' report. No signature on a supplementary part-petition which is the same as a signature on an original part-petition shall be counted. The number of signatures in both the original and supplementary petitions, properly verified, shall be used by the secretary of state in determining the total number of signatures to the petition which he shall record and announce. If they are sufficient, then such amendment, proposed law, or law shall be placed on the ballot as required by law. If the petition is found insufficient, the secretary of state shall notify the committee in charge of the circulation of the petition.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-179

CROSS REFERENCES

Days counted to ascertain time, 1.14
Common pleas court jurisdiction, Ch 2305
Falsehoods in proceedings relating to elections; fine and imprisonment, 3599.36

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 17, 22, 33 to 35
Am Jur 2d: 42, Initiative and Referendum § 37 to 40, 42 et seq.

NOTES ON DECISIONS AND OPINIONS

58 OS(2d) 395, 390 NE(2d) 829 (1979), Cappelletti v Celebrezze. Secretary of state, upon receipt of initiative petitions containing signatures of more than three per cent of voters, properly submitted part-petitions to county board of elections for verification of signatures.

33 OS(2d) 13, 293 NE(2d) 290 (1973), State ex rel Perk v Cotner. Clerk of Cleveland city council may not continue to invalidate signatures on original part-petitions after expiration of ten-day period.

166 OS 166, 140 NE(2d) 563 (1957), State ex rel Endress v Wellington. There is no legislative provision for filing supplemental petitions or adding additional signatures to a referendum petition after expiration of the time specified in RC 731.29.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. GC 4785-178 and 4785-179 (RC 3519.15, 3519.16) do not limit or restrict operation of the powers of the initiative and referendum.

OAG 72-082. The filing of additional signatures, after an initial finding and notification of insufficient signatures by the secretary of state, does not cause the postponement of the issue to a later election.

OAG 72-082. As a matter of practice, the secretary of state may find, and give notice of insufficient signatures on an original petition, proposing a constitutional amendment under O Const Art II §1a and 1g, at any time reports from the counties are received by him and he is able to determine the insufficiency, but in no event may he make a general finding of insufficiency later than the fortieth day prior to the election, at which the issue is to appear on the ballot.

1950 OAG 1419. A petition seeking to initiate a proposed law is required to have valid signatures totaling three per cent of the total vote for governor at the last preceding general election and in addition must include names from forty-four counties from each of which there must be valid signatures equal to or exceeding one and one-half per cent of the total vote for governor in each county at the last preceding general election; where such a petition contains a requisite total number of valid signatures for the state as a whole but contains the required totals in only forty-three counties of the state, and the number of signatures from the forty-fourth county is below the legal minimum, such petition is insufficient and the secretary of state is required by law to give notice of such insufficiency and the extent thereof to the committee charged with the circulation of the petition.

1950 OAG 1419. Where a defect in the part-petitions from a particular county operates to reduce the number of sufficient signatures so that only in forty-three counties rather than forty-four are there the constitutional number of valid signatures and such deficiency arises from defects other than the number of valid signatures, the committee in charge of circulating such petition is not entitled to file additional signatures to cure such defects.

3519.17 False or irregular signature shall not invalidate entire petition—Repealed

HISTORY: 130 v H 370, eff. 1-1-64
1953 H 1; GC 4785-179a

3519.18 Power of boards of elections

In the performance of the duties required of the boards of elections, the boards may subpoena witnesses, compel

the production of books, records, and other evidence, administer oaths, and take evidence.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-179b

CROSS REFERENCES

Duties of board of elections, 3501.11
Falsehoods in proceedings relating to elections; fine and imprisonment, 3599.36
Refusal to appear, produce materials, or answer questions at election proceeding; penalty, 3599.37

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 17, 22, 33 to 35
Am Jur 2d: 25, Elections § 44; 42, Initiative and Referendum § 37 et seq., 42 et seq.

3519.19 and 3519.20 Publicity pamphlets—Repealed

HISTORY: 1974 S 238, eff. 5-15-74
1953 H 1; GC 4785-180b, 4785-180c

MISCELLANEOUS PROVISIONS

3519.21 Ballot title of propositions or issues

The order in which all propositions, issues, or questions, including proposed laws and constitutional amendments, shall appear on the ballot and the ballot title of all such propositions, issues, or questions shall be determined by the secretary of state in case of propositions to be voted upon in a district larger than a county, and by the board of elections in a county in the case of a proposition to be voted upon in a county or a political subdivision thereof. In preparing such a ballot title the secretary of state or the board shall give a true and impartial statement of the measures in such language that the ballot title shall not be likely to create prejudice for or against the measure. The person or committee promoting such measure may submit to the secretary of state or the board a suggested ballot title, which shall be given full consideration by the secretary of state or board in determining the ballot title.

Except as otherwise provided by law, all propositions, issues, or questions submitted to the electors and receiving an affirmative vote of a majority of the votes cast thereon are approved.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-181

CROSS REFERENCES

Initiative and referendum, ballot language, O Const Art II §1b, 1g

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 110, 173; 56, Initiative and Referendum § 39, 44 to 46
Am Jur 2d: 25, Elections § 221, 222; 42, Initiative and Referendum § 22 to 25, 46

3519.22 Validity of petitions

No measure submitted to the electors and receiving an affirmative majority of the votes cast thereon shall be held ineffective or void on account of the insufficiency of the petitions by which such submission was procured.

The basis upon which the required number of petitioners in any case is determined shall be the total number of votes cast for the office of governor, in the case of state, county, or municipal referendum, at the last preceding election therefor.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-182

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 760; 56, Initiative and Referendum § 22, 53
Am Jur 2d: 42, Initiative and Referendum § 26

NOTES ON DECISIONS AND OPINIONS

100 App 323, 136 NE(2d) 671 (1953), Zeiher v Egger. The basis upon which the number of signatures upon a municipal initiative or referendum petition in the city of Sandusky is to be determined is the total number of votes cast for governor within such municipality at the last preceding election therefor. (GC 4227-4 and 4785-182 (RC 731.31, 3519.22) reconciled.)

Chapter 3521

CONGRESSIONAL REPRESENTATION

APPORTIONMENT

3521.01 Apportionment of congressional districts

VACANCIES IN SENATE AND HOUSE

3521.02 Vacancy in the senate of the United States
3521.03 Vacancy in office of congressman

APPORTIONMENT

CROSS REFERENCES

Apportionment, O Const Art XI

3521.01 Apportionment of congressional districts

For the purpose of election of representatives to congress, the state is apportioned as follows:

The first district contains the following territory:

Hamilton county (part):

Whole census tracts: 1, 2, 3.01, 3.02, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 55, 56, 57.01, 58, 59, 61, 62.01, 62.02, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82.01, 82.02, 83, 84, 85.01, 85.02, 86.01, 87, 88, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99.01, 99.02, 100.01, 100.02, 101, 102.01, 102.02, 103, 104, 105, 106, 107, 108, 109, 110, 111, 204.01, 204.02, 205.05, 206.01, 206.02, 207.01, 207.04, 207.05, 207.06, 207.07, 208.01, 208.02, 209.01, 209.02, 210.01, 210.02, 210.03, 211.01, 211.02, 212.01, 212.02, 213.02, 213.03, 213.04, 214.01, 214.02, 215.05, 215.09, 216.02, 216.03, 216.04, 217, 218.01, 218.02, 219, 220, 221.01, 227, 228, 234, 257, and 258.

Census block groups: groups 1, 2, and 3 of census tract 40; groups 3 and 4 of census tract 43; groups 1, 2, 3, and 4 of census tract 57.02; groups 1 and 5 of census tract 60; groups 1, 3, 4, and 5 of census tract 215.04; group 1 of census tract 215.06; groups 2, 4, 5, and 6 of census tract 215.07; groups 1, 2, 3, 5, 6, 7, and 8 of census tract 221.02; groups 1, 4, 5, and 6 of census tract 222; groups 2 and 4 of census tract 224; groups 1, 2, 3, and 5 of census tract 225; and groups 1, 3, 4, 5, and 6 of census tract 238.

Census blocks: blocks 402, 403, 404, 405, 406, 407, and 409 of census tract 40; blocks 204 and 205 of census tract 43; blocks 501, 502, 503, 504, 505, 506, 507, 508A, and 510 of census tract 57.02; blocks 212, 213, 306, 311, 411A, 411B, 414, 415, 416, and 417 of census tract 60; blocks 107, 109, 110A, 110B, 111A, 111B, 112, 113A, 114, 115, 116, 117, 202, 203, 204, and 205 of census tract 205.01; block 305 of census tract 205.02; blocks 201A, 202, 203, 204, 205, 206, and 207 of census tract 215.04; blocks 201, 202, 203, and 204 of census tract 215.06; blocks 106, 107, and 108 of census tract 215.07; blocks 401B, 403, 404, and 405 of census tract 221.02; blocks 201A, 201C, 202A, 202B, 202D, 202E, 203, 204, 205A, 205B, 206, and 207 of census tract 222; blocks 401, 402, 403, 404, 405, 410, 412, 413, 415, 416, 417A, and 417C of census tract 225; blocks 501B, 503, 514B, 602B, and 701B of census tract 226; blocks 201B, 201C, 203, 204, 205, 206, 207, 208, 209, 210, 212, and 213B of census tract 238; blocks 101B, 101C, 103A, 103C, 104, and 201A of census tract 242; and blocks 504 and 505A of census tract 255.

The second district contains the following territory:

Whole counties: Adams, Brown, and Clermont.

Hamilton county (part):

Whole census tracts: 20, 44, 45, 46.01, 46.02, 46.03, 47.01, 47.02, 48, 49, 50, 51, 52, 53, 54, 205.04, 215.01, 215.08, 223.01, 223.02, 229, 230.01, 230.02, 231, 232.01, 232.02, 233, 235.01, 235.02, 236, 237.01, 237.02, 239, 240.01, 240.02, 241, 243.01, 243.02, 243.03, 244, 245, 247, 248, 249.01, 249.02, 250.01, 250.02, 251.01, 251.02, 251.03, 251.04, 252, 253, 254.01, 254.02, 256, 259, 260, 261, and 262.

Census block groups: group 1 of census tract 43; groups 1 and 2 of census tract 205.02; groups 1, 3, and 5 of census tract 224; groups 1, 2, 3, 4, and 8 of census tract 226; and groups 1, 2, 3, 4, 6, and 7 of census tract 255.

Census blocks: block 401 of census tract 40; blocks 201, 202, and 203 of census tract 43; block 508B of census tract 57.02; blocks 201, 202, 203A, 203B, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 307, 308, 309, 310, 401, 402, 403, 404, 405, 406, 407, 408, 409, and 410 of census tract 60; blocks 101, 102, 103, 104, 105, 106, 108, 113B, 118, and 201 of census tract 205.01; blocks 301, 302, 303, 304, and 306 of census tract 205.02; block 201B of census tract 215.04; blocks 205A and 205B of census tract 215.06; blocks 101A, 101B, 101C, 102, 103, and 104 of census tract 215.07; blocks 401A and 402 of census tract 221.02; blocks 201B and 202C of census tract 222; block 417B of census tract 225; blocks 501A, 502, 508, 509, 514A, 518, 601, 602A, 603, 609, 610, 611, 612, 614, 616, 617, 618, 619, 620, 621, and 701A of census tract 226; blocks 201A and 213A of census tract 238; blocks 101A, 102, 103B, 201B, 202, and 216 of census tract 242; and blocks 501, 502, 503, 505B, 506, 507, and 508 of census tract 255.

Warren county (part):

Whole census tracts: 301.01, 301.02, 302, 303, 304, 305.01, 305.02, 306, 307, 308, 309, 310, 317, and 319.03.

Census block groups: group 1 of census tract 311; group 1 of census tract 312; groups 2 and 4 of census tract 316; group 2 of census tract 319.04; group 3 of census tract 320.01; and group 5 of census tract 320.02.

Census blocks: blocks 109, 112, 113, 114, and 115 of census tract 320.01 and blocks 104 and 304 of census tract 320.02.

The third district contains the following territory:

Montgomery county (part):

Whole census tracts: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 49, 101, 102, 201, 202, 203, 204, 205, 206.01, 206.02, 207, 208, 209, 210, 211, 212, 213.01, 213.02, 214, 215.01, 215.02, 216.01, 216.02, 217, 218, 219, 301, 302, 401.01, 401.02, 401.03, 402.01, 402.02, 403.01, 403.02, 404.01, 404.02, 501.01, 501.02, 501.03, 503.01, 503.02,

503.03, 504.01, 504.02, 505.01, 505.02, 506, 601, 602, 603, 701.01, 701.02, 702.01, 702.02, 703, 704, 705, 706, 707, 801, 802, 803, 804, 805, 806, 807, 903.01, 903.02, 904, 906, 907, 908, 909, 910, 1001.01, 1001.02, 1002.01, 1002.02, 1002.03, 1003.01, 1003.02, 1004, 1101, 1102, 1150.02, 1150.11, 1150.12, 1201.01, 1201.02, 1201.03, 1250, 1251.01, 1251.02, 1301, 1401, and 1650.

Census block groups: groups 1 and 2 of census tract 1501.

Census blocks: blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312B, 313B, 314B, 315, 316, 317, 318, 319, 320, 321B, 322, 401, 402, 403, 404, 405, 406B, 407, 408, 409, 410, 433, 434, and 435 of census tract 1501 and blocks 101, 102, 103, 113, 125, 126, 131, and 135 of census tract 1601.

The fourth district contains the following territory:

Whole counties: Allen, Crawford, Hancock, Hardin, Marion, Morrow, Richland, and Wyandot.

Auglaize county (part):

Whole census tracts: 401, 402, 403, 404, and 405.

Census block groups: groups 1 and 2 of census tract 406; groups 3 and 6 of census tract 407; and groups 2, 3, and 4 of census tract 411.

Census blocks: blocks 301, 302A, 302B, 302C, 302D, 303, 304A, 304B, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315A, 316A, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337A, 340A, 341, 353A, and 354A of census tract 406; blocks 201, 202A, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 401, 402, 403, 404, 405, 406, 407, 408, 409A, 409B, 410A, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513A, 513B, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 701A, 702A, 709A, 710A, 710B, and 711A of census tract 407; and blocks 101B, 102B, 103B, 129B, 130B, 131, 132, 133B, and 134 of census tract 411.

Knox county (part):

Whole census tracts: 9869, 9870, 9874, and 9877.

Census block groups: groups 2, 3, and 4 of census tract 9867; group 5 of census tract 9868; group 4 of census tract 9875; and group 5 of census tract 9876.

Census blocks: blocks 323, 324, 325, 326, 327A, 327B, 328, 329, 330A, 330B, 330C, 330D, and 330E of census tract 9875 and blocks 415, 416, 417B, and 418 of census tract 9876.

Logan county (part):

Whole census tracts: 9840, 9841, and 9842.

Census block groups: groups 2, 3, and 4 of census tract 9838; groups 1, 2, and 3 of census tract 9839; group 1 of census tract 9843; and group 1 of census tract 9847.

Census blocks: blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125A, 125B, 126, 127, 128, 129, 130, 131, 132A, 132B, 133A, 133B, 134, 135A, 135B, 135C, 136A, 136B, 136C, 137, 138, 139A, 139B, 139C, 140A, 140B, 141, 142, 143, 144, 145A, 145B, 146, 147, 148A, 148B, 149B, and 150 of census tract 9838; blocks 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415A, 415B, 416, 417, 418, 419, 420, 421, 422, 423A, 423B, 424, 425A, 425B, 425C, 426, 428A, 428B, 429, 431, 432, 433A, 433B, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443A, 443B, 444A, 444B, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, and 461B of census tract 9839; blocks 201A, 201B, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228A, 228B, 229A, 229B, 230A, 230B, 231A, 231B, 232A, 232B, 233, 234, 235A, 235B, 236, 237, 238, 239, 240, 241, 242, 243A, 243B, 244, 245, 246A, 246B, 247A, 247B, 248A, 248B, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264A, 264B, 265, 266A, 266B, 267C, 267D, 268, 269, 270, 271, 272, 273, 274, 275A, 275B, 275C, 276A, 276B, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288B, 289C, 290C, 291B, 294A, 294B, 295, 296, and 297 of census tract 9843; and blocks 201A, 201B, 202, 203A, 203B, 204A, 204B, 205, 206, 207, 208, 209, 210A, 210B, 211, 212, 213, 214, 215, 216, 217, 218, 219A, 219B, 220A, 220B, 221A, 221B, 222, 223, 224, 225, 226A, 227, 228A, 228B, 229C, 229D, 231B, 232, 235, 236, 239C, 301A, 301B, 302A, 302B, 303B, 330, 331A, 331B, 332, 333, 334A, 334B, and 335 of census tract 9847.

The fifth district contains the following territory:

Whole counties: Defiance, Erie, Henry, Huron, Paulding, Putnam, Sandusky, Seneca, Van Wert, and Williams.

Lorain county (part):

Whole census tracts: 301, 771, 921, 931, 941, 951, 961, and 971.

Census blocks: block 919 of census tract 503; blocks 101, 102, 103B, 104A, 105, 109, 110, 111, 112, 113, 121, 122, and 123 of census tract 601; block 911B of census tract 709.01; blocks 101B, 104, 203C, 203D, 204, 205, 206, 207, and 208 of census tract 713; and blocks 105, 107A, 107B, 108, 109, 110, 111, 112, 113, 114, 115, 116, 202B, 203, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, and 218 of census tract 715.

Mercer county (part):

Whole census tract: 9672.

Census block group: group 2 of census tract 9673.

Census blocks: blocks 101, 102, 103, 104, 105, 106, 107A, 107B, 108A, 108B, 109A, 109B, 110A, 110B, 111, 112, 113A, 113B, 114, 115, 116, 117, 118, 119, 120, 121, 129, 131, 132, 133A, 133B, 134A, 134B, 135, 136, and 139 of census tract 9673.

Ottawa county (part):

Whole census tracts: 501, 502, 503, 504, 505, 506, and 507.

Census block groups: groups 1, 2, and 3 of census tract 508.

Wood county (part):

Whole census tracts: 205, 213, 214, 215, 221, 222, 223, and 224.

Census block groups: group 4 of census tract 203; groups 1, 2, 3, and 4 of census tract 204; groups 1, 2, 3, 5, 6, and 9 of census tract 206; group 1 of census tract 212; groups 1, 2, and 4 of census tract 216; groups 1 and 2 of census tract 217.01; and groups 2, 4, and 5 of census tract 219.

Census blocks: blocks 304B, 901B, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, and 930 of census tract 203; blocks 208, 209, 210, 211, 212, 213, 214, 215A, 215B, 216, 217, 218, 219, 220, 221, 222, 223A, 223B, 224, 225, 226A, 226B, 227, 228, 229, 249, 250, 251, 252, and 253 of census tract 212; blocks 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 337, 339, 341, 342, 343, 344, 345, 346, 347, 348, 349, and 350 of census tract 216; blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, and 325 of census tract 217.01; blocks 102, 103, 104,

105, 106, 107, 108, 109, 113, 114, 115, 116, 117, and 118 of census tract 217.02; and blocks 164A, 164B, 165, 166, 167, 168, 169A, 169B, 170, 171, 172, 173, 174, 175, 176, 177A, 177B, 178A, 178B, 179, 180, 181, 182, 183, 184, 185A, 185B, 186, 187, 188, 189, 190, 191, 201B, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275A, 275B, 276A, 276B, 277, 278, 279, 280, 281A, 281B, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, and 297 of census tract 220.

The sixth district contains the following territory:

Whole counties: Athens, Clinton, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pike, Scioto, Vinton, and Washington.

Ross county (part):

Whole census tracts: 9559, 9562, 9564, 9565, 9567, 9568, and 9569.

Census block groups: groups 2, 3, and 4 of census tract 9557; group 3 of census tract 9560; groups 2, 3, 4, and 5 of census tract 9561; group 3 of census tract 9563; and groups 2 and 3 of census tract 9566.

Census blocks: block 143 of census tract 9557; blocks 427, 433A, 433B, 435, 436, 437, 438, 439, and 440 of census tract 9558; blocks 201A, 206, 207, 208, 209A, 209B, 210, 211, 212, 213, 214, 215, 216, 217A, 217B, 217C, 218, 219, 220, 221, 222, 401, 402, 404, 405, 406, and 407 of census tract 9560; and blocks 102, 103, 104, 105, 106, 107, and 108 of census tract 9561.

Warren county (part):

Whole census tracts: 313, 314, 315, 319.02, 320.03, 321, 322, 323, and 324.

Census block groups: group 2 of census tract 311; groups 2 and 3 of census tract 312; groups 1 and 3 of census tract 316; group 1 of census tract 319.04; group 2 of census tract 320.01; and groups 2 and 4 of census tract 320.02.

Census blocks: blocks 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 110, and 111 of census tract 320.01 and blocks 101, 102, 103, 105, 108, 113, 301, 302, and 303 of census tract 320.02.

The seventh district contains the following territory:

Whole counties: Champaign, Clark, Fairfield, Fayette, Greene, and Union.

Logan county (part):

Whole census tracts: 9844, 9845, 9846, and 9848.

Census block groups: groups 3 and 4 of census tract 9843.

Census blocks: block 149A of census tract 9838; blocks 427, 430, 461A, 462, 463, 464, 465A, and 465B of census tract 9839; blocks 267A, 267B, 288A, 289A, 289B, 290A, 290B, 291A, 292, 293A, and 293B of census tract 9843; and blocks 226B, 229A, 229B, 230, 231A, 233, 234A, 234B, 237A, 237B, 237C, 238, 239A, 239B, 239D, 240A, 240B, 241A, 241B, 242, 243A, 243B, 244, 245A, 245B 246, 247, 303A, 303C, 304, 305, 306, 307, 308, 309, 310A, 310B, 311A, 311B, 311C, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323A, 323B, 324, 325, 326, 327, 328, 329, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361A, 361B, 362A, 362B, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382A, 382B, 383, 384, 385, 386, 387, 388, 389, 390, and 391 of census tract 9847.

Pickaway county (part):

Whole census tracts: 201, 202, 203.10, 203.20, 204, 211, 212, 215, 216, and 217.

Census blocks: blocks 401, 402, 403A, 403B, 404, 405, 406, 407, 408, 409A, 409B, 410A, 410B, 410C, 410D, 411, 412, 413A, 413B, 413C, 416, 417, 418, 419, 420, 424, 425, 426, 427, 428, 434, 435, 436, 501, 502, 513A, 514A, 514B, 515, 516, 517, 518, 519, 520, 521, 522, 523, and 524 of census tract 214.

Ross county (part):

Whole census tracts: 9555 and 9556.

Census block groups: groups 1, 2, and 3 of census tract 9558; group 1 of census tract 9560; groups 1 and 2 of census tract 9563; and group 1 of census tract 9566.

Census blocks: blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123A, 123B, 124A, 124B, 125, 126, 127, 128, 129, 130, 131A, 131B, 132, 133, 134, 135, 136, 137, 138, 139, 140A, 140B, 141, 142, 144A, 144B, 145A, 145B, 146A, 146B, 147, 148, 149, 150, 151A, 151B, 152A, 152B, 153, 154, 155, 156, 157A, 157B, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167 of census tract 9557; blocks 401A, 401B, 402A, 402B, 403, 404, 405, 406, 407, 408, 409, 410, 411A, 411B, 412A, 412B, 413A, 413B, 414, 415A, 415B, 416, 417, 418A, 418B, 419, 420, 421, 422, 423, 424, 425, 426, 428, 429, 430, 431, 432A, 432B, and 434 of census tract 9558; blocks 201B, 202, 203A, 203B, 204, 205A, 205B, and 403 of census tract 9560; and block 101 of census tract 9561.

The eighth district contains the following territory:

Whole counties: Butler, Darke, Miami, Preble, and Shelby.

Auglaize county (part):

Whole census tracts: 409 and 410.

Census block groups: group 4 of census tract 406 and group 1 of census tract 407.

Census blocks: blocks 315B, 316B, 337B, 338, 339, 340B, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353B, 354B, and 355 of census tract 406; blocks 202B, 203, 204, 205, 206, 222, 223, 224, 410B, 513C, 701B, 702B, 703, 704, 705, 706, 707, 708, 709B, 711B, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, and 732 of census tract 407; and blocks 101A, 102A, 103A, 104A, 104B, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129A, 130A, 133A, 135, 136, 137, 138, 139, 140, 141, 142A, 142B, 143, 144A, 144B, and 145 of census tract 411.

Mercer county (part):

Whole census tracts: 9674, 9675, 9676, 9677, 9678, 9679, and 9680.

Census block groups: groups 3 and 4 of census tract 9673.

Census blocks: blocks 122, 123, 124, 125, 126, 127, 128, 130, 137, 138, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167 of census tract 9673.

Montgomery county (part):

Census block group: group 2 of census tract 1601.

Census blocks: blocks 312A, 313A, 314A, 321A, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 406A, 411, 412A, 412B, 413, 414A, 414B, 415A, 415B, 416, 417, 418, 419A, 419B, 420, 421, 422, 423, 424,

425, 426, 427, 428, 429, 430, 431, 432, 436, and 437 of census tract 1501 and blocks 104A, 104B, 105A, 105B, 106, 107, 108, 109, 110, 111, 112, 114, 115, 116, 117, 124, 133, 134, 136, and 137 of census tract 1601.

The ninth district contains the following territory:

Whole counties: Fulton and Lucas.

Ottawa county (part):

Whole census tracts: 509, 510, and 511.

Census block group: group 4 of census tract 508.

Wood county (part):

Whole census tracts: 201, 202, 207, 208, 209, 210, 211, and 218.

Census block groups: groups 1 and 2 of census tract 203; group 5 of census tract 204; group 4 of census tract 206; groups 2, 3, 4, and 5 of census tract 217.02; and groups 1 and 3 of census tract 219.

Census blocks: blocks 301, 302, 303, 304A, 305, 306A, 306B, 307A, 307B, 307C, 307D, 307E, 308, 309, 310, 311, and 901A of census tract 203; blocks 201, 202, 203, 204, 205, 206, 207, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 254, 255, 256, 257, 258, 259, 260, 261, and 262 of census tract 212; blocks 301, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332A, 332B, 332C, 333, 334, 335, 336, 338A, 338B, and 340 of census tract 216; block 323 of census tract 217.01; blocks 101, 110, 111, and 112 of census tract 217.02; and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137A, 137B, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 192, 193, 194, 195, and 201A of census tract 220.

The tenth district contains the following territory:

Cuyahoga county (part):

Whole census tracts: 1011.01, 1011.02, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1021.01, 1021.02, 1022, 1023, 1024.01, 1024.02, 1025, 1026, 1027, 1028, 1029, 1031, 1032, 1032.99, 1033.99, 1034, 1035, 1036, 1038, 1039, 1041, 1042, 1042.99, 1043, 1044, 1045, 1046, 1047.02, 1049, 1056.01, 1057, 1059, 1061, 1062, 1063, 1064, 1065, 1066, 1068, 1069, 1070, 1073, 1074, 1074.99, 1075, 1091, 1107, 1109, 1151, 1152, 1154, 1157, 1159, 1231, 1232, 1233, 1234, 1235.01, 1235.02, 1236.01, 1236.02, 1236.03, 1237, 1238, 1239, 1242.01, 1242.02, 1246, 1301.03, 1301.04, 1301.05, 1301.06, 1341, 1342.03, 1342.04, 1342.05, 1342.06, 1343, 1371.02, 1371.03, 1531.03, 1531.04, 1531.05, 1531.06, 1531.07, 1601, 1602, 1603, 1604, 1605, 1606.01, 1606.02, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1741.03, 1741.04, 1741.05, 1741.06, 1741.07, 1742.03, 1742.04, 1742.05, 1742.06, 1742.07, 1761, 1762, 1771.01, 1771.03, 1771.04, 1772.01, 1772.02, 1773.02, 1773.03, 1773.04, 1774.03, 1774.04, 1774.05, 1774.06, 1775.01, 1775.03, 1775.04, 1775.05, 1776.04, 1776.05, 1776.06, 1776.07, 1776.08, 1776.09, 1811, 1812.01, 1812.03, 1812.04, 1821.03, 1821.04, 1821.05, 1821.06, 1861.05, 1862.01, 1862.02, 1862.03, 1862.04, 1891.03, 1891.04, 1891.05, 1891.07, 1891.08, 1905.01, 1905.02, 1920, 1922, and 1923.

Census block groups: group 2 of census tract 1037; groups 2, 3, and 4 of census tract 1048; groups 1 and 2 of census tract 1051; groups 1, 2, 4, and 5 of census tract 1053; groups 3, 4, and 5 of census tract 1054; group 3 of census tract 1055; groups 4, 5, and 6 of census tract 1056.02; group 2 of census tract 1071; group 4 of census tract 1076; group 2 of census tract 1077; groups 2 and 3 of census tract 1108; groups 1, 4, 5, and 6 of census tract 1158; groups 1, 2, 4, 5, 6, and 7 of census tract 1241; groups 1, 2, and 3 of census tract 1243; groups 2, 3, 4, and 5 of census tract 1245; group 2 of census tract 1371.01.

Census blocks: blocks 101, 102, 103A, 104, 105, 106, 111, 112, 113, 114, 115, 116, 118, 119, 120, 202, and 209 of census tract 1033; blocks 101, 102, 105, 106, 107, 109, 114, and 115 of census tract 1037; blocks 109, 110, 116, 117, 118, 119, 120, 121, 122, 123, 124, and 125 of census tract 1048; blocks 301, 302, 303, 304, 305, 306, 309, 310, 312A, 312B, 313A, 313B, 314, 315, 316, 317, 318, 319, 320, 321, 322A, 322B, 322C, 322D, 323A, and 323B of census tract 1051; blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 116A, 118A, 119A, 119B, and 120 of census tract 1052; blocks 301, 302, 303, 304, 305, and 306 of census tract 1053; blocks 101, 102, 103, 104, 105, 207, 208, 209, 210, 211, 212, 213, 214, and 215 of census tract 1054; blocks 101, 102, 103, 104, 105, and 106 of census tract 1055; blocks 302, 303, 304, 305, 306, 307, 308, 309, and 310 of census tract 1056.02; blocks 101, 102, 103, 104, 105, 111, and 120 of census tract 1071; blocks 101, 105, 107, 114, 117, 118, 121, 122, 125, 127, and 128 of census tract 1072; blocks 105, 106, 107, 108, 109, 204, 205, 206, 207, 208, 209, 210, 211, 216, 221, 222, 223, 224, 302, 303, 304, 305, 312, 317, and 318 of census tract 1076; blocks 101, 102, 103, 118, 119, 120, 121, 201, 202, 203, 204, 207, 208, 209, 210, 211, 213, 214, 215, 216, and 217 of census tract 1078; blocks 203, 204, 205, 206, and 208 of census tract 1092; block 209 of census tract 1102; blocks 206 and 213 of census tract 1105; blocks 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, and 120 of census tract 1106; blocks 102, 104, 105, 106, 107, 108, 109, 110, and 111 of census tract 1108; blocks 202, 203, 204, 207, 208, 302, 307, 308, and 310 of census tract 1153; blocks 201, 202, 203, 204, 205, 302, 304, 305, 306, 307, 308, 309, 310, 311, 312, and 313 of census tract 1158; blocks 301, 302, 303, and 304 of census tract 1241; blocks 401, 402, 405, 406, 407, 408, 410, 503, 504, 505, 506, and 606 of census tract 1243; blocks 105 and 106 of census tract 1245; blocks 101, 106, 107, 108, 109, 110A, 110B, 111A, 111B, 112, 113, 114, 115, 702, 703, 704, and 705 of census tract 1371.01; blocks 303, 304, 305, 306, 307, 308, 309, 311, 312, 313, 314, 315, 316, 317, 318, and 319 of census tract 1861.03; and blocks 502, 503, 504, 505, 506, and 507 of census tract 1861.04.

The eleventh district contains the following territory:

Cuyahoga county (part):

Whole census tracts: 1047.01, 1079, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1093, 1096, 1097, 1098, 1099, 1101, 1103, 1104, 1111, 1112, 1113, 1114.01, 1114.02, 1115, 1116, 1117, 1118, 1119.01, 1119.02, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1155, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1171.01, 1171.02, 1172.01, 1172.02, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1181, 1182, 1183, 1184, 1185, 1186.01, 1186.02, 1187, 1188, 1189, 1191, 1192.01, 1192.02, 1193, 1194.01, 1194.02, 1195.01, 1195.02, 1196, 1197.01, 1197.02, 1198, 1199, 1201, 1202, 1204, 1205, 1206, 1207.01, 1207.02, 1208.01, 1208.02, 1211, 1212, 1213, 1214.01, 1214.02, 1215, 1216, 1217, 1218, 1219, 1221, 1222, 1223, 1244, 1261, 1275, 1321, 1331.03,

1331.04, 1331.05, 1331.06, 1401, 1402.01, 1402.02, 1403.01, 1403.02, 1404, 1405, 1406, 1407.01, 1407.02, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416.01, 1416.02, 1417, 1501, 1503, 1504, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1521.01, 1521.02, 1522.01, 1522.02, 1523.01, 1523.02, 1523.03, 1524, 1525.01, 1525.02, 1526.03, 1526.04, 1526.05, 1526.06, 1527.01, 1527.02, 1527.03, 1543, 1547, 1711.02, 1711.03, 1711.04, 1831, 1832, 1833, 1834.01, 1834.02, 1835.01, 1835.02, 1836.03, 1836.04, 1836.05, 1836.06, 1851.01, 1851.02, 1851.03, 1852.01, 1852.02, 1852.03, 1871.03, 1871.04, 1871.05, 1871.06, 1881.03, 1881.04, 1881.05, 1881.06, 1881.07, 1915, 1928, 1938, 1939, and 1948.

Census block groups: group 2 of census tract 1055; group 1 of census tract 1077; group 1 of census tract 1092; group 1 of census tract 1102; group 1 of census tract 1105; groups 1 and 4 of census tract 1153; groups 2 and 3 of census tract 1311.02; groups 1 and 2 of census tract 1322; group 2 of census tract 1712.04; group 1 of census tract 1801.04; groups 2, 3, and 4 of census tract 1851.04; groups 1 and 3 of census tract 1940; and group 1 of census tract 1949.

Census blocks: blocks 107, 108, 201, 203, 204, 205, 206, 207, 208, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, and 225 of census tract 1033; blocks 103 and 104 of census tract 1037; blocks 101, 102, 103, 104, 105, 106, 107, 108, 111, 112, 113, 114, and 115 of census tract 1048; blocks 307, 308, and 311 of census tract 1051; blocks 113, 115, 116B, 117, and 118B of census tract 1052; blocks 308, 311, and 312 of census tract 1053; blocks 106, 107, 205, and 206 of census tract 1054; block 108 of census tract 1055; block 301 of census tract 1056.02; block 119 of census tract 1071; blocks 102, 103, 108, 111, 112, 115, 116, 120, and 123 of census tract 1072; blocks 101, 103, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 201, 202, 203, 212, 213, 214, 215, 217, 218, 219, 220, 301, and 306 of census tract 1076; blocks 104, 107, 205, 206, and 218 of census tract 1078; blocks 201, 202, 207, 209, 210, 211, 212, 213, and 214 of census tract 1092; blocks 201, 202, 203, 204, 205, 206, 207, 208, and 210 of census tract 1102; blocks 201, 203, 204, 205, 207, 208, 209, 210, 211, 212, 214, and 215 of census tract 1105; block 106 of census tract 1106; blocks 101 and 103 of census tract 1108; blocks 201, 301, 303, 304, 305, 306, 309, 311, 312, and 313 of census tract 1153; blocks 206, 301, and 303 of census tract 1158; blocks 305 and 306 of census tract 1241; blocks 403, 404, 501, 502, 507, 508, 509, 510, 511, 512, 601, 605, and 607 of census tract 1243; blocks 101, 102, 103, and 104 of census tract 1245; blocks 105, 401, and 402 of census tract 1311.02; blocks 301, 302, 303, 304, 305, 306, 308, 309, 401, 402, 403, 404, 405, 406, 407, 408, 410, 411, and 412 of census tract 1322; blocks 101, 102, 103, 104, 105, 106, and 107 of census tract 1323.01; blocks 102, 103, 104, 105, and 701 of census tract 1371.01; blocks 202 and 204 of census tract 1542; blocks 101A, 101B, 102, 105, 106, 107, 108, 109, and 110 of census tract 1712.03; block 401 of census tract 1712.05; block 702A of census tract 1801.03; blocks 102, 103, 104, 105, and 106B of census tract 1851.04; blocks 201, 202, 203, 204, 205, 206, 207, 401, 501, 502, 503, 504, 505, 506, 507, 508, 601, 602, 603, and 604 of census tract 1940; and blocks 201, 202, 203, 204, 205, 206B, 301B, 302, 303, 304, 305, 306, 307, 308, and 309 of census tract 1949.

The twelfth district contains the following territory:

Whole county: Delaware.

Franklin county (part):

Whole census tracts: 7.30, 9.10, 9.20, 15, 16, 23, 25.10, 25.20, 26, 27.10, 27.20, 27.30, 27.40, 27.50, 27.60, 27.70, 27.80, 28, 29, 30, 36, 37, 38, 39, 40, 41, 44, 53, 54.10, 54.20, 55, 59, 62.10, 62.20, 62.30, 69.42, 69.43, 69.44, 69.45, 69.90, 70.10, 70.20, 71.11, 71.13, 71.20, 71.30, 71.92, 71.93, 71.94, 72, 73.90, 74.10, 74.22, 74.24, 74.25, 74.90, 75.11, 75.12, 75.20, 75.32, 75.33, 75.34, 75.40, 75.50, 76, 87.10, 87.30, 87.40, 88.11, 88.13, 89, 90, 91, 92.10, 92.20, 92.30, 92.40, 92.50, 93.21, 93.26, 93.31, 93.32, 93.33, 93.34, 93.36, 93.37, 93.40, 93.50, 93.62, 93.81, 93.82, 93.83, 93.84, 93.85, 93.86, and 93.90.

Census block groups: group 2 of census tract 7.10; groups 1, 2, 3, and 4 of census tract 7.20; groups 1 and 2 of census tract 14; groups 3 and 4 of census tract 17; groups 1, 2, and 5 of census tract 22; groups 1, 2, and 3 of census tract 34; groups 1, 2, and 3 of census tract 47; groups 6 and 7 of census tract 49; groups 2, 5, and 7 of census tract 50; groups 3 and 4 of census tract 51; group 3 of census tract 56.10; group 2 of census tract 60; groups 3, 4, 7, and 8 of census tract 63.81; group 1 of census tract 63.91; groups 1, 2, 4, and 6 of census tract 69.31; groups 1, 2, 3, and 6 of census tract 69.32; groups 1, 3, 4, and 5 of census tract 69.33; group 2 of census tract 71.12; groups 1 and 3 of census tract 75.31; groups 3 and 5 of census tract 77.21; groups 1 and 5 of census tract 87.20; groups 1 and 2 of census tract 88.12; group 2 of census tract 93.11; groups 2, 3, and 4 of census tract 93.23; group 1 of census tract 93.25; and groups 1 and 3 of census tract 93.61.

Census blocks: blocks 103, 104, 105, and 109 of census tract 7.10; blocks 206, 207, 210, and 302 of census tract 8.10; blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 113, 115, 116, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 306, 307, 313, 401, 407, and 408 of census tract 8.20; blocks 103, 104, 105, and 106 of census tract 13; blocks 302, 303, 304, 305, 306, 307, 308, and 309 of census tract 14; blocks 201, 202, 203, 204, 205, 206, 207, 209, 210, 211, 212, and 509 of census tract 17; blocks 206 and 207 of census tract 21; blocks 404, 406, 407, and 408 of census tract 22; block 602 of census tract 43; blocks 401, 402, 403, 404, 405, 406, 407, 503, 504, 505, 603, and 604 of census tract 47; blocks 103, 105, 112, 113, 114, 115, 119, 204, 205, 206, and 207 of census tract 48.20; blocks 111, 112A, 112B, 201, 202, 206, 504, 505, 506, 507, 508, 509, 510, 513, 514, 518, 519A, 519D, 519E, 521A, 521B, and 523 of census tract 51; blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 127, 129, 133, 141, 144, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 405, 408, 411, 412, 413, 415, 416, 417, and 418 of census tract 56.10; blocks 101, 102, 103, 104, 105, 109, 110, 111, 112, 113, 201, 202, 203, 204, 205, 206, 207, 209, 210, 211, 212, 301, 302, 305, 306, 310, and 311 of census tract 56.20; blocks 101, 102, 109, 110, 111, and 505 of census tract 60; blocks 201, 202A, 202B, 203A, 203B, 204, 205, 206, 207, 208A, 208B, 209B, 209C, and 301B of census tract 63.91; blocks 304, 305, 306, and 307 of census tract 69.31; blocks 402, 403, 407, and 506 of census tract 69.32; blocks 201, 204, and 205 of census tract 69.33; blocks 101B, 101C, 101D, 101E, 101F, 101G, 101H, 101J, 102A, 102B, 102C, 108, 109A, and 109B of census tract 71.12; block 201A of census tract 75.31; blocks 101A, 101B, 101C, 102A, 102B, 102C, 102D, 102E, 103A, 103B, 106B, 108, 109, 201A, and 201C of census tract 77.10; blocks 202, 407A, 407B, 601, 602, and 603 of census tract 77.21; blocks 105, 112, 304, 305, and 307 of census tract

77.22; blocks 903B and 905B of census tract 79.20; block 902 of census tract 79.50; blocks 101 and 102 of census tract 83.22; blocks 908A, 908B, 908C, 908D, and 908E of census tract 83.40; blocks 401, 411, 412, and 413 of census tract 87.20; blocks 302, 303, 304, 305, 306, and 307 of census tract 88.12; blocks 401, 402, 403, 404, 405, 406, 407, 408, 409, and 410 of census tract 93.22; blocks 301, 303, 304, 305, 306, 307, 308, 309, 311, and 312 of census tract 93.25; and blocks 101A, 101B, 102B, 110, 111B, and 112B of census tract 93.71.

Licking county (part):

Whole census tracts: 7533, 7536, 7539, 7541, 7547, 7550, 7553, 7556, 7559, 7562, 7565, 7568, 7571, 7574, and 7577.

Census block groups: group 2 of census tract 7519.

Census blocks: blocks 401A, 401B, and 402A of census tract 7516 and blocks 101, 102, 113, and 114 of census tract 7519.

The thirteenth district contains the following territory:

Whole counties: Geauga and Medina.

Cuyahoga county (part):

Whole census tracts: 1351.05, 1351.98, and 1752.02.

Census block groups: group 1 of census tract 1361.02.

Census blocks: blocks 915 and 916 of census tract 1351.03; blocks 905 and 906 of census tract 1351.04; blocks 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, and 917 of census tract 1361.02; block 907 of census tract 1361.03; and blocks 901, 902, 903, 904, 905, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, and 925 of census tract 1752.01.

Lorain county (part):

Whole census tracts: 101, 102, 103, 104, 131, 132, 211, 212, 221, 222, 223, 224, 224.99, 225, 226.01, 226.02, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 281, 501, 502, 504, 571, 602, 701, 702, 703, 704, 705, 706, 707, 708, 709.02, 710, 711, 712, 714, 801, 805, 806, 807, 901.98, 902.98, 911, and 912.

Census block groups: groups 1 and 2 of census tract 503; groups 2 and 3 of census tract 601; and groups 1 and 2 of census tract 709.01.

Census blocks: blocks 901, 902A, 902B, 903A, 903B, 904, 905A, 905B, 906A, 906B, 907, 908, 909A, 909B, 910, 911, 912, 913A, 913B, 914, 915A, 915B, 916, 917A, 917B, 918A, and 918B of census tract 503; blocks 103A, 103C, 104B, 106, 107, 108, 114A, 114B, 115, 116, 117, 118, 119, and 120 of census tract 601; blocks 901A, 901B, 902A, 902B, 902C, 903, 904, 905, 906, 907A, 907B, 908, 909, 910A, 910B, 910C, 910D, 911A, and 921 of census tract 709.01; blocks 101A, 102, 103, 201, 202, 203A, and 203B of census tract 713; and blocks 101A, 101B, 102, 103, 104, 106, 201, 202A, 204, 205, 206, 207A, and 207B of census tract 715.

Portage county (part):

Whole census tracts: 6001.98, 6002, 6003.01, 6003.02, 6006.98, 6007.02, 6019.01, 6019.02, and 6020.

Census block groups: groups 1 and 2 of census tract 6007.01.

Census blocks: blocks 202, 203, 204, 208, 209, 210, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 922, 923, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 938, 939, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 978, 979, 980, 981, 982, 983, 984, and 985 of census tract 6005; blocks 901A, 901B, 901C, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916A, 916B, 917A, 917B, 917C, 917D, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937A, 937B, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, and 970 of census tract 6007.01; and blocks 408, 504, 505, 902, 914, 915, 916, 918, 934, 935, 937, 938, 940, 941, 943, 948, 956, 957, 958, 959, 960, 961, 964, 965, 966, 967, 968, 969, 970, 971, 972, and 973 of census tract 6018.

Summit county (part):

Whole census tracts: 5301, 5301.01, 5301.02, 5327.01, 5327.02, 5327.03, 5327.05, 5327.06, and 5336.98.

Trumbull county (part):

Whole census tracts: 9305.98, 9306, 9335, 9336, 9337, 9341.98, and 9342.98.

Census block groups: groups 2 and 3 of census tract 9304; group 9 of census tract 9307; and groups 1 and 2 of census tract 9308.

Census blocks: blocks 104A, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134A, 134B, 134C, 134D, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, and 147 of census tract 9304 and blocks 101 and 105 of census tract 9307.

The fourteenth district contains the following territory:

Portage county (part):

Whole census tracts: 6004.01, 6004.02, 6004.03, 6008, 6009.01, 6009.02, 6010, 6011, 6012, 6013, 6014, 6015, 6016, 6017, and 6021.

Census block groups: group 1 of census tract 6005 and groups 1, 2, and 3 of census tract 6018.

Census blocks: blocks 201, 205, 206, 207, 916, 917, 918, 919, 920, 921, 924, 937, 940, 953, 954, 955, 956, 957, 958, 973, 974, 975, 976, and 977 of census tract 6005; block 958 of census tract 6007.01; and blocks 401, 402, 403, 404, 405, 406, 407, 503, 901, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 917, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 936, 939, 942, 944A, 944B, 945, 946, 947, 949, 950, 951, 952, 953, 954, 955, 962, 963, 974, 975, and 976 of census tract 6018.

Stark county (part):

Census blocks: blocks 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 128, 130, 131, 132, 134, 135, 136, 420, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 902, 903, 905, 906, 907, 908, 910, 912, 913, 940, 942, 943, 945, and 969 of census tract 7111.

Summit county (part):

Whole census tracts: 5011, 5012, 5013.01, 5013.02, 5014, 5015, 5017, 5018, 5019, 5021.01, 5021.02, 5022, 5023, 5024, 5025, 5026, 5027, 5028, 5031, 5032, 5033, 5034, 5035, 5036, 5037.01, 5037.02, 5038, 5041, 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5051, 5052, 5053, 5054, 5055, 5056, 5057, 5058, 5059, 5061, 5062, 5063.02, 5063.03, 5063.04, 5064, 5065, 5066, 5067, 5068, 5069, 5071.01, 5071.02, 5072.01, 5072.02, 5072.03, 5073, 5074, 5075, 5076, 5080, 5101, 5102, 5103.01, 5103.02, 5104, 5105, 5201.01, 5201.02, 5202, 5203, 5204, 5205, 5206, 5302, 5304, 5305, 5306.01, 5306.02, 5307, 5308.01, 5308.02, 5309.01, 5309.02, 5309.03, 5310, 5311, 5314.01, 5314.02, 5315, 5316.01, 5316.02, 5317, 5318.01, 5318.02, 5320.01, 5320.02, 5322.02, 5323, 5325, 5326, 5329, 5330, 5331, 5332, 5333, 5334, and 5335.

The fifteenth district contains the following territory:

Whole counties: Madison.

Franklin county (part):

Whole census tracts: 1.10, 1.20, 2.10, 2.20, 3.10, 3.20, 3.30, 4.10, 4.20, 5, 6, 10, 11.10, 11.20, 12, 18.10, 18.20, 19, 20, 32, 33, 42, 45, 46.10, 46.20, 48.10, 52, 57, 58.10, 58.20, 61, 63.10, 63.21, 63.23, 63.30, 63.40, 63.51, 63.52, 63.53, 63.60, 63.70, 63.82, 63.92, 64.10, 64.20, 64.30, 65, 66, 67.10, 67.21, 67.22, 68.10, 68.21, 68.22, 68.23, 68.30, 69.10, 69.21, 69.23, 69.24, 69.41, 69.50, 77.30, 77.40, 78.11, 78.12, 78.20, 78.30, 79.20, 79.30, 79.40, 79.50, 80, 81.10, 81.20, 81.30, 81.40, 81.60, 82.10, 82.30, 82.40, 82.91, 83.11, 83.12, 83.21, 83.30, 83.50, 83.60, 83.70, 83.80, 83.91, 84, 85, 88.21, 88.22, 88.24, 88.25, 93.12, 93.72, 93.73, 93.74, 94.10, 94.20, 94.30, 94.40, 94.50, 94.90, 95.10, 95.20, 95.90, 96, 97.11, 97.12, 97.20, 97.40, 97.50, and 98.

Census block groups: groups 3, 4, 5, and 6 of census tract 108; group 5 of census tract 7.20; groups 1 and 4 of census tract 8.10; groups 2 and 3 of census tract 13; group 4 of census tract 14; group 1 of census tract 17; groups 1 and 3 of census tract 21; group 3 of census tract 22; group 4 of census tract 34; groups 1, 2, 3, 4, and 5 of census tract 43; group 7 of census tract 47; group 3 of census tract 48.20; groups 1, 2, 3, 4, and 5 of census tract 49; groups 1, 3, 4, and 6 of census tract 50; groups 3 and 4 of census tract 60; groups 1, 2, 5, and 6 of census tract 63.81; group 5 of census tract 69.31; group 1 of census tract 77.21; groups 2 and 4 of census tract 77.22; groups 1 and 2 of census tract 79.20; groups 1 and 2 of census tract 79.50; groups 2, 3, and 4 of census tract 83.22; groups 1 and 2 of census tract 83.40; groups 2 and 3 of census tract 87.20; groups 1 and 3 of census tract 93.11; group 1 of census tract 93.22; groups 1 and 9 of census tract 93.23; groups 2 and 4 of census tract 93.61; and groups 2 and 3 of census tract 93.71.

Census blocks: blocks 101, 102, 106, 107, and 108 of census tract 7.10; blocks 201, 202, 203, 204, 205, 208, 209, 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, and 313 of census tract 8.10; blocks 305, 308, 309, 310, 311, 312, 314, 402, 403, 404, 405, 406, 409, 410, 411, and 412 of census tract 8.20; blocks 101 and 102 of census tract 13; block 301 of census tract 14; blocks 208, 501, 502, 503, 504, 505, 506, 507, and 508 of census tract 17; blocks 201, 202, 203, 204, 205, 208, 211, 212, 213, 214, and 216 of census tract 21; blocks 401, 402, and 405 of census tract 22; blocks 601, 604, and 605 of census tract 43; blocks 408, 409, 501, 502, 506, 507, 601, 602, 605, 606, 607, 608, and 609 of census tract 47; blocks 101, 104, 106, 107, 108, 109, 110, 111, 116, 118, 201, 202, 203, 208, 209, 210, and 211 of census tract 48.20; blocks 101, 102, 107, 108, 109, 199, 203, 515, 516, 517, 519B, 519C, and 522 of census tract 51; blocks 115, 142, 143, 401, 402, 403, 404, 406, 407, 409, 410, 414, 419, and 420 of census tract 56.10; blocks 108, 115, 116, 117, 118, 208, 303, 304, 307, 308, 309, 312, 313, 314, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 414, and 415 of census tract 56.20; blocks 103, 104, 105, 106, 107, 108, 501, 502, 503, and 504 of census tract 60; blocks 209A, 210, 211A, 211B, 211C, 301A, 301C, 304A, 304B, 304C, 304D, 305, 306, and 307 of census tract 63.91; blocks 301A, 301B, 302, and 303 of census tract 69.31; blocks 401, 404, 405, 406, 408, 409, 410, 411, 501, 502, 503, 504, and 505 of census tract 69.32; block 203 of census tract 69.33; blocks 101A, 103, 104A, 104B, 105, 106, 107, 110, and 111 of census tract 71.12; blocks 201B, 201C, 202, 203A, 203B, 203C, 203D, 203E, 203F, 204A, and 204B of census tract 75.31; blocks 104, 105A, 105B, 106A, 107A, 107B, 201B, 202, 203, 204, 205, 206, 207, 209, 210, 301A, 301B, 302A, 302B, 304, 306, 401, 402, 403A, 403B, 404, 405, 406, 407, 408, 501, 502, 503, 504, 505, and 506 of census tract 77.10; blocks 203, 204, 401A, 401B, 402A, 402B, 403, 404, 405, 406, 604, and 605 of census tract 77.21; blocks 101, 102, 103, 104A, 104B, 106A, 106B, 107, 108, 109, 110A, 110B, 111, 116A, 116B, 301A, 301B, 302, 303, and 306 of census tract 77.22; blocks 901, 902A, 902B, 902C, 903A, 903C, 904A, 904B, 905A, 906A, 906B, 907, 908, 909A, 909B, 909C, 910A, 910B, 910C, 911A, 911B, 912A, 912B, 913A, 913B, 913C, 914, 915A, 915B, 916A, 916B, 916C, 917A, 917B, 917C, 918, 919, 920A, 920B, 921, 922, 923, 924, and 925 of census tract 79.20; blocks 901, 903A, 903B, 903C, 903D, 903E, 903F, 903G, 904, 905, 906, 907, 908A, 908B, 909, 910A, 910B, 910C, 911, 912, 913A, 913B, 913C, 913D, 913E, 914A, 914B, 914C, 914D, 915A, 915B, 916A, 916B, 916C, 917A, 917B, 918, 919A, 919B, and 999 of census tract 79.50; blocks 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115A, 115B, and 116 of census tract 83.22; blocks 901A, 901B, 901C, 901D, 902, 903A, 903B, 903C, 903D, 905A, 905B, 907, and 999 of census tract 83.40; blocks 403, 405, 406, 407, 409, and 410 of census tract 87.20; blocks 301, 308, and 309 of census tract 88.12; blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 301, 302, 303, 304, 305, 306, 307, and 411 of census tract 93.22; blocks 302 and 310 of census tract 93.25; and blocks 102A, 103, 104, 105, 106, 107, 108, 109, 111A, and 112A of census tract 93.71.

Pickaway county (part):

Whole census tract: 213.

Census block groups: groups 1, 2, 3, 6, 7, and 8 of census tract 214.

Census blocks: blocks 414, 415, 421, 422, 423, 429, 430, 431, 432, 433, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513B, 525, 526A, 526B, 599A, 599B, and 599C of census tract 214.

The sixteenth district contains the following territory:

Whole counties: Ashland, Holmes, and Wayne.

Knox county (part):

Whole census tracts: 9871, 9872, and 9873.

Census block groups: group 1 of census tract 9867; groups 1, 2, 3, and 4 of census tract 9868; groups 1 and 2 of census tract 9875; and groups 1, 2, and 3 of census tract 9876.

Census blocks: blocks 301, 302, 303, 304A, 304B, 304C, 305, 306, 307A, 307B, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 331, and 332 of census tract 9875 and blocks 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, and 417A of census tract 9876.

Stark county (part):

Whole census tracts: 7001, 7002, 7003, 7004, 7005, 7006, 7007, 7008, 7010, 7011, 7012, 7013, 7015, 7017, 7018, 7021, 7023, 7025, 7101, 7102, 7103, 7104, 7105, 7106, 7107, 7108, 7109, 7110, 7112, 7113.01, 7113.02, 7114, 7115, 7116, 7117, 7118, 7119, 7120, 7121.01, 7121.02, 7122.01, 7122.02, 7123, 7124, 7125, 7126.01, 7126.02, 7127, 7128, 7129, 7130, 7131, 7132.01, 7132.02, 7133, 7134.01, 7134.02, 7135, 7136, 7137, 7138, 7139, 7140, 7141, 7142, 7143.01, 7143.02, 7144, 7146, 7147.01, 7147.02, 7148, 7149.01, and 7149.02.

Census block groups: groups 2, 3, and 6 of census tract 7111.

Census blocks: blocks 102, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418,

419, 421, 422, 501A, 501B, 502, 503, 516, 517, 518, 901, 904, 909, 911, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 941, 944, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, and 989 of census tract 7111.

The seventeenth district contains the following territory:

Whole county: Mahoning.

Columbiana county (part):

Whole census tracts: 9501, 9502, 9503, 9504, 9505, 9506, 9507, 9508, 9509, 9510, 9511, 9514, 9515, 9516, 9518, 9519, 9520, 9521, 9522, 9523, 9524, and 9525.98.

Census block groups: groups 1, 2, 3, and 4 of census tract 9512; group 1 of census tract 9513; and groups 1, 2, 3, and 5 of census tract 9517.

Census blocks: blocks 502A, 504, 505, 506, 507, 508, 509, 510A, 510B, 511A, 511B, 512, 513A, 514, 515, 516, 517, 518A, 519, 520A, 521, 522, 523, 524, 525, 526, 527, 528, 529A, 530, 535A, 536A, 537, 538A, 538B, and 539 of census tract 9512; blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220A, 220B, 221, 222A, 222B, 223, 224, 225, 226, 227, 228, 229, 236, 237, 238, 301A, 301B, 302, 303A, 303B, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313A, 313B, 314, 315, 316, 317, 318A, 318B, 319, 320, 321, 322A, 322B, 323, 324A, 324B, 324C, 325, 326, 327, 328A, 328B, 329A, 329B, 338A, 348A, 348B, 354, 356A, 356B, 409A, 410, 411, 414A, and 417 of census tract 9513; and blocks 401, 402, 403A, 403B, 404A, 404B, 405A, 405B, 406A, 406B, 407, 408, 409, 410, 411, 412, 413A, 413B, 413C, 414, 415, 416, 417A, 417B, 418A, 418B, 419, 420, 421, 422, 424A, 424B, 424C, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435A, 435B, 436A, 436B, 437A, 437B, 438A, 438B, 439, 440, 441, and 442 of census tract 9517.

Trumbull county (part):

Whole census tracts: 9201, 9202, 9203, 9204, 9205, 9206, 9207, 9208, 9209, 9210, 9211, 9212, 9213, 9214, 9215, 9216, 9301.01, 9301.02, 9302, 9303, 9309, 9310, 9311, 9312, 9313, 9314, 9315, 9316, 9317, 9319, 9320, 9321, 9322, 9323, 9324, 9325, 9326, 9327, 9328, 9329, 9330, 9331, 9333, 9334, 9338.98, 9339.98, and 9340.98.

Census block groups: group 2 of census tract 9307 and groups 3 and 4 of census tract 9308.

Census blocks: blocks 101, 102, 103, and 104B of census tract 9304 and blocks 102, 103, 104, 106, 107, 108, 109, 110, 111, 114, 115, and 116 of census tract 9307.

The eighteenth district contains the following territory:

Whole counties: Belmont, Carroll, Coshocton, Guernsey, Harrison, Jefferson, Monroe, Morgan, Muskingum, Noble, Perry, and Tuscarawas.

Columbiana county (part):

Census blocks: blocks 501, 502B, 503, 513B, 518B, 520B, 529B, 531, 532, 533, 534, 535B, 535C, 536B, and 536C of census tract 9512; blocks 230, 231, 232A, 232B, 233A, 233B, 233C, 234, 235, 330, 331, 332, 333, 334A, 334B, 335, 336, 337, 338B, 339, 340, 341, 342, 343, 344, 345, 346, 347, 349A, 349B, 349C, 350, 351A, 351B, 352, 353, 355, 399C, 399D, 401, 402, 403, 404, 405, 406, 407, 408, 409B, 409C, 412, 413, 414B, 415, 416, 418, and 419 of census tract 9513; and block 423 of census tract 9517.

Licking county (part):

Whole census tracts: 7501, 7504, 7507, 7510, 7513, 7522, 7525, 7528, 7531, 7544, 7580, 7583, 7586, and 7589.

Census block groups: groups 1, 2, and 3 of census tract 7516 and groups 3, 4, and 5 of census tract 7519.

Census blocks: blocks 402B, 403, 404A, 404B, and 405 of census tract 7516 and blocks 103, 104A, 104B, 104C, 104D, 104E, 104F, 105A, 105B, 106, 107, 108, 109, 110, 111, 112, 115A, 115B, 116, 117, 118, 119, 120, 121, 122, 123, 124, and 125 of census tract 7519.

The nineteenth district contains the following territory:

Whole counties: Ashtabula and Lake.

Cuyahoga county (part):

Whole census tracts: 1311.03, 1311.04, 1323.02, 1361.01, 1381.05, 1381.06, 1381.07, 1381.08, 1381.09, 1381.10, 1541, 1544, 1545.01, 1545.02, 1546.01, 1546.03, 1546.04, 1551, 1561.01, 1561.02, 1701.01, 1701.02, 1702.01, 1702.02, 1712.06, 1721.01, 1721.02, 1721.03, 1722.01, 1722.02, 1731.03, 1731.04, 1731.05, 1731.06, 1731.07, 1751.02, 1751.03, 1751.04, 1781.01, 1781.02, 1782.01, 1782.04, 1782.05, 1782.06, 1791.01, 1791.02, 1801.02, 1841.03, 1841.04, 1841.05, 1841.06, 1841.07, 1841.08, 1861.06, 1861.07, 1929, 1941, 1943, 1945, 1947, 1951, 1952, 1953, 1954, and 1955.

Census block groups: group 2 of census tract 1323.01; group 2 of census tract 1351.03; groups 1 and 2 of census tract 1351.04; groups 1, 2, and 3 of census tract 1361.03; group 1 of census tract 1542; groups 3 and 8 of census tract 1712.03; group 3 of census tract 1712.04; group 7 of census tract 1712.05; groups 4, 5, 6, and 8 of census tract 1801.03; group 2 of census tract 1801.04; and groups 1, 2, and 3 of census tract 1861.04.

Census blocks: blocks 101, 102, 103, 104, 106, 107, 108, 109, 110, 403, 404, 405, 406, 407, 408, 409, and 410 of census tract 1311.02; blocks 307 and 409 of census tract 1322; blocks 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, and 121 of census tract 1323.01; blocks 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, and 914 of census tract 1351.03; blocks 901, 902, 903, and 904 of census tract 1351.04; blocks 901, 902, 903, and 904 of census tract 1361.02; blocks 901, 902, 903, 904, 905, 906, 908, 909, 910, 911, and 912 of census tract 1361.03; blocks 201, 203, 205, 206, 207, 208, 209, 210, 211, 212, and 213 of census tract 1542; blocks 103, 104, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, and 121 of census tract 1712.03; blocks 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, and 412 of census tract 1712.05; block 906 of census tract 1752.01; blocks 701 and 702B of census tract 1801.03; blocks 101 and 106A of census tract 1851.04; blocks 301, 302, and 310 of census tract 1861.03; block 501 of census tract 1861.04; blocks 208, 209, 402, 403, 404, 405, 509, 510, and 605 of census tract 1940; and blocks 206A and 301A of census tract 1949.

Any county, or part thereof, of the state that has not been described as included in one of the districts described in this section is included within that district which contains the least population according to the 1990 decennial census referred to in this section, and that is contiguous to such county, or part thereof. "Counties," "townships," "municipal corporations," "block numbering areas," "census tracts," "census block groups," and "census blocks" have the same meanings and describe the same geographical boundaries as these terms mean and describe as used by the United States department of commerce, bureau of the census, in reporting the 1990 decennial census of Ohio; further, the official report, and all official documents relating thereto, of the aforementioned census are hereby incorporated by reference into this section. Unless otherwise

specified, a township includes all municipal corporations situated within the township.

HISTORY: 1992 S 292, eff. 3-27-92

Note: Former 3521.01 repealed by 1992 S 292, eff. 3-27-92; 1985 H 160; 1982 H 953, H 20; 1974 H 1440; 1972 H 992; 132 v S 462; 130 v Pt 2, H 18; 130 v S 334; 1953 H 1; GC 4828.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 3.02(A)

CROSS REFERENCES

Equal protection and benefit of the people as purpose of government, O Const Art I §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 141, 150, 184; 84, State of Ohio § 55
Am Jur 2d: 25, Elections § 13, 30, 34, 35, 186, 370

NOTES ON DECISIONS AND OPINIONS

165 OS 139, 133 NE(2d) 369 (1956), State ex rel Clampitt v Brown. As used in RC 3513.05, "most populous county of such district" refers to a county not wholly situated in the district where the portion in the district is most populous.

60 USLW 4279 (US 1992), United States Commerce Dept v Montana. The general principle in US Const Art I §2, that apportionment be according to the states "respective members," is constrained by the constitutional requirements that (1) the number of representatives not exceed one for each 30,000 people, (2) each state have at least one representative, and (3) district boundaries not cross state lines, as well as constrained by the problem of fractional remainders that results when a state's total population is divided by the population of the "ideal district" and the remainder must either be disregarded or treated as if sufficient to have another representative; Congress does not have authority to choose any one of the alternative methods of apportionment since the issue is not a political question excluded from judicial review, but the present "Hill Method" of equal proportions is constitutionally adequate.

478 US 109, 106 SCt 2797, 92 LEd(2d) 85 (1986), Davis v Bandemer. That the manner in which electoral district boundaries are drawn diminishes one political party's likelihood of electing candidates in one election in proportion to the party's number of electors does not show the boundaries violate US Const Am 14. (Ed. note: Indiana law construed in light of federal constitution.)

478 US 109, 106 SCt 2797, 92 LEd(2d) 85 (1986), Davis v Bandemer. Whether the boundaries of electoral districts are drawn in a manner favoring one political party is a question raising an issue of equal protection of the laws under US Const Am 14 and accordingly may be considered by federal courts. (Ed. note: Indiana law construed in light of federal constitution.)

462 US 725, 103 SCt 2653, 77 LEd(2d) 133 (1983), Karcher v Daggett. To provide the equal representation called for by US Const Art I §2 congressional districts must be apportioned to be as equal in population as is practicable, and no variation in population that could be avoided in a practical manner is tolerable; the fact a deviation from the ideal size for a district is less than the predictable "undercount" in census figures does not justify consideration of the deviation as the "functional equivalent of zero," because the census count is the only reliable, if imperfect, measure of district population. (Ed note: New Jersey statute construed in light of federal constitution.)

775 FSupp 1044 (ND Ohio 1991), Armour v Ohio. Under the Voting Rights Act of 1965, 42 USC 1973, a politically cohesive and geographically compact minority population cannot be divided between two single-member districts in which the minority bloc vote will consistently be minimized by white bloc voting merely because the minority population is not more than half of the single district's population.

561 FSupp 36 (SD Ohio 1982), Flanagan v Gillmor. If the general assembly uses the location of racial groups as a factor in drawing congressional districts an inference of purposeful discrimination could be drawn, but mere awareness of the location and size of racial and ethnic populations does not make division of a racial or ethnic community discrimination, absent a showing part of the reason for the division was an invidiously discriminatory motive or intent.

305 FSupp 269, 24 Misc 185 (SD Ohio 1969), Heiser v Rhodes. Candidate for state board of education was not entitled to have his name placed on ballot even if apportionment of membership was invalid.

VACANCIES IN SENATE AND HOUSE

3521.02 Vacancy in the senate of the United States

When a vacancy occurs in the representation of this state in the senate of the United States by death, resignation, or otherwise, such vacancy shall be filled forthwith by appointment by the governor who may appoint some suitable person having the necessary qualifications for senator. Such appointee shall hold office until the fifteenth day of December next succeeding the next regular state election which occurs more than one hundred eighty days after such vacancy happens. At such next regular state election a special election to fill such vacancy shall be held, provided, that when the unexpired term ends within one year immediately following the date of such regular state election, an election to fill such unexpired term shall not be held and the appointment shall be for the unexpired term. The special election shall be governed in all respects by the laws controlling regular state elections for such office. Candidates to be voted for at such special election shall be nominated in the same manner as is provided for the nomination of candidates at regular state elections.

At least one hundred eighty days prior to the date of such regular state election, the governor shall issue a writ directing that a special election be held to fill such vacancy as provided in this section. Such writ shall be directed to the secretary of state and a copy thereof sent by mail to the board of elections of each county in the state which shall give notice of the time and place of holding such special election in the same manner and at the same time provided in section 3501.03 of the Revised Code for giving similar notice for regular elections.

HISTORY: 1974 H 1037, eff. 2-6-74
1953 H 1; GC 4828-3

CROSS REFERENCES

Days counted to ascertain time, 1.14
Primaries and nominations, Ch 3513
Election, appointment, and filling vacancies, O Const Art II §27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 141, 150, 184
Am Jur 2d: 25, Elections § 30, 186; 77, United States § 25

NOTES ON DECISIONS AND OPINIONS

64 Temp L Rev 629 (Fall 1991). An Excursion Into The Unchartered Waters Of The Seventeenth Amendment, Laura E. Little.

1928 OAG 2211. Where, under this section, a special election is to be held at the election of state officers in November, for the purpose of filling a vacancy in the representation of this state in the Senate of the United States, the candidates at such special election must be nominated on the second Tuesday in August of the same

year, and the primaries at which such candidates are nominated, are to be governed by the same laws and regulations and conducted in the same manner as is provided for the nomination of candidates at regular elections.

1928 OAG 2211. A special election held under this section, for the purpose of filling a vacancy in the representation of this state in the United States Senate, is to be governed in all respects by the laws of this state controlling regular elections for United States senator, including GC 5016, 5017 (Repealed, RC 3505.10), which provide inter alia that the names of all candidates, whose nominations for any office specified in the ballot have been duly made, shall be placed on the same ballot, arranged in tickets or lists under the respective party or political or other designation certified.

3521.03 Vacancy in office of congressman

When a vacancy in the office of representative to congress occurs, the governor, upon satisfactory information thereof, shall issue a writ of election directing that a special election be held to fill such vacancy in the territory entitled to fill it on a day specified in the writ. Such writ shall be directed to the board of elections within such territory which shall give notice of the time and places of holding such election as provided in section 3501.03 of the Revised Code. Such election shall be held and conducted and returns thereof made as in case of a regular state election.

HISTORY: 1971 H 87, eff. 9-8-71
1953 H 1; GC 4829

CROSS REFERENCES

Election, appointment, and filling vacancies, O Const Art II §27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 141, 150, 184; 84, State of Ohio § 105

Am Jur 2d: 25, Elections § 30, 186; 77, United States § 25

NOTES ON DECISIONS AND OPINIONS

161 OS 168, 118 NE(2d) 414 (1954), State ex rel Kay v Lausche. The time of the holding of a special election is discretionary with the governor and that discretion is not subject to judicial control in the absence of an abuse thereof.

130 OS 160, 198 NE 180 (1935), State ex rel Armstrong v Davey. It is mandatory upon the governor to call a special election for the purpose of filling a vacancy created by death in the office of representative-at-large. However, there vests in him the discretion to determine and set the time for holding such election.

81 App 398, 79 NE(2d) 791 (1947), State ex rel Campbell v Durbin. When a vacancy occurs in congressional district that requires an election for nomination of candidates for office of representative of the United States House of Representatives at a time other than the time when the General Code provides for regular nominations for members of the United States House of Representatives, such an election is a special election and governed by the pertinent GC provisions as to a special election rather than the GC provisions relating to a primary election.

81 App 398, 79 NE(2d) 791 (1947), State ex rel Campbell v Durbin. When an election is called for by a proclamation of the governor of the state for an election to nominate candidates for office of representative of the United States house of representatives, such an election is not governed by provisions of GC 4785-39 (RC 3503.11), limiting time for registration of electors, such election being a special election pursuant to GC 4785-97 (RC 3513.32) and this section; provisions of GC 4785-39 (RC 3503.11) apply to general election to be held on November 4, 1947, pursuant to GC 4785-3 (RC 3501.01).

1954 OAG 4584. A certificate of election is prima-facie evidence of election as state representative, and the house of representatives is the judge of such election.

Chapter 3523

AMENDMENTS TO UNITED STATES CONSTITUTION

GENERAL PROVISIONS

3523.01 Amendment to constitution of United States
3523.02 Qualification of voters
3523.03 Conduct of election

CONVENTION AND DELEGATES

3523.04 Number of delegates; qualifications; nomination
3523.05 Ballot on amendment to constitution of the United States
3523.06 Vacancy
3523.07 Meeting of delegates
3523.08 Powers of the convention
3523.09 Journal of proceedings
3523.10 Certification in case of ratification of the proposed amendment
3523.11 Mileage of delegates
3523.12 Manner of constituting convention set by congress

CROSS REFERENCES

Amendments to Ohio Constitution, O Const Art II §1, 1a, Art XVI

GENERAL PROVISIONS

3523.01 Amendment to constitution of United States

Whenever congress proposes an amendment to the constitution of the United States, and proposes that it be ratified by conventions in the several states, the governor shall fix, by proclamation, the date of an election for the purpose of electing the delegates to such convention. Such election may either be at a special election or may be held at the same time as a general election, but shall be held at least as soon as the next general election occurring more than three months after the amendment has been proposed by congress.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-235

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281

Am Jur 2d: 16, Constitutional Law § 1, 19 to 28; 26, Elections § 210, 226 et seq.

NOTES ON DECISIONS AND OPINIONS

127 OS 104, 186 NE 918 (1933), State ex rel Donnelly v Myers. An act of the state legislature setting up the machinery by which a convention may be assembled to take final action to ratify or reject an amendment to the federal Constitution is not subject to referendum and the referendum provisions of the Ohio Constitution and laws are inapplicable. The calling of such convention is but a step necessary and incidental to the final action of the convention in registering the voice of the state upon the amendment proposed by the congress. The action of the legislature in performing this function rests upon the authority of US Const Art V. It is a federal function which in the absence of action by congress the state legislature is authorized to perform.

3523.02 Qualification of voters

At an election held for the purpose of electing delegates to a convention to ratify an amendment to the constitution of the United States, all persons qualified to vote for members of the general assembly shall be entitled to vote.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-236

CROSS REFERENCES

Qualifications of electors, 2961.01; O Const Art V §1, 4, 6
Age and residence, registration for 30 days, assignment of electors to adjoining precinct, 3503.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24; 26, Elections § 210, 225

3523.03 Conduct of election

Except as otherwise provided in sections 3523.01 to 3523.12, inclusive, of the Revised Code, the election provided for in section 3523.01 of the Revised Code shall be conducted and the results ascertained and certified in the same manner as in the case of the election of presidential electors in this state, and all provisions of Title XXXV of the Revised Code except so far as inconsistent with sections 3523.01 to 3523.12, inclusive, of the Revised Code, are applicable to such election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-237

CROSS REFERENCES

Election procedure, Ch 3501
Ballot, Ch 3505
Voting equipment, machine, Ch 3506, Ch 3507
Absentee ballots, Ch 3509, Ch 3511
Recounts and election contests, Ch 3515

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d; 16, Constitutional Law § 16 et seq., 24, 34; 26, Elections § 210

CONVENTION AND DELEGATES

3523.04 Number of delegates; qualifications; nomination

The number of delegates to be chosen to the convention provided for by section 3523.01 of the Revised Code shall be fifty-two, to be elected from the state at large.

Candidates for the office of delegate to the convention shall be citizens and residents of the state and of age. Nomination of candidates for the office of delegate shall be by petition and not otherwise. A single petition may nominate any number of candidates not exceeding the total number of delegates to be elected, and shall be signed by not less than five thousand voters. Nomination shall be without party or political designation, but the nominating petitions shall contain a statement as to each nominee, to the effect that he favors ratification, or that he opposes ratification, or that he will remain unpledged, and no nominating petition shall contain the name of any nominee whose position as stated therein is inconsistent with that of any other nominee as stated therein. No nomination shall be effective except those of the fifty-two nominees in favor of ratification, the fifty-two nominees against ratification, and the fifty-two nominees to remain unpledged, whose nominating petitions have respectively been signed by the largest number of voters, ties to be decided by lot drawn by the secretary of state. Within ten days after the petitions are filed, the secretary of state shall certify the candidates of each group to the appropriate local election authorities. All petitions and acceptances thereof shall be filed with the secretary of state not less than thirty days before the proclaimed date of the election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-238, 4785-239

CROSS REFERENCES

Days counted to ascertain time, 1.14
Convention delegates shall not give proxies, 3599.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 34, 36; 26, Elections § 210

3523.05 Ballot on amendment to constitution of the United States

The election provided for in section 3523.01 of the Revised Code shall be by ballot, which may be separate from any ballot to be used at the same election. Such ballot shall first state the substance of the proposed amendment to the constitution of the United States. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width, headed respectively in plain type, "for ratification," "against ratification," and "unpledged." In the column headed "for ratification" shall be placed the names of the nominees nominated as in favor of ratification. In the column headed "against ratification" shall be placed the names of the nominees nominated as against ratification. In the column headed "unpledged" shall be placed the names of the nominees nominated as unpledged. The voter shall indicate his choice by making one or more punches or marks in the

appropriate spaces provided on the ballot. No ballot shall be held void because any such punch or mark is irregular in character. The ballot shall be so arranged that the voter may, by making a single punch or mark, vote for the entire group of nominees whose names are comprised in any column. The ballot shall be in substantially the following form:

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Delegates to the convention to ratify the proposed amendment.

The congress has proposed an amendment to the constitution of the United States which provides (insert here the substance of the proposed amendment).

The congress has also proposed that the said amendment shall be ratified by conventions in the states.

INSTRUCTIONS TO VOTERS

Do not vote for more than fifty-two candidates.

To vote for all candidates in favor of ratification, or for all candidates against ratification, or for all candidates who intend to remain unpledged, make a *** *mark* in the CIRCLE. If you do this, make no other mark. To vote for an individual candidate make a *** *mark* in the SQUARE at the left of the name.

For Ratification	Against Ratification	Unpledged
○	○	○
☐ John Doe	☐ Charles Coe	☐ Daniel De Foe
☐ Richard Doe	☐ Michael Moe	☐ Louis St Loe

All rights on the part of lists of candidates to name challengers and witnesses in the polling places shall be the same as those under Title XXXV of the Revised Code.

The fifty-two nominees who receive the highest number of votes shall be delegates to the convention.

HISTORY: 129 v 1653, eff. 6-29-61
1953 H 1; GC 4785-240; Source—GC 4785-241

CROSS REFERENCES

Election challengers and witnesses, appointment, 3505.21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 35, 45; 26, Elections § 203, 210, 221, 222

3523.06 Vacancy

If there is a vacancy in the convention caused by the death or disability of any delegate or any other cause, such vacancy shall be filled by appointment by the majority vote of the delegates comprising the group from which such delegate was elected. If the convention contains no other delegate of that group, such vacancy shall be filled by the governor.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-241

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 36; 26, Elections § 210

3523.07 Meeting of delegates

The delegates to the convention shall meet at the capitol on the twenty-eighth day after their election at one p.m., and shall thereupon constitute a convention to pass upon the question of whether or not the proposed amendment to the constitution of the United States shall be ratified.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-242

CROSS REFERENCES

Convention delegates shall not give proxies, 3599.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 35; 26, Elections § 210

3523.08 Powers of the convention

The convention shall be the judge of the election and qualification of its members, and may elect its president, secretary, and other officers and adopt its own rules.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-243

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 37; 26, Elections § 210

3523.09 Journal of proceedings

The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of ratification of the proposed amendment to the constitution of the United States. Upon final adjournment, the journal shall be filed with the secretary of state.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-244

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 39; 26, Elections § 210

3523.10 Certification in case of ratification of the proposed amendment

If the convention agrees, by vote of a majority of the total number of delegates, to the ratification of the pro-

posed amendment to the constitution of the United States, a certificate to that effect shall be executed by the president and secretary of the convention and transmitted to the secretary of state of this state who shall transmit the certificate under the great seal of the state to the secretary of state of the United States.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-245

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 39; 26, Elections § 210

3523.11 Mileage of delegates

Each delegate to the convention shall receive the legal rate of transportation by motor vehicle each way for mileage from and to his place of residence by the most direct route of public travel to and from the city of Columbus.

HISTORY: 1986 H 555, eff. 2-26-86
1953 H 1; GC 4785-246

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 35; 26, Elections § 210

3523.12 Manner of constituting convention set by congress

If, at or about the time of submitting any amendment to the constitution of the United States, congress either in the resolution submitting such amendment or by statute prescribes the manner in which the convention shall be constituted, and does not except from such statute or resolution such states as theretofore have provided for constituting such convention, sections 3523.01 to 3523.11, inclusive, of the Revised Code shall be inoperative. The convention shall then be constituted and shall operate as the resolution or act of congress directs, and all officers of the state who by said resolution or statute are authorized or directed to take any action to constitute such a convention for this state shall act thereunder and in obedience thereto with the same effect as if acting under a statute of this state.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-247

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 276 to 281
Am Jur 2d: 16, Constitutional Law § 16 et seq., 24, 34; 26, Elections § 210

Chapter 3599

OFFENSES AND PENALTIES

Note: All penalties for violation of any section concerning election laws as contained in Title XXXV are accumulated in this chapter. 3599.40 is the general penalty section for a violation of any section for which there is no specific penalty.

IMPROPER USE OF MONEY

3599.01 Bribery
3599.02 Sale of vote by voter
3599.03 Corporation funds shall not be used to aid political organization; funds used to promote or oppose ballot issue; exemptions
3599.031 Deduction of political contribution from employee's wages; written authorization required
3599.04 Contributions for illegal purposes

EMPLOYERS AND EMPLOYEES

3599.05 Employer shall not influence political action of employee
3599.06 Employer shall not interfere with employee on election day

UNFAIR AND ILLEGAL CAMPAIGN ACTIVITIES

3599.07 Excessive expenditures—Repealed
3599.08 Influencing candidates and voters by publications
3599.09 Political communications must be identified; penalty
3599.091 Unfair political campaign activities
3599.092 Unfair activities in issue campaign

CANDIDATE'S PLEDGE CONCERNING LEGISLATION

3599.10 Candidate for general assembly shall not be asked to pledge vote on legislation

ELECTION PROCEDURE

3599.11 False registration; penalty; improper handling of forms
3599.12 Illegal voting
3599.13 Unqualified person signing petitions
3599.14 Prohibitions relating to petitions
3599.15 Sale, theft, destruction, or mutilation of petitions
3599.16 Misconduct of members or employees of board of elections
3599.161 Access to records; denial prohibited
3599.17 Failure of registrars, judges, and clerks to perform duties
3599.18 Misconduct of registrars and police officers
3599.19 Misconduct of judges and clerks of elections in polling place
3599.20 Secret ballot
3599.21 Absent voter's ballot
3599.22 Printing of ballots
3599.23 Custodian of ballots, papers, or marking devices, offenses and penalties

3599.24 Interference with conduct of election
3599.25 Inducing illegal voting
3599.26 Tampering with ballots
3599.27 Possession of voting machine, tabulating equipment, or marking device prohibited; tampering; penalty
3599.28 False signatures
3599.29 Possession of false records
3599.30 Congregating at polls
3599.31 Failure of officer of law to assist election officers
3599.32 Failure of election official to enforce law
3599.33 Fraudulent writing on ballots or election records
3599.34 Destruction of election records before expiration of time for contest

MISCELLANEOUS PROVISIONS

3599.35 Proxies shall not be given by party representatives; impersonation of representatives
3599.36 Perjury in matters relating to elections; election falsification
3599.37 Refusal to appear or testify concerning violation of election laws
3599.38 Election officials shall not influence voters
3599.39 Second offense under election laws
3599.40 General penalty
3599.41 Person violating election laws may testify against other violators
3599.42 Prima-facie case of fraud
3599.43 Communications purporting to be from boards of elections; penalty
3599.44 Penalties—Repealed
3599.45 Contributions from medicaid provider

CROSS REFERENCES

Operations improvement task force, compensation, 107.40

NOTES ON DECISIONS AND OPINIONS

No. 88-C-54 (7th Dist Ct App, Columbiana, 3-30-89), Gosney v Bd of Elections. The investigation of elections is a discretionary function of a prosecutor; thus, there is no clear legal right to such an investigation and mandamus will not lie to compel such investigation.

842 F(2d) 825 (6th Cir Ohio 1988), Connaughton v Harte Hanks Communications, Inc; affirmed by 491 US 657, 109 SCt 2678, 105 LEd(2d) 562 (1989). The press is not released from liability for reckless or intentional publication of falsehoods simply because it is reporting on an election campaign or possible political misconduct.

IMPROPER USE OF MONEY

3599.01 Bribery

(A) No person shall before, during, or after any primary, convention, or election:

(1) Give, lend, offer, or procure or promise to give, lend, offer, or procure any money, office, position, place or employment, influence, or any other valuable consideration to or for a delegate, elector, or other person;

(2) Attempt by intimidation, coercion, or other unlawful means to induce such delegate or elector to register or refrain from registering or to vote or refrain from voting at a primary, convention, or election for a particular person, question, or issue;

(3) Advance, pay, or cause to be paid or procure or offer to procure money or other valuable thing to or for the use of another, with the intent that it or part thereof shall be used to induce such person to vote or to refrain from voting.

(B) Whoever violates this section is guilty of bribery, a felony of the fourth degree; and if he is a candidate he shall forfeit the nomination he received, or if elected to any office he shall forfeit the office to which he was elected at the election with reference to which such offense was committed.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 126 v 575; 1953 H 1; GC 4785-190

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.01], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Misconduct of state, county, municipal, and subdivision officers as grounds for removal, 3.07
Bribery, 2921.02
Penalty for fourth degree felony, 2929.11
Felon ineligible to hold office, 2961.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 135; 37, Elections § 150, 234, 282, 286, 291
Am Jur 2d: 26, Elections § 377
Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

670 FSupp 1368 (SD Ohio 1987), Pestrak v Ohio Elections Comm. The limited judicial review under RC 119.12 of decisions of the elections commission does not afford adequate and timely protection of constitutional rights of free speech.

2. In general

1 OS(3d) 85, 1 OBR 122, 438 NE(2d) 410 (1982), MacDonald v Bernard. An election contest proceeding conducted pursuant to RC 3515.08 is not a proper forum for determining whether violation of RC 3599.091 or 3599.01 has occurred.

1932 OAG 4408. When a candidate is nominated for public office at a primary election by voters unlawfully induced so to vote, such candidate is legally nominated in the absence of evidence of unlawful acts on his part.

3599.02 Sale of vote by voter

No person shall before, during, or after any primary, convention, or election solicit, request, demand, receive, or contract for any money, gift, loan, property, influence, position, employment, or other thing of value for himself or another:

(A) For registering or refraining from registering;

(B) For agreeing to register or to refrain from registering;

(C) For agreeing to vote or refraining from voting;

(D) For voting or refraining from voting at any primary, convention, or election for a particular person, question, or issue;

(E) For registering or voting, or refraining from registering or voting, or voting or refraining from voting for a particular person, question, or issue.

Whoever violates this section is guilty of bribery, and shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than one year, or both, and shall be excluded from the right of suffrage and holding any public office for five years next succeeding such conviction.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-191

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges
Gotherman & Babbit, Ohio Municipal Law, Text 15.11

CROSS REFERENCES

Bribery, 2921.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 52, 135; 26, Criminal Law § 422; 37, Elections § 286, 291

Am Jur 2d, Elections § 382

3599.03 Corporation funds shall not be used to aid political organization; funds used to promote or oppose ballot issue; exemptions

(A) Except to carry on activities specified in sections 3517.082 and 3599.031 of the Revised Code and except as provided in divisions (D) and (E) of this section, no corporation engaged in business in this state shall, directly or indirectly, pay, use, offer, advise, consent, or agree to pay or use the corporation's money or property for or in aid of or opposition to a political party, a candidate for election or nomination to public office, a political action committee, or any organization that supports or opposes any such candidate, or for any partisan political purpose, or violate any law requiring the filing of an affidavit or statement respecting such use of such funds, or pay or use the corporation's money for the expenses of a social fund-raising event for its political action committee if an employees's right to attend such an event is predicated on the employee's contribution to the corporation's political action committee.

Whoever violates division (A) of this section shall be fined not less than five hundred nor more than five thousand dollars.

(B) No officer, stockholder, attorney, or agent of such corporation and no candidate, political party official, or other individual shall knowingly aid, advise, solicit, or receive money or other property in violation of division (A) of this section.

Whoever violates division (B) of this section shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

(C) A corporation engaged in business in this state may use its funds or property for or in aid of or opposition to a proposed or certified ballot issue. Such use of funds or property shall be reported on a form prescribed by the secretary of state. Reports of contributions in connection with statewide ballot issues shall be filed with the secretary of state. Reports of contributions in connection with local issues shall be filed with the board of elections of the most populous county of the district in which the issue is submitted or to be submitted to the electors. Reports made pursuant to this division shall be filed by the times specified in divisions (A)(1) and (2) of section 3517.10 of the Revised Code.

(D) Any gift made pursuant to section 3517.101 of the Revised Code does not constitute a violation of this section or of any other section 3517.101 of the Revised Code.

(E) Any compensation or fees paid by a financial institution to a state political party for services rendered pursuant to division (B) of section 3517.19 of the Revised Code do not constitute a violation of this section or of any other section of the Revised Code.

HISTORY: 1989 S 6, eff. 10-30-89
1987 H 354; 1980 H 1062; 1953 H 1; GC 4785-192

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Illustrative Forms 7.01 (FT-1120), 7.011 (FT-1120-S)

CROSS REFERENCES

FSL and corporate political action committees, OAC Ch 111-4

Purposes of corporation, 1701.03

Political contributions and expenditures, reporting, providing candidates with copies of statutes, 3517.11

Public utilities, affidavit denying payments to political parties, 5727.61

Corporation's affidavit denying illegal payments to political organizations, 5733.27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 295

Am Jur 2d: 19, Corporations § 1018; 26, Elections § 381

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491

Constitutionality, construction, and application of 18 USCS § 610, prohibiting national banks, corporations, and labor organizations from making contributions or expenditures in connection with federal elections. 24 ALR Fed 162.

NOTES ON DECISIONS AND OPINIONS

29 Case WR L Rev 808 (Summer 1979). Corporate Spending on State and Local Referendums: First National Bank of Boston v. Bellotti, Gary Hart and William Shore.

63 OS(3d) 190 (1992), State ex rel Taft v Franklin County Court of Common Pleas. Since neither the secretary of state nor the elections commission has exclusive jurisdiction over alleged violations of RC 3599.03, a common pleas court may entertain a declaratory judgment action to determine whether an organization constitutes a political action committee.

169 OS 42, 157 NE(2d) 331 (1959), State ex rel Corrigan v Cleveland-Cliffs Iron Co. A corporation may lawfully contribute to a committee organized and conducted merely for the purposes of advocating the adoption of a constitutional amendment and the passage of bond issues and tax levies.

79 Abs 232, 152 NE(2d) 1 (App, Cuyahoga 1958), State ex rel Corrigan v Cleveland-Cliffs Iron Co; reversed by 169 OS 42, 157 NE(2d) 331 (1959). Corporations may not contribute funds for the purpose of supporting or opposing issues of propositions submitted to the voters.

110 SCt 1391, 108 LEd(2d) 652 (1990), Austin v Michigan Chamber of Commerce. A state political campaign finance law that forbids corporations other than those owning news media to use general treasury funds for independent expenditures in connection with state candidate elections, while allowing such expenditures from segregated funds used solely for political purposes, does not

violate US Const Am 1; moreover, neither the express exemption of "media corporations" nor the exclusion of unincorporated associations from coverage puts the statute in conflict with the Equal Protection Clause of US Const Am 14. (Ed. note: Michigan statute construed in light of federal constitution.)

1930 OAG 2055. Financial assistance by corporations to a committee appointed by the governor to conduct research work to report to the governor as to tax legislation, is not a violation of this section.

3599.031 Deduction of political contribution from employee's wages; written authorization required

(A) Notwithstanding any section of the Revised Code, any employer may deduct from the wages and salaries of its employees such amounts for the support of such candidates, separate segregated funds, political action committees, political parties, or ballot issues as the employee by written authorization may designate and shall transmit any amounts so deducted as the authorization shall direct. Any such authorization may be on a form that is used to apply for or authorize membership in or authorize payment of dues or fees to any organization. The employer may either deduct from the amount to be so transmitted a uniform amount determined by the employer to be necessary to defray the actual cost of making such deduction and transmittal, or may utilize its own funds in an amount it determines is necessary to defray the actual administrative cost, including making the deduction and transmittal.

(B) Any person who solicits an employee to authorize a deduction from his wages or salary pursuant to division (A) of this section shall inform the employee at the time of the solicitation that he may refuse to authorize a deduction without suffering any reprisal.

HISTORY: 1987 H 354, eff. 9-22-87
1976 H 1379; 1974 S 46

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(A)
Baldwin's Ohio Tax Law and Rules, Illustrative Forms 7.01 (FT-1120), 7.011 (FT-1120-S), 7.02 (FT-1120-FI)

CROSS REFERENCES

Corporation establishing political action committee or campaign funds, contributions from employees, 3517.082
Public utilities, affidavit denying payments to political parties, 5727.61
Corporation's affidavit denying illegal payments to political organizations, 5733.27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 242
Am Jur 2d: 26, Elections § 381
State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

NOTES ON DECISIONS AND OPINIONS

Ethics Op 77-002. RC 102.03(D) does not per se prohibit a county clerk of courts from deducting voluntary contributions from his employees' wages for his election campaign fund pursuant to RC 3599.031.

3599.04 Contributions for illegal purposes

No person shall, directly or indirectly, in connection with any election, pay, lend, or contribute or offer or promise to pay, lend, or contribute any money or other valuable consideration in the election or defeat of any candidate or the adoption or defeat of any question or issue for any purposes other than those enumerated in sections 3517.08 and 3517.12 of the Revised Code.

Whoever violates this section is guilty of corrupt practices and shall be fined not less than twenty-five nor more than five hundred dollars.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-193

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 294
Am Jur 2d: 26, Elections § 381, 382

EMPLOYERS AND EMPLOYEES

3599.05 Employer shall not influence political action of employee

No employer or his agent or a corporation shall print or authorize to be printed upon any pay envelopes any statements intended or calculated to influence the political action of his or its employees; or post or exhibit in the establishment or anywhere in or about the establishment any posters, placards, or hand bills containing any threat, notice, or information that if any particular candidate is elected or defeated work in the establishment will cease in whole or in part, or other threats expressed or implied, intended to influence the political opinions or votes of his or its employees.

Whoever violates this section is guilty of corrupt practices, and shall be punished by a fine of not less than five hundred nor more than one thousand dollars.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-194

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges
Siegel & Stephen, Ohio Employment Practices Law, Text 3.01

CROSS REFERENCES

Corporations may solicit political contributions from employees, 3517.082
Every citizen may freely speak, write, and publish his sentiments on all subjects; no law may restrain liberty of speech or the press, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 256, 292, 296, 297; 39, Employment Relations § 39
Am Jur 2d: 15, Civil Rights § 243 to 245; 26, Elections § 371 to 394

3599.06 Employer shall not interfere with employee on election day

No employer, his officer or agent, shall discharge or threaten to discharge an elector for taking a reasonable

amount of time to vote on election day; or require or order an elector to accompany him to a voting place upon such day; or refuse to permit such elector to serve as an election official on any registration or election day; or indirectly use any force or restraint or threaten to inflict any injury, harm, or loss; or in any other manner practice intimidation in order to induce or compel such person to vote or refrain from voting for or against any person or question or issue submitted to the voters.

Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-195

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges
Siegel & Stephen, Ohio Employment Practices Law, Text 1.03(B)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 256, 292, 296, 297; 39, Employment Relations § 39
Am Jur 2d: 15, Civil Rights § 245

NOTES ON DECISIONS AND OPINIONS

1951 OAG 2691. An employer's failure or refusal to pay an employee who is employed otherwise than on a piecework, commission or an hourly basis, for reasonable amount of time that employee is absent for the purpose of voting on election day, if done in order to induce or compel such person to vote or refrain from voting in a certain way would be a violation of this section.

UNFAIR AND ILLEGAL CAMPAIGN ACTIVITIES

3599.07 Excessive expenditures—Repealed

HISTORY: 1974 S 46, eff. 7-23-74
1953 H 1; GC 4785-196

3599.08 Influencing candidates and voters by publications

No owner, editor, writer, or employee of any newspaper, magazine, or other publication of any description, whether published regularly or irregularly, shall use the columns of any such publication for the printing of any threats, direct or implied, in the columns of any such publication for the purpose of controlling or intimidating candidates for public office. Such person shall not directly or indirectly solicit, receive, or accept any payment, promise, or compensation for influencing or attempting to influence votes through any printing matter, except through matter inserted in such publication as "paid advertisement" and so designated.

Whoever violates this section is guilty of a corrupt practice and shall be fined not less than five hundred nor more than one thousand dollars.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-197

CROSS REFERENCES

Every citizen may freely speak, write, and publish his sentiments on all subjects; no law may restrain liberty of speech or the press, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 256, 292, 296, 297; 39, Employment Relations § 39
Am Jur 2d: 26, Elections § 379 et seq., 387

NOTES ON DECISIONS AND OPINIONS

23 Akron L Rev 209 (Fall 1989). Political Campaign Advertising And The First Amendment: A Structural-Functional Analysis Of Proposed Reform, Rebecca Arbogast.

3599.09 Political communications must be identified; penalty

(A) No person shall write, print, post, or distribute, or cause to be written, printed, posted, or distributed, a notice, placard, dodger, advertisement, sample ballot, or any other form of general publication which is designed to promote the nomination or election or defeat of a candidate, or to promote the adoption or defeat of any issue, or to influence the voters in any election, or make an expenditure for the purpose of financing political communications through newspapers, magazines, outdoor advertising facilities, direct mailings, or other similar types of general public political advertising, or through flyers, handbills, or other nonperiodical printed matter, unless there appears on such form of publication in a conspicuous place or is contained within said statement the name and residence or business address of the chairman, treasurer, or secretary of the organization issuing the same, or the person who issues, makes, or is responsible therefor. The disclaimer "paid political advertisement" is not sufficient to meet the requirements of this division. When such publication is issued by the regularly constituted central or executive committee of a political party, organized as provided in Chapter 3517. of the Revised Code, it shall be sufficiently identified if it bears the name of the committee and its chairman or treasurer. No person, firm, or corporation shall print or reproduce any notice, placard, dodger, advertisement, sample ballot, or any other form of publication in violation of this section. This section does not apply to the transmittal of personal correspondence that is not reproduced by machine for general distribution.

The secretary of state may, by rule, exempt, from the requirements of this division, printed matter and certain other kinds of printed communications such as campaign buttons, balloons, pencils, or like items, the size or nature of which makes it unreasonable to add an identification or disclaimer. The disclaimer or identification, when paid for by a campaign committee, shall be identified by the words "paid for by" followed by the name and address of the campaign committee and the appropriate officer of the committee, identified by name and title.

(B) No person shall utter or cause to be uttered, over the broadcasting facilities of any radio or television station within this state, any communication which is designed to promote the nomination or election or defeat of a candidate, or the adoption or defeat of any issue or to influence the voters in any election, unless the speaker identifies himself with his name and residence address or unless such communication identifies the chairman, treasurer, or secre-

tary of the organization responsible for the same with the name and residence or business address of such officer, except that communications by radio need not broadcast the residence or business address of such officer. However, a radio station shall, for a period of at least six months, keep the residence or business address on file and divulge it to any person upon request.

No person operating a broadcast station or any organ of printed media shall broadcast or print any paid political communication that does not contain the identification required by this section.

Division (B) of this section does not apply to any communications made on behalf of a radio or television station or network by any employee of such radio or television station or network while acting in the course of his employment.

No person shall use or cause to be used a false, fictitious, or fraudulent name or address in the making or issuing of a publication or communication included within the provisions of this section.

(C) No prosecution under this section shall commence until the procedures prescribed in division (C) of section 3599.091 of the Revised Code have been followed. If the commission finds a violation of division (A) or (B) of this section, it shall do only one of the following:

(1) Impose a fine not to exceed the fine specified pursuant to section 3517.991 of the Revised Code;

(2) Report its findings to the appropriate prosecuting authority, which shall institute such civil or criminal proceedings as are appropriate;

(3) Enter a finding that good cause has been shown for the commission not to impose a fine or report its findings to the appropriate prosecuting authority.

Any person adversely affected by the action of the commission under division (C)(1) of this section may appeal from such action in accordance with section 119.12 of the Revised Code.

HISTORY: 1986 H 555, eff. 2-26-86
1984 H 722; 1980 H 1062, S 251; 1976 H 804; 130 v H 351; 129 v 244; 127 v 203; 1953 H 1; GC 4785-198

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Secretary of state, political communications, no disclaimer needed for certain items, OAC 111:4-1-01

Equal protection of people a purpose of government, O Const Art I §2

Every citizen may freely speak, write, and publish his sentiments on all subjects; no law may restrain liberty of speech or the press, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 256, 292, 296, 297; 39, Employment Relations § 39; 70, Names § 5

Am Jur 2d: 26, Elections § 379 et seq., 387

NOTES ON DECISIONS AND OPINIONS

23 Akron L Rev 209 (Fall 1989). Political Campaign Advertising And The First Amendment: A Structural-Functional Analysis Of Proposed Reform, Rebecca Arbogast.

OAG 75-068. RC Ch 3517 requires a candidate's campaign committee to report all contributions and expenditures, which are in excess of twenty-five dollars, regardless of who made the contributions or expenditures.

OAG 75-068. The changes to RC Ch 3517, effected by 1974 S 46, eff. 7-23-74, have no effect upon the identification requirements contained in RC 3599.09, which apply to published campaign materials whether they are designed to defeat or to promote a candidate or an issue.

1930 OAG 2032. This section as to a notice or placard designed to promote the nomination or election of a candidate requires only that the chairman or secretary of the organization issuing same or the name and address of some voter responsible therefor appear thereon. If such notice contains the name and address of the candidate, and has been issued by him, the requirements of this section have been met.

1930 OAG 2020. The circulation of a 3" x 6" card printed on blotting paper glazed on one side to further the candidacy of a candidate is not prohibited.

Elections Op 91-003. The requirement in RC 3599.09 that the issuer of a political communication include his residence or business address cannot be met through the use of a post office box number.

3599.091 Unfair political campaign activities

(A) No person, during the course of any campaign for nomination or election to public office or office of a political party, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

(1) Serve, or place another person to serve, as an agent or employee in the election campaign organization of a candidate for the purpose of acting to impede the conduct of the candidate's campaign for nomination or election or of reporting information to the employee's employer or the agent's principal without the knowledge of the candidate or his organization;

(2) Promise, offer, or give any valuable thing or valuable benefit to any person who is employed by or is an agent of a candidate or his election campaign organization for the purpose of influencing the employee or agent with respect to the improper discharge of his campaign duties or to obtain information about the candidate or his campaign organization.

(B) No person, during the course of any campaign for nomination or election to public office or office of a political party, by means of campaign materials, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

(1) Use the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office or use the term "re-elect" when the candidate has never been elected at a primary, general, or special election to the office for which he is a candidate;

(2) Make a false statement concerning the formal schooling or training completed or attempted by a candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a candidate; or the period of time during which a candidate attended any school, college, community technical school, or institution;

(3) Make a false statement concerning the professional, occupational, or vocational licenses held by a candidate, or concerning any position the candidate held for which he received a salary or wages;

(4) Make a false statement that a candidate or public official has been indicted or convicted of a theft offense,

extortion, or other crime involving financial corruption or moral turpitude;

(5) Make a statement that a candidate has been indicted for any crime or has been the subject of a finding by the Ohio elections commission without disclosing the outcome of any legal proceedings resulting from the indictment or finding;

(6) Make a false statement that a candidate or official has a record of treatment or confinement for mental disorder;

(7) Make a false statement that a candidate or official has been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services;

(8) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate by a person or publication;

(9) Make a false statement concerning the voting record of a candidate or public official;

(10) Post, publish, circulate, distribute, or otherwise disseminate a false statement, either knowing the same to be false or with reckless disregard of whether it was false or not, concerning a candidate that is designed to promote the election, nomination, or defeat of the candidate.

As used in this section, "voting record" means the recorded "yes" or "no" vote on a bill, ordinance, resolution, motion, amendment, or confirmation.

(C) Before any prosecution may commence, a complaint shall be presented to the Ohio elections commission by an affidavit of any person, made on personal knowledge and subject to the penalties for perjury, setting forth any violation of division (A) or (B) of this section. The commission shall proceed to investigate the charges made in the affidavit, and shall, whenever possible, complete the investigation of all matters before an election. The commission or a member of the commission may administer oaths, and the commission may issue and enforce subpoenas with regard to an investigation under this section in the same manner as provided in division (C) of section 3517.15 of the Revised Code. The commission shall issue copies of its findings to the committees or persons involved in its investigation.

(D)(1) If the commission finds that division (A) or (B) of this section has been violated, it shall do only one of the following:

(a) Impose a fine not to exceed one thousand dollars;

(b) Forthwith transmit a copy of its findings and the evidence to the prosecuting attorney of the appropriate county.

(2) Notwithstanding any provision of Chapters 1901., 1905., 1907., and 2931. of the Revised Code, the common pleas court has exclusive original jurisdiction over prosecutions under this section.

(3) Any person adversely affected by the action of the commission under division (D)(1)(a) of this section may appeal from such action in accordance with section 119.12 of the Revised Code.

(E) If the commission finds upon the preponderance of the evidence that the violation is a continuing one, or if it has reason to believe that recurrence of the violation is imminent, it may issue an order to cease and desist. The commission or the person who filed the affidavit, or the treasurer of the campaign committee of any candidate who filed an affidavit may bring an action for an injunction against any person violating or attempting to violate the order. Any person adversely affected by a cease and desist order of the commission may appeal as provided in section 119.12 of the Revised Code. No appeal, however, shall stay enforcement of a cease and desist order. In an action for injunction to enforce any final order of the commission brought pursuant to this section, the findings of the commission, after hearing, are prima-facie evidence of the facts found.

(F) In any action before the commission, if the allegations of the person who filed the affidavit are not proved, and the commission seeks neither civil nor criminal relief in court, the commission may find that the complaint is frivolous and order the complainant to pay costs. If so, the person filing the complaint may be required to pay such costs of the commission as would be assessed for the same service in a civil action before the court of common pleas. Such costs paid to the commission shall be deposited in the general revenue fund of the state. The commission shall provide each person under investigation, by mail or in person, prior to each meeting of the commission at which the person's presence is requested, a notice for the hearing, and shall supply to each person under investigation, prior to the person's first appearance before the commission, a statement of the legal rights and obligations of those under investigation by the commission.

(G) Whoever violates division (A) or (B) of this section is guilty of unfair campaign practices, a misdemeanor of the first degree.

HISTORY: 1986 H 555, eff. 2-26-86
1984 H 722; 1980 S 251; 1977 H 1; 1976 H 804

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges
Baldwin's Ohio School Law, Text 5.03(A)

CROSS REFERENCES

Referrals and complaints, Ohio elections commission, OAC 111:1-1-01, 111:1-1-02
Hearings before the elections commission, OAC 111:1-1-04, 111:1-1-05
Evidence before the elections commission, OAC 111:1-1-06
Subpoenas by elections commission, OAC 111:1-1-07
Counsel at elections commission proceedings permitted, OAC 111:1-1-08
Fines by the election commission, OAC 111:1-1-10
Order to violator of election laws to cease and desist, OAC 111:1-1-11
Filing of frivolous complaint, order of costs, OAC 111:1-1-18

"Anything of value" defined, 1.03
Oaths, 3.20, 3.21
General revenue fund, 113.09
County prosecutor, Ch 309
Common pleas court jurisdiction, 2305.01
Libel and slander, Ch 2399
Injunctions, Ch 2727
Perjury in official proceeding a felony of the third degree, 2921.11
Penalty for misdemeanor, 2929.21, 2929.22
Copy of unfair political campaign activities law to be furnished to candidates, 3513.33
Freedom of speech and press; libel, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 90, 101, 128, 240, 253, 254, 293; 72, Notice and Notices § 27 to 32
Am Jur 2d: 26, Elections § 371 et seq.

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

27 App(3d) 65, 27 OBR 84, 499 NE(2d) 1255 (Geauga 1985), State v Davis. RC 3599.091(B)(10), which prohibits certain false statements in an election campaign, is constitutional.

61 App(2d) 25, 399 NE(2d) 99 (1978), Dewine v Ohio Elections Comm. RC 3599.091(B)(9) affronts neither US Const Am 1, nor provisions of the Ohio Constitution.

61 App(2d) 25, 399 NE(2d) 99 (1978), Dewine v Ohio Elections Comm. RC 3599.091(C) does not comprise an unconstitutional delegation of judicial power, or legislative authority.

677 FSupp 534 (SD Ohio 1988), Pestrak v Ohio Elections Comm. RC 3599.091(B) as enforced by RC 3599.091(C), 3599.091(D), and 3599.091(E), forbidding falsehoods in election campaigns, is held to violate the First Amendment to the federal constitution on the grounds the administrative adjudication it calls for constitutes a burden upon and prior restraint of protected speech, and allows imposition of liability using a standard of proof less than clear and convincing; the constitutionality of RC 3599.091(C), 3599.091(D), and 3599.091(E) in the enforcement of RC 3599.091(A) is not affected.

670 FSupp 1368 (SD Ohio 1987), Pestrak v Ohio Elections Comm. Under RC 3599.091(B)(10), defamatory speech during a political campaign that is not protected by the First Amendment is made a crime, but RC 3599.091(D)(1) and 3599.091(E) are unconstitutional because the elections commission can find a violation thereunder using a standard of proof less than "clear and convincing."

2. In general

9 OS(3d) 190, 9 OBR 504, 459 NE(2d) 866 (1984), State ex rel Unger v Quinn. The court of common pleas has exclusive jurisdiction over prosecutions for violations of RC 3599.091; such a prosecution may not therefore be transferred to a municipal court pursuant to Crim R 21, although it otherwise meets the requirements of that rule.

1 OS(3d) 85, 1 OBR 122, 438 NE(2d) 410 (1982), MacDonald v Bernard. An election contest proceeding conducted pursuant to RC 3515.08 is not a proper forum for determining whether violation of RC 3599.091 or 3599.01 has occurred.

44 App(3d) 3, 540 NE(2d) 329 (Franklin 1988), In re Pirko. Although a pamphlet which is printed and circulated for the purpose of causing a candidate's defeat contains a statement which is potentially misleading and fails to disclose all the relevant facts surrounding the candidate's actions, such statement does not constitute a "false statement" within the meaning of former RC 3599.091.

44 App(3d) 3, 540 NE(2d) 329 (Franklin 1988), In re Pirko. Ohio's Unfair Campaign Practices Act, RC 3599.091, prohibits certain unfair campaign practices and permits the Ohio elections commission to impose a fine of up to $1,000 upon an individual found to have violated the statute; further, the statute defines an "offense" and must be strictly construed against the state and liberally in favor of an accused.

27 App(3d) 65, 27 OBR 84, 499 NE(2d) 1255 (Geauga 1985), State v Davis. Sentence for a conviction of RC 3599.091(B)(10), for making false statements in an election campaign, may not include a condition on probation that the defendant not engage in any political activity during probation, since such a condition borders on infringement of First Amendment rights.

61 App(2d) 25, 399 NE(2d) 99 (1978), Dewine v Ohio Elections Comm. Under RC 3599.091, the standard of proof to be used by the Ohio elections commission, in determining whether a violation has occurred, encompasses a test based upon the "preponderance of the evidence," rather than one calling for "proof beyond a reasonable doubt."

Elections Op 87-10. A candidate may not use campaign funds to pay a fine imposed directly upon the candidate by the Ohio elections commission for a violation of RC 3599.091, which prohibits certain campaign practices.

3599.092 Unfair activities in issue campaign

(A) No person during the course of any campaign in advocacy of or in opposition to the adoption of any proposition or issue submitted to the voters shall knowingly and with intent to affect the outcome of such campaign do any of the following:

(1) Serve, or place another person to serve, as an agent or employee in the election campaign organization of a committee which advocates or is in opposition to the adoption of any ballot proposition or issue for the purpose of acting to impede the conduct of the campaign on the proposition or issue or of reporting information to the employee's employer or the agent's principal without the knowledge of the committee;

(2) Promise, offer, or give any valuable thing or valuable benefit to any person who is employed by or is an agent of a committee in advocacy of or in opposition to the adoption of any ballot proposition or issue, for the purpose of influencing the employee or agent with respect to the improper discharge of his campaign duties or to obtain information about the committee's campaign organization.

(B) No person, during the course of any campaign in advocacy of or in opposition to the adoption of any ballot proposition or issue, by means of campaign material, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, a press release, or otherwise, shall knowingly and with intent to affect the outcome of such campaign do any of the following:

(1) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a ballot proposition or issue by a person or publication;

(2) Post, publish, circulate, distribute, or otherwise disseminate, a false statement, either knowing the same to be false or acting with reckless disregard of whether it was false or not, that is designed to promote the adoption or defeat of any ballot proposition or issue.

(C) Before any prosecution may commence, a complaint shall be presented to the Ohio elections commission by an affidavit of any person, made on personal knowledge and subject to the penalties for perjury, setting forth any violation of division (A) or (B) of this section. The commission shall proceed to investigate the charges made in the affidavit, and shall, whenever possible, complete the investigation of all matters before an election. The commission shall provide each person under investigation, by mail or in person, prior to each meeting of the commission at which the person's presence is requested, a notice for the hearing, and shall supply to each person under investigation, prior to the person's first appearance before the commission, a statement of the legal rights and obligations of those under investigation by the commission. The commission or a member of the commission may administer oaths, and the commission may issue and enforce subpoenas with regard to an investigation under this section in the same manner as provided in division (C) of section 3517.15 of the Revised Code. The commission shall issue copies of its

findings to the committee or person involved in its investigation.

(D)(1) If the commission finds that division (A) or (B) of this section has been violated, it shall do only one of the following:

(a) Impose a fine not to exceed one thousand dollars;

(b) Forthwith transmit a copy of its findings and the evidence to the prosecuting attorney of the appropriate county.

(2) Any person adversely affected by the action of the commission under division (D)(1)(a) of this section may appeal from such action in accordance with section 119.12 of the Revised Code.

(E) If the commission finds upon the preponderance of the evidence that the violation is a continuing one, or if it has reason to believe that recurrence of the violation is imminent, it may issue an order to cease and desist. The commission or the person who filed the affidavit, or the treasurer of any committee in advocacy of or in opposition to the adoption of a proposition or issue which filed an affidavit may bring an action for an injunction against any person violating or attempting to violate the order. Any person adversely affected by a cease and desist order of the commission may appeal as provided in section 119.12 of the Revised Code. No appeal, however, shall stay enforcement of a cease and desist order. In an action for injunction to enforce any final order of the commission brought pursuant to this section, the findings of the commission, after hearing, are prima-facie evidence of the facts found.

(F) In any action before the commission, if the allegations of the person who filed the affidavit are not proved, and the commission seeks neither civil nor criminal relief in court, the commission may find that the complaint is frivolous and order the complainant to pay costs. If so, the person filing the complaint may be required to pay such costs of the commission as would be assessed for the same service in a civil action before the court of common pleas. Such costs paid to the commission shall be deposited in the general revenue fund of the state. Notwithstanding any provision of Chapters 1901., 1905., 1907., and 2931. of the Revised Code, the common pleas court has exclusive original jurisdiction over prosecutions under this section.

(G) Whoever violates division (A) or (B) of this section is guilty of unfair campaign practices, a misdemeanor of the first degree.

HISTORY: 1986 H 555, eff. 2-26-86
1984 H 722; 1980 S 251

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges
Baldwin's Ohio School Law, Text 5.03(A)

CROSS REFERENCES

Practice before Ohio elections commission; fines, OAC Ch 111:1-1

Oaths, 3.20, 3.21
County prosecutor, Ch 309
Common pleas court jurisdiction, 2305.01
Injunctions, Ch 2727
Perjury in official proceedings a felony of the third degree, 2921.11
Penalty for misdemeanor, 2929.21, 2929.22
Freedom of speech and press; libel, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 240; 72, Notice and Notices § 27 to 32
Am Jur 2d: 26, Elections § 371 et seq.

NOTES ON DECISIONS AND OPINIONS

670 FSupp 1368 (SD Ohio 1987), Pestrak v Ohio Elections Comm. Finding a violation of RC 3599.092 without a judicial proceeding is a form of prior restraint even though the allegedly false words have already been spoken.

CANDIDATE'S PLEDGE CONCERNING LEGISLATION

3599.10 Candidate for general assembly shall not be asked to pledge vote on legislation

No person, firm, or corporation shall demand of any candidate for the general assembly any pledge concerning his vote on any legislation, question, or proposition that may come before the general assembly; provided that this shall not be understood to prohibit a reasonable inquiry as to such candidate's views on such question or legislation.

Whoever violates this section is guilty of a corrupt practice and shall be fine not less than five hundred nor more than one thousand dollars.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-200

CROSS REFERENCES

Freedom of speech and press, O Const Art I §11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 304
Am Jur 2d: 26, Elections § 283, 379

ELECTION PROCEDURE

3599.11 False registration; penalty; improper handling of forms

(A) No person shall knowingly register or make application or attempt to register in a precinct in which he is not a qualified voter; or knowingly aid or abet any person to so register; or attempt to register or knowingly induce or attempt to induce any person to so register; or fraudulently impersonate another or write or assume the name of another, real or fictitious, in registering or attempting to register; or by false statement or other unlawful means procure, aid, or attempt to procure the erasure or striking out on the register or duplicate list of the name of a qualified elector therein; or fraudulently induce or attempt to induce a registrar or other election authority to refuse registration in a precinct to an elector thereof; or willfully or corruptly swear or affirm falsely upon a lawful examination by or before any registrar or registering officer; or make, print, or issue any false or counterfeit certificate of registration or fraudulently alter any certificate of registration.

No person shall knowingly register under more than one name or knowingly induce any person to so register.

No person shall knowingly make any false statement on any form for registration or change of registration or upon any application or return envelope for an absent voter's ballot.

Whoever violates this division is guilty of a felony of the fourth degree.

(B) No person who helps another person register outside an official voter registration place shall knowingly destroy, or knowingly help another person to destroy, any completed registration form, or knowingly fail to return any registration form entrusted to that person to the board of elections on or before the thirtieth day before the election.

Whoever violates this division is guilty of a misdemeanor of the first degree.

HISTORY: 1978 H 1209, eff. 11-3-78
1977 S 125; 1971 S 460; 1953 H 1; GC 4785-201

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Days counted to ascertain time, 1.14
Penalties for felony, 2929.11 to 2929.15
Penalty for misdemeanor, 2929.21, 2929.22
Registration, proper precinct, 3503.01
Person registered more than once, additional forms canceled, 3503.12

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 289, 290, 292
Am Jur 2d: 25, Elections § 111 et seq.; 26, Elections § 371 to 394

NOTES ON DECISIONS AND OPINIONS

32 Ohio St L J 600 (1971). Voter Residency Requirements In State And Local Elections, Note.

125 OS 415, 181 NE 890 (1932), Miller v State. When the law makes it a crime to knowingly persuade and induce one who is under twenty-one years of age to register as a lawful voter, and the indictment charges that the accused did knowingly violate this statute, the trial court must instruct the jury in its charge that the jury must find that the accused knew that the person so persuaded and induced to register was then under twenty-one years of age. To omit this essential makes the charge a positive misstatement of the law, prejudicial to the accused, and available on error under a general exception to the charge made at the trial.

3599.12 Illegal voting

No person shall vote or attempt to vote in any primary, special, or general election in a precinct in which he is not a legally qualified voter; or vote or attempt to vote more than once at the same election; or impersonate or sign the name of another person, real or fictitious, living or dead, and vote or attempt to vote as such person in any such election; or vote or attempt to vote at any primary the ballot of a political party with which he has not been affiliated, as required by section 3513.19 of the Revised Code, or with which he did not vote at the last election; or cast a ballot at any such election after objection has been made and sustained to his vote; or knowingly vote or attempt to vote a ballot other than the official ballot.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-202

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.12], as amended by [1982 S 199], ... shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Penalties for felony, 2929.11 to 2929.15
Challenge of electors, 3501.31
Deaths reported monthly to elections board by subdivision health officers, 3503.18
Impersonating an elector, 3505.22

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 12, Business Relationships § 583; 37, Elections § 290
Am Jur 2d: 26, Elections § 375

NOTES ON DECISIONS AND OPINIONS

157 OS 338, 105 NE(2d) 399 (1952), State ex rel Klink v Eyrich. An individual can vote only once at the same election. "If he even tries to vote more than once at such election, he thereby violates the law."

80 Abs 228, 155 NE(2d) 267 (CP, Mercer 1958), In re Carthagena Local School District. Where precinct election officials failed to pass out proper ballots to some ninety eligible voters they failed in the performance of a mandatory duty, invalidating the election, and the failure is not cured by an attempt to notify either directly or indirectly such voters to return and cast their votes.

1928 OAG 2895. Evidence admissible in a prosecution of a person for voting, or attempting to vote, at the primary election of a political party other than the political party with which he has affiliated, under former GC 13335 (Repealed).

3599.13 Unqualified person signing petitions

No person shall sign an initiative, supplementary, referendum, recall, or nominating petition knowing that he is not at the time qualified to sign it; or knowingly sign such petition more than once; or sign a name other than his own; or accept anything of value for signing such petition; or seek by intimidation or threats to influence any person to sign or refrain from signing such petition, or from circulating or abstaining from circulating such petition; or sign a nominating petition for a candidate of a party with which he is not affiliated, as required by section 3513.05 of the Revised Code; or make a false affidavit or statement concerning the signatures on any such petition.

Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars or imprisoned not less than three nor more than six months, or both.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-203

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

"Anything of value" defined, 1.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 288
Am Jur 2d: 25, Elections § 143, 172

NOTES ON DECISIONS AND OPINIONS

35 Misc 4 (CP, Cuyahoga 1973), Carney v Perk. Board of elections has jurisdiction to investigate circulation of petitions seeking

amendment of city charter and to bring declaratory judgment action in respect thereto.

21 Abs 331 (App, Franklin 1936), Gillette v State. Initiative petition exists within meaning of this section without circulator's affidavit, without proof that it contained any genuine signature, and without submission for filing to secretary of state.

3599.14 Prohibitions relating to petitions

No person shall knowingly, directly or indirectly, misrepresent the contents, purport, or effect of any initiative, supplementary, referendum, recall, local option, or nominating petition for the purpose of persuading any person to sign or refrain from signing such petition; or pay or offer to pay anything of value for signing or refraining from signing such petition; or promise to assist any person to obtain appointment to any office or position as a consideration for obtaining or preventing signatures to any such petition; or obtain or prevent signatures to any such petition as a consideration for the assistance or promise of assistance of any person in securing appointment to any office or position; or circulate or cause to be circulated any such petition knowing it to contain false, forged, or fictitious names; or add any signatures or names except his own on any such petition; or make a false certification or statement concerning any such petition; or file with the election authorities any such petition knowing it to contain false, forged, or fictitious names; or fail to fill out truthfully and file all itemized statements required by law in connection with such petition.

Whoever violates this section shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 1990 H 405, eff. 4-11-91
1980 H 1062; 1953 H 1; GC 4785-204

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 288
Am Jur 2d: 26, Elections § 372

NOTES ON DECISIONS AND OPINIONS

No. 91CA005065 (9th Dist Ct App, Lorain, 12-18-91), State v King. The attempted false certification of nominating petitions by use of photocopied petitions from a prior election does not constitute a violation of RC 2913.31(A)(3), as RC 2913.31(A)(3) and 3599.14 are allied offenses of similar import and as such, the more specific statute, RC 3599.14, must prevail over the more general statute, RC 2913.31(A)(3).

486 US 414, 108 SCt 1886, 100 LEd(2d) 425 (1988), Meyer v Grant. A state law making the payment of money to people circulating petitions needed to put a proposed constitutional amendment on the general election ballot abridges the right to engage in political speech secured by the First and Fourteenth Amendments to the federal constitution. (Ed. note: Colorado statute construed in light of federal constitution.)

3599.15 Sale, theft, destruction, or mutilation of petitions

No person shall purchase, steal or attempt to steal, sell or attempt to sell, or willfully destroy or mutilate any initiative, supplementary, referendum, recall, or nominating petition, or any part thereof, which is being or has been lawfully circulated; provided that the words "purchase" and "sell" do not apply to persons paying or receiving pay for soliciting signatures to or circulating a petition or petition paper.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-205

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.15], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Penalties for felony, 2929.11 to 2929.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 288
Am Jur 2d: 26, Elections § 371, 376

NOTES ON DECISIONS AND OPINIONS

35 Misc 4 (CP, Cuyahoga 1973), Carney v Perk. Board of elections has jurisdiction to investigate circulation of petitions seeking amendment of city charter and to bring declaratory judgment action in respect thereto.

3599.16 Misconduct of members or employees of board of elections

No member, director, or employee of a board of elections shall:

(A) Willfully or negligently violate or neglect to perform any duty imposed upon him by law, or willfully perform or neglect to perform it in such a way as to hinder the objects of the law, or willfully disobey any law incumbent upon him so to do;

(B) Willfully or knowingly report as genuine a false or fraudulent signature on a petition or registration form, or willfully or knowingly report as false or fraudulent any such genuine signature;

(C) Willfully add to or subtract from the votes actually cast at an election in any official returns, or add to or take away or attempt to add to or take away any ballot from those legally polled at such election;

(D) Carry away, destroy, or mutilate any registration cards or forms, pollbooks, or other records of any election;

(E) Act as an election official in any capacity in an election, except as specifically authorized in his official capacity;

(F) In any other way willfully and knowingly or unlawfully violate or seek to prevent the enforcement of any other provisions of the election laws.

Whoever violates this section shall be dismissed from his position as a member or employee of the board and is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1980 H 1062; 1953 H 1; GC 4785-206

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.16], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Board of elections, oath to uphold election laws, 3501.08
Duties of board of elections, 3501.11
Duties of director of board of elections, 3501.13
Removal of board of elections member, director, or employee from office, 3501.16

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 135; 37, Elections § 287, 298, 303
Am Jur 2d: 25, Elections § 46 et seq.; 26, Elections § 278, 376

3599.161 Access to records; denial prohibited

(A) The director of elections, deputy director of elections, or an employee of the board of elections designated by the director or deputy director shall be available during normal office hours to provide any person with access to the public records filed in the office of the board of elections.

(B) No director of elections, deputy director of elections, or employee of the board of elections designated by the director or deputy director shall knowingly prevent or prohibit any person from inspecting, under reasonable regulations established and posted by the board of elections, the public records filed in the office of the board of elections.

(C) Whoever violates division (B) of this section is guilty of prohibiting inspection of election records, a minor misdemeanor, and shall, upon conviction, be dismissed from his position as director of elections, deputy director of elections, or employee of the board of elections.

HISTORY: 1977 H 86, eff. 8-26-77

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Public records, availability, 149.43
Penalty for misdemeanor, 2929.21, 2929.22
Duties of director of the board of elections as to books and papers, 3501.13
Registration records, public inspection, 3503.13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 20, 298
Am Jur 2d: 25, Elections § 51

3599.17 Failure of registrars, judges, and clerks to perform duties

No registrar or judge or clerk of elections shall fail to appear before the board of elections, or its representative, after notice has been served personally upon him or left at his usual place of residence, for examination as to his qualifications; or fail to appear at the polling place to which he is assigned at the hour and during the hours set for the registration or election; or fail to take the oath prescribed by section 3501.31 of the Revised Code, unless excused by such board; or refuse or sanction the refusal of another registrar or judge of elections to administer an oath required by law; or fail to send notice to the board of the appointment of a judge or clerk to fill a vacancy; or act as registrar, judge, or clerk without having been appointed and having received a certificate of appointment, except a judge or clerk appointed to fill a vacancy caused by absence or removal; or in any other way fail to perform any duty imposed by law.

Whoever violates this section shall be fined not less than twenty-five nor more than one hundred dollars or imprisoned not more than fifteen days, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-207

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Board appointment of employees, 3501.14

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 26, Elections § 373, 376

3599.18 Misconduct of registrars and police officers

No registrar of electors or police officer shall refuse, neglect, or unnecessarily delay, hinder, or prevent the registration of a qualified voter, who in a lawful manner applies for registration; or enter or consent to the entry of a fictitious name for registration; or alter the name or remove or destroy the registration card or form of any qualified voter; or willfully neglect or corruptly execute or fail to execute any duty enjoined upon him as a registrar.

Whoever violates this section shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than one year, or both.

HISTORY: 1975 H 1, eff. 6-13-75
1953 H 1; GC 4785-208

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Duty of police as to elections, 3501.34

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 26, Elections § 373, 376

3599.19 Misconduct of judges and clerks of elections in polling place

No judge or clerk of elections shall unlawfully open or permit to be opened the sealed package containing registration lists, ballots, blanks, pollbooks, and other papers and material to be used in the election; or unlawfully misplace, carry away, negligently lose or permit to be taken from him, fail to deliver, or destroy any such packages, papers, or material; or knowingly receive or sanction the reception of a ballot from a person not a qualified elector or from a person who refused to answer a question in accordance

with the election law; or refuse to receive or sanction the rejection of a ballot from a person, knowing him to be a qualified elector; or knowingly permit a fraudulent ballot to be placed in the ballot box; or place or permit to be placed in any ballot box any ballot known by him to be improperly or fraudulently marked; or knowingly count or permit to be counted any illegal or fraudulent ballot; or mislead an elector who is physically unable to prepare his ballot; or mark a ballot for such elector otherwise than as directed by him; or disclose to any person, except when legally required to do so, how such elector voted; or when counting the ballots alter or mark or permit any alteration or marking on any ballot; or wrongfully count or tally or sanction the wrongful counting or tallying of votes; or after the counting of votes commences, as required by law, postpone or sanction the postponement of the counting of votes, adjourn at any time or to any place, or remove the ballot box from the place of voting, or from the custody or presence of all the judges and clerks of such elections; or permit any ballot to remain or to be in the ballot box at the opening of the polls, or to be put therein during the counting of the ballots, or to be left therein without being counted; or admit or sanction the admission to the polling room at an election during the receiving, counting, and certifying of votes of any person not qualified by law to be so admitted; or refuse to admit or sanction the refusal to admit any person, upon lawful request therefor, who is legally qualified to be present; or permit or sanction the counting of the ballots contrary to the manner prescribed by law; or willfully neglect or corruptly execute any duty enjoined upon him by law.

Whoever violates this section shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not less than three nor more than six months, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-209

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Elector needing assistance at poll, 3505.24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 298, 302, 303
Am Jur 2d: 26, Elections § 252, 373, 376
Validity of absentee voters' laws. 97 ALR2d 218

3599.20 Secret ballot

No person shall attempt to induce an elector to show how he marked his ballot at an election; or, being an elector, allow his ballot to be seen by another, except as provided by section 3505.24 of the Revised Code, with the apparent intention of letting it be known how he is about to vote; or make a false statement as to his ability to mark his ballot; or purposely mark his ballot so it may be identified after it has been cast; or attempt to interfere with an elector in the voting booth when marking his ballot; or willfully destroy or mutilate a lawful ballot; or remove from the polling place or be found in unlawful possession of a lawful ballot outside the enclosure provided for voting; or willfully hinder or delay the delivery of a lawful ballot to a person entitled to receive it; or give to an elector a ballot printed or written contrary to law; or forge or falsely make an official indorsement on a ballot.

Whoever violates this section shall be fined not less than twenty-five nor more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-210

CROSS REFERENCES

Lost ballots, 3505.17
Elector needing assistance at poll, 3505.24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 298, 302, 303
Am Jur 2d: 26, Elections § 236, 252, 376
Validity of absentee voters' laws. 97 ALR2d 218

3599.21 Absent voter's ballot

No person shall impersonate another, or make a false representation in order to obtain an absent voter's ballot; or knowingly connive to help a person to vote an absent voter's ballot illegally; or being an election official open, destroy, steal, mark, or mutilate any absent voter's ballot; or abet another to open, destroy, steal, mark, or mutilate any absent voter's ballot after the ballot has been voted; or delay the delivery of any such ballot with a view to preventing its arrival in time to be counted; or hinder or attempt to hinder the delivery or counting of such absent voter's ballot.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-211

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.21], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

CROSS REFERENCES

Impersonation of elector forbidden, 3502.22
Absent voter's ballot, Ch 3509
Armed services absent voter's ballot, Ch 3511

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 298, 302, 303
Am Jur 2d: 26, Elections § 236, 252, 376
Validity of absentee voters' laws. 97 ALR2d 218

3599.22 Printing of ballots

No person employed to print or engage in printing the official ballots shall print or cause or permit to be printed an official ballot other than according to the copy furnished him by the board of elections or a false or fraudulent ballot; or print or permit to be printed more ballots than are delivered to the board; or appropriate, give, deliver, or knowingly permit to be taken away any of such ballots by a person other than the person authorized by law to do so; or print such ballots on paper other than that provided in the contract with the board; or willfully seal up or cause or permit to be sealed up in packages or deliver to the board a less number of ballots than the number indorsed thereon.

Whoever violates this section shall be fined not less than two hundred nor more than one thousand dollars or imprisoned not more than six months, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-212

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Interpreters for voters fluent in foreign tongue, 3501.221
Contract for printing ballots; packaging, 3505.13 to 3505.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 301
Am Jur 2d: 26, Elections § 371 to 373

3599.23 Custodian of ballots, papers, or marking devices, offenses and penalties

No printer or other person entrusted with the printing, custody, or delivery of registration cards or forms, ballots, blanks, pollbooks, cards of instruction, or other required papers shall unlawfully open or permit to be opened a sealed package containing ballots or other printed forms; or give or deliver to another not lawfully entitled thereto, or unlawfully misplace or carry away, or negligently lose or permit to be taken from him, or fail to deliver, or destroy any such forms or packages of ballots, or a ballot, pollbooks, cards of instruction, or other required papers.

No person entrusted with the preparation, custody, or delivery of marking devices shall unlawfully open or permit to be opened a sealed package containing marking devices, or give or deliver to another not lawfully entitled thereto, or unlawfully or carelessly use or negligently lose or permit to be taken from him and fail to deliver or destroy, any such marking devices.

Whoever violates this section shall be fined not less than one hundred dollars or imprisoned not more than one year, or both.

HISTORY: 129 v 1653, eff. 6-29-61
1953 H 1; GC 4785-213

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Opening of ballots and other supplies at poll, 3505.16
Marking devices, Ch 3506

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 301
Am Jur 2d: 26, Elections § 371 to 373

3599.24 Interference with conduct of election

(A) No person shall do any of the following:

(1) By force, fraud, or other improper means, obtain or attempt to obtain possession of the ballots, ballot boxes, or pollbooks;

(2) Recklessly destroy any property used in the conduct of elections;

(3) Attempt to intimidate an election officer, or prevent him from performing his duties;

(4) Knowingly tear down, remove, or destroy any of the registration lists or sample ballots furnished by the board of elections at the polling place;

(5) Loiter in or about a registration or polling place during registration or the casting and counting of ballots so as to hinder, delay, or interfere with the conduct of the registration or election;

(6) Remove from the voting place the pencils, cards of instruction, supplies, or other conveniences furnished to enable the voter to mark his ballot.

(B) Whoever violates division (A)(1) or (2) of this section is guilty of a felony of the fourth degree. Whoever violates division (A)(3) or (4) of this section is guilty of a misdemeanor of the first degree. Whoever violates division (A)(5) or (6) of this section is guilty of a minor misdemeanor.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4785-214

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Penalties for felony, 2929.11 to 2929.15
Penalty for misdemeanor, 2929.21, 2929.22
Loitering near poll forbidden, 3501.35
Ballot instructions at poll, 3505.12

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 297
Am Jur 2d: 25, Elections § 277; 26, Elections § 385

3599.25 Inducing illegal voting

No person shall counsel or advise another to vote at an election, knowing that he is not a qualified voter; or advise, aid, or assist another person to go or come into a precinct for the purpose of voting therein, knowing that such person is not qualified to vote therein; or counsel, advise, or attempt to induce an election officer to permit a person to vote, knowing such person is not a qualified elector.

Whoever violates this section shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not less than one nor more than six months, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-215

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 292
Am Jur 2d: 26, Elections § 375, 383

3599.26 Tampering with ballots

No person shall fraudulently put a ballot or ticket into a ballot box; or knowingly and willfully vote a ballot other than an official ballot lawfully obtained by him from the precinct election authorities; or fraudulently or deceitfully change a ballot of an elector, by which such elector is pre-

vented from voting for such candidates or on an issue as he intends to do; or mark a ballot of an elector except as authorized by section 3505.24 of the Revised Code; or hand a marked ballot to an elector to vote, with intent to ascertain how he voted; or furnish a ballot to an elector who cannot read, knowingly informing him that it contains a name different from the one which is printed or written thereon, to induce him to vote contrary to his intentions; or unduly delay or hinder an elector from applying for registration, registering, or from attempting to vote or voting; or knowingly print or distribute a ballot contrary to law.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-216

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.26], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Penalties for felony, 2929.11 to 2929.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 298, 301, 303
Am Jur 2d: 26, Elections § 371 to 373

3599.27 Possession of voting machine, tabulating equipment, or marking device prohibited; tampering; penalty

No unauthorized person shall have in his possession any voting machine which may be owned or leased by any county or any of the parts or the keys thereof. No person shall tamper or attempt to tamper with, deface, impair the use of, destroy, or otherwise injure in any manner any voting machine.

No unauthorized person shall have in his possession any marking device, automatic tabulating equipment, or any of the parts, appurtenances, or accessories thereof. No person shall tamper or attempt to tamper with, deface, impair the use of, destroy, or otherwise change or injure in any manner any marking device, automatic tabulating equipment, or any appurtenances or accessories thereof.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 129 v 1653; 126 v 575; 1953 H 1; GC 4785-217

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.27], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Penalties for felony, 2929.11 to 2929.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 304
Am Jur 2d: 26, Elections § 371 to 373

3599.28 False signatures

No person, with intent to defraud or deceive, shall write or sign the name of another person to any document, petition, registration card, or other book or record authorized or required by Title XXXV of the Revised Code.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-219

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.28], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

CROSS REFERENCES

Penalties for felony, 2929.11 to 2929.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 287, 288
Am Jur 2d: 26, Elections § 281, 375

3599.29 Possession of false records

No person shall have in his possession a falsely made, altered, forged, or counterfeited registration card, form, or list, pollbook, tally sheet, or list of election returns of an election, knowing it to be such, with intent to hinder, defeat, or prevent a fair expression of the popular will at such election.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-220

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.29], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

CROSS REFERENCES

Correction of registration list, 3503.24
Mistake in registration form, 3503.30

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 301
Am Jur 2d: 26, Elections § 371 to 373, 386

3599.30 Congregating at polls

No person, being one of two or more persons congregating in or about a voting place during the receiving of ballots, so as to hinder or delay an elector in registering or casting his ballot, having been ordered by the registrar or judge of elections to disperse shall refuse to do so.

Whoever violates this section shall be fined not less than twenty nor more than three hundred dollars or imprisoned not more than six months, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-221

CROSS REFERENCES

No loitering near polls, 3501.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 297, 298
Am Jur 2d: 25, Elections § 45; 26, Elections § 286, 374, 385

3599.31 Failure of officer of law to assist election officers

No officer of the law shall fail to obey forthwith an order of the presiding judge and aid in enforcing a lawful order of the presiding judges at an election, against persons unlawfully congregating or loitering within one hundred feet of a polling place, hindering or delaying an elector from reaching or leaving the polling place, soliciting or attempting, within one hundred feet of the polling place, to influence an elector in casting his vote, or interfering with the registration of voters or casting and counting of the ballots.

Whoever violates this section shall be fined not less than fifty nor more than one thousand dollars or imprisoned not more than thirty days, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-218

CROSS REFERENCES

Sheriff's general duties, 311.07
Township constables, duties, 509.05
General duties of municipal police, 737.11
Duty of police at elections, 3501.34
No loitering near polls, 3501.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 297, 298
Am Jur 2d: 25, Elections § 45; 26, Elections § 286, 376

3599.32 Failure of election official to enforce law

No official upon whom a duty is imposed by an election law for the violation of which no penalty is otherwise provided shall willfully disobey such election law.

Whoever violates this section shall be fined not less than fifty nor more than one thousand dollars or imprisoned not more than one year, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-222

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 297, 298
Am Jur 2d: 25, Elections § 45; 26, Elections § 286, 376

3599.33 Fraudulent writing on ballots or election records

No person shall, from the time ballots are cast or counted until the time has expired for using them as evidence in a recount or contest of election, willfully and with fraudulent intent make any mark or alteration on any ballot; or inscribe, write, or cause to be inscribed or written in or upon a registration form or list, pollbook, tally sheet, or list, lawfully made or kept at an election, or in or upon a book or paper purporting to be such, or upon an election return, or upon a book or paper containing such return the name of a person not entitled to vote at such election or not voting thereat, or a fictitious name, or, within such time, wrongfully change, alter, erase, or tamper with a name, word, or figure contained in such pollbook, tally sheet, list, book, or paper; or falsify, mark, or write thereon with intent to defeat, hinder, or prevent a fair expression of the will of the people at such election.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-223

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.33], as amended by [1982 S 199], . . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

CROSS REFERENCES

Personating an officer or agent of government forbidden, penalty, 2913.44
Penalties for felony, 2929.11 to 2929.15
Unlawful possession of ballots, 3505.25
Time for filing recount application, 3515.02
Time for contesting election, 3515.09

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 303, 304
Am Jur 2d: 26, Elections § 257 et seq., 281, 292, 386

NOTES ON DECISIONS AND OPINIONS

33 App 1, 168 NE 550 (1929), Kahoun v State. Indictment charging that primary election was duly held on specified day, and that, on the day after the ballots had been cast and voted, defendant wrote on poll book names of persons not voting, with intent to defeat, hinder, and prevent fair expression of people's will at such election, held not defective under former GC 13350, 13581 (Repealed).

3599.34 Destruction of election records before expiration of time for contest

No person shall, from the time ballots are cast or voted until the time has expired for using them in a recount or as evidence in a contest of election, unlawfully destroy or attempt to destroy the ballots, or permit such ballots or a ballot box or pollbook used at an election to be destroyed; or destroy, falsify, mark, or write in a name on any such ballot that has been voted.

Whoever violates this section is guilty of a felony of the fourth degree.

HISTORY: 1982 H 269, § 4, eff. 7-1-83
1982 S 199; 1953 H 1; GC 4785-224

UNCODIFIED LAW

1982 H 269, § 4, eff. 1-5-83, amended 1982 S 199, § 10, eff. 1-5-83, to read, in part: "[3599.34], as amended by [1982 S 199],

. . . shall take effect on July 1, 1983, and shall apply only to offenses committed on or after July 1, 1983."

CROSS REFERENCES

Penalties for felony, 2929.11 to 2929.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 303, 304
Am Jur 2d: 26, Elections § 257 et seq., 386

MISCELLANEOUS PROVISIONS

3599.35 Proxies shall not be given by party representatives; impersonation of representatives

No party committeeman or party delegate or alternate chosen at an election, or a delegate or alternate appointed to a convention provided by law, shall give or issue a proxy or authority to another person to act or vote in his stead.

No person shall knowingly or fraudulently act or vote or attempt to impersonate, act, or vote in place of such committeeman or delegate.

Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars or imprisoned not more than sixty days, or both.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-225

CROSS REFERENCES

State and national political party delegates, 3513.11, 3513.12
Party controlling committees, election, term, 3517.02 to 3517.06
Solicitation of candidate's support, restrictions, 3517.09
Conventions and delegates for amendment of United States Constitution, 3523.04 to 3523.12

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 303, 304
Am Jur 2d: 26, Elections § 235, 257 et seq., 386

NOTES ON DECISIONS AND OPINIONS

1931 OAG 3868. The signing of a written statement by a member of a political committee, endorsing a person for a certain position is not violative of this section, in the absence of any language in such statement purporting to authorize another person to act in the stead of the signer thereof.

3599.36 Perjury in matters relating to elections; election falsification

No person, either orally or in writing, on oath lawfully administered or in a statement made under penalty of election falsification, shall purposely state a falsehood as to a material matter relating to an election in a proceeding before a court, tribunal, or officer created by law, or in a matter in relation to which an oath or statement under penalty of election falsification is authorized by law, including a statement required for verifying or filing a nominating, initiative, supplementary, referendum, or recall petition, or petition paper.

Whoever violates this section is guilty of election falsification, which is a misdemeanor of the first degree.

Every paper, card, or other document relating to any election matter which calls for a statement to be made under penalty of election falsification shall be accompanied by the following statement in bold face capital letters: "The penalty for election falsification is imprisonment for not more than six months, or a fine of not more than one thousand dollars, or both."

HISTORY: 1980 H 1062, eff. 3-23-81
1974 H 662, S 429; 128 v 255; 1953 H 1; GC 4785-226

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Statutory Charges

CROSS REFERENCES

Oaths, 3.20, 3.21
Mistake in registration form, 3503.30
Former resident's presidential ballot; imprisonment for willful falsehood, 3504.06

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 287, 288
Am Jur 2d: 26, Elections § 371 to 394; 60, Perjury § 65

NOTES ON DECISIONS AND OPINIONS

12 OS(2d) 13, 231 NE(2d) 61 (1967), State ex rel Buchanon v Stillman. Where a board of elections has checked the signatures on petitions and determined that there are a sufficient number thereof that are valid, it may determine that such petitions are valid if the only protest against the petitions is based solely upon the failure of the circulator's affidavit to state "that all signers were to the best of his knowledge and belief qualified to sign."

3599.37 Refusal to appear or testify concerning violation of election laws

No person having been subpoenaed or ordered to appear before a grand jury, court, board, or officer in a proceeding or prosecution upon a complaint, information, affidavit, or indictment for an offense under an election law shall fail to appear or, having appeared, refuse to answer a question pertinent to the matter under inquiry or investigation; or refuse to produce, upon reasonable notice, any material, books, papers, documents, or records in his possession or under his control.

Whoever violates this section shall, unless he claims his constitutional rights, be fined not less than one hundred nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-227

CROSS REFERENCES

Election contest, trial proceedings, 3515.11
Boards of elections may subpoena witnesses, compel production of papers, and take evidence, 3519.18
Self-incrimination in criminal cases not compulsory, O Const Art I §10

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 17, Contempt § 34, 51; 37, Elections § 285
Am Jur 2d: 26, Elections § 392; 81, Witnesses § 28.5

NOTES ON DECISIONS AND OPINIONS

35 Misc 4 (CP, Cuyahoga 1973), Carney v Perk. When witness refuses to testify before a board of elections, the board must invoke the assistance of a court in a direct proceeding against the witness under RC 3599.37.

1936 OAG 5423. Person having information or records desired by a grand jury or board of elections may be compelled by subpoena to appear or produce the same before such bodies, providing there is no federal or state statute which prevents such witness or records from being subpoenaed. Privilege of testimony or records is a question for court and not for witness to determine.

1936 OAG 5423. The files, records and employees of the federal emergency relief administration, the WPA and charitable institutions and organizations may be subpoenaed by a grand jury or a board of elections.

3599.38 Election officials shall not influence voters

No judge, clerk, witness, deputy sheriff, special deputy sheriff, police officer, or other election officer, while performing the duties of his office, shall wear any badge, sign, or other insignia or thing indicating his preference for any candidate or for any question submitted or influence or attempt to influence any voter to cast his ballot for or against any candidate or issue submitted at such election.

Whoever violates this section shall be fined not less than fifty nor more than one hundred dollars and imprisoned not less than thirty days nor more than six months.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-228

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 298
Am Jur 2d: 25, Elections § 46 et seq.

3599.39 Second offense under election laws

Any person convicted of a violation of any provision of Title XXXV of the Revised Code, who is again convicted of a violation of any such provision, whether such conviction is for the same offense or not, shall on such second conviction be fined not less than five hundred nor more than one thousand dollars or imprisoned not less than one nor more than five years, or both, and in addition, such person shall be disfranchised.

HISTORY: 126 v 575, eff. 10-6-55
1953 H 1; GC 4785-230

CROSS REFERENCES

Convicted felon incompetent to be elector, juror, or officeholder, 2961.01

General assembly can exclude felons from voting or holding office, O Const Art V §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 135; 37, Elections § 286
Am Jur 2d: 25, Elections § 94; 26, Elections § 383, 384

3599.40 General penalty

Whoever violates any provision of Title XXXV of the Revised Code, unless otherwise provided in such title, is guilty of a misdemeanor of the first degree.

HISTORY: 1972 H 511, eff. 1-1-74
1953 H 1; GC 4785-232

CROSS REFERENCES

Penalties for misdemeanor, 2929.21, 2929.22

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 282, 301, 302
Am Jur 2d: 26, Elections § 388 to 394

NOTES ON DECISIONS AND OPINIONS

OAG 74-087. Unless otherwise specified, the two-year limitation of RC 3599.40 and 2901.13(A) applies to prosecutions of violations of the elections laws which occurred after Jan. 1, 1974; the one-year limitation of former RC 3599.40 applied to those which occurred before that date.

1962 OAG 2875. A candidate for office who fails to file a statement of expenditures within the time prescribed by RC 3517.10 is subject to the specific penalty provided in RC 3517.11, but is not subject to the penalty provision of RC 3599.40, but where a candidate fails to file at any time, he may be prosecuted for such failure and the penalty provided by RC 3599.40 may be imposed.

3599.41 Person violating election laws may testify against other violators

A person violating any provision of Title XXXV of the Revised Code is a competent witness against another person so offending, and may attend and testify at a trial, hearing, or investigation thereof.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-229

PRACTICE AND STUDY AIDS

Giannelli, Ohio Evidence Manual, Author's Comment § 601.10

CROSS REFERENCES

General rule of competence as witness, Evid R 601

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 27, Criminal Law § 1293; 37, Elections § 285
Am Jur 2d: 26, Elections § 391, 392

3599.42 Prima-facie case of fraud

A violation of any provision of Title XXXV of the Revised Code constitutes a prima-facie case of fraud within the purview of such title.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4785-231

CROSS REFERENCES

Fraud, Ch 2913

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 282
Am Jur 2d: 26, Elections § 281, 349

3599.43 Communications purporting to be from boards of elections; penalty

No person, not authorized by a board of elections, shall send or transmit to any other person any written or oral communication which purports to be a communication from a board of elections, or which reasonably construed

appears to be a communication from such a board and which was intended to be so construed.

Whoever violates this section shall be fined not less than one hundred nor more than one thousand dollars or imprisoned not more than six months or both.

HISTORY: 130 v H 709, eff. 9-16-63

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 300

3599.44 Penalties—Repealed

HISTORY: 1974 S 46, eff. 7-23-74
1970 H 1040

3599.45 Contributions from medicaid provider

(A) No candidate for the office of attorney general or county prosecutor or his campaign committee shall knowingly accept any contribution from a provider of services or goods under contract with the department of human services pursuant to the medicaid program of Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, or from any person having an ownership interest in the provider.

As used in this section "candidate," "campaign committee," and "contribution" have the same meaning as in section 3517.01 of the Revised Code.

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.

HISTORY: 1986 H 428, eff. 12-23-86
1978 S 159

CROSS REFERENCES

Attorney general, Ch 109
County prosecutor, Ch 309
Medical assistance programs, Ch 5111

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 29, Criminal Law § 2365

MISCELLANEOUS SECTIONS
OHIO REVISED CODE

OFFICERS; OATHS; BONDS

3.01 Officers to hold office until successors are qualified

A person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state.

HISTORY: 130 v H 1, eff. 1-23-63
1953 H 1; GC 8

UNCODIFIED LAW

1992 S 156, § 4, eff. 1-10-92, reads: Any person who, on the effective date of this act, is serving as a member of a board of mental retardation and developmental disabilities pursuant to section 3.01 of the Revised Code may be reappointed as a member of the board. Reappointments under this section may be made only during the 30 days that follow the effective date of this act.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.03, 11.13, 13.01, 13.08
Gotherman & Babbit, Ohio Municipal Law, Text 15.17

CROSS REFERENCES

Appointment to state administrative offices, 121.03, 121.06
Election promises to help a person obtain appointment prohibited, 731.36
Felon is incompetent to hold public office, 2961.01
Convicted embezzlers of public funds not to hold public office, O Const Art II §5
General assembly to fix terms and compensation of officers, O Const Art II §20
Election and appointment of officers and filling of vacancies, O Const Art II §27
Succession to powers and duties of public offices in time of emergency resulting from disasters caused by enemy attack, O Const Art II §42
Appointment to state office, O Const Art III §21
Eligibility for elective or appointive office, O Const Art XV §4
Election or appointment to elective state office upon vacancy, O Const Art XVII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 124, 164, 165, 214; 20, Counties, Townships, and Municipal Corporations § 64, 137, 356; 22, Courts and Judges § 198; 37, Elections § 12; 82, Schools, Universities, and Colleges § 89; 86, Taxation § 186
Am Jur 2d: 63A, Public Officers and Employees § 149, 166

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Election or appointment and qualification
4. Who are officers
5. Section governs
6. Other law governs

1. Constitutional issues

134 OS 178, 16 NE(2d) 261 (1938), State ex rel Wheatley v Kirk. GC 8 (RC 3.01) in providing for continuity in government, is a valid exercise of legislative power and is not in conflict with O Const Art XVII §2, in respect to maximum length of term for which elective county officers may be elected.

2. In general

134 OS 206, 16 NE(2d) 334 (1938), State ex rel Bolsinger v Oridge. When president pro tem of a city council, becomes president of the council by operation of law (GC 4274 (RC 733.08)), he holds the office of president until the end of the term and until his successor is appointed or elected and qualified, by virtue of GC 8 (RC 3.01), but his right to hold the office ends with the expiration of the term which he is filling when his successor has been duly elected for the ensuing term at the last general election, has duly qualified and at the inception of his term has not resigned or abandoned the position or failed or refused to accept or assume the office.

132 OS 421, 8 NE(2d) 434 (1937), State ex rel Kopp v Blackburn. The distinction between GC 8 (now RC 3.01) and GC 10 (now RC 3.02) is that the former is general in scope and character, while the latter is specific; GC 8 applies to persons holding office generally, while GC 10 prescribes the tenure of appointees.

OAG 70-131. Person appointed to board of trustees of university may be seated and take part in meetings pending confirmation or rejection by Ohio senate, and fact that new trustee was previously university business manager is no bar to exercise of powers by new appointee, except to extent that new member exercise sound judgment and intelligent discretion in performance of his duties and his personal relationship thereto.

1959 OAG 774. The terms of office of members of the public utilities commission expire in every sixth year following the first day of February in 1915, 1917 and 1919, respectively, commence on the date that a member qualifies for office, and an incumbent member whose term has expired serves until his successor is appointed and qualified for office.

1959 OAG 671. Where, at an election held in 1955, following the organization of a local school district, two members of a local board of education were elected for a period of two years and three for a period of four years, and no election was held in 1957 to fill the expiring terms of the two-year members, they will hold over until December 31, 1961; and at the election to be held in November 1959 only three members shall be elected for four-year terms to succeed those whose terms expire December 31, 1959.

1957 OAG 176. An officer whose fixed statutory term of office has expired and who is continued in office by operation of law "until his successor is elected or appointed and qualified" does not, during such period of continuance in office hold such office for any fixed or definite term, nor for an "existing term" within the meaning of O Const Art II §20, and the inhibition therein against a change in salary "during his existing term" has no application during such period of continued tenure.

1934 OAG 2311. A village mayor and marshal cannot legally refuse to qualify for a second term to which they have been elected,

and thereby hold office under a continuation of their first term of office.

3. Election or appointment and qualification

7 OS(2d) 109, 218 NE(2d) 729 (1966), State ex rel Brothers v Zellar. Appointment to and qualification for a public office are separate and distinct acts performed by different people; appointment relates to the acts of the authority in whom the appointing power reposes, while qualification relates to the acts which the appointee must perform before he is entitled to enter upon the duties of the office.

7 OS(2d) 109, 218 NE(2d) 729 (1966), State ex rel Brothers v Zellar. An appointment by the governor submitted to the senate, while it is in session, vests title to the appointed office in the appointee as soon as the appointee performs the necessary acts on his part to qualify for such office, and such title is vested subject to being divested by the action of the senate rejecting the appointment.

132 OS 546, 9 NE(2d) 497 (1937), State ex rel Cox v Riffle. R and C were both candidates for the office of county engineer at the November 1936, general election. R received the higher number of votes. Neither R nor C was licensed as a professional engineer and registered surveyor in Ohio. C was the incumbent county engineer serving in that office "immediately prior to" the 1936 election. R, by reason of being ineligible was not legally elected county engineer. Although eligible as a candidate, having served as county engineer "immediately prior to" the election, C was not elected county engineer. Where no one is legally elected to the office of county engineer, the incumbent in that office will hold over under this section, until his successor is elected and qualified.

132 OS 466, 9 NE(2d) 288 (1937), State ex rel Gahl v Lutz. A person appointed to an unexpired term in the office of sheriff until his successor is elected and qualified will be deemed to hold the office from the date of appointment and qualification, and not from the date of the receipt of the commission, even though the governor's commission is received by the appointee after the unexpired term has terminated.

58 App 491, 16 NE(2d) 840 (Hamilton 1938), State ex rel Bolsinger v Oridge. A city council president who has succeeded to that office by operation of law by reason of having been the president pro tem of council when the vacancy occurred in the office of council president holds such title only until a successor is elected and qualified under GC 8, even though the duly elected successor never occupies the office.

1962 OAG 3463. Where the term of a member of the waterways safety commission expires when the senate is not in session, a vacancy occurs and the governor is authorized to fill the vacancy and report the appointment to the next session of the senate, and the appointee takes office upon receiving the governor's commission and taking an oath of office.

1962 OAG 3318. A member of the board of trustees of the Ohio state university serves until his successor is appointed, confirmed by the senate, and qualifies by receiving a governor's commission and taking the oath of office.

1961 OAG 2006. The service of a member of the racing commission after the senate adjourned without consenting to his appointment, is as a de facto officer "until his successor is appointed and qualified," and he may serve legally as a de facto officer until the governor makes a new appointment to the position.

4. Who are officers

3 App(2d) 43, 209 NE(2d) 460 (1965), State ex rel Brothers v Zellar; reversed by 7 OS(2d) 109, 218 NE(2d) 729 (1966). The position of member of the board of tax appeals is an office of public trust within the meaning of RC 3.01.

20 CC(NS) 478, 29 CD 631 (Lorain 1904), Essex v Ault. The chief of a volunteer fire department elected by the city council under an ordinance is an officer within this section, and therefore holds until his successor is elected and qualified.

11 CC(NS) 569, 21 CD 215 (Hamilton 1909), State v Withrow; affirmed by 81 OS 523, 91 NE 1143 (1909). The president of a board of education is an officer within the meaning of this section.

4 CC(NS) 560, 16 CD 241 (Cuyahoga 1904), State ex rel Myers v Coon. A clerk of a city board of education is a public officer within the meaning of the school code and RS 8 and, as such, continues in office until his successor is elected or appointed and qualified.

1953 OAG 3249. The office of member of the board of directors of a conservancy district is "an office of public trust" and the incumbent of such office continues to serve therein following the expiration of his statutory term until such time as his successor is appointed and qualified.

5. Section governs

4 App 260, 22 CC(NS) 254 (1915), Case v Burrell. GC 8 (RC 3.01), that a public officer continues until his successor is qualified controls GC 3268 (RC 505.01), as to the terms of township trustees as does also O Const Art IV §10, and where the terms of township trustees expired at midnight but their successors did not qualify for several days, their establishment of a ditch next day and levying an assessment are acts of a de jure board.

OAG 82-074. The term of a community mental health board member expires at midnight on June thirtieth, four years after his July first appointment, if a successor has been appointed and qualified to assume office at the expiration of the member's term; if no successor has been appointed and qualified to assume office at the expiration of an incumbent community mental health board member's term, the incumbent may continue to hold office, pursuant to RC 3.01, until a successor has been appointed and qualified.

OAG 66-155. When a vacancy in the office of township trustee occurred on November 19, 1965, by reason of the death of an incumbent who had been reelected at the November 2, 1965 election, and where such vacancy for the term ending December 31, 1965, was filled by appointment under RC 503.24, there would be no vacancy in the office for the full term commencing January 1, 1966, and no new appointment is necessary, since the person appointed to the unexpired term would continue in office in accordance with RC 3.01 for the entire unexpired term ending December 31, 1967.

1928 OAG 2860. Where a candidate for county surveyor dies before election day on a day too late for a substitution to be made and a majority of the electors cast their ballot for the deceased candidate, the opponent cannot be declared elected. The present incumbent will hold over under GC 8 (RC 3.01) until his successor is elected or appointed and qualified, providing the total tenure under his election shall not exceed four years.

6. Other law governs

101 OS 65, 127 NE 871 (1920), State ex rel Spaulding v Baldwin. Upon the death of a county treasurer-elect before the beginning of his term, the incumbent does not hold over, but the vacancy is filled by the county commissioners by appointment under GC 2636 (RC 321.03).

1949 OAG 1181. Under the practice of the general assembly providing each biennium for the establishment of the controlling board, and authorizing the board to appoint a comptroller, for the period during which liabilities may be incurred under the general appropriations act (Am HB 654, 98th General Assembly), the position of such Comptroller is not a continuing public office to which GC 8 (RC 3.01) applies.

3.02 Term of appointee to elective office; certificate of appointment

(A) When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than

forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term.

(B) When an elective office becomes vacant and is filled by appointment, the appointing authority shall, immediately but no later than seven days after making the appointment, certify it to the board of elections and to the secretary of state. The board of elections or, in the case of an appointment to a statewide office, the secretary of state shall issue a certificate of appointment to the appointee. Certificates of appointment shall be in such form as the secretary of state shall prescribe.

(C) When an elected candidate fails to qualify for the office to which he has been elected, the office shall be filled as in the case of a vacancy. Until so filled, the incumbent officer shall continue to hold office. This section does not postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, or affect the official term, or the time for the commencement thereof, of any person elected to such office before the occurrence of such vacancy.

HISTORY: 1986 H 734, eff. 4-15-86
129 v 582; 126 v 205; 1953 H 1; GC 10

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.12, 11.13

CROSS REFERENCES

Felon is incompetent to hold public office, 2961.01

Workers' compensation, regional boards of review, 4123.14

Convicted embezzlers of public funds not to hold public office, O Const Art II §5

General assembly to fix terms and compensation of officers, O Const Art II §20

Election and appointment of officers and filling of vacancies, O Const Art II §27

Succession to powers and duties of public offices in time of emergency resulting from disasters caused by enemy attack, O Const Art II §42

Appointment to state office, O Const Art III §21

Eligibility for elective or appointive office, O Const Art XV §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 163, 164, 166, 168; 20, Counties, Townships, and Municipal Corporations § 61; 22, Courts and Judges § 154, 158, 198; 37, Elections § 140; 82, Schools, Universities, and Colleges § 96

Am Jur 2d: 63A, Public Officers and Employees § 155, 156, 164, 165

Power to appoint public officer for term commencing at or after expiration of term of appointing officer or body. 75 ALR2d 1277

NOTES ON DECISIONS AND OPINIONS

149 OS 173, 78 NE(2d) 38 (1948), State ex rel Grace v Franklin County Bd of Elections. Where, by reason of death of an incumbent, a vacancy occurs in office of county sheriff and is filled by an appointee of the board of county commissioners, such appointee shall hold office until a successor is elected at first election held on the first Tuesday after the first Monday in November in an even-numbered year and occurring more than thirty days after occurrence of such vacancy.

148 OS 681, 76 NE(2d) 869 (1947), State ex rel Shriver v Hayes. When office of county engineer becomes vacant more than thirty days before a regular state election, a county engineer shall be elected for the unexpired term at such succeeding regular election, and the names of candidates for such term may be written in with a clear designation of the office and the required "X" on the official ballot, and the person receiving the highest number of votes will be declared elected to such office, notwithstanding the name of such office is not printed on the ballot.

147 OS 505, 72 NE(2d) 102 (1947), State ex rel McKee v Rice. Successor of appointee appointed to fill vacancy in office of county engineer, which vacancy occurred more than thirty days before next general election at which county officers can be voted for, must be elected at next general election for county officers.

146 OS 341, 66 NE(2d) 111 (1946), State ex rel Smith v Hummel. Until his death on December 16, 1944, O was sheriff of Summit county; on November 7, 1944, he was re-elected for a term of four years beginning January 1, 1945; vacancy having resulted from O's death, S became his duly appointed successor on December 21, 1944; on February 13, 1945, S resigned; next day he was reappointed and he still holds office; R, M and S have filed declarations and petitions as candidates for nomination for office of sheriff of such county at primary election to be held May 7, 1946; S brings this proceeding in prohibition to prevent placing of names of those candidates on party ballots. Writ of prohibition will issue to prevent placing on primary ballots candidates' names which may not lawfully be placed there; by S's original appointment as sheriff, he held office for unexpired term which ended December 31, 1944 and thereafter until election and qualification of his successor; by his resignation and reappointment, S did not acquire any right to tenure that he did not have before, and he continues to hold office until his successor is elected in November 1946 and qualified.

134 OS 206, 16 NE(2d) 334 (1938), State v Oridge. GC 10 (RC 3.02) applies only in those instances in which an elective office becomes vacant and is filled by appointment.

132 OS 421, 8 NE(2d) 434 (1937), State ex rel Kopp v Blackburn. The distinction between GC 8 (now RC 3.01) and GC 10 (now RC 3.02) is that the former is general in scope and character, while the latter is specific; GC 8 applies to persons holding office generally, while GC 10 prescribes the tenure of appointees.

126 OS 633, 186 NE 809 (1933), State ex rel Haff v Pask. When there is a vacancy in the office of sheriff, and the county commissioners duly appoint a person for the unexpired part of such vacancy, the appointee is by statute entitled to hold the office until the expiration of such unexpired term and until his successor is elected and qualified. (See also State ex rel Crawford v McGregor, 44 OS 628, 10 NE 66 (1887).)

125 OS 235, 181 NE 16 (1932), State ex rel Harsha v Troxel. The successor of an appointee appointed to fill a vacancy in the office of county auditor, which vacancy occurred more than thirty days before the next general election at which county officers can be voted for, must be elected at the next general election for county officers.

80 OS 244, 88 NE 738 (1909), State ex rel Hoyt v Metcalfe. The capacity conferred upon an elective officer by O Const Art XVII to serve until a successor is elected and qualified attaches to and may be enjoyed by one appointed to succeed after the elected officer has resigned, and such appointee succeeds to the entire term and capacity to hold over enjoyed by his predecessor, and no vacancy occurs at the expiration of the original term for which the resigning judge was elected.

66 OS 612, 64 NE 558 (1902), State ex rel Tranger v Nash. The phrase "the first proper election" in RS 11 (now RC 3.02) means the first election appropriate to the office, i.e., the election at which such officers are regularly and properly elected, and therefore the first proper election for the successor to the lieutenant governor is one at which a lieutenant governor would have been elected had no such vacancy occurred. (See also State v Barbee, 45 OS 347, 13 NE 731 (1887).)

62 OS 156, 56 NE 871 (1900), State ex rel Sheets v Speidel. Where an incumbent sheriff running for re-election dies on election day before the polls close, a vacancy is created in his unexpired term but not in the term for which he was a candidate; therefore, one who is duly appointed and qualified to fill the vacancy will hold

the office for and during the unexpired term of his predecessor and until his successor is elected and qualified at the next election held more than thirty days after the vacancy occurred.

59 OS 167, 52 NE 125 (1898), State ex rel Springer v Hadley. County auditors are elected triennially, and there is no authority of law for the election of a county auditor for a term shorter than three years; therefore, a successor elected to fill a vacancy in that office holds office for the full term of three years.

55 OS 195, 45 NE 56 (1896), State ex rel Mark v Dahl. The death of a duly elected county auditor before his term of office is to begin, where the term is to begin less than thirty days before the general election, creates no vacancy in the office, and where the office is then filled by a duly elected, qualified and acting auditor who will continue as such until the end of his term.

79 App 311, 71 NE(2d) 531 (1946), State ex rel Heck v Ahlers. A county official died more than thirty days prior to a general election; neither political party made a nomination to fill vacancy for unexpired term; at general election, names of various persons were written in blank space and properly marked. The person receiving highest number of votes was duly and legally elected to fill unexpired term.

58 App 491, 16 NE(2d) 840 (Hamilton 1938), State ex rel Bolsinger v Oridge. A city council president who has succeeded to that office by operation of law by reason of having been the president pro tem of council when the vacancy occurred in the office of council president holds such title only until a successor is elected and qualified under GC 8, even though the duly elected successor never occupies the office.

7 CC 258, 4 CD 585 (Hamilton 1893), State ex rel Burke v Comer. This section is a general provision which cannot be set aside unless there is some other provision which does so in clear and positive terms; therefore, where a vacancy occurs in the office of constable more than thirty days before a general election, an appointment to fill the vacancy can be made only to the next general election.

OAG 77-042. The provisions of 1976 H 1207 are prospective and do not affect vacancies in boards of education that were filled prior to August 31, 1976. Persons appointed prior to August 31, 1976 to boards of education shall fill such vacancies for the unexpired term as provided by RC 3313.11 prior to amendment by 1976 H 1207, eff. 8-31-76.

OAG 76-013. RC 733.31 sets out the proper procedure to be followed for appointment to a vacancy resulting from death of an incumbent elected official, and RC 733.31, as it existed at the time the appointment was made, controls over RC 733.31 as it was thereafter amended; RC 3.02 is a general statute providing for the length of an appointee's term, and controls over the more specific terms of RC 733.31, where 733.31 contained no such specific terms at the time of appointment.

OAG 66-155. When a vacancy in the office of township trustee occurred on November 19, 1965 by reason of the death of an incumbent who had been reelected at the November 2, 1965 election, and where such vacancy for the term ending December 31, 1965 was filled by appointment under RC 503.24, there would be no vacancy in the office for the full term commencing January 1, 1966 and no new appointment is necessary, since the person appointed to the unexpired term would continue in office in accordance with RC 3.01 for the entire unexpired term ending December 31, 1967.

1963 OAG 389. RC 731.43 provides the sole statutory methods by which a vacancy in the office of a member of the legislative authority of a municipal corporation may be filled, and such section was not repealed by implication by the amendment of RC 3.02.

1961 OAG 2439. Vacancies occurring in a board of education are to be filled pursuant to RC 3313.11, which operates as a special exception to the general provisions of RC 3.02, which latter section does not apply to the filling of vacancies in boards of education.

1957 OAG 200. Where an incumbent of the office of county engineer has been elected at the general election in November 1956 for a four year term, commencing on the first Monday in January 1957, and where such incumbent resigns effective January 31, 1957, the individual thereafter appointed by the board of county commissioners to fill such vacancy will hold such office until the election and qualification of his successor; and such successor should be elected for the unexpired term at the general election in November 1958.

1950 OAG 1870. An appointment made by the county commissioners to fill a vacancy in the office of county engineers is valid and the period of appointment expires on the day of the following general election which occurs more than thirty (now forty) days after the vacancy becomes effective.

1949 OAG 800. The term of the clerk pro tempore of the court of common pleas ends when his successor is elected and qualified; said election of the successor shall be at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred; the candidates for said office shall run for the unexpired term of the original clerk of common pleas court and not for the full four-year term.

1940 OAG 3184. A person appointed and holding the office of sheriff is entitled to hold over when the person elected to the office fails to qualify until the expiration of the unexpired term to which he was appointed and until his successor is elected and qualified.

1917 OAG p 1676. A vacancy does not occur in office where there is an incumbent duly authorized to hold over, and who is legally qualified to perform the duties of the office.

1915 OAG p 1566. Under the provisions of GC 4748 (Repealed), a person elected by the board of education of a school district to fill a vacancy caused by the resignation of a member of such board, holds office for the unexpired term for which the member so resigning was elected, and until his successor is elected and qualified.

1912 OAG p 1102. In case of vacancies in the school board filled by appointment, this section provides that a successor shall be elected for the unexpired term at the first general election for such office, if such vacancy occurs more than thirty days before such election. Such appointee, however, has the same right as an elective officer to hold over until his successor is elected and qualified.

3.07 Forfeiture of office for misconduct in office

Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10, inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings.

HISTORY: 1953 H 1, eff. 10-1-53
GC 10-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.15, 21.02; Forms 1.21
Baldwin's Ohio School Law, Text 5.05
Gotherman & Babbit, Ohio Municipal Law, Text 15.21, 15.22

CROSS REFERENCES

Forfeiture of office for solicit funds from civilian conservation program participants, 1553.09

Municipal court, oath of office, removal, vacancy, appointment, election of substitute, 1901.10

Bribery as ground for forfeiture of office, 3599.01

Director of health and public health council members, grounds and procedures for removal, 3701.12

Impeachment, O Const Art II §23, 24

Laws for removing officers for misconduct, O Const Art II §38

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Filling vacancy in judgeship, O Const Art IV §13

General assembly may remove judge, O Const Art IV §17

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 146, 147, 149, 152, 154; 20, Counties, Townships, and Municipal Corporations § 65, 345; 21, Counties, Townships, and Municipal Corporations § 606, 610, 611, 614, 623; 22, Courts and Judges § 143, 147, 150, 156; 37, Elections § 24; 75, Police, Sheriffs, and Related Officers § 25; 82, Schools, Universities, and Colleges § 94; 84, State of Ohio § 114

Am Jur 2d: 46, Judges § 18, 19, 79; 63A, Public Officers and Employees § 178, 183 to 186, 189 to 203

Removal of public officer for misconduct during previous term. 42 ALR3d 691

Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct. 63 ALR3d 586

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Procedures
4. Positions affected
5. Nonfeasance
6. Misfeasance

1. Constitutional issues

43 App 76, 181 NE 905 (1931), In re Bostwick. The statute (GC 10-1 (RC 3.07)) under which ouster proceeding of probate judge was brought violates no provision of the state constitution. On the contrary, its provisions are in direct response to the mandate imposed by O Const Art II §38. (See also In re Bostwick, 125 OS 182, 180 NE 713 (1932).)

29 NP(NS) 21 (CP, Franklin 1931), In re Bostwick; affirmed by 43 App 76, 181 NE 905 (1931). O Const Art II §38 authorizes the legislature to provide for the prompt removal from office of judges and other officers, for any misconduct involving moral turpitude, or for other causes provided by law. Pursuant thereto, the legislature did enact GC 10-1 (RC 3.07). (See also In re Bostwick, 125 OS 182, 180 NE 713 (1932).)

2. In general

175 OS 114, 191 NE(2d) 723 (1963), State ex rel Hover v Wolven. Where an individual accepts a second office whose duties are incompatible with those of another office already held by such individual, the first held office is thereby vacated.

62 App(3d) 417, 575 NE(2d) 1186 (Franklin 1989), Hughes v Brown. There is no requirement for a hearing pursuant to RC 3.07 prior to forfeiture of a public office where the officeholder has been convicted of a felony; the appeal of a felony conviction does not operate to negate the conviction.

17 App(2d) 247, 246 NE(2d) 607 (1969), State ex rel Stokes v Cuyahoga County Probate Court. RC 3.07 to 3.10 do not repeal by implication RC 733.72 to 733.77.

47 App 17, 189 NE 855 (1933), In re Diehl; affirmed sub nom McMillen v Diehl, 128 OS 212, 190 NE 567 (1934). The taking of the so-called bankrupt act is not ground for removal of an official when he has made full disclosure of his assets, and is not seeking to avoid the payment of his obligations.

47 App 17, 189 NE 855 (1933), In re Diehl; affirmed sub nom McMillen v Diehl, 128 OS 212, 190 NE 567 (1934). Borrowing money from practicing lawyers is disapproved and condemned, but is not ground for removal of a judge from office, when there is no proof that such borrowing resulted in favoritism or discrimination, or affected the conduct of the judge.

No. 83-B-25 (7th Dist Ct App, Belmont, 11-30-83), State ex rel McGee v Wright. Where taxpayers brought a mandamus action to compel a mayor to fill vacancies existing in the zoning official's office pursuant to RC 733.58, the trial court erred in holding that mandamus would not lie on the grounds that an adequate legal remedy was available by way of removal of the mayor pursuant to RC 3.07 where there was no assertion that the mayor refused or willfully neglected to fill the vacancies.

32 Abs 263 (CP, Jackson 1940), In re Removal of Leach. Member of board of education who had a pecuniary interest in a contract with such board within meaning of GC 4757 (Repealed) and also had a pecuniary interest in the employment of his unemancipated son as janitor by the board of education was subject to removal under this section.

15 Abs 140 (App, Franklin 1933), State ex rel Newman v Skinner. A state librarian appointed by the state library board is not a public officer within the meaning of O Const Art II §38 and GC 10-1 and need not be removed in the manner provided by this section which requires the filing and hearing of a complaint; the state library board has the power to remove a state librarian.

29 NP(NS) 21 (CP, Franklin 1931), In re Bostwick; affirmed by 43 App 76, 181 NE 905 (1931). Neither the constitutional grant of power to the legislature to provide for the removal of judges for misconduct involving moral turpitude and for other causes provided by law (O Const Art II §38), nor the legislative act (GC 10-1 (RC 3.07)) enacted in exercise of this power, require that the immoral conduct shall be connected with the office or arise out of official duties. The statute also contemplates moral conduct in the judge's general relation to society and acts practiced outside his official occupation. (See also In re Bostwick, 125 OS 182, 180 NE 713 (1932).)

1919 OAG 650. Laws relating to the removal from office prior to the enactment of RC 3.07 and exclusive of this section do not define causes or fix the procedure for removal from office which applies uniformly to all officers.

3. Procedures

31 OS(2d) 41, 285 NE(2d) 376 (1972), State ex rel Hughes v Brown. A formal complaint and hearing are required prior to any removal of member of board of elections.

125 OS 182, 180 NE 713 (1932), In re Bostwick. Decision is reviewable by proceedings in error. (See also In re Bostwick, 43 App 76, 181 NE 905 (1931).)

66 App(2d) 79, 419 NE(2d) 1108 (1979), 2,867 Signers of Petition for Removal of Mack v Mack. Any amendment to the charges in a complaint filed pursuant to RC 3.07 to 3.10 requires recirculation of the petitions and the filing of a new action.

47 App 17, 189 NE 855 (1933), In re Diehl; affirmed sub nom McMillen v Diehl, 128 OS 212, 190 NE 567 (1934). Removal statutes are to be construed strictly and to warrant removal of an official, the evidence must be clear and convincing.

43 App 76, 181 NE 905 (1931), In re Bostwick. A complaint filed to secure the removal of a public official under GC 10-1 (RC 3.07), need not be verified. Where such complaint appears on its face to have been signed by the required number of signers, and such required number are apparently qualified to so sign, no issue on either the number of signers or their qualifications can be made by answer. (See also In re Bostwick, 125 OS 182, 180 NE 713 (1932).)

36 Abs 46, 42 NE(2d) 724 (App, Summit 1940), Ridgeway v Akron. Under GC 10-1 (RC 3.07) in class of cases enumerated, it is

an indispensable prerequisite to an order of removal that there shall have been a complaint filed and an opportunity for a hearing had.

1933 OAG 169. Where a proceeding was instituted under GC 10-1 (RC 3.07) et seq., for the removal of a township trustee in which such officer was removed by the common pleas court, the township trustees had no authority to employ an attorney to prosecute such a proceeding and pay for his services out of township funds. In such a case, the county commissioners have no authority to pay attorney fees for prosecuting the same.

4. Positions affected

66 App(2d) 79, 419 NE(2d) 1108 (1979), 2,867 Signers of Petition for Removal of Mack v Mack. A member of a board of education is subject to removal from office pursuant to RC 3.07 to 3.10.

5 App(2d) 265, 215 NE(2d) 434 (1966), Thomas v Liberty Twp Bd of Trustees. A township police constable is not a public officer within the provisions of RC 3.07 or O Const Art II §38.

1963 OAG 561. Members of a county child welfare board are "public officers" within the meaning of O Const Art II §38, and may be removed by the board of county commissioners only upon "complaint and hearing" and only "for good cause."

5. Nonfeasance

53 App(2d) 327, 374 NE(2d) 160 (1977), In re Augenstein. Where nonfeasance alone is the ground for removal of a public officer under RC 3.07, the record must show by clear and convincing evidence a substantial departure from the faithful performance of duty.

67 App 191, 36 NE(2d) 291 (Trumbull 1941), State ex rel Robinson v Niles. An action in mandamus will not lie against the mayor, director of public service, auditor, and treasurer of a municipality to compel them to collect electric and water bills owed and allowed to go uncollected for several years, as there is an adequate legal remedy available by way of removal under GC 10-1 and GC 10-2 for misconduct in office.

45 App 365, 187 NE 196 (1933), In re Whisner. A member of a board of education cannot be said to have willfully neglected to perform an official duty, because he persistently voted to elect a particular teacher, with the result that the election had to be made by the county board.

29 NP(NS) 92 (CP, Cuyahoga 1931), In re Sulzmann; affirmed by 125 OS 594, 183 NE 531 (1932). Nonfeasance by an officer is an omission to perform a required duty.

29 NP(NS) 92 (CP, Cuyahoga 1931), In re Sulzmann; affirmed by 125 OS 594, 183 NE 531 (1932). Neglect of duty by a public official is willful if it is conscious or intentional, and the word does not necessarily imply corruption or criminal intent.

OAG 65-70. The failure of a member of a board of township trustees to regularly attend the meetings of such board and to properly discharge his duties does not result in a vacancy in such office, but it may be ground for removal of such township officer under RC 3.07.

1963 OAG 3519. Failure of a member of a board of township trustees to regularly attend the meetings of such board does not result in a vacancy in such office, but may be ground for removal of such township officer.

1928 OAG 2461. If the failure of a state officer to comply with GC 24 (RC 131.01) is willful and flagrant, such conduct would be ground for removal under GC 10-1 (RC 3.07).

6. Misfeasance

128 OS 212, 190 NE 567 (1934), McMillen v Diehl. Statutes authorizing the removal of an incumbent from office are quasi penal in character and should be strictly construed, and the evidence sustaining the removal of an official from office should be clear and convincing; therefore, where the evidence shows that a judge sought to be removed borrowed money from lawyers practicing before him during previous terms of office, such sums remaining unpaid in the present term, but no proof is shown of any kind of favoritism or discrimination resulting from these transactions, the judge will not be removed.

125 OS 594, 183 NE 531 (1932), In re Sulzmann. While a sheriff is not required to patrol his county as a policeman, nor to ferret out crime as a detective, where a sheriff knows that betting on horse races is going on in his county, neglects to stop it, and issues permits to some tracks but not to others, such sheriff is guilty of misfeasance in office, and is rightfully removed from office.

25 App(2d) 58, 266 NE(2d) 248 (1970), In re Removal of Pickering. Where there is evidence that a riot was taking place, that commands to disperse and use of tear gas proved insufficient and ineffectual to cause dispersal, that a shotgun loaded with birdshot was fired by the village mayor into the air and in direction of rioters, but there is no evidence that the shotgun was fired by him with intent to actually hit any rioter, or at a range that such would probably occur, and there is no evidence that any person was hit or injured by birdshot except one person whose wounds were merely superficial, there is no clear and convincing evidence that force used was more than was necessary and proper to suppress the riot or disperse or apprehend rioters, and no evidence that acts of mayor in such regard constituted misfeasance.

32 Abs 263 (CP, Jackson 1940), In re Removal of Leach. A member of the board of education who has a pecuniary interest in a contract for the purchase of coal and in the employment of his minor son as a janitor by the board of education may be removed from office under this section.

31 LR 120 (App 1929), Staples v Sprague. Proceedings for the removal of a municipal judge, because of his conduct in the trial of or refusal to try persons charged with the operation of motion picture theaters on Sunday may properly be brought under this section and following providing that such a proceeding be based on a written complaint signed by five per cent of the qualified electors.

29 NP(NS) 92 (CP, Cuyahoga 1931), In re Sulzmann; affirmed by 125 OS 594, 183 NE 531 (1932). Where the evidence in support of a petition for removal of a sheriff shows that he knew that betting and gambling on horse races was going on in his county, that he issued permits for some tracks to operate and denied permits for others, and that he neglected not only to stop the gambling but even to investigate it, such sheriff must be deemed guilty of misconduct in office, to which his claim that he did not know what his duties were is no defense, and under the law he should be removed from office.

3.08 Procedure for removal of public officers

Proceedings for the removal of public officers on any of the grounds enumerated in section 3.07 of the Revised Code shall be commenced by the filing of a written or printed complaint specifically setting forth the charge and signed by qualified electors of the state or political subdivision whose officer it is sought to remove, not less in number than fifteen per cent of the total vote cast for governor at the last preceding election for the office of governor in the state or political subdivision whose officer it is sought to remove, or, if the officer sought to be removed is the sheriff or prosecuting attorney of a county or the mayor of a municipal corporation, the governor may sign and file such written or printed complaint without the signatures of qualified electors. Such complaint shall be filed with the court of common pleas of the county where the officer against whom the complaint is filed resides, except that when the officer against whom the complaint is filed is a judge of the court of common pleas, such complaint shall be filed in the court of appeals of the district where such judge resides, and all complaints against state officers shall be filed with the court of appeals of the district where the officer against whom the complaint is filed resides. The judge or clerk of the court shall cause a copy of such complaint to be served upon the officer, against whom the complaint has been

filed, at least ten days before the hearing upon such complaint. Such hearing shall be had within thirty days from the date of the filing of the complaint by said electors, or by the governor. The court may suspend the officer pending the hearing.

The removal proceedings filed in the court of common pleas shall be tried by a judge unless a jury trial is demanded in writing by the officer against whom the complaint has been filed. If a jury is demanded, it shall be composed of twelve persons who satisfy the qualifications of a juror specified in section 2313.42 of the Revised Code. If nine or more persons of that jury find one or more of the charges in the complaint are true, such jury shall return a finding for the removal of the officer, which finding shall be filed with the clerk of the court and be made a matter of public record. If less than nine persons of that jury find that the charges on the complaint are true, the jury shall return a finding that the complaint be dismissed. The proceedings had by a judge upon such removal shall be matters of public record and a full detailed statement of the reasons for such removal shall be filed with the clerk of the court and shall be made a matter of public record.

HISTORY: 1984 H 183, eff. 10-1-84
1953 H 1; GC 10-2

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.05
Gotherman & Babbit, Ohio Municipal Law, Text 13.04

CROSS REFERENCES

Public official who refuses to keep accounts of his office may be removed, 117.40

Removal of public official for civil service abuse of power, 124.56

Removal of public official for unfair labor practices, 4117.11

Removal of officials from office for misconduct, O Const Art II §38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 142, 146, 147, 149, 152, 154, 155; 21, Counties, Townships, and Municipal Corporations § 606, 611, 623; 22, Courts and Judges § 143, 147, 150; 75, Police, Sheriffs, and Related Officers § 25

Am Jur 2d: 63A, Public Officers and Employees § 205 to 211, 222 to 231, 256 to 271

Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct. 63 ALR3d 586

NOTES ON DECISIONS AND OPINIONS

22 OS(2d) 120, 258 NE(2d) 594 (1970), State ex rel Stokes v Cuyahoga County Probate Court. RC 733.72 is quasi-penal in character and should be strictly construed, and so strictly construed, pertains solely to acts of misfeasance or malfeasance occurring in the then existing term of the office, and does not authorize removal for noncontinuing acts of misconduct occurring in a term prior to re-election of said officer by the electors of the municipality.

125 OS 182, 180 NE 713 (1932), In re Bostwick. Decision is reviewable by proceedings in error.

66 App(2d) 79, 419 NE(2d) 1108 (1979), 2,867 Signers of Petition for Removal of Mack v Mack. Any amendment to the charges in a complaint filed pursuant to RC 3.07 to 3.10 requires recirculation of the petitions and the filing of a new action.

66 App(2d) 79, 419 NE(2d) 1108 (1979), 2,867 Signers of Petition for Removal of Mack v Mack. Removal proceedings pursuant to RC 3.07 to 3.10 are quasi-penal in nature and should be strictly construed, for the law does not favor the removal of a duly elected official.

66 App(2d) 79, 419 NE(2d) 1108 (1979), 2,867 Signers of Petition for Removal of Mack v Mack. An action for removal of a public officer pursuant to RC 3.07 to 3.10 is a special statutory proceeding to which the civil rules do not apply.

66 App(2d) 79, 419 NE(2d) 1108 (1979), 2,867 Signers of Petition for Removal of Mack v Mack. Pursuant to RC 3.07 to 3.10, although the charges in the complaint or in the petitions need not conform to the technical niceties of a criminal indictment, the charges must be stated with specificity and set out with substantial certainty so as to aver facts and not conclusions, thus permitting the officer charged with misconduct in office to adequately prepare his defense.

47 App 17, 189 NE 855 (1933), In re Diehl; affirmed sub nom McMillen v Diehl, 128 OS 212, 190 NE 567 (1934). The court of appeals has jurisdiction to hear complaints against, and remove from office, judges of the common pleas court.

No. 3664 (11th Dist Ct App, Trumbull, 3-21-86), Petitioners v Stringer. Any number of separate printed or written complaints, identical in form and substance, bound together as one document, would conform to the RC 3.08 requirement that the complaint be signed by the requisite number of electors.

No. 3664 (11th Dist Ct App, Trumbull, 3-21-86), Petitioners v Stringer. Pursuant to RC 3.08, the charges in a complaint for removal from public office must be set out with specificity and substantial certainty.

No. 83-B-34 (7th Dist Ct App, Belmont, 5-8-84), In re Recall of Each Member of St. Clairsville-Richland Bd of Ed. Signed petitions which seek the recall of the members of a board of education because of misconduct "in the execution of the contract of employment for the Superintendent" do not specifically set forth the charge, and the action based thereon is properly dismissed.

28 Abs 635 (CP, Cuyahoga 1939), In Re Tunstall. In a proceeding under this section for removal of members of the board of education, where the charges are not specific and are uncertain and indefinite they should be dismissed in order that the respondents may not be deprived of their right to due process of law.

29 NP(NS) 92 (CP, Cuyahoga 1931), In re Sulzmann; affirmed by 125 OS 594, 183 NE 531 (1932). Petitions under GC 10-1, 10-2 (RC 3.07, 3.08) for removal of a public official for misconduct in office are not invalidated by the fact that they had been acknowledged before a notary public who had himself signed a petition and who was active in circulating the petitions. Petitions in present case for removal of sheriff found sufficient to confer jurisdiction.

470 F(2d) 163 (6th Cir Ohio 1972), Burks v Perk. The mayor of Cleveland has power pursuant to the city charter to determine charges of neglect of duty and malfeasance in office of civil service commissioners, and state statute provides for judicial review of the mayor's determination in the common pleas court, which could restrain enforcement of the mayor's decision pending review; therefore, since adversely affected commissioners have an adequate remedy under state law, they may not resort to the federal courts in the first instance.

339 FSupp 1194 (ND Ohio 1972), Burks v Perk; reversed by 470 F(2d) 163 (6th Cir Ohio 1972). In action by members of city civil service commission against the mayor challenging the validity of proceedings for their removal, the federal courts will apply the doctrine of abstention to allow the Ohio courts to determine the validity of the city charter provisions providing therefor, but the state removal proceedings will be stayed until such determination is made by the state court.

1963 OAG 561. Members of a county child welfare board are "public officers" within the meaning of O Const Art II §38, and may be removed by the board of county commissioners only upon "complaint and hearing" and only "for good cause."

1928 OAG 2167. Under the provisions of this section, proceedings for the removal of the county recorder in question can only be had by the filing of a written complaint specifically setting forth the charge, signed by five per cent of the qualified electors, and filed in

the common pleas court of the county to be heard, after proper notice has been given and within thirty days, by the common pleas court, and a judgment of forfeiture should then be entered if the facts so warrant.

3.11 A person may hold but one of certain offices

No person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of the court of common pleas, county recorder, prosecuting attorney, and probate judge.

HISTORY: 129 v 582, eff. 1-10-61
1953 H 1; GC 11

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.03
Gotherman & Babbit, Ohio Municipal Law, Vol. 1, Table of Compatible and Incompatible Offices

CROSS REFERENCES

Public officers shall devote entire time and hold no other office, 121.12
Prosecuting attorney, eligibility, 309.02
County engineer, eligibility, 315.02
County auditor, eligibility, 319.07
Chief of division of wildlife shall hold no other offices, 1531.05
Offenses against justice and public administration; having an unlawful interest in a public contract, 2921.42
Members of general assembly not to hold any other public office, O Const Art II §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 384; 20, Counties, Townships, and Municipal Corporations § 136, 172, 192; 22, Courts and Judges § 86, 191; 75, Police, Sheriffs, and Related Officers § 17
Am Jur 2d: 63A, Public Officers and Employees § 64 et seq.
Incompatibility, under common-law doctrine, of office of state legislator and position or post in local political subdivision. 89 ALR2d 632

NOTES ON DECISIONS AND OPINIONS

65 Abs 495, 115 NE(2d) 62 (CP, Madison 1953), Allison v Baynes. Offices are incompatible when one is subordinate to, or in any way a check upon the other, or where it is physically impossible for one person to discharge the duties of both.

65 Abs 495, 115 NE(2d) 62 (CP, Madison 1953), Allison v Baynes. The offices of deputy sheriff and special constable are not incompatible.

OAG 81-078. A township trustee may serve as the holder of a certificate of competency as an electrical safety inspector privately employed in the business of conducting electrical inspections so long as he removes himself from any situation involving self-dealing or conflict of interest, since the possession of such a certificate does not in itself constitute a public office.

OAG 73-127. The positions of county treasurer and member of a township board of zoning appeals are incompatible, since the treasurer is a member of the county budget commission and as such is in a position where he can check on a township budget in which, as a member of the zoning board, he has a pecuniary interest.

OAG 73-024. The position of a member of a board of governors of a joint township hospital is incompatible with that of a county commissioner, since the legislature intended for the office of county commissioners to serve as a check upon the office of board of hospital governors.

OAG 71-027. There is no incompatibility in full-time employee of county treasurer or county engineer serving also as part-time investigator on staff of prosecuting attorney, as long as it is understood that his duties will not involve any investigation of his full-time employer.

OAG 65-150. The Ohio common law test of incompatibility of offices is when one is subordinate to, or in any way a check upon, the other, or when it is physically impossible for one person to discharge the duties of both.

OAG 65-138. The positions of secretary of the municipal civil service commission and stenographer clerk in the finance department are compatible, since only one of the two is a public office, and the other is merely a clerical job.

OAG 63-161. The positions of deputy sheriff and township clerk are compatible, unless it is physically impossible for the same person to perform the duties of the two positions, since there is no inconsistency between them and neither office is subordinate to nor in any way a check upon the other.

OAG 59-120. A director of a county agricultural society is not a public officer but is the agent of a private corporation, and therefore no incompatibility exists between the office of clerk of courts and the position of director of a county agricultural society.

OAG 56-6398. A school district may lawfully employ as a school bus driver a member of a board of township trustees.

OAG 56-6327. So long as the appointing authorities concerned find it to be physically possible for one individual to perform the duties of both positions, a probation officer of the juvenile court may lawfully be appointed to act also as school attendance officer of a city school district under RC 3321.14.

OAG 55-5565. The offices of township trustee and director of public safety in a city located in the township are compatible and may be held by one and the same person.

1952 OAG 2178. A deputy sheriff may not serve in that capacity and also hold the office of county coroner.

1943 OAG 6305. The positions of deputy sheriff and inspector of nuisances are compatible and may be held by the same person unless it is physically impossible for one person to discharge faithfully and efficiently the duties of both employments.

1938 OAG 1910. A public officer cannot in the interval between the date on which his resignation is offered and the date it is to take effect hold an office which is incompatible with the one in which he serves, once his resignation is duly accepted by the proper authority.

1938 OAG 1910. When an officer of one subdivision draws the salary incident to an incompatible office under a second subdivision, and is not a legal incumbent of that office, a finding should be made against the officer for the salary paid him by the second subdivision, and against the official or officials of the second subdivision who are responsible for such payments having been made.

1938 OAG 1312. A sheriff cannot accept appointment as a deputy of the tax commission because it creates an untenable condition which makes the holding of both offices incompatible.

3.15 Residency requirements

(A) Except as otherwise provided in division (B) of this section, at all times during his term of office:

(1) Each member of the general assembly or of the state board of education shall be a resident of the district he represents.

(2) Each judge and each elected officer of a court shall be a resident of the territory of that court.

(3) Each person holding an elective office of a political subdivision shall be a resident of that political subdivision.

(4) Each member of a municipal legislative authority who represents a ward shall be a resident of the ward he represents, and each member of a board of education of a city school district who represents a subdistrict shall be a resident of the subdistrict he represents.

(B) Any person who fails to meet any of the requirements of division (A) of this section that apply to him shall

forfeit his office. Division (A) of this section applies to persons who have been either elected or appointed to an elective office. Division (A) of this section does not apply to a member of the general assembly or the state board of education, to a member of a municipal legislative authority who represents a ward, or to a member of a board of education of a city school district who represents a subdistrict, during the remainder of his existing term of office after there is a change in his district's, ward's, or subdistrict's boundaries that leaves his permanent residence outside the district, ward, or subdistrict.

HISTORY: 1990 S 196, eff. 6-21-90

UNCODIFIED LAW

1990 S 196, § 3, eff. 6-21-90, reads: Section 3.15 of the Revised Code as enacted by this act does not apply to any officeholder described in division (A) of that section who holds the elective office on the effective date of this act for the remainder of his term of office.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 13.03

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 63A, Public Officers and Employees § 60

NOTES ON DECISIONS AND OPINIONS

OAG 91-045. For purposes of the residency requirement of RC 3.15, if, as a result of the adoption of a new apportionment plan, the number used to identify the district from which a representative was elected is assigned to a geographic region that differs in any way from the geographic region of the district from which the representative was elected, the boundaries of the representative's district have changed. Should such a boundary change occur, thereby causing the representative's permanent residence to be located outside the boundaries of the numerical district from which he was elected, the representative may, pursuant to RC 3.15(B), continue to represent his current district for the remainder of his term without complying with the residency requirement of RC 3.15(A) that he reside for his entire term within the district from which he was elected.

OAG 91-045. A member of the Ohio house of representatives who is affected by the operation of RC 3.15(B) may move his permanent residence outside of the district he was elected to represent without threat of forfeiture of office as of the date of the adoption of the 1991 apportionment plan, whether that plan is ultimately deemed valid or invalid under applicable law.

OAG 91-045. For purposes of RC 3.15, a person is a resident of the place where he dwells or has his abode; a person's "permanent residence" is his dwelling place or the place where he has established his home on other than temporary or transient basis.

OAG 90-070. Pursuant to RC 3.15, a person serving as county coroner, whether elected or appointed, must be a resident of the county in which he serves at all times during his term of office.

3.23 Oath of office of judges and other officers

The oath of office of each judge of a court of record shall be to support the constitution of the United States and the constitution of this state, to administer justice without respect to persons, and faithfully and impartially to discharge and perform all the duties incumbent on him as such judge, according to the best of his ability and understanding. The oath of office of every other officer, deputy, or clerk shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3

PRACTICE AND STUDY AIDS

Merrick-Rippner, Ohio Probate Law (4th Ed.), Forms 5.42, 5.61, 217.03, 217.05
Baldwin's Ohio Township Law, Text 11.07, 13.06
Baldwin's Ohio School Law, Text 3.02(B)

CROSS REFERENCES

State governmental departments, bond and oath of office, 121.11
Bond of county recorder, oath, 317.02
Chief of division of forestry, oath of office, 1503.01
Municipal court, judges and officers, oath of office, 1901.10
Administrative juvenile judge shall be clerk of court, oath requirement, 2153.08
Oath of commissioners of jurors, 2313.03
Bureau of workers' compensation, oath of administrator, 4121.12
Powers and duties of board of embalmers and funeral directors, oath of members, 4717.04
Oath required before taking office, O Const Art XV §7

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 98, 321; 20, Counties, Townships, and Municipal Corporations § 97, 138, 174, 194; 22, Courts and Judges § 42, 43; 46, Judges § 12
Am Jur 2d: 63A, Public Officers and Employees § 131, 132

NOTES ON DECISIONS AND OPINIONS

43 OS(3d) 1, 1989 SERB 4-41, 539 NE(2d) 103 (1989), Rocky River v SERB. Judges in Ohio are charged with supporting the Ohio Constitution by O Const Art XV §7 and RC 3.23; they are not sworn to support someone else's interpretation of it.

43 OS(3d) 1, 1989 SERB 4-41, 539 NE(2d) 103 (1989), Rocky River v SERB. Reexamining constitutional precedent is a personal decision for each supreme court judge, in an ever-evolving society that requires innovative thinking and change to cope with problems of the future; hidebound, slavish adherence to the past is unnecessary, and if a constitutional matter is of "deep concern" to the majority of the current members of a court they have not merely the power but the duty to reconsider it.

47 App(2d) 28, 351 NE(2d) 777 (1975), Cuyahoga County Bd of Mental Retardation v Assn of Cuyahoga County Teachers of Trainable Retarded. When the undisputed facts are such that a trial judge is under a clear and mandatory duty to disqualify himself from hearing a case, his attempt to act in violation of that duty is null and void, and when an affidavit of disqualification has been properly filed with the clerk of courts, a trial judge is without authority to proceed with the case or to enter judgment therein, until the chief justice of the Ohio supreme court has passed upon the issue of disqualification.

OAG 81-085. A newly-appointed county auditor becomes entitled to compensation upon giving bond and taking the oath of office required by O Const Art XV §7 and RC 3.22 and 3.23.

1961 OAG 2035. A person who has been elected to serve an unexpired term in the court of common pleas must present a legal certificate of his election, and receive a governor's commission to fill such office, and take the required oath of office before he is entitled to serve in such capacity and receive the salary provided therefor.

UCBR B90-00071-0000 (6-11-90), In re Williams. A public employee's oath to "support the Constitution of the State of Ohio" does not include a prohibition against violating any criminal statute enacted thereunder, and does not give a public employer just cause

to dismiss a public employee who commits a fourth-degree felony unrelated to her work by shooting her boyfriend in a barroom.

3.24 Elected officials may administer oaths of office

Every person holding an elected office under the constitution or laws of this state may administer oaths of office to persons elected or appointed to offices under the constitution or laws of this state if those persons are elected or appointed to offices within the geographical limits of his constituency, except that members of the general assembly may administer oaths of office to persons elected or appointed to any office under the constitution or laws of this state. Nothing in this section shall forbid the judge of a court established by the constitution of this state from administering an oath to any person.

When an oath of office is required to be certified in writing, the person taking the oath shall write his signature immediately under the text of the oath. The person administering the oath under authority of this section shall then write his signature, the title of the elected office which he holds, and the date; and shall affix the seal of his office if a seal is prescribed for, or has been adopted by, his office.

HISTORY: 1975 H 901, eff. 11-19-75

PRACTICE AND STUDY AIDS

Merrick-Rippner, Ohio Probate Law (4th Ed.), Forms 217.03, 217.05

Baldwin's Ohio Township Law, Text 11.06, 13.06, 15.06; Forms 1.02, 1.03

Baldwin's Ohio School Law, Forms 5.02, 6.05

PROCESS; PUBLICATION

7.10 Rates for legal advertising

For the publication of advertisements, notices, and proclamations, except those relating to proposed amendments to the Ohio constitution, required to be published by a public officer of the state, county, municipal corporation, township, school, benevolent or other public institution, or by a trustee, assignee, executor, or administrator, or by or in any court of record, except when the rate is otherwise fixed by law, publishers of newspapers may charge and receive for such advertisements, notices, and proclamations rates charged on annual contracts by them for a like amount of space to other advertisers who advertise in its general display advertising columns.

Legal advertising, except that relating to proposed amendments to the Ohio constitution, shall be set up in a compact form, without unnecessary spaces, blanks, or headlines, and printed in not smaller than six point type. The type used must be of such proportions that the body of the capital letter M is no wider than it is high and all other letters and characters are in proportion.

Except as provided in section 2701.09 of the Revised Code, all legal advertisements or notices shall be printed in newspapers published in the English language only.

HISTORY: 1977 S 27, eff. 9-23-77
1976 S 407; 1970 S 451; 129 v 395; 125 v 48; 1953 H 1; GC 6251, 6254; source—GC6251-1

CROSS REFERENCES

Public improvements, publication of notice to bid, 153.07

Advertisement for bids by director of public service, 735.05

Notice of completion of plans for location of a street shall be published, 735.20

Dividends by assignee of insolvent debtor to be advertised, 1313.48

Notice of time and place of sale in case of execution shall be published, 2329.13, 2329.26, 2329.27

Designation of daily law journal, publication of legal notices and court calendars, 2701.09

Advertisement of sale of attached property, 2715.25

Advertising for bids on schoolhouses, 3313.46

Publication of certificate of compliance by insurance companies, 3905.11

Notice of sale of watercraft by an officer, 4585.10

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Newspapers § 18, 24, 29

Am Jur 2d: 58, Newspapers § 17, 19

Validity of legislation relating to publication of legal notices. 26 ALR2d 655

NOTES ON DECISIONS AND OPINIONS

110 OS 360, 144 NE 256 (1924), Cleveland v Legal News Publishing Co. This section does not permit city authorities and the publisher of a newspaper to agree orally for the payment of a greater rate than that herein fixed, and the payment of any such greater rate, even though the contract and payment be made without fraud or collusion, does not preclude a recovery, under GC 286 (RC 117.10), of the excess illegally paid.

81 OS 246, 90 NE 803 (1909), McCormick v Niles. This section, RS 4366, fixes the maximum rate for publication but no minimum rate.

22 NP(NS) 225, 31 D 54 (CP, Defiance 1919), Uhlman v Sherman. Subject to reasonable rules as to character and length of advertisements, a newspaper must accept, without discrimination, all advertisements offered.

OAG 71-048. Where only newspaper published in village is owned by husband of a village councilwoman, such newspaper is not prevented from publishing legal notices of the village, and such councilwoman may take reportorial notes during council sessions as a basis for articles to be published in said newspaper concerning such sessions.

1951 OAG 771. Newspapers with a circulation of over 25,000 are not required to base their charges for legal advertisements on the rates applicable to advertisers who contract to use a minimum amount of periodical space.

1951 OAG 771. Statute specifying rate of one dollar for each square of the first insertion and fifty cents per square for each additional insertion refers to the rate to be charged for legal advertising by newspapers having a circulation of less than 25,000 and not those having circulation of more than 25,000.

1951 OAG 771. Where a newspaper prescribed rates for advertisements other than legal advertisements, classifying them as transient, with no prescribed number of insertions, or on a twelve months basis, the newspaper may charge a rate for legal advertising not inconsistent with the transient rate for other advertisements.

1940 OAG 2920. Publisher of a newspaper who prints the notice required to be attached to the list of delinquent lands pursuant to provisions of GC 5704 (RC 5721.03), is entitled to be compensated therefor at the rate prescribed by GC 6251 (RC 7.10).

1936 OAG 5582. When a display advertisement explaining the three plans of payment of real estate taxes, and requesting payment of real estate taxes which are delinquent, is inserted by a county treasurer in a newspaper having less than 25,000 circulation, in order to determine the number of squares used, each line of such advertisement shall be calculated as to the number of ems it contains in accordance with the size of type employed and then the number of lines of each type shall be determined in accordance

with the number of ems contained in each line of the type in which the same line is set.

1928 OAG 2365. Publishers of newspapers in which are published the advertisements, notices and proclamations described in this section, may not charge in excess of the maximum rate prescribed in such section for such publication, but where the statute specifically provides that proof of publication be furnished by the publisher, such proof constitutes an essential part of the publication and must be furnished and no additional payment may be demanded therefor.

1921 OAG p 409. The word "circulation," which prescribes rates of charges for legal advertisements, means the bona fide circulation of the issue of the newspaper in which the advertisement is published.

1919 OAG 671. Publication of the notice of municipal service examinations under GC 486-10 and 486-19 (now RC 124.23 and 124.40) are subject to the statutory provisions of GC 4228, 4229, and 6251 (now RC 731.21, 731.22, and 7.10).

1916 OAG 1397. Advertisements deemed by the county auditor, treasurer, probate judge, or commissioners to be of general interest to taxpayers under this section and ordered published are to be paid for at the rate fixed at GC 6251 (now RC 7.10).

7.101 Rates and specifications for publishing proposed constitutional amendments

For publication of proposed amendments to the Ohio constitution, ballot language, and explanations and arguments both for and against proposed amendments, referenda, or laws proposed by initiative petitions, publishers of newspapers may charge and receive rates charged on annual contracts by them for a like amount of space to other advertisers who advertise in its general display advertising columns.

Legal advertising of proposed amendments to the constitution shall be printed in display form and shall meet the following specifications. The advertisements shall contain a headline entitled "proposed amendment to the Ohio constitution" printed in not smaller than thirty point type. The ballot language, and explanations and arguments both for and against the proposed amendments, shall be printed in type not smaller than ten point type. For referenda and laws proposed by initiative petitions, the advertisement shall contain a headline entitled "referendum" or, when appropriate, "proposed law" printed in not smaller than thirty point type. All advertisements shall contain such normal spaces and blanks as contribute to clarity and understanding and the entire section of each publication shall be enclosed by a black border line of the same point type size as corresponds to the type size of the ballot language. The notice shall be printed in two or more columns if necessary to contribute to clarity or understanding or if necessary to accommodate the black border outline.

All legal advertisements or notices under this section shall be printed in newspapers published in the English language only.

HISTORY: 1980 H 1062, eff. 3-23-81
1977 S 27; 1976 S 407

CROSS REFERENCES

Proposed constitutional amendments, ballot language, and arguments pro and con to be published, O Const Art XVI §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Newspapers § 18, 25, 30; 72, Notice and Notices § 27 to 30, 33, 34

Am Jur 2d: 58, Newspapers, Periodicals, and Press Associations §17, 19

7.11 Notices, proclamations, and orders to be published in two newspapers; commercial rate

A proclamation for an election, an order fixing the time of holding court, notice of the rates of taxation, bridge and pike notices, notice to contractors, and such other advertisements of general interest to the taxpayers as the county auditor, county treasurer, probate judge, or board of county commissioners deems proper shall be published in two newspapers of opposite politics of general circulation as defined in section 5721.01 of the Revised Code at the county seat if there are such newspapers published thereat. If there are not two newspapers of opposite politics and of general circulation published in said county seat, such publication shall be made in one newspaper published in said county seat and in any other newspaper of general circulation in said county as defined in section 5721.01 of the Revised Code, wherever published, without regard to the politics of such other newspaper. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of such notice shall be made in two newspapers of opposite politics and of general circulation in such city as defined in such section. For purposes of this section, a newspaper independent in politics is a newspaper of opposite politics to a newspaper of designated political affiliation. Sections 7.10 to 7.13, inclusive, of the Revised Code, do not apply to the publication of notices of delinquent and forfeited land sales.

The cost of any publication authorized by this section which is printed in display form shall be the commercial rate charged by such newspaper.

HISTORY: 129 v 395, eff. 9-9-61
1953 H 1; GC 6252

CROSS REFERENCES

Notice of elections to be published, 3501.03
Duties of boards of elections, 3501.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 677; 54, Highways, Streets, and Bridges § 57, 160; 72, Newspapers § 6, 7, 11, 12, 14 to 17, 19 to 23, 26 to 28, 31, 34 to 36; 72, Notice and Notices § 1 to 5, 27 to 36, 42 to 48; 78, Public Works and Contracts § 62; 87, Taxation § 890

Am Jur 2d: 58, Newspapers, Periodicals, and Press Associations § 5, 7, 8, 11, 12, 19; 58, Notice § 29

NOTES ON DECISIONS AND OPINIONS

68 OS 362, 67 NE 733 (1903), Vindicator Printing Co v State. Publication of a sheriff's proclamation is authorized by RS 2977, supplemented by RS 4367, which requires publication in two newspapers of opposite politics, and taken together the meaning is one insertion in each newspaper; insofar as these several statutes provide for the number of publications, they control, and publications in excess of the limit fixed are unauthorized.

56 App 88 (Hamilton 1937), Dallman v Campbell. This section is not applicable where the county commissioners comply with GC 6945 by publishing notice in a newspaper of general circulation, since GC 6945 is a special statute and controls in situations involving road construction bids.

36 App 455, 173 NE 252 (1929), Grooms v Adams County Bd of Commrs. This section in no way changes the provision of GC

6864 (RC 5553.05), as applied to the advertisement involved in this case.

18 App 462 (1923), State ex rel Compton v Butler County Bd of Commrs. Applies to publication of notice of submission to the electors of question of expenditure for construction of bridge by county commissioners under GC 5639-1 (Repealed).

18 App 462 (1923), State ex rel Compton v Butler County Bd of Commrs. GC 6864 (RC 5553.05), relating to publication of notice of view and hearing by county commissioners in road improvement proceedings, and GC 6252 (RC 7.11) relating to the publication of legal advertisements, are statutes of a general nature having uniform operation throughout the state and should be construed in pari materia.

30 CC(NS) 273, 35 CD 387 (Lorain 1918), Reefy v Elyria. The standard of political orthodoxy by which two newspapers are measured to see if they are "opposite" with the contemplation of this section is their conduct and affiliations during an election time when partisanship holds sway and party organization and discipline finds expression in party platforms, not their claims and declarations at a time of political inactivity.

30 CC(NS) 273, 35 CD 387 (Lorain 1918), Reefy v Elyria. What constitute "newspapers of opposite politics."

6 CC(NS) 151, 17 CD 264 (Franklin 1905), Columbus v Barr. Conformity with this section requires that publication shall be made in two papers which are the recognized organs of parties politically opposed, and an independent paper which refuses to be bound by the ties of allegiance is not within the classification, and this section does not permit an award of such advertising to an independent newspaper.

7 NP 239, 1 D 584 (CP, Defiance 1900), State v Defiance County Bd of Commrs. This section is not unconstitutional as depriving publishers from outside the county seat from competing for public printing, since the law does not provide for competitive bidding, and the publication of such notice is not a private enterprise.

20 D 548, 55 Bull 217 (CP, Cuyahoga 1910), Doster v Cleveland. This section, requiring papers for publication of ordinances to be of opposite politics, means party newspapers, advocating and expounding party politics.

1963 OAG 395. Requirements for public hearings under RC 711.10 and 711.101 imply that there must be notice prior to the hearing; no particular form of notice is required so long as it is reasonably calculated to apprise all interested parties, and a single publication in a newspaper of general circulation thirty days before such hearing constitutes reasonable notice.

1959 OAG 354. RC 7.11 requires that certain proclamations, orders and notices (1) be published in two newspapers of opposite politics published at the county seat, if two such papers are published at such county seat, and (2) that, in counties having cities of eight thousand population or more, not the county seats of such counties, additional publication of such proclamations, orders and notices shall be made in each such other city in two newspapers of opposite politics and, as to any other city, of general circulation therein, regardless of the place at which such newspapers are physically produced.

1952 OAG 1235. County officers have authority to publish advertisements to encourage the payment of delinquent real estate taxes and to stimulate interest in pending sales of delinquent and forfeited lands, and such latter advertisements must be published in two papers published in the county seat.

1936 OAG 5209. A county treasurer has discretionary authority to enter into a contract to publish a display advertisement explaining the three different plans of payment of real estate taxes and requesting the payment of real estate taxes which are delinquent, providing such advertisement is published in two newspapers of opposite politics at the county seat, if there are such.

1933 OAG 1657. Where there are not two newspapers of opposite politics published in a city of over eight thousand population in a county, but there are two nonpartisan newspapers published in such city and of general circulation in the county, the county treasurer should publish the notices of the rates of taxation in those two newspapers as a compliance with the terms of this section and GC 2648 (RC 323.08), and the said treasurer may not, at his own discretion, insert the tax rates in either of such newspapers.

1932 OAG 4092. Additional publication of the notice of rates of taxation must be made for six consecutive weeks in two newspapers of opposite politics in each city of 8,000 inhabitants or more which is not the county seat.

1931 OAG 3394. Whether or not newspapers are of opposite politics is a question of fact to be determined from all the pertinent circumstances by the public official charged with the duty of having publication made, and the decision of such question of fact is final, in the absence of fraud or gross abuse of discretion.

1928 OAG 1566. County commissioners may, if they so deem proper, further advertise the sale of county bonds in accordance with the provisions of this section, provided that such additional publications shall not be in excess of the three weeks provided by GC 2293-28 (RC 133.35). Where such additional advertisement is authorized it must be published in two newspapers of opposite politics at the county seat if there be such newspapers published thereat, and, in addition thereto, notices shall be published in two newspapers of opposite politics in each city of eight thousand inhabitants or more within such county.

1927 OAG 2333. The delivery of the tax duplicate to the county treasurer at a later date than that prescribed by statute does not absolve the county treasurer from the duty of publishing the tax rates.

1927 OAG 1292. Under GC 2648 (RC 323.08) and this section it is mandatory upon the county treasurer to publish the rates of taxation.

1927 OAG 1292. The publication of the rates of taxation should be made in two newspapers of opposite politics at the county seat, if there be such newspapers published thereat; and such publication should be made for six successive weeks as provided in GC 2648 (RC 323.08). If two newspapers of opposite politics are not published at the county seat, publication should be made in one such newspaper if there be one. There is no authority for the publication of such notice in a newspaper which is not published at the county seat except in cities other than a county seat having a population of eight thousand inhabitants or more.

1919 OAG 458. The publication of notice to contractors must comply with both this section and GC 2352, since these two statutes are cumulative.

1918 OAG 1648. The county treasurer may be compelled by mandamus to make the publication of the tax rate in two newspapers as provided in this section and GC 2648.

1918 OAG 937. Notice under this section has been complied with when published in the only newspaper of a city of 8,000 population which is not a county seat.

1915 OAG 941. A federal census is not conclusive for purposes of this section, but a census taken by a city itself under GC 3625 (now RC 715.17) may be adopted in determining whether additional publication of the notice provided for in this section shall be made in such city.

1915 OAG 897. The provisions of this section requiring the publication of the "times for holding courts" to be made in two newspapers of "opposite politics" as specified therein are supplementary to and control the provisions of the special statutes requiring such publications to be made in one or more newspapers of general circulation, and whether a publication is a "newspaper" or a "newspaper of general circulation" or a newspaper of "opposite politics" is a mixed question of law and fact which can only be determined under the particular facts of each case.

7.12 Newspapers qualified for publication of legal notices; office of publication; general circulation

Whenever any legal publication is required by law to be made in a newspaper published in a municipal corporation, county, or other political subdivision, the newspaper shall also be a newspaper of general circulation in the municipal

corporation, county, or other political subdivision, without further restriction or limitation upon a selection of the newspaper to be used. If no newspaper is published in such municipal corporation, county, or other political subdivision, such legal publication shall be made in any newspaper of general circulation therein. If there are less than two newspapers published in any municipal corporation, county, or other political subdivision in the manner defined by this section, then any legal publication required by law to be made in a newspaper published in a municipal corporation, county, or other political subdivision may be made in any newspaper regularly issued at stated intervals from a known office of publication located within the municipal corporation, county, or other political subdivision. As used in this section, a known office of publication is a public office where the business of the newspaper is transacted during the usual business hours, and such office shall be shown by the publication itself.

In addition to all other requirements, a newspaper or newspaper of general circulation, except those publications performing the functions described in section 2701.09 of the Revised Code for a period of one year immediately preceding any such publication required to be made, shall be a publication bearing a title or name, regularly issued as frequently as once a week for a definite price or consideration paid for by not less than fifty per cent of those to whom distribution is made, having a second class mailing privilege, being not less than four pages, published continuously during the immediately preceding one-year period, and circulated generally in the political subdivision in which it is published. Such publication must be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.

HISTORY: 1977 H 42, eff. 10-7-77
127 v 784; 1953 H 1; GC 6255

PRACTICE AND STUDY AIDS

Hausser and Van Aken, Ohio Real Estate Law and Practice, Text 39.02(C)

Baldwin's Ohio Civil Practice, Text 3.24(E)

Baldwin's Ohio Township Law, Forms 37.05

Baldwin's Ohio School Law, Forms 5.10, 40.04, 40.16, 40.24, 40.35

Gotherman & Babbit, Ohio Municipal Law, Forms 11.21, 13.18

CROSS REFERENCES

Financing public facilities, notification of meetings to the public and news media, OAC 154-1-01

Water development authority definition of "published," OAC 6121-1-11

General provisions when no newspaper published at place where publication is required, 701.04

Publication when no newspaper in municipal corporation, 731.25

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 49, Fiduciaries § 255; 50, Fish and Game § 16; 69, Mortgages and Deeds of Trust § 316; 72, Newspapers § 7, 9, 10, 14 to 17; 72, Notice and Notices § 33, 34; 78, Public Works and Contracts § 62; 79, Quo Warranto § 40

Am Jur 2d: 58, Newspapers § 5 to 8, 12

NOTES ON DECISIONS AND OPINIONS

56 OS(3d) 145, 565 NE(2d) 536 (1990), State ex rel Daily Reporter v Franklin County Court of Common Pleas. The manifest intent of the legislature was that the special provision, RC 2329.26, prevail over and be an exception to the general provision, RC 7.12, in regard to the authority of a court to designate a newspaper for publication of an order of sale of property taken in execution.

56 OS(3d) 140, 565 NE(2d) 532 (1990), State ex rel Court Index Press, Inc v Deters. A daily law journal which is designated as "the journal in which shall be published all calendars of the courts of record" pursuant to RC 2701.09 qualifies as a "newspaper of general circulation" under RC 7.12 and legal notices may be published in it.

49 OS(3d) 296, 551 NE(2d) 1286 (1990), Record Publishing Co v Kainrad. To be a "newspaper of general circulation," a publication must meet all the requirements of RC 7.12, including the requirement that the publication be of a type to which the general public resorts for news of passing events.

49 OS(3d) 296, 551 NE(2d) 1286 (1990), Record Publishing Co v Kainrad. The judges of the courts of record in a county do not have the authority to designate a specific publication to be the exclusive carrier of all notices which, by law, are required to be published in a newspaper of general circulation.

91 OS 354, 110 NE 922 (1915), Elmwood Place v Schanzle. In light of the settled policy of the state as indicated by the history of legislation on the subject of legal notice, the general assembly did not intend by the codification of this section and others that in a village in which only one newspaper is published and of general circulation no publication of its ordinances would be required.

32 Abs 308 (App, Montgomery 1940), State ex rel Dayton-Oakwood Press v Dissinger. A newspaper publisher cannot urge that he is entitled to a writ of mandamus compelling either the city manager or clerk of counsel to publish ordinances in his newspaper, as there is no statute wherein the legislature has specifically placed upon either or both the duty to attend to the publication of ordinances or resolutions.

OAG 91-059. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to O Const Art XVI §1, the provision of RC 7.12 governing instances where there are "less than two newspapers published in" a county applies when only one newspaper is actually printed in a county.

OAG 91-059. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to O Const Art XVI §1, when only one newspaper is actually printed in a county RC 7.12 authorizes selection of a newspaper printed out of the county if, in addition to being a newspaper of "general circulation," it is also "a newspaper regularly issued at stated intervals from a known office of publication located within" the county.

OAG 86-097. RC 7.12 does not permit a county to make the required publication of legal notices in a newspaper which has no second class mailing privilege and is distributed free of charge.

1963 OAG 395. Requirements for public hearings under RC 711.10 and 711.101 imply that there must be notice prior to the hearing; no particular form of notice is required so long as it is reasonably calculated to apprise all interested parties, and a single publication in a newspaper of general circulation thirty days before such hearing constitutes reasonable notice.

1946 OAG 824. Change in ownership and suspension of publication for period of approximately two months does not cause newspaper to lose its character as "newspaper of general circulation" as that phrase is defined in GC 5704 (RC 5721.03) and this section.

1918 OAG 1309. The officers of a municipality in which the only newspaper published in the city is printed in the German language are not compelled to insert legal advertising in it unless it has a bona fide paid circulation of not less than 1,000 copies.

PUBLIC OFFICERS

102.01 Definitions

As used in Chapter 102. of the Revised Code:

(A) "Compensation" means money, thing of value, or financial benefit. "Compensation" does not include reimbursement for actual and necessary expenses incurred in the performance of official duties.

(B) "Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency. "Public official or employee" does not include a person elected or appointed to the office of precinct, ward, or district committee member under section 3517.03 of the Revised Code, any presidential elector, or delegate to a national convention. "Public official or employee" does not include a person who is a teacher, instructor, professor, or any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.

(C) "Public agency" means the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity. "Public agency" does not include a department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated.

(D) "Immediate family" means a spouse residing in the person's household and any dependent child.

(E) "Income" includes gross income as defined and used in the "Internal Revenue Code of 1954," 68A Stat. 26 U.S.C. 1, as now or hereafter amended, interest and dividends on obligations or securities of any state or of any political subdivision or authority thereof, and interest or dividends on obligations of any authority, commission, or instrumentality of the United States.

(F) "Appropriate ethics commission" means:

(1) For matters relating to members of the general assembly, employees of the general assembly, and candidates for the office of member of the general assembly, the house or senate legislative ethics committee, depending on the house of which he is a member, by which he is employed, or for which he is a candidate; for employees of the legislative service commission, the senate legislative ethics committee;

(2) For matters relating to judicial officers and employees, and candidates for judicial office, the board of commissioners on grievances and discipline of the supreme court;

(3) For matters relating to all other persons, the Ohio ethics commission.

(G) "Anything of value" has the same meaning as provided in section 1.03 of the Revised Code and includes, but is not limited to, a contribution as defined in section 3517.01 of the Revised Code.

HISTORY: 1986 H 300, eff. 9-17-86
1981 H 694; 1977 H 1; 1976 H 268, H 1040; 1973 H 55

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 29.10(B), 45.01(B),(C)

CROSS REFERENCES

Ohio housing finance agency, members, disclosures, 175.03

Members of technical advisory council of county or joint solid waste management district not public officers or state employees, 3734.54

Metropolitan housing authorities, public officials may serve as members, officers, or employees, 3735.27

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 63A, Public Officers and Employees § 1 to 28

NOTES ON DECISIONS AND OPINIONS

Ethics Op 74-004. Since the clause "who receives less than one thousand dollars per year for serving in such position," as used in RC 102.01(B), applies only to persons who are members of a board, commission, or bureau of any county or city, village officials and employees are exempted from the definition of "public official or employee" regardless of the amount of compensation received for serving in such position.

102.02 Financial statement to be filed with ethics commission

(A) Every person who is elected to or is a candidate for a state, county, or city office, or the office of member of the United States congress, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office, and the director, assistant directors, deputy directors, division chiefs, or persons of equivalent rank of any administrative department of the state, the chief executive officer of each state retirement system, all members of the board of commissioners on grievances and discipline of the supreme court, the ethics commission created under section 102.05 of the Revised Code, every public official or employee who is paid a salary or wage in accordance with schedule C of section 124.15 of the Revised Code, and every other public official or employee who is designated by the appropriate ethics commission pursuant to division (B) of this section, excluding any person elected or appointed to the office of precinct, ward, or district committee member under Chapter 3517. of the Revised Code, presidential elector, delegate to a national convention, city, exempted village, county, local, and joint vocational school district boards of education, village officials and employees, township officials and employees, any physician or psychiatrist paid a salary or wage in accordance with schedule C of section 124.15 or schedule E-2 of section 124.152 of the Revised Code and whose primary duties do not require the exercise of administrative discretion, and any member of a board, commission, or bureau of any county or city who receives less than one thousand dollars per year for serving in such position, shall file with the appropriate ethics commission on a form prescribed by the commission, a statement disclosing:

(1) The name of the person filing the statement and each member of his immediate family and all names under which the person or members of his immediate family does business;

(2) Exclusive of reasonable expenses, identification of every source of income over five hundred dollars, including honorariums, received during the preceding calendar year, in his own name or by any other person for his use or benefit, by the person filing the statement, and a brief

description of the nature of the services for which the income was received. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code. This division shall not be construed to require a person filing the statement who derives income from a business or profession to disclose the individual items of income that constitute the gross income of that business or profession.

(3) The name of every corporation on file with the secretary of state which is incorporated in Ohio or holds a certificate of compliance authorizing it to do business in this state, trust, business trust, partnership, or association which transacts business in Ohio in which the person filing the statement or any other person for his use and benefit had during the preceding calendar year an investment of over one thousand dollars at fair market value as of the thirty-first day of December of the preceding calendar year, or the date of disposition, whichever is earlier, or in which the person holds any office or has a fiduciary relationship, and a description of the nature of the investment, office, or relationship. This division does not require disclosure of the name of any bank, savings and loan association, credit union, or building and loan association with which the person filing the statement has a deposit or a withdrawable share account.

(4) All fee simple and leasehold interests to which the person filing the statement holds legal title to or a beneficial interest in real property located within the state, excluding the person's residence and property used primarily for personal recreation;

(5) The names of all persons residing or transacting business in the state to whom the person filing the statement owes, in his own name or in the name of any other person, more than one thousand dollars. This division shall not be construed to require the disclosure of debts owed by the person resulting from the ordinary conduct of a business or profession or debts on the person's residence or real property used primarily for personal recreation, except that the superintendent of building and loan associations shall disclose the names of all state-chartered building and loan associations and of all service corporations subject to regulation under division (E)(2) of section 1151.34 of the Revised Code to whom the superintendent in his own name or in the name of any other person owes any money, and that the superintendent of banks and any deputy superintendent shall disclose the names of all state-chartered banks and all bank subsidiary corporations subject to regulation under section 1107.35 of the Revised Code to whom such superintendent or deputy superintendent owes any money.

(6) The names of all persons residing or transacting business in the state, other than a depository excluded under division (A)(3) of this section, who owes more than one thousand dollars to the person filing the statement, either in his own name or to any person for his use or benefit. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code, nor the disclosure of debts owed to the person resulting from the ordinary conduct of a business or profession.

(7) The source of each gift of over five hundred dollars received by the person in his own name or by any other person for his use or benefit during the preceding calendar year, except gifts received by will or by virtue of section 2105.06 of the Revised Code, or received from parents or grandparents, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor.

A person who is a candidate for elective office shall file his statement no later than the thirtieth day before the primary, special, or general election at which such candidacy is to be voted on, whichever election occurs sooner, except a person who is a write-in candidate shall file his statement no later than the twentieth day before the earliest election at which such candidacy is to be voted on. A person who holds elective office shall file his statement on or before the fifteenth day of April of each year, unless he is a candidate for office. A person who is appointed to fill a vacancy for an unexpired term in an elective office shall file his statement within fifteen days after he qualifies for office. Other persons shall file an annual statement on or before the fifteenth day of April, or if appointed or employed after such date, within ninety days after appointment or employment. No person shall be required to file more than one statement for any one calendar year with the appropriate ethics commission.

The appropriate ethics commission may for good cause extend, for a reasonable time, the deadline for filing a disclosure statement under this section.

A statement filed under this section is subject to public inspection at locations designated by the appropriate ethics commission except as otherwise provided in this section.

(B) The Ohio ethics commission, the house and senate legislative ethics committees, and the board of commissioners on grievances and discipline of the supreme court may, using the rule-making procedures of Chapter 119. of the Revised Code, require any class of public officials or employees under its jurisdiction and not specifically excluded by this section whose positions involve a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or a county or city, or the execution of other public trusts, to file an annual statement on or before the fifteenth day of April under division (A) of this section. The appropriate ethics commission shall send the public officials or employees written notice of the requirement by the fifteenth day of February of each year the filing is required, unless the public official or employee is appointed after such date, in which case the notice shall be sent within thirty days after appointment and the filing shall be made not later than ninety days after appointment.

Disclosure statements filed under this division with the Ohio ethics commission by members of boards, commissions, or bureaus of the state for which no compensation is received other than reasonable and necessary expenses shall be kept confidential. The Ohio ethics commission shall examine each disclosure statement required to be kept confidential to determine whether a potential conflict of interest exists for the person who filed the disclosure statement. A potential conflict of interest exists if the private interests of the person, as indicated by his disclosure statement, might interfere with the public interests he is required to serve in the exercise of his authority and duties in his office or position of employment. If the commission determines that a potential conflict of interest exists, it shall notify the person who filed the disclosure statement and shall make the portions of the disclosure statement that indicate a

potential conflict of interest subject to public inspection in the same manner as is provided for other disclosure statements. Any portion of the disclosure statement that the commission determines does not indicate a potential conflict of interest shall be returned immediately to the person who filed the statement.

(C) No person shall knowingly fail to file a statement that is required by this section.

(D) No person shall knowingly file a false statement that is required to be filed under this section.

HISTORY: 1986 H 428, eff. 12-23-86
1986 H 300, H 831; 1977 S 40, H 1; 1976 H 268, H 1040; 1975 H 703; 1973 H 55

Penalty: 102.99(A)(B)

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 45.01(C), 45.02
Gotherman & Babbit, Ohio Municipal Law, Text 15.69

CROSS REFERENCES

Financial disclosure filing requirement, OAC 102-5-02

Governor may remove or suspend appointee, 3.04
Ethics committees of general assembly, powers and duties, 101.34
Classified civil service, tenure of office, reduction, suspension, and removal, appeal, 124.34
Ohio housing finance agency, members, disclosures, 175.03
County commissioners, election and term, 305.01
Organization of the agricultural financing commission, 901.62
Superintendent of banks and employees to be disinterested, 1125.04

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 90, 244, 245, 294; 84, State of Ohio § 90
Am Jur 2d: 63A, Public Officers and Employees § 322, 323
Payroll records of individual government employees as subject to disclosure to public. 100 ALR3d 699

NOTES ON DECISIONS AND OPINIONS

55 OS(2d) 70, 378 NE(2d) 153 (1978), State ex rel Citizens' Bar Assn v Gagliardo. Financial disclosure statement filed by juvenile judge with juvenile court is not a public record.

OAG 76-009. The financial disclosure statement to be filed annually pursuant to Code of Jud Cond Canon 6(C) and RC 102.02 is a public record to be made available to the press if requested and may be divulged without the written consent of the board of commissioners on grievances and discipline of the supreme court of Ohio or the ethics commission.

Bd of Commrs on Grievances & Discipline Op 91-028 (12-6-91). The clerk and deputy clerk of the Court of Claims are not required under RC 102.02 to file annual financial disclosure statements, but are persons whom the bd of commrs on grievances & discipline could require to file through rule-making procedures of RC Ch 119; however, under Canon 6(C) and the compliance section of Code of Jud Cond, the clerk and deputy clerk of the Court of Claims must file financial disclosure statements with the secretary of the bd of commrs on grievances & discipline.

Ethics Op 90-014. RC 102.02(A) does not require a person who was elected as a village council member to file a financial disclosure statement with the Ohio ethics commission during the remainder of his term when, as a result of the decennial federal census, the municipality's status has changed from a village to a city.

Ethics Op 90-014. RC 102.02(A) requires a council member of a village that has been advanced to a city as a result of the federal decennial census who desires to seek election as a city council member to file his first financial disclosure statement with the Ohio ethics commission no later than the thirtieth day before the first election at which his candidacy as a city official will be voted upon.

Ethics Op 89-007. A county treasurer is required to file a financial disclosure statement on or before April 15 of the year after his election by RC 102.02(A), even though his term of office does not begin until the first Monday in September of the year following the election.

Ethics Op 89-001. A public official or employee required to file a financial disclosure statement pursuant to RC 102.02 is deemed to owe a person more than $1000 for purposes of RC 102.02(A)(5) where he has made purchases from that person costing more than $1000 and has deferred payment for those items under the terms of a credit agreement, even though the public official or employee subsequently pays the entire amount owed during the grace period allowed under the credit agreement, so that no interest charges are incurred.

Ethics Op 89-001. RC 102.02(A)(5) requires a public official or employee to disclose the names of all persons residing or transacting business in the state to whom he has owed, in his own name or in the name of any other person, more than $1000 at any time during the preceding calendar year.

Ethics Op 89-001. RC 102.02(A)(6) requires a public official or employee to disclose the names of all persons residing or transacting business in the state who owed the public official or employee, either in his own name or in the name of any other person for his use or benefit, more than $1000 at any time during the preceding calendar year.

Ethics Op 80-005. RC 102.02(A) requires a person who holds an elective office to file a financial disclosure statement on or before the fifteenth day of April of each year, unless he is a qualified candidate for office.

Ethics Op 76-013. A county commissioner, who is a general partner in partnership A which, in turn, is a partner in partnership B, is required by RC 102.02(A)(3) to disclose on his financial disclosure statement his interest in partnership A, but not partnership A's interest in partnership B.

Ethics Op 76-012. A person required to file a financial disclosure statement under RC 102.02(A)(3) must disclose the name of the partnership in which he has an investment of more than one thousand dollars and give a description of the nature of his investment.

Ethics Op 76-012. A person who meets the specifications of RC 102.02 and who is a general partner in a partnership which owns real property is required to disclose partnership property on his financial disclosure statement.

Ethics Op 76-011. A trust, for the purposes of RC 102.02(A)(3), is a relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another.

Ethics Op 76-011. A fiduciary relationship, for the purposes of RC 102.02(A)(3), includes the relationship of director to a corporation and a trustee to a trust.

Ethics Op 75-036. RC 102.02(A) does not require a councilwoman, who must file a financial disclosure statement, to disclose sources of income of her spouse which exceed $500, unless the income as initially received by her spouse is specifically designated for the use and benefit of the councilwoman.

Ethics Op 75-032. A person who is appointed to the office of city councilman on December 30, 1974 and resigns from that office on January 2, 1975, is required to file a financial disclosure statement based on calendar year 1974, within fifteen days after he qualifies for office, but if he complies with this requirement, he is not required to file an additional financial disclosure statement based on calendar year 1974 on or before April 15, 1975. He will, however, be required to file a financial disclosure statement based on calendar year 1975, on or before April 15, 1976.

Ethics Op 75-031. A person seeking election who voluntarily withdraws from an election within twenty days after filing his petition of candidacy is no longer a candidate within the purview of RC 102.02(A), and therefore is not required to file a financial disclosure statement.

Ethics Op 75-031. For the purposes of RC 102.02, a "candidate" is a person who has filed his or her petition of candidacy whether or not that petition has been certified.

Ethics Op 75-029. Criteria of whether a person occupies an "office" for the purposes of RC 102.02 include whether he was appointed or elected, whether he has a title, whether he exercises a function of government concerning the public, whether he is not subject to a contract of employment, and whether he exercises the sovereign power.

Ethics Op 75-003. The requirement to file a financial disclosure statement does not apply during the then current term of office to any elected official or any person who was appointed to an elective office and was serving in such capacity prior to December 19, 1973.

Ethics Op 74-002. An appointed member of a council or board, excluding the board of commissioners on grievances of the supreme court, the Ohio ethics commission, and those required by rule of the ethics commission, is not the director or deputy director of that council or board for the purposes of RC 102.02.

102.021 Disclosure of political contributions by deputy registrars

(A) Annually, on or before the thirty-first day of January, every deputy registrar shall file with the Ohio ethics commission on a form prescribed by the commission, a statement disclosing all of the following:

(1) The name of the person filing the statement, and, where applicable, of his spouse and of members of his immediate family;

(2) Any contribution made within the previous calendar year by the person and, where applicable, by his spouse and by members of his immediate family to each of the following:

(a) Any political party;

(b) Any candidate for the office of governor, attorney general, secretary of state, treasurer of state, auditor of state, member of the senate or house of representatives of the general assembly, or to the campaign committee of any such candidate.

(3) The month, day, and year in which the contribution was made;

(4) The full name and address of each person, political party, or campaign committee to which a contribution was made;

(5) The value in dollars and cents of the contribution.

(B) No person shall knowingly fail to file a statement that is required by this section.

(C) No person shall knowingly make a false statement in a statement that is required to be filed under this section.

HISTORY: 1988 S 1, eff. 11-28-88

Penalty: 102.99(C)(D)

CROSS REFERENCES

Licensing of motor vehicles, contracting of deputy registrars prohibited for excess political contributions, 4503.03

Motor vehicles licensing law, solicitation of political contributions from deputy registrars, award or termination of contract not to be affected by political contributions, 4503.032

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 63A, Public Officers and Employees § 322, 323, 330

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

102.03 Restrictions during and after employment; bribery prohibited; honorarium for personal appearance; reimbursement for travel expenses; membership in organizations

(A) No present or former public official or employee shall, during his public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which he personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion. For twenty-four months after the conclusion of his service, a former commissioner or attorney examiner of the public utilities commission may not represent a public utility, as defined in section 4905.02 of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission, or agency. For twenty-four months after the conclusion of his employment or service, no former public official or employee who personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, the development or adoption of solid waste management plans, investigation, inspection, or other substantial exercise of administrative discretion under Chapter 343. or 3734. of the Revised Code shall represent a person who is the owner or operator of a facility, as defined in section 3734.01 of the Revised Code, or who is an applicant for a permit or license for a facility under that chapter, on any matter in which he personally participated as a public official or employee. As used in this division, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in this division, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. Nothing contained in this division shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served. This division shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of his duties as a public official or employee, except through ministerial functions as defined

in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his immediate family owns or controls more than five per cent. No public official or employee shall participate within the scope of his duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or his immediate family, or a partnership, trust, business trust, corporation, or association of which he or his immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging such sale with the clerk or secretary of the public agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code.

(D) No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

(G) In the absence of bribery or another offense under the Revised Code or a purpose to defraud, contributions, as defined in section 3517.01 of the Revised Code, made to a campaign committee, political party, or political action committee on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

(H) Divisions (D), (E), and (F) of this section do not prohibit a public official or employee from soliciting or accepting or prohibit a person from promising or giving to a public official or employee an honorarium or similar fee for making a personal appearance or speech, or soliciting, accepting, promising, or giving prepayment or reimbursement of travel, meal, and lodging expenses incurred in connection with the personal appearance or speech if either division (H)(1) or (2) of this section applies:

(1) The public official or employee is required to file a financial disclosure statement under section 102.02 of the Revised Code covering the time period in which he accepts payment; neither the honorarium or similar fee nor the prepaid or reimbursed expenses are paid by any person or other entity, or any representative or association of such persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves; and the expenses paid or reimbursed do not exceed the actual cost of items actually furnished;

(2) The honorarium, expenses, or both were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from his public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of such persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to his official duties if the travel, meals, and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon him with respect to his duties. The house of representatives and senate, in their respective codes of ethics, and the Ohio ethics commission, under section 111.15 of the Revised Code, may adopt rules setting standards and conditions for the furnishing and acceptance of such travel, meals, and lodging, expenses, or reimbursement.

A person who acts in compliance with this division and any applicable rules adopted under it, or any applicable, similar rules adopted by the supreme court governing judicial officers and employees, does not violate division (D), (E), or (F) of this section. This division does not preclude any person from seeking an advisory opinion from the appropriate ethics commission under section 102.08 of the Revised Code.

(J) For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and improper influence on him with respect to his duties. As used in this division, "organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use his official position with regard to the interests of the organization on the matter if he has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect his personal, pecuniary interests.

HISTORY: 1990 S 382, eff. 1-1-91
1990 H 610; 1988 H 592; 1986 H 300; 1982 S 378; 1980 S 425; 1976 H 1040; 1973 H 55

Penalty: 102.99(B)

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.18, 19.03, 39.02, 39.13, 59.05
Baldwin's Ohio School Law, Text 45.03, 45.04, 45.11
Gotherman & Babbit, Ohio Municipal Law, Text 9.16, 15.70

CROSS REFERENCES

Agricultural commodity handlers, financial information, confidentiality of information, 926.06
Probate judge and appointees, dealing in estate assets forbidden, 2101.40
Probate judge and clerks, law practice limits, 2101.41
Bribery, 2921.02
Soliciting or receiving improper compensation, 2921.43

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 242; 84, State of Ohio § 89
Am Jur 2d: 63A, Public Officers and Employees § 73, 78

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Improper representation of client
3. Abuse of confidential information
4. Conflict of interest
5. Seeking improper advantages
6. Conduct found not improper

1. In general

38 Cities & Villages 12 (June 1990). Ethical Restrictions on Travel, Meal and Lodging Expenses, John Rawski.

66 App(2d) 17, 419 NE(2d) 1128 (1979), State v Nipps. RC 102.03 is not unconstitutional on its face.

Ethics Op 91-005. The exemption to the revolving door law of RC 102.03(A), which permits a former public official or employee to be "retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served," allows a former official or employee to be employed by *all* of the public agencies by which he was employed or on which he served.

Ethics Op 91-005. The exemption to the revolving door law of RC 102.03(A), which permits a former public official or employee to be "retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served," applies to the two-year prohibition governing former officials and employees who personally participated while in public service under RC Ch 343 or Ch 3734, as well as to the general, one-year prohibition of the revolving door law.

Ethics Op 89-013. The Ohio ethics law, RC Ch 102, and related statutes prohibit a public official or employee from accepting from a vendor interested in doing business with the official's or employee's agency the travel, meal, and lodging expenses incurred in viewing the vendor's product and prohibit the vendor from paying such expenses, regardless of whether the expenses would be paid directly to the public official or employee or as reimbursement to the official's or employee's agency.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. RC 102.03(A) does not apply to an independent contractor with a governmental agency so long as the independent contractor does not exercise sovereign powers of government through his authority and administrative discretion.

Ethics Op 89-002. The Ohio ethics law, RC Ch 102, and related statutes do not prohibit private companies from donating industrial and safety equipment to the industrial commission, so long as no official or employee of the commission benefits personally from the equipment and the donation is voluntary.

Ethics Op 88-002. RC 102.03 forbids a deputy director of the office of budget and management who is president of the controlling board from accepting, soliciting, or using his official authority or influence to secure employment with a state agency.

Ethics Op 88-001. RC 2921.42(A)(1) and 102.03(D) prohibit a physician who is employed by the department of mental retardation and developmental disabilities from authorizing, or using the authority or influence of his employment to secure authorization of a contract under which he would provide on-call medical services to the department.

Ethics Op 85-012. An officer or board member of a professional association is not, as such, forbidden by law to serve on the state licensing board that regulates his profession, but RC 102.03(D) does forbid him to solicit or receive expenses or other things of value from the professional association, or to participate in state licensing board deliberations or votes on any matter with respect to which the professional association has taken a formal position.

Ethics Op 81-003. The Ohio ethics law and RC 2921.42 prohibit a board member of a private contract agency from serving on a county board of mental retardation and developmental disabilities.

Ethics Op 81-001. RC 2921.42 prohibits a member of city council from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which his employer has an interest.

Ethics Op 79-008. A city council member is prohibited from voting on a zoning change affecting real property owned by his wife.

Ethics Op 79-003. RC 102.03(D) prohibits a member of a township zoning commission from voting to approve a zoning change or variance for property in which he has a commission interest as a real estate agent.

Ethics Op 76-008. A "state official or employee" is a person elected or appointed to an office of an instrumentality of the state or employed by a state agency.

Ethics Op 75-022. A member of the Ohio board of regents is not a "public official or employee" as that phrase is defined in RC 102.01(B), and therefore is not subject to the provisions of RC 102.03.

2. Improper representation of client

Ethics Op 91-009. RC 102.03(A) prohibits a former chief deputy administrator for a board of county commissioners, for twelve months from the time he leaves his public position, from representing a client or acting in a representative capacity for any person, before any public agency, on any matter in which he personally participated while he was a public official.

Ethics Op 91-009. For purposes of RC 102.03(A), a former chief deputy administrator for a board of county commissioners will be deemed to have "personally participated" in a matter if he participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion; he will be deemed to have "personally participated" in a matter if he exercised supervision, oversight, or administrative responsibility over other county officials or employees on that specific matter.

Ethics Op 91-009. RC 102.03(A) prohibits a former chief deputy administrator for a board of county commissioners from representing, within one year after he leaves his public position, the officials or employees of any department, division, institution, board, commission, authority, bureau, or other instrumentality of the county, or any other governmental entity, except the board of county commissioners, on any matter in which he personally participated while he was employed by the board of county commissioners.

Ethics Op 90-008. RC 102.03(D) prohibits a city council member who is employed by a private law firm from voting, discussing, or otherwise using the authority or influence of his official position, formally or informally, with regard to a matter pending before city council if an employee or partner of his law firm is representing a client on that specific matter pending before council.

Ethics Op 90-008. RC 102.03(E) prohibits a city council member who is employed by a law firm from receiving a distributive share of client fees earned by members of his law firm for representing a client on matters pending before city council or for

providing consultation and advice to a party which is presenting a matter before council.

Ethics Op 89-016. RC 102.03(D) prohibits a member of a public body who is a partner or associate in a law firm from voting, discussing, participating in deliberations, or otherwise using his official position, formally or informally, with regard to matters pending before his public body on which a member of his law firm is representing a client.

Ethics Op 89-016. RC 102.03(E) prohibits a member of a public body who is a partner in a law firm from receiving a distributive share of fees paid by clients for legal services rendered by members of his law firm on matters pending before the public body.

Ethics Op 89-015. RC 102.03 prohibits an individual from serving as a city law director where the law firm of which he is a member represents clients in adversarial actions against the city.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. RC 102.03(A) prohibits a former public official or employee who participated as a public official or employee through the exercise of administrative discretion under RC Ch 343 or Ch 3734 from representing or acting in a representative capacity for an owner or operator of a facility defined in RC 3734.01(N) or an applicant for a permit or license for a facility under that chapter before any public agency for twenty-four months after the conclusion of his service on any matter, regardless of whether he personally participated in the matter as a public official or employee, and regardless of whether the matter was handled by a governmental agency other than his former employer, or is unrelated to the regulation of solid, hazardous, or infectious wastes.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. As used in RC 102.03(A), the term "represent" is defined to include any formal or informal appearance before or written or oral communication with any public agency, including all courts.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. A former public official or employee who is subject to the postemployment restrictions in RC 102.03(A) is prohibited from formally or informally appearing before, or communicating orally or in writing with, any public agency on behalf of a facility owner or operator or applicant for a permit or license for a facility, and from preparing any letters, reports, or other documents that are presented to a public agency on behalf of such a party, regardless of whether the former official or employee personally participates in the presentation of the materials to the public agency.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. A former public official or employee who is subject to the postemployment restrictions in RC 102.03(A) is prohibited from representing a facility owner or operator, or applicant for a permit or license for a facility, before a public agency on any legislation or administrative rules in which he participated while in public service.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. The twenty-four-month period imposed by RC 102.03(A) commences when the public official or employee leaves public service, not when he ceases to have responsibility for matters under RC Ch 343 or Ch 3734.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. A public official or employee who is subject to the postemployment restrictions in RC 102.03(A) is prohibited from representing a political subdivision or governmental agency which is a facility owner or operator, or an applicant for a permit or license for a facility.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. The postemployment restrictions in RC 102.03(A) do not apply to a former public official or employee who exercised administrative discretion under RC Ch 343 or Ch 3734 prior to June 24, 1988.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. The restrictions in RC 102.03(A) do not apply to present, as opposed to former, public officials and employees, but the general provision of RC 102.03(A) prohibits a present public official or employee who exercises administrative discretion under RC Ch 343 or Ch 3734 from representing or acting in a representative capacity for a facility owner or operator or applicant for a permit or license for a facility before any public agency on any matter in which the official personally participated as a public official or employee; other provisions of the Ohio ethics law, RC Ch 102, also restrict the conduct of a present public official or employee in representing a facility owner, operator, or applicant.

Ethics Op 84-005. RC 102.03(A) prohibits a former employee of a state department from representing his new employer before the department or any other public agency for a period of one year after his departure from state service on any matter in which he personally participated as a state employee; however, RC 102.03(A) does not prohibit a former employee of a state department from representing his new employer before the department on a new matter that arose after his departure from state service.

Ethics Op 82-002. RC 102.03(A) prohibits a former examiner for the state auditor's office from representing a city by which he is now employed before the state auditor's office, on any matter in which he personally participated while employed by the state auditor.

Ethics Op 81-002. RC 102.03(A) prohibits a former state employee from representing a private client before any public agency on a matter in which he personally participated as a state employee.

Ethics Op 80-008. RC 102.03(A) prohibits a former state employee from representing a private client on a matter in which he personally participated as a state employee, for a period of twelve months after he leaves state service.

Ethics Op 79-007. A city council member, who is an engineer and surveyor, is prohibited from representing a private client on any matter with which he is directly concerned and in which he personally participates by a substantial and material exercise of administrative discretion in his capacity as a city council member, including a zoning change or variance. He is also prohibited from voting to approve plats and plans which he has drafted, for compensation, in his capacity as a private engineer and surveyor.

Ethics Op 78-002. "Represent ... or act in a representative capacity" comprehends any formal or informal appearance or written or oral communication.

3. Abuse of confidential information

49 App(3d) 150, 551 NE(2d) 625 (Hocking 1988), Wilson v Patton. A correctional facility is exempted from RC Ch 1347 by RC 1347.04(A)(1)(d), but a prisoner's claim to a right of nondisclosure of confidential prison medical records does state a cause of action for invasion of privacy under RC 102.03 and 42 USC 1983.

66 App(2d) 17, 419 NE(2d) 1128 (1979), State v Nipps. RC 102.03(A), when read in context with the other subdivisions of RC 102.03, clearly indicates a legislative purpose to ensure that no public official or employee will engage in a conflict of interest or realize personal gain at public expense from the use of "inside" information.

Ethics Op 90-012. RC 102.03(B) prohibits a respiratory care board member who serves a professional organization as a board member or officer, or in some other capacity, from disclosing or using confidential information he has acquired in his official duties, or taking any action on behalf of the organization if he will base his action on confidential information acquired in his official duties.

Ethics Op 90-009. RC 102.03(D) prohibits members of the real estate appraiser board who will take the real estate appraiser examination from having a direct personal involvement in the development of the specific questions and answers used in the examination and from using the authority or influence of their positions to secure their success on the examination.

Ethics Op 88-009. RC 102.03(B) prohibits a board member of a joint-county community mental health district from disclosing or using, without appropriate authorization, confidential information acquired in his official capacity as a board member for the joint-county community mental health district.

Ethics Op 88-003. RC 102.03(B) prohibits a county officer or employee from using, without appropriate authorization, confidential information acquired by him in his official capacity with regard to the county's plans to construct a public improvement or acquire property in connection therewith.

4. Conflict of interest

OAG 84-007. RC 102.03(D) prohibits a district supervisor of oil and gas well inspectors employed by the division of oil and gas of the department of natural resources from reviewing or supervising the inspection or regulation of a gas or oil well in which he has an interest.

Ethics Op 91-008. RC 102.03(E) prohibits a city mayor from accepting, for the duration of his term, an increase in compensation enacted by city council during his current term of office; a mayor is bound by this prohibition regardless of whether he approves the ordinance, disapproves the ordinance, or does not return the ordinance to council.

Ethics Op 91-008. A city law director is prohibited by RC 102.03(E) from accepting, for the duration of his term, an increase in compensation enacted by city council during his current term of office.

Ethics Op 91-007. RC 102.03(E) prohibits a member of a city council from accepting, for the duration of his present term, an increase in compensation enacted by council while he was a member thereof; a city council member is bound by this prohibition regardless of whether he votes for or against the increase or whether he abstains from participating in the issue.

Ethics Op 91-007. RC 102.03(E) prohibits the president of a city council from accepting, for the duration of his current term, an increase in compensation enacted by city council while he was president thereof; the president is bound by this prohibition regardless of whether he voted in favor of the increase in order to break a tie on council.

Ethics Op 91-006. RC 102.03(D) prohibits a member of city council, who is employed by a local school district which includes the city, from voting, discussing, participating in deliberations, or otherwise using his official position as a council member, formally or informally, with regard to city council's grant of a tax abatement to a business located within the school district.

Ethics Op 91-004. The Ohio ethics law and related statutes do not prohibit a member of city council whose spouse serves as an uncompensated member of the city planning commission from participating in council's review of, and action upon, the decisions or recommendations of the planning commission, including those matters in which her spouse participated, so long as the matter does not affect the personal pecuniary interests of the city council member or her spouse.

Ethics Op 91-004. RC 102.03(D) prohibits a city planning commission member from participating in any matter that would directly affect the interests of the bank that employs him or his own interests as an employee of the bank, or in any matter where he or the bank would have a contingent interest in the outcome of the planning commission's decision or recommendation, but RC 102.03(D) would not prohibit, per se, the planning commission member from participating in matters affecting the interests of a customer of the bank, unless the relationship between the commission member as a bank employee and the customer is such that the commission member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of the customer.

Ethics Op 91-004. RC 102.03(D) prohibits a city planning commission member who owns stock in a bank from participating in any matter affecting the interests of a bank customer where the bank would also have a direct or contingent interest in the outcome of the planning commission's decision or recommendation, but RC 102.03(D) would not prohibit, per se, the planning commission member from participating in a matter affecting the interests of a bank customer where the bank itself would have no interest in the outcome of the matter, unless the relationship between the commission member and the customer is such that the commission member's objectivity or independence of judgment could be impaired with regard to matters that affect the interests of the customer.

Ethics Op 91-004. RC 102.03(D) prohibits a city council member from participating in any matter affecting the interests of a customer of a bank in which her spouse owns stock, where the bank would also have a direct or contingent interest in the matter, but she would not otherwise be prohibited from participating in a matter solely on the basis that the matter would affect the interests of a bank customer.

Ethics Op 91-003. RC 102.03(A) prohibits a former public official or employee who personally participated as a public official or employee through the exercise of administrative discretion under RC Ch 343 or Ch 3734 from representing an owner or operator of a facility as defined in RC 3734.01(N) or an applicant for a permit or license for a facility under that chapter, before any public agency, for twenty-four months after the conclusion of her employment or service on any matter in which she personally participated as a public official or employee; Ethics Op 89-003 is overruled in part due to legislative amendment.

Ethics Op 91-003. A former public official or employee who participated as a public official or employee through the exercise of administrative discretion under RC Ch 343 or Ch 3734, on or after June 24, 1988, and who left public service before January 1, 1991, is bound by the former prohibition of RC 102.03(A) for twenty-four months from the date she left public office or until January 1, 1991, whichever is earlier.

Ethics Op 91-003. A former public official or employee who participated as a public official or employee through the exercise of administrative discretion under RC Ch 343 or Ch 3734, on or after June 24, 1988, and who left public service before January 1, 1991, is bound by the present prohibition of RC 102.03(A) from January 1, 1991, until such time as she has been gone from public service for two years.

Ethics Op 91-002. RC 102.03(D) prohibits a city council member who serves as an unpaid volunteer paramedic with the fire department of the city from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office, either formally or informally, with regard to matters affecting the fire department and its personnel.

Ethics Op 91-001. RC 2921.42(A)(1) and 102.03(D) prohibit a township trustee who serves as an employee of a private fire company which is under contract to provide fire protection services to the township from discussing, deliberating, voting, or otherwise using the authority or influence of his position, either formally or informally, to authorize, secure, renew, modify, or renegotiate a contract between his employing fire company and the township, and from signing warrants and checks to the company for services provided under the contract.

Ethics Op 90-012. RC 102.03(D) prohibits a member of the respiratory care board who serves as an officer or board member of a professional organization from participating in any matter on which the organization has taken a position or which would directly benefit the interests of the organization, even though he receives no compensation for serving as an officer or board member of the organization.

Ethics Op 90-012. RC 102.03(D) prohibits a member of the respiratory care board who serves a professional organization as a lobbyist or who serves on a special committee from participating in deliberations, voting, or otherwise using his official position with regard to a matter where he has assumed a particular responsibility in the organization with regard to that subject matter or has advocated a position as a lobbyist for the professional organization.

Ethics Op 90-009. RC 102.03(D) would prohibit a member of the real estate appraiser board who provides teaching services or assistance in course and program development for sponsors of examination-preparatory courses from participating as a board member in matters pertaining to the development, preparation, and administration of board examinations.

Ethics Op 90-007. RC 102.03(D) prohibits a county prosecutor from recommending, suggesting, withdrawing, or acting in any way,

formally or informally, to secure employment of his law partner by township trustees the county prosecutor is statutorily required to represent.

Ethics Op 90-007. RC 102.03(E) and 2921.43(A) prohibit a county prosecutor from receiving a distributive share of client fees received by his law partner for representing township trustees the prosecutor is statutorily required to represent.

Ethics Op 90-003. RC 102.03(D) prohibits a board of education member from using the authority or influence of his office over school personnel or students in the school district to secure business for his store.

Ethics Op 90-002. RC 102.03(D) prohibits a department of agriculture meat inspector who owns a meat processing plant from using the authority or influence of his official position to advance the interests of his private business.

Ethics Op 90-002. RC 102.03(D) and 102.03(E) prohibit a department of agriculture meat inspector from owning and operating a meat processing plant where he is required to inspect his own plant or plants which would be in competition with his business.

Ethics Op 89-010. RC 102.03(D) and 102.03(E) prohibit a department of agriculture employee from accepting, soliciting, or using the authority or influence of his public employment to secure employment as an independent contractor at an institution where he performs regulatory responsibilities for the department of agriculture, regardless of the fact that the service performed for the institution as an independent contractor is unrelated to his duties as a department of agriculture employee, and regardless of the fact that he has complied with the requirements of RC 102.04(D) and 102.04(E).

Ethics Op 89-008. RC 2921.42(A)(1) and 102.03(D) prohibit a city council member from voting, deliberating, participating in discussions, or otherwise authorizing or using the official authority or influence of his position with regard to an application for a property tax abatement submitted by a company with which he is employed.

Ethics Op 89-004. RC 102.03(D) prohibits a member of a board of county commissioners from using the authority or influence of his office to secure for his insurance agency contracts with a regional transit authority where the board of county commissioners has the power to appoint and remove trustees of the transit authority, and to appropriate moneys to the transit authority.

Ethics Op 89-003; superseded in part by statute as stated in Ethics Op 91-003. RC 102.03(A) prohibits a former public official or employee who participated as a public official or employee through the exercise of administrative discretion under RC Ch 343 or Ch 3734 from representing or acting in a representative capacity for an owner or operator of a facility defined in RC 3734.01(N) or an applicant for a permit or license for a facility under that chapter before any public agency for twenty-four months after the conclusion of his service on any matter, regardless of whether he personally participated in the matter as a public official or employee, and regardless of whether the matter was handled by a governmental agency other than his former employer, or is unrelated to the regulation of solid, hazardous, or infectious wastes.

Ethics Op 88-009. RC 102.03(D) prohibits a board member of a joint-county community mental health district from voting upon, or discussing, deliberating or taking any action regarding a contract existing between the mental health board and a private, nonprofit agency he formerly served as director, where he signed the contract in his capacity as director of the agency.

Ethics Op 88-005. Under RC 102.03(D) a member of a city planning commission is barred from discussing, voting, or otherwise participating in the decision to rezone property owned by a community improvement corporation, where his immediate supervisor in his private employment is the president of the community improvement corporation.

Ethics Op 88-004. RC 102.03(D) forbids a city council member's voting, deliberating, discussing, or otherwise using his official authority or influence with regard to any matter that would provide such a definite and particular pecuniary benefit or detriment to property in which he has an interest that his private interests could impair his independence of judgment in making official decisions.

Ethics Op 88-004. RC 102.03(D) prohibits a city council member's voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide a definite and particular pecuniary benefit or detriment to property in which his business associate has an interest, unless the council member can demonstrate that, under the circumstances, his independence of judgment in making official decisions could not be impaired by his business associate's interests.

Ethics Op 87-006 (8-14-87). Members of a county board of mental retardation and developmental disabilities and the board's superintendents, administrative officials, and case managers are forbidden by RC 102.03(D) and 102.03(E) to serve as trustees, officers, or employees of a private provider of residential services, or to secure such a position by use of the authority or influence of their public posts; this is so regardless of whether the county board has contracted with the private provider.

Ethics Op 87-004 (6-18-87). The director of development is forbidden by RC 102.03(D) to seek employment with any firm having an application for a grant pending before the department unless he is able to withdraw from considering, acting upon, or otherwise using his official position in connection with the application.

Ethics Op 87-004 (6-18-87). The director of development is forbidden by RC 102.03(D) to use the authority or influence of his position to secure anything of value for a firm from which he has accepted an offer of employment; if the position given to the former director would not exist but for an award of funds approved by him, he is forbidden by RC 2921.42(A)(3) to accept compensation for one year after leaving state service.

Ethics Op 87-004 (6-18-87). Under RC 102.03(A), a director of development who leaves office to take private employment cannot represent his new employer before any public agency on any matter in which he personally participated as director, including a grant he previously recommended for the firm that later hired him.

Ethics Op 87-001. RC 102.03(A) does not forbid a former state employee to accept employment with a private firm under contract to the employee's former agency where the employee would not be representing the firm before any public agency on any matter in which he personally participated in his official capacity.

Ethics Op 86-007. The owner of a restaurant or other business regulated by the board of health is not forbidden to sit on the board by RC 102.03, but he cannot take part in a matter that benefits his business and should also avoid matters involving his competitors.

Ethics Op 85-007. A county treasurer is not forbidden to serve on the board of directors of a bank, but he is forbidden to participate in an official decision about a transaction with the bank if he has a financial stake in the transaction.

Ethics Op 81-003. The Ohio ethics law and RC 2921.42 prohibit a board member of a private contract agency from serving on a county board of mental retardation and developmental disabilities.

Ethics Op 80-003. A school board member may not represent or act in a representative capacity for the automobile dealership by which he is employed before the school district on any matter in which he is directly concerned and in which he personally participates by substantial and material exercise of administrative discretion; nor may he vote or otherwise use or attempt to use his official position to secure approval of a contract for the purchase or service of school buses involving the automobile dealership by which he is employed.

5. Seeking improper advantages

Ethics Op 91-011. RC 2921.42(A)(1) and 102.03(D) prohibit a city officer or employee from voting, discussing, deliberating, recommending, or otherwise using his official authority or influence, formally or informally, to secure from the city a housing unit constructed on city property and financed by the city as part of a

community development and revitalization project for himself or a member of his family.

Ethics Op 91-010. RC 102.03(D) and 102.03(E) prohibit a state official or employee from accepting, soliciting, or using the authority or influence of her position to secure, for personal travel, a discounted or free "frequent flyer" airline ticket or other benefit from an airline if she has obtained the ticket or other benefit from the purchase of airline tickets, for use in official travel, by the department, division, agency, institution, or other entity with which she serves or by which she is employed.

Ethics Op 91-008. RC 102.03(D) prohibits a city mayor from approving the enactment of an ordinance which grants him an increase in compensation and from otherwise using his authority or influence, formally or informally, to secure an increase in compensation.

Ethics Op 91-007. RC 102.03(D) prohibits the members of a city council from enacting an ordinance granting an in-term increase in compensation for the current members of council.

Ethics Op 91-007. RC 102.03(D) prohibits the president of a city council from voting to break a tie of council in favor of enacting an ordinance to grant to the president an in-term increase in compensation and from otherwise using his authority or influence, formally or informally, to secure an increase in compensation.

Ethics Op 90-013. RC 102.03(D) prohibits a port authority member from voting, participating in discussions or deliberations of the port authority or otherwise using his official position, formally or informally, with regard to a lawsuit or the subject of a lawsuit which he is, or may be, pursuing against the authority, or which is, or may be, brought by the authority against him.

Ethics Op 90-012. RC 102.03(D) and 102.03(E) prohibit a member of the respiratory care board from soliciting, accepting, or using the authority or influence of his official position to secure anything of value from a professional organization whose members are regulated by the respiratory care board.

Ethics Op 90-012. RC 102.03(D) and 102.03(E) prohibit a member of the respiratory care board from soliciting, accepting, or using the authority or influence of his official position to secure a position as an officer, board member, member of a special committee of, or lobbyist for, a professional respiratory care organization if he would receive compensation, a fee, or anything else of value for such service.

Ethics Op 90-009. RC 102.03(D) prohibits a member of the real estate appraiser board from using his official position to secure for himself employment to provide teaching services or assistance in course and program development for sponsors of courses which constitute the educational prerequisites for individuals to become state-certified real estate appraisers, the continuing education courses required to maintain that certification, or examination-preparatory courses.

Ethics Op 90-009. RC 102.03(E) prohibits a member of the real estate appraiser board from accepting compensation for providing teaching services or assistance in course and program development for sponsors of courses which constitute the educational prerequisites for individuals to become state-certified real estate appraisers, the continuing education courses required to maintain that certification, or examination-preparatory courses, unless he is able to withdraw as a board member from consideration of all matters which directly affect the sponsor for which he provides teaching or consulting services.

Ethics Op 90-008. RC 102.03(D) prohibits a city council member who is employed by a private law firm from voting, discussing, or otherwise using the authority or influence of his official position, formally or informally, with regard to a matter pending before city council on which an employee or partner of his law firm has provided consultation and advice to the party which is presenting the matter to council.

Ethics Op 90-006. The members and employees of the Ohio student loan commission are prohibited by RC 102.03(D) and 102.03(E) from accepting, soliciting, or using their positions to secure anything of value, including director's fees, compensation, and benefits, from a national guarantee agency with which the OSLC is seeking to affiliate after it has been restructured as a nonprofit corporation.

Ethics Op 90-001. RC 102.03(F) and 2921.43(A) prohibit a vendor who is doing or seeking to do business with an office, department, or agency of a political subdivision from promising or giving travel, meal, and lodging expenses incurred in inspecting and observing the vendor's product to the officials and employees of the office, department, or agency, even though the expenses are limited to those which are essential to the conduct of official business and are incurred in connection with the official's or employee's duty to inspect and observe the vendor's products in operation at existing facilities.

Ethics Op 90-001. RC 102.03(F) and 2921.43(A) prohibit a vendor who is doing or seeking to do business with an office, department, or agency of a political subdivision from promising or giving travel, meal, and lodging expenses to the officials and employees of the office, department, or agency, even if the vendor's products and services are sold to the political subdivision pursuant to competitive bidding and the vendor has submitted the lowest and best bid.

Ethics Op 89-014. RC 102.03(D), 102.03(E) and 2921.43(A) prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company that is doing or seeking to do business with his county department, even though the expenses are incurred in connection with the official's or employee's duty to inspect and observe the company's products in operation at facilities located within and outside the county.

Ethics Op 89-014. RC 102.03(D), 102.03(E) and 2921.43(A) prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company doing or seeking to do business with his county, even if the county and the company enter into a written agreement which states that the county is under no obligation to purchase the company's products and services if county officials or employees accept payment of expenses from the company.

Ethics Op 89-013. The Ohio ethics law, RC Ch 102, and related statutes prohibit a public official or employee from accepting from a vendor interested in doing business with the official's or employee's agency the travel, meal, and lodging expenses incurred in viewing the vendor's product and prohibit the vendor from paying such expenses, regardless of whether the expenses would be paid directly to the public official or employee or as reimbursement to the official's or employee's agency.

Ethics Op 89-006. RC 102.03(D) prohibits an Ohio department of mental health employee who has accepted a position with a college or university that has applied for or received an office of education and training grant from using his position at the department to secure anything of value for the college or university, or for himself in the performance of his duties for the college or university.

Ethics Op 89-006. RC 102.03(D) prohibits an Ohio department of mental health official or employee from using the authority or influence of his office to secure for himself employment with a college or university that has applied for or received a department grant.

Ethics Op 89-006. RC 102.03(E) prohibits an Ohio department of mental health official or employee from accepting an offer of employment with a college or university that has applied for or received a grant from the office of education and training within the department if his duties at the department include reviewing or approving OET grants and he is unable to withdraw from consideration of the grant or grant application of his prospective employer.

Ethics Op 88-005. RC 102.03(D) forbids a city planning commission member from discussing, voting, or otherwise using his official authority or influence to secure the disapproval of a zoning change for property, where he is interested in purchasing such property and the planning commission's refusal to approve the zoning change will provide the member the opportunity to purchase the property.

Ethics Op 88-003. RC 2921.42(A)(1) and 102.03(D) prohibit a county officer or employee from voting, deliberating, participating in discussions, or otherwise authorizing or using the authority or influence of his position to secure the acquisition of his property by the county.

Ethics Op 87-009. A city council member is forbidden by RC 102.03(D) and 102.03(E) to serve as the agent of landowners petitioning the city to annex their land or to serve as attorney for the agent.

Ethics Op 87-008. RC 102.03(D) and 102.03(E) forbid a board of education member to solicit or use his office's authority or influence to obtain employment with the board.

Ethics Op 87-008. A board of education member is forbidden to vote, deliberate, participate in discussions, or otherwise use the authority or influence of his office concerning creation of a new position with the school district or the compensation for that position where the member is considering or being considered for employment in the new position.

Ethics Op 86-011. RC 102.03(E), RC 102.03(H), and RC 102.03(I) forbid public officials and employees to solicit or accept travel, food, and lodging expenses from a party interested in matters before or regulated by their agency, or that does or seeks to do business with that agency.

Ethics Op 85-014. RC 102.03(D) forbids an employee of the division of geological survey of the department of natural resources to solicit or receive fees from a private party for articles written by the employee as part of his official duties, but the statute does not necessarily prohibit the employee from soliciting or receiving fees for articles written on his own time and in his own field of expertise.

Ethics Op 85-013. RC 102.03 prohibits a radio technician employed by the division of wildlife of the department of natural resources from soliciting or receiving additional payments or fees for radio repair services that he provides or is required to provide in his official capacity.

Ethics Op 85-012. An officer or board member of a professional association is not, as such, forbidden by law to serve on the state licensing board that regulates his profession, but RC 102.03(D) does forbid him to solicit or receive expenses or other things of value from the professional association, or to participate in state licensing board deliberations or votes on any matter with respect to which the professional association has taken a formal position.

Ethics Op 84-014. RC 102.03(D) prohibits a city fire chief from soliciting or receiving a commission on the purchase of fire equipment by the city.

Ethics Op 84-013. RC 102.03(D) prohibits a city employee from using his official position to market computer software that was developed and licensed by a computer software firm under a contract with the city.

Ethics Op 84-012. RC 102.03(D) prohibits a service forester employed by the division of forestry of the department of natural resources, who owns a tree service company, from soliciting or receiving fees for services rendered on a project on which he provides, or is required to provide, technical assistance or advice in his official capacity.

Ethics Op 84-010. RC 102.03(D) prohibits an employee of a state department from soliciting or receiving travel expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with the department; RC 102.03(D) also prohibits the spouse of a state employee from receiving travel expenses from a party that is interested in matters before, regulated by, or doing or seeking to do business with the department with which the public employee serves.

Ethics Op 84-008. RC 102.03(D) prohibits an employee of a state commission from using his official position to secure a finder's fee or other payments from a manufacturer of a computer service or its agent that sells the system to the commission or other government or private agencies.

Ethics Op 84-004. RC 102.03(D) prohibits a city auditor/tax commissioner or his employees from reviewing the tax returns of private clients prepared by him or other members of his private firm.

Ethics Op 83-007. RC 102.03(D) prohibits inspectors and other employees of the board of cosmetology from selling cosmetology products to salons that they inspect or otherwise regulate.

Ethics Op 83-001. RC 102.03(D) prohibits a county engineer from reviewing a survey prepared by him or by other members of his firm that has been filed with an office of the county with which he serves; RC 102.04(C) does not prohibit a county engineer from receiving compensation for performing survey work for a private client as part of a real estate conveyance that is not part of a case, proceeding, application, or other matter before the county.

Ethics Op 82-005. RC 102.03(D) prohibits a city council member from receiving free cable television service from a corporation that holds a cable television franchise granted by the city.

Ethics Op 82-002. RC 102.03(D) prohibits an examiner employed by the state auditor from seeking employment with a city during the course of his audit of that city.

Ethics Op 82-001. RC 102.03(D) prohibits a city engineer from reviewing private engineering work prepared by him or by other members of the firm by which he is employed.

Ethics Op 81-007. RC 102.03(D) prohibits an employee of a county recorder's office from receiving compensation from private individuals for conducting title searches.

Ethics Op 80-007. RC 102.03(D) prohibits a city council member from knowingly participating in discussions or voting on council matters regarding a downtown revitalization project which would benefit his property.

Ethics Op 80-004. A member of a state licensing board may not accept the payment of registration fees and lodging for his attendance at a conference sponsored by a professional association whose members are regulated by the board, according to the prohibition of RC 102.03(D).

Ethics Op 79-006. A public official or employee is prohibited from soliciting or receiving an honorarium for delivering a speech or participating in a seminar sponsored by a private corporation, if the honorarium is received from a party interested in matters before the agency with which the official or employee serves, or regulated by that agency.

Ethics Op 79-002. RC 102.03(D) prohibits a public official or employee from soliciting or receiving a fee for consulting services from a private firm if the fee is from a party either interested in matters before the agency with which the official serves or is regulated by that agency, nor may the official or employee receive compensation for services rendered or to be rendered by him for a private firm in a matter before the agency with which he serves.

Ethics Op 79-001. Division (D) of RC 102.03 prohibits a county prosecuting attorney from using or attempting to use his official position to secure anything of value for himself, including the proceeds of a contract with the county welfare department to provide child support enforcement, that would not ordinarily accrue to him in the performance of his official duties and that is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

Ethics Op 76-005. A valuable thing or valuable benefit must be something other than the regular salary, expenses, and fringe benefits of the public official or employee.

Ethics Op 76-005. To be within the purview of RC 102.03(D), the valuable thing or benefit must be such that it would improperly influence, consciously or unconsciously, the reasonably prudent public official or employee in the performance of his or her duties.

6. Conduct found not improper

Ethics Op 91-009. The prohibition contained in RC 102.03(A) does not prohibit the new employer of a former county official from representing a client or acting in a representative capacity for any person on matters in which the former official personally participated during his public service.

Ethics Op 91-009. RC 102.03(A) does not prohibit a former chief deputy administrator for a board of county commissioners

from being engaged, within one year after he leaves his public position, to represent the board of county commissioners on any matter, even on those matters in which he personally participated while he was employed by the board of county commissioners.

Ethics Op 91-009. RC 102.03(A) does not prohibit a former chief deputy administrator for a board of county commissioners from representing a client, including a company with which the county does business, on matters that arose after he left county service, on legislative matters, or on matters in which he did not personally participate while he was employed by the board of county commissioners even though such representation may be against the county.

Ethics Op 91-008. A city auditor is not prohibited by RC 102.03 from accepting an increase in compensation enacted by city council during his current term of office unless a local provision authorizes the auditor to exercise discretionary authority with respect to the enactment of legislation, the appropriation of city funds, or the establishment of the compensation for the position of city auditor.

Ethics Op 91-008. A city director of public safety is not prohibited by RC 102.03 from accepting an increase in compensation enacted by city council during his tenure unless a local provision authorizes the safety director to exercise discretionary authority with respect to the enactment of legislation, the appropriation of city funds, or the establishment of the compensation for the position of safety director.

Ethics Op 91-007. The clerk of a city council and the city treasurer are not prohibited by RC 102.03 or 2921.42 from accepting an increase in compensation enacted by city council during their current term of office unless a local provision authorizes the clerk or treasurer to exercise discretionary authority with respect to the enactment of legislation, the appropriation of city funds, or the establishment of the compensation for their respective positions.

Ethics Op 91-006. RC 102.03(A) does not prohibit a member of city council, who is employed by a local school district which includes the city, from participating in the enactment of general legislation which would uniformly regulate all gas and oil well drilling within the city, despite the fact that the school district desires to drill gas wells upon its property which would be subject to the city regulation.

Ethics Op 91-006. RC 102.03(D) does not prohibit a member of city council, who is employed by a local school district which includes the city, from participating in matters with regard to the enactment of legislation which would enable the development of an industrial plant or a housing tract, despite the possibility that such development could, in some indefinite manner, result in increased tax revenue for the school district or increase the school district's student population.

Ethics Op 91-004. RC 102.03(D) would not, as a general matter, prohibit a city council member whose spouse is employed by a bank from participating in matters involving customers of the bank unless her spouse would derive a definite and direct personal pecuniary benefit from council's action.

Ethics Op 91-002. RC 2921.42(A)(4) and 102.03(E) do not prohibit a city council member from serving as an unpaid volunteer paramedic with the fire department of the city, provided he receives no definite and direct personal pecuniary benefit from such service.

Ethics Op 90-013. The Ohio ethics law does not, per se, prohibit a person from serving as a member of a port authority on the basis that he is pursuing a lawsuit against the authority or is a defendant in a lawsuit brought by the authority.

Ethics Op 90-011. RC 102.03(D) does not prohibit a city council member from participating in a matter presented to council by a former client of his law firm or law partner, even though his law partner had previously represented the client before council on that matter, so long as there is no ongoing relationship between the party and his law firm or law partner, and no understanding that the attorney-client relationship will be resumed at some time in the future, and so long as the council member would not be required to review, approve, base his decision upon, or otherwise act upon legal work or services previously performed by his law firm or law partner.

Ethics Op 90-009. RC 102.03(D) does not prohibit members of the real estate appraiser board who will take the real estate appraiser examination from adopting rules which establish general examination specifications and criteria for the successful completion of the examination or from procuring questions and answers for the development of the examination from a knowledgeable, disinterested source.

Ethics Op 90-008. RC 102.03(D) does not generally prohibit a city council member from participating in a matter pending before city council which is brought by a party who is a client of the council member's law firm but is not represented by the law firm on the matter before council, unless the relationship between the council member and client is such that the council member's independence of judgment could be impaired.

Ethics Op 90-008. RC 102.03(D) does not generally prohibit a city council member who is employed by a private law firm from participating in a matter pending before city council in which a client of the city council member's law firm has a contingent interest, unless the law firm's receipt of client fees is dependent upon council's determination of the matter, or unless the council member's independence of judgment could otherwise be impaired.

Ethics Op 90-006. The employees of the Ohio student loan commission are not prohibited by the Ohio ethics law and related statutes from accepting, soliciting, or using their positions to secure employment with a nonprofit corporation to which the OSLC has been restructured, so long as the compensation and benefits paid to the employees by the nonprofit corporation are not substantially greater than the compensation and benefits they receive as state employees.

Ethics Op 90-006. The members of the Ohio student loan commission are not prohibited by the Ohio ethics law and related statutes from accepting, soliciting, or using their authority or influence to secure positions as directors of a nonprofit corporation to which the OSLC has been restructured, so long as the members receive no compensation or benefits as directors.

Ethics Op 90-004. RC 102.03(D) does not prohibit a city council member whose spouse is the elected municipal court judge from voting, discussing, participating in deliberations, or otherwise using his official position to secure an appropriation from city council for the municipal court since the amount of a municipal court judge's compensation and the share payable by the city are statutorily established and the judge receives no definite and direct, private pecuniary benefit from the remainder of the appropriation for court accommodations, personnel, supplies, and services.

Ethics Op 90-004. RC 102.03(D) does not prohibit a city council member whose spouse is the elected municipal court judge from voting, discussing, participating in deliberations, or otherwise using his official position to secure a general appropriation for health care benefits which are uniformly available for eligible municipal personnel even though his spouse's benefits are paid from this appropriation.

Ethics Op 90-004. RC 102.03(E) does not prohibit a city council member whose spouse is the elected municipal court judge from continuing to receive city health care benefits he was receiving prior to his election and as a result of his spouse's position, until such time as the city council takes action which will alter the insurance program currently available.

Ethics Op 90-003. Ohio ethics law does not prohibit a member of a board of education who is the owner of a store from donating goods or services to the school district with which he serves provided that he receives no pecuniary gain from the donation and he does not use the donation to secure anything of value for himself or his business.

Ethics Op 89-009. For purposes of RC 102.03(A), the twelve-month period of post-employment restrictions commences when a public official or employee resigns from his office or employment; this period is not extended if the public official or employee is retained as an independent contractor or consultant to represent or assist his former public agency during the twelve-month period.

Ethics Op 89-009. RC 102.03(A) does not prohibit an official or employee of a regional transit authority from being retained or employed to represent or assist the transit authority during the twelve-month period following his resignation from the transit authority.

Ethics Op 89-009. RC 102.03(A) does not prohibit a company which employs the former manager of a regional transit authority from bidding upon or entering into a contract to supply liability insurance to the transit authority.

Ethics Op 89-008. Neither RC 2921.42(A)(1) nor 102.03(D) prohibits a city council member who is a member of a labor organization from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his position with regard to an application for a property tax abatement submitted by a company which employs members of the labor organization to which he belongs if he is not employed by the applicant company, and is not an officer, board member, or member of the negotiating team of the labor organization.

Ethics Op 89-008. Neither RC 2921.42(A)(1) nor 102.03(D) prohibits a city council member from voting, deliberating, participating in discussions, or otherwise authorizing or using the authority or influence of his position with regard to an application for a property tax abatement submitted by a company which employs a member of the official's family, if the family member has no definite and direct pecuniary or fiduciary interest in the award of the abatement and does not receive a definite and direct benefit therefrom.

Ethics Op 89-002. The Ohio ethics law, RC Ch 102, and related statutes do not prohibit private companies from donating industrial and safety equipment to the industrial commission, so long as no official or employee of the commission benefits personally from the equipment and the donation is voluntary.

Ethics Op 88-009. RC 102.03(A) does not prohibit the former director of a private, nonprofit agency which has entered into a contract with a joint-county community mental health board from serving as a board member of the mental health district even though he signed the existing contract between the agency and the mental health board in his capacity as director of the contract agency.

Ethics Op 88-005. RC 102.03(D) does not prohibit the participation of a member of a city planning commission in discussions about or a decision to rezone property owned by a designated community improvement corporation of which he is a trustee, where he has been properly designated by the city to serve as trustee in his capacity as a city official.

Ethics Op 88-005. RC 102.03(D) does not forbid a city planning commission member's participation in discussions about or a decision to rezone property owned by a community improvement corporation, where his daughter's supervisor is the president of the community improvement corporation.

Ethics Op 88-004. RC 102.03 and related statutes do not prevent a city council member from participating in matters that would provide a general, uniform benefit to citizens within the city.

Ethics Op 87-007 (8-14-87). Where bid specifications for a public contract and the contract itself provide that the party doing business with the agency must pay expenses of necessary travel for agency officers and employees, RC 102.03(D), 102.03(E), and 102.03(H) are not violated.

Ethics Op 87-005 (6-25-87). Under RC 1321.53, applicants for registration as second mortgage lenders can be charged by the division of consumer finance for certain expenses of investigators, such as meals and lodging; this practice does not conflict with RC 102.03(E), as that law does not forbid public agencies to solicit or accept expenses from a regulated party that the agency is otherwise allowed by statute to recover, nor does it conflict with RC 102.03(H), which does not forbid parties to promise or give a public agency expense money that the agency is allowed by statute to recover.

Ethics Op 86-008. A city councilman is not forbidden by RC 102.03 to establish a "consulting" firm to assist minority businesses seeking contracts with state agencies.

Ethics Op 85-011. Neither RC 102.03 nor RC 2921.42 prohibits the wife of a city law director from leasing space in a building constructed by a developer on land purchased from the city under a revolving loan program, provided that the law director does not use his official position to secure the lease for his spouse.

Ethics Op 85-007. A county treasurer is not forbidden to serve on the board of directors of a bank, but he is forbidden to participate in an official decision about a transaction with the bank if he has a financial stake in the transaction.

Ethics Op 85-006. A realtor is not forbidden to serve on a city planning commission by RC 102.03(D).

Ethics Op 83-009. The Ohio ethics law and RC 102.03, RC 102.04, and RC 2921.42 do not prohibit a county prosecutor from representing a joint ambulance district in his private capacity, provided that the representation is not before agencies of the county, and not on a matter in which he personally participated as a public official.

Ethics Op 83-001. RC 102.03(D) prohibits a county engineer from reviewing a survey prepared by him or by other members of his firm that has been filed with an office of the county with which he serves; RC 102.04(C) does not prohibit a county engineer from receiving compensation for performing survey work for a private client as part of a real estate conveyance that is not part of a case, proceeding, application, or other matter before the county.

Ethics Op 75-023. RC 102.03(C) does not prohibit per se a person from serving as director of the department of agriculture when he also owns and operates one farm and owns a majority interest in a corporation for which he operates another farm when the director personally, and the corporation-owned farm receive licenses from the department of agriculture.

Ethics Op 75-014. A former deputy administrator of the bureau of employment services is not prohibited from representing a client on a matter before the unemployment compensation board of review or the courts.

102.04 Unauthorized compensation prohibited; restricted transactions; exemptions

(A) Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

(B) Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall sell or agree to sell, except through competitive bidding, any goods or services to the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

(C) Except as provided in division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commis-

sion, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

(D) A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:

(1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves;

(2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.

The required statement shall contain the official's or employee's name and home address, the name and mailing address of the public agencies with which he serves and before which the matter is pending or that is purchasing or has agreed to purchase goods or services, and a brief description of the pending matter and of the personal services to be rendered or a brief description of the goods or services to be purchased. The statement shall also contain the public official's or employee's declaration that he disqualifies himself for a period of two years from any participation as such public official or employee in any matter involving any public official or employee of the agency before which the present matter is pending or to which goods or services are to be sold. The two-year period shall run from the date of the most recently filed statement regarding the agency before which the matter was pending or to which the goods or services were to be sold. No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year.

(E) No public official or employee who files a statement or is required to file a statement under division (D) of this section shall knowingly fail to disqualify himself from any participation as a public official or employee of the agency with which he serves in any matter involving any official or employee of an agency before which a matter for which he rendered personal services was pending or of a public agency that purchased or agreed to purchase goods or services.

(F) This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

HISTORY: 1980 S 425, eff. 10-20-80
1976 H 1040; 1973 H 55

Penalty: 102.99(B)

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 59.05
Baldwin's Ohio School Law, Text 45.04, 45.11
Gotherman & Babbit, Ohio Municipal Law, Text 15.71

CROSS REFERENCES

Housing authority members and employees shall have no interest in contracts, 3735.29

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 63A, Public Officers and Employees § 360 to 413, 431 to 471

Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 ALR3d 1230

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Pay for services before government agency
3. Exemptions

1. In general

27 Ohio School Boards Assn Jour 15 (1983). Ohio Ethics Commission Advisory Opinions: Ethical Restrictions on School Board Members, James M. Long.

Ethics Op 89-010. RC 102.04(B) prohibits an employee of the department of agriculture from selling or agreeing to sell tool sharpening services to the department of rehabilitation and correction except through competitive bidding, unless the provisions of RC 102.04(D) and 102.04(E) are met.

Ethics Op 89-010. RC 102.03(D) and 102.03(E) prohibit a department of agriculture employee from accepting, soliciting, or using the authority or influence of his public employment to secure employment as an independent contractor at an institution where he performs regulatory responsibilities for the department of agriculture, regardless of the fact that the service performed for the institution as an independent contractor is unrelated to his duties as a department of agriculture employee, and regardless of the fact that he has complied with the requirements of RC 102.04(D) and 102.04(E).

Ethics Op 85-001. RC 2921.42(A)(5) and RC 102.04(B) prohibit a park manager employed by the department of natural resources from contracting with the department to provide machine repair and maintenance services in his park and elsewhere in the state park system except by competitive bidding.

Ethics Op 83-009. The Ohio ethics law and RC 102.03, RC 102.04, and RC 2921.42 do not prohibit a county prosecutor from representing a joint ambulance district in his private capacity, provided that the representation is not before agencies of the county, and not on a matter in which he personally participated as a public official.

Ethics Op 75-013. Although its functions are of a public nature, a nonprofit corporation is not a governmental agency for the purposes of RC 102.04.

Ethics Op 75-012. For the purposes of RC 102.04, an independent contractor is not a person "employed by" a state agency.

Ethics Op 75-004. "Instrumentality" includes the type of organizational unit of government called a "council."

Ethics Op 75-004. One criterion of whether a person occupies an "office" within the meaning of RC 102.04 is whether he exercises the sovereign power, i.e., whether his duties involve some discretionary, decision-making qualities and whether he exercises substantial and material administrative discretion.

Ethics Op 74-007. Some of the tests which will determine whether a person is an "officer" within the meaning of RC 102.04 are: whether the person was appointed, whether the person has a title, whether the person exercises functions of government concerning the public, and whether the person is not subject to a contract of employment.

2. Pay for services before government agency

Ethics Op 89-016. RC 102.04(C) prohibits a member of a city commission from representing clients or rendering any other personal service in a case, proceeding, application, or other matter that is pending before the city commission.

Ethics Op 89-010. RC 102.04(D) and 102.04(E) allow for an exception to the competitive bidding requirement of RC 102.04(B) for an employee of the department of agriculture who wishes to sell

tool sharpening services to the department of rehabilitation and correction, provided the employee files the required statements describing his interest in the unbid contract and stating he will disqualify himself for two years from any participation as an employee of the department of agriculture in any matter involving any public official or employee of the department of rehabilitation and correction.

Ethics Op 87-009. A city council member is forbidden by RC 102.04(C) to receive compensation directly or indirectly for personally representing or otherwise serving landowners on their application for annexation pending before the council.

Ethics Op 84-008. RC 102.04(A) prohibits an employee of a state commission from receiving compensation, other than from the commission, for personal services rendered as a consultant on a case, proceeding, application, or other matter before any agency of the state, unless the exemption of RC 102.04(D) is applicable.

Ethics Op 84-004. RC 102.04(C) prohibits a city auditor/tax commissioner from receiving compensation from private clients for tax or accounting services provided in a case, proceeding, application, or other matter before any agency of the city, excluding the courts.

Ethics Op 83-001. RC 102.03(D) prohibits a county engineer from reviewing a survey prepared by him or by other members of his firm that has been filed with an office of the county with which he serves; RC 102.04(C) does not prohibit a county engineer from receiving compensation for performing survey work for a private client as part of a real estate conveyance that is not part of a case, proceeding, application, or other matter before the county.

Ethics Op 82-006. RC 102.04(A) prohibits a physician who is a member of the state medical board from receiving compensation, directly or indirectly, other than from the medical board, for services rendered as a consultant to the department of mental retardation and developmental disabilities and as a provider for the department of public welfare.

Ethics Op 82-001. RC 102.04(C) prohibits an individual or firm, serving as city engineer, from receiving compensation from private clients for engineering services provided in a matter before the city engineer's office or any other agency of the city.

Ethics Op 81-006. RC 102.04(A) prohibits a state employee, who is a psychologist, from receiving or agreeing to receive compensation as a consultant to a private hospital on a matter that requires the approval of the agency that employs him.

Ethics Op 80-002. A city council member may not receive compensation from a community improvement corporation designated by the city with which he serves.

Ethics Op 79-007. A city council member is prohibited from receiving compensation for engineering services rendered by him personally for a private client on a matter which is before the city council or any agency of the city.

Ethics Op 79-003. RC 102.04(C) prohibits a member of a township zoning commission from receiving compensation, in the form of a real estate commission, for any service rendered by him personally in a zoning change or variance that is before the zoning commission.

Ethics Op 79-002. RC 102.03(D) prohibits a public official or employee from soliciting or receiving a fee for consulting services from a private firm if the fee is from a party either interested in matters before the agency with which the official serves or is regulated by that agency, nor may the official or employee receive compensation for services rendered or to be rendered by him for a private firm in a matter before the agency with which he serves.

Ethics Op 78-004. A city engineer is forbidden by RC 102.04(C) to receive or agree to receive direct or indirect compensation other than from the city for any service rendered or to be rendered by him personally in any matter before the city council or any city agency other than the courts.

Ethics Op 76-009. "Rendering services" includes the activities of a lobbyist whose duty it is to promote, advocate, amend, or oppose any matter before the general assembly.

Ethics Op 76-009. RC 102.04(A) applies to a "person ... appointed to an office of ... any ... board ... of the state" irrespective of whether he receives compensation as a member of that board.

3. Exemptions

Ethics Op 88-001. RC 102.04(B) does not apply to the provision of personal, professional services, and thus would not prohibit a physician employed by the department of mental retardation and developmental disabilities from contracting to provide on-call medical services to the department, regardless of whether the contract was bid competitively.

Ethics Op 82-006. RC 102.04(D) exempts a member of the state medical board from the prohibition in RC 102.04(A), if both of the following apply: (1) the agency to which he is rendering the services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves; and (2) prior to rendering the services, the public official files a statement with the agency with which he serves, the agency to which he is rendering services or before which the matters are pending, and the Ohio ethics commission, (1) identifying the agencies involved; (2) describing the matters involved and the services to be rendered; and (3) including a statement of disqualification for two years from participation in matters concerning personnel of the agencies to which he is rendering the services or before which the matters are pending.

Ethics Op 78-007. RC 102.04(A) prohibits state commission members from receiving direct or indirect compensation other than from the commission they serve for any service rendered or to be rendered in any case, proceeding, application, or other matter before the general assembly, or any state department or agency other than the courts; RC 102.04(D) establishes an exemption from the prohibition where: (1) the agency before which the matter that involves a commission member's services comes is an agency other than the one he serves; and (2) before rendering the services, the official files a statement with the commission he serves and the agency before which the matter is pending identifying the agencies involved, describing the matter in question and the services to be rendered, and including a statement of disqualification for two years from official involvement with employees or officials of the agency before which the matter is pending.

Ethics Op 75-017. A ministerial function as that term is used in RC 102.04(C) is a function which is performed in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of personal judgment upon the propriety of the act being done, and includes but is not limited to the filing of applications for permits and licenses.

Ethics Op 75-015. RC 102.04(A) does not prohibit an employee of a state institution from receiving compensation from more than one agency of the state.

Ethics Op 75-010. RC 102.04 does not prohibit the receipt of compensation from more than one agency of a particular governmental entity.

Ethics Op 75-006. A "ministerial" act is one performed in a prescribed manner without the exercise of discretion.

Ethics Op 74-001. RC 102.04 operates to restrict remuneration from the same governmental entity; it does not prohibit remuneration from different governmental entities for different work.

ETHICS COMMISSION

102.06 Powers and duties; annual report

The appropriate ethics commission shall receive, and may initiate, complaints against persons subject to Chapter 102. of the Revised Code concerning conduct alleged to be in violation of this chapter, section 2921.42, or section 2921.43 of the Revised Code. All complaints except those by the commission shall be by affidavit made on personal knowledge, subject to the penalties of perjury. Complaints

by the commission shall be by affidavit, based upon reasonable cause to believe that a violation has occurred.

The commission shall investigate complaints and may investigate charges presented to it and may request further information, including the specific amount of income from a source, from any person filing with the commission a statement required by section 102.02 of the Revised Code, if the information sought is directly relevant to a complaint or charges received by the commission pursuant to this section. Such information is confidential. The person so requested shall furnish the information to the commission, unless within fifteen days from the date of the request the person files an action for declaratory judgment challenging the legitimacy of the request in the court of common pleas of the county of his residence, of his place of employment, or of Franklin county. The requested information need not be furnished to the commission during the pendency of the judicial proceedings. Proceedings of the commission in connection therewith, shall be kept confidential except as otherwise provided by this section. Before the commission proceeds to take any formal action against a person who is the subject of an investigation based on charges presented to the commission, a complaint shall be filed against the person. If the commission finds that a complaint is not frivolous, and there is reasonable cause to believe that the facts alleged in a complaint constitute a violation of section 102.02, section 102.03, section 102.04, section 2921.42, or section 2921.43 of the Revised Code, it shall hold a hearing. If the commission does not so find, it shall dismiss the complaint. The person against whom the complaint is directed shall be given reasonable notice by certified mail of the date, time, and place of the hearing, a statement of the charges and the law directly involved, and shall be given the opportunity to be represented by counsel, to have counsel appointed for him if he is unable to afford counsel without undue hardship, to examine the evidence against him, to produce evidence and to call and subpoena witnesses in his defense, to confront his accusers, and to cross-examine witnesses. The commission shall have a stenographic record made of the hearing. The hearing shall be closed to the public.

If upon the basis of the hearing, the commission finds based upon a preponderance of the evidence that the facts alleged in the complaint are true and constitute a violation of section 102.02, section 102.03, section 102.04, section 2921.42, or section 2921.43 of the Revised Code, it shall report its findings to the appropriate prosecuting authority for proceedings in prosecution of the violations and to the appointing or employing authority of the accused.

If the commission does not find based upon a preponderance of the evidence that the facts alleged in the complaints are true and constitute a violation of section 102.02, section 102.03, section 102.04, section 2921.42, or section 2921.43 of the Revised Code, or if the commission has not scheduled a hearing within ninety days after the complaint is filed or has not finally disposed of the complaint within six months after it has been heard, it shall dismiss the complaint and, upon the request of the accused person, make a public report of the finding, but in such case all evidence and the record of the hearing shall remain confidential unless the accused person also requests that the evidence and record be made public. Upon request by the accused person, the commission shall make the evidence and the record available for public inspection.

The commission, or a member of the commission, may administer oaths, and the commission may issue subpoenas to any person in the state compelling the attendance of witnesses and the production of relevant papers, books, accounts, and records. The commission shall issue any such subpoena upon the request of an accused person. Section 101.42 of the Revised Code shall govern the issuance of such subpoenas insofar as applicable. Upon refusal of any person to obey a subpoena or to be sworn or to answer as a witness, the commission may apply to the court of common pleas of Franklin county under section 2705.03 of the Revised Code. The court shall hold proceedings in accordance with Chapter 2705. of the Revised Code. The commission or the accused person may take the depositions of witnesses residing within or without the state in the same manner as prescribed by law for the taking of depositions in civil actions in the court of common pleas.

At least once each year, the Ohio ethics commission shall report on its activities of the immediately preceding year to the majority and minority leaders of the senate and house of representatives of the general assembly. The report shall indicate the total number of complaints received, initiated, and investigated by the commission, the total number of complaints for which formal hearings were held, and the total number of complaints for which formal prosecution was recommended by the commission. The report shall also indicate the nature of the inappropriate conduct alleged in each complaint and the governmental entity with which any employee or official that is the subject of a complaint was employed at the time of the alleged inappropriate conduct.

All papers, records, affidavits, and documents upon any complaint, inquiry, or investigation relating to the proceedings of the commission shall be sealed and are private and confidential, except as otherwise provided in this section.

HISTORY: 1986 H 300, eff. 9-17-86
1983 H 291; 1980 S 425; 1976 H 1040; 1973 H 55

PRACTICE AND STUDY AIDS

Giannelli, Ohio Evidence Manual, Author's Comment § 501.04

CROSS REFERENCES

Governor may remove or suspend appointee, 3.04
Complaints against legislative agents to be filed with legislative ethics committees, 101.75
Inspector general, reports to ethics commission, 121.42, 121.44
Lobbying, investigation of complaints, 121.65
Classified civil service, tenure of office, reduction, suspension, and removal, appeal, 124.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 66, Limitations and Laches § 4; 84, State of Ohio § 91

NOTES ON DECISIONS AND OPINIONS

OAG 76-020. The county prosecuting attorney and the city solicitor have the authority to initiate prosecutions for alleged violations of RC Ch 102 when appropriately requested to do so by the Ohio ethics commission so that either such prosecutor would be an "appropriate law enforcement agency" under RC 102.06.

OAG 76-020. The "appropriate law enforcement agency" referred to in RC 102.06, for the purpose of prosecuting violations of RC Ch 102, is the prosecuting authority vested with the authority to initiate prosecutions for misdemeanor violations which occur within his jurisdiction.

OAG 76-009. The financial disclosure statement to be filed annually pursuant to Code of Jud Cond Canon 6(C) and RC 102.02

is a public record to be made available to the press if requested and may be divulged without the written consent of the board of commissioners on grievances and discipline of the supreme court of Ohio or the ethics commission.

OAG 74-089. A representative of the attorney general's office is the proper person to present complaints before hearings of the ethics commission, under present circumstances.

102.08 Recommendations and opinions of commissions; immunity from prosecution

The Ohio ethics commission, the board of commissioners on grievances and discipline of the supreme court, and the house and senate legislative ethics committees may recommend legislation relating to ethics, conflicts of interest, and financial disclosure, and render advisory opinions with regard to questions concerning these matters for persons for whom it is the appropriate ethics commission. When the appropriate ethics commission renders an advisory opinion relating to a special set of circumstances involving ethics, conflict of interest, or financial disclosure under Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, the person to whom the opinion was directed or who was similarly situated may reasonably rely upon such opinion and shall be immune from criminal prosecutions, civil suits, or actions for removal from his office or position of employment for a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code based on facts and circumstances covered by the opinion, if the opinion states there is no violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code. The appropriate ethics commission shall provide a continuing program of education and information concerning the provisions of Chapter 102., and sections 2921.42 and 2921.43 of the Revised Code and other provisions of law pertaining to ethics, conflicts of interest, and financial disclosure.

HISTORY: 1986 H 300, eff. 9-17-86
1976 H 1040; 1973 H 55

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 45.01(B)
Gotherman & Babbit, Ohio Municipal Law, Text 15.70, 15.72

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 84, State of Ohio § 91

NOTES ON DECISIONS AND OPINIONS

27 Ohio School Boards Assn Jour 12 (1983). Ohio Ethics Commission Advisory Opinions: School Board Members and Public Contracts, James M. Long.

66 App(2d) 17, 419 NE(2d) 1128 (1979), State v Nipps. A former public official or employee is not required to guess whether his conduct may be prohibited, but may request an advisory opinion from the Ohio ethics commission; and reliance on such an opinion, in accordance with RC 102.08, is a defense to an action brought under the Ohio Ethics Act.

OAG 91-014. Members of the emergency response commission who have been appointed under RC 3750.02 and members of a local emergency planning committee who have been appointed pursuant to RC 3750.03 are entitled to immunity from criminal prosecutions, civil suits, and actions for removal from office or employment for violations of RC Ch 102, 2921.42, or 2921.43 in the circumstances prescribed by RC 102.08.

OAG 91-007. In the case of a nonprofit corporation established pursuant to RC 307.696, and provided that there is no violation of a statutory provision subject to interpretation by the Ohio ethics commission pursuant to RC 102.08, a board of county commissioners, or the members thereof in their official capacities, may serve as members of the corporation if (1) the county has created or participated in the nonprofit corporation, (2) the board of county commissioners formally designates the offices in question to represent the county, (3) the county commissioners are formally instructed to represent the county and its interests, and (4) there is no other conflict of interest on the part of a particular county commissioner.

OAG 91-007. In the case of a nonprofit corporation established pursuant to RC 307.696, and provided that there is no violation of a statutory provision subject to interpretation by the Ohio ethics commission pursuant to RC 102.08, the county administrator and/or any other county official or employee other than a county commissioner may legally serve as a trustee, officer, or director of the corporation if (1) the county has created or participated in the nonprofit corporation, (2) the board of county commissioners formally designates the office or position in question to represent the county, (3) the county administrator or other county official or employee is formally instructed to represent the county and its interests, and (4) there is no other conflict of interest on the part of the particular county administrator or other county official or employee.

OAG 87-025. Because RC 102.08 grants the ethics commission the authority to render advisory opinions interpreting a statute, the attorney general will not also render opinions construing the same statute.

Ethics Op 75-037. The Ohio ethics commission renders advisory opinions only when the facts presented in a request are hypothetical or the conduct in question is prospective.

FINANCIAL DISCLOSURE STATEMENT FORM

102.09 Financial disclosure; distribution of forms and law; notice to ethics commission of appointments

(A) The secretary of state and the county board of elections shall furnish, to each candidate for elective office who is required to file a financial disclosure statement by section 102.02 of the Revised Code, a financial disclosure form, and shall notify the appropriate ethics commission, within fifteen days of the name of the candidate, and of the subsequent withdrawal, disqualification, or death of the candidate. The candidate shall acknowledge receipt of the financial disclosure form in writing.

(B) The secretary of state and the county board of elections shall furnish to each person who is appointed to fill a vacancy for an unexpired term in an elective office, and who is required to file a financial disclosure statement by section 102.02 of the Revised Code, a financial disclosure form, and shall notify the appropriate ethics commission within fifteen days of being notified by the appointing authority, of the name and position of the public official and the date of appointment. The person shall acknowledge receipt of the financial disclosure form in writing.

(C) The public agency or appointing authority that employs, appoints, or promotes any public official or employee who, as a result of such employment, appointment, or promotion, is required to file a financial disclosure statement by section 102.02 of the Revised Code, shall, within fifteen days of the employment, appointment, or promotion, furnish the public official or employee with a financial disclosure form, and shall notify the appropriate ethics commission of the name and position of the public official or employee and the date of employment, appointment, or promotion. The public official or employee shall

acknowledge receipt of the financial disclosure form in writing.

(D) The clerk of the senate and executive secretary of the house of representatives shall distribute to every member of his respective house prior to the first day of February a copy of the form for filing the financial disclosure statement under section 102.02 of the Revised Code. The member shall acknowledge his receipt in writing.

(E) Within fifteen days after any public official or employee begins the performance of his official duties, the public agency with which he serves or the appointing authority shall furnish him a copy of Chapter 102. and section 2921.42 of the Revised Code, and may furnish such other materials as the appropriate ethics commission prepares for distribution. The official or employee shall acknowledge their receipt in writing. The requirements of this division do not apply at the time of reappointment or reelection.

HISTORY: 1984 H 474, eff. 9-26-84
1981 H 552; 1980 S 425; 1977 S 40; 1976 H 1040; 1973 H 55

CROSS REFERENCES

Nominating petitions, rejection by secretary of state or boards of elections, 3501.39

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 90, 244, 245

Am Jur 2d: 26, Elections § 289, 290; 63A, Public Officers and Employees § 322, 323, 325

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS secs. 431-454) pertaining to disclosure of campaign funds. 18 ALR Fed 949

MISCELLANEOUS PROVISIONS

102.99 Penalties

(A) Whoever violates division (C) of section 102.02 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(B) Whoever violates division (D) of section 102.02, section 102.03, 102.04, or 102.07 of the Revised Code is guilty of a misdemeanor of the first degree.

(C) Whoever violates division (B) of section 102.021 of the Revised Code shall be fined one thousand dollars.

(D) Whoever violates division (C) of section 102.021 of the Revised Code shall be fined ten thousand dollars.

HISTORY: 1988 S 1, eff. 11-28-88
1986 H 300; 1977 H 1; 1976 H 268, H 1040; 1973 H 55

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 294

Am Jur 2d: 26, Elections § 287, 289; 63A, Public Officers and Employees § 322, 323, 325

GOVERNOR

107.05 Certain officers ineligible to perform duties until commissioned by governor

A judge of a court of record, state officer, county officer, militia officer, or judge of a county court, shall be ineligible to perform any duty pertaining to his office until he presents to the proper officer a legal certificate of his election or appointment, and receives from the governor a commission to fill such office.

HISTORY: 127 v 1039, eff. 1-1-58
1953 H 1; GC 138

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.51

CROSS REFERENCES

Transmitting commission of judges of courts of record, 2701.06
Issuing grants and commissions, O Const Art III §13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 99; 22, Courts and Judges § 42, 43; 84, State of Ohio § 106

Am Jur 2d: 63A, Public Officers and Employees § 114 et seq., 117 et seq.

NOTES ON DECISIONS AND OPINIONS

132 OS 466, 9 NE(2d) 288 (1937), State ex rel Gahl v Lutz. Where one eligible to hold public office is appointed to fill a vacancy in the office of sheriff for an unexpired term and until his successor is elected and qualified, and where the governor's commission is received by the appointee after the unexpired term has terminated, such appointee will be deemed to hold the office from the date of appointment and qualification, and not from the date of the receipt of the commission.

1962 OAG 3463. Where the term of a member of the waterways safety commission expires when the senate is not in session, a vacancy occurs and the governor is authorized to fill the vacancy and report the appointment to the next session of the senate, and the appointee takes office upon receiving the governor's commission and taking an oath of office.

1962 OAG 3318. A member of the board of trustees of the Ohio State university serves until his successor is appointed, confirmed by the senate, and qualifies by receiving a governor's commission and taking the oath of office.

1961 OAG 2035. A person who has been elected to serve an unexpired term in the court of common pleas must present a legal certificate of his election, receive a governor's commission to fill such office, and take the required oath of office before he is entitled to serve in such capacity and receive the salary provided therefor.

1957 OAG 607. The clerk of the court of common pleas may properly refuse to file or make a record of the commission of a justice of the peace.

1943 OAG 5974. Person who is appointed to perform duties of elective county officer who is absent from his office due to his service in armed forces, is not county officer within meaning of this section, and consequently is not required to obtain commission from governor as provided for in said section.

1937 OAG 115. When a certificate of election or appointment, regular and legal upon its face, is presented to the governor of Ohio, reciting the fact that the person named therein has been duly elected or appointed to an office under the laws of the state, it is the mandatory duty of the governor to issue to him a commission as provided by law. Whether or not he has been legally appointed is a

judicial question, to be determined by a court of competent jurisdiction.

1929 OAG 862. In order to become a de jure officer, a person elected or appointed county treasurer must receive a commission for the office.

107.06 Fees for governor's commission

Except militia officers, each officer designated in section 107.05 of the Revised Code, who receives compensation shall pay a fee to the secretary of state for making, recording, and forwarding his commission. A judge of a county court shall pay two dollars, and all other officers, five dollars.

HISTORY: 127 v 1039, eff. 1-1-58
1953 H 1; GC 139

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Forms 5.51

CROSS REFERENCES

Certificates of election, 3505.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 99; 22, Courts and Judges § 43; 84, State of Ohio § 106

107.07 Certificate and fee for commission sent to secretary of state

When the result of the election of any officer mentioned in section 107.05 of the Revised Code is officially known to the board of elections of the proper county, and upon payment to such board of the fee prescribed in section 107.06 of the Revised Code, the board shall immediately forward by mail to the secretary of state a certificate of election of such officer and such fee. Upon receipt of the certificate and fee by the secretary of state, the governor shall issue a commission to the officer and for the office named in the certificate, and shall forward the commission to the clerk of the court of common pleas, who shall deliver the commission to the officer named therein. The fees received by the secretary of state shall be paid into the state treasury to the credit of the general revenue fund.

HISTORY: 1953 H 1, eff. 10-1-53
GC 140

CROSS REFERENCES

Certificates of election, 3505.38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 99; 22, Courts and Judges § 43, 55; 84, State of Ohio § 106

107.08 Vacancy in office of judge

The office of a judge is vacant at the expiration of the term of the incumbent when no person has been elected as his successor. Such vacancy shall be filled by appointment by the governor. If the appointment is to a court of appeals, court of common pleas, or municipal court, the clerk of the court shall give written notice to the board of elections responsible for conducting elections for that court of the name of the appointee. A successor shall be elected for the unexpired term at the first general election for the office that occurs more than thirty days after such appointment.

HISTORY: 1986 H 555, eff. 2-26-86
1953 H 1; GC 142

CROSS REFERENCES

Municipal court, oath of office required, vacancy, appointment, election of substitute, 1901.10
County court judges, filling vacancies in office, 1907.11
Courts of appeals judges, qualifications and terms, 2501.02
Filling vacancy in judgeship, O Const Art IV §13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 154, 156, 157
Am Jur 2d: 46, Judges § 237 to 240

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

1939 OAG 138. A law which provides that a vacancy for a period of less than one year in the office of a judge be filled by the governor for the remainder of the unexpired term is in conflict with O Const Art XVII, § 2, and O Const Art IV, § 13, and therefore is unconstitutional.

2. In general

OAG 66-176. The person appointed by the governor to a vacancy in the office of county judge shall hold office until his successor is elected and has qualified.

OAG 66-176. A candidate for the office of county judge cannot qualify himself after August 8, 1966, and have his name placed on the ballot at the election to be held in November, 1966.

OAG 65-7. A nominating petition filed pursuant to RC 1907.051 and RC 3513.261 is void where it states that the candidate is seeking election at the general election in November to a full term as county court judge and there is no full term for which an election could be held at that time, and a favorable vote cast by the electors for such candidate for a full term as judge of the county court is ineffective.

SUNSHINE LAW

121.22 Meetings of public bodies to be open; exceptions; notice

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) "Public body" means any board, commission, committee, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution.

(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3) "Regulated individual" means:

(a) Any student in a state or local public educational institution;

(b) Any person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body must be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any such public body shall be promptly recorded and open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) of this section.

(D) This section does not apply to a grand jury, to an audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit, to the adult parole authority when its hearings are conducted at a penal institution for the sole purpose of interviewing inmates to determine parole or pardon, to the organized crime investigations commission established under section 177.01 of the Revised Code, to the state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (D) of section 4731.22 of the Revised Code, to the board of nursing when determining whether to suspend a license without prior hearing pursuant to division (B) of section 4723.181 of the Revised Code, or to the executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code.

(E) The controlling board, the development financing advisory board, the industrial technology and enterprise advisory board, and the minority development financing commission, when any of the boards or the commission meets to consider granting assistance pursuant to Chapters 122. and 166. of the Revised Code, in order to protect the interest of the applicant and the possible investment of public funds, may by unanimous vote of all board or commission members present close the meeting during consideration of the following information confidentially received by the commission or board from the applicant:

(1) Marketing plans;

(2) Specific business strategy;

(3) Production techniques and trade secrets;

(4) Financial projections;

(5) Personal financial statements of the applicant or members of his immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the commission or board to accept or reject the application, as well as all proceedings of the commission or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body shall, by rule, establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person may, upon request and payment of a reasonable fee, obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G) The members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold such a session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of his official duties or for his removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use this division as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or rules or state statutes;

(6) Specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (6) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

(H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) of this section and conducted at an executive session held in compliance with this section.

(I)(1) Any person may bring an action to enforce the provisions of this section. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2) If the court of common pleas issues an injunction pursuant to this section, the court may award to the party that sought the injunction all court costs and reasonable attorney's fees and also shall order the public body that it enjoins to pay a civil forfeiture of one hundred dollars. If the court of common pleas does not issue an injunction pursuant to this section and the court determines at that time that the bringing of the action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public body all court costs and reasonable attorney's fees.

(3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(4) A member of a public body who knowingly violates an injunction issued pursuant to this division may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

HISTORY: 1988 S 367, eff. 12-14-88
1988 S 150, H 529; 1986 H 769, S 74, S 279; 1985 H 201; 1983 S 227; 1980 H 440; 1975 S 74; 129 v 582; 126 v 303; 125 v 534

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 367—LSC Analysis, p 5-1017

Baldwin's Ohio Township Law, Text 15.09, 17.03, 17.04, 17.06, 17.07, 17.11, 37.10, 55.05, 59.02, 83.07; Forms 1.16 to 1.20

Baldwin's Ohio School Law, Text 5.12, 7.04(B), 25.12(A) to (D), 29.03, 31.01, 34.09(C), 44.09; Forms 5.11 to 5.16, Ch 7, Ch 34, Ch 36, Ch 37, Ch 40, Ch 41

Gotherman & Babbit, Ohio Municipal Law, Text 3.52, 7.62, 9.25, 10.01 to 10.10, 16.44, 44.03; Forms 10.01, 13.11, 13.12, 13.18

Lewis & Spirn, Ohio Collective Bargaining Law, Author's Comment to 4117.17, 4117.21

CROSS REFERENCES

Notice of ethics commission meetings, OAC 102-1-02

Legislative service commission, notice of meetings, OAC 103-1-02

Ballot board, notice of meetings, OAC 111:2-1-01

Board of voting machine examiners, notice of meetings, OAC 111:3-1-01

State personnel board, notice of meetings, OAC 124-17-05

Office of budget and management, procedures for giving public notice, OAC 126-1-01

Controlling board, notice of meetings, OAC 126:1-1-01

Board of commissioners of the sinking fund, notice of meetings, OAC 129-1-01

State board of deposit, notice of meetings, OAC 135-1-01

Public employees retirement system, notice of meetings, OAC 145-1-04, 145:1-1-02

State records commission, notice of meetings, OAC 149:1-1-04

Building authority, notice of meetings, OAC 152-1-02

Public facilities commission, notice of meetings, OAC 154-1-01

Police and firemen's disability and pension fund, notice of meetings (sunshine law), OAC 742-15-01

Department of agriculture, procedures for giving public notice, OAC 901-3-01

Expositions commission, notice of meetings, OAC 991-1-01

Open public meetings of the banking board, OAC 1301:1-1-02

Division of real estate, procedures for giving public notice, OAC 1301:5-1-01

Real estate commission, open public meetings, OAC 1301:5-1-12

Wild, scenic and recreational river advisory councils, OAC Ch 1501:1-1 to Ch 1501:1-31

Coastal resources advisory council, notice of public meetings, minutes, OAC 1501:1-35-01, 1501:1-35-02

Division of oil and gas, procedures for giving public notice, OAC 1501:9-1-01

Division of reclamation, notice of public hearings, OAC 1501:13-1-08, 1501:14-1-15

Division of natural areas and preserves, notice of public hearings, OAC 1501:17-13-01, 1501:17-49-01

Recreational vehicles division, notice of public hearings, OAC 1501:20-1-01

Division of water, notice of public hearings, OAC 1501:21-1-01

Division of wildlife, notice of public hearings, OAC 1501:31-1-01

Division of parks and recreation, notice of public hearings, OAC 1501:41-1-01

Watercraft division, notice of public hearings, OAC 1501:47-1-01

Oil and gas board of review, notice of public hearings and meetings, OAC 1509-1-15, 1509-1-16

Soil and water conservation commission, hearings and meetings, OAC 1515-1-01 et seq.

State board of education, notice of meetings, OAC 3301-4-01

Governor's council on disabled persons, open meetings, OAC 3303-1-04

Rehabilitation services commission, open meetings, OAC 3304-1-03

State teachers retirement board, notice of meetings, OAC 3307-1-02

Board of regents, meetings, OAC 3333-1-01, 3333-1-14

War orphans scholarship board, notice of meetings, OAC 3333-7-01

Ohio tuition trust authority, notice of meetings, OAC 3334-1-01

Ohio university board of trustees, notice of meetings, OAC 3337-1-07

Central state university board of trustees, public meetings and executive sessions, OAC 3343-1-01, 3343-1-03

Student loan commission, notice of meetings, OAC 3351-1-15

Educational broadcasting network commission, collection, maintenance and use of only personal information which is necessary and relevant, OAC 3353-1-08

Community college's board of trustees, notice of meetings, OAC 3354:1-6-01, 3354:2-3-02, 3354:3-1-05, 3354:4-1-01

Youngstown state university board of trustees, notice of meetings, OAC 3356:1-3-09

Technical college's board of trustees, notice of meetings, OAC Ch 3357:3-1 to 3357:17-1

Edison state community college board of trustees, notice of meetings, OAC 3358:1-1-02

University of Akron board of trustees, notice of meetings, OAC 3359-4-04

State library board, operating rules and regulations, OAC 3375-1-01

Higher education facilities commission, notice of meetings, OAC 3377-1-01

Ohio arts council, public notice of meetings, OAC 3379-3-08

Public health council, notice of meetings, OAC 3701-1-02

Milk sanitation board, notice of meetings, OAC 3701:1-1-01

State certificate of need review board, notice of meetings and hearings, OAC 3702-1-01, 3702-1-03

Air quality development authority, open meeting procedure, OAC 3706-1-01

State board of housing, notice of meetings, OAC 3735-1-01

Public meetings, OAC 3737-1-02

Environmental board of review, notice of meetings, OAC 3746-15-01

State lottery commission, meetings, OAC 3770:1-5-04

Boxing commission, notification of meetings, OAC 3773-1-07

Board of building standards, notice of meetings, OAC 4101:2-92-02

Division of women and minors and minimum wage, notice of public hearings for rule changes, OAC 4101:9-2-25

Civil rights commission, public meetings and executive sessions, OAC 4112-1-04

State use committee, notice of meetings and public notice procedures, OAC 4115-3-04, 4115-3-05

State employment relations board, notice of meetings and hearings, rule changes, OAC 4117-25-01, 4117-25-02

Public employment advisory and counseling effort commission, meetings, OAC 4118-1-01, 4118-1-02

Workers' compensation, collection, maintenance and use of only personal information which is necessary and relevant, OAC 4123-16-05

Unemployment compensation board of review, changes in rules of procedure, OAC 4146-27-01

Liquor control commission, notice of proposed regulations and meetings, OAC 4301:1-1-66, 4301:1-1-77

Reciprocity board, meetings, OAC 4503-1-01

State dental board, notice of meetings, OAC 4715-17-01

Board of embalmers and funeral directors, notice of meetings, OAC 4717-1-21

Optical dispensers board, notice of meetings, OAC 4726-1-02

State board of pharmacy, notice of meetings, OAC 4729-1-02

Record of board meetings, recording, filming and photographing of meetings, OAC 4731-9-01

Board of psychology, meetings, miscellaneous forms of public notice, OAC 4732-1-01

Hearing aid dealers and fitters licensing board, notice of meetings (sunshine law), OAC 4747-1-20

Board of speech pathology and audiology, notice of meetings, OAC 4753-1-02

Occupational therapy board, notice of meetings, OAC 4755-1-01

Physical therapy section of the occupational therapy and physical therapy board, notice of meetings, OAC 4755-21-01

Public utilities commission, open meetings, OAC 4901-3-01

Consumer's counsel governing board, meetings, OAC 4901:4-1-01

Power siting board, meetings, public participation, OAC 4906-1-12, 4906-1-13

Public welfare, collection, maintenance, and use of only personal information which is necessary and relevant, OAC 5101-9-34

Joint mental health and mental retardation advisory and review commission, open meetings, OAC 5119:80-1-13

Mental health and mental retardation citizen's advisory boards, open meetings, OAC 5119:81-7-13, 5119:81-17-13, 5119:81-43-13, 5119:81-47-13

Department of mental health, procedures for giving public notice, OAC 5122-1-02

Department of mental hygiene and correction, changes in rules and regulations, OAC 5122:2-1-21

County boards of mental retardation, meetings, OAC 5123:2-1-02

Department of transportation, aviation division, notice of public hearings, OAC 5501:1-8-01

Department of tax equalization, public notice of rules changes, OAC 5705-1-01

Water development authority, meetings, OAC 6121-1-02, 6121-1-11 et seq.

Ohio funds management board, note proceedings, 113.41

Administrative procedure, adoption, amendment, or rescission of rules; public notice, 119.03

Incontestability of securities proceedings, presumption of compliance, 133.02

Clerk of taxing authority to furnish certified transcript of proceedings with reference to issuance of bonds, auditor to attach statement, 133.39

Capital improvements projects, bond proceedings to be open, 164.09

Ohio housing finance agency, meetings, notice, 175.03

Nonprofit corporations for housing purposes, 176.011

Special sessions of county commissioners at other than usual office, 305.07

Community mental health board, committee meetings, 340.03

County garbage and refuse disposal districts, meetings by directors or county commissioners, 343.08

Merger of or with municipal corporations, effect of disapproval, procedures after approval, commission to formulate conditions of merger, meetings, 709.46

Joint economic development districts, boards of directors, 715.10

Board of trustees of police and firemen's disability and pension fund, meetings, 742.07

Organization of the agricultural financing commission, 901.62

Personal information systems, executive sessions, 1347.04

Quorum, public meetings, official records of state board of education, 3301.05

State teachers retirement board, quorum, open meeting, 3307.09

School employees retirement board, meetings, 3309.09

Arts facilities commission, applicability, 3383.02

Transfer or discharge of resident of nursing or rest home, hearing, 3721.16

Adult care facilities, hearing on transfer or discharge of residents, applicability, 3722.14

Emergency response commission, not applicable to, 3750.02

Public hearings of state lottery commission, 3770.04

State dental board proceedings to be confidential, 4715.03

Emergency telephone number system, charges on property owners, resolution adopted at public meeting, 4931.51

Meetings of county board of mental retardation and developmental disabilities, 5126.04

Highway patrol retirement system, pension board, members, meetings, rules, 5505.04

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 2, Administrative Law § 54, 55; 10, Building, Zoning, and Land Controls § 242; 20, Counties, Townships, and Municipal Corporations § 357; 39, Employment Relations § 442.12; 72, Notice and Notices § 27 to 30, 33, 34; 73, Pensions and Retirement Systems § 23, 51, 129; 77, Public Securities § 115; 82, Schools, Universities, and Colleges § 101

Validity, construction, and application of statutes making public proceedings open to public. 38 ALR3d 1070; 84, State of Ohio § 77; 88, Trade Secrets § 28

NOTES ON DECISIONS AND OPINIONS

1. In general

2. Public body
3. Public meeting
4. Executive session
5. Records
6. Notice

1. In general

40 Case WR L Rev 227 (1989-90). Mr. Smith Comes Home: The Constitutional Presumption Of Openness In Local Legislative Meetings, Note.

1 Baldwin's Ohio School Serv 2 (March/April 1989). The Sunshine Law—Open Meetings In Ohio, Mary A. Lentz.

36 Cities & Villages 13 (September 1988). Ohio's Open Meeting Law.

32 Ohio School Bds Assn J 2 (August 1988). Ohio's changing sunshine law, Richard J. Dickinson.

39 OS(3d) 19, 528 NE(2d) 1254 (1988), Fox v Lakewood. Adoption of an amendment to a city charter by the electors of the city cures the city council's failure to open to the public its deliberations regarding the amendment, as required by the city's charter.

38 OS(3d) 165, 527 NE(2d) 807 (1988), State ex rel Plain Dealer Publishing Co v Barnes. Where a city charter provision requires that "all meetings of council or committees thereof shall be public," the word "meetings" encompasses any assemblage of the city council or its committees where a majority of the members constituting the body are in attendance and the gathering is arranged for the purpose of discussing public business.

62 OS(2d) 362, 405 NE(2d) 1041 (1980), Matheny v Frontier Local Bd of Ed. The enactment of RC 121.22(G)(1) has not afforded a nontenured teacher a procedural right to a hearing on the issue of contract renewal.

62 OS(2d) 362, 405 NE(2d) 1041 (1980), Matheny v Frontier Local Bd of Ed. RC 121.22 does not give rise to a constitutionally protected expectancy of continued employment for nontenured teachers.

167 OS 15, 145 NE(2d) 665 (1957), State ex rel Adams v Rockwell. Petition for writ of mandamus to compel school board to hold public meetings denied on ground injunctive relief is available.

41 App(3d) 218, 534 NE(2d) 1239 (Ross 1988), Gannett Satellite Information Network, Inc v Chillicothe City School Dist Bd of Ed. The exceptions to the Ohio Sunshine Law set forth in RC 121.22(G)(1) through 121.22(G)(6) must be strictly construed to require open meetings unless one of the exceptions clearly applies.

4 App(3d) 240, 4 OBR 432, 448 NE(2d) 163 (Wayne 1982), Hills & Dales, Inc v Wooster. A charter municipality, in the exercise of its sovereign powers of local self-government as established by O Const Art XVIII, § 3, is not bound to follow the provisions of the state's "Sunshine Law."

64 App(2d) 222, 412 NE(2d) 1331 (1979), City Comm of Piqua v Piqua Daily Call. RC 121.22 does not expand or limit the power of the city commission under its charter.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. Actions taken by the board of trustees of a designated community action agency at closed meetings held in violation of RC 121.22 are invalid.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. The award of attorney fees under the public meetings law is plainly discretionary; a court when deciding whether to award fees under the act will use the same criteria as that applicable to the public records law.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. A newspaper initiating court action to force a recalcitrant public office, a designated community action agency, to open its meetings and records to public review confers a significant benefit on the public, and attorney fees will be awarded to the prevailing newspaper where the legal positions taken by the agency are not supported by any plausible reading of the statutes nor by logical argument from existing decisions.

23 Misc 49, 259 NE(2d) 522 (CP, Montgomery 1970), Dayton Newspapers, Inc v Dayton; affirmed by 28 App(2d) 95, 274 NE(2d) 766 (1971). Balance between access to public meetings and nonpublic side of operation of government is determined first by law and second by lawful discretion of officials in charge.

686 FSupp 177 (ND Ohio 1988), WJW-TV, Inc v Cleveland; vacated by 870 F(2d) 658 (6th Cir Ohio 1989) and 878 F(2d) 906 (6th Cir Ohio 1989); cert denied 110 SCt 74, 107 LEd(2d) 41 (1989). Although there is nothing in the First Amendment to the United States Constitution from which a public right of access to legislative proceedings may automatically be inferred, a qualified right of access will be recognized by extending the present right of public access to most criminal trials that is enforceable even where the defendant himself desires a closed trial; when compelling reasons justifying a closed meeting are present, these reasons must be stated.

RBR 4-87-204 (12-3-87), Pleasant City v Div of Reclamation. The claim of a village that its consent to coal mining in a public road is invalid because it was given in violation of the Ohio Sunshine Law has no effect on the issue of the validity of the mining permit in proceedings before the reclamation board of review, since that administrative tribunal has no authority to review or invalidate acts of village trustees; the common pleas court is the forum for presentation of this issue.

2. Public body

70 App(3d) 407 (Portage 1990), Vlach v Kent State University. A court of common pleas has jurisdiction to determine whether a state university's animal care and use committee is a "public body" as defined by RC 121.22 and to issue an injunction and award court costs, attorney fees, and a civil forfeiture of $100 as provided for by RC 121.22(I)(2).

64 App(3d) 659 (Cuyahoga 1990), State ex rel Kinsley v Berea Bd of Ed. Settlement agreements are not exempted from disclosure pursuant to RC 121.22(G)(3) which exempts conferences with an attorney for a public body concerning pending or imminent court action from public view since a settlement agreement contains only the result of the bargaining process rather than revealing the details of the negotiations which led to the result.

20 App(3d) 100, 20 OBR 122, 484 NE(2d) 1381 (Auglaize 1985), Stegall v Joint Twp Dist Memorial Hospital. The board of governors of a joint township district hospital is a public body for purposes of RC 121.22.

69 App(2d) 27, 429 NE(2d) 1179 (1980), Walker v Lockland City School Dist Bd of Ed. The superintendent of a school district cannot enter into an oral contract binding on the board of education for the school district when the board has not authorized the contract pursuant to RC 3313.33 and RC 121.22.

64 App(2d) 222, 412 NE(2d) 1331 (1979), City Comm of Piqua v Piqua Daily Call. RC 121.22 does not and cannot amend the home rule provision of the constitution which alone resolves the question of the power of local self-government under a city charter.

64 App(2d) 222, 412 NE(2d) 1331 (1979), City Comm of Piqua v Piqua Daily Call. Where a municipal corporation has a charter form of government adopted pursuant to the home rule amendment, RC 121.22 cannot be interpreted so as to tell a charter city commission or assembly when, how, where and under what circumstances it may meet, adjourn or hold an executive meeting.

62 App(2d) 174, 405 NE(2d) 731 (1978), Maser v Canton. Where a city council appoints a committee composed of several of its members to investigate problems in a municipal department and such committee is delegated powers normally restricted to the council, all hearings held by the committee must be conducted in public, pursuant to the mandate of RC 121.22.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. A designated community action agency administering governmentally funded programs is a public body within the meaning of RC 121.22(B)(1).

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. The board of trustees of a designated community action agency is a decision-making body of a state agency.

22 Misc 197, 259 NE(2d) 757 (CP, Lake 1970), Curran v Board of Park Commrs. A county park board is a governmental unit and is subject to provisions of RC 121.22, RC 149.40, RC 149.43 and RC 1545.07.

OAG 88-029. The public utilities commission nominating council is a "public body" as that phrase is defined in RC 121.22.

OAG 86-091. The Ohio legal rights service commission is a "public body" for purposes of RC 121.22, Ohio's open-meeting law. The commission may consider in executive session such matters as come within RC 121.22(G).

OAG 85-044. A township board of zoning appeals is a "public body" for purposes of RC 121.22.

OAG 82-081. A soldiers' relief commission established pursuant to RC 5901.02 is a public body for the purposes of RC 121.22.

OAG 80-083. The convening of members of the county central committee pursuant to RC 305.02 is a "meeting." Final voting on the appointment of persons to the committee must be held in a public meeting. However, the convening of the committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacant public offices is not a "meeting" as defined by RC 121.22(B)(2).

OAG 79-110. The safety codes committee, created by resolution of the industrial commission for the purpose of reviewing safety code requirements and drafting revisions for consideration by the industrial commission, is not a public body for the purposes of RC 121.22.

OAG 79-061. The governing board of a community improvement corporation, organized as provided in RC 1702.04 and RC 1724.01 to RC 1724.09, does not constitute a public body for the purposes of RC 121.22, but when such a corporation has been designated an agency of a county, municipal corporation or any combination thereof, it is considered a public body.

OAG 78-059. The internal security committee, established by the industrial commission and the bureau of workers compensation pursuant to RC 4121.22(D), is a public body for purposes of RC 121.22.

OAG 76-062. The board of trustees of a comprehensive mental health center, which is a private, non-profit corporation, does not constitute a public body for purposes of RC 121.22.

3. Public meeting

40 OS(3d) 149, 532 NE(2d) 719 (1988), State ex rel Craft v Schisler. A city charter provision requiring all council and committee meetings to be public effectively prohibits any meeting, regardless of its purpose, from being private and supersedes RC 121.22(G) which allows members of a public body to hold private executive sessions to discuss matters relating to personnel, official appointment, purchasing property, litigation, and labor negotiations.

38 OS(3d) 165, 527 NE(2d) 807 (1988), State ex rel Plain Dealer Publishing Co v Barnes. Where a city charter provision requires that "all meetings of council or committees thereof shall be public," the word "meetings" encompasses any assemblage of the city council or its committees where a majority of the members constituting the body are in attendance and the gathering is arranged for the purpose of discussing public business.

62 OS(2d) 362, 405 NE(2d) 1041 (1980), Matheny v Frontier Local Bd of Ed. RC 121.22 authorizes a school board to conduct private deliberations upon the renewal of a limited teaching contract.

3 OS(2d) 191, 209 NE(2d) 399 (1965), Beacon Journal Publishing Co v Akron. The public has no common law right to attend meetings of governmental bodies; any right the public has to attend such meetings must arise by reason of the provisions of the ordinance or statute which the boards or commissions in question are created by or subject to.

3 OS(2d) 191, 209 NE(2d) 399 (1965), Beacon Journal Publishing Co v Akron. At any session of a municipal board or commission subject to RC 121.22 or to a similar municipal code provision, where any action is taken which is required by law, rule or regulation to be recorded in the minutes, the journal or any other official record of the board or commission, such session is a meeting which must be open to the public.

70 App(3d) 346 (Franklin 1990), Angerman v Medical Bd. The state medical board does not violate the open meeting requirement of RC 121.22 when its deliberations on a physician's license revocation are not conducted in a public session although the board's unanimous vote to adopt the referee's recommendation of revocation, as well as limited discussion on the action, is conducted at a public session; "deliberations" of a quasi-judicial administrative tribunal on the action to be taken following a public hearing on charges against a licensee need not be open to the licensee or the public although the final action or vote of the quasi-judicial tribunal must be conducted in an open meeting.

52 App(3d) 8, 556 NE(2d) 200 (Franklin 1988), In re Petition for Annexation to Westerville of 162.631 Acres in Blendon Twp. An annexation hearing under RC 709.032 is a formal, quasi-judicial proceeding and not a meeting subject to the Sunshine Law, RC 121.22.

48 App(3d) 52, 547 NE(2d) 1230 (Summit 1988), Conner v Lakemore. An appeal of the termination of a village police chief must be heard at a public hearing and may not be heard at a mere executive session of the village council.

62 App(2d) 174, 405 NE(2d) 731 (1978), Maser v Canton. Where a city council appoints a committee composed of several of its members to investigate problems in a municipal department and such committee is delegated powers normally restricted to the council, all hearings held by the committee must be conducted in public, pursuant to the mandate of RC 121.22.

59 App(2d) 231, 394 NE(2d) 331 (Medina 1978), Amigo v Cloverleaf Local School Dist Bd of Ed. The argument that a public employee cannot request a public hearing as required under RC 121.22(G)(1) when the employee has no knowledge that an executive session to consider his or her employment or dismissal will be conducted is without merit where compliance with provisions of RC 121.22(F) occur and a public employee attending a meeting can request a public hearing.

28 App(2d) 95, 274 NE(2d) 766 (1971), Dayton Newspapers, Inc v Dayton. Meetings of governmental bodies, which are required by RC 121.22 to be meetings open to public at all times, are meetings for transaction of business, and all public business must be transacted at such public meetings.

18 App(2d) 101, 247 NE(2d) 330 (1969), State ex rel Humphrey v Adkins. A board of education may hold executive sessions, but may take action only at a public meeting.

No. 52354 (8th Dist Ct App, Cuyahoga, 6-11-87), Fox v Lakewood. The home rule provisions of the Ohio Constitution exempt a municipal corporation from the mandates of the "sunshine law," RC 121.22, where such law is not adopted in the municipal corporation's charter; thus, an amendment authorized by an ordinance passed by council at an open meeting after discussing it at a closed meeting and approved by the voters is not voidable.

No. 3515 (11th Dist Ct App, Trumbull, 12-20-85), State ex rel Brookfield Federation of Teachers v Brookfield Local Bd of Ed. Where a factfinder's report was rejected in an open meeting as required by RC 121.22(A), a federation of teachers has no clear legal right pursuant to RC 4117.14(C)(6) to a writ of mandamus seeking recommendations of the factfinder to be deemed agreed by a board of education.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. Meetings of the board of trustees of a designated community action agency must be open to the public at all times.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. A fine of $200 shall be assessed against the board of trustees of a desig-

nated community action agency found to have twice violated the open meeting requirements of RC 121.22.

36 Misc(2d) 4, 521 NE(2d) 9 (CP, Morgan 1987), Schank v Hegele. When construed in pari materia, RC 3313.66(E) and 121.22(A) both provide that official action, such as suspensions or expulsions of students, should only be considered at open meetings, and therefore a board of education may not consider whether to reinstate an expelled pupil in an executive session unless the pupil or his representative is present and so requests.

2 OBR 449 (CP, Mahoning 1982), State ex rel Vindicator Printing Co v Hughey. Prearranged precaucus meetings of the Youngstown city council must be open to the public.

521 F(2d) 1329 (6th Cir Ohio 1975), Shirley v Chagrin Falls Exempted Village Schools Bd of Ed. RC 121.22 was not violated where only formal action was taken at a regularly scheduled meeting of a school board.

OAG 88-087. A board of township trustees may adopt a rule regulating but not prohibiting the audio and video recording of township proceedings. Such rules must promote the orderly transaction of business without unreasonably interfering with the rights of those present, and may require recording equipment to be silent, unobtrusive, self-contained and self-powered to avoid interfering with the ability of those present to hear, see and participate in the proceedings. The public's right of access to governmental proceedings includes the right to record township meetings, and any regulation thereof must be precisely and narrowly drawn to be no broader than necessary to insure the order of the proceedings.

OAG 88-029. With respect to "regular meetings" or "special meetings" as those terms are used in RC 121.22(F), the public utilities commission nominating council is required to establish, by rule, a reasonable method whereby any person may determine the time, place, and purpose of such meetings, and such rule must provide for reasonable advance notification of all meetings at which a specific type of business is to be discussed to all persons requesting such notice and paying a reasonable fee.

OAG 85-048. The open meeting requirements of RC 121.22 and RC 305.09 are satisfied where a board of county commissioners convenes a public meeting at which only two of the three members are present and the third member of the board, who is not physically present, participates in such board proceedings by means of communications equipment.

OAG 85-044. A township board of zoning appeals may not conduct, in an executive session, deliberations concerning a zoning appeal heard pursuant to RC 519.14(A) or RC 519.14(B).

OAG 80-083. The convening of members of the county central committee pursuant to RC 305.02 is a "meeting." Final voting on the appointment of persons to the committee must be held in a public meeting. However, the convening of the committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacant public offices is not a "meeting" as defined by RC 121.22(B)(2).

4. Executive session

62 OS(2d) 362, 405 NE(2d) 1041 (1980), Matheny v Frontier Local Bd of Ed. A non-tenured teacher is not entitled to a due process hearing upon nonrenewal of a teaching contract, nor to have his reemployment considered at an open meeting rather than an executive session.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. Although RC 121.22 is not applicable in every case involving meetings conducted by city council, since a charter municipality has the right to determine by charter the manner in which meetings will be held if a city does choose to draft its own rules concerning the meeting of the public body and the rules are included in its charter, the city council must abide by those rules and therefore, where a city formulates and includes in its charter the guidelines with which the city must comply when conducting its meetings and these guidelines are nearly identical to those set forth in RC 121.22, the city violates the terms of its city charter by conducting deliberations and taking official action on the city council's certification of an initiative petition in an executive session closed to the public, despite the city's contention that it acted under an exception to the open meeting requirement contained in its charter which allows it to hold a closed executive session to confer with an attorney concerning disputes involving the public body that are the subject of pending or imminent court action where the city fails to prove that the city council's noncertification of the petition initiative would create a dispute involving the public body that would be the subject of pending or imminent court action.

48 App(3d) 52, 547 NE(2d) 1230 (Summit 1988), Conner v Lakemore. An appeal of the termination of a village police chief must be heard at a public hearing and may not be heard at a mere executive session of the village council.

41 App(3d) 218, 534 NE(2d) 1239 (Ross 1988), Gannett Satellite Information Network, Inc v Chillicothe City School Dist Bd of Ed. RC 121.22(G)(1) permits a public body to enter into executive session when its sole purpose is the consideration of a specific employee's employment, dismissal, etc.; thus, the exception does not apply to a session discussing general budget cuts which may affect employee salaries.

19 App(3d) 1, 19 OBR 46, 482 NE(2d) 982 (Greene 1984), Greene County Guidance Center, Inc v Greene-Clinton Community Mental Health Bd. Proof only that an action taken in a public meeting was previously discussed in executive session is not sufficient to show that the action resulted from the closed discussions within the meaning of RC 121.22(H).

39 App(2d) 11, 314 NE(2d) 186 (1973), Crist v True. A "special session" of a board of township trustees held at the private residence of a township official does not qualify as a "public meeting" within the meaning of RC 519.12 and RC 121.22.

28 App(2d) 95, 274 NE(2d) 766 (1971), Dayton Newspapers, Inc v Dayton. Executive session of any governmental board, commission, agency or authority, one from which public is excluded, at which only such selected persons as may be invited are permitted to be present, and at which no public business shall be transacted, is recognized and permitted by statute.

28 App(2d) 95, 274 NE(2d) 766 (1971), Dayton Newspapers, Inc v Dayton. Provisions of city charter and related ordinance that all meetings of city commission shall be public refer to meetings at which public business may be transacted, and not to executive sessions from which the public and the press may be excluded.

18 App(2d) 101, 247 NE(2d) 330 (1969), State ex rel Humphrey v Adkins. A board of education may hold executive sessions, but may take action only at a public meeting.

No. 15-83-23 (3d Dist Ct App, Van Wert, 1-25-85), Seiler v Vantage Joint Vocational School Dist Bd of Ed. A school board may conduct private deliberations on whether to enter into a continuing contract.

No. WD-81-74 (6th Dist Ct App, Wood, 5-7-82), Sturm v Village of Bradner. Where defendant in a removal hearing fails to request a public hearing, pursuant to RC 121.22(H), until the close of all the evidence, and a non-public executive session is subsequently held to consider the removal, such a delayed request does not satisfy the requirements of RC 121.22(H).

23 Misc 49, 259 NE(2d) 522 (CP, Montgomery 1970), Dayton Newspapers, Inc v Dayton; affirmed by 28 App(2d) 95, 274 NE(2d) 766 (1971). Executive meetings, investigations and informal efforts of city commissioners for preliminary purposes are subject to sovereign legislative and rule making power and may be conducted in private.

686 FSupp 177 (ND Ohio 1988), WJW-TV, Inc v Cleveland; vacated by 870 F(2d) 658 (6th Cir Ohio 1989) and 878 F(2d) 906 (6th Cir Ohio 1989); cert denied 110 SCt 74, 107 LEd(2d) 41 (1989). Although there is nothing in the First Amendment to the United States Constitution from which a public right of access to legislative proceedings may automatically be inferred, a qualified right of access will be recognized by extending the present right of public access to most criminal trials that is enforceable even where the defendant himself desires a closed trial; when compelling reasons justifying a closed meeting are present, these reasons must be stated.

OAG 88-003. The word "property" as used in RC 121.22(G)(2) includes both tangible and intangible property; accordingly, the public employees retirement board may discuss in executive session the purchase or sale of any tangible or intangible property authorized under RC 145.11, including but not limited to bonds, notes, stocks, shares, securities, commercial paper, and debt or equity interests.

OAG 86-091. The Ohio legal rights service commission is a "public body" for purposes of RC 121.22, Ohio's open-meeting law. The commission may consider in executive session such matters as come within RC 121.22(G).

OAG 85-044. A township board of zoning appeals may not conduct, in an executive session, deliberations concerning a zoning appeal heard pursuant to RC 519.14(A) or RC 519.14(B).

OAG 80-083. The convening of members of the county central committee pursuant to RC 305.02 is a "meeting." Final voting on the appointment of persons to the committee must be held in a public meeting. However, the convening of the committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacant public offices is not a "meeting" as defined by RC 121.22(B)(2).

OAG 70-165. Governmental body may hold executive sessions from which public is excluded provided no final binding action shall be taken, inasmuch as its only meetings which are required to be open to public are those in which a resolution, rule, regulation or formal action of any kind is adopted or passed.

5. Records

56 OS(3d) 97, 564 NE(2d) 486 (1990), State ex rel Fairfield Leader v Ricketts. A meeting of government officials to discuss annexation and development projects at which no specific proposals are made and no official action taken, and where the meeting is called by and paid for by a private developer, must be reduced to minutes. These minutes must be made available to the public; where the officials refuse to reduce the meeting to minutes, mandamus shall be granted to compel such action.

45 OS(2d) 107, 341 NE(2d) 576 (1976), Dayton Newspapers, Inc v Dayton. A record is "required to be kept" by a governmental unit, within the meaning of RC 149.43, where the unit's keeping of such record is necessary to the execution of its duties and responsibilities.

45 App(2d) 288, 344 NE(2d) 156 (1975), Washington Bd of Twp Trustees v Spring Creek Gravel Co. Where there is no record of the adoption of an amended zoning regulation by the township trustees, it is conclusively presumed that the trustees took no action and and that such amended zoning regulation did not become law, since statutes requiring a record of action by township trustees are mandatory where such action is legislative in nature.

5 App(2d) 265, 215 NE(2d) 434 (1966), Thomas v Liberty Twp Bd of Trustees. The omission of making a record of the proceedings of a board of township trustees does not, per se, invalidate the action of the township trustees, which is otherwise valid.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. A designated community action agency is a public office within the meaning of RC 149.43 and its records are public records.

22 Misc 197, 259 NE(2d) 757 (CP, Lake 1970), Curran v Lake County Metropolitan Park Dist Bd of Park Commrs. All records that reflect official action of a park board or its authorized employees are public, including records which document organization, functions, policies, decisions, procedures, operations or other activities of the office, but not including real estate appraisals from private experts which board secures for use in land transactions.

OAG 88-087. A board of township trustees may adopt a rule regulating but not prohibiting the audio and video recording of township proceedings. Such rules must promote the orderly transaction of business without unreasonably interfering with the rights of those present, and may require recording equipment to be silent, unobtrusive, self-contained and self-powered to avoid interfering with the ability of those present to hear, see and participate in the proceedings. The public's right of access to governmental proceedings includes the right to record township meetings, and any regulation thereof must be precisely and narrowly drawn to be no broader than necessary to insure the order of the proceedings.

OAG 77-075. Pursuant to RC 4112.05(B), the Ohio civil rights commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated.

OAG 74-072. The public utilities commission has authority to adopt rules for the conduct of its proceedings, and it may restrict the audio-visual recording of such proceedings so long as such restrictions are reasonable, or may enact a rule permitting the use of audio-visual equipment in its proceedings if it chooses.

6. Notice

59 App(2d) 231, 394 NE(2d) 331 (1978), Amigo v Cloverleaf Local School District Bd of Ed. A board of education rule, adopted pursuant to, and complying with, RC 121.22(F), allowing any person to request notification of upcoming regular or special meetings precludes the claim of a board employee, who has not utilized such rule, that RC 121.22 requires the board to personally notify her of upcoming board meetings at which her employment or dismissal will be considered in executive session during the meeting.

No. 3515 (11th Dist Ct App, Trumbull, 12-20-85), State ex rel Brookfield Federation of Teachers v Brookfield Local Bd of Ed. Where a board of education meets in executive session at 3:30 p.m. without first having held a regular or special meeting and, where the board is called shortly after the adjournment to an emergency meeting set for 4:20 p.m. to consider a factfinder's report under RC 4117.14, the board complies with RC 121.22(F) when it notifies the media approximately ten minutes after the start of the 4:20 p.m. meeting which lasts a few minutes.

OAG 88-029. With respect to "regular meetings" or "special meetings" as those terms are used in RC 121.22(F), the public utilities commission nominating council is required to establish, by rule, a reasonable method whereby any person may determine the time, place, and purpose of such meetings, and such rule must provide for reasonable advance notification of all meetings at which a specific type of business is to be discussed to all persons requesting such notice and paying a reasonable fee.

OAG 88-029. Pursuant to RC 121.22(F), the public utilities commission nominating council is required to provide at least twenty-four hours' advance notice of all special meetings to the news media which have requested such notification except in the event of an emergency requiring immediate official action, in which case the member or members calling the meeting must immediately notify all news media which have requested such notification of the time, place, and purpose of the meeting.

DEPARTMENT OF ADMINISTRATIVE SERVICES—PERSONNEL

124.57 Political activity prohibited

No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof, or civil service townships; nor shall any officer or employee in the classified service of the

state, the several counties, cities, and city school districts thereof, and civil service townships, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.

HISTORY: 1974 H 513, eff. 8-9-74
1973 S 174

Note: 124.57 is former 143.41 recodified by 1973 S 174, eff. 12-4-73; 1953 H 1; GC 486-23.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.03, 13.03
Gotherman & Babbit, Ohio Municipal Law, Text 9.08, 15.55

CROSS REFERENCES

Political activity of employees in the classified service, OAC 123:1-46-02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Civil Servants and Other Public Officers and Employees § 2; 15, Civil Servants and Other Public Officers and Employees § 174, 288, 289; 39, Employment Relations § 442; 54, Highways, Streets, and Bridges § 23; 82, Schools, Universities, and Colleges § 88

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Positions incompatible
4. Positions compatible
5. Other activities

1. Constitutional issues

323 FSupp 1281, 28 Misc 141 (ND Ohio 1971), Gray v Toledo. RC 143.41 is constitutional.

2. In general

54 OS(2d) 282, 376 NE(2d) 580 (1978), Jackson v Chapman. The appointing officer may appeal from the decision of the state personnel board of review in cases involving removal of an employee.

52 OS(2d) 43, 368 NE(2d) 1259 (1977), Jackson v Coffey. Where classified employee was discharged for serving as precinct committeeman, state personnel board of review improperly reinstated him on ground that removal order was not implemented within a reasonable time.

39 Misc(2d) 8 (CP, Summit 1985), Esler v Summit County. In determining whether two public offices are incompatible with each other, a court should consider the following: (1) whether either position is a check upon or subordinate to the other; (2) whether either position is classified pursuant to RC 124.57; (3) whether the empowering statutes limit outside employment; (4) whether one person can physically perform both functions; (5) whether there is a conflict of interest; and (6) whether there are any controlling ordinances or regulations. The mere possibility of a conflict of interest is insufficient to render two position incompatible; rather, a court should look to the degree of remoteness of a potential conflict, the ability or inability to remove oneself from the conflict, whether one exercises decision-making authority in both positions, whether the conflict involves primary functions of each position, and whether the conflict involves budgetary controls.

646 FSupp 47 (SD Ohio 1986), Craig v Celeste. Where two department of transportation county superintendents are found to have solicited political contributions from subordinates in violation of RC 124.57 and one is a black, female democrat while the other is a white, male republican, any difference in treatment between them based on any of the three opposite characteristics violates 42 USC 1985(3); thus, where the democrat is suspended for five days while the republican is fired the department will be ordered to restore him to his post.

OAG 91-065. The terms of a collective bargaining agreement may provide that a classified employee may engage in partisan politics and, pursuant to RC 4117.10(A), such terms will prevail over the provisions of RC 124.57.

OAG 87-013. The position of assignment commissioner and secretary for a municipal court judge exercising countywide jurisdiction is not a classified civil service position, and a person holding such position is not barred by RC 124.57 from seeking election to the position of mayor of a village within that county.

1940 OAG 2239. Civil service commission may not withhold its approval of the payroll for salary or compensation of a person in classified civil service who has become a candidate for nomination for office at a primary election, except where such person has been removed by the appointing authority in specific manner provided by law.

UCBR 608754-BR (5-21-86), In re Owens. A state employee who loans another state worker cash to buy a ticket to a political function does not violate RC 124.57 where there is no proof that he solicited, coerced, encouraged, or otherwise facilitated the sale; consequently, the employer lacks just cause under RC 4141.29 to fire the lender.

3. Positions incompatible

135 OS 602, 21 NE(2d) 991 (1939), State ex rel Hein v Cull. A person holding a temporary appointment in the classified civil service is subject to the restraints imposed on such persons as a condition of their employment and, therefore, may not serve as a central committeeman.

39 Misc(2d) 10, 531 NE(2d) 785 (CP, Trumbull 1988), Chronister v Trumbull County Prosecuting Attorney. Where one office is insubordinate to, or in any way a check upon, the other, where there is a conflict of interest in two positions, or when it is physically impossible for one person to discharge the duties of both, two public offices are incompatible.

OAG 89-022. An individual who holds a position of assistant auditor of state pursuant to RC 117.09 is prohibited from simultaneously holding the position of township clerk if the election for township clerk is a partisan election as provided in RC 3513.253 and the duties of the assistant auditor include participating in or supervising the audit of that township.

OAG 89-022. An individual who holds a position of assistant auditor of state pursuant to RC 117.09 is prohibited from simultaneously holding the position of city planning commissioner if the office of city planning commissioner is a partisan political office and the duties of the assistant auditor include participating in or supervising the audit of that municipality.

OAG 88-020. A township trustee who is not elected to that office in a partisan election may also be employed as a truck driver in the classified service of the county highway department.

OAG 84-041. RC 124.57 prohibits a classified employee from serving on the state central committee or a county central committee of a political party or on the executive committee of the state central committee or a county central committee.

OAG 82-085. A deputy sheriff in the unclassified service may serve as a member of a village legislative authority. However, a deputy sheriff in the classified service may not be a candidate for the position of village council member if such members are elected in a partisan election. He may be a candidate for, and serve as a village council member if the election for such position is nonpartisan in nature.

OAG 82-085. A city police officer may not be a candidate for the position of village council member in a partisan election. He may, however, be a candidate for, and serve as, a village council member if the election for such position is nonpartisan in nature.

OAG 74-071; overruled in part by OAG 82-085. An employee in a county highway department, in the classified civil service, may not also serve as village councilman, because of the prohibition of political activity by classified employees in RC 124.57.

OAG 71-040. The office of councilman or the office of president of council of a city, both being elective offices, may not be held by one employed in the position of safety inspector II in the department of highways.

OAG 69-150. A classified position in a county engineer's office is incompatible with an elected membership in a village board of trustees of public affairs, and such positions may not be held concurrently by the same person.

OAG 66-046; overruled in part by OAG 82-085. A person holding a position in the classified service of a state university could not at the same time become a candidate for, be elected to, or hold the office of member of village council.

1962 OAG 3005; overruled in part by OAG 83-095 and OAG 88-020. A county highway department employee who is in the classified service of the county and who becomes a candidate for the elective position of township trustee is in violation of RC 143.41.

1962 OAG 3005; overruled in part by OAG 83-095 and OAG 88-020. A county highway department employee, classified or unclassified, who is elected as a township trustee, may qualify for, and serve in, that office, but in so doing he vacates his county employment.

1962 OAG 3005; overruled in part by OAG 83-095 and OAG 88-020. The elective position of township trustee is incompatible with the position of county highway department employee whether the latter position is in the classified or unclassified service of the county.

1962 OAG 2879. The elective position of township trustee is incompatible with the positions of county dog warden and deputy county dog warden, said positions of county dog warden and deputy county dog warden being in the classified civil service of the county.

1961 OAG 2310. The positions of township trustee and janitor in a state highway patrol system are incompatible.

1960 OAG 1663. The elective position of township clerk is incompatible with the position of state department of highways employee when the latter position is in the classified civil service, but is not incompatible if the latter position is not in the classified civil service and if it is physically possible for one person to perform the duties of both positions.

1959 OAG 223; overruled in part by OAG 88-020. The elective position of township trustee is incompatible with the position of county highway department employee whether the latter position be in the classified or unclassified service of the county.

1959 OAG 223; overruled in part by OAG 88-020. The elective position of township trustee and the position of county probation officer are not compatible.

1958 OAG 3074. A person holding a position in the classified service cannot at the same time become a candidate for, be elected to, or hold the office of member of a local board of education.

1958 OAG 1648. The office of judge of the county court is incompatible with the position of county veterans service officer.

1957 OAG 844. A township clerk cannot at the same time be a city street employee unless the city under its home rule powers relieves such employees from RC 143.41.

1954 OAG 4058. An employee in the classified service of the state who simultaneously occupies an elective office is subject to removal from his classified position even though the office is nonpartisan. If occupying elective office, he is ineligible for a classified appointment, and if while in classified service he declares for elective office, he is subject to removal proceedings.

1952 OAG 1116. A city councilman may not serve as township constable.

1951 OAG 1014. This section prohibits same person from holding concurrently the offices of township trustee and prison guard at the Ohio penitentiary.

1951 OAG 862. Holding an appointment as deputy sheriff amounts to taking part in politics, and a deputy sheriff is ineligible to hold the position of county dog warden.

1933 OAG 1926. The offices of township trustee and member of the county board of education are compatible.

1933 OAG 338. The county dog warden is prohibited by the civil service laws from accepting employment as deputy sealer of weights and measures. Accepting such public employment would amount to taking part in politics, in violation of this section.

1931 OAG 3398. A duly elected township constable may not concurrently hold a position under the classified service of a city.

1929 OAG 1285. The mayor of a village cannot also hold a position in the classified service of a city.

1929 OAG 1074. A state highway inspector, being in the classified civil service of the state, may not hold the office of township clerk at the same time.

1929 OAG 544. A member of the city police department who is in the classified civil service may not legally hold the office of a member of the city board of health at the same time.

1928 OAG 2545. A person holding a position in the classified civil service of the state, or of a county, city or city school district, may not at the same time hold the office of member or clerk of the board of deputy state supervisors and inspectors of elections, or board of deputy state supervisors of elections, without thereby violating this section.

1928 OAG 2060. Under this section, a person employed in the classified civil service of the state may not legally be a candidate for the office of member of council of a village, nor hold such office by election or appointment.

1927 OAG 902. A superintendent of a county home, who is in the classified civil service of the county, and who becomes a candidate for the office of member of the county board of education, violates this section, and is subject to removal as such superintendent.

4. Positions compatible

OAG 91-067. The position of county personnel officer is compatible with the position of court appointed volunteer of a juvenile court.

OAG 91-036. The position of president pro tempore of the legislative authority of a village is compatible with the position of bituminous plant inspector in the Ohio department of transportation, provided that the election to the legislative authority is nonpartisan.

OAG 88-020. A township trustee who is not elected to that office in a partisan election may also be employed as a truck driver in the classified service of the county highway department.

OAG 83-090. A director of a county board of elections may also serve as a member of a municipal civil service commission, even though the municipality is located within the county served by the board of elections.

OAG 79-112. An individual may serve as a member of a board of county commissioners and as administrator of a village located within that county at the same time.

OAG 79-111. The common law test of incompatibility is applicable to the simultaneous holding of a public office and a public employment by the same person. An individual is not precluded from holding office as municipal council member and employment as a special deputy sheriff at the same time, assuming that the special deputy holds a fiduciary relationship to the sheriff and thus is in the unclassified civil service. Where possible conflicts are remote and speculative, common law incompatibility or conflict of interest rules are not violated.

OAG 78-022. RC 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to RC 503.24, or from seeking that office in a nonpartisan election.

OAG 74-034. A person in the classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by RC 124.57, because that section only prohibits partisan political activity.

OAG 73-035. The offices of township trustee and juvenile probation officer are compatible.

OAG 72-109. The positions of township clerk and county highway department employee are incompatible, whether the highway position is classified or unclassified.

OAG 71-065. Assuming there is no village ordinance to the contrary, member of village police department may also serve as clerk of township in which village is located, unless it is physically impossible for same person to perform duties of both offices.

OAG 70-038. Postal employee in federal classified service does not hold public office within the meaning of RC 731.12, and is therefore not barred from serving as village councilman, although he may be subject to applicable provisions of federal law governing political activity within federal service.

OAG 66-053. The position of clerk of a local board of education is compatible with the office of member of a board of elections.

OAG 65-133. An engineer employed by a noncharter municipality on a part-time basis but holding a regular and permanent position on an annual salary payable monthly, is the head of a subdivision of the city under the supervision of the city director of public service and as such is an employee in the classified civil service, but the service of such city engineer, during the part time when he is not on such duty, as state legislative agent for the Ohio state automobile association, is not taking part in partisan politics and does not constitute a violation of RC 143.41.

1963 OAG 3521. In the absence of a valid ordinance or resolution by the legislative authority of the village prohibiting the chief or members of a village police department from taking part in politics, the chief or any such member may hold an elective or appointive political office at the same time he is serving in the police department, assuming he is physically able to do so.

1963 OAG 123. RC 143.41 is not applicable to village deputy marshals and one serving in the capacity of deputy village marshal, if otherwise qualified, may lawfully declare his candidacy for election to the office of mayor of such village.

1962 OAG 3393. RC 143.41 does not prohibit a person holding a position in the classified civil service of the state from serving as an election official, judge, or clerk at the polls or as a member of a board of zoning appeals.

1962 OAG 2797. One person may at the same time serve as an unclassified employee of the county auditor, not a deputy county auditor, and as mayor of a village in the county if it is physically possible for one person to perform the duties of both positions.

1962 OAG 2746. A member of a board of education of a city school district may at the same time serve as clerk of a city council to which he is elected, provided the charter of the city does not contain a contrary provision in regard to such clerk, and provided it is physically possible for one person to perform the duties of such offices.

1961 OAG 1993. A person may at the same time serve as mayor of a city and as teacher in the city school district providing it is physically possible for one person to discharge the duties of both positions.

1961 OAG 1989. The office of member of a county soldiers relief commission is not incompatible with the office of mayor of a municipal corporation.

1959 OAG 224. A member of a municipal civil service commission may also be a clerk of a board of elections and may serve also as a party executive committeeman.

1957 OAG 589. An assistant registrar in the bureau of motor vehicles whose position has been exempted from the classified civil service may at the same time be a member of a county board of elections and chairman of a county executive committee provided it is physically possible to perform the duties of all three positions.

1952 OAG 1116. A county service officer may serve as a member of the board of elections.

1952 OAG 1116. The offices of deputy clerk of a board of elections and member of the soldiers relief commission are not incompatible.

1952 OAG 1116. The positions of township clerk and member of the board of directors of a county agricultural society are not incompatible.

1945 OAG 367. The mere fact that a position in the state service is in the classified civil service and one in the service of a county is in the unclassified civil service does not in and of itself render such two positions incompatible; consequently, if the duties of the two positions are in no way conflicting or those of one a check upon those of the other or subordinate thereto in any manner, the same person may lawfully hold both positions at the same time.

1940 OAG 1972. Person holding a position in the classified civil service of the state does not bring himself within the prohibition of this section, or take part in politics by the mere acceptance of clerical work in a probate court.

1933 OAG 1571. Assuming that other county-employed stenographers are not in the classified civil service, they may report hearings before the tax commission of Ohio, in such county, and draw compensation for such, providing that it is physically possible for them to properly perform and discharge the duties of both positions.

5. Other activities

171 OS 177, 168 NE(2d) 535 (1960), In re Removal of Walker. Circulation of petitions for candidates for village council is political activity.

163 OS 109, 126 NE(2d) 138 (1955), Heidtman v Shaker Heights. The word, "politics," as used in GC 486-23 (RC 143.41) must be defined as politics in its narrower partisan sense, and activities of municipal employees in the classified service in circulating an initiative petition seeking enactment of an ordinance relating to their employment do not constitute a taking part in politics as that term is used in such section.

27 App(3d) 175, 27 OBR 213, 500 NE(2d) 404 (Wayne 1986), Northern Ohio Patrolmen's Benevolent Assn v Wayne County Sheriff's Dept. A deputy sheriff violates RC 124.57 by serving as director of an employee association that endorses candidates and by signing a press release announcing endorsements since these activities are not so much an expression of opinion as an attempt to influence the votes of others.

99 App 415, 119 NE(2d) 644 (1954), Heidtman v Shaker Heights; affirmed by 163 OS 109, 126 NE(2d) 138 (1955). The preparation, circulation and filing of an initiative petition by members of a municipal fire department in the classified service seeking enactment of an ordinance to establish the three-platoon system in the fire department is not in violation of RC 143.41. (See also Heidtman v Shaker Heights, 162 OS 214, 122 NE(2d) 634 (1954).)

323 FSupp 1281, 28 Misc 141 (ND Ohio 1971), Gray v Toledo. By interpreting words "political" and "politics" in their narrower partisan sense, RC 143.41 regulates nonprotected political activity and is, therefore, lawful enactment by legislature.

OAG 83-095. RC 124.57 may not constitutionally be enforced to prohibit classified employees from engaging in nonpartisan political activity; however an appointing authority has the authority to take action pursuant to RC 124.34 to remove or otherwise discipline a classified employee who is engaged in partisan political activity in violation of RC 124.57, but such authority is discretionary, not mandatory, in nature.

1951 OAG 862. A person who is appointed dog warden of a county is, under GC 486-8 (RC 143.08), in the classified service and forbidden to take any part in politics, except to vote as he pleases and to express his political opinions.

1933 OAG 714. Employees in the classified service are not taking part in politics within the meaning of that phrase as used in this section when carrying tire covers on their automobiles which have printed thereon the name of a candidate for public office, the party ticket on which the name of the candidate appears and the date of the election.

1928 OAG 2276. Where the trustees of firemens' pension funds and of police relief funds effect an organization for the purpose of furthering amendments of the statutes under which they function,

and where members of police and fire departments join such organization, such action is not political activity within this section.

PBR 84 INV-10-1332 (3-15-86), Collins v New Vienna. The "politics" in which classified civil servants are forbidden by RC 124.57 to take part includes standing for election to village council as a nonpartisan candidate.

124.60 Abuse of official power for political reasons prohibited

No officer or employee of the state or the several counties, cities, and city school districts thereof, or civil service townships, shall appoint, promote, reduce, suspend, lay off, discharge, or in any manner change the official rank or compensation of any officer or employee in the classified service, or promise or threaten to do so, or harass, discipline, or coerce any such officer or employee, for giving, withholding, or refusing to support any party.

HISTORY: 1975 H 1, eff. 6-13-75
1974 S 243, H 513; 1973 S 174

Note: 124.60 is former 143.44 recodified by 1973 S 174, eff. 12-4-73; 1953 H 1; GC 486-26.

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 15.57

CROSS REFERENCES

Report of violation of statutes or rules filed by employee, protection of reporting employee, 124.341

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Civil Servants and Other Public Officers and Employees § 2; 15, Civil Servants and Other Public Officers and Employees § 289; 39, Employment Relations § 442; 54, Highways, Streets, and Bridges § 23
Am Jur 2d: 15A, Civil Service § 63, 79

BOND LAW

131.23 Bonds for indebtedness and general and disability assistance; authorization in anticipation of tax collection; special election; distribution of proceeds

The various political subdivisions of this state may issue bonds, and any indebtedness created by such issuance shall not be subject to the limitations or included in the calculation of indebtedness prescribed by sections 133.05, 133.06, 133.07, and 133.09 of the Revised Code, but such bonds may be issued only under the following conditions:

(A) The subdivision desiring to issue such bonds shall obtain from the county auditor a certificate showing the total amount of delinquent taxes due and unpayable to such subdivision at the last semiannual tax settlement.

(B) The fiscal officer of that subdivision shall prepare a statement, from the books of the subdivision, verified by him under oath, which shall contain the following facts of such subdivision:

(1) The total bonded indebtedness;

(2) The aggregate amount of notes payable or outstanding accounts of the subdivision, incurred prior to the commencement of the current fiscal year, which shall include all evidences of indebtedness issued by the subdivision except notes issued in anticipation of bond issues and the indebtedness of any nontax-supported public utility;

(3) Except in the case of school districts, the aggregate current year's requirement for general assistance and disability assistance provided under Chapters 5113. and 5115. of the Revised Code that the subdivision is unable to finance except by the issue of bonds;

(4) The indebtedness outstanding through the issuance of any bonds or notes pledged or obligated to be paid by any delinquent taxes;

(5) The total of any other indebtedness;

(6) The net amount of delinquent taxes unpledged to pay any bonds, notes, or certificates, including delinquent assessments on improvements on which the bonds have been paid;

(7) The budget requirements for the fiscal year for bond and note retirement;

(8) The estimated revenue for the fiscal year.

(C) The certificate and statement provided for in divisions (A) and (B) of this section shall be forwarded to the tax commissioner together with a request for authority to issue bonds of such subdivision in an amount not to exceed seventy per cent of the net unobligated delinquent taxes and assessments due and owing to such subdivision, as set forth in division (B)(6) of this section.

(D) No subdivision may issue bonds under this section in excess of a sufficient amount to pay the indebtedness of the subdivision as shown by division (B)(2) of this section and, except in the case of school districts, to provide funds for general assistance and disability assistance, as shown by division (B)(3) of this section.

(E) The tax commissioner shall grant to such subdivision authority requested by such subdivision as restricted by divisions (C) and (D) of this section and shall make a record of the certificate, statement, and grant in a record book devoted solely to such recording and which shall be open to inspection by the public.

(F) The commissioner shall immediately upon issuing the authority provided in division (E) of this section notify the proper authority having charge of the retirement of bonds of such subdivision by forwarding a copy of such grant of authority and of the statement provided for in division (B) of this section.

(G) Upon receipt of authority, the subdivision shall proceed according to law to issue the amount of bonds authorized by the commissioner, and authorized by the taxing authority, provided the taxing authority of that subdivision may by resolution submit to the electors of that subdivision the question of issuing such bonds. Such resolution shall make the declarations and statements required by section 133.18 of the Revised Code. The county auditor and taxing authority shall thereupon proceed as set forth in divisions (C) and (D) of such section. The election on the question of issuing such bonds shall be held under divisions (E), (F), and (G) of such section, except that publication of the notice of such election shall be made on four separate days prior to such election in one or more newspapers of general circulation in the subdivisions. Such bonds may be exchanged at their face value with creditors of the subdivision in liquidating the indebtedness described and enumerated in division (B)(2) of this section or may be sold as provided in Chapter 133. of the Revised Code, and in either event shall be uncontestable.

(H) The per cent of delinquent taxes and assessments collected for and to the credit of the subdivision after the

exchange or sale of bonds as certified by the commissioner shall be paid to the authority having charge of the sinking fund of the subdivision, which money shall be placed in a separate fund for the purpose of retiring the bonds so issued. The proper authority of the subdivisions shall provide for the levying of a tax sufficient in amount to pay the debt charges on all such bonds issued under this section.

(I) This section is for the sole purpose of assisting the various subdivisions in paying their unsecured indebtedness, and providing funds for general assistance and disability assistance. The bonds issued under authority of this section shall not be used for any other purpose and any exchange for other purposes, or the use of the money derived from the sale of such bonds by the subdivision for any other purpose, is misapplication of funds.

(J) The bonds authorized by this section shall be redeemable or payable in not to exceed ten years from date of issue and shall not be subject to or considered in calculating the net indebtedness of the subdivision. The budget commission of the county in which the subdivision is located shall annually allocate such portion of the then delinquent levy due such subdivision which is unpledged for other purposes to the payment of debt charges on the bonds issued under authority of this section.

(K) The issue of bonds under this section shall be governed by Chapter 133. of the Revised Code, respecting the terms used, forms, manner of sale, and redemption except as otherwise provided in this section.

The board of county commissioners of any county may issue bonds authorized by this section and distribute the proceeds of such bond issues to any or all of the cities and townships of such counties, according to their relative needs for general assistance as determined by such county.

All sections of the Revised Code inconsistent with or prohibiting the exercise of the authority conferred by this section are inoperative respecting bonds issued under this section.

HISTORY: 1991 H 298, eff. 7-26-91
1989 H 230; 1988 H 708; 1983 H 260; 1980 H 1062; 1976 H 920; 126 v 392; 125 v 713; 1953 H 1; GC 2293-43, 2293-44

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

Uniform bond law, 133.01 et seq.

Determination of net indebtedness of any subdivision, securities issued, 133.04

Taxes received from railroad reorganization, 323.32

Bonds and notes, issuance for soil and water conservation district improvements, 1515.24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Securities § 53, 63; 78, Public Welfare § 21; 87, Taxation § 898

NOTES ON DECISIONS AND OPINIONS

137 OS 255, 28 NE(2d) 593 (1940), State ex rel Cleveland v Gesell. This section, authorizing a political subdivision of the state to pay unsecured indebtedness and provide funds for poor relief by the issuance of bonds under prescribed conditions and in a limited amount, is a valid enactment within the power of the general assembly; and a subdivision, complying with the statute, may properly issue bonds for the designated purposes, when it appears there is no transgression of constitutional provisions or other lawful enactments.

1944 OAG 6621. Delinquent tax bonds may not be issued by the taxing authority of a subdivision under this section, for purpose of funding a deficit created during the previous fiscal year in violation of limitation and restrictions on indebtedness imposed by budget law.

1941 OAG 3455. No vested rights exist in uncollected taxes, and when bonds are lawfully issued in anticipation of collection of such taxes, as for example bonds issued under this section, the firemen's relief and pension fund created and administered under provisions of GC 4600 (RC 741.02) et seq. is not entitled to any part of such delinquent tax collections.

1939 OAG 360. When, pursuant to provisions of this section, a subdivision issues bonds in anticipation of collection of delinquent taxes, such subdivision may again issue similar bonds under provisions of this section, against those taxes and assessments which became delinquent subsequent to date of semiannual tax settlement next preceding first issuance of such bonds.

1936 OAG 5700. When a subdivision issues bonds under this section, the amount of unpledged delinquent taxes and assessments which are collected shall be paid to the authority having charge of the sinking fund of the subdivision, which money shall be placed in a separate fund for the purpose of retiring said bonds.

133.18 Submission of question of issuing bonds to electors

(A) The taxing authority of a subdivision may by legislation submit to the electors of the subdivision the question of issuing any general obligation bonds, for one purpose, that the subdivision has power or authority to issue.

(B) When the taxing authority of a subdivision desires or is required by law to submit the question of a bond issue to the electors, it shall pass legislation that does all of the following:

(1) Declares the necessity and purpose of the bond issue;

(2) States the date of the authorized election at which the question shall be submitted to the electors;

(3) States the amount, approximate date, estimated rate of interest, and maximum number of years over which the principal of the bonds may be paid;

(4) Declares the necessity of levying a tax outside the tax limitation to pay the debt charges on the bonds and any anticipatory securities.

The estimated rate of interest, and any statutory or charter limit on interest rate that may then be in effect and that is subsequently amended, shall not be a limitation on the actual interest rate or rates on the securities when issued.

(C) The taxing authority shall certify a copy of the legislation passed under division (B) of this section to the county auditor. The county auditor shall promptly calculate and advise and, not later than seventy-five days before the election, confirm that advice by certification to, the taxing authority the estimated average annual property tax levy, expressed in cents or dollars and cents for each one hundred dollars of tax valuation and in mills for each one dollar of tax valuation, that the county auditor estimates to be required throughout the stated maturity of the bonds to pay the debt charges on the bonds. In calculating the estimated average annual property tax levy for this purpose, the county auditor shall assume that the bonds are issued in one series bearing interest and maturing in substantially equal principal amounts in each year over the maximum number of years over which the principal of the bonds may be paid as stated in that legislation, and that the amount of the tax valuation of the subdivision for the current year

remains the same throughout the maturity of the bonds. If the tax valuation for the current year is not determined, the county auditor shall base the calculation on the estimated amount of the tax valuation submitted by the county auditor to the county budget commission. If the subdivision is located in more than one county, the county auditor shall obtain the assistance of the county auditors of the other counties, and those county auditors shall provide assistance, in establishing the tax valuation of the subdivision for purposes of certifying the estimated average annual property tax levy.

(D) After receiving the county auditor's advice under division (C) of this section, the taxing authority by legislation may determine to proceed with submitting the question of the issue of securities, and shall, not later than the seventy-fifth day before the day of the election, file the following with the board of elections:

(1) Copies of the legislation provided for in division (B) of this section and in this division (D);

(2) The amount of the estimated average annual property tax levy, expressed in cents or dollars and cents for each one hundred dollars of tax valuation and in mills for each one dollar of tax valuation, as estimated and certified to the taxing authority by the county auditor.

(E)(1) The board of elections shall prepare the ballots and make other necessary arrangements for the submission of the question to the electors of the subdivision. If the subdivision is located in more than one county, the board shall inform the boards of elections of the other counties of the filings with it, and those other boards shall if appropriate make the other necessary arrangements for the election in their counties. The election shall be conducted, canvassed, and certified in the manner provided in Title XXXV of the Revised Code.

(2) The election shall be held at the regular places for voting in the subdivision. If the electors of only a part of a precinct are qualified to vote at the election the board of elections may assign the electors in that part to an adjoining precinct, including an adjoining precinct in another county if the board of elections of the other county consents to and approves the assignment. Each elector so assigned shall be notified of that fact prior to the election by notice mailed by the board of elections, in such manner as it determines, prior to the election.

(3) The board of elections shall publish a notice of the election, in one or more newspapers of general circulation in the subdivision, at least once no later than ten days prior to the election. The notice shall state all of the following:

(a) The principal amount of the proposed bond issue;

(b) The stated purpose for which the bonds are to be issued;

(c) The maximum number of years over which the principal of the bonds may be paid;

(d) The estimated additional average annual property tax levy, expressed in cents or dollars and cents for each one hundred dollars of tax valuation and in mills for each one dollar of tax valuation, to be levied outside the tax limitation, as estimated and certified to the taxing authority by the county auditor.

(F)(1) The form of the ballot to be used at the election shall be substantially either of the following, as applicable:

(a) "Shall bonds be issued by the _____ (name of subdivision) for the purpose of _____ (purpose of the bond issue) in the principal amount of _____ (principal amount of the bond issue), to be repaid annually over a maximum period of _____ (the maximum number of years over which the principal of the bonds may be paid) years, and an annual levy of property taxes be made outside the _____ (as applicable, "ten-mill" or "___ charter tax") limitation, estimated by the county auditor to average over the repayment period of the bond issue _____ (number of mills) mills for each one dollar of tax valuation, which amounts to _____ (rate expressed in cents or dollars and cents, such as "36 cents" or "$1.41") for each $100 of tax valuation, to pay the annual debt charges on the bonds, and to pay debt charges on any notes issued in anticipation of those bonds.

	For the bond issue
	Against the bond issue

"

(b) In the case of an election held pursuant to legislation adopted under section 3375.43 or 3375.431 of the Revised Code:

"Shall bonds be issued for _____ (name of library) for the purpose of _____ (purpose of the bond issue), in the principal amount of _____ (amount of the bond issue) by _____ (the name of the subdivision that is to issue the bonds and levy the tax) as the issuer of the bonds, to be repaid annually over a maximum period of _____ (the maximum number of years over which the principal of the bonds may be paid) years, and an annual levy of property taxes be made outside the ten-mill limitation, estimated by the county auditor to average over the repayment period of the bond issue _____ (number of mills) mills for each one dollar of tax valuation, which amounts to _____ (rate expressed in cents or dollars and cents, such as "36 cents" or "$1.41") for each $100 of tax valuation, to pay the annual debt charges on the bonds, and to pay debt charges on any notes issued in anticipation of those bonds.

	For the bond issue
	Against the bond issue

"

(2) The purpose for which the bonds are to be issued shall be printed in the space indicated, in boldface type.

(G) The board of elections shall promptly certify the results of the election to the tax commissioner, the county auditor of each county in which any part of the subdivision is located, and the fiscal officer of the subdivision. The election, including the proceedings for and result of the election, is incontestable other than in a contest filed under section 3515.09 of the Revised Code in which the plaintiff prevails.

(H) If a majority of the electors voting upon the question vote for it, the taxing authority of the subdivision may proceed under sections 133.21 to 133.33 of the Revised Code with the issuance of the securities and with the levy and collection of a property tax outside the tax limitation during the period the securities are outstanding sufficient in amount to pay the debt charges on the securities, including

debt charges on any anticipatory securities required to be paid from that tax. If legislation passed under section 133.22 or 133.23 of the Revised Code authorizing those securities is filed with the county auditor on or before the last day of November, the amount of the voted property tax levy required to pay debt charges or estimated debt charges on the securities payable in the following year shall if requested by the taxing authority be included in the taxes levied for collection in the following year under section 319.30 of the Revised Code.

(I)(1) If, before any securities authorized at an election under this section are issued, the net indebtedness of the subdivision exceeds that applicable to that subdivision or those securities, then and so long as that is the case none of the securities may be issued.

(2) No securities authorized at an election under this section may be initially issued after the first day of the sixth January following the election, but this period of limitation shall not run for any time during which any part of the permanent improvement for which the securities have been authorized, or the issuing or validity of any part of the securities issued or to be issued, or the related proceedings, is involved or questioned before a court or a commission or other tribunal, administrative agency, or board.

(3) Securities representing a portion of the amount authorized at an election that are issued within the applicable limitation on net indebtedness are valid and in no manner affected by the fact that the balance of the securities authorized cannot be issued by reason of the net indebtedness limitation or lapse of time.

(4) Nothing in this division (I) shall be interpreted or applied to prevent the issuance of securities in an amount to fund or refund anticipatory securities lawfully issued.

(5) The limitations of divisions (I)(1) and (2) of this section do not apply to any securities authorized at an election under this section if at least ten per cent of the principal amount of the securities, including anticipatory securities, authorized has theretofore been issued, or if the securities are to be issued for the purpose of participating in any federally or state-assisted program.

(6) The certificate of the fiscal officer of the subdivision is conclusive proof of the facts referred to in this division (I).

HISTORY: 1989 H 230, eff. 10-30-89

Note: 133.18 is former 133.09, amended and recodified by 1989 H 230, eff. 10-30-89; 1980 H 1062; 1971 S 105; 125 v 713; 1953 H 1; GC 2293-19.

Note: Former 133.18 repealed by 1989 H 230, eff. 10-30-89; 1981 H 235; 1980 H 1062; 132 v S 350; 128 v 67; 125 v 713; 1953 H 1; GC 2293-15c.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

Baldwin's Ohio Township Law, Text 21.29, 35.03, 35.10, 35.45, 35.57, 91.04; Forms 7.02 to 7.04, 7.07 to 7.12, 7.16

Baldwin's Ohio School Law, Text 41.09, 41.12(A)(B), 41.13(A), 41.14(A) to (C), 41.15, 41.17(A), 41.32; Forms 34.13 to 34.16, 41.54, 41.61 to 41.64, 41.68, 41.80

Gotherman & Babbit, Ohio Municipal Law, Text 17.20, 17.23, 17.24, 17.26, 17.39; Forms 17.03 to 17.05

CROSS REFERENCES

Federal aid bonds and notes, election on question of issuance, 139.02, 139.04

Board of county commissioners may issue bonds upon petition, 307.68

County hospital, tax anticipation notes, 339.14

Soldier's memorial building bonds, election on question of issuance, 345.02, 511.08

Board of township trustees, bond issue for fire prevention measures limited, 505.40

Bond issues by board of trustees of township police district, 505.52

Bonds for schools, detention homes, or forestry camps, election on question of issuance, 2151.655

School facility bonds, election on question of issuance, 3318.06

Community colleges, bonds, 3354.11

Voting machines, issuance of bonds for acquisition of, 3507.16

Port authorities created by subdivisions, power to issue bonds, 4582.31

Children's home bonds, election on question of issuance, 5153.52

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 387; 77, Public Securities § 50, 51, 53 to 55, 57, 58, 63, 66, 69; 82, Schools, Universities, and Colleges § 420

Am Jur 2d: 64, Public Securities and Obligations § 124 et seq., 180

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax. 68 ALR2d 1041

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Compliance sufficient
3. Invalidating defects
4. Single purpose requirement
5. Compliance with stated purpose

1. In general

167 OS 23, 145 NE(2d) 668 (1957), State ex rel Miami Trace Bd of Ed v Thompson. Failure to comply with certain specific requirements of the Uniform Bond Act is a matter of affirmative defense. (Annotation from former RC 133.09.)

160 OS 77, 113 NE(2d) 241 (1953), Cross v Madison Bd of Ed. In computing the percentage of those voting on a bond issue, blank ballots are not counted in arriving at the total number of votes cast. (Annotation from former RC 133.18.)

153 OS 294, 91 NE(2d) 673 (1950), State ex rel Cincinnati v Flick. The steps required by GC 2293-19 to GC 2293-23 (RC 133.09 to RC 133.13), as a prerequisite to the issuance of bonds outside the constitutional and statutory limitations constitute a "pending proceeding" from and after the adoption of the resolution of necessity, and an amendment to these statutes does not affect proceedings commenced prior to the effective date of such amendment, such proceedings being saved therefrom by the provisions of GC 26 (RC 1.20), that "whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal . . . unless otherwise expressly provided in the amending or repealing act." (Annotation from former RC 133.09.)

152 OS 77, 87 NE(2d) 462 (1949), State ex rel Wuebker v Bockrath. Where the board of a joint township hospital district desires to submit the question of the issuance of bonds of the district to the electors of the district, the proper procedure is under this section. (Annotation from former RC 133.09.)

4 App(2d) 99, 212 NE(2d) 671 (1963), Schnoerr v Miller; affirmed by 2 OS(2d) 121, 206 NE(2d) 902 (1965). Where a proposed municipal bond issue is approved at an election without compliance with the mandatory procedural requirements of the Uniform Bond Act, injunction to enjoin issuance of the bonds is an appropriate remedy. (Annotation from former RC 133.10.)

72 Abs 301, 131 NE(2d) 704 (CP, Logan 1955), State ex rel Bellefontaine Bd of Ed v Jones. Where wide publicity was given to an election in which a bond issue received a seventy-six per cent

affirmative vote, the fact that the requirement of publication of a notice thereof for four consecutive weeks preceding the election was not strictly complied with does not invalidate the election. (Annotation from former RC 133.18.)

32 Abs 277 (CP, Hamilton 1940), Buzek v Stewart. Word "approximate" as used in this section refers to date, rate of interest and maturity, and was placed in the statute rather for the information of the county auditor than for the information of the voters. (Annotation from former RC 133.09.)

32 Abs 277 (CP, Hamilton 1940), Buzek v Stewart. General rule as to preliminary ordinances or resolutions with regard to bond issues is that the ordinance or resolution must by fair and natural construction convey a reasonable certainty of meaning to the average intellect. (Annotation from former RC 133.09.)

OAG 88-013. When a library board of trustees complies with RC 3375.43 and 5705.23 and submits a resolution requesting the submission of the question of issuing bonds to the taxing authority of the political subdivision to whose jurisdiction the library board is subject, the taxing authority has a duty to submit the question to the electorate. (Annotation from former RC 133.09.)

OAG 80-003; overruled in part by OAG 85-072. Interest earned on the proceeds of a special levy for debt charges imposed by a noncharter municipality in accordance with RC 133.09 or on the proceeds of a special assessment levied by a noncharter municipality under RC 727.25, may be applied only to the purpose for which such levy was made. (Annotation from former RC 133.09.)

OAG 65-52. A proposed bond issue outside of the constitutional ten-mill tax limitation to be paid from funds derived from a general tax levy must be submitted to the electors under RC 133.09 which requires submission to the board of elections ninety days preceding the election, notwithstanding a home rule charter provision that a municipal bond issue can be placed before the electorate if submitted to the board of elections sixty days prior to the election. (Annotation from former RC 133.09.)

1961 OAG 2479. A board of education of a city, exempted village, or local school district may expend money to improve its athletic field; and such a subdivision may submit to the electors of the subdivision the question of issuing any bonds and levying of any tax for the purpose of providing the necessary funds therefor. (Annotation from former RC 133.18.)

1958 OAG 2992. Where a school district proposes to issue bonds and to levy a tax outside the ten-mill limitation to pay the interest thereon and to retire such bonds, and where the question thus involved is to be submitted to the electors in a November election, such district may proceed either under RC 133.09 et seq. or under RC 133.18. (Annotation from former RC 133.09.)

1954 OAG 4178. Township trustees may submit a bond issue taking the form of a single proposal for the construction of a township fire station and for the purchase of fire apparatus, equipment and appliances; said issue not to exceed $20,000. (Annotation from former RC 133.10.)

1951 OAG 933. When a proposed bond issue has been submitted by a board of education to the electors of its district and money have been collected from approved tax levy and placed in the bond retirement fund, and thereafter, by reason of doubt of validity of such submission, the proposition is resubmitted and again approved by the electors, moneys paid in the meantime from the general fund of the district for the construction of a part of the proposed improvement, may not, under GC 5625-13 and GC 5625-13a (RC 5705.14 and RC 5705.15) be transferred from said bond retirement fund to reimburse the general fund for the sum so expended. In such case, if the portion of the proposed improvement which was constructed pending the resubmission was included in the original plan for such improvement, the general fund may be reimbursed from the proceeds of such bond issue. (Annotation from former RC 133.09.)

1950 OAG 2636. The question of the issuance of bonds pursuant to this section may be submitted to a vote of the electors of the issuing subdivision at a general election, without the consent of the department of taxation of Ohio or the director of education. (Annotation from former RC 133.18.)

1930 OAG 2792. In the event the taxing authority, after the question of issuing bonds has been favorably voted upon by the electors, determines that the issuance of such bonds is not necessary, there is nothing to preclude such taxing authority from thereafter determining that their issuance is necessary and proceedings under GC 2293.25 to GC 2293-29 (RC 133.32 to RC 133.36), inclusive. (Annotation from former RC 133.09.)

2. Compliance sufficient

160 OS 77, 113 NE(2d) 241 (1953), Cross v Madison Bd of Ed. In calculating millage the county auditor is not required to use a mathematically exact tax valuation. (Annotation from former RC 133.09.)

152 OS 77, 87 NE(2d) 462 (1949), State ex rel Wuebker v Bockrath. Under this section, the taxing authority desiring to submit the question of the issuing of bonds to the electors of the district is required to pass but one resolution; the fact that such taxing authority passes other resolutions on the same day as the required resolution does not invalidate proceedings under such section. (Annotation from former RC 133.09.)

152 OS 77, 87 NE(2d) 462 (1949), State ex rel Wuebker v Bockrath. A section of the Uniform Bond Act, requiring the clerk or other officer having charge of the minutes of the taxing authority to furnish successful bidder of its bonds a true transcript, is for the convenience of the successful bidder and its proper preparation is not a condition precedent to the authorization of an election or the issuance of bonds. (Annotation from former RC 133.09.)

144 OS 565, 60 NE(2d) 183 (1945), State ex rel Springfield Bd of Ed v Maxwell. The bond issue of a political subdivision approved at an election by more than the requisite percentage of electors voting thereon will not be invalidated on the ground that the resolution of necessity, passed under this section, provided for a maximum maturity of twenty years, whereas the notice of the election and the ballots submitted provided for a tax levy covering a maximum period of twenty-two and one-half years. (Annotation from former RC 133.09.)

102 App 315, 143 NE(2d) 159 (1955), State ex rel Southeastern Bd of Ed v Allen. Where a county auditor certifies to a board of education an incorrect figure for the average annual tax levy to pay the principal and interest on bonds, a figure of 3.5 mills per dollar being certified instead of the correct figure of 4.2 mills per dollar, such incorrect figure is carried in the text of the notice of election published by the board of education and on the face of the ballot, and such bond issue carries by a majority of 75.8 per cent of the electors, there is a substantial compliance with the provisions of the Uniform Bond Act and such clerical defect in the notice of election and on the ballot is not sufficient to invalidate such bonds. (Annotation from former RC 133.09.)

96 App 210, 121 NE(2d) 561 (1953), State ex rel Spitler v Beidleman. Where the council of a municipality provides for submission to the electors of the question of issuing bonds, provides for a tax levy outside the ten-mill limitation for retirement of such bonds over a twenty-five-year maximum period, and the ballot prepared and submitted to the electors provides for a maximum retirement period of thirty years, such misstatement in the ballot of the maximum maturity period of such bonds does not invalidate the proceedings. (Annotation from former RC 133.09.)

92 Abs 457, 192 NE(2d) 1 (CP, Madison 1963), Mt. Sterling v Tracy. Where resolution of council was filed with county auditor 106 rather than 110 days before election, and auditor's certification was made 105 days prior to election, and resolution to submit measure to voters was filed 92 days prior to election, statute was substantially complied with. (Annotation from former RC 133.09.)

92 Abs 457, 192 NE(2d) 1 (CP, Madison 1963), Mt. Sterling v Tracy. As applied to RC 133.09 substantial compliance means that there was no error of omission or commission in the proceedings, which substantially and materially deprived the voters of the full time and information which the statute requires in order to discuss, debate, inquire and consider whether in their opinion the burden of the additional tax for the reason and to the extent stated should be approved or disapproved. (Annotation from former RC 133.09.)

OAG 73-100. The question of construction or improvement of a town hall, at a cost greater than ten thousand dollars, may be, and the question of issuance of bonds to meet the cost of construction or improvement of a town hall must be submitted to the electorate by the board of township trustees at any election or at the same election. (Annotation from former RC 133.09.)

3. Invalidating defects

2 OS(2d) 121, 206 NE(2d) 902 (1965), Schnoerr v Miller. The Uniform Bond Act requires that the purpose for which such bonds are to be used be specifically set forth in the resolution, notice of election, and the ballot, and the designation of a contemplated municipal improvement as "a public building" is not a sufficient description of the purpose of a bond issue to comply with the requirement of the act. (Annotation from former RC 133.09.)

165 OS 12, 133 NE(2d) 323 (1956), State ex rel Hamilton County Bd of Commrs v Guckenberger. Where the estimated average additional tax rate for a road building bond issue was erroneously computed but corrected by stickers on all ballots except absentee ballots, the failure to show the correct rate on the absentee ballots invalidated the election. (Annotation from former RC 133.09.)

155 OS 402, 99 NE(2d) 179 (1951), State ex rel Jackson County Bd of Commrs v Jenkins. The provisions of this section are mandatory, and a substantial compliance therewith is a prerequisite for the issuance of bonds. (Annotation from former RC 133.09.)

4 App(2d) 99, 212 NE(2d) 671 (1963), Schnoerr v Miller; affirmed by 2 OS(2d) 121, 206 NE(2d) 902 (1965). A ballot submitted at an election for approval of a municipal bond issue, which designates the purpose for which the bonds are to be issued as a "public building," where the purpose contemplated is the construction of a community blast and fallout shelter, does not meet the mandatory procedural requirements of the Uniform Bond Act. (Annotation from former RC 133.09.)

1930 OAG 1404. When the question of issuing bonds is submitted to the electors of a subdivision pursuant to the provisions of the Uniform Bond Act and the question carries by one vote, authorizing the issue and a tax levy outside of the fifteen mill limitation to pay the interest and principal of such bonds, in the event such levy has been miscalculated and is in fact approximately twenty-six per cent greater than authorized by the electors, such election is invalid and the people of such subdivision may not be taxed pursuant thereto. (Annotation from former RC 133.09.)

4. Single purpose requirement

167 OS 23, 145 NE(2d) 668 (1957), State ex rel Miami Trace Bd of Ed v Thompson. A resolution for a school bond issue for the purposes of acquiring real estate, constructing fireproof buildings, providing furnishings therefor, improving non-fireproof buildings, and providing furnishings therefor is for a single purpose. (Annotation from former RC 133.10.)

163 OS 159, 126 NE(2d) 449 (1955), State ex rel Speeth v Carney. A resolution of necessity which provides for the "construction of subways" rather than for the "construction of a subway" properly expresses a single and not a multiple purpose. (Annotation from former RC 133.10.)

129 OS 206, 194 NE 415 (1935), State ex rel Upper Sandusky v Snyder. A resolution passed by the council of a municipality, which provides for calling an election on the issuance of bonds, "for the purpose of acquiring or constructing waterworks," relates the one purpose only. (Annotation from former RC 133.10.)

45 App 470, 187 NE 248 (1933), Oberlin v Morris. Municipal legislation providing for an election to authorize the issue and sale of bonds "to construct or purchase a municipal electric light and power plant, consisting of works for the generation and transmission of electricity and equipping the same, including transmission and distribution lines for supplying electricity to the municipality and the inhabitants thereof," constitutes legislation for a single purpose and is authorized by statute. (Annotation from former RC 133.10.)

83 Abs 314, 169 NE(2d) 314 (CP, Cuyahoga 1960), Bearden v Shaker Heights. A ballot stating that a bond issue shall be for "improving recreation facilities by constructing swimming pools and other fireproof structures and play areas and otherwise developing the sites therefor" does not violate the "one purpose" rule. (Annotation from former RC 133.10.)

5. Compliance with stated purpose

71 Abs 140, 128 NE(2d) 267 (CP, Cuyahoga 1955), Bartlett v Miamisburg Bd of Ed. The authority and discretion of a board of education over the location, number and nature of elementary school buildings is not restricted by a bond levy, the express purpose of which was to acquire a site and construct "an elementary school building and additions to existing school buildings." (Annotation from former RC 133.10.)

OAG 71-033. Funds from a voted tax levy under RC 5705.191 for "constructing and equipping a new children's home" may be expended to erect, on the same premises, a service building to house vehicles and maintenance equipment to be used in connection with such home. (Annotation from former RC 133.10.)

OAG 65-94. The board of education cannot legally proceed with the performance of less than the entire stated purpose for which the bond issue was approved, i.e., constructing additions to and improving elementary school buildings and constructing a physical education facility, including site development. (Annotation from former RC 133.10.)

1964 OAG 1456; overruled in part by OAG 80-070. The unexpended balance from the proceeds of a bond issue, or from the interest on the proceeds, which is no longer needed for the purpose for which such bonds were issued must be used in accordance with RC 5705.14. (Annotation from former RC 133.10.)

1964 OAG 1456; overruled in part by OAG 80-070. The proceeds or the interest on the proceeds of a bond issue for the purpose of constructing, equipping and furnishing school buildings, including the acquisition and improvement of sites therefor, remaining after the buildings have been constructed, equipped and furnished, may not be used as a fund for repairs and improvements to such school buildings. (Annotation from former RC 133.10.)

1956 OAG 6873. Proceeds from the sale of bonds voted for the purpose "of providing for the construction of a fireproof elementary school building and a gymnasium, the making of alterations and improvements in fireproof and non-fireproof school buildings, and for the improvement of school grounds and playgrounds" and as so provided in the resolutions of the board of education passed prior to the election may not be used to purchase an existing building (real estate) to be used for school purposes. (Annotation from former RC 133.10.)

1950 OAG 1648. The entire proceeds of the sale of bonds issued by a board of education for the purpose of "constructing a group of fireproof school buildings, to wit: a vocational-agricultural school building, a school stadium and school swimming pool and furniture and furnishings" may not be expended for the construction of a school stadium. (Annotation from former RC 133.10.)

1950 OAG 1648. Where bonds are issued for one purpose which contemplates more than one improvement falling in the same class the question of whether or not the issuing authority has abused its discretion in expending the fund derived from the proceeds of the sale of such bonds is dependent upon the circumstances in each case and is properly determinable by an appropriate proceeding in a court having jurisdiction of the action. (Annotation from former RC 133.10.)

FEDERAL AID BONDS

139.02 Subdivisions may issue bonds to participate in federal aid; limitations; submission to electors; maturity

For the purpose of enabling subdivisions to participate in federal aid provided by any act of congress, and for such purpose only, the taxing authority of any subdivision may issue bonds during the effective period of the act of congress, subject to Chapter 133., except as provided in sections 139.01 to 139.04, of the Revised Code. No bonds shall be issued under this section for the acquisition, construction, extension, enlargement, lease, operation, or maintenance of any proprietary function of a subdivision which will compete with existing private enterprise.

If the department of taxation certifies that the subdivision is unable to issue such bonds subject to the limitations prescribed by sections 133.05, 133.06, 133.07, and 133.09 of the Revised Code, whether or not such bonds have been or may be voted, then such bonds may be issued to the extent required without the authority of an election and outside the limitations prescribed by those sections after exhausting the powers for the creation of net indebtedness within such limitations. The certificate as to the matters required by sections 139.01 to 139.04 of the Revised Code is final. This section does not prevent the application to such bonds of division (B)(1) of section 133.05 or division (C)(2) of section 133.07 of the Revised Code to the extent that the bonds are self-supporting securities.

Such bonds shall not be subject to the limitations of sections 133.05, 133.06, 133.07, and 133.09 of the Revised Code.

The question of issuing such bonds may be submitted to the electors, notwithstanding the fact that approval by the proper federal authorities or their authorized representatives of the project to be financed by such bonds has not been first obtained; but no such bonds shall be issued, whether under authority of an election or otherwise, except to the extent that the project to be financed by such bonds has, prior to their issue, received the approval of the proper federal authorities or their authorized representatives, nor until an agreement has been entered into between the proper authorities of the subdivision and the proper federal authorities.

When the conditional approval by the proper federal authorities or their authorized representatives has first been obtained for the project, such question may be submitted with the consent of the department to the electors.

The legislation submitting the question shall make the declarations and statements required by section 133.18 of the Revised Code. The county auditor and taxing authority shall thereupon proceed as set forth in divisions (C) and (D) of that section.

The first maturity of any bonds issued under this chapter, whether voted or unvoted, may be postponed to any date not later than five years after the earliest possible maturity despite the prohibition contained in section 133.21 of the Revised Code.

The election on the question of issuing such bonds shall be held under divisions (E), (F), and (G) of section 133.18 of the Revised Code.

HISTORY: 1989 H 230, eff. 10-30-89
1980 H 1062; 125 v 713; 1953 H 1; GC 2293-87

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925
Gotherman & Babbit, Ohio Municipal Law, Text 17.27

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Securities § 53; 78, Public Welfare § 23; 82, Schools, Universities, and Colleges § 420
Am Jur 2d: 64, Public Securities and Obligations § 56, 124 et seq., 141

DOCUMENTS, REPORTS, AND RECORDS

149.43 Availability of public records; mandamus action

(A) As used in this section:

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose his identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(B) All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, govern-

mental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division.

(C) If a person allegedly is aggrieved by the failure of a governmental unit to promptly prepare a public record and to make it available to him for inspection in accordance with division (B) of this section, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a person responsible for it to make a copy available to him in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the governmental unit or the person responsible for the public record to comply with division (B) of this section and that awards reasonable attorney's fees to the person that instituted the mandamus action. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

HISTORY: 1987 S 275, eff. 10-15-87
1985 H 319, H 238; 1984 H 84; 1979 S 62; 130 v H 187

UNCODIFIED LAW

1987 S 275, § 3 and 4, eff. 10-15-87, read:

Section 3. It is the intent of the General Assembly in the enactment of new division (C) of section 149.43 of the Revised Code in Section 1 of this act to supersede the effect of the September 9, 1987 decision of the Ohio Supreme Court in *State, ex rel. Fostoria Daily Review Co.*, v. *Fostoria Hosp. Assn.* (1987) 32 Ohio St. 3d 323[1] and to statutorily specify that a civil action for a writ of mandamus is available to obtain compliance with the Public Records Law.

Section 4. Any action in which a writ of mandamus is sought to compel compliance with section 149.43 of the Revised Code, or any appeal of such action, pending in any court as of the effective date of this act may proceed as if this division had been in effect at the time such action was filed.

PRACTICE AND STUDY AIDS

Friedman, Ohio Securities Law and Practice, Text 47.08

Merrick-Rippner, Ohio Probate Law (4th Ed.), Text 3.12, 205.06, 223.12(A), 227.23

Baldwin's Ohio Township Law, Text 15.09, 21.10, 23.10, 29.14; Forms 1.16

Baldwin's Ohio School Law, Text 5.09(H), 18.20, 27.15, 44.01 to 44.03, 44.09, 45.01(B)

Gotherman & Babbit, Ohio Municipal Law, Text 13.64, 44.03, 44.131, 44.14

Giannelli, Ohio Evidence Manual, Author's Comment § 501.04

Lewis & Spirn, Ohio Collective Bargaining Law, Author's Comment to 4117.17

Dill Calloway, Ohio Nursing Law, Text 6.04(A), 6.08(E)

Carroll, Ohio Administrative Law, Text 1.05(C)

CROSS REFERENCES

Department of administrative services, records of the director, OAC 123:1-1-02

Educational broadcasting network commission, data subject's right to inspect personal information, OAC 3353-1-10

Human services, microfilming by county agencies, OAC 5101-4-70 to 5101-4-76

Public welfare, data subject's right to inspect personal information, OAC 5101-9-39

County welfare departments, disclosure of surveys, OAC 5101:1-1-04

Child support enforcement agency records, confidentiality, OAC 5101:1-29-071

Department of rehabilitation and correction, public records, OAC 5120-9-49, 5120:1-1-36

Citizens' reward program records not subject to public disclosure, 9.92

Securities records not to be public records, 9.96

Joint committee on organizational grants, forms and statements provided as public records to, 103.70

Duties of superintendent of the bureau of criminal identification and investigation, 109.57

State auditor's and treasurer's offices, audit reports as public records, 117.14, 117.15, 117.26

Long-term care ombudsman program, investigative files not public records, 173.22

Organized crime task force information considered confidential, 177.03

Transient vendors, information filed with county sheriff, open to public inspection, 311.37

Bank articles of incorporation and certificates, availability, 1103.15

Investigation reports of director of commerce as to transmitters of money confidential, 1310.06

County auditor's book of licenses for auction of new merchandise to be open to public inspection, 1318.05

Reports by second mortgage lenders to superintendent of division of consumer finance in commerce department not public records, 1321.55

Registered trade names and fictitious business names; secretary of state to disclose users' identities on request, 1329.01

Trademarks and service marks registered with secretary of state open to public examination, 1329.61

Discovery powers of attorney general, 1331.16

Personal information systems, exemptions, 1347.04

Personal information systems, rights of subjects to inspection, 1347.08

Soil and water conservation division, capability analysis program, public inspection of records, 1511.02

Professional solicitors and fund-raising counsel, annual reports and files, 1716.08

Probate court to furnish machines needed to read electromagnetic and photographic records, 2101.121

Uniform Anatomical Gift Act, certificates of request for donations, 2108.021

Victim impact statements not public records, 2151.355

Bureau of support to compile statistics, public records, 2301.41

Corrupt activity, seizure and disposition of property involved in, inspections of records, 2923.32

Drug trafficking, use and disposition of fines, written internal control policy, public inspection, 2925.03

Forfeiture of property of drug offenders, public inspection of records, 2925.42, 2925.43

Waiver of statutory precondition for nonconsensual entry, request for, public inspection of records, 2933.231

Law enforcement agency, seizure and disposition of contraband and property by, use and disposition of proceeds from trust funds, written internal control policy, inspection of records, 2933.41, 2933.43

Releases of identifying information by biological parents not public records, 3107.42

Visitation rights, confidential law enforcement investigatory record defined, 3109.051

Non-spousal artificial insemination, physician's files not public records, 3111.36

[1]So in original; should this read: "327"?

Education management information system, data not public record, 3301.0714

Records of board of education pertaining to rewards for information leading to convictions not public, 3313.173

Tuition trust authority, records not public records, 3334.11

Board of elections, own records and papers or books filed with it are "public records", 3501.13

Election registration records open to public inspection, 3503.13

Registered voter lists; copying can be restricted near election day, 3503.26

Political party state and county committee membership lists, filed in secretary of state's office and open to public inspection, 3517.06

Campaign committee statements of contributions and expenditures, open to public inspection, 3517.10

Access to public records filed with board of elections, 3599.161

Employee assistance program, confidentiality of records, 3701.041

AIDS testing, partner notification program, information not public record, 3701.241

Standards for hospital staff to be set and made available to public, 3701.351

Home health agencies, annual summary report, 3701.88

Environmental protection agency, air pollution control records available to public, exceptions, 3704.08

Vital statistics, uncertified copies, 3705.23

Prescriptions, orders, and other controlled substance records open only for official inspection, 3719.13

Controlled substances sold by peace officer in performance of official duties, written internal control policy, inspection of records, 3719.141

Rest homes and nursing homes, complaints, confidentiality of information, 3721.031

Rest homes and nursing homes, reports of abuse and neglect, confidentiality, 3721.25

Nurse aides, test materials not public records, 3721.31

Nurse aide registry, inspection of information, 3721.32

Radon testing and mitigation, information reported to health director not public record, 3723.09

Hospitals, patient data to be reported to health department, 3727.11, 3727.14

Migrant agricultural ombudsman, qualifications, duties, 3733.49

Environmental board of review regulations of procedures are public records, 3745.03

Lottery commission meeting records available for public inspection upon showing of good cause, 3770.02

Program for addicted pregnant women, public inspection of records, 3793.15

Insurance fraud investigatory records, confidentiality, 3901.44

Audits of insurance companies, records not public records, 3901.48

Reports by property and casualty insurers, public records, 3929.301

Commercial insurance joint underwriting association, reports and communications not public records, 3930.10

Insurance, notice of impairment not public record, 3999.36

Audits by accountants, related documents not public records, 4701.19

Physicians, grounds for refusal to grant and revocation of certificate, report of cases, 4731.22

Occupational therapists, physical therapists, and athletic trainers board, athletic trainers section, confidentiality of information, 4755.61

Consumers' counsel documents public records, 4911.10

Regulation of nursing facilities, confidentiality of information, 5111.61

Hospital care assurance program, confidentiality of information, 5112.21

Department of mental health, criminal records of applicants not public, 5119.072

Department of mental retardation and developmental disabilities, employee criminal investigation records not public, 5123.081

Certain records pertaining to mentally retarded or developmentally disabled not public, 5123.57

Mentally retarded or developmentally disabled adults, confidentiality of reports, 5123.61

County mental retardation and developmental disabilities boards, criminal records of employment applicants, 5126.28

Mentally retarded or developmentally disabled adults, review of reports of abuse and neglect, confidentiality of reports, 5126.31

Documents filed with tax commissioner, status as public records, 5715.27, 5715.39

Estate tax certificate, public record, 5731.21

Estate tax, confidentiality of information, 5731.90

Veterans' rights, public record and medical record defined, 5903.21

Attorney's work product privilege, Civ R 26

Grand jurors' votes on indictment not to be made public save on court's order, Crim R 6

Prosecuting attorney's reports and memoranda not discoverable, Crim R 16

Court of appeals reports as public records, C A Sup R 2

Reports of court of common pleas as public records, C P Sup R 5

Municipal and county court reports as public records, MC Sup R 6, 12

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 39, Employment Relations § 9; 55, Incompetent Persons § 47; 78, Public Welfare § 54; 80, Records and Recording § 13, 15 to 17, 22 to 25, 27, 33; 84, State of Ohio § 91

Am Jur 2d: 66, Records and Recording Laws § 12 to 19, 27 to 29

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Records required to be kept
4. Records held public
5. Records expressly exempted by this section
6. Records otherwise held not public
7. Procedures and remedies

1. Constitutional issues

40 Ad L Rev 79 (Winter 1988). The Federal Presentence Investigation Report: Postsentence Disclosure Under The Freedom Of Information Act, Carol Shockley.

3 Ohio Civ Practice J 49 (May/June 1992). The Freedom of Information Act As a Discovery Tool for Lawyers, Janice Toran.

39 Cities & Villages 13 (October 1991). Developments In Ohio Public Records Law, Stan Dobrowski.

47 OS(3d) 28, 546 NE(2d) 939 (1989), State ex rel Thompson Newspapers Inc v Martin. Confidential law enforcement investigatory records do not become public records merely because they are submitted to a trial court to provide the factual basis for obtaining the appointment of a special prosecutor.

46 OS(3d) 163, 546 NE(2d) 203 (1989), State ex rel Recodat Co v Buchanan. RC 149.43(B) requires that copies of public records shall be made available to the public; however, magnetic tapes upon which records are stored and the software needed to access the information are not public records if they are available to the public in another form.

61 App(3d) 330, 572 NE(2d) 781 (Hamilton 1989), State v Gover. The identity of a confidential informant must be disclosed where such information would be helpful or beneficial to the defendant in preparing a defense. There is no requirement that disclosure would establish the defendant's innocence, merely that the defendant would obtain benefit in the preparation of his defense. Disclosure of an informant's identity would be helpful to the defendant where the defenses of alibi and mistaken identity are presented, and the prosecution's evidence of guilt is not overwhelming.

52 App(3d) 87, 557 NE(2d) 788 (Butler 1988), State ex rel Dwyer v Middletown. An agreement not to disclose matters of public record is not enforceable.

44 App(3d) 169, 542 NE(2d) 663 (Cuyahoga 1988), Bowman v Parma Bd of Ed. An agreement between a school board and a former teacher not to disclose incidents of child molesting that led to his termination is void as against public policy.

44 App(3d) 118, 541 NE(2d) 1084 (Cuyahoga 1988), Woodman v Lakewood. The attorney-client privilege established by RC 149.43(A)(1) preserves the confidentiality of records of communications between an attorney and a government client even though the communications are not within the trial preparation exception of RC 149.43(A)(4).

No. 54858 (8th Dist Ct App, Cuyahoga, 1-19-89), Sawchyn v Middleburg Heights. Where a city responds to a request for public information within five days, including weekends, that response is within a "reasonable period of time" as required by RC 149.43(B).

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. A public office may not withhold its public records from inspection and copying until a member of the public files a mandamus action, and then escape the consequences of such wrongful withholding by belatedly providing the records.

50 Misc(2d) 1, 552 NE(2d) 243 (CP, Lucas 1990), State ex rel Toledo Blade Co v Telb. The term "public record" in RC 149.43(B) is defined broadly and any record is public and subject to disclosure under the law unless expressly excepted from disclosure; the exceptions are to be strictly construed against the custodian and any doubts resolved in favor of disclosure.

50 Misc(2d) 1, 552 NE(2d) 243 (CP, Lucas 1990), State ex rel Toledo Blade Co v Telb. A government body cannot shield its records from public scrutiny by a generalized, universal assurance of the confidentiality of witnesses.

50 Misc(2d) 1, 552 NE(2d) 243 (CP, Lucas 1990), State ex rel Toledo Blade Co v Telb. A collective bargaining agreement cannot supplant RC 149.43 by requiring that records be kept confidential contrary to Ohio's public records law.

No. A8700770 (CP, Hamilton, 5-2-88), Ohio Ed Assn v Great Oaks Joint Vocational School Dist Bd of Ed. RC 149.43, granting members of the general public a qualified right to inspect the records of their state, county, city, village, township, and school offices is unconstitutional and unenforceable in its entirety for overbreadth, because it allows the public to see records such as personnel papers without regard to the wishes of the person whose records are seen, thereby intruding upon the individual's "fundamental right" to privacy without the justification of a compelling state interest.

2. In general

50 Ohio St L J 1307 (1989). De Novo Review in Reverse Freedom of Information Act Suits, Comment.

18 Tol L Rev 543 (Winter 1987). *State ex. rel. Dispatch Printing Co. v. Wells:* A Limitation on Public Employee Collective Bargaining and a New Standard of Review for Public Record Disclosure, Note.

12 Lake Legal Views 1 (November 1989). Ohio Public Records Law—A Summary, Hon. Martin O. Parks.

35 Cities & Villages 4 (July 1987). A Guided Tour Through Ohio's Public Records Act, Shawn H. Nau.

38 OS(3d) 79, 526 NE(2d) 786 (1988), State ex rel National Broadcasting Co v Cleveland. A governmental body refusing to release records has the burden of proving that the records are excepted from disclosure by RC 149.43.

35 OS(3d) 241, 520 NE(2d) 207 (1988), Henneman v Toledo. Records and information compiled by an internal affairs division of a police department are subject to discovery in civil litigation arising out of alleged police misconduct if, upon an in camera inspection, the trial court determines that the requesting party's need for the material outweighs the public interest in the confidentiality of such information.

56 OS(2d) 126, 383 NE(2d) 124 (1978), Wooster Republican Printing Co v Wooster. RC 149.43 must be read in pari materia with RC Ch 1347.

56 OS(2d) 126, 383 NE(2d) 124 (1978), Wooster Republican Printing Co v Wooster. In determining whether disclosure to the general public of personal information contained in an otherwise public record would constitute an improper use of personal information under the provisions of RC Ch 1347, the interest of the public's "right to know," codified in RC 149.43, must be balanced against an individual's "right of personal privacy," codified in RC Ch 1347; in the consideration of these respective interests, doubt should be resolved in favor of public disclosure of public records in order to insure the existence of an informed public.

62 App(3d) 752 (Franklin 1989), State ex rel Zauderer v Joseph. RC 149.43 does not contemplate that any individual has the right to a complete duplication of the voluminous files kept by government agencies; the right of inspection is circumscribed by endangerment to the safety of the record and/or unreasonable interference with the discharge of the duties of the record custodian.

62 App(3d) 298, 575 NE(2d) 497 (Butler 1990), State ex rel Butler County Bar Assn v Robb. RC 149.43(B) does not require the clerk of courts to establish reasonable business hours, only that he make public records "available for inspection . . . at all reasonable times during regular business hours"; inconvenience caused by restricted business hours does not justify mandamus relief.

49 App(3d) 59, 550 NE(2d) 214 (Butler 1989), State ex rel Petty v Wurst. RC 149.43 must be construed liberally where it defines public records and strictly where it makes exceptions; any doubt is to be resolved in favor of disclosure.

44 App(3d) 30, 541 NE(2d) 124 (Clark 1989), Sanford v Kelly. A trial court has greater responsibility under RC 149.43 than that which it has under Crim R 16.

No. CA87-10-139 (12th Dist Ct App, Butler, 8-29-88), State ex rel Dwyer v Middletown. Where allegations made against a police chief are subject to public inspection under RC 149.43, a contract making such allegations confidential in exchange for the resignation of the police chief is illegal and unenforceable. (See also State ex rel Dwyer v Middletown, 52 App(3d) 87 (Butler 1988).)

No. 13575 (9th Dist Ct App, Summit, 4-13-88), State ex rel Beacon Journal Publishing Co v Akron Metropolitan Housing Auth; affirmed on other grounds by 42 OS(3d) 1 (1989). The provisions contained in RC Ch 1347 do not limit the provisions of RC 149.43; thus, employment applications and resumes received by a metropolitan housing authority are public records subject to disclosure, and a writ of mandamus compelling disclosure should be granted.

22 Misc 197, 259 NE(2d) 757 (CP, Lake 1970), Curran v Lake County Bd of Park Commrs. A county park board is a governmental unit and is subject to provisions of RC 121.22, RC 149.40, RC 149.43 and RC 1545.07.

1990 SERB 4-95 (10th Dist Ct App, Franklin, 11-1-90), State ex rel Eaton City School Dist Bd of Ed v SERB. RC 4117.17 does not prevail over RC 149.43.

492 US 136, 109 SCt 2841, 106 LEd(2d) 112 (1989), United States Justice Dept v Tax Analysts. Publishing company employees wanting to obtain all United States district court tax opinions and final orders involving the tax division of the department of justice, who have become frustrated with the difficulty of obtaining copies of cases from court clerks, have a right under the Freedom of Information Act, 5 USC 552(a)(4)(B), to obtain copies from the tax division since the copies are "agency records" subject to disclosure, notwithstanding the fact that they are also available from their original sources, the courts, and because the papers fall within none of the statute's exemptions.

805 F(2d) 155 (6th Cir Ohio 1986), In re Antitrust Grand Jury. While the attorney-client privilege protects only confidential communications and belongs to the client, the "work product" doctrine is broader and protects papers prepared in anticipation of litigation by or for the lawyer and may be asserted by attorney or client.

805 F(2d) 155 (6th Cir Ohio 1986), In re Antitrust Grand Jury. The "work product" privilege does not exist where the client con-

sulted the attorney to further a fraud or a crime and the attorney knowingly participated; an unknowing attorney may assert the privilege despite the client's continued wrongdoing.

OAG 90-102. Where a provision of state law prohibits the release of a record, the express terms of the statute control the nature and extent of the prohibition.

OAG 90-102. Neither RC 149.43 nor any other Revised Code section serves to make confidential all records filed with Ohio taxation authorities; rather, particular tax information is made confidential by specific Revised Code sections.

OAG 90-101. A decision, at a particular point in time, not to charge, arrest, file a complaint with, or refer a juvenile to the juvenile court pursuant to Juv R 9 does not require disclosure or terminate the juvenile's status as a "suspect," pursuant to RC 149.43(A).

OAG 90-050. "Any person" under RC 149.43, pursuant to RC 1.59, includes individuals, corporations, business trusts, estates, trusts, partnerships, and associations.

OAG 90-007. Where a provision of state or federal law prohibits the release of information in a record kept by the human services department, a county human services department, or a county children services board, the terms of that provision control to whom and under what circumstances the record may be released, and such prohibition remains effective despite the death of the subject of the record.

OAG 90-007. RC Ch 1347 is not "a provision of state law prohibiting the release of information," and therefore, "personal information" is not an exception to the definition of the term "public record" in RC 149.43.

OAG 89-073. Under RC 149.43(B), public records must be made available "at cost" to any person who requests a copy. A public office, in its sound discretion, may adopt a reasonable policy setting a fee for copies obtained from the public office. The fee should reflect the actual costs involved in making a copy, unless the cost is otherwise set by statute.

OAG 83-003. RC 149.99 authorizes a penalty of not more than five hundred dollars for a violation of RC 149.351, RC 149.43, or RC 149.431.

OAG 83-003. The definition of records which appears in RC 149.40 is applicable to RC 149.31 through RC 149.44.

OAG 80-103. RC 169.06(C), which requires that an alphabetical listing of owners of unclaimed funds and beneficiaries of life insurance policies be made available to the general public, does not restrict access of the general public to records compiled by the department of commerce which are public records as defined by RC 149.43.

OAG 80-096. A governmental agency which is subject to the provisions of RC Ch 1347, the Privacy Act, may collect, maintain and use personal information that is subject to the provisions of RC Ch 1347 only if such information is necessary to the functions of the agency.

OAG 80-096. Ohio law recognizes three classes of governmental records. One class, consisting of records pertaining to confidential law enforcement investigations, trial preparations, and adoptions, may not be disclosed either to the public at large or to the person who is the subject matter of the information. The second class, consisting of records made confidential by law, may not be disclosed to the public at large, but must be disclosed to the person who is the subject of the information. The third class, consisting of public records, must be disclosed to any member of the public for any reason.

OAG 80-096. RC Ch 1347, the Privacy Act, does not restrict access to records that are public under the terms of RC 149.43.

3. Records required to be kept

1 Gotherman's Ohio Muni Serv 2 (January/February 1989). Ohio Public Records Law, Stanley J. Dobrowski.

63 OS(3d) 498 (1992), Franklin County Sheriff's Dept v Employment Relations Bd. Investigatory files compiled by the state employment relations board pursuant to RC 4117.12 must be disclosed upon request pursuant to RC 4117.17 and 149.43 unless an in camera inspection demonstrates that all or any portions of the files are excepted from disclosure; excepted information may be redacted prior to disclosure.

50 OS(3d) 51, 552 NE(2d) 635 (1990), State ex rel Polovischak v Mayfield. A record of investigation which qualifies as a confidential law enforcement investigatory record under RC 149.43(A)(2) does not forfeit its statutory protection merely because there has been a passage of time with no forthcoming enforcement action.

48 OS(3d) 41, 549 NE(2d) 167 (1990), State ex rel Multimedia, Inc v Whalen. The general assembly has determined that the fact that police are conducting an "ongoing investigation" about an incident is to be given no weight by a court deciding under RC 149.43(A)(2) whether "confidential law enforcement investigatory records" should be disclosed.

20 OS(3d) 30, 20 OBR 279, 485 NE(2d) 706 (1985), State ex rel Mothers Against Drunk Drivers v Gosser. A local court rule requiring the court clerk not to accept for filing and not to disclose any documents in traffic and criminal cases other than complaints, motions, memoranda, entries, and verdicts is void, as it conflicts with the clerk's statutory duty under RC 1901.31(E) to keep such records, and conflicts with the duty under RC 149.43(B) to permit public access to such records.

45 OS(2d) 107, 341 NE(2d) 576 (1976), Dayton Newspapers, Inc v Dayton. A record is "required to be kept" by a governmental unit, within the meaning of RC 149.43, where the unit's keeping of such record is necessary to the execution of its duties and responsibilities.

70 App(3d) 525 (Cuyahoga 1991), State ex rel Lippitt v Kovacic. Expanded, compiled arrest histories are public records subject to disclosure.

70 App(3d) 525 (Cuyahoga 1991), State ex rel Lippitt v Kovacic. The names of relatives of individuals included in police department arrest histories need not be redacted absent a showing that these persons are witnesses, information sources, victims, or law enforcement officers, or that release of these names poses a risk to any of the named persons.

64 App(3d) 659 (Cuyahoga 1990), State ex rel Kinsley v Berea Bd of Ed. Settlement agreements entered into by a governmental unit are public records and not trial preparation records since a settlement agreement is not a record compiled in anticipation of or in defense of a lawsuit, but rather is a contract negotiated with the opposing party to prevent or conclude litigation and although the parties and their attorneys subjectively evaluate the litigation confronting them in order to reach a settlement, the settlement agreement itself contains only the result of the negotiation process and bargaining discourse which took place between the parties in achieving the settlement.

64 App(3d) 659 (Cuyahoga 1990), State ex rel Kinsley v Berea Bd of Ed. No cause of action exists for one's inability to decipher a public record since the public records law only requires that documents be copied or made available for inspection; unless a summary or explanation of public records exists as a public document itself, a governmental unit is not required to create a new document to explain or facilitate review of public records already produced.

No. 55797 (8th Dist Ct App, Cuyahoga, 1-25-89), State ex rel Mazzaro v Ferguson; affirmed by 49 OS(3d) 37 (1990). An audit performed on a municipal corporation by the state auditor is a public record, and mandamus will lie to compel public inspection thereof.

61 Misc(2d) 617 (CP, Hocking 1991), State ex rel Jones v Myers. Disclosure of a public employee's name, designation, identification number, earnings, tax withholding, retirement deductions, vacation and sick leave record, purchase of retirement service credits, and insurance deductions, garnishments, and court-ordered support payments are matters of public record and disclosure of such matters is not an invasion of privacy; but disclosure of an employee's deductions for deferred compensation plans and savings plans is not a matter of public record and disclosure of personal financial information is a violation of the employee's right to privacy under O Const Art I §14.

50 Misc(2d) 1, 552 NE(2d) 243 (CP, Lucas 1990), State ex rel Toledo Blade Co v Telb. A psychologist's report obtained by a public office to assist it in deciding about an employee's future employment is not "maintained in the process of medical treatment," and must be disclosed.

50 Misc 13, 364 NE(2d) 297 (CP, Summit 1977), Wayside Farms, Inc v State. Complaint letters or other complaint communications against nursing home operators received by the director of health of Ohio are not records required to be kept by him as a public official and, therefore, such matters are not subject to the provisions of RC 149.43.

1990 SERB 4-51 (10th Dist Ct App, Franklin, 8-28-90), Franklin County Sheriff's Dept v SERB; modified by 62 OS(3d) 498 (1992). No blanket of confidentiality will be wrapped around investigation files of the state employment relations board prepared in the course of an unfair labor practice investigation, given the sweep of Ohio's public records law.

1990 SERB 4-51 (10th Dist Ct App, Franklin, 8-28-90), Franklin County Sheriff's Dept v SERB; modified by 62 OS(3d) 498 (1992). The word "only" will not be read into RC 4117.17 before the list of papers at the state employment relations board that are designated public records, for the purpose of creating a conflict with the "open records" provisions of RC 149.43; under RC 1.51 the statutes must be construed in a manner giving effect to both.

1990 SERB 4-51 (10th Dist Ct App, Franklin, 8-28-90), Franklin County Sheriff's Dept v SERB; modified by 62 OS(3d) 498 (1992). The reference to "other proceedings instituted by" the state employment relations board in RC 4117.17 that are considered "public records" include contents of a file compiled during investigation of an unfair labor practice charge, and the statute contemplates a rule of openness and not confidentiality; RC 149.43(A) gives the board authority, however, to withhold from public scrutiny any record falling within one of several specified exceptions.

OAG 88-103. An application to the county veterans service commission for assistance under RC 5901.09 is a public record; absent a prohibition against release in federal or state law, any member of the public may inspect and copy each item of information supplied on the application or on the required statement, consisting of the amount, nature and source of public assistance received.

OAG 86-057. Pursuant to RC 507.05, the township clerk is given responsibility for overseeing the township books. Pursuant to RC 149.351, the township clerk is prohibited from wrongfully removing, damaging, or disposing of the township books. Pursuant to RC 149.43(B), the township clerk is required to maintain the township books in such a manner that they can be made available for inspection to any member of the general public at all reasonable times during regular business hours.

OAG 76-011. Cost reports filed by nursing homes with the Ohio department of public welfare for reimbursements under the medicaid program are records required to be kept and are public records within the meaning of RC 149.43, open to public inspection without prior express authorization by the nursing homes.

4. Records held public

2 Baldwin's Ohio School Serv 2 (March/April 1990). School Administrators: "Trustees For The People," Sarah C. Sweeney.

34 Ohio School Bds Assn J 2 (June 1990). Most records are open for inspection, Richard Slee.

57 OS(3d) 83, 566 NE(2d) 151 (1991), State ex rel Coleman v Cincinnati. While the police may reasonably anticipate a "criminal action or proceeding," within the meaning of RC 149.43(A)(4), when they investigate a homicide, such investigations do not meet the "specifically compiled" requirement of the statute.

57 OS(3d) 83, 566 NE(2d) 151 (1991), State ex rel Coleman v Cincinnati. Broad application of the trial preparation exception to police criminal investigations negates the specifically drawn narrow exceptions to the general assembly's mandated release of RC 149.43(A)(2), "confidential law enforcement investigatory record." If police criminal investigations could qualify generally as trial preparation records, that exception would frustrate the legislative policies behind the public records statute.

56 OS(3d) 97, 564 NE(2d) 486 (1990), State ex rel Fairfield Leader v Ricketts. A meeting of government officials to discuss annexation and development projects at which no specific proposals are made and no official action taken, and where the meeting is called by and paid for by a private developer, must be reduced to minutes. These minutes must be made available to the public; where the officials refuse to reduce the meeting to minutes, mandamus shall be granted to compel such action.

56 OS(3d) 20, 564 NE(2d) 81 (1990), State ex rel Zuern v Leis. A sheriff department's homicide investigative file does not qualify as an exempt "trial preparation record" under RC 149.43(A)(4), since the file was not specifically compiled in anticipation of litigation, and in any event the voluntary disclosure by the victim's estate of all the documents sought except for one witness statement in a civil suit claiming damages for the victim's death waives any claim of exemption.

54 OS(3d) 55, 560 NE(2d) 1313 (1990), State ex rel Clark v Toledo. A criminal defendant who has exhausted the direct appeals of his conviction may avail himself of RC 149.43 to support his petition for post-conviction relief; any person may obtain public records pursuant to RC 149.43 without the necessity of stating a reason for obtaining those records, and despite his present station in life, the criminal defendant remains a "person" within the contemplation of that statute.

49 OS(3d) 37, 550 NE(2d) 464 (1990), State ex rel Mazzaro v Ferguson. Where (1) a private entity prepares records in order to carry out a public office's responsibilities, (2) the public office is able to monitor the private entity's performance, and (3) the public office has access to the records for this purpose, a relator in an RC 149.43(C) mandamus action is entitled to relief regardless of whether he also shows that the private entity is acting as the public office's agent.

44 OS(3d) 111, 541 NE(2d) 587 (1989), State ex rel Fostoria Daily Review Co v Fostoria Hospital Assn. Records of a public hospital are public records unless privileged under RC 2305.25.

40 OS(3d) 10, 531 NE(2d) 313 (1988), State ex rel Fostoria Daily Review Co v Fostoria Hospital Assn. A public general hospital, rendering public service to residents, which is supported by public taxation is a public office whose records are subject to disclosure for purposes of RC 149.011(A), despite the fact that the custodian of such records is a private nonprofit corporation.

39 OS(3d) 108, 529 NE(2d) 443 (1988), State ex rel Fox v Cuyahoga County Hospital System. A public hospital, which renders a public service to residents of a county and which is supported by public taxation, is a "public institution" and thus a "public office" pursuant to RC 149.011(A), making it subject to the public records disclosure requirements of RC 149.43.

38 OS(3d) 324, 528 NE(2d) 175 (1988), State ex rel Outlet Communications, Inc v Lancaster Police Dept. Arrest records and intoxilyzer records which contain the names of persons who have been formally charged with an offense, as well as those who have been arrested and/or issued citations but who have not been formally charged, are not confidential law enforcement investigatory records within the exception to the public records law, RC 149.43(A)(2)(a), and are thus subject to disclosure.

38 OS(3d) 170, 527 NE(2d) 1230 (1988), State ex rel Cincinnati Post v Schweikert. The public records law, RC 149.43, does not exempt compilations of information contained in public records and does not require members of the public to exhaust their energy and ingenuity to gather information which is already compiled and organized in a document created by public officials.

38 OS(3d) 170, 527 NE(2d) 1230 (1988), State ex rel Cincinnati Post v Schweikert. A report prepared by a court administrator from factual information contained in public records is a public record subject to disclosure under the public records law, RC 149.43, even though such compilations are made for the use of judges in sentencing.

38 OS(3d) 79, 526 NE(2d) 786 (1988), State ex rel National Broadcasting Co v Cleveland. Law enforcement investigatory

records must be disclosed unless they are excepted from disclosure by RC 149.43.

37 OS(3d) 308, 525 NE(2d) 812 (1988), Barton v Shupe. An investigation conducted and a record compiled to establish the accuracy of accusations being made against a police chief and to assess the propriety of his conduct constitute a lawful investigation of one public officer by another and, as such, the record compiled is a public record as defined in RC 149.43.

25 OS(3d) 15, 25 OBR 13, 494 NE(2d) 1135 (1986), State ex rel Harmon v Bender. Videotapes of trial proceedings are public records within the meaning of RC 149.43(A)(1) and are subject to public inspection.

20 OS(3d) 30, 20 OBR 279, 485 NE(2d) 706 (1985), State ex rel Mothers Against Drunk Drivers v Gosser. In the court file of a drunk driving case, the following are required to be kept and are thus public records subject to disclosure: (1) alcohol influence report, (2) breath test result, (3) statement of facts by arresting officer, (4) accident report, and (5) driving record.

18 OS(3d) 382, 18 OBR 437, 481 NE(2d) 632 (1985), State ex rel Dispatch Printing Co v Wells. Personnel records of a municipal civil service commission, maintained as required by RC 124.40(A) and RC 124.09(B), are public records as defined by RC 149.43(A)(1), the disclosure of which may be compelled by mandamus.

18 OS(3d) 231, 18 OBR 289, 480 NE(2d) 482 (1985), Police & Fire Retirees of Ohio, Inc v Police & Firemen's Disability & Pension Fund. Mandamus lies to compel the police and firemen's disability and pension fund to make the names and addresses of its members available for public inspection inasmuch as (1) the fund is a public agency, and (2) the fund is invested by RC 724.14 with duties which cannot be fulfilled unless a list of members' names and addresses is maintained, although no statute specifically requires maintenance of such a list.

9 OS(3d) 1, 9 OBR 52, 457 NE(2d) 821 (1984), State ex rel Plain Dealer Publishing Co v Lesak. Mandamus will lie to compel disclosure of banking records of illicit checking accounts where the accounts should have been kept by a governmental unit and where the accounts were turned over to the governmental unit, thereby waiving any exception from the disclosure requirements.

64 OS(2d) 392, 415 NE(2d) 310 (1980), State ex rel Beacon Journal Publishing Co v University of Akron. Law enforcement records compiled before the 1979 amendment of RC 149.43 are available to the public provided they are public records as defined by RC 149.43 and are not exempted from disclosure by its provisions.

60 OS(2d) 93, 397 NE(2d) 1191 (1979), State ex rel Public Employees Retirees, Inc v Public Employees Retirement System. Public Employees Retirees, Inc. is entitled to access to a list of names and addresses of member retirees of the public employees retirement system.

51 OS(2d) 1, 364 NE(2d) 854 (1977), State ex rel Plain Dealer Publishing Co v Krouse. When the industrial commission allows a claim or award, a notation of that decision such as a remittance advice form is a public record, and the provisions of RC 4123.88 do not prohibit its release.

49 OS(2d) 245, 361 NE(2d) 444 (1977), State ex rel Milo's Beauty Supply Co v State Bd of Cosmetology. Records of state board of cosmetology listing the names and addresses of all licensed cosmetologists, beauty salons, and schools of cosmetology in the state are public records which must be available for inspection and copying.

48 OS(2d) 283, 358 NE(2d) 565 (1976), State ex rel Beacon Journal Publishing Co v Andrews. The records of all proceedings of the registrar of motor vehicles are required to be open to the public for inspection at all reasonable times.

42 OS(2d) 498, 330 NE(2d) 442 (1975), State ex rel Grosser v Boy. Documents disclosing the names of all pupils, and the address of those pupils under eighteen years of age and what courses each pupil is taking, are "public records" within the meaning of RC 149.43.

42 OS(2d) 498, 330 NE(2d) 442 (1975), State ex rel Grosser v Boy. A mandamus is the proper action to compel the inspection of a public record. (Annotation from former RC 3317.021.)

42 OS(2d) 498, 330 NE(2d) 442 (1975), State ex rel Grosser v Boy. School membership records by grades mandated by RC 3317.021 are public records within the scope of RC 149.43. (Annotation from former RC 3317.021.)

64 App(3d) 499 (Cuyahoga 1990), Pinkava v Corrigan. A twelve-year-old victim's account to police of an offense committed against her is a public record which is subject to disclosure pursuant to a writ of mandamus, since the requester of the record, not being a criminal defendant at trial, has no plain and adequate alternative remedy to a mandamus action to secure the document; furthermore, the victim's statement is not excepted from disclosure as specific investigatory work product since it contains only a factual description of the offense as related to a police officer and is not a subjective analysis of any sort by an investigating officer, nor does the victim's statement constitute trial preparation as defined in the public records statute since although the victim's statement may eventually constitute the basis of a prosecution or civil proceeding, when the police recorded the facts they were performing foremost a routine part of their law enforcement duties and were not compiling material specifically for litigation.

62 App(3d) 752 (Franklin 1989), State ex rel Zauderer v Joseph. Although under RC 149.43 a city police chief, county sheriff, and superintendent of state highway patrol generally have a duty to make traffic accident reports available for inspection to any person at all reasonable times during regular business hours, a request to inspect city, state, and county traffic accident reports of record must comport with the method of retrieval used by the city, state, or county; a request that merely asks for any and all traffic accident reports will not be enforced pursuant to a writ of mandamus since the request is unreasonable in scope, and if granted would interfere with the sanctity of the recordkeeping process.

55 App(3d) 75, 562 NE(2d) 946 (Cuyahoga 1989), State ex rel Ware v Cleveland. Documents prepared as part of a routine investigation of a jail suicide and not as the result of a "specific suspicion of criminal wrongdoing" are public records within the meaning of RC 149.43.

55 App(3d) 26, 561 NE(2d) 1054 (Hamilton 1989), Cincinnati Enquirer v Cincinnati. A letter written by a federal judge to counsel in a civil case with a request, but not an official order, that it be kept confidential, constitutes a public record within the meaning of RC 149.43; therefore, a writ of mandamus will issue ordering disclosure of its contents to a newspaper.

52 App(3d) 87, 557 NE(2d) 788 (Butler 1988), State ex rel Dwyer v Middletown. A report for city officials after investigation of a public employee's alleged wrongdoing is a "public record" within the meaning of RC 149.43(A) that is subject to disclosure; a contractual agreement to refuse disclosure of the report is illegal.

49 App(3d) 59, 550 NE(2d) 214 (Butler 1989), State ex rel Petty v Wurst. Releasing information about a county employee's name, job classification, rate of salary, and gross salary does not violate the employee's right to privacy and is not excepted from the disclosure required by RC 149.43.

44 App(3d) 30, 541 NE(2d) 124 (Clark 1989), Sanford v Kelly. Statements of potential witnesses in the possession of a prosecuting attorney are discoverable in a criminal prosecution pursuant to RC 149.43 if the court determines that (1) the records in question are not specific investigatory work product under RC 149.43(A)(2)(c) or otherwise excepted from disclosure under RC 149.43(A)(2), or (2) the records in question were specifically compiled in reasonable anticipation of a criminal action or proceeding under RC 149.43(A)(4); further, the court must redact that which is not discoverable in the records but must make the redacted portions a part of the record of appeal under seal.

30 App(3d) 89, 30 OBR 187, 506 NE(2d) 927 (Lorain 1986), State ex rel Jacobs v Prudoff. Materials not submitted to any of the state agencies listed in RC 122.36 are not protected by said section against public disclosure.

30 App(3d) 89, 30 OBR 187, 506 NE(2d) 927 (Lorain 1986), State ex rel Jacobs v Prudoff. Community development loan applications kept by a governmental unit are public records within the meaning of RC 149.43(A)(1), but the release of such records may be elsewhere prohibited by state law.

30 App(3d) 89, 30 OBR 187, 506 NE(2d) 927 (Lorain 1986), State ex rel Jacobs v Prudoff. Materials not submitted to any of the state agencies listed in RC 166.05(E) are not protected by said section against public disclosure.

20 App(3d) 67, 20 OBR 71, 484 NE(2d) 233 (Preble 1984), State ex rel Kuczak v Mong. An application for legal fees for appointed counsel is a public record subject to disclosure and not an exempt trial preparation record within the meaning of RC 149.43(A)(4).

53 App(2d) 274, 373 NE(2d) 1261 (1976), Lorain County Title Co v Essex. Where information contained in public records is placed on microfilm, the microfilm becomes a public record to which the public has reasonable access.

No. 12058 (9th Dist Ct App, Summit, 8-7-85), Beacon Journal Publishing Co v Stow; affirmed by 25 OS(3d) 347, 25 OBR 399, 496 NE(2d) 908 (1986). A collective bargaining agreement between a municipal corporation and its safety forces which has been signed by the union and the mayor is a public record open to inspection pursuant to RC 149.43 even where such agreement has not yet been approved and validated by city council.

No. 9-263 (11th Dist Ct App, Lake, 5-6-83), State ex rel Plain Dealer Publishing Co v Lesak. Where a newspaper reporter demands the bank records of a school athletic account from the board of education, such board must release the records since such records are public records; although the records were currently subject to a state audit, since the identity of the athletic director who controlled the account and the pending litigation was made known through newspaper articles, the confidential law enforcement investigatory exception does not apply.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. A designated community action agency is a public office within the meaning of RC 149.43 and its records are public records.

26 Misc(2d) 5, 26 OBR 277, 498 NE(2d) 508 (CP, Clermont 1985), State ex rel Cincinnati Post v Marsh. Where a city council retains an investigator to gather information and prepare a report on the police chief to help it decide whether to remove the chief, the report is a public record that must be made available to the public under RC 149.40 and RC 149.43.

22 Misc 197, 259 NE(2d) 757 (CP, Lake 1970), Curran v Lake County Bd of Park Commrs. All records that reflect official action of a park board or its authorized employees are public, including records which document organization, functions, policies, decisions, procedures, operations or other activities of the office, but not including real estate appraisals from private experts which board secures for use in land transactions.

1990 SERB 4-95 (10th Dist Ct App, Franklin, 11-1-90), State ex rel Eaton City School Dist Bd of Ed v SERB. Files of the state employment relations board compiled during investigation of unfair labor practice charges are public records, not trial preparation records, where not shown to be the product of specific investigatory work.

116 FRD 270 (ND Ohio 1987), Dinkins v Ohio State Highway Patrol. The exception under Ohio law to the definition of "public records" made for confidential reports of law enforcement investigations does not encompass investigations into the background of applicants for employment with the highway patrol.

115 FRD 1 (SD Ohio 1986), Horizon of Hope Ministry v Clark County. Although police personnel records are confidential and not discoverable under Ohio law, there is no privilege for personnel files under federal law, which governs federal civil rights actions.

OAG 92-005. For purposes of RC 149.43, a copy of federal income tax Form W-2 prepared and maintained by a township as an employer is subject to inspection as a public record.

OAG 91-053. For purposes of RC 149.43, federal tax return information filed by an individual pursuant to RC 3113.215(B)(5) and a local rule of court is a public record.

OAG 91-053. 26 USC §6103, imposing confidentiality on federal income tax returns, is not applicable to a federal income tax return submitted to a court of common pleas by a litigant in connection with a child support determination or modification proceeding in that court.

OAG 90-101. Absent an applicable exception in state or federal law, upon the request of any person, local law enforcement agencies and the county prosecutor must release records containing the names of juvenile offenders and other identifying data.

OAG 90-050. Pursuant to RC 149.43, the recorded name, address, and telephone number of each employee of a public school district is a public record open to inspection by any person. The motive of the person requesting such information, absent a statutory restriction, is irrelevant, and access may not be denied because such person indicates the intended use of the information is commercial or professional sales solicitation.

OAG 89-073. Shorthand notes taken pursuant to RC 2301.20 and transcripts prepared pursuant to RC 2301.23 by an official shorthand reporter or assistant shorthand reporter of a common pleas court are the property of that common pleas court and are public records under RC 149.43, unless the notes or transcripts include or comprise a record which is excepted from the definition of "public record" in RC 149.43(A)(1).

OAG 86-089. Pursuant to RC 149.43, a personnel file maintained by an exempted village school district is a public record, and shall be made available for inspection to any member of the general public at all reasonable times during regular business hours, except to the extent such file may include records which are excepted from the definition of the term "public record," set forth in RC 149.43(A)(1), such as medical records and trial preparation records.

OAG 86-069. A letter requesting an advisory opinion from the Ohio ethics commission under RC 102.08 and the documents held by the commission concerning such advisory opinion are public records for purposes of RC 149.43.

OAG 85-087. Appraisal cards which are kept by the office of the county auditor and which contain information used in the valuation and assessment of real property for purposes of taxation are subject to public inspection pursuant to RC 149.43 and RC 5715.07, and disclosure of such documents does not violate either RC 5715.49 or RC 5715.50.

OAG 84-077. Under RC 1347.08, a juvenile court must permit a juvenile or a duly authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under RC 1347.04(A)(1)(e) or RC 1347.08(C) or RC 1347.08(E)(2). Under Juv R 37(B), the records may not, however, be put to any public use except in the course of an appeal or as authorized by order of the court.

OAG 84-077. RC 1347.04 does not operate to exempt juvenile courts from the provisions of RC Ch 1347 with respect to the courts' records of matters pertaining to juveniles; however, if a juvenile court has any personal information systems which are comprised of investigatory material compiled for law enforcement purposes, such systems are exempt from RC Ch 1347 under RC 1347.04(A)(1)(e).

OAG 83-003. Materials which are classified as records under RC 149.40 are subject to RC 149.43 and, if they fall within the definition of "public record," are available for public inspection as provided therein.

OAG 82-104. Birth and death records kept by a probate court pursuant to RC 2101.12 are public records which must be made available to any member of the general public as required by RC 149.43, regardless of the motive which such member of the public has for inspecting such records.

OAG 81-051. Neither federal law nor RC 149.43 exempts from disclosure records concerning amounts paid to individual providers by the state of Ohio in connection with the medicaid program.

OAG 81-019. The academic and nonacademic personnel inventory maintained by the Ohio board of regents is a public record

under the terms of RC 149.43; this inventory must, therefore, be open to public inspection and copies must be made available at cost.

OAG 81-014. Complaints filed with the division of real estate concerning violations of RC Ch 4735, except those complaints which qualify as "confidential law enforcement investigatory records," are public records within the meaning of RC 149.43, and must be made available for public inspection.

OAG 81-006. The employee address and payroll records maintained by a board of township trustees are public records that must be made available for inspection at all reasonable times; a municipal official charged with enforcing the income tax provisions of a municipality does not need a subpoena duces tecum in order to gain access to such records.

OAG 80-103. With the exception of trial preparation records, records compiled by the department of commerce pursuant to RC Ch 169 are public records to which the general public is entitled to access.

OAG 80-103. Pursuant to RC 149.43, the term "trial preparation records" includes only those records specifically compiled by a governmental unit after the unit's attention has focused upon a particular person or claim, in reasonable anticipation of a civil or criminal proceeding, and does not include those records routinely compiled by a governmental unit as a matter of common practice.

OAG 80-096. Unless made confidential by law, all records maintained by a governmental agency that are necessary to the agency's execution of its duties and responsibilities are public records under the terms of RC 149.43.

OAG 80-096. RC Ch 1347, the Privacy Act, does not restrict access to records that are public under the terms of RC 149.43.

OAG 77-043. It is not a violation of RC 5122.31 to permit unrestricted access to the general and separate indices of mental illness matters filed in the probate court by the public, inasmuch as they are public records under RC 149.43, and therefore they shall be open at all reasonable times for inspection.

OAG 76-011. Fiscal reviews of nursing home facilities by the Ohio department of public welfare's bureau of fiscal review are records required by law to be kept and are open for inspection pursuant to RC 149.43, subject, where applicable, to federal requirements that names of medicaid recipients not be publicly released.

OAG 76-011. Cost reports filed by nursing homes with the Ohio department of public welfare for reimbursements under the medicaid program are records required to be kept and are public records within the meaning of RC 149.43, open to public inspection without prior express authorization by the nursing homes.

OAG 76-009. The financial disclosure statement to be filed annually pursuant to Canon 6(C) of the Code of Judicial Conduct and RC 102.02 is a public record to be made available to the press if requested and may be divulged without the written consent of the board of commissioners on grievances and discipline of the supreme court of Ohio or the ethics commission.

OAG 75-062. The industrial commission is required pursuant to RC 4121.10 to keep records showing its proceedings, findings, awards, and each member's vote as cast in all claims for compensation presented for its consideration; such records together with the transcript at its hearings, if any, are a public record as defined in RC 149.43 and shall be available to the public at all reasonable times for inspection even if they are filed within the claim files.

OAG 74-097. With the exception of physical and psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law, RC 149.43 requires all court records to be kept open for inspection at all reasonable times and the public's right to inspect such records may not be restricted by a court because of the intended purpose of such inspection.

OAG 66-125. A county recorder is not precluded from making an uncertified copy, either wholly or partially, of any document or instrument recorded in his office, and may charge for such uncertified copy a fee equal to the cost of providing that copy.

1940 OAG 2623. Records of births and deaths kept by the central bureau of vital statistics are public records, and as such, the public has the right of inspection of these records, subject only to the limitation that such inspection does not endanger the safety of the records or interfere with the discharge by the custodian of his official duties in connection with the same. (Annotation from former RC 3705.05.)

5. Records expressly exempted by this section

62 OS(3d) 455 (1992), State ex rel Fant v Mengel. Release of information not considered a document, device, or item as defined by RC 149.011 is not subject to disclosure under RC 149.43.

57 OS(3d) 77, 566 NE(2d) 146 (1991), State ex rel National Broadcasting Co v Cleveland. Internal police investigations of the use of deadly force constitute confidential law enforcement investigatory records under RC 149.43(A)(2); further, a court should conduct an in camera inspection and redact protected information prior to ordering release of the files.

54 OS(3d) 25, 560 NE(2d) 230 (1990), State ex rel Renfro v Cuyahoga County Human Services Dept. A county human services department has no duty under RC 149.43, 1347.08, or 5153.17 to allow inspection of investigation reports of alleged child abuse.

49 OS(3d) 59, 550 NE(2d) 945 (1990), State ex rel McGee v State Psychology Bd. The reference in RC 149.43(A)(2) to four types of law enforcement matters: criminal, quasi-criminal, civil, and administrative, shows a clear statutory intention to include investigative activities of state licensing boards.

47 OS(3d) 28, 546 NE(2d) 939 (1989), State ex rel Thompson Newspapers Inc v Martin. Confidential law enforcement investigatory records do not become public records merely because they are submitted to a trial court to provide the factual basis for obtaining the appointment of a special prosecutor.

47 OS(3d) 28, 546 NE(2d) 939 (1989), State ex rel Thompson Newspapers Inc v Martin. A prosecutor's decision not to file formal charges against a suspect does not take the record of the investigation outside the exception provided for confidential law enforcement investigatory records in RC 149.43(A)(2).

44 OS(3d) 111, 541 NE(2d) 587 (1989), State ex rel Fostoria Daily Review Co v Fostoria Hospital Assn. RC 2305.25 and 2305.251 render confidential the proceedings and records of a "hospital board or committee reviewing professional qualifications or activities of its medical staff or applicants for admission to its medical staff."

38 OS(3d) 79, 526 NE(2d) 786 (1988), State ex rel National Broadcasting Co v Cleveland. The specific investigatory work product exception, RC 149.43(A)(2)(c), protects an investigator's deliberative and subjective analysis, his interpretation of the facts, his theory of the case, and his investigative plans. The exception does not encompass the objective facts and observations he has recorded.

12 OS(3d) 100, 12 OBR 87, 465 NE(2d) 458 (1984), State ex rel Dayton Newspapers, Inc v Rauch. A county coroner's autopsy records and reports on homicide victims are exempt from public disclosure as specific investigatory work products pursuant to RC 149.43(A)(2)(c), notwithstanding RC 313.10, which provides that records of the coroner are public records.

5 OS(3d) 104, 5 OBR 241, 449 NE(2d) 762 (1983), State ex rel Gaines v Adult Parole Auth. Relator was not entitled to transcript of parole revocation hearing, as they are not public records pursuant to RC 149.43 exception.

64 OS(2d) 392, 415 NE(2d) 310 (1980), State ex rel Beacon Journal Publishing Co v University of Akron. Law enforcement records compiled before the 1979 amendment of RC 149.43 are available to the public provided they are public records as defined by RC 149.43 and are not exempted from disclosure by its provisions.

56 OS(2d) 126, 383 NE(2d) 124 (1978), Wooster Republican Printing Co v Wooster. Pursuant to RC 1347.08(F), the general assembly has denied to any person "access to any information compiled in reasonable anticipation of a civil or criminal action or

proceeding"; consequently, the release of records containing such information has been "prohibited by state ... law," within the meaning of the exception to the compulsory disclosure provisions of RC 149.43.

64 App(3d) 63 (Meigs 1989), State v Parsons. Disclosure of an informant's identity is not required where the informant's role is that of a mere tipster and the defendant has demonstrated no need for disclosure; therefore, where an informant is not an active participant in the criminal activity, and the testimony of the informant is not vital to establishing an element of the crime nor helpful or beneficial to the accused in preparing his defense, disclosure need not be made, as the tipster's involvement is limited to providing information relevant to the issue of probable cause.

44 App(3d) 118, 541 NE(2d) 1084 (Cuyahoga 1988), Woodman v Lakewood. The attorney-client privilege established by RC 149.43(A)(1) preserves the confidentiality of records of communications between an attorney and a government client even though the communications are not within the trial preparation exception of RC 149.43(A)(4).

No. 88-A-1421 (11th Dist Ct App, Ashtabula, 12-8-89), Central Appalachian Petroleum Co v Ross. Oil and gas well tax forms are not public records subject to public inspection, pursuant to RC 5715.49.

No. 23-CA-86 (5th Dist Ct App, Fairfield, 8-10-87), State ex rel Outlet Communications Inc v Lancaster Police Dept; reversed by 38 OS(3d) 324 (1988). Pursuant to RC 149.43(A)(2)(a), the term "confidential law enforcement investigatory record" includes arrest record docket books, traffic citations not filed with the municipal court, and intoxilyzer records; because each contains names of persons not charged with an offense, these records are not public records and are exempt from public disclosure.

No. 23-CA-86 (5th Dist Ct App, Fairfield, 8-10-87), State ex rel Outlet Communications Inc v Lancaster Police Dept. The release of justice fund records which contain information of confidential sources who might be endangered by the release of this information is prohibited by RC 149.43(A)(2)(d) under the confidential law enforcement investigatory record exception. (See also State ex rel Outlet Communications Inc v Lancaster Police Dept, 38 OS(3d) 324 (1988).)

No. 9-263 (11th Dist Ct App, Lake, 5-6-83), State ex rel Plain Dealer Publishing Co v Lesak. Where a newspaper reporter demands the bank records of a school athletic account from the board of education, such board must release the records since such records are public records; although the records were currently subject to a state audit, since the identity of the athletic director who controlled the account and the pending litigation was made known through newspaper articles, the confidential law enforcement investigatory exception does not apply.

1991 SERB 4-105 (7th Dist Ct App, Jefferson, 10-25-91), O'Donnell v Jefferson Technical College. An individual requesting release of state employment relations board investigatory matters relating to dismissal of his unfair labor practice charge is not prejudiced by SERB's refusal to release the papers.

102 FRD 468 (SD Ohio 1984), In re Dayco Corp Derivative Securities Litigation. A diary that chronicles corporate involvement in the subject matter of a stockholders' derivative action, prepared by a corporate employee at the direction of outside corporate counsel, is protected from discovery by the attorney-client privilege and the work product immunity rule where the diarist and other corporate executives arguably able to provide the same information are available to be deposed.

102 FRD 468 (SD Ohio 1984), In re Dayco Corp Derivative Securities Litigation. Unauthorized publication by a newspaper of excerpts from a diary prepared by an employee at the direction of outside corporate counsel to chronicle events related to the subject matter of a derivative action does not effect a waiver of the attorney-client privilege or work product rule.

OAG 91-003. Child abuse and neglect investigation records maintained by public children services agencies do not constitute "public records" within the meaning of RC 149.43 to which the right of public access attaches. Records of child abuse or neglect investigations under RC 2151.421(H)(1) and 5153.17 are "records the release of which is prohibited by state law" under RC 149.43(A)(1).

OAG 90-101. To the extent that a specific exception in RC 149.43 or an applicable provision of state or federal law prohibits their release, local law enforcement agency records concerning juvenile offenders are not public records under RC 149.43 and the public does not have a right to inspect and receive copies of such records under the Public Records Act.

OAG 90-101. For purposes of the confidential law enforcement investigatory records exception under RC 149.43(A), a juvenile may be considered a "suspect" when no charge, arrest, complaint, or referral to the juvenile court pursuant to Juv R 9 has been made.

OAG 90-101. For purposes of the confidential law enforcement investigatory records exception under RC 149.43(A), a juvenile ceases to be a "suspect" upon arrest, being charged, the filing of a complaint, or a referral to the juvenile court pursuant to Juv R 9.

OAG 84-084. Client records held by the rehabilitation services commission in connection with the state vocational rehabilitation services program are not public records for purposes of RC 149.43, because the general release of such records is prohibited by RC 3304.21 and 34 CFR 361.49.

OAG 84-079. Grand jury subpoenas, while in the possession of the clerk of courts prior to issuance in accordance with RC 2939.12, are not public records subject to disclosure under RC 149.43.

OAG 84-077. Under RC 1347.08, a juvenile court must permit a juvenile or a duly authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under RC 1347.04(A)(1)(e) or RC 1347.08(C) or RC 1347.08(E)(2). Under Juv R 37(B), the records may not, however, be put to any public use except in the course of an appeal or as authorized by order of the court.

OAG 84-077. RC 1347.04 does not operate to exempt juvenile courts from the provisions of RC Ch 1347 with respect to the courts' records of matters pertaining to juveniles; however, if a juvenile court has any personal information systems which are comprised of investigatory material compiled for law enforcement purposes, such systems are exempt from RC Ch 1347 under RC 1347.04(A)(1)(e).

OAG 81-019. The faculty inventory and the report on faculty service maintained by the board of regents on computer tapes are not public records within the meaning of RC 149.43 and, therefore, need not be made available to the public for inspection; the public release of the reports is restricted by 20 USC § 1232(b)(1), which provides for a potential loss of federal funds.

OAG 80-103. Pursuant to RC 149.43, the term "trial preparation records" includes only those records specifically compiled by a governmental unit after the unit's attention has focused upon a particular person or claim, in reasonable anticipation of a civil or criminal proceeding, and does not include those records routinely compiled by a governmental unit as a matter of common practice.

OAG 76-049. 45 CFR 401.47(B)(5) requires that information from a rehabilitation services commission client's case record be available upon his request to him or his representative for use in any proceeding or action; the rehabilitation services commission, however, must release only such information as is relevant to the action or proceeding and, if medical or psychological information contained in the case record may be harmful to the client, must arrange either to release the information to a representative of the client or to have the information released to the client by a physician or licensed psychologist.

OAG 76-049. Records concerning individuals applying for or receiving services from the rehabilitation services commission are not public records within the meaning of RC 149.43, because the general release of such records is prohibited by RC 3304.21 and 45 CFR 401.47.

OAG 76-011. RC 149.43 creates a public right of inspection only as to records the release of which is not prohibited by state or federal law.

OAG 76-011. Fiscal reviews of nursing home facilities by the Ohio department of public welfare's bureau of fiscal review are

records required by law to be kept and are open for inspection pursuant to RC 149.43, subject, where applicable, to federal requirements that names of medicaid recipients not be publicly released.

OAG 76-011. Periodic medical reviews of services rendered to nursing home patients under the medicaid program are records required by law to be kept; however, the release of these records is prohibited by federal law, and hence they are not available for public inspection, and the alteration of these records or summary reports of them containing information is not required.

OAG 75-062. Any information contained in a workmen's compensation claim file which was gained through communication or observation by a physician from a claimant who has contacted him for treatment or for diagnosis looking toward treatment would generally be subject to the patient-physician privilege under RC 2317.02(A) and may not be released except upon the authorization of the patient-claimant; however, the privilege attached to such information is waived if such information was obtained and placed in the claim file pursuant to a written medical waiver voluntarily signed by the claimant or if the claimant voluntarily testifies or introduces otherwise privileged information at a public hearing; where the claimant has waived the patient-physician privilege, then pursuant to RC 4123.88 a member of the industrial commission, the employer or the administrator of the bureau of workmen's compensation may authorize anyone to examine such medical records which may be contained in the claim file.

OAG 75-062. The materials which comprise a workmen's compensation claim file and any other file pertaining thereto fall within the exception to the definition of a "public record" found in RC 149.43 because RC 4123.88 specifically prohibits the examination or release of any claim file without the express prior authorization of the claimant, employer, a member of the industrial commission, or the administrator of the bureau of workmen's compensation.

OAG 75-047. The records of a school psychologist, whether licensed under RC Ch 4732 or certificated pursuant to RC 3319.22, do not constitute public records within the purview of RC 149.43; however, authorized board of education personnel do have access to the reports and recommendations of the certificated school psychologist.

6. Records otherwise held not public

40 Ad L Rev 1 (Winter 1988). Freedom Of Information Act Dispute Resolution, Mark H. Grunewald.

30 Akron Bar Assn Examiner 5 (January 1990). Enforcement Of Ohio's Public Records Law, David L. Jamison.

62 OS(3d) 456 (1992), State ex rel Margolius v Cleveland. A governmental agency must allow the copying of the portions of computer tapes to which the public is entitled under RC 149.43, if the person requesting the information has presented a legitimate reason why a paper copy of the records would be insufficient or impracticable, and if this person assumes the expense of copying.

62 OS(3d) 452 (1992), State ex rel Clark v Toledo. After an in camera review, a court need not individually describe each document and specify the applicable exemption.

62 OS(3d) 452 (1992), State ex rel Clark v Toledo. An appellate court may apply an exemption even though the party in possession of the records does not request nondisclosure.

62 OS(3d) 452 (1992), State ex rel Clark v Toledo. Redacted copies of the documents submitted for in camera review need not be released when the originals are submitted; redacted copies need not be "blacked out" rather than "whited out."

62 OS(3d) 203 (1991), State ex rel Mayrides v Whitehall. Where a city, by a custodian affidavit, affirms that all documents in the city's custody relating to an individual's prior arrest and conviction for rape have been turned over to the individual and the individual fails to produce any credible evidence showing that the city has failed or refused to produce copies of all documents that exist in regard to his prior arrest and conviction for rape, a writ of execution will be denied since the individual has already received from the city all documents to which he is entitled; the Public Records Act, RC 149.43, does not require that a public office create documents to meet a requester's demand. (See also State ex rel Fant v Mengel, 62 OS(3d) 197 (1991).)

62 OS(3d) 197 (1991), State ex rel Fant v Mengel. The Public Records Act, RC 149.43 does not require that a public office create new documents to meet a requester's demand; therefore, a writ of mandamus to compel the disclosure of public records will be denied where the documents sought do not exist. (See also State ex rel Mayrides v Whitehall, 62 OS(3d) 203 (1991).)

45 OS(3d) 376, 544 NE(2d) 680 (1989), State ex rel Scanlon v Deters. Where Crim R 16 provides a relator an adequate alternative remedy to RC 149.43, he cannot be granted a writ of mandamus ordering the production of public records available under such a rule.

56 OS(2d) 126, 383 NE(2d) 124 (1978), Wooster Republican Printing Co v Wooster. Police and other law enforcement investigatory records are not subject to the compulsory disclosure provisions of RC 149.43.

55 OS(2d) 70, 378 NE(2d) 153 (1978), State ex rel Citizens' Bar Assn v Gagliardo. Financial disclosure statement filed by juvenile judge with juvenile court is not a public record.

54 OS(2d) 41, 374 NE(2d) 641 (1978), State ex rel Harris v Rhodes. Records of the correctional medical and reception center are not public records under RC 149.43.

48 OS(2d) 379, 358 NE(2d) 615 (1976), State ex rel Lippitt v Edgecomb. Supreme court affirmed an appellate court judgment that evidence was inconclusive to show that the temporary docket of a municipal court regarding drunken driving arrests was a public record. (See also Dayton Newspapers, Inc v Dayton, 45 OS(2d) 107, 341 NE(2d) 576 (1976).)

70 App(3d) 525 (Cuyahoga 1991), State ex rel Lippitt v Kovacic. Redaction of OBCI "rap sheets" and FBI and BCI numbers is required before police scientific investigation unit cover sheets are released.

64 App(3d) 659 (Cuyahoga 1990), State ex rel Kinsley v Berea Bd of Ed. An award of attorney fees is unwarranted in a mandamus action brought by a party who is denied her request for copies of settlement agreements entered into between teachers and a board of education and other documents detailing the teachers' salary schedules and back-pay allowances; although a public benefit may be derived from the disclosure of public records previously withheld, the board provided all records requested, including personnel data and fiscal records, except the settlement agreements and the board's claim for nondisclosure of the settlement agreements is not unreasonable.

64 App(3d) 63 (Meigs 1989), State v Parsons. Dismissal of an indictment charging the defendant with cultivation of marijuana is not warranted due to the prosecution's failure to disclose the identity of an informant where disclosure of the identity of the informant is not required in the interests of justice, as a court must apply the least severe sanction available when sanctioning a discovery order violation.

30 App(3d) 89, 30 OBR 187, 506 NE(2d) 927 (Lorain 1986), State ex rel Jacobs v Prudoff. Prohibition against conversion of trade secrets in RC 1333.51(C) applies to protect trade secrets that are public records within the meaning of RC 149.43(A)(1) against disclosure; it is a question of fact whether a given document contains a trade secret as defined in RC 1333.51(A)(3).

61 Misc(2d) 617 (CP, Hocking 1991), State ex rel Jones v Myers. A public employee's name, designation, earnings, withholding taxes, vacation and sick leave record, purchase of retirement service credits, medical or hospitalization insurance deductions, and garnishments and court-ordered support payments are public records as defined by RC 149.43(A)(1) and must be disclosed by the keeper of those records upon request; other financial information, e.g., deductions for deferred compensation plans, savings bonds, Christmas clubs, is confidential and is not a public record.

50 Misc(2d) 1, 552 NE(2d) 243 (CP, Lucas 1990), State ex rel Toledo Blade Co v Telb. The burden of proving records are

excepted from disclosure by RC 149.43 is on the government body refusing to release them.

50 Misc(2d) 1, 552 NE(2d) 243 (CP, Lucas 1990), State ex rel Toledo Blade Co v Telb. The legislature's use of the word "reasonable" in RC 149.43(A)(2)(b) makes clear that something more than a routine procedure is necessary to establish that a statement was given under circumstances that will except it from disclosure under the public records law; moreover, it is axiomatic that a government official has no authority to undertake administratively a practice that would have the effect of nullifying the application of a state law to an entire category of public records.

50 Misc(2d) 1, 552 NE(2d) 243 (CP, Lucas 1990), State ex rel Toledo Blade Co v Telb. RC 149.43(C) permits an award of attorney fees to the party instituting a mandamus action; to determine whether an award is appropriate a court must decide if the party obtaining the writ conferred a "sufficient benefit" on the public and also the reasonableness of the other party's refusal to disclose.

1989 SERB 4-72 (CP, Franklin, 6-7-89), Franklin County Sheriff v SERB. A public employer is not given a right by RC 149.43 or 4117.17 to obtain investigation files from the state employment relations board or the attorney general.

1988 SERB 4-16 (CP, Franklin, 2-3-88), Franklin County Bd of County Commrs v SERB. Citing the liberal construction of RC Ch 4117 mandated by RC 4117.22 as authority, the Franklin county appeals court denies public access to investigation files of the state employment relations board.

1988 SERB 4-16 (CP, Franklin, 2-3-88), Franklin County Bd of County Commrs v SERB. Investigation files of the state employment relations board are not "public records" under RC 149.43, nor are they considered "evidence" available to the public under RC 4117.17.

OAG 90-101. To the extent that a specific exception in RC 149.43 or an applicable provision of state or federal law prohibits their release, local law enforcement agency records concerning juvenile offenders are not public records under RC 149.43 and the public does not have a right to inspect and receive copies of such records under the Public Records Act.

OAG 90-101. When a record of the adjudication or arrest of a juvenile has been ordered sealed or expunged pursuant to RC 2151.358, such record is not a public record.

OAG 90-101. Pursuant to Juv R 32(B), 37(B) and RC 2151.14, juvenile court records, the records of social, mental, and physical examinations pursuant to court order, and records of the juvenile court probation department are not public records under RC 149.43.

OAG 90-101. If, pursuant to RC 2151.313, a law enforcement officer or other authorized person takes fingerprints or photographs of a juvenile arrested or taken into custody, the fingerprints, photographs, and other records relating to that arrest or custody of the juvenile are not public records.

OAG 83-100. To the extent that records maintained by the Ohio state board of psychology contain information or other data the release of which is prohibited by RC 2953.35(A), such records are not "public records" within the meaning of RC 149.43(A)(1); therefore, the board may seal such information or data or otherwise segregate it from its public records in order to comply with RC 2953.35(A); the board does not have the authority to "expunge," or actually destroy, its official records, except as provided by law or pursuant to a schedule or application approved by the state records commission.

OAG 83-071. Pursuant to OAC 5101:1-1-03 and related statutory provisions, a county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of aid to families with dependent children or poor relief, unless such law enforcement personnel are prosecuting public fraud or seeking child support, or the applicant or recipient has expressly consented in writing to the disclosure; in addition, the release must be for a purpose directly connected with the administration of a public assistance program outlined in OAC 5101:1, and the agency to which the information is released must be subject to standards of confidentiality substantially comparable to those established in OAC 5101:1-1-03.

OAG 81-043. A "news hook" maintained by a city police department is not a public record under the terms of RC 149.43, and need not, therefore, be disclosed to all members of the public for any reason whatsoever.

OAG 77-075. Pursuant to RC 4112.05(B), the Ohio civil rights commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated.

OAG 71-053. Case files of specific investigations made by state highway patrol are not "public records" within meaning of RC 149.43.

7. Procedures and remedies

62 OS(3d) 452 (1992), State ex rel Clark v Toledo. An appellate court may apply an exemption even though the party in possession of the records does not request nondisclosure.

62 OS(3d) 197 (1991), State ex rel Fant v Mengel. Pro se litigants are not entitled to attorney fees under RC 149.43.

58 OS(3d) 213, 569 NE(2d) 904 (1991), State ex rel Toledo Blade Co v Northwood. RC 149.43(C) does not contemplate an award of attorney fees in mandamus actions rendered moot by the voluntary production of a record.

57 OS(3d) 102, 566 NE(2d) 661 (1991), State ex rel Beacon Journal Publishing Co v Radel. A peremptory writ of mandamus may not be granted before an answer denying or admitting the material facts has been filed where a petitioner alleges that a judge has improperly sealed criminal records and has denied public access to those records.

57 OS(3d) 77, 566 NE(2d) 146 (1991), State ex rel National Broadcasting Co v Cleveland. Internal police investigations of the use of deadly force constitute confidential law enforcement investigatory records under RC 149.43(A)(2); further, a court should conduct an in camera inspection and redact protected information prior to ordering release of the files.

56 OS(3d) 97, 564 NE(2d) 486 (1990), State ex rel Fairfield Leader v Ricketts. A meeting of government officials to discuss annexation and development projects at which no specific proposals are made and no official action taken, and where the meeting is called by and paid for by a private developer, must be reduced to minutes. These minutes must be made available to the public; where the officials refuse to reduce the meeting to minutes, mandamus shall be granted to compel such action.

56 OS(3d) 97, 564 NE(2d) 486 (1990), State ex rel Fairfield Leader v Ricketts. An award of attorney fees is warranted where public officials attempt to design a meeting with the specific intent of circumventing local and state laws governing public access.

56 OS(3d) 36, 564 NE(2d) 89 (1990), State ex rel Shane v New Philadelphia Police Dept. A criminal defendant may not obtain a writ of mandamus under RC 149.43 to secure public records where he may litigate his right to obtain these records in his criminal case through the discovery process.

51 OS(3d) 99, 554 NE(2d) 1321 (1990), State ex rel Multimedia, Inc v Whalen. Attorney fees shall be awarded as a sanction where denial of access to public records is an unreasonable attempt to avoid the clear mandate of RC 149.43.

51 OS(3d) 1, 553 NE(2d) 1345 (1990), State ex rel Beacon Journal Publishing Co v Ohio Health Dept. The attorney fees provision of RC 149.43(C) does not violate the constitutional prohibition against retroactive legislation.

50 OS(3d) 152, 553 NE(2d) 646 (1990), State ex rel Hastings Mutual Insurance Co v Merillat. The granting of a Civ R 26(B) motion to quash a subpoena duces tecum issued pursuant to Civ R 30(B) is subject to review by way of appeal; accordingly, the party opposing the motion may not seek to obtain identical relief collaterally through the institution of a separate action in mandamus brought pursuant to RC 149.43(C).

48 OS(3d) 41, 549 NE(2d) 167 (1990), State ex rel Multimedia, Inc v Whalen. A person aggrieved by government refusal to release

records may seek a writ of mandamus under RC 149.43(C) to obtain the records from the government unit or the custodian of the records; consequently, a police chief's assertion that an individual seeking records that are in the chief's custody could have simply appealed to the chief's superiors in city government following the chief's refusal, and thus had an adequate remedy at law, is rejected.

48 OS(3d) 41, 549 NE(2d) 167 (1990), State ex rel Multimedia, Inc v Whalen. An award of attorney fees under RC 149.43(C) is not mandatory.

45 OS(3d) 376, 544 NE(2d) 680 (1989), State ex rel Scanlon v Deters. A relator in a mandamus action seeking production of documents pursuant to RC 149.43 is required, as are relators in other mandamus actions, to show the absence of an adequate alternative to issuing the writ.

42 OS(3d) 1, 535 NE(2d) 1366 (1989), State ex rel Beacon Journal Publishing Co v Akron Metropolitan Housing Auth. Where the respondent in a mandamus action for an order to allow inspection of job application materials attempts to resolve the dispute through compromise and the trial court finds no bad faith in respondent's denial of access to such materials, the trial court does not abuse its discretion in denying relator's request for attorney fees under RC 149.43(C).

39 OS(3d) 108, 529 NE(2d) 443 (1988), State ex rel Fox v Cuyahoga County Hospital System. The award of attorney fees under RC 149.43(C) is discretionary, not mandatory.

38 OS(3d) 79, 526 NE(2d) 786 (1988), State ex rel National Broadcasting Co v Cleveland. When a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question. If the court finds that these records contain excepted information, this information must be redacted and any remaining information must be released.

35 OS(3d) 241, 520 NE(2d) 207 (1988), Henneman v Toledo. Records and information compiled by an internal affairs division of a police department are subject to discovery in civil litigation arising out of alleged police misconduct if, upon an in camera inspection, the trial court determines that the requesting party's need for the material outweighs the public interest in the confidentiality of such information.

33 OS(3d) 120, 515 NE(2d) 618 (1987), State ex rel Fant v Staples. A mandamus action for the production of public records and motions pending in connection with the action will be dismissed as moot where the respondent establishes its willingness to voluntarily comply with relator's request for access to its records.

32 OS(3d) 327, 512 NE(2d) 1176 (1987), State ex rel Fostoria Daily Review Co v Fostoria Hospital Assn. RC 149.99 sets forth an exclusive remedy to compel compliance with the public records statute, RC 149.43; therefore, a writ of mandamus compelling access to public records must be denied. (Superseded by amendment of RC 149.43 by 1987 S 275, eff. 10-15-87.)

29 OS(3d) 17, 29 OBR 235, 504 NE(2d) 1115 (1987), State ex rel Fant v Sykes. A writ of mandamus to compel disclosure of public records will be denied where the records sought have been furnished to relator rendering the action in mandamus moot. (See also State ex rel Fant v Sykes, 29 OS(3d) 18, 29 OBR 236 (1987).)

25 OS(3d) 347, 25 OBR 399, 496 NE(2d) 908 (1986), Beacon Journal Publishing Co v Stow. For purposes of imposing the fine set forth in former RC 149.99, before its repeal by 1985 H 238, eff. 7-1-85, for violations of RC 149.43(B), a city's repeated refusals to disclose public documents may be found by the trier of fact to constitute only one violation, where repeated demands for disclosure can be construed merely as renewals of an original demand.

20 OS(3d) 51, 20 OBR 351, 485 NE(2d) 1039 (1985), State v Bundy. A trial court's error in not allowing a criminal defendant access to requested public records of a police department is harmless error where the defendant does not demonstrate any prejudice from lack of access to the requested material.

56 OS(2d) 126, 383 NE(2d) 124 (1978), Wooster Republican Printing Co v Wooster. In determining whether disclosure to the general public of personal information contained in an otherwise public record would constitute an improper use of personal information under the provisions of RC Ch 1347, the interest of the public's "right to know," codified in RC 149.43, must be balanced against an individual's "right of personal privacy," codified in RC Ch 1347; in the consideration of these respective interests, doubt should be resolved in favor of public disclosure of public records in order to insure the existence of an informed public.

46 OS(2d) 184, 347 NE(2d) 539 (1976), State ex rel Grosser v Boy. "Public benefit" conferred by successful mandamus action to inspect and copy certain high school records did not justify an award of attorney's fees.

34 OS(2d) 37, 295 NE(2d) 665 (1973), State ex rel White v Cleveland. Where a taxpayer requests the law director of a municipality to advise the commissioner of the division of building to permit the inspection and copying of public records, as required by RC 149.43, and the law director refuses, relying upon an alleged policy of the municipality, it is clear that a written request upon the law director to maintain a mandamus action against the commissioner, pursuant to RC 733.58, would be futile and unavailing, and such request, required by RC 733.59, is excused.

66 App(3d) 398 (Butler 1990), State ex rel Butler County Bar Assn v Robb. A clerk of court is required to make ordinary copies of public records available at cost to a county bar association despite the clerk's contention that RC 2303.20(G) requires a clerk of the common pleas court to charge $1.00 per page for copies, since the statute pertains to a limited class of copies only, i.e., certified copies, and does not pertain to all copies of public records which might be sought by a member of the public.

64 App(3d) 659 (Cuyahoga 1990), State ex rel Kinsley v Berea Bd of Ed. The individual members of a board of education are amenable to suit in mandamus as the persons responsible for the public records of the school district which are not made available on request since although as a general rule and absent a statute to the contrary, suit must be instituted against the board as an entity when it acts collectively, the public records statute permits a mandamus action to be brought not only against the governmental unit, but also against the individuals responsible for the records.

62 App(3d) 752 (Franklin 1989), State ex rel Zauderer v Joseph. Although under RC 149.43 a city police chief, county sheriff, and superintendent of state highway patrol generally have a duty to make traffic accident reports available for inspection to any person at all reasonable times during regular business hours, a request to inspect city, state, and county traffic accident reports of record must comport with the method of retrieval used by the city, state, or county; a request that merely asks for any and all traffic accident reports will not be enforced pursuant to a writ of mandamus since the request is unreasonable in scope, and if granted would interfere with the sanctity of the recordkeeping process.

62 App(3d) 298, 575 NE(2d) 497 (Butler 1990), State ex rel Butler County Bar Assn v Robb. A complaint in mandamus concerning cost of copies of public records states a claim for relief under RC 149.43(B), which provides that "persons responsible for public records shall make copies available at cost."

62 App(3d) 225, 575 NE(2d) 224 (Franklin 1990), State ex rel Mayrides v Whitehall. A party who has been wrongfully refused access to public records is not entitled under RC 149.43(C) to receive copies of those records free of charge as a sanction for the wrongful refusal.

62 App(3d) 225, 575 NE(2d) 224 (Franklin 1990), State ex rel Mayrides v Whitehall. RC 149.43 does not require the custodian of public records to provide copies of such records free of charge.

62 App(3d) 225, 575 NE(2d) 224 (Franklin 1990), State ex rel Mayrides v Whitehall. An award of attorney fees under RC 149.43(C) is inappropriate where the custodian's refusal to release public records was based on a good faith belief that the party requesting the records was unable to pay for copying costs.

56 App(3d) 174, 565 NE(2d) 880 (Cuyahoga 1989), Schregardus v Croucher. A municipal court lacks subject matter jurisdiction to hear a case seeking money only damages pursuant to RC 149.99 for an alleged violation of RC 149.43, as the statutory remedies allowing for monetary forfeiture and the recovery of attorney fees

are ancillary to the principal remedy of compelled compliance; a claim brought under RC 149.99 is principally equitable in a nature and, therefore, a municipal court lacks jurisdiction to adjudicate such a claim.

49 App(3d) 61, 550 NE(2d) 217 (Erie 1989), Yee v Lechner. A defendant in a pending criminal case has an adequate legal remedy to obtain police records and reports with a subpoena under Crim R 17(C), and his petition for a writ of mandamus for disclosure will be denied.

49 App(3d) 59, 550 NE(2d) 214 (Butler 1989), State ex rel Petty v Wurst. To warrant an award of attorney fees under RC 149.43(C), a sufficient benefit to the public must be demonstrated, and the reasonableness of the public official's refusal to disclose information may also be considered, since such fees are regarded as punitive.

53 App(2d) 203, 373 NE(2d) 386 (1976), Lindley v Ferguson; affirmed by 52 OS(2d) 60, 369 NE(2d) 482 (1977). The power of subpoena is entirely separate and distinct from a citizen's right of inspection of public records.

52 App(2d) 56, 368 NE(2d) 326 (1977), Land Title Guarantee & Trust Co v Essex. The statutory right to inspect county public records under RC 149.43 incorporates within its meaning the right to copy such records within reasonable limitations.

No. 90 CA 42 (7th Dist Ct App, Mahoning, 12-5-90), State ex rel Vindicator Printing Co v Philomena. Individual in camera scrutiny of records is essential to determine whether such records are exempt from disclosure under RC 149.43; a denial of a writ of mandamus to compel disclosure on the pleadings will be reversed and remanded for such inspection.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. The award of attorney fees under the public meetings law is plainly discretionary; a court when deciding whether to award fees under the act will use the same criteria as that applicable to the public records law.

61 Misc(2d) 631 (CP, Lucas 1990), State ex rel Toledo Blade Co v Economic Opportunity Planning Assn of Greater Toledo. A newspaper initiating court action to force a recalcitrant public office, a designated community action agency, to open its meetings and records to public review confers a significant benefit on the public, and attorney fees will be awarded to the prevailing newspaper where the legal positions taken by the agency are not supported by any plausible reading of the statutes nor by logical argument from existing decisions.

1990 SERB 4-51 (10th Dist Ct App, Franklin, 8-28-90), Franklin County Sheriff's Dept v SERB; modified by 62 OS(3d) 498 (1992). Materials gathered during investigation of an unfair labor practice charge by the state employment relations board are "law enforcement investigatory records" for purposes of RC 149.43, since RC 4117.12 calls for the board to investigate any charged violations; the burden of demonstrating that law enforcement investigatory records are exempt from disclosure under RC 149.43(A)(2) is on the agency refusing to disclose.

No. A8700770 (CP, Hamilton, 5-2-88), Ohio Ed Assn v Great Oaks Joint Vocational School Dist Bd of Ed. A public employer has standing to assert its employees' "fundamental right" to privacy to prevent a union's use of the public records law, RC 149.43, to inspect and copy personnel records with employees' names and addresses for use in a labor organizing campaign; the public records law is entirely unconstitutional and unenforceable.

116 FRD 270 (ND Ohio 1987), Dinkins v Ohio State Highway Patrol. A black applicant denied employment as a highway patrolman and suing under 42 USC 2000e-2 for discrimination is not entitled to discovery of the actual reports of a background investigation that was "one factor" in the patrol's decision where an in camera review of the reports by the court confirms the accuracy of a summary provided by the patrol stating the applicant averaged thirty absences per year from high school, held many jobs briefly because of absenteeism, and was described by those who knew him as "lacking in common sense"; the patrol will be forced to identify the trooper who conducted the investigation and prepared the actual reports, however, so the applicant can discern whether the "interviewing process itself caused bias."

OAG 89-073. Under RC 149.43(B), a person seeking to inspect or receive a copy of the shorthand notes taken and filed pursuant to RC 2301.20 or the transcript prepared pursuant to RC 2301.23 by an official shorthand reporter or assistant shorthand reporter of a common pleas court may direct the request therefor to the official shorthand reporter. If a transcript is filed with the common pleas court, any person seeking to inspect or receive a copy of the transcript may direct the request therefor to the clerk of the common pleas court.

OAG 81-006. The employee address and payroll records maintained by a board of township trustees are public records that must be made available for inspection at all reasonable times; a municipal official charged with enforcing the income tax provisions of a municipality does not need a subpoena duces tecum in order to gain access to such records.

OAG 75-062. Any information contained in a workmen's compensation claim file which was gained through communication or observation by a physician from a claimant who has contacted him for treatment or for diagnosis looking toward treatment would generally be subject to the patient-physician privilege under RC 2317.02(A) and may not be released except upon the authorization of the patient-claimant; however, the privilege attached to such information is waived if such information was obtained and placed in the claim file pursuant to a written medical waiver voluntarily signed by the claimant or if the claimant voluntarily testifies or introduces otherwise privileged information at a public hearing; where the claimant has waived the patient-physician privilege, then pursuant to RC 4123.88 a member of the industrial commission, the employer or the administrator of the bureau of workmen's compensation may authorize anyone to examine such medical records which may be contained in the claim file.

OAG 75-062. The industrial commission is required pursuant to RC 4121.10 to keep records showing its proceedings, findings, awards, and each member's vote as cast in all claims for compensation presented for its consideration; such records together with the transcript at its hearings, if any, are a public record as defined in RC 149.43 and shall be available to the public at all reasonable times for inspection even if they are filed within the claim files.

OAG 73-034. Any citizen or taxpayer of the state of Ohio who requests to view, or have copies made of, salary or compensation records of employees of the university of Toledo at any reasonable time should be permitted to inspect or have copies of such records at cost.

OAG 67-018. A demand by a party, not included within RC 2301.23, upon the court reporter to transcribe and deliver a copy of such transcription is not a request to make available public records under RC 149.43, but transcripts already prepared for parties are available to disinterested parties upon demand as public records.

COUNTY RURAL ZONING

303.11 Zoning plan to be submitted to electors; filing requirements

If the zoning resolution is adopted by the board of county commissioners, such board shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the county included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. on the seventy-fifth day before the day of the election. No zoning regulations shall be put into effect in any township, unless a majority of the vote cast on the issue in that township is in

favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect in all townships which voted approval, eliminating from the plan any township which did not vote approval.

Within five working days after the resolution's effective date, the board of county commissioners shall file it, including text and maps, in the office of the county recorder. The board shall also file duplicates of the same documents with the regional or county planning commission, if one exists, within the same period.

The board shall file all resolutions, including text and maps, that are in effect on January 1, 1992, in the office of the county recorder within thirty working days after that date. The board shall also file duplicates of the same documents with the regional or county planning commission, if one exists, within the same period.

The failure to file a resolution, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the resolution and is not grounds for an appeal of any decision of the board of zoning appeals.

HISTORY: 1991 S 20, eff. 1-1-92
1980 H 1062; 125 v 713; 1953 H 1; GC 3180-10

Penalty: 303.99(A)

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 61.03

CROSS REFERENCES

County recorder informing board of filing requirements, 317.081
Filing fees, 317.32
General and special elections, 3501.01, 3501.02
Board of elections certification, 3501.11
Primary elections, 3513.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 154, 220, 235, 241
Am Jur 2d: 82, Zoning and Planning § 55
Adoption of zoning ordinance or amendment thereto as subject of referendum. 72 ALR3d 1030

NOTES ON DECISIONS AND OPINIONS

1964 OAG 1500. A comprehensive zoning plan adopted pursuant to RC Ch 519 may not be repealed for a part only of the territory included within the zoning plan but must be repealed vel non as a whole.

1964 OAG 1107. Zoning regulations for a county, adopted pursuant to RC 303.26 et seq., must be submitted to a vote as provided in RC 303.11 to be effective in any township within the county.

1963 OAG 1299. A township may be made subject to an existing zoning plan in the unincorporated part of a county by the procedures set forth in RC 303.03 to RC 303.11.

1962 OAG 2963. RC 303.11 and RC 303.22 are in pari materia and their provisions when so construed require but one issue to be presented for consideration to the eligible voters.

1962 OAG 2963. Where the question of the adoption of county rural zoning is submitted in a township and a part of such township is under township zoning, such township zoning will be replaced by the county zoning plan if such plan is adopted by an affirmative vote in the entire township covered by the county zoning plan and by a majority vote of voters in the area with township zoning within such township.

1962 OAG 2963. Repeal of township zoning pursuant to RC 519.25 is not a prerequisite to, nor the same as, a consideration of the question raised by RC 303.11 and RC 303.22.

1962 OAG 2963. When a board of county commissioners adopts a zoning resolution, such resolution must be submitted for approval or rejection to all of the voters residing in the area included within the plan, regardless of whether there is at the time of such election township zoning in all or part of such township.

1951 OAG 226. The question of the approval or rejection of a proposed plan of rural zoning is to be submitted only to the electors residing in the unincorporated area of the county included in the proposed plan of zoning.

1951 OAG 226. Where a proposed plan of rural zoning which is submitted for approval includes part but not all of the territory of a township, only the electors residing in that portion of the township so included are entitled to vote.

303.12 Amendments to zoning resolution; notices and hearings; referendum; form of petition; filing requirements

(A) Amendments to the zoning resolution may be initiated by motion of the county rural zoning commission, by the passage of a resolution therefor by the board of county commissioners or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the county rural zoning commission. The board of county commissioners may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee therefor to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the board of county commissioners requires such a fee, it shall be required generally, for each application. The board of county commissioners shall upon the passage of such resolution certify it to the county rural zoning commission.

Upon the adoption of such motion, or the certification of such resolution or the filing of such application, the county rural zoning commission shall set a date for a public hearing thereon, which date shall not be less than twenty nor more than forty days from the date of adoption of such motion or the date of the certification of such resolution or the date of the filing of such application. Notice of such hearing shall be given by the county rural zoning commission by one publication in one or more newspapers of general circulation in each township affected by such proposed amendment at least ten days before the date of such hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the county auditor's current tax list. The failure of delivery of such notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing;

(2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the zoning commission;

(8) A statement that after the conclusion of such hearing the matter will be submitted to the board of county commissioners for its action.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) A statement that after the conclusion of such hearing the matter will be submitted to the board of county commissioners for its action;

(6) Any other information requested by the zoning commission.

Hearings shall be held in the county court house or in a public place designated by the zoning commission.

(E) Within five days after the adoption of such motion or the certification of such resolution or the filing of such application the county rural zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the county rural zoning commission. Such recommendation shall be considered at the public hearing held by the county rural zoning commission on such proposed amendment.

The county rural zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment, or the approval of some modification thereof and shall submit such recommendation together with such application or resolution, the text and map pertaining thereto and the recommendation of the county or regional planning commission thereon to the board of county commissioners.

The board of county commissioners shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment, which date shall be not more than thirty days from the date of the receipt of such recommendation from the county rural zoning commission. Notice of such public hearing shall be given by the board by one publication in one or more newspapers of general circulation in the county, at least ten days before the date of such hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and shall include all of the following:

(1) The name of the board that will be conducting the public hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the board that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after such public hearing the board shall either adopt or deny the recommendation of the zoning commission or adopt some modification thereof. In the event the board denies or modifies the recommendation of the county rural zoning commission the unanimous vote of the board shall be required.

Such amendment adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment there is presented to the board of county commissioners a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for

governor in such area at the last preceding general election at which a governor was elected, requesting the board to submit the amendment to the electors of such area, for approval or rejection, at a special election to be held on the day of the next primary or general election. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment proposal is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM

(if the proposal is identified by a particular name or number, or both, these should be inserted here) _____

A proposal to amend the zoning map of the unincorporated area of _____ Township, _____ County, Ohio, adopted _____ (date) _____ (followed by brief summary of the proposal).

To the Board of County Commissioners of _____ County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of _____ Township, included within the _____ County Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of County Commissioners to submit this amendment of the zoning resolution to the electors of _____ Township residing within the unincorporated area of the township included in the _____ County Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on _____ (date) _____, pursuant to section 303.12 of the Revised Code.

Signature	Street Address or R.F.D.	Township	Precinct	County	Date of Signing

STATEMENT OF CIRCULATOR

_____(name of circulator)_____

Declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing _____(number)_____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____
(Signature of circulator)

_____
(Address)

_____
(City, village or township, and zip code)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH."

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters it shall take immediate effect.

Within five working days after an amendment's effective date, the board of county commissioners shall file the text and maps of the amendment in the office of the county recorder and with the regional or county planning commission, if one exists.

The board shall file all amendments, including text and maps, that are in effect on January 1, 1992, in the office of the county recorder within thirty working days after that date. The board shall also file duplicates of the same documents with the regional or county planning commission, if one exists, within the same period.

The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals.

HISTORY: 1991 S 20, eff. 1-1-92
1988 S 112; 1984 H 14; 1981 H 101; 130 v S 346; 128 v 128; 127 v 363, 1262; 126 v Pt II, 20; 1953 H 1; GC 3180-11

Penalty: 303.99(A)

CROSS REFERENCES

Newspaper of general circulation, 7.12
County recorder informing board of filing requirements, 317.081
Filing fees, 317.32
Tax list of county auditor, 319.28
Zoning resolutions, solid waste facilities exempted from, 343.01
General elections, 3501.01, 3501.02
Primary elections, 3513.01
Election petitions, offenses and penalties, 3599.13 to 3599.16
County and joint solid waste management plans, 3734.53

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 154, 220, 235, 242, 243; 56, Initiative and Referendum § 3, 17, 26; 72, Notice and Notices § 27 to 30, 32 to 36

Am Jur 2d: 42, Initiative and Referendum § 21 et seq.; 82, Zoning and Planning § 18, 47 to 50, 57 to 59

Validity and construction of statutory notice requirement prerequisite to adoption or amendment of zoning ordinance or regulation. 96 ALR2d 449

Construction and application of statute or ordinance requiring notice as prerequisite to granting variance or exception to zoning requirement. 38 ALR3d 167

Adoption of zoning ordinance or amendment thereto as subject of referendum. 72 ALR3d 1030

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Amendment to zoning resolution
3. Notice and hearing
4. Referendum petition and procedure

1. In general

67 OS(2d) 345, 423 NE(2d) 1087 (1981), Peachtree Development Co v Paul. Article XVI of the Hamilton county zoning resolution does not unlawfully delegate legislative authority to the regional planning commission.

67 OS(2d) 345, 423 NE(2d) 1087 (1981), Peachtree Development Co v Paul. A board of county commissioners action in approval of community unit plan which altered zoning on parcel of land involved was a legislative act subject to referendum.

67 OS(2d) 139, 423 NE(2d) 184 (1981), Moraine v Montgomery County Bd of Commrs. County commissioners have inherent authority to reconsider their own legislative decisions, provided there is no change or modification from the original proposal.

67 OS(2d) 139, 423 NE(2d) 184 (1981), Moraine v Montgomery County Bd of Commrs. An appeal pursuant to RC 2506.01 from the denial of an amendment to a comprehensive zoning plan is improper, since such action is a legislative function.

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976). A municipal charter provision which requires that any ordinance changing land use be ratified by the voters in a city-wide election constitutes an unlawful delegation of legislative power.

162 OS 521, 124 NE(2d) 115 (1955), Eggers v Morr. Mere inconvenience in complying with the necessary steps in taking an appeal from an action of the county commissioners in rezoning an area does not constitute an excuse for resorting to an independent action for an injunction in lieu of taking the appeal.

162 OS 521, 124 NE(2d) 115 (1955), Eggers v Morr. A zoning resolution of a board of county commissioners may be attacked in an original action which seeks to enjoin its enforcement.

58 App(3d) 61, 568 NE(2d) 722 (Hamilton 1989), State ex rel Turpin Woods Co v Hamilton County Bd of Commrs. The enactment of a zoning change by the county commissioners pursuant to a common pleas court judgment declaring the prior zoning classification unconstitutional does not violate RC 303.12.

30 App(3d) 217, 30 OBR 374, 507 NE(2d) 438 (Hamilton 1986), State ex rel Dry Ridge Development Co v Hamilton County Bd of Commrs. Where two of three members of a board of county commissioners vote to deny a recommendation of a rural zoning commission and the third member abstains from voting, the unanimity requirement of RC 303.12(H) has been met.

16 App(2d) 147, 242 NE(2d) 670 (1968), Deserisy v De Courcy. The failure of a board of county commissioners to act within twenty days of its hearing on an application for a change of zoning following recommendation by a zoning commission does not constitute approval of the favorable recommendations of such zoning commission.

5 App(2d) 187, 214 NE(2d) 681 (1965), In re Application of Latham. RC Ch 2506 does not confer jurisdiction upon a court of common pleas to hear an appeal from the action of a board of county commissioners denying an application for rezoning.

91 App 523, 108 NE(2d) 747 (1952), Schneller v Hamilton County Bd of Commrs. A petition in common pleas court challenging the validity of an amendment of zoning ordinances by county commissioners must be filed within ten days of the date of such order.

5 Misc 210, 210 NE(2d) 747 (CP, Hamilton 1965), Seyler v Balsly. The requirement of a unanimous vote of the board of county commissioners in RC 303.12 is met by the unanimous vote of the two commissioners present at a meeting.

83 Abs 321, 164 NE(2d) 466 (CP, Butler 1959), Fried v Augspurger. A board of county commissioners does not have discretion to allow signatures to be withdrawn from a referendum petition requesting a referendum on a zoning change after the board of county commissioners had ordered said matter to be placed on the ballot.

77 Abs 93, 149 NE(2d) 33 (App, Franklin 1957), State ex rel Holmes v Lauderbaugh. Where a petition is filed with a board of county commissioners requesting that an amendment to a zoning ordinance be submitted to an election, and an individual files a mandamus action against the board to compel it to submit such questions, the board cannot thereafter rescind its resolution to submit the amendment.

OAG 71-052. Board of township trustees has duty to determine whether petitions requesting referendum on zoning amendment filed with board are valid on their face for presentation to board of elections, but does not have power to inquire into other matters respecting said petitions.

1963 OAG 1299. A township may be made subject to an existing zoning plan in the unincorporated part of a county by the procedures set forth in RC 303.03 to 303.11.

2. Amendment to zoning resolution

67 OS(2d) 139, 423 NE(2d) 184 (1981), Moraine v Montgomery County Bd of Commrs. An appeal pursuant to RC 2506.01 from the denial of an amendment to a comprehensive zoning plan is improper, since such action is a legislative function.

74 Abs 132, 136 NE(2d) 627 (CP, Franklin 1956), Kreutz v Lauderbaugh. Any change intended to be made in the zoning of an unincorporated area must be done as set forth in RC 303.03, and any attempt to delegate to the rural zoning commission the right to rezone, amend or supplement the original plan is contrary to law.

3. Notice and hearing

87 Abs 168, 175 NE(2d) 881 (CP, Hamilton 1961), Seyler v Clark. The "notice" required by RC 303.12 is more than a mere "public hearing" notice and must contain a summary of the proposed charge showing the interested citizen the content of the proposed charge without the necessity of his inspecting the official records.

OAG 65-218. A county rural zoning commission is required to hear and determine only those applications for amendment or supplement filed with it by owners or lessees of affected property; property contiguous to, or directly across the street from, an area proposed to be changed is property so "affected"; and the commission may determine that additional property is "affected" by a proposed amendment or supplement to the zoning resolution.

1963 OAG 77. The statements in paragraph 3, RC 519.12, relating to the contents of the written notice do not refer as such to the procedure to be followed under RC 519.12, but merely provide that the notices, in addition to other requirements, state the procedure applicable to the county or regional planning commission and township trustees as the case may be pursuant to paragraphs 4, 5 and 6 of said section.

1960 OAG 1089. RC 303.12 as amended by 128 v 128, eff. 6-18-59 does not refer to procedure as such, but merely directs that published and mailed notices should contain such facts as are applicable in a given situation.

4. Referendum petition and procedure

53 Cin L Rev 381 (1984). Referendum Zoning: Legal Doctrine and Practice, Ronald H. Rosenberg.

48 OS(2d) 173, 357 NE(2d) 1079 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections. Where rezoning of four parcels was sought and township trustees approved rezoning of only three parcels, and where a subsequent referendum petition and proposed ballot question imply that the trustees approved rezoning of all four parcels, the misstatement is good grounds for the board of elections to order that the question not appear on the ballot.

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976). Under O Const Art II §1f, municipal referendum powers are limited to questions which municipalities are "authorized by law to control by legislative action".

40 OS(2d) 94, 320 NE(2d) 672 (1974), State ex rel Home Federal Savings & Loan Assn v Moser. A petition paper seeking a referendum on a zoning resolution under RC 303.12 is invalid where the circulator's affidavit fails to comply with the requirement of RC 3501.38(E) that the circulator "witnessed the affixing of every signature."

40 OS(2d) 94, 320 NE(2d) 672 (1974), State ex rel Home Federal Savings & Loan Assn v Moser. RC 3501.38 is applicable to all petitions for referendum filed pursuant to RC 303.12.

40 OS(2d) 94, 320 NE(2d) 672 (1974), State ex rel Home Federal Savings & Loan Assn v Moser. The requirements of O Const Art II §1g apply only to state-wide referenda, and do not apply to a referendum under RC 303.12.

174 OS 535, 190 NE(2d) 687 (1963), State ex rel Galloway v Board of County Commissioners. In the absence of statutory provisions to the contrary, an elector signing a referendum petition authorized by law has a right to withdraw his signature from such petition at any time before official action has been taken thereon and before an action in mandamus has been properly commenced to compel the taking of such action, even though after the time within which such petition is required by law to be filed and after it actually has been filed.

43 App(3d) 189, 541 NE(2d) 80 (Franklin 1988), Olen Corp v Franklin County Bd of Elections. A determination of whether an inaccuracy contained within a "brief summary of the proposal" required for a referendum petition under RC 303.12(H) is fatally confusing or misleading to the average voter must be based on an objective standard based on the language itself coupled with the actual existing circumstances rather than through the testimony of witnesses giving their personal subjective opinions as to whether the petition is misleading or confusing.

9 App(3d) 73, 9 OBR 93, 458 NE(2d) 431 (Hamilton 1983), Nunneker v Murdock. Substantial compliance with the requirements of RC 303.12 regarding a referendum petition about a zoning change does not require strict adherence to technical, mathematical, or administrative matters, but rather requires that the contraverted issues be set out and the procedural standards be met which will allow a prospective signer to make an informed decision.

50 App(2d) 1, 361 NE(2d) 477 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections; affirmed by 48 OS(2d) 173, 357 NE(2d) 1079 (1976). The requirements for referendum petitions under RC 519.12 are: (a) the petition must contain the number and a full and correct title of the zoning resolution; (b) the petition must contain the affidavit of the person soliciting signatures for the petition certifying that to the best of his or her knowledge and belief each of the signatures is that of the person whose name it purports to be, that he believes such persons are electors of the township, and that such persons signed the petition with knowledge of its contents; and (c) if the petition contains any additional information it must be of such a character as to promote the attempt to fairly and accurately present the question or issue and must not in any way detract from a free, intelligent and informed choice by the average citizen who is requested to make a decision as to whether he should or should not sign such a petition.

45 App(2d) 137, 341 NE(2d) 349 (1975), Northeast Franklin Co v Cooper. Where a referendum petition, circulated pursuant to RC 3501.38, contains language, prominently displayed, warning of criminal penalties, and the language substantially complies with the form set out in division (J) of the statute, such petition will not be declared invalid if no intentional misrepresentation is shown.

21 App(2d) 241, 256 NE(2d) 716 (1969), State ex rel Jeffries v Ryan. Provisions of RC 3501.38(C) do not require specific or express authorization and direction by signer of a petition to place after his name the date of signing, and to complete location of his voting residence by addition, after house number and street, of name of post office address; but authority to accurately fill in such information is inferred merely from act of signing, in absence of evidence that such was done contrary to directions, express or implied, of signer, and to extent that they would be capable of an interpretation that they would require an express or specific authorization by signer to someone else to place such information on petition, are merely directory, and not mandatory, and cannot serve as basis for invalidation of petition which contains required information at time it was filed, even if filled in without specific or express authorization of signer.

110 App 535, 164 NE(2d) 180 (Cuyahoga 1960), Hilltop Realty, Inc v South Euclid; appeal dismissed by 170 OS 585, 166 NE(2d) 924 (1960). A zoning ordinance passed by the council of a municipal corporation that amends a comprehensive zoning ordinance is subject to referendum.

83 Abs 321, 164 NE(2d) 466 (CP, Butler 1959), Fried v Augspurger. A board of county commissioners does not have discretion to allow signatures to be withdrawn from a referendum petition requesting a referendum on a zoning change after the board of county commissioners had ordered said matter to be placed on the ballot.

77 Abs 93, 149 NE(2d) 33 (App, Franklin 1957), State ex rel Holmes v Lauderbaugh. Where a petition is filed with a board of county commissioners requesting that an amendment to a zoning ordinance be submitted to an election, and an individual files a mandamus action against the board to compel it to submit such questions, the board cannot thereafter rescind its resolution to submit the amendment.

66 Abs 538, 118 NE(2d) 162 (CP, Franklin 1953), Argo v Kaiser. An election by the voters of a township defeating the rezoning by the county commissioners of a portion of land within the township was not invalidated by the fact that the property was defectively described by lot number where the location, size and ownership of the parcel were correctly described.

426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976), Eastlake v Forest City Enterprises. A zoning referendum cannot be characterized as a delegation of power, since the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature; therefore, a charter amendment permitting the voters to decide whether the zoned use of a real estate developer's property could be altered does not violate the due process rights of the developer who applied for a zoning change.

426 US 668, 96 SCt 2358, 49 LEd(3d) 132 (1976), Eastlake v Forest City Enterprises, Inc. Referendum provisions in a municipal charter tantamount to a veto power over zoning legislation are a valid reservation of power by the people, rather than a delegation of power to the people that would be invalid without statutory "standards" to guide the power's use.

426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976), Eastlake v Forest City Enterprises, Inc. Where the result of a referendum on a zoning change is arbitrary and capricious and bears no relation to the police power, a challenge may be brought in state court.

303.25 County zoning plan repeal in township; procedure

In any township in which there is in force a plan of county zoning, the plan may be repealed by the board of county commissioners, as to such township, in the following manner:

(A) The board may adopt a resolution upon its own initiative.

(B) The board shall adopt a resolution, if there is presented to it a petition, similar in all relevant aspects to that prescribed in section 303.12 of the Revised Code, signed by a number of qualified voters residing in the unincorporated area of such township included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the question of whether or not the plan of zoning in effect in such township shall be repealed, to be submitted to the electors residing in the unincorporated area of the township included in the zoning plan at a special election to be held on the day of the next primary or general election. The resolution adopted by the board of county commissioners to cause such question to be submitted to the electors shall be certified to the board of elections not later than seventy-five days prior to the day of election at which the

question is to be voted upon. In the event a majority of the vote cast on such question in the township is in favor of repeal of zoning, then such regulations shall no longer be of any effect. Not more than one such election shall be held in any two calendar years.

HISTORY: 1981 H 101, eff. 9-25-81
1980 H 1062; 127 v 363; 1953 H 1; GC 3180-25

CROSS REFERENCES

Certification of question to board of elections, 3501.02
Qualifications of electors, 3503.01 to 3503.04, 3503.06, 3503.07; O Const Art V §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Buildings, Zoning and Land Controls § 245
Am Jur 2d: 82, Zoning and Planning § 10

NOTES ON DECISIONS AND OPINIONS

OAG 72-003. A board of county commissioners is not authorized by RC 6103.02 to assent to a provision in the contract under which the municipal zoning ordinances take precedence over the zoning resolutions of the townships affected by the contract.

1964 OAG 1500. A comprehensive zoning plan adopted pursuant to RC Ch 519 may not be repealed for a part only of the territory included within the zoning plan but must be repealed vel non as a whole.

1964 OAG 1500. A referendum seeking repeal of a township zoning plan may be held in the same year the plan was approved by the electorate.

1964 OAG 1500. The electors residing within the unincorporated area of the township included within the zoning plan shall vote upon the repeal of that zoning plan.

BOARD OF COUNTY COMMISSIONERS—GENERALLY

305.01 County commissioners; election and term

The board of county commissioners shall consist of three persons who shall be elected as follows:

(A) In November, 1974, and quadrennially thereafter, one county commissioner shall be elected to take office on the first day of January following.

(B) In November, 1972, and quadrennially thereafter, two commissioners shall be elected. The term of one of such commissioners shall commence on the second day of January next after his election, and the term of the other commissioner shall commence on the third day of January next after his election.

(C) Thereafter such officers shall hold office for the term of four years and until their successors are elected and qualified.

HISTORY: 1971 S 322, eff. 2-25-72
127 v 894; 1953 H 1; GC 2395

CROSS REFERENCES

Candidates to file financial statement with ethics commission, 102.02
Alternative form, board of county commissioners; number of members; terms, 302.08
Compensation of county commissioners, 325.10, 325.18
County commissioners to be organizational board of "new community" projects, 349.01
Election procedure, Ch 3501
Times for filing statement of contributions and expenditures by candidates and committees, 3717.10
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 53, 62, 63, 90, 95, 111
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 147 to 149

NOTES ON DECISIONS AND OPINIONS

167 OS 452, 150 NE(2d) 46 (1958), State ex rel Miller v Brown. RC 305.01 as amended by 127 v 894, eff. 8-30-57, void and former RC 305.01 is still in effect.

478 US 30, 106 SCt 2752, 92 LEd(2d) 25 (1986), Thornburg v Gingles. As amended in 1982, 42 USC 1973 outlaws state voting standards, practices, or procedures that are not "equally open to participation by members of a [protected class] . . . in that its members have less opportunity . . . to elect representatives of their choice," even where no intent to discriminate is shown; where a legislative body is elected in multimember districts a minority group will prove its votes were illegally diluted by showing, (1) the minority is of such size and location that it would be a majority in one single-member district, (2) a significant portion of the minority supports the same candidates, and (3) the white majority votes so as to defeat the minority's choice absent special circumstances. (Ed. note: North Carolina law construed in light of federal statute.)

860 F(2d) 683 (6th Cir Ohio 1988), Lawrence County Bd of Commrs v L. Robert Kimball & Associates; cert denied 110 SCt 1480, 108 LEd(2d) 617 (1990). In the absence of any Ohio statute forbidding county commissioners to enter contracts extending beyond the term of the board or any clear Ohio precedent establishing a public policy against such acts, a federal court will not find an arbitration award to be against public policy simply because it enforces a contract of indefinite duration between the county and an engineering firm that involves "necessity or some special circumstances."

OAG 88-085. Pursuant to RC 145.297(A)(3)(c), a board of county commissioners may designate the office of the county engineer as an employing unit for purposes of a retirement incentive plan established under RC 145.297; county employees other than those employed by the county engineer are not eligible to participate in the plan established for the office of the county engineer.

OAG 88-057. A county commissioner who was elected while he was a resident of the county may continue to serve as county commissioner after moving to an adjoining county within the state.

OAG 88-017. So long as it is physically possible to do so, a person may simultaneously hold the positions of reclamation inspector for the natural resources department and county commissioner, except that where the county in which he serves as commissioner has, pursuant to RC 307.11, entered into a lease or contract for the mining of coal on county land, he may not perform the duties of reclamation inspector within that county. The fact that a county has entered into such a lease or contract does not give a commissioner of that county a direct or indirect financial interest in a coal mining or reclamation operation that would prohibit him from also serving as a reclamation inspector.

OAG 88-011. The positions of member of a board of county commissioners and member of a board of education of a local school district located in whole or in part within the same county are incompatible.

OAG 85-029. The positions of trustee of a regional airport authority and county commissioner of a county included within the regional airport authority are incompatible.

OAG 81-010. The positions of full time local school principal and county commissioner are incompatible when it is physically impossible for one person to adequately perform the duties of both positions.

OAG 81-009. The positions of special deputy and county commissioner are incompatible because of a conflict of interest.

OAG 79-112. An individual may serve as a member of a board of county commissioners and as administrator of a village located within that county at the same time.

OAG 73-024. The position of a member of a board of governors of a joint township hospital is incompatible with that of a county commissioner.

1959 OAG 198. A member of the board of county commissioners may not at the same time hold the position of director or officer of a county or independent agricultural society.

1959 OAG 42. The position of supervisor of a soil conservation district is incompatible with the position of a member of the board of county commissioners.

1940 OAG 3088. Offices of member of a board of county commissioners and member of a board of education in a rural school district in the same county are incompatible and can not lawfully be held simultaneously by one and the same person.

1934 OAG 2530. A county commissioner may become a member of the board of directors of the county agricultural society, and his election thereto does not operate to vacate the office of county commissioner.

Ethics Op 80-006. A county commissioner is prohibited by 2921.42(A)(4) from knowingly having an interest in the profits or benefits of a public contract, including an industrial revenue bond, entered into by or for the use of the county with which he serves.

Ethics Op 76-011. RC 102.02(A)(3) requires a candidate for county office to disclose the name of every corporation, incorporated in Ohio or holding a certificate of compliance authorizing it to do business in Ohio, and the name of every trust, which transacts business in Ohio, in which the candidate holds an office or has a fiduciary relationship, along with a brief description of the nature of the office or the relationship.

Ethics Op 75-018. A county commissioner who is also an attorney is not prohibited by RC 102.04(B) from receiving compensation for services rendered by him personally in matters which are before the courts.

305.02 Filling vacancy

(A) If a vacancy in the office of county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, or coroner occurs more than forty days before the next general election for state and county officers, a successor shall be elected at such election for the unexpired term unless such term expires within one year immediately following the date of such general election.

In either event, the vacancy shall be filled as provided in this section and the appointee shall hold his office until a successor is elected and qualified.

(B) If a vacancy occurs from any cause in any of the offices named in division (A) of this section, the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, except that if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.

(C) Not less than five nor more than forty-five days after a vacancy occurs, the county central committee shall meet for the purpose of making an appointment under this section. Not less than four days before the date of such meeting the chairman or secretary of such central committee shall send by first class mail to every member of such central committee a written notice which shall state the time and place of such meeting and the purpose thereof. A majority of the members of the central committee present at such meeting may make the appointment.

(D) If the last occupant of the office or the officer-elect was elected as an independent candidate, the board of county commissioners shall make such appointment at the time when the vacancy occurs, except where the vacancy is in the office of county commissioner, in which case the prosecuting attorney and the remaining commissioners or a majority of them shall make the appointment.

(E) Appointments made under this section shall be certified by the appointing county central committee or by the board of county commissioners to the county board of elections and to the secretary of state, and the persons so appointed and certified shall be entitled to all remuneration provided by law for the offices to which they are appointed.

(F) The board of county commissioners may appoint a person to hold any of the offices named in division (A) of this section as an acting officer and to perform the duties thereof between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes the office.

(G) A person appointed prosecuting attorney or assistant prosecuting attorney shall give bond and take the oath of office prescribed by section 309.03 of the Revised Code for the prosecuting attorney.

HISTORY: 1990 S 196, eff. 6-21-90
130 v S 368, H 349; 129 v 1365; 127 v 894; 126 v 205; 1953 H 1; GC 2396, 2397

Note: 305.02 contains provisions analogous to former 319.09, repealed by 129 v 1620, eff. 9-18-61, to former 315.04, 317.06, 319.04, and 2303.04, repealed by 129 v 1365, eff. 10-12-61, and to former 309.04, repealed by 130 v S 368, eff. 6-28-63.

CROSS REFERENCES

Term of appointee to elective office, certificate of appointment, 3.02
Bonds, consequences of failure to give, 3.30
Vacancy during term, 302.09
Election of sheriff, qualifications, 311.01
Prosecuting attorneys, bond, 325.12
General election defined, 3501.01
County central committees, organization and membership, 3517.02 to 3517.06

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 141, 229; 75, Police, Sheriffs, and Related Officers § 16
Am Jur 2d: 56, Municipal Corporations, Counties and Other Political Subdivisions § 254
Provision authorizing directors to fill vacancies as applicable to newly created directorships. 6 ALR2d 174

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Appointment of person to hold office
   a. In general
   b. Tenure of appointee
3. Election of successor
4. Vacancy not existing when

1. In general

173 OS 370, 182 NE(2d) 546 (1962), State ex rel Hayes v Jennings. RC 305.02, authorizing the members of the central commit-

tee of a political party to fill vacancies occurring, inter alia, in the office of clerk of courts of a county, confers official power upon the members of the central committee, and this annexation of power to this position makes it a public office and is a constitutional grant of power by the general assembly, rather than an appointment of an individual to an office by the general assembly. (Annotation from former RC 2303.04.)

166 OS 269, 141 NE(2d) 665 (1957), State ex rel Trago v Evans. The provision of RC 305.03 that whenever a county officer is absent from the county for ninety consecutive days, except in the case of sickness or injury or while being in the active military service of the United States, his office shall be deemed vacant and the county commissioners shall declare a vacancy to exist, is a valid exercise of legislative power.

161 OS 269, 119 NE(2d) 47 (1954), State ex rel Tobias v Seitz. Upon a vacancy occurring in the office of the clerk of the court of common pleas of a county because of the death of the duly elected incumbent, the board of county commissioners of that county has authority to fill the vacancy but has no authority to appoint a clerk for an interim period less than the period of such vacancy. (Annotation from former RC 2303.04.)

132 OS 421, 8 NE(2d) 434 (1937), State ex rel Kopp v Blackburn. For procedure when clerk dies after election but before commencement of term. (Annotation from former RC 2303.04.)

9 App(2d) 280, 224 NE(2d) 353 (1967), State ex rel McCurdy v DeMaioribus. The chairmanship of a county central committee of a political party is a "public office" within the meaning of RC 2733.01, and quo warranto will lie to try the title thereto.

OAG 88-041. A county commissioner may, pursuant to RC 122.69(B)(3) and 42 USC 9904(c)(3), serve on the board of directors of a community action agency.

OAG 86-083. A board of county commissioners has no authority to adopt a resolution, which designates by title, emergency interim successors to carry out the functions of the board in the event that any emergency situation exists within the county or state, and two or more positions on the board of county commissioners become vacant or two or more commissioners are unavailable to perform their duties.

OAG 80-083. The convening of members of the county central committee pursuant to RC 305.02 is a "meeting." Final voting on the appointment of persons to the committee must be held in a public meeting. However, the convening of the committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacant public offices is not a "meeting" as defined by RC 121.22(B)(2).

1959 OAG 855. An elected county engineer of one county may not be employed by the county commissioners of an adjoining county as deputy county engineer when there is a vacancy in the office of county engineer in such adjoining county. (Annotation from former RC 315.04.)

1947 OAG 2503. In event of a vacancy in office of county engineer no one can perform official duties imposed on county engineer by statute. (Annotation from former RC 315.04.)

1923 OAG p 466. A prosecuting attorney may not, after taking office continue to represent a client in a case in which the interests of such client and county are adverse. If an application is made to the common pleas court by the county commissioner and prosecuting attorney for employment of an assistant for such case, and is granted by the court, the determination of whether assistant legal counsel shall be provided, and who shall be employed, rests with the county commissioners. (Annotation from former RC 309.04.)

2. Appointment of person to hold office

a. In general

OAG 90-070. Pursuant to RC 305.02(F), where the office of coroner is vacant, the board of county commissioners may appoint a person to serve as acting coroner and to perform the duties of the coroner between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes office; such acting coroner need not be a resident of the county he serves, but must be properly certified to practice medicine in accordance with RC Ch 4731.

OAG 69-052. When a re-elected county treasurer dies more than fifteen days before the end of his term of office, the vacancy shall be filled pursuant to subsection (A) of RC 305.02 for the reason that there is no provision made in the law to permit an appointment to be made for the purpose of filling vacancies in the office of county treasurer spanning more than part of one term, the county central committee shall appoint someone to fill such second vacancy if it occurs because of death before the term began, pursuant to subsections (A) and (B) of RC 305.02.

OAG 68-072. The determination of who shall appoint a person to hold the office of prosecuting attorney pursuant to RC 305.02 is contingent upon whether or not the last occupant of the office was elected as an independent.

1959 OAG 855. When there is a vacancy in the office of county engineer, the county commissioners must appoint a suitable person to fill such vacancy, and the appointee need not be an elector of the county but must be a qualified elector of the state of Ohio. (Annotation from former RC 315.04.)

1959 OAG 855. In the filling of a vacancy in the office of county engineer, an elected county engineer of one county may not be appointed as county engineer of a neighboring county and hold the two offices at the same time. (Annotation from former RC 315.04.)

1927 OAG 817. Upon the death of a county recorder, it becomes the duty of the county commissioners to appoint his successor without unreasonable delay. If an appointment is not made within a reasonable time, the commissioners become subject to an action in mandamus to compel them to act. (Annotation from former RC 317.06.)

b. Tenure of appointee

OAG 84-063. When a vacancy in any of the offices named in RC 305.02(A) occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, the person appointed to take such office by the central committee of the political party with which such officer-elect was affiliated shall hold office until a successor is elected and qualified, and a successor shall be elected at the next general election for state and county officers.

1957 OAG 200. Where an incumbent of the office of county engineer has been elected at the general election in November of 1956 for a four year term, commencing on the first Monday in January 1957, and where such incumbent resigns effective January 31, 1957, the individual thereafter appointed by the board of county commissioners to fill such vacancy will hold such office until the election and qualification of his successor; and such successor should be elected for the unexpired term at the general election in November, 1958. (Annotation from former RC 315.04.)

1930 OAG 1972. A county surveyor who has been appointed 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. (Annotation from former RC 315.04.)

1930 OAG 1880, 1887. The tenure of an appointee to a vacancy in the office of county treasurer, is not for the unexpired term but only until the successor is elected and qualified. A successor to such appointee should be elected at the first general November election for the office which is vacant occurring more than thirty days after the occurrence of the vacancy. (Annotation from former RC 321.04.)

1928 OAG 2918. Where a county commissioner was appointed to fill a vacancy which occurred more than thirty days before a regular election and at said regular election no one was elected for the remainder of the unexpired term said appointee is entitled to hold his office during the remainder of the unexpired term.

1928 OAG 2167. If a judgment of forfeiture should now be entered against a county recorder for misconduct in office and a vacancy declared, a suitable person appointed by the county commissioners to such office will hold the same until the November

election in 1928 and the qualification of the elected successor immediately thereafter. The elected successor at the November 1928 election would hold the office for the unexpired term of the county recorder, whose office was vacated, viz. until the first Monday in January 1931. (Annotation from former RC 317.06.)

1928 OAG 2167. Where a vacancy occurs in the office of county recorder, it is the duty of county commissioners to appoint a suitable person to fill such office, who, upon giving bond and taking the oath of office, as provided by law, holds his office until his successor is elected and qualified. (Annotation from former RC 317.06.)

1927 OAG 946. Where a county commissioner is appointed to fill a vacancy by the probate judge, auditor and recorder of the county, such appointee may only serve until his successor is elected and qualified and the fact that the commissioner of the governor states that the appointment is for the unexpired term does not effect a change in the law.

1927 OAG 946. When a vacancy occurs in the office of county commissioner more than thirty days before the next election for state and county officers, a successor must be elected at said election to serve for the unexpired term of the commissioner who was elected to the office.

1927 OAG 40. Where a vacancy occurs in the office of the county commissioner, who was elected in November 1926, and said vacancy is filled by appointment, the appointee will hold his office as county commissioner until his successor is elected and qualified at the November election of 1928, and the person so elected at that time will hold his office for the unexpired term for which his predecessor was elected.

3. Election of successor

144 OS 162, 57 NE(2d) 661 (1944), State ex rel Sagebiel v Montgomery County Bd of Elections. There is no duty resting upon a board of elections (though so ordered by the secretary of state) to prepare a separate ballot for the November 7, 1944 election, with party designations but with the name of no candidate thereon, for the purpose of filling a vacancy in the office of county commissioner caused by the death of an incumbent occurring subsequent to July 20, 1944.

79 App 311, 71 NE(2d) 531 (1946), State ex rel Heck v Ahlers. A duly elected and acting county official died more than thirty days prior to a general election; neither political party made a nomination to fill vacancy for unexpired term; at general election, names of various persons were written in blank space and properly marked; thus, person receiving highest number of votes was duly and legally elected to fill unexpired term.

898 F(2d) 1192 (6th Cir Ohio 1990), Banchy v Hamilton County Republican Party. The refusal of county political party officials to allow newly elected party precinct executives to participate in an election of ward chairmen is not state action, and the actions of a county central committee in electing ward chairmen are not under color of state law simply because the central committee has some governmental duties.

OAG 70-011. It is not necessary to provide write-in spaces on primary election ballots for offices of member of state central committee of a political party in Ohio, or delegate or alternate to national convention of a political party, but such write-in space must be provided for office of member of county central committee and such office must appear on ballot even though no candidate has qualified to have his name printed on ballot for the office, in order that votes cast for eligible write-in candidates may be counted.

1944 OAG 7137. During year 1944 where a county commissioner, who is not candidate for re-election, dies after twentieth day of July, this section requires that his successor for balance of his term shall be elected at November election, but during year 1944 after twentieth day of July there is no provision of law authorizing nomination of person for election to office of county commissioner to serve unexpired term of one who becomes deceased; it is duty of board of elections to provide ballot upon which voters may write in their choice for election to office of county commissioner for unexpired term of deceased county commissioner even though board of elections is not authorized to place any names of persons to be voted for upon such ballot.

1930 OAG 1956. When a county auditor, who was elected in November 1926, and entered upon the duties of his office on the second Monday of March, 1927, resigned on April 14, 1930, a successor should be elected at the general election in November, 1930. Said successor should take office as soon as he can qualify after such election and serve until March 9, 1931. (Annotation from former RC 319.04.)

1930 OAG 1956. If a county commissioner, who was elected at the general November election in 1928, and assumed office on January 7, 1929, should resign at the present time, a successor should be elected at the general November election in 1930, and would serve from the date of qualification after such election for the unexpired term, i.e., until the first Monday in January 1933. (Annotation from former RC 319.04.)

1928 OAG 1768. Under the provisions of GC 2782 (RC 315.01) and this section, in connection with GC 10 (RC 3.02), where a vacancy in the office of county surveyor occurs more than thirty days prior to the November election of 1928, a successor shall be elected to fill the unexpired term, whose tenure of office will begin upon qualification after such November election and end on the first Monday of January 1929. At said November election in 1928, there shall also be elected a county surveyor for the full term of four years beginning on the first Monday of January 1929. (Annotation from former RC 315.04.)

4. Vacancy not existing when

OAG 85-062. The office of county commissioner may not be declared vacant when the incumbent is seriously ill and unable to fulfill the duties of office but is not absent from the county.

1963 OAG 572. In the absence of an actual relinquishment of office prior to the effective date stated in a prospective resignation, no vacancy occurs in the office of clerk of courts by reason of the presentation of a prospective resignation prior to the effective date thereof.

1929 OAG 190. Where a county treasurer is physically absent from his office for a period of seven months on account of illness, such situation does not create a vacancy which the county commissioners are authorized to fill under this section if the duties of the office are being properly performed under his supervision. (Annotation from former RC 321.04.)

305.03 Failure to perform duties; absence; office deemed vacant

(A) Whenever any county officer fails to perform the duties of his office for ninety consecutive days, except in case of sickness or injury as provided in divisions (B) and (C) of this section, his office shall be deemed vacant.

(B) Whenever any county officer is absent because of sickness or injury, he shall cause to be filed with the board of county commissioners a physician's certificate of his sickness or injury. If such certificate is not filed with the board within ten days after the expiration of ninety consecutive days of absence, his office shall be deemed vacant.

(C) Whenever a county officer files a physician's certificate under division (B) of this section, but continues to be absent for an additional thirty days commencing immediately after the last day on which this certificate may be filed under division (B) of this section, his office shall be deemed vacant.

Any vacancy declared under this section shall be filled in the manner provided by section 305.02 of the Revised Code.

This section shall not apply to a county officer while in the active military service of the United States.

HISTORY: 1986 H 734, eff. 4-15-86
1953 H 1; GC 2397-1, 2397-2

CROSS REFERENCES

Vacancy during term, 302.09

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 254

NOTES ON DECISIONS AND OPINIONS

40 OS(3d) 236, 533 NE(2d) 301 (1988), State ex rel Battin v Bush. RC 305.03, as amended by 1986 H 734, eff. 4-15-86, is, by its terms, self-executing; thus, upon the happening of the enumerated events, the office becomes vacant, without resort to any legal proceeding such as quo warranto.

40 OS(3d) 236, 533 NE(2d) 301 (1988), State ex rel Battin v Bush. RC 305.03, as amended by 1986 H 734, eff. 4-15-86, was not intended to be applied other than prospectively; accordingly, the earliest date from which consecutive days of absence from the performance of official duties may be calculated is the effective date of the amendment.

166 OS 269, 141 NE(2d) 665 (1957), State ex rel Trago v Evans. The provision of RC 305.03 that whenever a county officer is absent from the county for ninety consecutive days, except in the case of sickness or injury or while being in the active military service of the United States, his office shall be deemed vacant and the county commissioners shall declare a vacancy to exist, is a valid exercise of legislative power.

149 OS 13, 77 NE(2d) 245 (1948), State ex rel Welty v Outland. One who was elected to office of prosecuting attorney at the November 1940 election, but subsequently entered active military service of United States as commissioned officer, was not eligible to qualify for such office of prosecuting attorney thereafter on January 1, 1941.

143 OS 175, 54 NE(2d) 308 (1944), State ex rel Clinger v White. By virtue of provisions of this section and GC 2397-2 (RC 305.03), whenever a county officer shall be absent from county for ninety consecutive days, except in case of sickness or injury evidenced by physician's certificate as therein required his office shall be deemed vacant and the county commissioners shall declare a vacancy to exist in such office, but by specific provision thereof, nothing contained in those sections "shall apply to a county officer while in the active military service of the United States," thus, prosecuting attorney who enlists in such service does not by reason of his absence while in such service vacate his office as prosecuting attorney, and upon demand is entitled to receive the salary prescribed by law.

71 App 555, 50 NE(2d) 568 (1942), State ex rel Clinger v Shell; appeal dismissed by 141 OS 474, 48 NE(2d) 1009 (1943). Prosecuting attorney who becomes member of military service of United States and devotes his full time thereto, retains office of prosecuting attorney, under authority of this section, but is not entitled to salary of such office while so engaged in such military service.

No. 3728 (11th Dist Ct App, Trumbull, 9-30-87), State ex rel Battin v Bush; reversed by 40 OS(3d) 236, 533 NE(2d) 301 (1988). A dispute over whether a vacancy exists in a county office for failure to perform duties under RC 305.03 is to be settled in a quo warranto proceeding.

1955 OAG 5984. Where a vacancy in the office of sheriff is declared by resolution of the county commissioners as provided in RC 305.03, such vacancy should be filled by the commissioners as provided in RC 311.03.

1955 OAG 5984. RC 305.03 is a mere restatement of GC 2397-1 and GC 2397-2.

1946 OAG 710. When a regularly elected and qualified coroner is absent from county by reason of military service he is entitled to full compensation provided by law for his office, without deduction of any amount paid to an acting coroner or assistant coroner for services rendered during his absence.

1942 OAG 5412. Where county prosecuting attorney or county engineer enlists in some branch of military service or is drafted into service of United States during present war, each would carry responsibility for his position during his absence in such service and would be entitled to receive salary pertaining thereto.

1941 OAG 4262. A coroner in a county of less than one hundred thousand population does not vacate his office because of absence with the military forces of the United States.

COUNTY REFERENDUM PETITIONS

305.31 Procedure for submitting additional tax resolutions to referendum

The procedure for submitting to a referendum any resolution adopted by a board of county commissioners pursuant to section 322.02, 324.02, 4504.02, 5739.021, 5739.026, 5741.021, or 5741.023 or rule adopted pursuant to section 307.79 of the Revised Code shall be as follows:

When a petition, signed by ten per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the county, is filed with the county auditor within thirty days after the date such resolution is passed or rule is adopted by the board of county commissioners, or is filed within forty-five days after the resolution is passed, in the case of a resolution adopted pursuant to section 5739.021 of the Revised Code that is passed within one year after a resolution adopted pursuant to that section has been rejected or repealed by the electors, requesting that such resolution be submitted to the electors of such county for their approval or rejection, such county auditor shall, after ten days following the filing of the petition, and not later than four p.m. of the seventy-fifth day before the day of election, transmit a certified copy of the text of the resolution or rule to the board of elections. The county auditor shall transmit the petition to the board together with the certified copy of the resolution or rule. The board shall examine all signatures on the petition to determine the number of electors of the county who signed the petition. The board shall return the petition to the auditor within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition. The board shall submit the resolution or rule to the electors of the county, for their approval or rejection, at the next succeeding general or primary election held in the county on the first Tuesday after the first Monday in November in any year, or on the first Tuesday after the first Monday in May of even-numbered years, occurring subsequent to seventy-five days after the auditor certifies the sufficiency and validity of the petition to the board of elections.

No resolution shall go into effect until approved by the majority of those voting upon it. However, a rule shall take effect and remain in effect unless and until a majority of the electors voting on the question of repeal approve the repeal. Sections 305.31 to 305.41 of the Revised Code do not prevent a county, after the passage of any resolution or adoption of any rule, from proceeding at once to give any notice or make any publication required by the resolution or rule.

The board of county commissioners shall make available to any person, upon request, a certified copy of any resolution or rule subject to the procedure for submitting a referendum under sections 305.31 to 305.42 of the Revised

Code beginning on the date the resolution or rule is adopted by the board. The board may charge a fee for the cost of copying the resolution or rule.

As used in this section, "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original resolution or rule.

HISTORY: 1991 H 192, eff. 10-10-91
1987 H 274; 1986 H 3; 1983 S 213; 1980 H 1062; 1978 H 513; 1974 H 662; 132 v H 919

CROSS REFERENCES

Levy of municipal motor vehicle license tax, rate, limitation, effective date, referendum, 4504.06

Local motor vehicle license tax, additional county tax, 4504.15 to 4504.171

Emergency telephone number system, charges on property owners, referendum, 4931.51

Referendum to increase county sales tax to provide additional revenue for county's general fund, 5739.026

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 53, 54

Am Jur 2d: 42, Initiative and Referendum § 15, 21, 22, 27, 28, 42

NOTES ON DECISIONS AND OPINIONS

32 OS(3d) 190, 513 NE(2d) 242 (1987), State ex rel Brettell v Canestraro. A writ of mandamus ordering a county auditor to certify the text of a resolution to a county board of elections under RC 305.31 will not be issued where the relator has failed to comply with the verification requirements of RC 305.33.

8 OS(3d) 1, 8 OBR 72, 455 NE(2d) 1275 (1983), State ex rel Lightle v Glass. Mandamus will not lie to compel placing an issue on the ballot where the requirements of RC 305.31 cannot be met.

20 OS(2d) 9, 252 NE(2d) 164 (1969), State ex rel Vanderwerf v Warren. When an unverified copy of a resolution of a board of county commissioners is filed with a county auditor for the purpose of a referendum pursuant to RC 305.31 et seq., the county auditor has no duty to take any action; however, if he does certify the referendum proceedings to the county board of elections, the referendum proceedings will not be stayed by a writ of prohibition because of the omission of the verification where the relator stipulates that the unverified document is, nevertheless, an accurate copy of the original resolution and proves no other defect in the proceedings.

OAG 89-049. RC 305.31 confers no authority on a county auditor to determine the validity of referendum petition papers with respect to the requirements imposed by RC 3501.38(E); such determination must be made by the county board of elections.

OAG 77-045. Where a board of county commissioners has by resolution enacted a county sales tax pursuant to RC 5739.021 and a county use tax pursuant to RC 5741.021, a referendum petition with respect to such resolutions must meet the requirements of RC 305.31 to RC 305.99 for a referendum petition as to both of the resolutions in question.

OAG 69-105. A resolution levying a motor vehicle license tax pursuant to RC 4504.02 is subject to referendum as provided for by RC 305.31 only for the thirty-day period immediately following its adoption.

305.32 Separate petition papers; sufficiency; effective date

Any referendum petition may be presented in separate petition papers, but each petition paper shall contain a full and correct copy of the title and text of the resolution or rule sought to be referred. Referendum petitions shall be governed by the rules of section 3501.38 of the Revised Code. In determining the validity of any such petition, all signatures which are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required by section 305.31 of the Revised Code.

The petitions and signatures upon such petitions shall be prima-facie presumed to be in all respects sufficient. No resolution submitted to the electors of any county, and receiving an affirmative majority of the votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the resolution was procured, nor shall the rejection, by a majority of the votes cast thereon, of any resolution submitted to the electors of such county, be held invalid for such insufficiency. No rule submitted to the electors of the county, and receiving a majority of the votes cast against repeal, shall be held invalid or void on account of the insufficiency of the petitions by which such submission was procured, nor shall the repeal, by approval of a majority voting for repeal, be held invalid for such insufficiency.

Resolutions receiving an affirmative majority of the votes cast thereon, shall become effective on the first day of the month following certification by the board of elections of the official vote on such question.

HISTORY: 1980 H 1062, eff. 3-23-81
1978 H 513; 1969 H 531; 132 v H 919

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.75

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 52, 55

Am Jur 2d: 42, Initiative and Referendum § 22, 27 to 30

Signature requirement for referendum. 27 ALR2d 606

NOTES ON DECISIONS AND OPINIONS

19 OS(3d) 154, 19 OBR 437, 484 NE(2d) 153 (1985), State ex rel Burech v Belmont County Bd of Elections. A referendum petition for an election to repeal an emergency permissive tax pursuant to RC 5739.022 must, according to RC 305.32, contain the text of the resolution to be repealed, not the text of a resolution calling for repeal.

20 OS(2d) 9, 252 NE(2d) 164 (1969), State ex rel Vanderwerf v Warren. When an unverified copy of a resolution of a board of county commissioners is filed with a county auditor for the purpose of a referendum pursuant to RC 305.31 et seq., the county auditor has no duty to take any action; however, if he does certify the referendum proceedings to the county board of elections, the referendum proceedings will not be stayed by a writ of prohibition because of the omission of the verification where the relator stipulates that the unverified document is, nevertheless, an accurate copy of the original resolution and proves no other defect in the proceedings.

19 OS(2d) 1, 249 NE(2d) 525 (1969), State ex rel Corrigan v Perk; appeal dismissed sub nom Perk v Ohio, 396 US 113, 90 SCt 397, 24 LEd(2d) 307 (1969). Signatures on petitions for a referendum on a county sales and use tax resolution must carry the ward and precinct of the signers.

58 App(3d) 61, 568 NE(2d) 722 (Hamilton 1989), State ex rel Turpin Woods Co v Hamilton County Bd of Commrs. A referendum petition making reference to a judgment entry necessitating a zoning change, but not including a copy of the judgment entry, substantially complies with RC 305.32 as the reference to the judg-

ment entry is sufficient to put the reader on notice of the judgment's existence.

305.33 Certified copy of resolution filed with county auditor

Whoever files a referendum petition against any resolution shall, before circulating such petition, file a certified copy of the resolution with the county auditor.

As used in this section, "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original resolution.

HISTORY: 1991 H 192, eff. 10-10-91
132 v H 919

NOTES ON DECISIONS AND OPINIONS

20 OS(2d) 9, 252 NE(2d) 164 (1969), State ex rel Vanderwerf v Warren. When an unverified copy of a resolution of a board of county commissioners if filed with a county auditor for the purpose of a referendum pursuant to RC 305.31 et seq., the county auditor has no duty to take any action; however, if he does certify the referendum proceedings to the county board of elections, the referendum proceedings will not be stayed by a writ of prohibition because of the omission of the verification where the relator stipulates that the unverified document is, nevertheless, an accurate copy of the original resolution and proves no other defect in the proceedings.

16 OS(2d) 1, 240 NE(2d) 869 (1968), State ex rel Clink v Smith. If a verified copy of a resolution of the county commissioner is not filed with the auditor as required by RC 305.33 he has no duty to certify the resolution because there has not been compliance with the statute.

305.34 Warning notice on each part of petition

At the top of each part of the petition mentioned in section 305.33 of the Revised Code, the following words shall be printed in red:

NOTICE

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

HISTORY: 132 v H 919, eff. 12-12-67

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 52, 56
Am Jur 2d: 42, Initiative and Referendum § 22

305.35 Filing committee; petition open to public inspection; procedure when resolution repealed or held invalid

The petitioners may designate in any referendum petition a committee of not less than three of their number, who shall be regarded as filing the petition. After a petition has been filed with the county auditor it shall be kept open for public inspection for ten days. If, after a verified referendum petition has been filed against any resolution or rule, the board of county commissioners repeals or rescinds such, or it is held to be invalid, the board of elections shall not submit such resolution or rule to a vote of the electors.

HISTORY: 1978 H 513, eff. 1-12-79
132 v H 919

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 52
Am Jur 2d: 42, Initiative and Referendum § 32

NOTES ON DECISIONS AND OPINIONS

OAG 73-031. A board of county commissioners may repeal by resolution a tax which was enacted pursuant to RC 5739.021, and the failure to hold public hearings prior to the repeal of the tax does not invalidate that repeal.

305.36 Itemized statement of circulator

(A) The circulator of a referendum petition, or his agent, shall, within five days after such petition is filed with the county auditor, file a statement, made under penalty of election falsification, showing in detail:

(1) All moneys or things of value paid, given, or promised for circulating such petition;

(2) Full names and addresses of all persons to whom such payments or promises were made;

(3) Full names and addresses of all persons who contributed anything of value to be used in circulating such petitions;

(4) Time spent and salaries earned while circulating or soliciting signatures to petitions by persons who were regular salaried employees of some person who authorized them to solicit signatures for or circulate the petition as a part of their regular duties.

(B) The statement provided for in division (A) of this section is not required from persons who take no other part in circulating a petition other than signing declarations to parts of the petition and soliciting signatures to them.

(C) Such statement shall be open to public inspection for a period of one year.

HISTORY: 1980 H 1062, eff. 3-23-81
132 v H 919

Prohibition: 305.37(F)

CROSS REFERENCES

Definition of "anything of value," 1.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 52
Am Jur 2d: 42, Initiative and Referendum § 30

305.37 Prohibitions

No person shall, directly or indirectly:

(A) Willfully misrepresent the contents of any referendum petition;

(B) Pay or offer to pay any elector anything of value for signing a referendum petition;

(C) Promise to help another person to obtain appointment to any office provided for by the constitution or laws of this state or by the ordinances of any municipal corporation, or to any position or employment in the service of the state or any political subdivision thereof as a consideration for obtaining signatures to a referendum petition;

(D) Obtain signatures to any referendum petition as a consideration for the assistance or promise of assistance of another person in securing an appointment to any office or position provided for by the constitution or laws of this state or by the ordinance of any municipal corporation

therein, or employment in the service of the state or any subdivision thereof;

(E) Alter, add to, or erase any signatures or names on the parts of a petition after such parts have been filed with the county auditor;

(F) Fail to file the sworn itemized statement required in section 305.36 of the Revised Code.

HISTORY: 132 v H 919, eff. 12-12-67

Penalty: 305.99(A)

CROSS REFERENCES

Definition of "anything of value," 1.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 56
Am Jur 2d: 26, Elections § 371 et seq.

305.38 Prohibition as to signature

No person shall knowingly sign a referendum petition more than once, sign a name other than his own, or sign when not a legal voter.

HISTORY: 132 v H 919, eff. 12-12-67

Penalty: 305.99(B)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 56

305.39 Acceptance of thing of value for signing

No person shall accept anything of value for signing a referendum petition.

HISTORY: 132 v H 919, eff. 12-12-67

Penalty: 305.99(B)

CROSS REFERENCES

Definition of "anything of value," 1.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 56

305.40 Stealing, destroying, or mutilating petition

No person shall sell, purchase, steal, attempt to steal, or willfully destroy or mutilate a referendum petition which is being or has been lawfully circulated.

HISTORY: 132 v H 919, eff. 12-12-67

Penalty: 305.99(C)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 56
Mutilations, alterations, and deletions as affecting admissibility in evidence of public record. 28 ALR2d 1443

305.41 Influencing or soliciting signatures

No person shall, directly or indirectly, by intimidation or threats, influence or seek to influence any person to sign or abstain from signing, or to solicit signatures to or abstain from soliciting signatures to a referendum petition.

HISTORY: 132 v H 919, eff. 12-12-67

Penalty: 305.99(B)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 56

305.42 Application to petitions

Sections 305.32 to 305.41 and 305.99 of the Revised Code apply to petitions authorized by sections 307.791, 322.021, 324.021, 4504.021, and 5739.022 of the Revised Code.

HISTORY: 1980 H 736, eff. 10-16-80
1978 H 513; 1969 H 531

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 53

305.99 Penalties

(A) Whoever violates section 305.37 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars.

(B) Whoever violates section 305.38, 305.39, or 305.41 of the Revised Code is guilty of a minor misdemeanor.

(C) Whoever violates section 305.40 of the Revised Code is guilty of a felony of the fourth degree.

HISTORY: 1972 H 511, eff. 1-1-74
132 v H 919; 1953 H 1

CROSS REFERENCES

Penalties for misdemeanor, 2929.21

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 56

REGIONAL TRANSIT AUTHORITY; COUNTY CHARTERS

306.32 Resolution or ordinance to create authority; filing procedures; referendum; territorial boundaries

Any county, or any two or more counties, municipal corporations, townships, or any combination thereof, may create a regional transit authority by the adoption of a resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which is to create or to join in the creation of the regional transit authority. Such resolution or ordinance shall state:

(A) The necessity for the creation of a regional transit authority;

(B) The counties, municipal corporations, or townships which are to create or to join in the creation of the regional transit authority;

(C) The official name by which the regional transit authority shall be known;

(D) The place in which the principal office of the regional transit authority will be located or the manner in which it may be selected;

(E) The number, term, and compensation, or method for establishing compensation, of the members of the board of trustees of the regional transit authority. Compensation shall not exceed fifty dollars for each board and committee meeting attended by a member, except that if compensation is provided annually it shall not exceed six thousand dollars for the president of the board or four thousand eight hundred dollars for each other board member.

(F) The manner in which vacancies on the board of trustees of the regional transit authority shall be filled;

(G) The manner and to what extent the expenses of the regional transit authority shall be apportioned among the counties, municipal corporations, and townships creating it;

(H) The purposes, including the kinds of transit facilities, for which the regional transit authority is organized.

The regional transit authority provided for in such resolution or ordinance shall be deemed to be created upon the adoption of such resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township enumerated in the resolution or ordinance.

The resolution or ordinance creating a regional transit authority may be amended to include additional counties, municipal corporations, or townships or for any other purpose, by the adoption of such amendment by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which has created or joined or proposes to join the regional transit authority.

After each county, municipal corporation, and township which has created or joined or proposes to join the regional transit authority has adopted its resolution or ordinance approving inclusion of additional counties, municipal corporations, or townships in such regional transit authority, a copy of each such resolution or ordinance shall be filed with the clerk of the board of the county commissioners of each county, of the legislative authority of each municipal corporation, and of the board of trustees of each township proposed to be included in the regional transit authority. Such inclusion is effective when all such filing has been completed, unless the regional transit authority to which territory is to be added has authority to levy an ad valorem tax on property, or a sales tax, within its territorial boundaries, in which event such inclusion shall become effective on the sixtieth day after the last such filing is accomplished, unless, prior to the expiration of such sixty day period, qualified electors residing in the area proposed to be added to the regional transit authority, equal in number to at least ten per cent of the qualified electors from such area who voted for governor at the last gubernatorial election, file a petition of referendum against such inclusion. Any petition of referendum filed under this section shall be filed at the office of the secretary of the board of trustees of the regional transit authority. The person presenting the petition shall be given a receipt containing thereon the time of the day, the date, and the purpose of the petition. The secretary of the board of trustees of the regional transit authority shall cause the appropriate board or boards of elections to check the sufficiency of signatures on any petition of referendum filed under this section and, if found to be sufficient, shall present the petition to the board of trustees at a meeting of said board which occurs not later than thirty days following the filing of said petition. Upon presentation to the board of trustees of a petition of referendum against the proposed inclusion, the board of trustees shall promptly certify the proposal to the board or boards of elections for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than seventy-five days after the date of the meeting of said board, or at a special election, the date of which shall be specified in the certification, which date shall be not less than seventy-five days after the date of such meeting of the board. Signatures on a petition of referendum may be withdrawn up to and including the meeting of the board of trustees certifying the proposal to the appropriate board or boards of elections. If territory of more than one county, municipal corporation, or township is to be added to the regional transit authority, the electors of such territories of the counties, municipal corporations, or townships which are to be added shall vote as a district and the majority affirmative vote shall be determined by the vote cast in such district as a whole. Upon certification of a proposal to the appropriate board or boards of elections pursuant to this section, such board or boards of election shall make the necessary arrangements for the submission of such questions to the electors of the territory to be added to the regional transit authority qualified to vote thereon and the election shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.191 of the Revised Code, except that the question appearing on the ballot shall read:

"Shall the territory within the _____

(Name or names of political subdivisions to be joined)

be added to _____ regional transit authority?" and shall a(n) _____ (here insert type of tax or taxes) at a rate of taxation not to exceed _____ (here insert maximum tax rate or rates) be levied for all transit purposes?"

(Name)

If the question is approved by at least a majority of the electors voting on such question, such joinder is immediately effective and the regional transit authority may extend the levy of such tax against all the taxable property within the territory which has been added. If such question is approved at a general election or at a special election occurring prior thereto but after the fifteenth day of July, the regional transit authority may amend its budget and resolution adopted pursuant to section 5705.34 of the Revised Code and such levy shall be placed on the current tax list and duplicate and collected as other taxes are collected from all taxable property within the territorial boundaries of the regional transit authority, including the territory within each political subdivision added as a result of such election.

The territorial boundaries of a regional transit authority shall be coextensive with the territorial boundaries of the counties, municipal corporations, and townships included within the regional transit authority, provided that the same area may be included in more than one regional transit authority so long as the regional transit authorities

are not organized for purposes as provided for in the resolutions or ordinances creating the same, and any amendments thereto, relating to the same kinds of transit facilities; and provided further, that if a regional transit authority includes only a portion of an entire county, a regional transit authority for the same purposes may be created in the remaining portion of the same county by resolution of the board of county commissioners acting alone or in conjunction with municipal corporations and townships as provided in this section.

No regional transit authority shall be organized after January 1, 1975, to include any area already included in a regional transit authority, except that any regional transit authority organized after the effective date of this section and having territorial boundaries entirely within a single county shall, upon adoption by the board of county commissioners of such county of a resolution creating a regional transit authority including within its territorial jurisdiction the existing regional transit authority and for purposes including the purposes for which such existing regional transit authority was created, be dissolved and its territory included in such new regional transit authority. Any resolution creating such new regional transit authority shall make adequate provision for satisfaction of the obligations of the dissolved regional transit authority.

HISTORY: 1989 H 98, eff. 9-13-89
1980 H 1062; 1974 S 544; 1970 S 125; 132 v H 1; 131 v H 421

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 51.08

CROSS REFERENCES

Vehicle-related revenue to be used only for highway purposes, O Const Art XII §5a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Transit § 7, 8

NOTES ON DECISIONS AND OPINIONS

895 F(2d) 266 (6th Cir Ohio 1990), Moir v Greater Cleveland Regional Transit Auth. A transit authority is a "political subdivision" of Ohio exempt from 29 USC 185(a) of the Federal Labor Management Relations Act of 1947 because the authority was created by the state through delegation of its authority and is administered by a board of trustees responsible to elected officials.

OAG 88-083. Under RC 149.38, a county records commission is not responsible for providing rules for the retention and disposal of records of a regional transit authority established pursuant to RC 306.32.

OAG 85-096. A board of county commissioners of a county which is a member of a regional transit authority may not, in its resolution creating the regional transit authority, limit the number of terms that a trustee may serve as a member of the board of trustees of the regional transit authority.

OAG 72-053. When a regional transit authority has been legally established by two municipalities, the withdrawal of one municipality under RC 306.54 will permit the continued existence of the authority within the boundaries of the other municipality.

306.40 General obligations bonds; final judgment bonds; use of proceeds; election; tax levy; anticipatory notes; issuance of obligation without vote

The regional transit authority may submit to the electors within its territorial boundaries the question of issuing bonds of such authority and also the necessity of a tax outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, to pay the interest on and to retire the bonds. Such bonds when so approved by the electors may be issued by the regional transit authority to purchase, acquire, construct, replace, improve, extend, and enlarge any transit facility which serves or will serve an area within the territorial boundaries of the regional transit authority, or to make an indemnification payment pursuant to an agreement for the sale and leaseback of qualified mass commuting vehicles as provided in division (AA) of section 306.35 of the Revised Code, or to pay a final judgment or judgments rendered against the regional transit authority, including settlement of a claim approved by a court, in an action for personal injuries or based on any other noncontractual obligation, provided that the net indebtedness, as defined for a municipal corporation in section 133.05 of the Revised Code, incurred by a regional transit authority shall never exceed five per cent of the total value of all property within the territorial boundaries of the regional transit authority as listed and assessed for taxation, and that no part of the proceeds of such bonds shall at any time be used to meet or defray any of the normal operating expenses of any transit facility or part thereof, and provided also, that bonds issued to make an indemnification payment pursuant to an agreement for the sale and leaseback of qualified mass commuting vehicles as provided in division (AA) of section 306.35 of the Revised Code shall have a maturing of not more than five years. The proceedings for such election and for the issuance and sale of such bonds shall be as provided by Chapter 133. of the Revised Code, provided that such a bond issue may be submitted to the electors and such bonds may be issued for any one or more of the purposes set forth in this section. If a majority of those voting upon the proposition vote in favor thereof, the board of trustees of the regional transit authority may proceed with the issue of such bonds and the levy of a tax outside the ten-mill limitation, sufficient in amount to pay the interest on and retire such bonds at maturity. Notes may be issued in anticipation of such bonds as provided in section 133.22 of the Revised Code. The board of trustees shall be the taxing authority or bond issuing authority of the regional transit authority.

The regional transit authority may also issue bonds and notes in anticipation of such bonds for any one or more of the purposes set forth in this section and as provided in Chapter 133. of the Revised Code, without a vote of the electors residing within the territorial boundaries of the authority. Prior to the issuance of such bonds or notes, the fiscal officer of the authority shall file with the board of trustees a certificate showing that the estimated revenues of the authority from sources other than ad valorem taxes on property, after first meeting from all available resources the estimated operation and maintenance expenses of the authority as they become due, are sufficient to pay the principal of and interest on such bonds as they become due, and that the maximum aggregate amount of principal and interest to become payable in any one calendar year on all of the bonds of the authority issued pursuant to this section

without a vote of the electors does not exceed one-tenth of one per cent of the total value of all the property within the territory of the authority as listed and assessed for taxation. To the extent that revenues of the authority from sources other than ad valorem taxes on property, after paying the operation and maintenance expenses of the facilities financed from the proceeds of bonds and notes issued pursuant to this section and any moneys required for the payment of the principal of and interest and any premium on revenue bonds issued by the regional transit authority pursuant to section 306.37 of the Revised Code, are sufficient to pay the principal of and interest on bonds issued pursuant to this section as they become due, such bonds shall not be considered within the five per cent limitation on indebtedness imposed by this section.

HISTORY: 1989 H 230, eff. 10-30-89
1986 H 301; 1982 S 543; 1974 S 544; 1970 S 125; 131 v H 421

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

Transit authority levy of sales tax, rates optional, limits, 5739.023

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 64, Public Securities and Obligations § 11 to 13, 417, 485; 71, State and Local Taxation § 75 to 77

Validity of submission of proposition to voters at bond election as affected by inclusion of several structures or units. 4 ALR2d 617

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR2d 559

NOTES ON DECISIONS AND OPINIONS

OAG 89-048. When voters have approved a sales tax levy for a regional transit authority pursuant to RC 306.70 and 5739.023 and no bonds or anticipation notes have been issued under RC 306.40 without a vote of the electors while the tax has been in effect, the board of trustees of the authority may, at any time while the tax is in effect, by resolution fix the rate of the tax at any rate authorized by RC 5739.023 and not in excess of the rate approved by the voters; the tax rate may, by resolution, be changed to any permissible rate pursuant to the procedure set forth in RC 5739.023.

306.49 Levy of property tax; purpose

(A) Upon the affirmative vote of at least a majority of the qualified electors within the territorial boundaries of the regional transit authority voting on the question at an election held for the purpose of authorizing it, the regional transit authority may levy upon the property within its territorial boundaries a tax, for all purposes other than bond debt charges, not in excess of five mills annually on the total value of all property as listed and assessed for taxation for any period not exceeding ten years. Such election shall be called, held, canvassed, and certified in the same manner as is provided for elections held pursuant to section 5705.191 of the Revised Code. On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, in the amount and manner and at the times as are provided in section 5705.193 of the Revised Code. The regional transit authority may borrow money in anticipation of the collection of current revenues as provided in section 133.10 of the Revised Code.

(B) Whenever the question of a tax upon property as provided in division (A) of this section has been rejected at an election, the regional transit authority may thereafter submit the question at a subsequent election to the qualified electors of the largest municipal corporation located within the territorial boundaries of the regional transit authority, and to the qualified electors of any other municipal corporation or township located within such boundaries, when its legislative authority or board of trustees has adopted a resolution requesting to be included in such election and has filed a copy thereof with the secretary-treasurer of the regional transit authority not later than ninety days prior to the date of the election.

Upon the affirmative vote of a majority of the qualified electors of the largest municipal corporation voting on the question, the regional transit authority may levy a tax as provided in division (A) of this section upon all property within the municipal corporation, and upon all property within any other municipal corporation or township included in the election when a majority of the qualified electors of such municipal corporation or township have authorized the tax.

Whenever a tax upon property has been authorized pursuant to this division, the legislative authority of any municipal corporation, or the board of trustees of any township, that is not subject to the tax, but is included within the territorial boundaries of the regional transit authority, may adopt a resolution requesting the regional transit authority to hold an election submitting the question of levying the tax to the electors of such municipal corporation or township.

Any election held pursuant to this division shall be called, held, canvassed, and certified in the same manner as provided for elections held pursuant to division (A) of this section, and any tax authorized by an election held under this division shall grant the same authority and be subject to the same requirements with respect to the issuance of notes and the borrowing of money as provided in division (A) of this section.

(C) Any tax authorized by an election held under this section shall be levied annually as provided in section 5705.34 of the Revised Code during the period authorized, and shall be for the purpose of providing funds necessary for the regional transit authority budget, except that any tax authorized under division (B) of this section shall be used for such purpose only in those municipal corporations or townships which have authorized the tax. The collection of such tax levy shall conform in all matters to the provisions of the Revised Code governing the collection of taxes and assessments levied by taxing districts, and the same provisions concerning the nonpayment of taxes shall apply to taxes levied pursuant to this section.

HISTORY: 1989 H 230, eff. 10-30-89
1974 S 544; 1972 H 1100; 1970 S 125

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

Tax collection, Ch 5719

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 71, State and Local Taxation § 191

NOTES ON DECISIONS AND OPINIONS

OAG 81-068. A board of trustees of a regional transit authority which levies a tax pursuant to RC 306.49(A) must levy the tax on all property within the territorial boundaries of the authority. The board of trustees of a regional transit authority may not levy a tax pursuant to RC 306.49(A) on property within a political subdivision which has withdrawn from the regional transit authority prior to the date on which the tax is levied.

306.70 Submission of question of adoption of sales and use tax

A tax proposed to be levied by a board of county commissioners or by the board of trustees of a regional transit authority pursuant to sections 5739.023 and 5741.022 of the Revised Code shall not become effective until it is submitted to the electors residing within the county or within the territorial boundaries of the regional transit authority and approved by a majority of the electors voting thereon. Such question shall be submitted at a general election or at a special election on a day specified in the resolution levying the tax and occurring not less than seventy-five days after such resolution is certified to the board of elections, in accordance with section 3505.071 of the Revised Code.

The board of elections of the county or of each county in which any territory of the regional transit authority is located shall make the necessary arrangements for the submission of such question to the electors of the county or regional transit authority, and the election shall be held, canvassed, and certified in the same manner as regular elections for the election of county officers. Notice of the election shall be published in one or more newspapers which in the aggregate are of general circulation in the territory of the county or of the regional transit authority once a week for four consecutive weeks prior to the election stating the type, rate and purpose of the tax to be levied, the length of time during which the tax will be in effect, and the time and place of the election.

More than one such question may be submitted at the same election. The form of the ballots cast at such[2] shall be:

"Shall a(n) _____ (sales and use) _____ tax be levied for all transit purposes of the _____ (here insert name of the county or regional transit authority) at a rate not exceeding _____ (here insert percentage) per cent for _____ (here insert number of years the tax is to be in effect, or that it is to be in effect for a continuing period of time)?"

If the tax proposed to be levied is a continuation of an existing tax, whether at the same rate or at an increased or reduced rate, or an increase in the rate of an existing tax, the notice and ballot form shall so state.

The board of elections to which the resolution was certified shall certify the results of the election to the county auditor of the county or secretary-treasurer of the regional transit authority levying the tax and to the tax commissioner of the state.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 S 544

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 13

CROSS REFERENCES

Newspaper of general circulation, 7.12
Canvass of returns, 3505.32
Certificates of election, 3505.38

NOTES ON DECISIONS AND OPINIONS

OAG 89-048. When voters have approved a sales tax levy for a regional transit authority pursuant to RC 306.70 and 5739.023 and no bonds or anticipation notes have been issued under RC 306.40 without a vote of the electors while the tax has been in effect, the board of trustees of the authority may, at any time while the tax is in effect, by resolution fix the rate of the tax at any rate authorized by RC 5739.023 and not in excess of the rate approved by the voters; the tax rate may, by resolution, be changed to any permissible rate pursuant to the procedure set forth in RC 5739.023.

306.71 Question of reduction of rate of continuing sales and use tax

The question of the decrease of the rate of a tax approved for a continuing period of time by the voters of a county or regional transit authority pursuant to sections 5739.023 and 5741.022 of the Revised Code may be initiated by the filing of a petition with the board of elections of the county, or in the case of a regional transit authority with the board of elections as determined pursuant to section 3505.071 of the Revised Code, prior to the seventy-fifth day before the general election in any year requesting that an election be held on such question. Such petition shall state the amount of the proposed decrease in the rate of the tax and shall be signed by at least ten per cent of the number of qualified electors residing in such county, or in the territory of the regional transit authority, who voted at the last general election.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the county or regional transit authority at the next succeeding general election. The election shall be conducted, notice thereof shall be given, and the results thereof shall be certified in the manner provided in section 306.70 of the Revised Code. If a majority of the qualified electors voting on such question approve the proposed decrease in rate, such decrease in rate shall become effective on the first day of the second January after such election.

In any case where bonds, or notes in anticipation of bonds, of a regional transit authority have been issued under section 306.40 of the Revised Code without a vote of the electors while the tax proposed to be reduced was in effect, the board of trustees of the regional transit authority shall continue to levy and collect under authority of the original election authorizing the tax a rate of tax in each year which the authority reasonably estimates will produce

[2]Prior and current versions differ although no amendment to this language was indicated in 1980 H 1062; "such" appeared as "such election" in 1974 S 544.

an amount in that year equal to the amount of principal of and interest on such bonds as is payable in that year.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 S 544

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 13

NOTES ON DECISIONS AND OPINIONS

OAG 89-048. RC 306.71 authorizes voters to initiate an election with respect to a continuing sales tax under RC 5739.023 to decrease the rate approved by the voters.

OAG 89-048. The sales tax rate fixed pursuant to RC 5739.023 may not exceed the rate approved by the voters, whether pursuant to the initial authorization of a levy under RC 5739.023 or pursuant to a decrease adopted in accordance with RC 306.71.

COUNTY COMMISSIONERS—GENERAL POWERS

307.696 Sports facility; corporation to operate; revenue bonds; use of county taxes

(A) As used in this section:

(1) "County taxes" means taxes levied by the county pursuant to sections 307.697, 4301.421, 5743.024, and 5743.323 of the Revised Code.

(2) "Corporation" means a nonprofit corporation that is organized under the laws of this state for the purposes of operating or constructing and operating a sports facility in the county and that may also be organized under the laws of this state for the additional purposes of conducting redevelopment and economic development activities within the host municipal corporation.

(3) "Sports facility" means a sports facility that is intended to house major league professional athletic teams, including a stadium, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interests that may be appropriate for, or used in connection with, the operation of the facility.

(4) "Construction" includes, but is not limited to, providing fixtures, furnishings, and equipment.

(5) "Debt service charges" means the interest, principal, premium, if any, carrying and redemption charges, and expenses on bonds issued by either the county or the corporation to:

(a) Construct a sports facility or provide for related redevelopment or economic development as provided in this section;

(b) Acquire real and personal property, property rights, easements, or interests that may be appropriate for, or used in connection with, the operation of the facility; and

(c) Make site improvements to real property, including, but not limited to, demolition, excavation, and installation of footers, pilings, and foundations.

(6) "Host municipal corporation" means the municipal corporation within the boundaries of which the sports facility is located, and with which a national football league, major league baseball, or national basketball association sports franchise is associated on the effective date of this amendment.

(B) A board of county commissioners of a county that levies a tax under section 307.697, 4301.421, or 5743.024 of the Revised Code may enter into an agreement with a corporation operating in the county, and, if there is a host municipal corporation all or a part of which is located in the county, shall enter into an agreement with a corporation operating in the county and the host municipal corporation, under which:

(1)(a) The corporation agrees to construct and operate a sports facility in the county and to pledge and contribute all or any part of the revenues derived from its operation, as specified in the agreement, for the purposes described in division (C)(1) of this section; and

(b) The board agrees to levy county taxes and pledge and contribute any part or all of the revenues therefrom, as specified in the agreement, for the purposes described in division (C)(1) of this section; or

(2)(a) The corporation agrees to operate a sports facility constructed by the county and to pledge and contribute all or any part of the revenues derived from its operation, as specified in the agreement, for the purposes described in division (C)(2) of this section; and

(b) The board agrees to issue revenue bonds of the county, use the proceeds from the sale of the bonds to construct a sports facility in the county, and to levy county taxes and pledge and contribute all or any part of the revenues therefrom, as specified in the agreement, for the purposes described in division (C)(2) of this section; and, if applicable

(3) The host municipal corporation agrees to expend the unused pledges and contributions and surplus revenues as described in divisions (C)(1) and (2) of this section for redevelopment and economic development purposes related to the sports facility.

(C)(1) The primary purpose of the pledges and contributions described in division (B)(1) of this section is payment of debt service charges. To the extent the pledges and contributions are not used by the county or corporation for payment of debt service charges, the county or corporation, pursuant to the agreement provided for in division (B) of this section, shall provide the unused pledges and contributions, together with surplus revenues of the sports facility not needed for debt service charges or the operation and maintenance of the sports facility, to the host municipal corporation, or a nonprofit corporation, which may be the corporation acting on behalf of the host municipal corporation, for redevelopment and economic development purposes related to the sports facility. If the county taxes are also levied for the purpose of making permanent improvements, the agreement shall include a schedule of annual pledges and contributions by the county for the payment of debt service charges. The county's pledge and contribution provided for in the agreement shall be for the period stated in the agreement but not to exceed twenty years. The agreement shall provide that any such bonds and notes shall be secured by a trust agreement between the corporation or other bond issuer and a corporate trustee that is a trust company or bank having the powers of a trust company within or without the state, and the trust agreement shall pledge or assign to the retirement of the bonds or notes, all moneys paid by the county for that purpose under this section. A county tax, all or any part of the revenues from which are pledged under an agreement entered into by a board of county commissioners under this section shall not be subject to diminution by initiative or referendum, or diminution by statute, unless provision is made therein for an adequate substitute therefor reasonably satisfactory to

the trustee under the trust agreement that secures the bonds and notes.

(2) The primary purpose of the pledges and contributions described in division (B)(2) of this section is payment of debt service charges. To the extent the pledges and contributions are not used by the county for payment of debt service charges, the county or corporation, pursuant to the agreement provided for in division (B) of this section, shall provide the unused pledges and contributions, together with surplus revenues of the sports facility not needed for debt service charges or the operation and maintenance of the sports facility, to the host municipal corporation, or a nonprofit corporation, which may be the corporation, acting on behalf of the host municipal corporation, for redevelopment and economic development purposes related to the sports facility. The corporation's pledge and contribution provided for in the agreement shall be until all of the bonds issued for the construction of the facility have been retired.

(D) A pledge of money by a county under this section shall not be indebtedness of the county for purposes of Chapter 133. of the Revised Code.

(E) If the terms of the agreement so provide, the board of county commissioners may acquire, make site improvements to, including, but not limited to, demolition, excavation, and installation of footers, pilings, and foundations, and lease real property for the sports facility to a corporation that constructs a sports facility under division (B)(1) of this section. The agreement shall specify the term, which shall not exceed thirty years and shall be on such terms as are set forth in the agreement. The purchase, improvement, and lease may be the subject of an agreement between the county and a municipal corporation located within the county pursuant to section 153.61 or 307.15 of the Revised Code, and are not subject to the limitations of sections 307.02 and 307.09 of the Revised Code.

(F) The corporation shall not enter into any construction contract or contract for the purchase of services for use in connection with the construction of a sports facility prior to the corporation's adoption and implementation of a policy on the set aside of contracts for bidding by or award to minority business enterprises, as defined in division (E)(1) of section 122.71 of the Revised Code. Sections 4115.03 to 4115.16 of the Revised Code apply to a sports facility constructed under this section.

(G) Not more than one-half of the total costs, including debt service charges and cost of operation, of a project undertaken pursuant to an agreement entered into under division (B) of this section shall be paid from county taxes. Nothing in this section authorizes the use of revenues from county taxes or proceeds from the sale of bonds issued by the board of county commissioners for payment of costs of operation of a sports facility.

HISTORY: 1990 S 188, eff. 3-20-90
1986 H 583

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 37

CROSS REFERENCES

County auditor's fees, 319.54
Sales tax, exemption, 5739.02
Cigarette sales tax, additional for sports facility or permanent improvements, 5743.024, 5743.323

NOTES ON DECISIONS AND OPINIONS

OAG 91-007. In the case of a nonprofit corporation established pursuant to RC 307.696, and provided that there is no violation of a statutory provision subject to interpretation by the Ohio ethics commission pursuant to RC 102.08, a board of county commissioners, or the members thereof in their official capacities, may serve as members of the corporation if (1) the county has created or participated in the nonprofit corporation, (2) the board of county commissioners formally designates the offices in question to represent the county, (3) the county commissioners are formally instructed to represent the county and its interests, and (4) there is no other conflict of interest on the part of a particular county commissioner.

OAG 91-007. In the case of a nonprofit corporation established pursuant to RC 307.696, and provided that there is no violation of a statutory provision subject to interpretation by the Ohio ethics commission pursuant to RC 102.08, the county administrator and/or any other county official or employee other than a county commissioner may legally serve as a trustee, officer, or director of the corporation if (1) the county has created or participated in the nonprofit corporation, (2) the board of county commissioners formally designates the office or position in question to represent the county, (3) the county administrator or other county official or employee is formally instructed to represent the county and its interests, and (4) there is no other conflict of interest on the part of the particular county administrator or other county official or employee.

307.697 Tax on spirituous liquor; election; ballot form

(A) For the purpose of section 307.696 of the Revised Code and to pay any or all of the charge the board of elections makes against the county to hold the election on the question of levying the tax, or for such purposes and to provide revenues to the county for permanent improvements, the board of county commissioners of a county may levy a tax not to exceed three dollars on each gallon of spirituous liquor sold to or purchased by liquor permit holders for resale, and sold at retail by the department of liquor control, in the county. The tax shall be levied on the number of gallons so sold. The tax may be levied for any number of years not exceeding twenty.

The tax shall be levied pursuant to a resolution of the county commissioners approved by a majority of the electors in the county voting on the question of levying the tax, which resolution shall specify the rate of the tax, the number of years the tax will be levied, and the purposes for which the tax is levied. Such election may be held on the date of a general or special election held not sooner than seventy-five days after the date the board certifies its resolution to the board of elections. If approved by the electors, the tax takes effect on the first day of the month specified in the resolution but not sooner than the first day of the month that is at least sixty days after the certification of the election results by the board of elections. A copy of the resolution levying the tax shall be certified to the department of liquor control at least sixty days prior to the date on which the tax is to become effective.

(B) A resolution under this section may be joined on the ballot as a single question with a resolution adopted under section 4301.421 or 5743.024 of the Revised Code to levy a tax for the same purposes, and for the purpose of paying the expenses of administering that tax.

(C) The form of the ballot in an election held pursuant to this section or section 4301.421 or 5743.024 of the Revised Code shall be as follows or in any other form acceptable to the secretary of state:

"For the purpose of paying not more than one-half of the costs of providing a public sports facility together with related redevelopment and economic development projects, shall (an) excise tax(es) be levied by _____ county at the rate of _____ (dollars on each gallon of spirituous liquor sold in the county by the Ohio Department of liquor control, cents per gallon on the sale of beer at wholesale in the county, cents per gallon on the sale of wine and mixed beverages at wholesale in the county, or mills per cigarette on the sale of cigarettes at wholesale in the county), for _____ years?

	Yes
	No

"

For an election in which questions under this section or section 4301.421 or 5743.024 of the Revised Code are joined as a single question, the form of the ballot shall be as above, except each of the proposed taxes shall be listed.

HISTORY: 1990 S 188, eff. 3-20-90
1986 H 583

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 37

CROSS REFERENCES

Liquor control department, collection of county tax on spirituous liquor, 4301.102
Cigarette sales tax, additional for sports facility or permanent improvements, joined on ballot with spirituous liquor tax resolution, 5743.024

307.70 County charter commissions; funds; distribution of charts; limit on public officers as members

In any county electing a county charter commission, the board of county commissioners shall appropriate money for the expenses of such commission in the preparation of a county charter, or charter amendment, and the study of problems involved. No appropriation shall be made for the compensation of members of the commission for their services. The board shall appropriate money for the printing and mailing or otherwise distributing to each elector in the county, as far as may be reasonably possible, a copy of a charter submitted to the electors of the county by a charter commission or by the board pursuant to petition as provided by Section 4 of Article X, Ohio Constitution. The copy of the charter shall be mailed or otherwise distributed at least thirty days prior to the election. The board shall appropriate money for the printing and distribution or publication of proposed amendments to a charter submitted by a charter commission pursuant to Section 4 of Article X, Ohio Constitution. Notice of amendments to a county charter shall be given by mailing or otherwise distributing a copy of each proposed amendment to each elector in the county, as far as may be reasonably possible, at least thirty days prior to the election or, if the board so determines, by publishing the full text of the proposed amendments once a week for at least two consecutive weeks in a newspaper published in the county. If no newspaper is published in the county or the board is unable to obtain publication in a newspaper published in the county, the proposed amendments may be published in a newspaper of general circulation within the county. No public officer is precluded, because of being a public officer, from also holding office as a member of a county charter commission, except that not more than four officeholders may be elected to a county charter commission at the same time. No member of a county charter commission, because of charter commission membership, is precluded from seeking or holding other public office.

HISTORY: 1979 S 169, eff. 6-29-79
131 v S 241; 1953 H 1; GC 2511

CROSS REFERENCES

Newspaper of general circulation, 7.12
County charter, O Const Art X §3, 4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Notice and Notices § 27 to 30, 32 to 36
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 126, 127

AUTOMATIC DATA PROCESSING

307.84 County automatic data processing board; members; county office defined

The board of county commissioners of any county may, by resolution, establish a county automatic data processing board. The board shall consist of the county treasurer or his representative, the county recorder or his representative, the clerk of the court of common pleas or his representative, a member or representative of the board of county commissioners chosen by the board, two members or representatives of the board of elections chosen by the board of elections one of whom shall be a member of the political party receiving the greatest number of votes at the next preceding general election for the office of governor and one of whom shall be a member of the political party receiving the second greatest number of votes at such an election, if the board of elections desires to participate, and the county auditor or his representative who shall serve as secretary. The members of the county automatic data processing board may by majority vote add to the board any additional members whose officers use the facilities of the board.

After the initial meeting of the county automatic data processing board, no county office shall purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior approval of the board.

As used in sections 307.84 to 307.846 of the Revised Code, "county office" means any officer, department, board, commission, agency, court, or other office of the county, other than a board of county hospital trustees.

HISTORY: 1991 H 185, eff. 7-1-91
1988 S 38; 1977 H 328; 132 v S 269

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 29.04

NOTES ON DECISIONS AND OPINIONS

57 Misc 20, 387 NE(2d) 254 (CP, Cuyahoga 1977), Campanella v Cuyahoga County; affirmed by No. 38439 (8th Dist Ct App, Cuyahoga, 7-5-78). The board of county commissioners must provide data processing services under the framework of an automatic

data processing board, as created by RC 307.84, or they are without authority to provide such services at all.

57 Misc 20, 387 NE(2d) 254 (CP, Cuyahoga 1977), Campanella v Cuyahoga County; affirmed by No. 38439 (8th Dist Ct App, Cuyahoga, 7-5-78). When a board of county commissioners terminates an automatic data processing board, a county office may then establish its own non-centralized data processing system or obtain such services elsewhere.

OAG 84-042. Word processors are a type of data processing equipment and, thus, fall within the jurisdiction of a county automatic data processing board.

OAG 83-027. As provided in RC 9.35, and subject to any limitations imposed under RC 307.84, the county engineer may, pursuant to a resolution duly adopted by the board of county commissioners, contract with a person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services for the performance of mechanical, clerical, or record-keeping services necessary in the performance of his duties.

OAG 77-030. The board of county commissioners has authority to terminate an automatic data processing board, established pursuant to RC 307.84, by adopting a resolution to that effect.

OAG 77-030. Upon termination of the county automatic data processing board, the board of county commissioners may continue to purchase data processing equipment as it is authorized to do under RC 307.843; RC 307.846 does not authorize the board of county commissioners to contract to provide data processing services to other public agencies and officials.

OAG 77-030. In the absence of a county automatic data processing board, county offices may establish their own data processing operations.

OAG 71-086. County automatic data processing board does have authority, under RC 307.846, to enter into contract to provide automatic data processing service to areawide coordinating agency formed under provisions of Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3331 et seq.

OAG 71-085. Court of appeals and court of common pleas are state courts and do not need to obtain prior approval of Cuyahoga county automatic data processing board to purchase, lease, operate, or contract for use and services of Ohio bar automated research system.

OAG 70-091. County auditor is official authorized to contract for computer services for performance of his ministerial functions in preparation of county tax lists and duplicates.

OAG 68-105. The county board of education is not a "county office" within the meaning of RC 307.84, and is, therefore, free to make contracts for data processing service notwithstanding the establishment of a county data processing board which governs "county office" data processing contracts.

OAG 68-029. A separate appropriation account may be established for the automatic data processing board which could be credited for services rendered other offices and departments while at the same time the appropriation accounts of such offices and departments serviced by the data processing center would be debited.

OAG 68-029. It is not mandatory or necessary for members of the automatic data processing board to elect a president or chairman.

COMPETITIVE BIDDING ON COUNTY PURCHASES

307.86 Competitive bidding required; exceptions

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ten thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 307.022, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists and such determination and the reasons therefor are entered in the minutes of the proceedings of the board, when:

(1) The estimated cost is less than twenty thousand dollars; or

(2) There is actual physical disaster to structures.

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding under division (A)(1) of this section because the estimated cost is less than twenty thousand dollars, but the estimated cost is ten thousand dollars or more, the county or contracting authority shall solicit informal estimates from no fewer than three persons who could perform the contract, before awarding the contract. With regard to each such contract, the county or contracting authority shall maintain a record of such estimates, including the name of each person from whom an estimate is solicited, for no less than one year after the contract is awarded.

(B) The purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county and the only source of supply for such supplies, part, or parts is limited to a single supplier.

(C) The purchase is from the federal government, state, another county or contracting authority thereof, a board of education, township, or municipal corporation.

(D) Public social services are purchased for provision by the county department of human services under section 329.04 of the Revised Code or program services, such as direct and ancillary client services, child day-care, case management services, residential services, and family resource services, are purchased for provision by a county board of mental retardation and developmental disabilities under section 5126.05 of the Revised Code.

(E) The purchase consists of human and social services by the board of county commissioners from nonprofit corporations or associations under programs which are funded entirely by the federal government.

(F) The purchase consists of any form of an insurance policy or contract authorized to be issued under Title XXXIX of the Revised Code or any form of health care contract or plan authorized to be issued under Chapter

1736., 1737., 1740., or 1742. of the Revised Code, or any combination of such policies, contracts, or plans that the contracting authority is authorized to purchase, and the contracting authority does all of the following:

(1) Determines that compliance with the requirements of this section would increase, rather than decrease, the cost of such purchase;

(2) Employs a competent consultant to assist the contracting authority in procuring appropriate coverages at the best and lowest prices;

(3) Requests issuers of such policies, contracts, or plans to submit proposals to the contracting authority, in a form prescribed by the contracting authority, setting forth the coverage and cost of such policies, contracts, or plans as the contracting authority desires to purchase;

(4) Negotiates with such issuers for the purpose of purchasing such policies, contracts, or plans at the best and lowest price reasonably possible.

(G) The purchase consists of computer hardware, software, or consulting services that are necessary to implement a computerized case management automation project administered by the Ohio prosecuting attorneys association and funded by a grant from the federal government.

(H) Child day-care services are purchased for provision to county employees.

Any issuer of policies, contracts, or plans listed in division (F) of this section may have his name and address, or the name and address of an agent, placed on a special notification list to be kept by the contracting authority, by sending the contracting authority such name and address. The contracting authority shall send notice to all persons listed on the special notification list. Notices shall state the deadline and place for submitting proposals. The contracting authority shall mail the notices at least six weeks prior to the deadline set by the contracting authority for submitting such proposals. Every five years the contracting authority may review this list and remove any person from the list after mailing the person notification of such action.

Any contracting authority that negotiates a contract under division (F) of this section shall request proposals and renegotiate with issuers in accordance with that division at least every three years from the date of the signing of such a contract.

Any consultant employed pursuant to division (F) of this section shall disclose any fees or compensation received from any source in connection with that employment.

HISTORY: 1991 H 155, eff. 7-22-91
1990 S 374, S 254, § 1, 3; 1989 H 317, § 1, 6; 1988 S 155, § 1, 3, S 156, § 1, 4; 1987 H 13, § 1, 3; 1986 H 428, § 1, 7; 1985 H 100, § 1, 3, H 47; 1984 S 96, H 224; 1983 H 373; 1982 H 598; 1981 S 114; 1980 H 752, H 271; 1977 S 295, H 1; 1976 S 396, S 430; 1975 H 1; 1971 S 104; 132 v H 428, H 1008

Note: An explanatory note from the Legislative Service Commission states: "While Am. Sub. H.B. 111 of the 118th G.A. purports to repeal the existing version of this section, it is nevertheless presented here as unaffected by H.B. 111. The repeal of 'existing sections' is intended only to be stated when conditional to their amendment and is a long-recognized means of complying with § 15(D) of Art. II, Ohio Constitution (which requires the existing version of sections amended to be repealed). See *Cox v. Dept. of Transportation* (1981), 67 OS(2d) 501, 508. This section is not, in fact, included for amendment in the body of H.B. 111. Nor does the title of the act indicate an intention to make an unconditional repeal of this section." See *Baldwin's Ohio Legislative Service*, 1989 Laws of Ohio, page 5-304, for original version of this Act.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 156—LSC Analysis, p 5-284
Baldwin's Ohio Township Law, Text 39.13, 39.41, 61.06, 97.17
Baldwin's Ohio School Law, Text 29.07

CROSS REFERENCES

Human services, program reports, statistics and requirements, OAC Ch 5101-5

Building contracts, 153.26
Contracts for erection and repair of bridge superstructures, 153.32
Group health insurance, when bidding not required, 305.171
Interest of commissioner in county contracts prohibited, 305.27
County transit system purchases and contracts, 306.11
Counties, procedure in sale or lease of real property, 307.10
Restraining completion of illegal contract, 309.12, 309.13
Commissioners contract with financial institutions to receive payments due county, 321.03
Financial institution, contract to receive tax payments by mail, 323.611
Hospitals, adoption of purchasing procedures in lieu of bidding, 339.05
Hospital commission, leasing hospital, improvements, 339.14
Hospital trustees, expenditure of funds, 339.47
Community mental health boards; contracts, powers and duties, 340.03, 340.13
Convention facilities authority defined as contracting authority, 351.06
Purchases and contracts of park board, 511.23
Soil and water conservation district improvements, 1515.21
Board of park commissioners, contracts, 1545.07
Limits on award of unbid contracts to campaign contributors, 3517.13
Emergency planning committees, purchases and leases, competitive bidding, 3750.03
Mental health department, provision of goods and services, applicability, 5119.16
County mental retardation and developmental disabilities board, contracts, 5126.05
County boards of mental retardation and developmental disabilities, contracts reserved for bidding by minority business enterprises, 5126.071
County highway equipment purchases, leases, 5549.01
Contracts for county road improvement; notice and letting, 5555.61
Reletting uncompleted county road improvement contracts, 5555.68
County auditor as assessor, competitive bidding, 5713.01
Contract for water supply improvements, 6103.10
Contract for sewer construction, modification, 6117.27
Streams, improvement contracts, 6131.37
Single county ditches, contract, 6131.41

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 78, Public Works and Contracts § 53
Am Jur 2d: 64, Public Works and Contracts § 30 to 40
Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amount to be let to lowest bidder. 53 ALR2d 498
Contract for personal services as within requirement of submission of bids as condition of public contract. 15 ALR3d 733
Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute. 33 ALR3d 397
Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 ALR4th 968

NOTES ON DECISIONS AND OPINIONS

36 App(3d) 86, 521 NE(2d) 7 (Summit 1987), Sentinel Security Systems v Medkeff. There is no conflict between RC 307.86 and 339.05 which would give rise to the need to have the specific provisions of RC 339.05 prevail over the more general provisions of RC 307.86, since 339.05 merely expands the class of county contracts that must be competitively bid to include county hospital contracts for structures or improvements that are less than two thousand and more than one thousand dollars; therefore, the plain meaning and effect of neither statute is disturbed by holding that a security service contract in excess of two thousand dollars is required to be competitively bid pursuant to RC 307.86.

36 App(3d) 86, 521 NE(2d) 7 (Summit 1987), Sentinel Security Systems v Medkeff. The requirement of competitive bidding on hospital improvement contracts in excess of one thousand dollars under RC 339.05 is not exclusive, but is in addition to general competitive bidding requirements under RC 307.86.

60 App(2d) 195, 396 NE(2d) 1059 (1978), Boger Contracting Corp v Stark County Bd of Commrs. Where a board of county commissioners, after publication of the required statutory notice, modifies the plans and specifications for a sanitary sewer construction project for which competitive bidding is required, and where the giving of notice of the addendum to prospective bidders is attempted by a procedure in violation of that set forth in the plans and specifications, the board of county commissioners has the burden of establishing that a bidder, who submits a bid not in conformance with the addendum, had actual knowledge of such addendum.

48 App(2d) 36, 354 NE(2d) 923 (1976), Yoder v Williams County. Before a board of county commissioners may lease premises to be occupied by the county welfare department, it must enter into competitive bidding, pursuant to RC 307.86.

No. 57884 (8th Dist Ct App, Cuyahoga, 2-7-91), Yellow Cab of Cleveland, Inc v Greater Cleveland Regional Transit Auth. A contract for the transportation of handicapped and elderly persons let by a regional transit authority is not a personal services contract; such a contract is subject to statutory competitive bidding requirements.

No. 10724 (9th Dist Ct App, Summit, 9-1-82), Akron-Canton Chapter American Subcontractors Assn v Morgan. Where a county charter grants not only all the powers of a county, but also all of the powers of a municipality, a conflict between concurrent county and municipality grants of power should be resolved to allow rather than restrict such grants of power. Therefore, the more liberal statute governing non-competitive bidding for municipalities, rather than the statute governing counties, should be applied.

60 Misc 71, 397 NE(2d) 781 (CP, Butler 1979), CB Transportation, Inc v Butler County Bd of Mental Retardation. The board of mental retardation is a contracting authority as described in RC 307.92, and therefore is bound by the competitive bidding provisions of RC 307.86.

60 Misc 71, 397 NE(2d) 781 (CP, Butler 1979), CB Transportation, Inc v Butler County Bd of Mental Retardation. The board of mental retardation is responsible for contracting for the transportation of mentally retarded persons and cannot delegate such duty to the board of county commissioners.

31 Misc 75, 286 NE(2d) 483 (CP, Montgomery 1972), Dalton v Kunde. An ordinance requiring that an affirmative action assurance plan be submitted with bids for municipal contracts and requiring that such plan be given consideration in selecting the lowest and best bid is valid.

OAG 91-051. A county dispatch center which arranges for towing services at the request of the county sheriff or sheriff's deputies is required to dispatch a towing service which has entered into a competitively bid contract with the sheriff pursuant to RC 307.86 only where the towing service is actually being purchased by the sheriff (as opposed to the vehicle owner) and where the cost of the service purchased exceeds $10,000. The determination of what constitutes a purchase pursuant to RC 307.86 is a question of fact.

OAG 91-051. A county dispatch center may use a rotational list for the dispatch of towing services at the request of the county sheriff or sheriff's deputies, provided that the requirements of RC 307.86 do not apply and further provided that the use of such a rotational list does not involve an agreement in the nature of a contract, combination, or conspiracy which restrains trade or commerce.

OAG 91-048. Where the board of county commissioners has employed a consultant in accordance with RC 307.86(F) to assist the board in selecting the insurance coverage to be procured for county personnel under RC 305.171, the board may, in the exercise of a reasonable discretion, reject the consultant's recommendation as to the best and lowest bidder.

OAG 91-044. The board of county commissioners may contract with an entity other than those enumerated in RC 9.833(C)(3) for the administration of a self-insured health care benefit plan for county personnel, so long as it complies with the competitive bidding requirements of RC 307.86.

OAG 91-012. Pursuant to RC 307.15, a municipal legislative authority that enters into a contract with a board of county commissioners to manage and operate a county sewer district established under RC Ch 6117 must exercise the specific powers and duties that pertain thereto in accordance with the terms of such statutory provisions as apply to the exercise of those powers and duties by the board of county commissioners. In such circumstance the award of contracts by the municipal legislative authority for capital improvement, assessment, and maintenance and repair projects of the county sewer district must comply with the pertinent competitive bidding procedures and requirements set forth in RC Ch 153, 307.86 to 307.92, and 6117.27 as would apply to the award of such contracts by the board of county commissioners.

OAG 90-076. A county which provides the service of dispatching towing companies for municipal corporations is not required to enter into competitively bid contracts with the towing companies pursuant to RC 307.86, and the county may use a rotation system for such dispatching if the municipal corporation has the authority to use a rotation system for dispatching towing companies on its own behalf.

OAG 90-034. Pursuant to approval by the county automatic data processing board, the county auditor, as chief administrator of the board, may enter into a contract with an independent contractor/consultant whereby the independent contractor/consultant agrees to provide the county such automatic data processing services as are authorized by RC 9.35(B) through the facilities of an automatic data processing center. Pursuant to RC 307.86, such a contract at a cost in excess of $10,000 shall be obtained through competitive bidding.

OAG 90-018. Neither RC 307.86 nor any other provision of the Revised Code requires a board of hospital governors of a joint township district hospital to competitively bid purchases of equipment for a joint township district hospital that are made pursuant to RC 513.17.

OAG 89-061. Under RC 3313.90, a joint vocational school district board of education may enter into an agreement with a board of county commissioners whereby vocational school students will construct a juvenile treatment facility for the county, provided that such agreement is reasonably necessary to fulfill the requirements of the vocational education program. Under RC 307.86(C), the board of county commissioners is not required to use competitive bidding when entering into such agreement.

OAG 84-064. A contract entered into by a county board of mental retardation and developmental disabilities for the purchase of the services of occupational therapists and physical therapists must be competitively bid pursuant to RC 307.86 if the cost of such contract exceeds five thousand dollars, unless such purchase falls within one of the exceptions set forth in RC 307.86.

OAG 82-038. A board of county commissioners may not renew a contract for group medical insurance, without competitive bidding in accordance with RC 307.86, either when that contract lacks an express term for renewal at a predetermined cost, or when significant changes in proposed premium rates, coverage, and benefits have occurred.

OAG 81-050. A county board of mental retardation and developmental disabilities is bound by the competitive bidding requirements of RC 307.86 when entering into contracts pursuant to RC 5126.05 where the dollar amount exceeds $5,000.

OAG 80-038. The $5,000 provision of RC 307.86 applies to purchases or leases of material or equipment for force account projects undertaken by the county engineer pursuant to RC 5543.19. The equipment and materials to be purchased or leased for each separate force account project must be obtained in compliance with RC 307.86, and within each project, the $5,000 threshold requirement applies separately to each purchase or lease which reasonably and in good faith constitutes a separate and distinct contract or order.

OAG 79-034. The requirements of RC 307.02 regarding filing of information, publication of notice, submission of bids, and certification do not apply to construction or lease of buildings, structures or other improvements by county commissioners other than lease-purchase plans; however the competitive bidding requirements of RC 307.86 do apply.

OAG 79-034. The competitive bidding requirements of RC 307.86 are not applicable to the purchase of real estate, or interests therein, by the board of county commissioners; rather, such acquisitions are governed by RC 307.08.

OAG 76-023. A county, acting through its board of county commissioners or its hospital commission, when constructing hospital facilities is not required to use competitive bidding or other contracting procedures found in RC 307.86 et seq. where (1) such construction is financed by issuance of revenue bonds pursuant to RC 140.06, which bonds are not repaid with tax monies but through lease payments made by a nonprofit hospital agency; and (2) the lease between the county and the hospital agency pursuant to RC 140.05 provides the method and procedures by which such construction shall take place.

OAG 74-065. While a board of county commissioners has no general statutory authority to contract for the services of a management consultant in every area in which the board is directed by statute to act, it may, however, do so to enable it to cooperate in a federally funded program, and, when it is operating under an alternative form of government pursuant to RC Ch 302, RC 302.13 permits the board to authorize the county executive to employ experts and consultants in connection with the administration of the affairs of the county.

OAG 73-076. A county hospital commission constructing a hospital with public bond money is not required by RC 339.14(H) to use competitive bidding for contract modifications costing in excess of $1,000, when such modifications do not exceed the scope of the original contract.

OAG 70-076. Provisions of RC 307.86 to RC 307.92 and RC 5555.71 do not permit board of county commissioners to let by competitive bidding labor and equipment items for road construction separately, while specifying that materials to be purchased by county are to be used.

OAG 69-048. If a county proposes to purchase insurance, competitive bidding is required if the cost is in excess of $2,000.

OAG 69-045. It is necessary to have competitive bidding, pursuant to RC 307.86, before entering into a group health insurance contract authorized by RC 305.171 if the premium cost for such insurance is in excess of $2,000.

OAG 69-016. Any motor vehicle purchased pursuant to RC 307.41 at a cost in excess of $2,000 must be obtained through bidding pursuant to RC 307.86.

307.861 Procedure for renewal of lease of electronic equipment

The county or contracting authority, as defined in section 307.92 of the Revised Code, may renew a lease which has been entered into for electronic data processing equipment, services, or systems, or a radio communications system at a cost in excess of ten thousand dollars as follows:

(A) The lessor shall submit a written bid to the county or contracting authority which is the lessee under the lease, stating the terms under which the lease would be renewed, including the length of the renewal lease, and the cost of the renewal lease to the county or contracting authority. The county or contracting authority may require the lessor to submit a bond with the bid.

(B) The county or contracting authority shall advertise for and receive competitive bids, as provided in sections 307.87 to 307.90 of the Revised Code, for a lease under the same terms and for the same period as provided in the bid of the lessor submitted under division (A) of this section.

(C) The county or contracting authority may renew the lease with the lessor only if the bid submitted by the lessor under division (A) of this section is an amount less than the lowest and best bid submitted pursuant to competitive bidding under division (B) of this section.

HISTORY: 1985 H 47, eff. 9-23-85
1980 H 271; 1977 S 295

307.87 Notice

Where competitive bidding is required by section 307.86 of the Revised Code, notice thereof shall be given in the following manner:

(A) Notice shall be published once a week for not less than two consecutive weeks preceding the day of the opening of bids in a newspaper of general circulation within the county for any purchase, lease, lease with option or agreement to purchase, or construction contract in excess of ten thousand dollars. The contracting authority may also cause notice to be inserted in trade papers or other publications designated by it.

Notices shall state:

(1) A general description of the subject of the proposed contract and the time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined;

(2) The time and place where bids will be opened;

(3) The time and place for filing bids;

(4) The terms of the proposed purchase;

(5) Conditions under which bids will be received;

(6) The existence of a system of preference, if any, for products mined and produced in Ohio and the United States adopted pursuant to section 307.90 of the Revised Code.

(B) The contracting authority shall also maintain in a public place in its office or other suitable public place a bulletin board upon which it shall post and maintain a copy of such notice for at least two weeks preceding the day of the opening of the bids.

HISTORY: 1986 H 237, eff. 5-23-86
1985 H 47; 1980 H 271; 132 v H 428

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 39.41

CROSS REFERENCES

Newspaper of general circulation, 7.12
Preference for Ohio products, local preference systems, 125.11
Contents of advertisement to bidders, 153.34

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Notice and Notices § 1 to 5, 27 to 30, 33, 34

Am Jur 2d: 64, Public Works and Contracts § 53

Duty of public authority to disclose to contractor information, in its possession, affecting cost or feasibility of project. 86 ALR3d 182

NOTES ON DECISIONS AND OPINIONS

60 App(2d) 195, 396 NE(2d) 1059 (1978), Boger Contracting Corp v Stark County Bd of Commrs. Where a board of county commissioners, after publication of the required statutory notice, modifies the plans and specifications for a sanitary sewer construction project for which competitive bidding is required, and where the giving of notice of the addendum to prospective bidders is attempted by a procedure in violation of that set forth in the plans and specifications, the board of county commissioners has the burden of establishing that a bidder, who submits a bid not in conformance with the addendum, had actual knowledge of such addendum.

OAG 89-064. Where a board of county commissioners enters into a lease agreement as lessee through competitive bidding, it may not subsequently agree to an increased lease term in exchange for renovations to the leasehold premises as part of the original lease agreement where such additional term was not included in the notice and specifications on which the bids were based.

307.88 Bid; bond or deposit; exemption

(A) Bids submitted pursuant to sections 307.86 to 307.92 of the Revised Code shall be in a form prescribed by the contracting authority and filed in a sealed envelope at the time and place mentioned in the advertisement. The bids received shall be opened and tabulated at the time stated in the notice. Each bid shall contain the full name of each person submitting the bid. Except as otherwise provided in division (B) of this section, if the bid is in excess of ten thousand dollars and for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, it shall meet the requirements of section 153.54 of the Revised Code. If the bid is in excess of ten thousand dollars and for any other contract authorized by sections 307.86 to 307.92 of the Revised Code, it shall be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association in a reasonable amount stated in the advertisement but not to exceed five per cent of the bid, conditioned that he shall, if his bid is accepted, execute a contract in conformity to the invitation and his bid.

(B) The board of county commissioners may, by a unanimous vote of the entire board, permit a contracting authority to exempt a bid from any or all of the requirements of section 153.54 of the Revised Code if the estimated cost is less than twenty-five thousand dollars. If the board exempts a bid from any but not all of these requirements, the bid notice published in the newspaper pursuant to section 307.87 of the Revised Code shall state the specific bid guaranty requirements that apply. If the board exempts a bid from all requirements of section 153.54 of the Revised Code, the notice shall state that none of the requirements of that section apply.

HISTORY: 1988 H 708, eff. 4-19-88
1987 H 128, H 59; 1980 S 157; 132 v H 428

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 29.07

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 78, Public Works and Contracts § 65, 67, 70

Am Jur 2d: 64, Public Works and Contracts § 60, 61, 65

Liability on bid bond for public works. 70 ALR2d 1370

Building contractor's liability, upon bond or other agreement to indemnify owner, for injury to death of third persons resulting from owner's negligence. 27 ALR3d 663

Liability of subcontractor upon bond or other agreement indemnifying general contractor against liability for damage to person or property. 68 ALR3d 7

NOTES ON DECISIONS AND OPINIONS

48 Cin L Rev 43 (1979). The Law of Mistaken Bids, Ernest M. Jones.

OAG 90-051. Pursuant to RC 307.88(B), a board of county commissioners may, by unanimous vote, permit a contracting authority to exempt a bid on a contract for a portion of the work in the construction of a public improvement from the requirement of a performance bond if the estimated cost of the contract is in excess of $10,000 but less than $25,000.

OAG 90-051. Pursuant to RC 307.88, a performance bond is not required on a contract pursuant to RC 307.86 to 307.92 for the construction, demolition, alteration, repair, or reconstruction of an improvement where the amount of the bid is less than $10,000.

OAG 84-064. Pursuant to RC 307.88, when a bid in excess of six thousand dollars is submitted for a contract for the purchase of the services of occupational therapists and physical therapists, it must be accompanied by a bond or certified check conditioned that the bidder shall, if his bid is accepted, execute a contract in conformity to the invitation and the bid.

307.89 Performance bond

When a bid is accepted for a contract other than for the construction, demolition, alteration, repair, or reconstruction of an improvement, the contracting authority shall, as a condition to entering a contract with the successful bidder, require faithful performance of all things to be done under the contract and may require, as a condition to entering a purchase contract, lease, or lease with option or agreement to purchase, the bond provided for by section 153.57 of the Revised Code, with good and sufficient surety in an amount not to exceed the amount of the bid.

HISTORY: 1980 S 157, eff. 8-1-80
132 v H 428

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 17, Contractors' Bonds § 43, 44

Surety's liability on bid bond for public works. 70 ALR2d 1370

Building contractor's liability, upon bond or other agreement to indemnify owner, for injury to death of third persons resulting from owner's negligence. 27 ALR3d 663

Liability of subcontractor upon bond or other agreement indemnifying general contractor against liability for damage to persons or property. 68 ALR3d 7

NOTES ON DECISIONS AND OPINIONS

117 OS 512, 159 NE 559 (1927), Southern Surety Co v Standard Slag Co. Suit upon the bond provided for in this section must be commenced within one year from the date of the acceptance of the improvement. (Annotation from former RC 5555.64.)

30 CC(NS) 209, 35 CD 662 (Stark 1919), American Fidelity Co v Metropolitan Paving Brick Co. Requiring suit within one year by claimants on surety bond of road improvement contractor does not limit party who furnished material contracted for before the statute. (Annotation from former RC 5555.64.)

OAG 90-051. Pursuant to RC 307.88(B), a board of county commissioners may, by unanimous vote, permit a contracting authority to exempt a bid on a contract for a portion of the work in the construction of a public improvement from the requirement of

a performance bond if the estimated cost of the contract is in excess of $10,000 but less than $25,000.

OAG 90-051. Pursuant to RC 307.88, a performance bond is not required on a contract pursuant to RC 307.86 to 307.92 for the construction, demolition, alteration, repair, or reconstruction of an improvement where the amount of the bid is less than $10,000.

307.90 Awarding of contracts; preference system for Ohio and American products and contractors

(A) The award of all contracts subject to sections 307.86 to 307.92 of the Revised Code shall be made to the lowest and best bidder. The bond or bid guaranty of all unsuccessful bidders shall be returned to them by the contracting authority immediately upon awarding the contract or rejection of all bids. The contracting authority may reject all bids.

(B) With respect to any contract for the purchase of equipment, materials, supplies, insurance, services, or a public improvement into which a county or its officers may enter, a board of county commissioners, by resolution, may adopt the model system of preferences for products mined or produced in Ohio and the United States and for Ohio-based contractors promulgated pursuant to division (E) of section 125.11 of the Revised Code. The resolution shall specify the class or classes of contracts to which the system of preferences apply, and once adopted, operates to modify the awarding of such contracts accordingly. While the system of preferences is in effect, no county officer or employee with the responsibility for doing so shall award a contract to which the system applies in violation of the preference system.

HISTORY: 1988 H 708, eff. 4-19-88
1986 H 237; 1980 S 157; 132 v H 428

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 39.41

CROSS REFERENCES

Human services, program reports, statistics, and requirements, awarding of contracts, OAC 5101-5-13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 78, Public Works and Contracts § 86, 90

Am Jur 2d: 64, Public Works and Contracts § 63 to 69, 73 to 78

Right of public authorities to reject all bids for public work or contract. 31 ALR2d 469

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amount to be let to lowest bidder. 53 ALR2d 498

Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 ALR4th 968

NOTES ON DECISIONS AND OPINIONS

12 OS(3d) 60, 12 OBR 51, 465 NE(2d) 416 (1984), State ex rel Executone of Northwest Ohio, Inc v Lucas County Commrs. The statutory directive that contracts be awarded to "the lowest and best bidder" vests the board of commissioners with discretion to make the award, and a complaint for mandamus to compel an award to one bidder, without an allegation of abuse of discretion, is properly dismissed.

61 Misc(2d) 132, 575 NE(2d) 532 (CP, Franklin 1990), Thomas J. Dyer Co v Franklin County Convention Facilities Auth. Where bid instructions, as well as RC 307.90(A), reserve the right to reject all proposals and to advertise for other bids, a decision by the contracting authority to reject all bids and to give all bidders an equal opportunity to resubmit bids may not be enjoined by preliminary injunction in the absence of clear and convincing proof of irreparable injury; this result is further supported when the issuance of an injunction will harm the other bidders by upsetting the rebidding process.

60 Misc 71, 397 NE(2d) 781 (CP, Butler 1979), CB Transportation, Inc v Butler County Bd of Mental Retardation. The board of mental retardation is a contracting authority as described in RC 307.92, and therefore is bound by the competitive bidding provisions of RC 307.86.

60 Misc 71, 397 NE(2d) 781 (CP, Butler 1979), CB Transportation, Inc v Butler County Bd of Mental Retardation. The board of mental retardation is responsible for contracting for the transportation of mentally retarded persons and cannot delegate such duty to the board of county commissioners.

1922 OAG p 491. Where proposal form used by county in taking bids for road improvement requires unit and lump sum prices, and states that comparison of bids will be made on the basis of estimated quantities with right reserved to county to increase or diminish quantities or omit items, county commissioners may award contract to one who submits lowest lump sum offer, notwithstanding he has omitted to specify unit price on one small item. (Annotation from former RC 5555.63.)

Ethics Op 89-004. RC 102.03(D) prohibits a member of a board of county commissioners from using the authority or influence of his office to secure for his insurance agency contracts with a regional transit authority where the board of county commissioners has the power to appoint and remove trustees of the transit authority, and to appropriate moneys to the transit authority.

Ethics Op 89-004. A member of a board of county commissioners is prohibited by RC 2921.42(A)(4) from having an interest in a public contract entered into by or for the use of a regional transit authority where the board of county commissioners participated in the creation of the authority and the county is included within the transit authority's jurisdiction.

Ethics Op 89-004. RC 2921.42(A)(1) prohibits a member of a board of county commissioners from authorizing or using the authority or influence of his office to secure authorization of a public contract in which he, a member of his family, or any of his business associates has an interest, where the public contract is entered into by a regional transit authority which the board of county commissioners participated in creating and which includes the county.

307.91 Rejection of bids

When the contracting authority rejects all bids it may either readvertise, using the original estimate, or amend the estimate and proceed to advertise in the manner provided for advertisement in section 307.86 of the Revised Code.

HISTORY: 1971 H 785, eff. 12-17-71
132 v H 428

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 64, Public Works and Contracts § 75 to 78

NOTES ON DECISIONS AND OPINIONS

OAG 80-062. Where the cost estimate requirement of RC 5543.19(A) or (B) is applicable, and the cost estimates required have been obtained and are found to exceed the statutory limits, requiring that competitive bids be invited and received, neither the county commissioners nor the county engineer may reject all bids and authorize the work to be undertaken by force account. Pursuant to RC 307.91, if the county commissioners reject all bids received, the county commissioners must either readvertise using the original estimate or amend the original estimate and then advertise.

307.92 Definition of contracting authority

As used in sections 307.86 to 307.91, inclusive, of the Revised Code, "contracting authority" means any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof.

HISTORY: 132 v H 428, eff. 12-9-67

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Housing and Urban Renewal § 149

NOTES ON DECISIONS AND OPINIONS

60 Misc 71, 397 NE(2d) 781 (CP, Butler 1979), CB Transportation, Inc v Butler County Bd of Mental Retardation. The board of mental retardation is a contracting authority as described in RC 307.92, and therefore is bound by the competitive bidding provisions of RC 307.86.

PETITION FOR COUNTY CHARTER

307.94 County charter; petition; alternative methods; verifying signatures

Electors of a county, equal in number to ten per cent of the number who voted for governor in the county at the last preceding gubernatorial election, may file, not later than one hundred days before the date of a general election, a petition with the board of county commissioners asking that the question of the adoption of a county charter in the form attached to the petition be submitted to the electors of the county. The petition shall be available for public inspection at the offices of the county commissioners during regular business hours until four p.m. of the ninety-sixth day before the election, at which time the board shall, by resolution, certify the petition to the board of elections of the county for submission to the electors of the county, unless the signatures are insufficient or the petitions otherwise invalid, at the next general election.

Such electors may, in the alternative not later than the one hundred fifteenth day before the date of a general election, file such a petition with the board of elections of the county. In such case the board of elections shall immediately proceed to determine whether the petition and the signatures on the petition meet the requirements of law and to count the number of valid signatures and to note opposite each invalid signature the reason for the invalidity. The board of elections shall complete its examination of the petition and the signatures and shall submit a report to the board of county commissioners not later than the one hundred fifth day before the date of the general election certifying whether the petition is valid or invalid and, if invalid, the reasons for invalidity, whether there are sufficient valid signatures, and the number of valid and invalid signatures. The petition and a copy of the report to the board of county commissioners shall be available for public inspection at the board of elections. If the petition is certified by the board of elections to be valid and to have sufficient valid signatures, the board of county commissioners shall forthwith and not later than four p.m. on the ninety-sixth day before the general election, by resolution, certify the petition to the board of elections for submission to the electors of the county at the next general election. If the petition is certified by the board of elections to be invalid or to have insufficient valid signatures, or both, the petitioners' committee may protest such findings or solicit additional signatures as provided in section 307.95 of the Revised Code, or both, or request that the board of elections proceed to establish the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures in an action before the court of common pleas in the county. Such action must be brought within three days after the request has been made, and the case shall be heard forthwith by a judge or such court whose decision shall be certified to the board of elections and to the board of county commissioners in sufficient time to permit the board of county commissioners to perform its duty to certify the petition, if it is determined by the court to be valid and contain sufficient valid signatures, to the board of elections not later than four p.m. on the ninety-sixth day prior to the general election for submission to the electors at such general election.

A county charter to be submitted to the voters by petition shall be considered to be attached to the petition if it is printed as a part of the petition. A county charter petition may consist of any number of separate petition papers. Each part shall have attached a copy of the charter to be submitted to the electors, and each part shall otherwise meet all the requirements of law for a county charter petition. Section 3501.38 of the Revised Code applies to county charter petitions.

The petitioners shall designate in the petition the names and addresses of a committee of not fewer than three nor more than five persons who will represent them in all matters relating to the petition. Notice of all matters or proceedings pertaining to such petitions may be served on the committee, or any of them, either personally or by certified mail, or by leaving it at the usual place of residence of each of them.

HISTORY: 1979 S 169, eff. 6-29-79

CROSS REFERENCES

General elections, 3501.01, 3501.02
Qualifications of electors, O Const Art V
County charters; content, adoption, O Const Art X §3
County charter commission; membership, purpose, O Const Art X §4

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 126, 127

307.95 Determining validity of petition; protests; secretary of state determines

(A) When a county charter petition has been certified to the board of elections pursuant to section 307.94 of the Revised Code, the board shall immediately proceed to determine whether the petition and the signatures on the petition meet the requirements of law, including section 3501.38 of the Revised Code, and to count the number of valid signatures. The board shall note opposite each invalid signature the reason for the invalidity. The board shall complete its examination of the petition and the signatures not later than ten days after receipt of the petition certified by the board of county commissioners and shall submit a report to the board of county commissioners not less than

eighty-five days before the election certifying whether the petition is valid or invalid and, if invalid, the reasons for the invalidity, whether there are sufficient valid signatures, and the number of valid and invalid signatures. The petition and a copy of the report to the board of county commissioners shall be available for public inspection at the board of elections. If the petition is determined by the board of elections to be valid but the number of valid signatures is insufficient, the board of county commissioners shall immediately notify the committee for the petitioners, who may solicit and file additional signatures to the petition pursuant to division (E) of this section or protest the board of election's findings pursuant to division (B) of this section, or both.

(B) Protests against the board of election's findings concerning the validity or invalidity of a county charter petition or any signature on such petition may be filed by any elector eligible to vote at the next general election with the board of elections not later than four p.m. of the eighty-second day before the election. Each protest shall identify the part of, or omission from, the petition or the signature or signatures to which the protest is directed, and shall set forth specifically the reason for the protest. A protest must be in writing, signed by the elector making the protest, and shall include the protestor's address. Each protest shall be filed in duplicate.

(C) The board of elections shall deliver or mail by certified mail one copy of each protest filed with it to the secretary of state. The secretary of state, within ten days after receipt of the protests, shall determine the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures. The secretary of state may determine whether to permit matters not raised by protest to be considered in determining such validity or invalidity or sufficiency or insufficiency, and may conduct hearings, either in Columbus or in the county where the county charter petition is filed. The determination by the secretary of state is final.

(D) The secretary of state shall notify the board of elections of the determination of the validity or invalidity of the petition and sufficiency or insufficiency of the signatures not later than four p.m. of the seventy-first day before the election. If the petition is determined to be valid and to contain sufficient valid signatures, the charter shall be placed on the ballot at the next general election. If the petition is determined to be invalid, the secretary of state shall so notify the board of county commissioners and the board of county commissioners shall notify the committee. If the petition is determined by the secretary of state to be valid but the number of valid signatures is insufficient, the board of elections shall immediately notify the committee for the petitioners and the committee shall be allowed ten additional days after such notification to solicit and file additional signatures to the petition subject to division (E) of this section.

(E) All additional signatures solicited pursuant to division (A) or (D) of this section shall be filed with the board of elections not less than sixty days before the election. The board of elections shall examine and determine the validity or invalidity of the additional separate petition papers and of the signatures thereon, and its determination is final. No valid signature on an additional separate petition paper that is the same as a valid signature on an original separate petition paper shall be counted. The number of valid signatures on the original separate petition papers and the additional separate petition papers shall be added together to determine whether there are sufficient valid signatures. If the number of valid signatures is sufficient and the additional separate petition papers otherwise valid, the charter shall be placed on the ballot at the next general election. If not, the board of elections shall notify the county commissioners, and the commissioners shall notify the committee.

HISTORY: 1979 S 169, eff. 6-29-79

307.96 Effective date; insufficiency of petition barred; notice

Except as provided by Section 3 of Article X, Ohio Constitution, a county charter or amendment shall become effective if it has been approved by the majority of the electors voting thereon. The charter or amendment shall take effect on the thirtieth day after approval unless another date is fixed in the charter or amendment.

No charter or amendment adopted by the electors of any county shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the resolution was procured, nor shall the rejection of any charter or amendment submitted to the electors of such county, be held invalid for such insufficiency.

Any charter or charter amendment proposal that is submitted to the electors of the county shall be posted in each polling place in some location that is easily accessible to the electors.

HISTORY: 1979 S 169, eff. 6-29-79

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 127

307.99 Penalties

(A) Whoever violates section 307.42 of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars for each offense.

(B) Whoever violates section 307.43 of the Revised Code shall be fined not less than twenty-five nor more than two hundred dollars, and imprisoned not less than ten nor more than sixty days.

(C) Whoever violates section 307.37 of the Revised Code, shall be fined not more than three hundred dollars.

(D) Whoever violates division (C)(5) of section 307.97 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars.

(E) Whoever violates any other subdivision of division (C) of section 307.97 of the Revised Code shall be imprisoned not more than six months or fined not more than one thousand dollars, or both.

HISTORY: 1979 S 169, eff. 6-29-79
125 v 903; 1953 H 1; GC 12880-1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 30

COUNTY OFFICERS

309.01 Prosecuting attorney

There shall be elected quadrennially in each county, a prosecuting attorney, who shall hold his office for four years, beginning on the first Monday of January next after his election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2909

CROSS REFERENCES

Compensation of prosecuting attorney, 325.11, 325.12
General elections, 3501.01, 3501.02
Campaign contributions from medicaid contractor to county prosecutor unacceptable, 3599.45
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 12
Am Jur 2d: 63A, Prosecuting Attorneys § 1, 8

NOTES ON DECISIONS AND OPINIONS

475 US 469, 106 SCt 1292, 89 LEd(2d) 452 (1986), Pembaur v Cincinnati. Recovery from a municipality for civil rights violations under 42 USC § 1983 must be for tortious conduct pursuant to a municipality's "official policy", acts which the municipality has officially sanctioned or ordered, and municipal liability may be imposed for a single decision by municipal policy makers under appropriate circumstances; therefore, the county may be held liable where the county prosecutor orders deputy sheriffs to "go and get" witnesses subpoenaed by a grand jury, and they chop down a clinic door to enter and detain such persons.

746 F(2d) 337 (6th Cir Ohio 1984), Pembaur v Cincinnati; reversed by 475 US 469, 106 SCt 1292, 89 LEd(2d) 452 (1986). One decision by a county prosecutor and sheriff to break down the door to a resisting physician's office to serve a capias on an employee is insufficient proof of the existence of a government policy on which county liability under 42 USC 1983 may be premised.

OAG 88-086. Under RC 1901.34(D), apart from those prosecutors specifically excepted, a county prosecutor may enter into an agreement with a city whereby he agrees to prosecute in municipal court those criminal cases within that court's jurisdiction which arise out of offenses occurring within the city.

OAG 88-086. Under RC 1901.34(D), a county prosecutor is not authorized to enter into an agreement with a city in which a municipal court is located whereby he agrees to prosecute in that court those criminal cases with that court's jurisdiction arising in unincorporated areas within that court's territory.

OAG 68-072. The determination of who shall appoint a person to hold the office of prosecuting attorney pursuant to RC 305.02 is contingent upon whether or not the last occupant of the office was elected as an independent.

1944 OAG 7214. A person elected to office of prosecuting attorney while serving in armed forces of United States in a foreign country may take his oath of office while stationed in such foreign country. The oath may be administered by any commissioned officer of armed forces of United States pursuant to provisions of GC 14862 (RC 147.38).

1936 OAG 5420. An amendment of the law changing the term of an elective office, which amendment becomes effective after candidates for such office have been nominated but before the date of election, is controlling as to the term of any candidate elected at such election.

1930 OAG 2534. A newly elected prosecuting attorney has no legal responsibility in connection with preparation of criminal cases now pending, until he assumes the duties of office.

Ethics Op 76-011. RC 102.02(A)(3) requires a candidate for county office to disclose the name of every corporation, incorporated in Ohio or holding a certificate of compliance authorizing it to do business in Ohio, and the name of every trust, which transacts business in Ohio, in which the candidate holds an office or has a fiduciary relationship, along with a brief description of the nature of the office or the relationship.

309.02 Qualifications of candidate for prosecuting attorney

No person shall be eligible as a candidate for the office of prosecuting attorney, or shall be elected to such office, who is not an attorney at law licensed to practice law in this state. No prosecuting attorney shall be a member of the general assembly of this state or mayor of a municipal corporation.

HISTORY: 1992 S 243, eff. 8-19-92
1953 H 1; GC 2910

CROSS REFERENCES

A person may hold but one of certain offices, 3.11
Qualifications for public office, 2961.01, 3503.01
Attorneys; practice of law, removal, Ch 4705
Qualifications for public office, O Const Art II §4, O Const Art II §5, O Const Art V §6, O Const Art XV §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 74; 84, State of Ohio § 22
Am Jur 2d: 63A, Prosecuting Attorneys § 5 to 7

NOTES ON DECISIONS AND OPINIONS

OAG 84-087. An assistant county prosecutor may not hold the position of treasurer of the county law library association.

OAG 71-037. Assistant prosecuting attorney may not be employed as administrative assistant to board of county commissioners in same county, where duties of such administrative assistant include general supervision of office of commissioners.

OAG 71-025. Offices of assistant prosecuting attorney and secretary-treasurer of county law library association, established pursuant to RC 1713.28, within same county, are incompatible and may not be held concurrently by same person.

OAG 70-053. Position of assistant prosecuting attorney, even though he serves in a limited capacity as special assistant prosecutor, is incompatible with position of mayor of municipality.

OAG 70-022. Positions of assistant prosecuting attorney and mayor of municipality are incompatible.

OAG 69-021. RC 309.08 requires that one elected to the office of prosecuting attorney remain a licensed attorney in order to continue in office.

OAG 66-047. A prosecuting attorney may not legally be appointed as chief probation officer so long as he is serving in the capacity of prosecutor.

1964 OAG 879. A member of the general assembly is ineligible to serve as an assistant county prosecutor.

1961 OAG 2064. The office of member of a county soldiers relief commission is not incompatible with the office of prosecuting attorney of the county.

1930 OAG 1973. A person is not eligible as a candidate 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 GC 4785-70, 4785-71, 4785-72 (RC 3513.05, RC 3513.07, RC 3513.09).

309.09 Legal adviser; additional counsel

(A) The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, and all other county officers and boards, including all tax-supported public libraries, and any of them may require written opinions or instructions from him in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party, and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code.

(B) Such prosecuting attorney shall be the legal adviser for all township officers, unless the township has adopted the limited self-government form of township government pursuant to Chapter 504. of the Revised Code, in which case the township law director, whether serving full-time or part-time, shall be the legal adviser for all township officers. When the board of township trustees finds it advisable or necessary to have additional legal counsel it may employ an attorney other than the township law director or the prosecuting attorney of the county, either for a particular matter or on an annual basis, to represent the township and its officers in their official capacities and to advise them on legal matters. No such counsel or attorney may be employed, except on the order of the board of township trustees, duly entered upon its journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.

Nothing in this division confers any of the powers or duties of a prosecuting attorney under section 309.08 of the Revised Code upon a township law director.

(C) Whenever the board of county commissioners employs an attorney other than the prosecuting attorney of the county, without the authorization of the court of common pleas as provided in section 305.14 of the Revised Code, either for a particular matter or on an annual basis, to represent the board of county commissioners in its official capacity and to advise it on legal matters, the board of county commissioners shall enter upon its journal an order of the board in which the compensation to be paid for such legal services shall be fixed. The compensation shall be paid from the county general fund. The total compensation paid, in any year, by the board of county commissioners for legal services under this division shall not exceed the total annual compensation of the prosecuting attorney for that county.

HISTORY: 1991 H 77, eff. 9-17-91
1986 H 428; 1978 H 316; 129 v 1557; 128 v 597; 125 v 235; 1953 H 1; GC 2917; Source—GC 2917-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.10(c), 3.14, 13.03, 19.02 to 19.04, 23.18, 27.08, 35.25, 59.21, 75.01, 97.15; Forms 1.11

CROSS REFERENCES

Board of county commissioners, legal counsel, 305.14
Compensation of county prosecutor, 325.11, 325.12
Limited self-government townships, law directors, 504.15
Coastal management, action by county prosecutor, 1506.09
Prosecutor to advise soil and water conservation district, 1515.11
Appearance on behalf of human services department in small claims court action, 1925.18
County prosecutor as legal advisor to general health district, 3709.33
Prosecutor is legal advisor of inspector of nuisances, 3767.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 18; 66, Libraries § 2; 82, Schools, Universities, and Colleges § 154
Am Jur 2d: 63A, Prosecuting Attorneys § 19, 20, 29
Validity, under state law, of appointment of independent special prosecutor to handle political or controversial prosecutions or investigations of persons other than regular prosecutor. 84 ALR3d 29

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Legal adviser, county officers and boards
   a. Eligible to receive legal services of prosecutor
   b. Not eligible to receive legal services of prosecutor
3. Legal adviser, township officers
4. Employment of additional legal counsel
5. Incompatible offices; ethics

1. In general

475 US 469, 106 SCt 1292, 89 LEd(2d) 452 (1986), Pembaur v Cincinnati. A forcible entry by deputy sheriffs on direction of the county prosecutor into an office to serve capiases on employees who ignored grand jury subpoenas concerning an investigation of the employer, is an act sanctioned by official policy; the warrantless entry in violation of the employer's rights under US Const Am 4 is, therefore, grounds for a suit under 42 USC 1983 against the county.

111 SCt 1934, 114 LEd(2d) 547 (1991), Burns v Reed. A state prosecuting attorney is absolutely immune from liability for damages under 42 USC 1983 for participating in a probable cause hearing but not for giving legal advice to the police.

OAG 89-001. Prior to the adoption of RC Ch 3750, a local emergency planning committee appointed by the emergency response committee was not a county board and the members of such a committee were not county officers for purposes of RC 309.09, and the county prosecutor had no duty to serve as legal adviser to the committee members or the corresponding local emergency planning district.

OAG 84-099. A prosecuting attorney has no statutory duty or authority to serve as legal adviser of a private industry council established for a service delivery area under the Federal Job Training Partnership Act, 29 USC 1501-1781.

OAG 81-059. A prosecuting attorney does not have the statutory duty to be the legal advisor of a joint recreation district established under RC 755.14(C) or of a joint recreation board established under RC 755.14(B).

OAG 80-076; overruled on other grounds by OAG 88-055. No statute or rule in Ohio provides for the recovery of attorney's fees from a person who initiated a criminal action.

OAG 69-036. A coroner in his investigation of death coming within his jurisdiction does not have the authority to apply law to the facts and determine what, if any, statute has been violated, and the legal responsibility of the persons involved.

2. Legal adviser, county officers and boards

a. Eligible to receive legal services of prosecutor

OAG 89-015. With respect to child support enforcement actions, a county prosecutor must perform those duties expressly imposed by statute upon his office and, where the county human services department has been designated under RC 2301.35 as the county's child support enforcement agency, such duties as may be required of his office by RC 309.09(A).

OAG 88-055. A common pleas court judge is a county officer for purposes of RC 305.14 and RC 309.09. Said sections do not authorize a board of county commissioners to reimburse a county officer for expenses incurred in a legal action which is no longer pending.

OAG 87-090. Pursuant to RC 309.09(A), the county prosecuting attorney must prosecute an action in the small claims division of a municipal or county court on behalf of a county human services department.

OAG 85-014. Pursuant to RC 309.09, a prosecuting attorney has the duty, upon request, to advise and represent a judge of the court of common pleas of his county as may be appropriate in connection with a situation in which an affidavit of bias and prejudice has been filed against the judge, and also has the duty to represent the bailiff of that judge, as may be appropriate, if the bailiff is deposed in connection with the affidavit of bias and prejudice.

OAG 80-076; overruled on other grounds by OAG 88-055. A deputy sheriff is an officer for purposes of RC 309.09. Thus, a county prosecutor has a duty to represent a deputy sheriff who has been charged with criminal assault if the facts and circumstances show that the suit arose out of a well-intended attempt on the deputy's part to perform his official duties.

OAG 77-039. The county prosecuting attorney is, pursuant to RC 309.09, the legal advisor of the board of trustees of a county tuberculosis hospital created pursuant to RC 339.33 and such board is without authority to employ other legal counsel.

OAG 73-055. If a lawsuit is filed against a volunteer deputy sheriff, operating an ambulance service pursuant to RC 307.051, for injuries sustained as a result of his acts in administering emergency care or treatment to an individual at the scene of an emergency, the county prosecutor is required to supply a defense, if he concludes, after examination of the facts, that the deputy sheriff was acting in good faith.

OAG 69-148. Municipal and county building departments should be represented at adjudication hearings and in court proceedings by the city attorney and county prosecuting attorney, respectively.

OAG 66-017. If creation of a university branch district is initiated by the board of county commissioners, or by the board of county commissioners in conjunction with the board of county commissioners of one or more contiguous counties, or by petition and referendum of the electors in the county, the prosecuting attorney has the duty to legally advise the board of county commissioners or the board of elections in matters relating to said creation, which duty continues until such time as the board or boards of county commissioners appoint either a district administrator or a university branch district board of trustees.

1964 OAG 1606; overruled in part by OAG 80-064. The legal adviser to a vocational school district formed by a local school district and an exempted village school district of the same county or by two or more local and city school districts of the same county is the county prosecutor of the county in which such district is located.

1963 OAG 18. Where a board of education fails to pay the amount due under RC 5127.04 to a child welfare board, the child welfare board may proceed in mandamus, or other proper legal remedy, to enforce the payment; and in such action, the child welfare board should be represented by the county prosecuting attorney.

1962 OAG 2919. The county prosecuting attorney is authorized to bring a civil action for the recovery of costs owing to county officers, including the county engineer or probate judge; and has a duty to so proceed when directed by such a county officer.

1962 OAG 2919. Where a report of the bureau of inspection and supervision of public offices sets forth that public moneys due a county officer have not been collected, the report is certified to the prosecuting attorney of the county, who then has a duty to institute action for the recovery of such moneys within ninety days after receipt of the report.

1962 OAG 2919. The county prosecuting attorney is authorized to bring a civil action for the recovery of costs owing to county officers, including the county engineer or probate judge; and has a duty to so proceed when directed by such a county officer.

1962 OAG 2840. A county director of civil defense is a county officer, and the county prosecuting attorney is his legal advisor.

1959 OAG 963. A board of county commissioners is not legally bound to pay a part of the cost of rent and lighting of the private office of the prosecuting attorney, which office is also being used as the office of the prosecutor, unless such board has agreed to make such payments in providing an office pursuant to RC 307.01 and such prosecuting attorney may not expend from the fund created in RC 325.12 any amount for such purpose.

1955 OAG 5666. The probate court judge is a county officer within the meaning of RC 309.09.

1954 OAG 4567. The prosecuting attorney may be authorized to defend the coroner in an action for damages for an illegal autopsy.

1940 OAG 3133. Prosecuting attorney is legal adviser to members of soldiers' relief commission for county in which he holds office and for which such members have been appointed.

1933 OAG 1750. It is the duty of a prosecuting attorney to defend a county sheriff and deputy sheriff in actions brought against them for damages for false arrest if the facts show that the suits arise out of a well intended attempt to perform duties attending their official positions.

1933 OAG 208. The county prosecuting attorney is required to advise justices of the peace upon matters pertaining to their ministerial functions. However, prosecuting attorney is not required to advise justices of the peace upon questions of procedure and substantive law involved in cases before such justices, these matters being among the judicial functions of magistrates.

1927 OAG 1125. By virtue of GC 3003 (RC 325.11), the prosecuting attorney may not be employed by a county officer and receive extra compensation for services required to be performed by him as such prosecuting attorney.

1927 OAG 627, 1125. It is the duty of the prosecuting attorney to represent the county treasurer and to prosecute all suits and actions, which the county treasurer may direct or to which he is a party, including suits and actions for the collection of personal taxes.

b. Not eligible to receive legal services of prosecutor

34 App(3d) 161, 517 NE(2d) 1001 (Butler 1986), Holcomb v Schlichter. RC 309.09 does not authorize a prosecuting attorney to seek enforcement of a prior permanent injunction absent an official request by a county board or officer.

OAG 90-073. A county prosecuting attorney has no duty to provide legal advice to a regional water and sewer district created under RC Ch 6119.

OAG 89-102. A county prosecutor is not required by the terms of RC 309.09(A) to serve as legal adviser to a joint solid waste management district board of directors.

OAG 85-071. A county prosecuting attorney is not, under RC 309.09, legal adviser to a joint fire district organized pursuant to RC 505.37 and RC 505.371.

OAG 80-076; overruled on other grounds by OAG 88-055. A deputy sheriff who has been charged with a criminal offense and found innocent of such offense is not entitled to representation at the county's expense if the prosecutor determines that he is not entitled.

OAG 66-017. If the board or boards of county commissioners appoint a district administrator pursuant to RC 3355.04, the prosecuting attorney has the duty to legally advise the board of county commissioners of his county in matters pertaining to the management of the university branch district, but he has no duty to so advise the district administrator or to legally advise the university branch district board of trustees.

1963 OAG 95. A bi-county airport agency created by agreement of two counties is not a "county board" within the meaning of RC 309.09, and is not entitled to legal advice from the prosecuting attorney of either county.

1963 OAG 95. A bi-county airport agency created by agreement of two counties is not a "county board" within the meaning of RC 309.09, and is not entitled to legal advice from the prosecuting attorney of either county.

1961 OAG 2383. A regional planning commission is not a "county board" within the meaning of RC 309.09, and is not eligi-

ble to receive the services of the prosecuting attorney as its legal advisor.

1959 OAG 172. Although the prosecuting attorney is required to act as legal counsel for the county child welfare board, he is not and cannot be required to defend one who has a contract with the board for the custody of children in an action brought against such custodian for an alleged tort against such child or against its parent.

1958 OAG 2736. A regional planning commission having more than one participating county is not a "county board," nor its members "county officers" within the meaning of RC 309.09, and such commission is not eligible to receive the services of the prosecuting attorney of a member county as its legal advisor.

1932 OAG 4671. A county prosecuting attorney owes no duty to appear on behalf of a county dog warden in an action which involves only the personal liability of such dog warden.

3. Legal adviser, township officers

475 US 469, 106 SCt 1292, 89 LEd(2d) 452 (1986), Pembaur v Cincinnati. Recovery from a municipality for civil rights violations under 42 USC § 1983 must be for tortious conduct pursuant to a municipality's "official policy", acts which the municipality has officially sanctioned or ordered, and municipal liability may be imposed for a single decision by municipal policy makers under appropriate circumstances; therefore, the county may be held liable where the county prosecutor orders deputy sheriffs to "go and get" witnesses subpoenaed by a grand jury, and they chop down a clinic door to enter and detain such persons.

OAG 89-083. A county prosecutor has a duty, pursuant to RC 309.09(A), to represent a board of township trustees in a removal proceeding against its township fire chief, pursuant to RC 505.38(A), notwithstanding that such fire chief is also a township trustee, but no duty to represent the fire chief.

OAG 88-088. A county prosecutor acting pursuant to RC 309.09 may represent a board of township trustees, and additional legal counsel permitted by RC 309.09 may be employed to represent such board, only when the board is interested in a controversy that is within the scope of the board's authority as expressly set forth in a statute or necessarily implied therefrom.

OAG 85-071. A county prosecuting attorney has a duty to act as legal adviser to a township trustee who serves as a representative to a board of fire district trustees on matters relating to the activities of the joint fire district which arise from such individual's position as township trustee.

OAG 80-098. An attorney who is an employee of a township is entitled to discretionary fringe benefits granted by the township to its employees, provided that he qualifies for such benefits. These benefits may include sick leave, vacation and hospitalization and life insurance coverage. An attorney who is an independent contractor serving a township is not entitled to discretionary fringe benefits.

OAG 80-098. An attorney who is an employee of a township is entitled to the statutory fringe benefits for which he qualifies. These may include holiday pay, membership in a retirement system, workers' compensation coverage and unemployment compensation benefits. An attorney who is an independent contractor serving a township is not eligible for holiday pay under RC 511.10.

OAG 80-098. The compensation of an attorney employed by a township need not be set at a specific dollar amount so long as there is a clear standard by which to calculate the compensation. The compensation includes fringe benefits.

OAG 80-098. In order to determine whether an attorney employed by a township pursuant to RC 309.09(A) is an independent contractor or an employee of the township, it is necessary to consider all the circumstances surrounding the arrangement between the township and the attorney. Factors include the degree of independence which the attorney possesses, whether the attorney performs legal services solely for the township, whether the attorney is paid for particular services or is paid a yearly salary, whether the township or the attorney has the right to hire assistants and the obligation to pay those assistants, and whether the township or the attorney provides office space and supplies.

OAG 74-024. A board of township trustees may employ counsel in addition to the prosecuting attorney, pursuant to RC 309.09, but such counsel may not act as the sole legal representative of the township and its officers.

OAG 69-095. Either a city solicitor or law director has the duty, pursuant to RC 1901.34 to prepare affidavits for and prosecute township misdemeanor zoning violation cases to be heard in a municipal court with jurisdiction outside its municipal boundaries.

OAG 66-061. A board of township trustees are not, in their official capacity, interested parties in annexation or incorporation.

OAG 66-061. A board of township trustees may not employ special counsel and expend public funds to pay for his services to oppose a proposed annexation of territory from the township.

1962 OAG 2850. Reports of the bureau of inspection and supervision of public offices concerning townships, boards of education, and park districts are filed with the county prosecuting attorney; and if such a report sets forth that funds of the agency concerned have been misapplied, said prosecutor has a duty to, within ninety days, institute civil action in the name of the agency to recover such money.

1960 OAG 1234. The prosecuting attorney of a county is the legal adviser of a joint township hospital board but is not the legal adviser of a board of hospital governors, and such board of hospital governors is authorized to employ counsel to assist it.

1929 OAG 297. The trustees of a township may not pay additional compensation to the prosecuting attorney of the county to prepare legislation for the construction of a township road.

4. Employment of additional legal counsel

No. L-84-181 (6th Dist Ct App, Lucas, 6-1-84), State ex rel Pease v Monclova Twp Bd of Trustees. Pursuant to RC 309.09, the appointment of additional legal counsel lies within the sound discretion of the township trustees and, therefore, a writ of mandamus will not lie to compel such appointment.

OAG 90-096. Neither a board of county commissioners nor a county children services board may pay, directly or by way of reimbursement, legal fees incurred by the county children services board's executive secretary in retaining the services of private legal counsel when such counsel has been hired other than in accordance with the specific terms and procedures set forth in RC 305.14(A) and 309.09(A).

OAG 88-066. A county prosecuting attorney has no duty to represent a board of township trustees before a board of county commissioners, nor may additional legal counsel be employed to represent the board of township trustees pursuant to RC 309.09(A) in a hearing on a petition to annex territory to a municipal corporation pursuant to RC Ch 709.

OAG 85-012. A regional organization for civil defense is not entitled to the general legal counsel of a prosecuting attorney or of the attorney general, but may hire legal counsel as needed for the performance of its duties.

OAG 80-064. Pursuant to RC 309.10, the school board of a joint vocational school district may employ counsel of its choice, rather than relying on the county prosecutor of the most populous county in the joint vocational school district, provided that such counsel is paid from school funds.

OAG 79-039. A county prosecuting attorney has no statutory duty to advise the board of trustees of a joint ambulance district which is comprised of townships and municipalities in a single county, but the board of trustees has authority to employ legal counsel to assist the board in performing its legal functions.

OAG 77-039. The board of county commissioners, when joined by the prosecuting attorney, may apply pursuant to the procedure set forth in RC 305.14 to the court of common pleas for authorization to employ legal counsel to represent the current and former members of the board of trustees of a county tuberculosis hospital in a third party complaint brought against them by the employees of the hospital and in a civil action filed against them by the prosecuting attorney.

OAG 75-014. There is no authority under RC 309.09 for the prosecuting attorney of a participating county to provide general

legal counsel to a joint county community mental health and retardation board, but such board may employ legal counsel pursuant to RC 340.04.

OAG 74-024. A board of township trustees has authority under RC 309.09 to employ additional legal counsel to represent and advise other township officers when they deem such action advisable or necessary.

OAG 68-036. RC 309.09 requires the prosecuting attorney of Lucas county to represent the executive secretary of the Lucas county child welfare board except when said executive secretary is authorized under RC 305.14 to retain private counsel at county expense.

OAG 66-061. A board of township trustees may not employ special counsel and expend public funds to pay for such services in doing the legal work in connection with a proposed incorporation.

1964 OAG 1606; overruled in part by OAG 80-064. The legal adviser to a vocational school district formed by two or more local and city school districts of more than one county is not the county prosecutor of any of the participating counties; counsel therefor may be employed by said board of education pursuant to RC 309.10.

1964 OAG 1523; overruled in part by OAG 80-064. A board of education of a joint vocational school district which includes school districts from five counties is not a county board and the members of the board are not county officers within the meaning of RC 309.09, and such board is not entitled to the services of the prosecuting attorney of any county; such board, pursuant to RC 309.10, may employ legal counsel and pay therefor from the school fund of the joint vocational school district.

1964 OAG 1297. The members of a board of park commissioners of a township park district are not township officers within the meaning of RC 309.09, and the prosecuting attorney does not have a statutory duty to provide legal counsel for such board, but such board may lawfully employ the legal counsel necessary to assist it in carrying out its statutory duties.

1963 OAG 285. The county treasurer may employ collectors and attorneys to enforce collection of delinquent personal property tax accounts from taxpayers who are now located and reside outside the state of Ohio, their compensation to be fixed by the county commissioners and paid out of the county treasury.

1958 OAG 2685. Authority of board of education and of clerk thereof to employ legal counsel where an action is brought against the board and the clerk, and liability of transferee district where the entire territory of such district is transferred, discussed.

1955 OAG 5666. Where a probate court judge files an action against the county commissioners with the aid of private counsel, the common pleas court may in its discretion authorize the commissioners to employ counsel to assist the probate court judge upon the application of the prosecuting attorney and the county commissioners.

1950 OAG 1981. By virtue of this section, boards of county hospital trustees are without authority to employ legal counsel.

1932 OAG 4231. The compensation of legal counsel employed by a township to assist the prosecuting attorney in defending a suit involving the cutting and burning of brush on one of the township roads, should be paid from the township general fund and not from the township road fund.

1928 OAG 1626. The township trustees of a township are not authorized to employ an attorney permanently to act as the legal adviser of such trustees and other township officers.

1928 OAG 1626. The township trustees may employ an attorney other than the prosecuting attorney of the county to represent them in a particular case in which they are parties in their official capacity. In such case the resolution providing for the employment of such attorney should fix the compensation to be paid to him for his services in the case.

5. Incompatible offices; ethics

OAG 91-010. An individual elected under RC 1907.13 as a judge of a county court may be employed, pursuant to RC 309.09(A), as a township solicitor in an area of jurisdiction not under his control as county court judge, provided the individual, as township solicitor, does not engage in the practice of law in matters pending or originating in that county court during his term of office, and further provided that he is not in violation of any local departmental regulations, charter provisions or ordinances, or statutory provisions, rules, or canons subject to interpretation by the Ohio ethics commission pursuant to RC 102.08 or the board of commissioners on grievances and discipline of the supreme court pursuant to Gov Bar R V(2)(b).

OAG 88-049. An assistant prosecuting attorney may not serve upon a board of township trustees for which the prosecuting attorney acts as legal adviser and counsel pursuant to the terms of RC 309.09(A).

OAG 83-030. An assistant county prosecutor may not serve as a member of a county board of mental retardation and developmental disabilities.

OAG 79-019. A multi-county felony bureau is not a county board nor is the bureau director a county officer as those terms are used in RC 309.09; therefore, the prosecuting attorney has no duty to represent the bureau, its director or its board of control. The bureau may hire private legal counsel and pay for such representation out of its own funds. The prosecuting attorney may provide such representation providing it does not conflict with the statutory duties of his office.

1963 OAG 25. The offices of an assistant prosecuting attorney and legal counsel for a township within the same county are incompatible and may not be held concurrently by the same person.

311.01 Election of sheriff; qualifications; basic training; continuing education

(A) A sheriff shall be elected quadrennially in each county. He shall hold his office for a term of four years, beginning on the first Monday of January next after his election.

(B) On and after January 1, 1988, except as otherwise provided in this section, no person is eligible to be a candidate for sheriff and no person shall be elected or appointed to the office of sheriff unless that person meets all of the following requirements:

(1) Is a citizen of the United States;

(2) Has been a resident of the county in which he is a candidate for or is appointed to the office of sheriff for at least one year prior to the qualification date;

(3) Has the qualifications of an elector as specified in section 3503.01 of the Revised Code and has complied with all applicable election laws;

(4) Has been awarded a high school diploma or a recognized equivalent of a high school diploma;

(5) Has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this state;

(6) Has been fingerprinted and has been the subject of a search of local, state, and national fingerprint files to disclose any criminal record. Such fingerprints shall be taken under the direction of the administrative judge of the court of common pleas who, prior to the applicable qualification date, shall notify the board of elections, board of county

commissioners, or county central committee of the proper political party, as applicable, of his findings.

(7) Has prepared a complete history of his places of residence for a period of six years immediately preceding the qualification date and a complete history of his places of employment for a period of six years immediately preceding the qualification date, indicating the name and address of each employer and the period of time employed by that employer. The residence and employment histories shall be filed with the administrative judge of the court of common pleas of the county, who shall forward them with the findings under division (B)(6) of this section to the appropriate board of elections, board of county commissioners, or county central committee of the proper political party prior to the applicable qualification date.

(8) Has held, within three years prior to the qualification date, a valid certificate of training as a law enforcement officer compensated with governmental funds;

(9) Has at least five years of full-time law enforcement experience in which the duties were related to the enforcement of statutes, ordinances, or codes and has at least two years of supervisory experience or its equivalent, or, in place of two years of supervisory experience, has completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located.

(C) Persons who meet the requirements of division (B) of this section, except the requirement of division (B)(2), may take all actions otherwise necessary to comply with division (B) of this section. If, on the applicable qualification date, no person has met all the requirements of division (B) of this section, then persons who have complied with and meet the requirements of division (B) of this section, except the requirement of division (B)(2), shall be considered qualified candidates under division (B) of this section.

(D) Appointed and newly elected sheriffs shall attend the first basic training course conducted by the Ohio peace officer training council pursuant to division (A) of section 109.80 of the Revised Code within six months following the date of their appointment or election to the office of sheriff. Any appointed or newly elected sheriff whose required attendance at the basic training course is waived by the council under division (C) of section 109.80 of the Revised Code because of medical disability or for other good cause shall attend the course when it is next offered by the council after the date on which the disability or other cause terminates. Sheriffs other than appointed and newly elected sheriffs also may attend the course. While attending the basic training course, sheriffs shall receive their regular compensation in the same manner and amounts as if they were carrying out their regular powers and duties. Five days of instruction at the course shall be considered equal to one week of work. The costs of conducting the basic training course and the costs of meals, lodging, and travel of those appointed and newly elected sheriffs attending the course shall be paid from state funds appropriated to the council for this purpose.

(E) Beginning in the second calendar year of the term of appointed and newly elected sheriffs appointed or elected on or after January 1, 1988, and beginning in calendar year 1988 for other sheriffs, and in each calendar year thereafter, each sheriff shall attend and successfully complete at least sixteen hours of continuing education approved under division (B) of section 109.80 of the Revised Code. A sheriff who receives a waiver of the continuing education requirement from the council under division (C) of section 109.80 of the Revised Code because of medical disability or for other good cause shall complete the requirement at the earliest time after the disability or cause terminates.

(F) Each person who is a candidate for election to or who is under consideration for appointment to the office of sheriff shall swear before the administrative judge of the court of common pleas as to the truth of any information the person provides to verify the person's qualifications for the office. No person shall falsely swear as to the truth of any such information.

(G) The office of a sheriff who is required to comply with division (D) or (E) of this section and who fails to successfully complete the courses pursuant to those divisions is hereby deemed to be vacant.

(H) As used in this section:

(1) "Qualification date" means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under section 305.02 of the Revised Code.

(2) "Newly elected sheriff" means a person who did not hold the office of sheriff of a county on the date he was elected sheriff of that county.

HISTORY: 1986 H 683, eff. 3-11-87
1953 H 1; GC 2823

Penalty: 311.99(D)

CROSS REFERENCES

Firearms requalification program, attendance in addition to continuing education requirement, 109.801

Compensation of sheriff; allowance; expenses, 325.06 to 325.071, 325.18

General elections, 3501.01, 3501.02

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 75, Police, Sheriffs, and Related Officers § 9, 23

Am Jur 2d: 70, Sheriffs, Police, and Constables § 1, 6

NOTES ON DECISIONS AND OPINIONS

64 OS(3d) 12 (1992), State ex rel Shumate v Portage County Bd of Elections. An incumbent sheriff who does not have five years of full-time law enforcement experience, but for whom the requirement was expressly waived by statute for the last election, is ineligible to be a candidate for the office of sheriff as the statute specifically states that it shall be of no effect after December 31, 1988.

64 OS(3d) 12 (1992), State ex rel Shumate v Portage County Bd of Elections. A county board of elections may not rely on a common pleas administrative judge's certification that a candidate for sheriff meets the qualifications of RC 311.01(B).

OAG 92-001. Experience as a member of the legislative authority of a village, public school teacher, or trustee of a nonprofit corporation does not qualify as law enforcement experience for purposes of RC 311.01(B)(9).

OAG 92-001. College or other postsecondary education does not qualify as law enforcement experience for purposes of RC 311.01(B)(9).

OAG 90-112. If an individual who lacked the certification and experience requirements of RC 311.01(B)(8) and 311.01(B)(9) for qualification as sheriff in 1988 was elected or appointed to the office of sheriff in 1988 pursuant to 1986 H 683, § 3, eff. 3-11-87 and successfully completed the required basic training course in a timely manner, the requirements of RC 311.01(B)(8) and 311.01(B)(9) have been waived for that individual. There are no time limitations on the waiver; it applies to the 1992 election and all subsequent elections.

OAG 90-023. When a county sheriff's term of office pursuant to RC 311.01(A) includes only part of a particular calendar year, the sheriff is entitled to a prorated portion of the annual compensation fixed for that year pursuant to RC 325.06 and 325.18, which portion should be calculated to reflect the number of days in that calendar year which are included in the sheriff's term of office.

OAG 89-034. RC 311.01(D) does not entitle a newly elected sheriff who attends a training course before taking office to be compensated for performing the duties of sheriff; however, the costs of such person's tuition, meals, lodging, and travel shall be paid from state funds appropriated for this purpose.

OAG 88-048. As used in RC 311.01(B)(8), the phrase "valid certificate of training as a law enforcement officer" is not limited to a peace officer certificate earned pursuant to RC 109.77.

OAG 88-048. Experience as a county probation officer qualifies as law enforcement experience for purposes of RC 311.01(B)(9).

OAG 88-048. A person who has held, within the three years prior to the qualification date, a valid certificate of training for a position as a law enforcement officer compensated with governmental funds meets the requirements for the position of county sheriff set forth in RC 311.01(B)(8) whether or not he actually has been compensated with governmental funds either for training or for performance of his duties as a law enforcement officer.

OAG 77-090. Revenue from the collection of parking fees by a state agency may be deposited in a particular rotary fund or special account if the office of budget and management determines that the deposit of such revenue is one of the intended uses of the fund or account; in the absence of such a determination, revenue from the collection of parking fees by a state agency must, pursuant to RC 131.08, revert to the state treasurer to the credit of the general revenue fund.

1961 OAG 2066. A person who is serving as sheriff or deputy sheriff of a county may not serve at the same time as clerk or deputy clerk of a county court.

1952 OAG 2178. An individual cannot serve as deputy sheriff and also as coroner.

1936 OAG 5420. An amendment of the law changing the term of an elective office, which amendment becomes effective after candidates for such office have been nominated but before the date of election, is controlling as to the term of any candidate elected at such election.

1927 OAG 802. The sheriff of a county cannot legally be appointed to the position of dog warden.

Ethics Op 76-011. RC 102.02(A)(3) requires a candidate for county office to disclose the name of every corporation, incorporated in Ohio or holding a certificate of compliance authorizing it to do business in Ohio, and the name of every trust, which transacts business in Ohio, in which the candidate holds an office or has a fiduciary relationship, along with a brief description of the nature of the office or the relationship.

313.01 Election of coroner; coroner defined

A coroner shall be elected quadrennially in each county, who shall hold his office for a term of four years, beginning on the first Monday of January next after his election.

As used in the Revised Code, unless the context otherwise requires, "coroner" means the coroner of the county in which death occurs or the dead human body is found.

HISTORY: 131 v H 257, eff. 11-4-65
1953 H 1

CROSS REFERENCES

Death without medical attendance, OAC 3701-5-09

Compensation of county coroner, 325.15, 325.18
General elections, 3501.01, 3501.02
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 12
Am Jur 2d: 18, Coroners or Medical Examiners § 2

NOTES ON DECISIONS AND OPINIONS

OAG 87-025. Because a county home physician is not a county employee, a compatibility analysis is inappropriate in determining whether a county coroner may concurrently serve as county home physician.

OAG 69-104. The offices of a county coroner and superintendent of a state hospital in the same county are incompatible, and the appointment of an assistant coroner would not alleviate the problem.

1936 OAG 6083. Autopsy fees under former GC 2856-3 (RC 313.02).

1928 OAG 1624. Receiving of autopsy fees, discussed.

1927 OAG 1194. Coroners in counties having a population of 400,000 or more are entitled to their salary during the time they are temporarily unable to perform the duties of the office, by reason of absence on account of illness or other causes.

1924 OAG p 438. The fees prescribed by former GC 2856-3 (RC 313.02) are applicable to coroners of all counties.

313.02 Qualifications for coroner

No person shall be eligible to the office of coroner except a physician who has been licensed to practice as a physician in this state for a period of at least two years immediately preceding his election or appointment as a coroner, and who is in good standing in his profession, or is a person who was serving as coroner on October 12, 1945.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2856-3

PRACTICE AND STUDY AIDS

Dill Calloway, Ohio Nursing Law, Text 4.03

CROSS REFERENCES

Qualifications for public office, 2961.01, 3503.01; O Const Art II §4, O Const Art II §5, O Const Art V §6, O Const Art XV §4
Admission to practice of medicine, 4731.08 to 4731.141

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 74
Am Jur 2d: 18, Coroners or Medical Examiners § 2

NOTES ON DECISIONS AND OPINIONS

136 OS 523, 26 NE(2d) 1020 (1940), State ex rel Kester v North. Osteopathic physician and surgeon, licensed by state medical board of Ohio to practice in Ohio, is within purview of GC 2856-3 (RC 313.02).

OAG 90-070. Pursuant to RC 3.15, a person serving as county coroner, whether elected or appointed, must be a resident of the county in which he serves at all times during his term of office.

OAG 90-070. Pursuant to RC 305.02(F), where the office of coroner is vacant, the board of county commissioners may appoint a person to serve as acting coroner and to perform the duties of the coroner between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes office; such acting coroner need not be a resident of the county he serves, but must be properly certified to practice medicine in accordance with RC Ch 4731.

OAG 69-104. The offices of a county coroner and superintendent of a state hospital in the same county are incompatible, and the appointment of an assistant coroner would not alleviate the problem.

1954 OAG 3747. There is no incompatibility between the office of coroner and employment as health commissioner. Whether a health commissioner employed "full time" is violating his duties by serving as coroner is a matter for the determination of the board of health. Where he is permitted by the board to continue to perform his duties as coroner, he is entitled, in addition to his compensation as health commissioner, to receive compensation as coroner.

1952 OAG 2178. An individual cannot serve as deputy sheriff and also as coroner.

1941 OAG 4662. Person who previously served as coroner is eligible to that office regardless of time of such previous service, notwithstanding he is not licensed physician.

313.04 Disability or absence

When the coroner is absent temporarily from the county, or when on duty with the armed services of the United States, the state militia, or the American red cross, or when unable to discharge the duties of his office, such coroner may appoint a person with the necessary qualifications to act as coroner during such absence, service, or disability.

HISTORY: 129 v 1365, eff. 10-12-61
129 v 582; 126 v 205; 1953 H 1; GC 2829

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 18, Coroners or Medical Examiners § 567 et seq.

NOTES ON DECISIONS AND OPINIONS

1946 OAG 958. Successor to a person appointed to fill a vacancy in office of coroner must be elected for unexpired term at next general election at which county officers can be voted for, which occurs more that thirty days after vacancy was created; each of candidates to be voted on for unexpired term may be selected by county central committee of his political party; selections shall be made by each of committees at a meeting called for such purpose by chairman of committee by giving to each member of committee at least two days' notice of time, place and purpose of meeting, and chairman and secretary of meeting shall certify, in writing and under oath, to board of elections of county, not later than seventy-sixth day before day of election at which person to fill unexpired term is to be elected, the name of person so selected.

1946 OAG 728. An acting coroner in a county having a population of less than 400,000, who was appointed pursuant to this section prior to its amendment in 1945, was entitled to receive up to said date the fees allowed coroners by GC 2866 (Repealed), but was not entitled under any circumstances, to difference between fees so received and sum of $150 as provided by GC 2866-1 (Repealed).

1941 OAG 4262. In county of less than 100,000 population a justice of the peace shall have the powers and the duties of the coroner to hold inquests in the presence of the sheriff or a deputy sheriff in the place of the coroner while that person is temporarily absent in the military service of the United States.

315.01 County engineer; election and term of office

There shall be elected quadrennially in each county a county engineer who shall assume office on the first Monday in January next after his election and shall hold such office for four years.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2782

CROSS REFERENCES

Compensation of county engineer, 325.14, 325.18
General elections, 3501.01, 3501.02
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 445; 20, Counties, Townships, and Municipal Corporations § 63

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 234, 249, 299; 63A, Public Officers and Employees § 14, 91, 155

NOTES ON DECISIONS AND OPINIONS

15 OS(2d) 253, 239 NE(2d) 660 (1968), State ex rel Mikus v Roberts. A county engineer is an "officer" within the meaning of O Const Art II §20.

147 OS 505, 72 NE(2d) 102 (1947), State ex rel McKee v Rice. Successor of appointee appointed to fill vacancy in office of county engineer, which vacancy occurred more than thirty days before next general election at which county officers can be voted for, must be elected at next general election for county officers.

OAG 87-092. The position of a member of a regional airport authority board is incompatible with the office of county engineer for a county included within the territory of the regional airport authority.

OAG 85-100. A county engineer may be employed as a teacher at a technical college, provided that the teaching obligations do not conflict with the time required to carry out the duties of the county engineer.

OAG 73-127. The positions of county treasurer and member of a township board of zoning appeals are incompatible.

1957 OAG 200. Where an incumbent of the office of county engineer has been elected at the general election in November of 1956 for a four year term, commencing on the first Monday in January 1957, and where such incumbent resigns effective January 31, 1957, the individual thereafter appointed by the board of county commissioners to fill such vacancy will hold such office until the election and qualification of his successor; and such successor should be elected for the unexpired term at the general election in November 1958.

1927 OAG 70. The offices of county commissioner and county surveyor are incompatible, and the two offices cannot be held simultaneously by the same person.

Ethics Op 76-011. RC 102.02(A)(3) requires a candidate for county office to disclose the name of every corporation, incorporated in Ohio or holding a certificate of compliance authorizing it to do business in Ohio, and the name of every trust, which transacts business in Ohio, in which the candidate holds an office or has a fiduciary relationship, along with a brief description of the nature of the office or the relationship.

Ethics Op 76-006. A county engineer or an employee of the county engineer's office is not prohibited by RC 102.04(B) from receiving compensation for conducting a land survey within that county unless the survey constitutes, or is an element of, a case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the county of which he is an officer or employee.

Ethics Op 76-006. A county engineer or employee of a county engineer's office is not prohibited by RC 102.04(B) from receiving compensation for conducting a land survey in any other county or any municipal corporation, including those municipal corporations within the county of which he is an officer or employee.

315.02 Eligibility for office of county engineer

No person holding the office of clerk of the court of common pleas, sheriff, county treasurer, or county recorder is eligible to hold the office of county engineer. No person is eligible in any county as a candidate for such office or shall be elected or appointed thereto unless he is a registered professional engineer and a registered surveyor, licensed to practice in this state.

HISTORY: 1981 S 114, eff. 10-27-81
1953 H 1; GC 2783

CROSS REFERENCES

A person may hold but one of certain offices, 3.11
Qualifications for public office, 2961.03, 3503.01; O Const Art II §4, O Const Art II §5, O Const Art V §6, O Const Art XV §4
Registration of professional engineers and surveyors; qualifications, 4733.10 to 4733.20

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 11, Businesses and Occupations § 143; 15, Civil Servants and Other Public Officers and Employees § 446; 20, Counties, Townships, and Municipal Corporations § 172, 192; 75, Police, Sheriffs, and Related Officers § 17
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 256

NOTES ON DECISIONS AND OPINIONS

171 OS 295, 170 NE(2d) 428 (1960), State ex rel Jeffers v Sowers. Vacancy on the ballot caused by death of a duly nominated candidate for the office of county engineer may be filled by the selection of a person who is a registered professional engineer and a registered surveyor licensed to practice in this state, and who is a resident and elector of this state, but it is not necessary for him to be a resident and elector of the county in which he is selected.

165 OS 498, 137 NE(2d) 674 (1956), State ex rel Barklow v Appel. Where a candidate for the office of county engineer was not a registered surveyor at the time he filed his expense account and paid his filing fee, he was not eligible as such candidate, and a decision of a board of elections that was reached as a result of a tie breaking vote by the secretary of state will be reversed.

133 OS 164, 12 NE(2d) 491 (1938), State ex rel Kirk v Wheatley. Where candidate for county engineer receiving highest number of votes is ineligible to election, incumbent in that office will hold over under GC 8 (RC 3.01), until his successor is elected and qualified.

133 OS 164, 12 NE(2d) 491 (1938), State ex rel Kirk v Wheatley. Provisions of this section are mandatory, and one who is not a registered professional engineer and registered surveyor licensed to practice in state is not eligible as candidate for office of county engineer or to be elected or appointed thereto unless he shall have previously served as county engineer immediately prior to his election.

132 OS 546, 9 NE(2d) 497 (1937), State ex rel Cox v Riffle. Where a candidate for county engineer, ineligible to election, receives the highest number of votes, receives a commission, qualifies, takes possession, enters upon and performs the duties of the office, such facts alone will not invest him with the title to the office where the right thereto does not exist.

55 App 243, 9 NE(2d) 699 (1936), State ex rel Hehr v Beery. When, in an action in mandamus to compel a county board of elections to omit the name of a candidate for county engineer from the ballot on the ground that such candidate is not qualified, a court of competent jurisdiction finds such candidate is not qualified, the act of omitting the candidate's name from the ballot is an act enjoined by law under GC 12283 (RC 2731.01), and a writ of mandamus will issue to compel performance thereof.

37 Abs 442, 47 NE(2d) 799 (App, Summit 1940), State ex rel Ranney v Corey. This section precludes one from being candidate for county engineer at primary election who, at expiration of time for filing his declaration of candidacy, does not possess qualifications provided for in said section.

OAG 73-127. The positions of county treasurer and member of a township board of zoning appeals are incompatible.

1959 OAG 855. When there is a vacancy in the office of county engineer, the county commissioners must appoint a suitable person to fill such vacancy, and the appointee need not be an elector of the county but must be a qualified elector of the state of Ohio.

1959 OAG 855. In the filling of a vacancy in the office of county engineer, an elected county engineer of one county may not be appointed as county engineer of a neighboring county and hold the two offices at the same time.

1959 OAG 855. An elected county engineer of one county may not be employed by the county commissioners of an adjoining county as deputy county engineer when there is a vacancy in the office of county engineer in such adjoining county.

1956 OAG 6623. The eligibility of an individual, under the provisions of RC 315.02 for nomination as a party candidate for the office of county engineer is a matter for judicial rather than administrative determination and a board of elections is without authority to make such determination by omitting from the ballot in the general election the name of an individual receiving the highest number of votes for such office in a party primary.

1935 OAG 4885. In order to be eligible as a candidate or to be elected to the office of county engineer, it is necessary for a person to be both a registered professional engineer and a registered surveyor.

1935 OAG 4885. It is not contemplated under the provisions of this section, that two persons, one being only a registered professional engineer and the other being only a registered surveyor, may be candidates for or elected to or appointed to the office of county engineer.

317.01 County recorder; election and term

There shall be elected quadrennially in each county a county recorder, who shall assume office on the first Monday in January next after his election and shall hold such office for a period of four years.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2750

CROSS REFERENCES

Compensation of county recorder, 325.09, 325.18
General elections, 3501.01, 3501.02
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 53, 63, 173
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 235, 249

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

128 OS 273, 191 NE 115 (1934), Board of Elections v State. GC 2750 (RC 317.01) wherein it is provided that there shall be elected in each county at the regular election in 1936, and quadrennially thereafter, a county recorder who shall assume office on the first Monday in January next after his election and who shall hold such office for a period of four years, is so inseparably connected with GC 2750-1 (Repealed) that it must fall with it, the 1934 election will be governed by this section as amended in 111 v 483.

2. In general

128 OS 273, 191 NE 115 (1934), Board of Elections v State. County recorders will be elected at the general election in 1934, as provided in GC 2750 (RC 317.01) prior to its attempted repeal and amendment.

OAG 69-115. The office of county recorder and the position of county veterans' service officer are incompatible.

OAG 65-8. The positions of county recorder and member of a village board of trustees of public affairs, are not incompatible as long as it is physically possible for one person to discharge the duties of both.

1959 OAG 447. The office of county recorder is incompatible with that of supervisor of a soil conservation district.

1936 OAG 6442. Where an incumbent of the office of county recorder dies shortly after the general November election of 1936, at which he was reelected county recorder, under the provisions of this section for a term of four years, beginning on the first Monday of January 1937, and the county commissioners, acting under authority of GC 2755 (RC 317.06), appoint a suitable person to fill the vacancy in such office, such person holds the office until a successor, who shall be elected at the general November election of 1938, has qualified after such election for the remainder of the unexpired portion of the four year term to which such deceased recorder had been elected.

1936 OAG 5420. An amendment of the law changing the term of an elective office, which amendment becomes effective after candidates for such office have been nominated but before the date of election, is controlling as to the term of any candidate elected at such election.

1933 OAG 149. A county recorder is not prohibited by the statutes of Ohio from obtaining or disseminating among business men information concerning the filing of chattel mortgages and liens, when no part of the business hours of the county recorder are used either in the collection or dissemination of such information, and any remuneration received by the county recorder is not required to be paid into the county treasury.

Ethics Op 76-011. RC 102.02(A)(3) requires a candidate for county office to disclose the name of every corporation, incorporated in Ohio or holding a certificate of compliance authorizing it to do business in Ohio, and the name of every trust, which transacts business in Ohio, in which the candidate holds an office or has a fiduciary relationship, along with a brief description of the nature of the office or the relationship.

Ethics Op 74-005. It is not a violation per se of RC 102.04 for a person to serve simultaneously as county recorder and, through his membership in a law firm, as legal counsel to a township.

319.01 County auditor; term of office

A county auditor shall be chosen quadrennially in each county, who shall hold his office for four years, commencing on the second Monday in March next after his election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2558

CROSS REFERENCES

Auditor as chief administrator of county automatic data processing board, 307.844

Compensation of county auditor, 325.03, 325.18

Auditor, membership on public assistance examining committee, 329.091

Auditor to be fiscal officer of community mental health district; duties, 340.10

Auditor to pay township from revenues from township forest lands, 1503.05

County auditor, duties as to soil and conservation district, 1515.23

General elections, 3501.01, 3501.02

County auditor is auditor of general health district, 3709.31

County auditor may acknowledge conveyances of interest in real property, 5301.01

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 53, 63, 137, 140

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 234, 235, 246; 63A, Public Officers and Employees § 14

NOTES ON DECISIONS AND OPINIONS

OAG 85-099. An individual may serve as county auditor even though his son is a member of a board of education of a city school district within the same county.

OAG 78-023. A person who is appointed to complete an unexpired term as county auditor after December 6, 1976 shall receive a salary according to the salary schedule contained in RC 325.03 prior to its amendment by 1976 H 784, eff. 12-6-76, plus any increase in that salary allocated by 1976 H 784, § 4; after the calendar year 1978 all county auditors will receive the salary set out in the amended salary schedule, but in no event will salary be less than that received during calendar year 1978.

1962 OAG 3239. A public officer, such as a county auditor, is not an employee as such word is used in RC 325.19, and, upon the death of such officer, no amount may be paid for earned but unused vacation leave under RC 2113.04 to his estate.

1940 OAG 2950. Office of county auditor does not become vacant by reason of the temporary absence of the incumbent while on active duty as an officer in the reserve corps of the United States army.

1930 OAG 1839. County treasurer may be a candidate for county auditor at the primaries and at the following election if he is nominated, without resigning the office of treasurer.

Ethics Op 76-011. RC 102.02(A)(3) requires a candidate for county office to disclose the name of every corporation, incorporated in Ohio or holding a certificate of compliance authorizing it to do business in Ohio, and the name of every trust, which transacts business in Ohio, in which the candidate holds an office or has a fiduciary relationship, along with a brief description of the nature of the office or the relationship.

319.07 Certain officials ineligible to office of auditor

No judge or clerk of a court, county commissioner, county recorder, county engineer, county treasurer, or sheriff shall be eligible to the office of county auditor.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2565

CROSS REFERENCES

Incompatible offices, 3.11

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 256

NOTES ON DECISIONS AND OPINIONS

OAG 85-099. An individual may serve as county auditor even though his son is a member of a board of education of a city school district within the same county.

1934 OAG 3605. The chief deputy county treasurer may, in the absence of the treasurer, serve as a member of the county budget commissioner.

1931 OAG 3791. The same person may not simultaneously hold positions of city auditor and deputy auditor of the county in which the city is located.

1931 OAG 3506. The same person may not at the same time lawfully hold the position of member of a board of education of a city school district and deputy auditor of the county in which the school district is located.

321.01 County treasurer; election and term

A county treasurer shall be elected quadrennially in each county, who shall hold his office for four years from the first Monday of September next after his election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2632

CROSS REFERENCES

Compensation of county treasurer, 325.04, 325.18
County treasurer to be custodian of community mental health funds, 340.03
County treasurer to receive money paid to county garbage and refuse disposal district, 343.08
County treasurer, duties as to soil and conservation district, 1515.23
County treasurer is treasurer of general health district, 3709.31
Undivided public housing fund for funds from metropolitan housing authority, county treasurer's duties, 3735.35
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 53, 63, 188, 193, 375
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 235, 249; 63A, Public Officers and Employees § 14, 91, 154 et seq.

NOTES ON DECISIONS AND OPINIONS

OAG 83-035. A county treasurer may not serve as a director of the county agricultural society.

OAG 73-127. The positions of county treasurer and member of a township board of zoning appeals are incompatible.

1964 OAG 1611. The positions of county treasurer and that of member of the soldiers relief commission are not incompatible, unless it is physically impossible for one person to discharge the duties of both.

1962 OAG 3425. Where a person serving as clerk of a board of county commissioners leaves that position to accept appointment to the office of county treasurer, such person is entitled to compensation for any earned but unused vacation leave to his credit at the time of separation.

1957 OAG 24. The offices of county treasurer and member of a county board of elections are incompatible.

1936 OAG 5420. An amendment of the law changing the term of an elective office, which amendment becomes effective after candidates for such office have been nominated but before the date of election, is controlling as to the term of any candidate elected at such election.

1930 OAG 1839. County treasurer may be candidate for county auditor at primaries, and at following election if he is nominated, without resigning office of treasurer.

Ethics Op 89-007. A county treasurer is required to file a financial disclosure statement on or before April 15 of the year after his election by RC 102.02(A), even though his term of office does not begin until the first Monday in September of the year following the election.

Ethics Op 76-011. RC 102.02(A)(3) requires a candidate for county office to disclose the name of every corporation, incorporated in Ohio or holding a certificate of compliance authorizing it to do business in Ohio, and the name of every trust, which transacts business in Ohio, in which the candidate holds an office or has a fiduciary relationship, along with a brief description of the nature of the office or the relationship.

COUNTY REAL PROPERTY TRANSFER TAX

322.02 Real property transfer tax; permissive levy by commissioners

For the purpose of paying the costs of enforcing and administering the tax and providing additional general revenue for the county, any county may levy and collect a tax to be known as the real property transfer tax on each deed conveying real property or any interest in real property located wholly or partially within the boundaries of such county at a rate not to exceed thirty cents per hundred dollars for each one hundred dollars or fraction thereof of the value of the real property or interest in real property located within the boundaries of the county granted, assigned, transferred, or otherwise conveyed by such deed. Such tax shall be levied pursuant to a resolution adopted by the board of county commissioners of such county and shall be levied at a uniform rate upon all deeds as defined in division (B) of section 322.01 of the Revised Code. Prior to the adoption of any such resolution, the board of county commissioners shall conduct two public hearings thereon, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of such hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing. Such tax shall be levied upon the grantor named in the deed and shall be paid by the grantor for the use of the county to the county auditor at the time of the delivery of the deed as provided in section 319.202 of the Revised Code and prior to the presentation of the deed to the recorder of the county for recording.

No resolution levying a real property transfer tax pursuant to this section of the Revised Code shall be effective sooner than thirty days following its adoption and such resolution is subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless such resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into immediate effect. Such emergency measure must receive an affirmative vote of all of the members of the board of commissioners, and shall state the reasons for such necessity. A resolution may direct the board of elections to submit the question of levying the tax to the electors of the county at the next primary or general election in the county occurring not less than

seventy-five days after such resolution is certified to the board. No such resolution shall go into effect unless approved by a majority of those voting upon it.

No real property transfer tax levied pursuant to this section shall be applicable with respect to the conveyance of real property unless such conveyance takes place on or after January 1, 1968.

HISTORY: 1980 H 1062, eff. 3-23-81
1969 H 531; 132 v H 919

Penalty: 322.99

PRACTICE AND STUDY AIDS

Hausser and Van Aken, Ohio Real Estate Law and Practice, Text 5.06(D)
Baldwin's Ohio Legal Forms, Form 101.14

CROSS REFERENCES

Newspaper of general circulation, 7.12
General and primary elections, 3501.01, 3501.02
Allocation to county undivided local government funds, 5747.51
County budget commission, deduction of expenditures, 5747.62

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 1213, 1384
Am Jur 2d: 71, State and Local Taxation § 641, 867 to 869

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

36 App(2d) 87, 302 NE(2d) 895 (1973), Okey v Walton. The words "at least twelve months" are severable from the remainder of RC 322.01(A) and do not affect the constitutionality of the remainder of the RC 322.01(A) or 322.02.

36 App(2d) 87, 302 NE(2d) 895 (1973), Okey v Walton. RC 322.01 and 322.02, with the exception of the words "at least twelve months" in RC 322.01(A), are constitutionally valid.

2. In general

OAG 83-027. Where a resolution adopted by a board of county commissioners under RC 322.02 directs the county auditor to collect a real property transfer tax, the county auditor must collect such tax, absent direction to the contrary by resolution of the county commissioners or order of a court, even if the resolution provides for annual review of the tax and such review has not been undertaken.

OAG 68-165. The county auditor has the inherent authority, in receiving statements of value and administering RC 319.202 and in collecting the permissive real property transfer tax authorized to be levied pursuant to RC Ch 322, to inquire into the facts and circumstances surrounding any and all transfers or conveyances claimed to be exempt under division (F)(3) of RC 319.54 in order to determine if the one claiming the exemption has affirmatively established his right to the exemption.

322.021 Election to repeal emergency permissive tax

The question of a repeal of a county permissive tax adopted as an emergency measure pursuant to section 322.02 of the Revised Code may be initiated by filing with the board of elections of the county not less than seventy-five days before the general election in any year a petition requesting that an election be held on such question. Such petition shall be signed by qualified electors residing in the county equal in number to ten per cent of those voting for governor at the most recent gubernatorial election.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the county at the next general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections for county offices in the county. Notice of the election shall be published in a newspaper of general circulation in the district once a week for four consecutive weeks prior to the election, stating the purpose, time, and place of the election. The form of the ballot cast at such election shall be prescribed by the secretary of state. The question covered by such petition shall be submitted as a separate proposition, but it may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers. If a majority of the qualified electors voting on the question of repeal approve the repeal, the result of the election shall be certified immediately after the canvass by the board of elections to the county commissioners, who shall thereupon, after the current year, cease to levy the tax.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 1969 H 531

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legal Forms, Form 101.14

CROSS REFERENCES

Newspaper of general circulation, 7.12
Referendum petitions, 305.32 to 305.42
General elections, 3501.01, 3501.02
County budget commission, deduction of expenditures, 5747.62

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 53; 87, Taxation § 1213
Am Jur 2d: 71, State and Local Taxation § 641, 867 to 869

COUNTY UTILITIES SERVICES TAX

324.02 Permissive levy; procedure

For the purpose of providing additional general revenues for the county and paying the expense of administering such levy, any county may levy a county excise tax to be known as the utilities service tax on the charge for every utility service to customers within the county at a rate not to exceed two per cent of such charge. On utility service to customers engaged in business, the tax shall be imposed at a rate of one hundred fifty per cent of the rate imposed upon all other consumers within the county. The tax shall be levied pursuant to a resolution adopted by the board of county commissioners of the county and shall be levied at uniform rates required by this section upon all charges for utility service except as provided in section 324.03 of the Revised Code. The tax shall be levied upon the customer and shall be paid by the customer to the utility supplying the service at the time the customer pays the utility for the service. If the charge for utility service is billed to a person other than the customer at the request of such person, the tax commissioner of the state may, in accordance with section 324.04 of the Revised Code, provide for the levy of the tax against and the payment of the tax by such other person. Each utility furnishing a utility service the charge for which is subject to the tax shall set forth the tax as a sepa-

rate item on each bill or statement rendered to the customer.

Prior to the adoption of any resolution levying a utilities service tax the board of county commissioners shall conduct two public hearings thereon, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of such hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing. No resolution levying a utilities service tax pursuant to this section of the Revised Code shall be effective sooner than thirty days following its adoption and such resolution is subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless such resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into immediate effect. Such emergency measure must receive an affirmative vote of all of the members of the board of commissioners, and shall state the reasons for such necessity. A resolution may direct the board of elections to submit the question of levying the tax to the electors of the county at the next primary or general election in the county occurring not less than seventy-five days after such resolution is certified to the board. No such resolution shall go into effect unless approved by a majority of those voting upon it. The tax levied by such resolution shall apply to all bills rendered subsequent to the sixtieth day after the effective date of the resolution. No bills shall be rendered out of the ordinary course of business to avoid payment of the tax.

HISTORY: 1980 H 1062, eff. 3-23-81
1969 H 531; 132 v H 919

Penalty: 324.99(A)

CROSS REFERENCES

Newspaper of general circulation, 7.12
Procedure for submitting additional tax resolutions adopted by a board of county commissioners to referendum, 305.31
Allocation to county undivided local government funds; effect of levy, 5747.51
County budget commission, deduction of expenditures, 5747.62
Excise taxes, O Const Art XII §3
Tax law to distinctly state object, O Const Art XII §5

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 1216, 1384
Am Jur 2d: 71, State and Local Taxation § 438, 439, 441

324.021 Election to repeal emergency permissive tax

The question of repeal of a county permissive tax adopted as an emergency measure pursuant to section 324.02 of the Revised Code may be initiated by filing with the board of elections of the county not less than seventy-five days before the general election in any year a petition requesting that an election be held on such question. Such petition shall be signed by qualified electors residing in the county equal in number to ten per cent of those voting for governor at the most recent gubernatorial election.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the county at the next general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections for county offices in the county. Notice of the election shall be published in a newspaper of general circulation in the district once a week for four consecutive weeks prior to the election, stating the purpose, the time, and the place of the election. The form of the ballot cast at such election shall be prescribed by the secretary of state. The question covered by such petition shall be submitted as a separate proposition, but it may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers. If a majority of the qualified electors voting on the question of repeal approve the repeal, the result of the election shall be certified immediately after the canvass by the board of elections to the county commissioners, who shall thereupon, after the current year, cease to levy the tax.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 1969 H 531

CROSS REFERENCES

Newspaper of general circulation, 7.12
General elections, 3501.01, 3501.02
County budget commission, deduction of expenditures, 5747.62
Elections, state and county officers, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 53; 87, Taxation § 1216
Am Jur 2d: 71, State and Local Taxation § 438, 439, 441

COUNTY MEMORIAL BUILDINGS

345.05 Approval of tax levy

If a majority of the electors voting on the tax levy provided for in section 345.01 of the Revised Code, vote in favor thereof, the taxing authority of a political subdivision, as provided by such section, may levy a tax within such subdivision, at the additional rate outside of the ten-mill limitation, during the period and for the purpose stated in the resolution, or at any lesser rate, or for any of such years or purposes.

HISTORY: 1986 H 583, eff. 2-20-86
1953 H 1; GC 3060-2

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 64, Public Securities and Obligations § 173

TOWNSHIPS

503.07 Conformity of boundaries

When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included

within the limits of such municipal corporation. The board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, shall upon the petition of a city change the boundaries of the township or erect such new township, and may upon the petition of a village change the boundaries of the township or erect such new township.

HISTORY: 129 v 1300, eff. 10-20-61
1953 H 1; GC 3249

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.20, 3.23 to 3.25, 33.04; Forms 31.24, 31.25

Gotherman & Babbit, Ohio Municipal Law, Forms 3.31, 3.32

CROSS REFERENCES

Identical municipal and township boundaries, 703.22

Joint economic development districts, applicability, 715.70

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 327, 329, 331; 37, Elections § 41

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 50 to 54, 57

What land is contiguous or adjacent to municipality so as to be subject to annexation. 49 ALR3d 589

NOTES ON DECISIONS AND OPINIONS

62 OS(3d) 55 (1991), State ex rel Dublin v Delaware County Bd of Commrs. Pursuant to RC 503.07, a board of county commissioners must comply with a municipal petition for a change of township boundaries in order to make those boundaries conform in whole or in part to the limits of the municipality.

62 OS(3d) 55 (1991), State ex rel Dublin v Delaware County Bd of Commrs. A township may exist in two or more counties; upon presentation of a petition by a municipality existing in two or more counties to annex municipal territory located in one county to a township comprising the largest portion of the municipality, the board of county commissioners must approve the annexation to the township comprising the greatest amount of municipal territory notwithstanding the fact that this township exists in another county and annexation will cause this township to extend into two or more counties.

160 OS 165, 114 NE(2d) 821 (1953), State ex rel Gilmore v Lorain County Bd of Elections. After the corporate limits of a village become identical with those of a township, the township may not be considered an "adjoining township" within the meaning of those words as set forth in the first sentence of GC 3577-1 (RC 709.39).

4 App(3d) 213, 4 OBR 318, 447 NE(2d) 765 (Franklin 1982), Franklin Twp v Marble Cliff. RC 503.07 and RC 703.22 are not irreconcilable, and RC 703.22 does not limit the authority of the board of county commissioners to detach a municipal corporation from the rest of a township but, instead, only deals with the result of a detachment.

OAG 90-071. It is not necessary for a municipality to seek a change in township boundaries pursuant to RC 503.02, rather than RC 503.07, when the proposed change will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with RC 703.22.

OAG 90-071. Pursuant to RC 503.07, a municipal corporation may petition for a change of township lines so that the lines become identical in part with the limits of the municipal corporation. Any parts of a township brought within a municipal corporation pursuant to such a change of township lines shall, in accordance with RC 503.14, be annexed to the township in which the municipal corporation or the greater part of it was previously situated. This procedure may be followed even though it will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with RC 703.22.

OAG 90-071. If a change in township boundaries proposed under RC 503.07 would result in the detachment of lands from a township in one county and their attachment to a township in an adjoining county, the petition for such change of boundaries must be submitted to the boards of commissioners of both counties.

OAG 90-071. RC 503.07 and 503.15 do not preclude a municipal corporation that seeks to form a "paper township" or to place all its residents within the boundaries of a single township from taking several actions over a period of years to achieve that objective, rather than filing a single petition.

OAG 90-048. When a portion of the territory of a township is included within a municipal corporation, steps may be taken under RC 503.07 or 503.09 to modify the township boundaries so that such portion of territory is no longer part of the township and electors residing in such portion of territory are no longer electors of the township. In the absence of such steps, such electors are residents of both the township and the municipal corporation, and they are entitled to vote on both municipal and township officers, issues, and tax levies, and are subject to taxation by both the municipal corporation and the township.

OAG 84-051. RC 503.14 does not provide an alternate, automatic method to that found in RC 503.07 for changing township boundaries to conform to municipal boundaries; if a municipality does not, after annexing township territory, initiate the procedure set forth in RC 503.07, such annexed township territory continues to be a component part of the township in which it was situated prior to municipal annexation.

OAG 77-097. Where township voters pass a levy pursuant to RC 5705.19(J) for the stated purpose of "providing and maintaining motor vehicles, communications, and other equipment used directly in the operation" of the township police department, and there is located entirely within that township a chartered village which already has its own police force, the township trustees may not appropriate proceeds of that levy to the village for its police force, nor use such proceeds to fund its obligation under a contract for additional police protection for the township under RC 505.50 or RC 505.441.

OAG 77-031. If a municipal corporation fails to initiate proceedings pursuant to RC 503.07 to adjust township boundaries, the inhabitants of township territory that has been annexed to such a municipal corporation are still subject to, and eligible to vote on township tax levies and issues.

OAG 72-016. A municipality which has created its own township pursuant to RC 503.07 is not within territorial limits of original township from which it was removed, and banks within new township no longer retain priority under RC Ch 135 to be depositories of public deposits of original township.

OAG 69-032. When a new township is created which conforms to the limits of a municipality and is created from part of the area of three different existing townships, the city ordinance which sets out the boundaries for the new township should describe the new boundaries of each of the three townships from which area was annexed and how it relates to the new township.

OAG 67-013. When a municipality, whose boundaries are coterminous with those of a township, annexes territory in an adjoining county, and then petitions for a change in township lines in that adjoining county to conform to the municipal boundaries, the residents of the annexed portion of the adjoining county who otherwise qualify, remain electors of that county and become electors of the municipality who vote at municipal precinct polling places, but cease to be electors of the township from which the territory which included their residence was annexed, and are not electors for any township offices or issues.

1963 OAG 748. Where the electors of a township which included a municipal corporation have authorized a special tax levy outside the ten-mill limitation for specific township purposes, and after such favorable vote by the electors a new township has been created to include only the limits of the municipal corporation, the board of trustees of the township which has retained its original

name may levy such special tax on all of the property formerly within the township, including the municipal corporation, for the payment of contracts, engagements, or liabilities contracted prior to the change in the township boundaries, but not to pay for contracts, engagements, or liabilities contracted or to be contracted after the effective date of the creation of the new township.

1962 OAG 3310. In a proceeding under RC 503.07 where the boundaries of a township are changed, or a new township is created by the board of county commissioners in such a manner so that any township officer no longer resides within the township, such township office should be deemed vacant and the board of township trustees should declare a vacancy to exist.

1962 OAG 3310. A board of county commissioners proceeding with a change of township boundaries under RC 503.07 is not required to give public notice in the manner set forth in RC 503.04.

1962 OAG 3170. (1) When a new township is established out of the portion of a township comprising a city, the city takes title to cemetery property owned by the original township but lying entirely within the borders of the city; and the cemetery is operated by the director of public service of the city; personal property of the original township which was not divided at the time the municipal corporation was incorporated, and remained the property of the township, remains the property of said original township when the new township is established, and (2) where a special levy for the purpose of the township cemetery exists in the original township, the proceeds of such levy should be apportioned between the two townships, the amount due the new township being allocated to the city, and the city and the original township may unite in the management of the cemetery.

1959 OAG 91. The provision in RC 503.07 that the county commissioners "may" change township boundaries in the circumstances therein stated is not mandatory, and such board may act in its discretion in such matters.

1958 OAG 2686. Duties of county commissioners regarding establishment of or changes in townships and apportionment of funds and liabilities of previously existing township discussed.

1958 OAG 1743. RC 503.03 does not prevent the creation of a new township of a reduced area where such reduction is an incident of changes made in township boundaries under RC 503.07.

1955 OAG 5422. Where a township not containing a municipal corporation is reduced to less than twenty-two square miles by a change of boundaries under RC 503.07, the county commissioners may, upon a petition of a majority of freeholders in such area, create a new township without any addition of territory.

1954 OAG 4642. Existence and operation of township government where township is within limits of a municipal corporation, in whole or in part, discussed at length.

1952 OAG 1459. A township zoning ordinance adopted under GC 3180-35 (RC 519.11) is not affected by the erection of a new township out of that portion of such township within the limits of a municipal corporation.

503.08 Disposition of remainder of township

In making a change of boundaries as provided by section 503.07 of the Revised Code, if any township not having a municipal corporation within its limits is reduced in territory to less than twenty-two square miles, it may thereupon be annexed by the board of county commissioners to any contiguous township, or the board may annex thereto territory from any contiguous township and erect a new township. If a majority of the householders of such reduced township, outside the limits of a municipal corporation, petition for such annexation, the board may erect such reduced township into a new township.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3250

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.20, 3.24

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 327

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 50 to 54

What land is contiguous or adjacent to municipality so as to be subject to annexation. 49 ALR3d 589

NOTES ON DECISIONS AND OPINIONS

1958 OAG 2686. Duties of county commissioners regarding establishment of or changes in townships and apportionment of funds and liabilities of previously existing township discussed.

1958 OAG 1743. RC 503.03 does not prevent the creation of a new township of a reduced area where such reduction is an incident of changes made in township boundaries under RC 503.07.

1955 OAG 5422. Where a township not containing a municipal corporation is reduced to less than twenty-two square miles by a change of boundaries under RC 503.07, the county commissioners may, upon a petition of a majority of freeholders in such area, create a new township without any addition of territory.

1949 OAG 687. Where a village by resolution requests the county commissioners to reduce the township lines of the township in which it is situated so that they will be coextensive and coterminous with those of the village, such commissioners may not grant such request without at the same time either annexing the remaining territory of the original township to a contiguous township or townships or creating such remaining territory into a new township which may or may not include territory annexed thereto from a contiguous township or townships.

503.09 Petition to erect new township excluding territory of municipal corporation

Where a township contains a municipal corporation, either in whole or in part, if a majority of the freehold electors owning land in the portion of such a township outside the municipal corporation's corporate limits, petitions, with a map accurately setting forth such territory, praying to have such territory erected into a new township, and excluding the territory within the municipal corporation, the board of county commissioners shall enter an order erecting such territory into a new township, the boundaries of which need not include twenty-two square miles of territory. Upon the erection of such new township, the territory lying within the limits of the municipal corporation in the original township shall be considered as not being located in any township.

HISTORY: 1982 H 77, eff. 7-26-82
131 v H 715; 1953 H 1; GC 3250-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.20, 3.24, 3.25

CROSS REFERENCES

Township may employ attorney for annexation proceedings, 505.62

Petition to submit question of detachment of territory, 709.39

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 326, 327, 331, 442

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 50 to 54, 83, 87

What land is contiguous or adjacent to municipality so as to be subject to annexation. 49 ALR3d 589

NOTES ON DECISIONS AND OPINIONS

160 OS 165, 114 NE(2d) 821 (1953), State ex rel Gilmore v Lorain County Bd of Elections. After the corporate limits of a village become identical with those of a township, the township may not be considered an "adjoining township" within the meaning of those words as set forth in the first sentence of GC 3577-1 (RC 709.39).

89 Abs 390, 172 NE(2d) 339 (CP, Trumbull 1958), Berlin v Kilpatrick. An elector signing a petition for creation of a new township under RC 503.09 may withdraw his name at any time before the county commissioners have acted thereon.

89 Abs 390, 172 NE(2d) 339 (CP, Trumbull 1958), Berlin v Kilpatrick. In order for a township to be organized out of that portion of the territory of an existing township outside the limits of a city under RC 503.09, said city must be entirely contained within the township.

83 Abs 97, 168 NE(2d) 163 (App, Trumbull 1959), State ex rel Waldron v Trumbull County Bd of County Commrs. RC 503.09 does not apply where a city is located partly but not wholly in the township.

OAG 90-048. When a portion of the territory of a township is included within a municipal corporation, steps may be taken under RC 503.07 or 503.09 to modify the township boundaries so that such portion of territory is no longer part of the township and electors residing in such portion of territory are no longer electors of the township. In the absence of such steps, such electors are residents of both the township and the municipal corporation, and they are entitled to vote on both municipal and township officers, issues, and tax levies, and are subject to taxation by both the municipal corporation and the township.

1954 OAG 4642. Existence and operation of township government where township is within limits of a municipal corporation, in whole or in part, discussed at length.

1937 OAG 849. This section is a mandatory statute and when a majority of the freehold electors, owning land in such township outside the city or cities therein located, petition the commissioners of the county in which such township is located for a new township, the county commissioners have but one duty and that is to enter an order erecting such territory into a new township.

1937 OAG 849. It is not enough that a person be a freeholder in the affected territory to qualify him to sign the petition for a new township. He must be a freehold elector; an elector under this section is one who is authorized and qualified to vote for township officers in the township in question.

1937 OAG 849. If man and wife own land jointly in the territory in question, the estate of each amounts to a freehold and they are electors in the township; they each have full right to sign the petition for a new township.

1937 OAG 849. If the title to the real estate is in one spouse only, no right is thereby conferred upon the other spouse to sign a petition for a new township because of the fact that while he or she as the case may be, may be an elector, he or she is not a freehold elector.

503.24 Vacancy in elective office; trustees to appoint; committee members or probate judge may appoint; term for which appointee serves

If there is a vacancy by reason of the nonacceptance, death, or removal of a person chosen to an office in any township at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term or until a successor is elected.

If a township is without a board or if no appointment is made within thirty days after the occurrence of a vacancy, a majority of the persons designated as the committee of five on the last-filed nominating petition of the township officer whose vacancy is to be filled who are residents of the township shall appoint a person having the qualifications of an elector to fill the vacancy for the unexpired term or until a successor is elected. If at least three of the committee members who are residents of the township cannot be found, or if that number of such members fails to make an appointment within ten days after the thirty-day period in which the board of township trustees is authorized to make an appointment, then the presiding probate judge of the county shall appoint a suitable person having the qualifications of an elector in the township to fill the vacancy for the unexpired term or until a successor is elected.

If a vacancy occurs in a township elective office more than forty days before the next general election for municipal and township officers a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election. If the term expires within one year from the day of the next general election for municipal and township officers, a successor appointed pursuant to this section shall serve out the unexpired term.

HISTORY: 1990 S 170, eff. 1-9-91
1979 H 399; 127 v 1039; 1953 H 1; GC 3261, 3262

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.03, 11.11, 11.12, 13.08, 13.10, 15.04; Forms 1.08

CROSS REFERENCES

Duties of township clerk, notification to board of elections of vacancy in elective office, 507.051

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 249 to 254

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Vacancy
3. Appointment by trustees
4. Other appointments

1. In general

OAG 78-022. RC 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to RC 503.24, or from seeking that office in a nonpartisan election.

OAG 72-026. Where member of a board of township trustees resigns while his term has almost three years remaining, board is prohibited by public policy from appointing to the vacancy one of its present members whose term has less than one year to run, and where such invalid appointment has been made, the appointed trustee is a de facto officer and the acts of board as thus constituted are valid in so far as they affect the rights of the public and innocent third parties; but they are invalid as to a third party who is guilty of fraud, connivance or collusion with respect to the invalid appointment.

OAG 66-044. A person who has ceased to reside in the township, and is thereby disqualified from serving as township clerk, cannot be appointed to serve as deputy township clerk.

1950 OAG 1364. A special election is permitted to be held only when authorized by statute; there are no provisions for the holding of a special election for the offices of member of a board of educa-

tion and township trustee; such elections under the provisions of GC 4785-4 (RC 3501.02) are to be held in odd-numbered years.

1934 OAG 3352. The phrase "oldest commission" appearing in this section means the existing live commission of earliest date.

1934 OAG 3321. A justice of the peace having the oldest commission in a township may legally appoint his father as township trustee to fill the vacancy in such office created by the resignation of a township trustee, providing his father is a person capable of transacting the duties of township trustee and possesses the qualifications of an elector in the township.

2. Vacancy

OAG 66-155. When a vacancy in the office of township trustee occurred on November 19, 1965, by reason of the death of an incumbent who had been re-elected at the November 2, 1965 election, and where such vacancy for the term ending December 31, 1965, was filled by appointment under RC 503.24, there would be no vacancy in the office for the full term commencing January 1, 1966, and no new appointment is necessary, since the person appointed to the unexpired term would continue in office in accordance with RC 3.01 for the entire unexpired term ending December 31, 1967.

OAG 66-044. When a township clerk has ceased to reside in the township, it is mandatory for the township trustees to declare the office vacant, and the vacancy exists from the time the officer ceases to reside in the township, and not from the time the board of township trustees declares the office vacant.

1963 OAG 3519. Failure of a member of a board of township trustees to regularly attend the meetings of such board does not result in a vacancy in such office, but may be ground for removal of such township officer.

1957 OAG 243. Township trustees may appoint a deputy township clerk only if the township clerk's inability to perform the duties of the office is based on one or more of the reasons set forth in RC 507.02.

1946 OAG 764. Vacancy in office of township trustee is created when holder of that office removes himself from township in which he is an office holder with intention of remaining away from said township and of making some other township his legal residence but not when he moves to an adjoining township for temporary purposes only with intention of returning to township of which he is legal resident and an office holder.

1940 OAG 2419. Resignation of a township trustee when filed with the justice of peace of his township holding the oldest commission becomes effective when so filed and creates a vacancy which may be filled by such justice of the peace.

1939 OAG 820. In case of removal from township of person holding office of trustee in said township, question of whether or not such office shall be declared vacant depends entirely upon whether such removal was temporary or permanent; this is a question of fact which may be determined by a consideration of all circumstances surrounding removal of such trustee, and of true intention of trustee which may be ascertained from such circumstances.

1939 OAG 581. Permanent removal from township of a township clerk creates a vacancy in office of township clerk, which office must be filled by township trustees.

1931 OAG 3601. Temporary physical or mental incapacity of a township clerk, preventing him from performing his duties, does not vacate his office; however, absence from the office for more than a reasonable time, due to physical or mental incapacity, creates a vacancy to be filled by the township trustees.

3. Appointment by trustees

48 OS(2d) 239, 358 NE(2d) 537 (1976), State ex rel Purola v Cable. Where the de jure office of township trustee is held by a person who is at least a de facto member of the board of township trustees, and such de facto trustee combines his vote with the vote of a duly-elected de jure trustee to appoint a qualified person as a member of the board of trustees in order to fill a vacancy created by the resignation of a member of the board in accordance with RC 503.24, such appointee to the board is a de jure township trustee.

OAG 72-026. Where member of a board of township trustees resigns while his term has almost three years remaining, board is prohibited by public policy from appointing to the vacancy one of its present members whose term has less than one year to run, and where such invalid appointment has been made, the appointed trustee is a de facto officer and the acts of board as thus constituted are valid in so far as they affect the rights of the public and innocent third parties; but they are invalid as to a third party who is guilty of fraud, connivance or collusion with respect to the invalid appointment.

1962 OAG 3310. When a vacancy is found to exist under RC 503.241, the board of township trustees, if such board exists, must appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term within thirty days from time such vacancy actually occurs.

1960 OAG 1285. Where a vacancy occurs on a board of township trustees, the authority of the remaining members of the board to fill the vacancy for the unexpired term is limited to a period of thirty days after the occurrence of the vacancy.

1958 OAG 1651. Where a vacancy in the office of township trustee occurred in December, 1957, by reason of the death of an incumbent who had been re-elected at the November 5, 1957, election and where such vacancy for the term ending December 31, 1957, was not filled by appointment under the provisions of then existing RC 503.24, the vacancy in the office for the full term may be filled by the surviving members of the board of township trustees by appointment made within thirty days after January 1, 1958, as provided in RC 503.24 as amended effective January 1, 1958.

1931 OAG 3601. When a vacancy occurs in the office of township clerk, the township trustees are required to appoint a qualified elector to fill such vacancy.

4. Other appointments

4 OS(2d) 47, 212 NE(2d) 604 (1965), State ex rel Saxon v Kienzle. The sole remaining member of a board of township trustees may not act as the board or fill vacancies thereon, but a trustee appointed by the judge of the municipal court at the request of such member holds office validly.

1961 OAG 2063. When a vacancy occurs on a board of township trustees of a township located in a county court district, and the board does not fill the vacancy within thirty days after it occurs, the vacancy should be filled by the county court of the county, and in a county court district having more than one county court judge such a vacancy must be filled by a majority of all of the judges of the court, and may not be filled by the judge having territorial jurisdiction in the township in which the vacancy occurred.

1957 OAG 607. If no justice of the peace in a township has received a commission and thus none is eligible to make an appointment to fill an unexpired term of a township trustee, there is no justice of the peace in such township for the purposes of RC 503.24, and the power to make such an appointment devolves upon the presiding municipal judge or probate judge.

1956 OAG 7411. A justice of the peace having appointive power under RC 503.24 may not appoint himself as township trustee.

1956 OAG 6449. A justice of the peace may fill a vacancy on the board of township trustees only in the township in which he is elected and where he resides, and if the township is subject to the civil jurisdiction of a justice elected in and resident in another township, the vacancy should be filled by the probate judge.

1945 OAG 156. After a vacancy occurs in office of justice of the peace by absence of the incumbent for six months, any legal authority that such incumbent may have had to fill a vacancy in board of township trustees ceases, and the remaining justice of the peace holding the oldest commission may fill the vacancy existing in the township board.

1939 OAG 581. In absence of statutory authority, township clerk may not appoint an assistant or deputy clerk to perform official duties imposed by law upon such office.

1936 OAG 5171. Where two justices of the peace were elected at the same time for terms to commence on the first day of January of the next year, but the commissions from the governor of Ohio bear different dates, the justice of the peace holding the commission bearing the earlier date is authorized to appoint a suitable person to fill a vacancy on the board of trustees of such township.

1933 OAG 846. Where two justices of the peace were appointed by the township trustees of a township under authority of this section, on the same day, but received their commissions from the governor of Ohio at different times, and consequently qualified on different dates, the justice of the peace holding the commission bearing the earlier date is authorized to appoint a suitable person to fill a vacancy on the board of trustees of such township in accordance with the terms of GC 3262 (RC 503.24).

1932 OAG 4080. Where a member of a board of trustees of a township dies shortly before the beginning of a new term to which he had been elected, and a qualified elector in the township is appointed to fill the vacancy for the unexpired term in the manner provided by law, neither such appointee, nor a member of said board of trustees, who was defeated for re-election, is entitled to hold over after the expiration of the old term of said deceased member until a successor to him is elected and qualified; in such a situation, the justice of the peace holding the oldest commission in the township, should appoint a qualified elector in the township to fill the vacancy for the new term of the deceased member.

1931 OAG 3601. There is no provision in the statutes permitting the temporary appointment of a person to transact the duties of a township clerk, while said clerk is absent from his office, due to physical or mental incapacity.

505.01 Board of township trustees; election and term

In each township there shall be a board of township trustees consisting of three members. Two of such trustees shall be elected at the general election in nineteen forty-nine and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after their election. The third trustee shall be elected at the general election in nineteen fifty-one and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after his election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3268

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.02, 11.04, 13.01, 13.02; Forms 1.08

CROSS REFERENCES

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 353, 390; 75, Police, Sheriffs, and Related Officers § 22

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 140 to 192

NOTES ON DECISIONS AND OPINIONS

4 App 260, 22 CC(NS) 254 (1915), Case v Burrell. GC 8 (RC 3.01) which provides that a public officer continues until his successor is qualified controls GC 3268 (RC 505.01) as to the terms of township trustees, as does also O Const Art IV, § 10; and where the terms of township trustees expired at midnight but their successors did not qualify for several days, their establishment of a ditch next day and levying an assessment are acts of a de jure board.

39 Misc(2d) 8, 530 NE(2d) 973 (CP, Summit 1985), Esler v Summit County. The positions of nonpartisan township trustee and chief building inspector of the county within which the township is located are compatible.

478 US 30, 106 SCt 2752, 92 LEd(2d) 25 (1986), Thornburg v Gingles. As amended in 1982, 42 USC 1973 outlaws state voting standards, practices, or procedures that are not "equally open to participation by members of a [protected class] . . . in that its members have less opportunity . . . to elect representatives of their choice," even where no intent to discriminate is shown; where a legislative body is elected in multimember districts a minority group will prove its votes were illegally diluted by showing, (1) the minority is of such size and location that it would be a majority in one single-member district, (2) a significant portion of the minority supports the same candidates, and (3) the white majority votes so as to defeat the minority's choice absent special circumstances. (Ed. note: North Carolina law construed in light of federal statute.)

OAG 90-083. The positions of city school district board of education member and trustee of a township located within such district are incompatible; a member of such board of education impliedly resigns from that position when he subsequently is elected and qualified as a trustee of a township located within such district.

OAG 89-101. The positions of superintendent of a county school district with more than one local school district and trustee of a township located within such county school district are incompatible.

OAG 88-049. An assistant prosecuting attorney may not serve upon a board of township trustees for which the prosecuting attorney acts as legal adviser and counsel pursuant to the terms of RC 309.09(A).

OAG 88-033. The positions of township trustee and county park district commissioner are incompatible.

OAG 88-020. A township trustee who is not elected to that office in a partisan election may also be employed as a truck driver in the classified service of the county highway department.

OAG 86-059. The positions of township trustee and maintenance man for a village are compatible, but the township trustee may not participate in negotiating or voting upon contracts between the board of township trustees and the village.

OAG 85-080. The office of township trustee is compatible with the position of equipment operator in the Ohio department of transportation, provided that the township in question has neither railroad grade crossings nor municipal corporations within its boundaries, and further provided that the township trustee is elected in a nonpartisan election.

OAG 85-074. An individual may not serve as both township trustee and county zoning inspector within the same county if the county zoning plan includes territory within the unincorporated area of the township.

OAG 85-006. The offices of member of the board of education of a local school district and trustee of a township which is located within the school district are incompatible.

OAG 84-059. The positions of township trustee and trustee of a regional water and sewer district established pursuant to RC Ch 6119 are incompatible.

OAG 83-051. The bailiff of a municipal court which has county-wide jurisdiction may also serve as a township trustee within the same county.

OAG 83-016. If it is physically possible for one person to hold both positions and if the holding of both positions is not prohibited by local law, the positions of township trustee and member of a county board of education are compatible.

OAG 80-035. An individual may simultaneously hold the office of township trustee and that of trustee of a technical college district.

OAG 77-082. O Const Art II, § 20, prohibits any increase in per diem payments to a township trustee that results from legislative action taken during such trustee's existing term in office.

OAG 73-102. A board of township trustees has no authority to use public funds to support the program of a federally funded private, nonprofit corporation which provides social services for senior citizens, styled a council on aging.

OAG 73-035. The offices of township trustee and juvenile probation officer are compatible.

OAG 70-137. Office of township trustee is compatible with that of secretary of conservancy district.

OAG 69-167. The office of township trustee and member of the board of a county health department are incompatible.

OAG 69-084. One may be a member of a private, nonprofit corporate board and also a member of a board of township trustees that deals infrequently with such private nonprofit corporation, if that member does not participate in the resolution of problems concerning that corporation.

OAG 66-169. The offices of township trustee and finance director of a municipality within the same county are incompatible.

OAG 66-060. The position of member of the board of education of a local school district and the position of township trustee of a township within that local school district are incompatible.

OAG 65-70. All three township trustees must be present actually or must be notified and given opportunity to be present to constitute a quorum, but a majority of the board of township trustees must be physically present to transact business.

1963 OAG 39. The position of member of a municipal civil service commission is not incompatible with the office of member of a board of township trustees.

1962 OAG 2879. The elective position of township trustee is incompatible with the positions of county dog warden and deputy county dog warden, said positions of county dog warden and deputy county dog warden being in the classified civil service of the county.

1961 OAG 2311. The positions of township trustee and deputy sheriff are incompatible.

1961 OAG 2310. The positions of township trustee and janitor in a state highway patrol system are incompatible.

1960 OAG 1209. One person may simultaneously hold the positions of county attendance officer of a county board of education and township trustee within the same county, provided it is physically possible to perform the duties of both positions.

1959 OAG 602; modified by OAG 85-080. The office of township trustee is incompatible with the position of state highway department employee whether the latter position be in the classified or unclassified service of the state highway department.

1959 OAG 386. The office of township trustee is incompatible with that of county civil defense director.

1959 OAG 223; overruled by OAG 88-020. The elective position of township trustee is incompatible with the position of county highway department employee whether the latter position be in the classified or unclassified service of the county.

1959 OAG 223; overruled by OAG 88-020. The elective position of township trustee and the position of county probation officer are not compatible.

1958 OAG 2202. The positions of township trustee and clerk of a local school board are incompatible.

1955 OAG 5565. The offices of township trustee and director of public safety in a city located in the township are compatible.

1941 OAG 4664. Offices of township trustee and village marshal are compatible and can be lawfully held simultaneously by one and the same person, unless it is physically impossible for one person to discharge the duties of both offices.

1939 OAG 1575. Offices of township trustee and a member of the board of park commissioners of a township created under the provisions of GC 3415 (RC 511.18) et seq., are incompatible.

1935 OAG 4284. The offices of township trustee and member of the board of a general health district are incompatible.

505.37 Fire regulations; purchase of fire-fighting equipment; establishment of fire districts; additional territory added to district; tax levied; withdrawal of municipal corporation from district; removal of territory from district; issuance of four-year notes; appropriation of land for fire station; licensing of emergency medical service

(A) The board of township trustees may establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board. The board shall provide for the care and maintenance of fire equipment, and, for such purposes, may purchase, lease, or construct and maintain necessary buildings, and it may establish and maintain lines of fire-alarm communications within the limits of the township. The board may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of fire-fighting equipment. The board may compensate the members of a volunteer fire company on any basis and in any amount that it considers equitable.

(B) The boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.42 of the Revised Code, and may prorate the expense of the joint action on any terms that are mutually agreed upon.

(C) The board of township trustees of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, create a fire district of any portions of the township that it considers necessary. The board may purchase or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for the fire protection for the fire district as provided in section 9.60 of the Revised Code. The fire district so created shall be given a separate name by which it shall be known.

Additional unincorporated territory of the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition. A municipal corporation that is within or adjoining the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition and the municipal legislative authority's adoption of a resolution or ordinance requesting the addition of the municipal corporation to the fire district.

If the township fire district imposes a tax, additional unincorporated territory of the township or a municipal corporation that is within or adjoining the township shall become part of the fire district only after all of the following have occurred:

(1) Adoption by the board of township trustees of a resolution approving the expansion of the territorial limits of the district and, if the resolution proposes to add a municipal corporation, adoption by the municipal legisla-

tive authority of a resolution or ordinance requesting the addition of the municipal corporation to the district;

(2) Adoption by the board of township trustees of a resolution recommending the extension of the tax to the additional territory;

(3) Approval of the tax by the electors of the territory proposed for addition to the district.

Each resolution of the board adopted under division (C)(2) of this section shall state the name of the fire district, a description of the territory to be added, and the rate and termination date of the tax, which shall be the rate and termination date of the tax currently in effect in the fire district.

The board of trustees shall certify each resolution adopted under division (C)(2) of this section to the board of elections in accordance with section 5705.19 of the Revised Code. The election required under division (C)(3) of this section shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.25 of the Revised Code, except that the question appearing on the ballot shall read:

"Shall the territory within _____
(description of the proposed territory to be added)
be added to _____ fire district,
(name)
and a property tax at a rate of taxation not exceeding _____ (here insert tax rate) be in effect for ____ (here insert the number of years the tax is to be in effect or "a continuing period of time," as applicable)?"

If the question is approved by at least a majority of the electors voting on it, the joinder shall be effective as of the first day of July of the year following approval, and on that date, the township fire district tax shall be extended to the taxable property within the territory that has been added. If the territory that has been added is a municipal corporation and if it had adopted a tax levy for fire purposes, the levy is terminated on the effective date of the joinder.

Any municipal corporation may withdraw from a township fire district created under division (C) of this section by the adoption by the municipal legislative authority of a resolution or ordinance ordering withdrawal. On the first day of July of the year following the adoption of the resolution or ordinance of withdrawal, the municipal corporation withdrawing ceases to be a part of such district and the power of the fire district to levy a tax upon taxable property in the withdrawing municipal corporation terminates, except that the fire district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the fire district as it was composed at the time the indebtedness was incurred.

Upon the withdrawal of any municipal corporation from a township fire district created under division (C) of this section, the county auditor shall ascertain, apportion, and order a division of the funds on hand, moneys and taxes in the process of collection except for taxes levied for the payment of indebtedness, credits, and real and personal property, either in money or in kind, on the basis of the valuation of the respective tax duplicates of the withdrawing municipal corporation and the remaining territory of the fire district.

A board of township trustees may remove unincorporated territory of the township from the fire district upon the adoption of a resolution authorizing the removal. On the first day of July of the year following the adoption of such a resolution, the unincorporated township territory described in the resolution ceases to be a part of such district and the power of the fire district to levy a tax upon taxable property in that territory terminates, except that the fire district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the fire district as it was composed at the time the indebtedness was incurred.

(D) The board of township trustees of any township, the board of fire district trustees of a fire district created under section 505.371 of the Revised Code, or the legislative authority of any municipal corporation may purchase the necessary fire-fighting equipment, buildings, and sites for the township, fire district, or municipal corporation and pay for it over a period of nine years. The board of township trustees, board of fire district trustees, or legislative authority may also construct any buildings necessary to house fire-fighting equipment and pay for the buildings over a period of nine years. The board of township trustees, board of fire district trustees, or legislative authority may issue the notes of the township, fire district, or municipal corporation, signed by the board or designated officer of the municipal corporation and attested by the signature of the township, fire district, or municipal clerk, covering such deferred payments and payable at the times provided, which notes shall bear interest not to exceed the rate determined as provided in section 9.95 of the Revised Code, and shall not be subject to Chapter 133. of the Revised Code. The legislation authorizing the issuance of the notes shall provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the notes. At least one-ninth of the purchase price or construction cost shall be paid in cash at the time of purchase as provided in the contract and the remainder of the purchase price or construction cost shall be paid in not more than eight equal annual installments. Each installment shall be not less than one-eighth of the deferred portion of the purchase price or construction cost and shall be secured by a note which may contain a clause permitting prepayment at the option of the board or legislative authority. The notes shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

(E) A board of township trustees of any township or a board of fire district trustees of a fire district created under section 505.371 of the Revised Code may purchase a policy or policies of liability insurance for the officers, employees, and appointees of the fire department, fire district, or joint fire district governed by the board that includes personal injury liability coverage as to the civil liability of such officers, employees, and appointees for false arrest, detention, or imprisonment, malicious prosecution, libel, slander, defamation or other violation of the right of privacy, wrongful entry or eviction, or other invasion of the right of private occupancy, arising out of the performance of their duties.

When a board of township trustees cannot, by deed of gift or by purchase and upon terms it considers reasonable, procure land for a township fire station that is needed in order to respond in reasonable time to a fire or medical emergency, the board may appropriate such land for that purpose under sections 163.01 to 163.22 of the Revised Code. If it is necessary to acquire additional adjacent land for enlarging or improving the fire station, the board may purchase, appropriate, or accept a deed of gift for the land for these purposes.

(F) A board of township trustees, by adoption of an appropriate resolution, may choose to have the Ohio ambu-

lance licensing board license any emergency medical service it operates. If the board adopts such a resolution, sections 3303.51 to 3303.55 and 3303.57 to 3303.62 of the Revised Code and all rules adopted under those sections are applicable to the township medical service. A board of township trustees, by adoption of an appropriate resolution, may remove its emergency medical service from the jurisdiction of the Ohio ambulance licensing board.

HISTORY: 1990 H 664, eff. 1-9-91
1990 H 319; 1989 H 230; 1987 H 432; 1984 H 451; 1982 H 148; 1981 H 76, H 95; 1980 S 98; 1979 H 275; 1969 S 245; 130 v Pt 2, H 5; 130 v S 69; 129 v 1817, 1437; 126 v 106; 1953 H 1; GC 3298-54

Note: A special endorsement by the Legislative Service Commission states, "Comparison of these amendments [1990 H 664, eff. 1-9-91 and 1990 H 319, eff. 7-2-90] in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment." In accordance with this endorsement, changes made by 1990 H 664, eff. 1-9-91 and 1990 H 319, eff. 7-2-90 have been incorporated in the above amendment. See *Baldwin's Ohio Legislative Service*, 1990 Laws of Ohio, pages 5-1142 and 5-198, for original versions of these Acts.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

Baldwin's Ohio Township Law, Text 11.15, 11.18, 19.03, 35.02, 35.08, 35.09, 35.12, 35.13, 35.39, 35.41, 35.42, 39.13, 67.01, 67.07, 75.01, 75.04, 75.06, 75.07, 75.14; Forms 13.01, 13.02

CROSS REFERENCES

1984 BOCA fire prevention code, as amended by Ohio fire marshal, OAC Ch 1301:7-7

Intergovernmental firefighting agreement, 9.60

City fire department, 737.08 et seq.

Township fire departments, authority to enter and inspect premises and vehicles at reasonable times, 3737.14

Fire department may request insurance company fire investigation information, 3737.16

Fire code shall not concern fire department structure or organization, 3737.84

Workers' compensation for handicapped employees, fire fighter with cardiovascular, pulmonary, or respiratory disease considered handicapped, 4123.343

Emergency and fire protection vehicles and equipment, sales tax exemption, 5739.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 362, 365, 368, 370, 389, 392, 393

Am Jur 2d: 35, Fires § 2 to 4; 56, Municipal Corporations, Counties, and Other Political Subdivisions § 13, 133, 196, 452 to 456

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Regulations
3. Equipment
4. Personnel
5. Joint action
6. Financing
7. Ambulance service

1. In general

OAG 90-048. A fire district or joint fire district may be created under RC 505.37 or 505.371. Only residents of the district are entitled to vote on, and benefit from, a district tax for fire protection, which is to be levied throughout the district.

OAG 89-028. A township which provides an emergency rescue service throughout its territory is required to furnish such rescue services to an institution of the rehabilitation and correction department located within the township territory.

OAG 88-074. When a village becomes part of a township fire district pursuant to RC 505.37(C), the township fire district is governed by the board of township trustees, the township clerk is responsible for keeping the records for the district, and legal questions may be addressed to the county prosecutor or other legal counsel for the township.

OAG 88-074. When a board of township trustees and the legislative authority of a village agree pursuant to RC 505.37(B) to undertake joint action to provide fire protection services or facilities, or contract pursuant to RC 9.60 to provide or obtain fire protection services, apparatus, or equipment, each participant must perform the tasks that relate to its duties under the agreement, and each may call upon its own legal counsel for advice; the participants may allocate duties of recordkeeping relating to the joint activity or contractual relationship in such manner as they see fit.

OAG 87-040. A township that chooses to provide fire protection without the creation of one or more fire districts cannot exclude portions of the township from the area to which fire protection is provided. Such a township must provide fire protection to persons traveling on portions of the Ohio turnpike that are included within the township.

OAG 85-071. A county prosecuting attorney is not, under RC 309.09, legal adviser to a joint fire district organized pursuant to RC 505.37 and RC 505.371.

OAG 85-071. A county prosecuting attorney has a duty to act as legal adviser to a township trustee who serves as a representative to a board of fire district trustees on matters relating to the activities of the joint fire district which arise from such individual's position as township trustee.

OAG 85-071. The board of fire district trustees of a joint fire district may employ such legal counsel as is necessary for the performance of its functions.

OAG 84-050. A board of township trustees may not use a bank credit card to defer all or part of the purchase price or create an installment payment plan for the purchase of supplies, materials, machinery, tools, parts, or equipment purchased pursuant to RC 505.37, RC 5549.04, or RC 5549.21.

OAG 84-050. A board of township trustees may use a bank credit card to purchase supplies, materials, machinery, tools, parts, or equipment pursuant to RC 505.37, RC 5549.04, or RC 5549.21 so long as the board duly authorizes such expenditure pursuant to RC 507.11, the township clerk certifies the existence of sufficient unencumbered funds to pay for such expenditure where such certificate is required under RC 5705.41(D), and the expenditure otherwise conforms with law.

1963 OAG 167. RC 505.37, RC 5705.29, RC 5705.31, RC 5705.41 and RC 5705.411 are in pari materia.

1957 OAG 1238. RC Ch 3310 does not apply to political subdivisions which maintain no fire departments of their own but which merely contract with a voluntary fire company or another political subdivision having a fire department for fire protection services.

1957 OAG 515. Township trustees may create two separate fire districts in a single township and may enter into a contract with one fire department for the protection of one fire district and a second for the other, and may levy taxes at different rates in the two districts.

1957 OAG 515. The revision of RC 505.37 in the 1953 recodification to delete the words "or districts" did not change the law.

1951 OAG 2692. Township trustees are not authorized to create a fire district in a township in which no municipality or part thereof is located.

2. Regulations

OAG 86-058. Pursuant to RC 505.37, a board of township trustees may establish regulations authorizing the use of water procured under authority of that statute to protect the property and lives of citizens against damages and accidents in emergency situations. Whether a particular situation constitutes an emergency is a determination to be made by the board of township trustees.

1963 OAG 408. A board of township trustees may establish a regulation requiring members of the township fire department to be resident within the township.

1963 OAG 408. There is no provision under which a referendum vote may be compelled on the subject of a fire regulation adopted by a board of township trustees under authority of RC 505.37.

3. Equipment

OAG 82-024. A board of county commissioners may not purchase firefighting equipment for the use of other political subdivisions, except as authorized under RC 505.37.

1962 OAG 3066. Township trustees may furnish and deliver water of the township fire department to private citizens to protect the property and lives of such citizens where drought or other causes have resulted in an emergency situation, but may not charge a fee for its services.

1958 OAG 2341. Township trustees have authority to sell a water line constructed for fire protection upon a resolution that such water line is not needed; but such sale must be by auction, and pursuant to publication of notice; in the absence of any bond issue for such improvement, the proceeds of such sale should be paid into a special fund of such fire district for the construction or acquisition of permanent improvements.

1957 OAG 153. Where a board of township trustees creates a fire district from part of a township, and purchases a fire truck to serve such fire district, the subsequent annexation of territory, including all of the fire district, to a municipal corporation does not give such municipal corporation any right of ownership in such fire truck.

1956 OAG 6909. A board of township trustees may expend public funds upon the construction of a fire house when the land on which the building is to be erected is held under a long term lease extending or renewable for the expected life of the building.

1956 OAG 6541. Funds derived from a township tax levy for fire protection purposes may be used to obtain fire hydrants and water supply for fire-fighting purposes although such hydrants and water supply will benefit only a portion of the township.

1956 OAG 6541. The authority of a board of township trustees to establish or procure water lines and to provide a water supply within the township concerned extends only to the provision of such water supply as is necessary for fire-fighting purposes.

1953 OAG 2839. Where it is anticipated that the cost of constructing a township firehouse will be many times in excess of $1,000, the trustees may not split such project into a number of smaller contracts so as to avoid the necessity of complying with the statutory requirements of competitive bidding.

1952 OAG 1665. A township has authority to receive federal grants for the purpose of providing fire-fighting equipment for civil defense, and may use such grants in connection with its own funds for such purpose, and may use its equipment in cooperation with civil defense organizations in case of enemy attack.

1951 OAG 276. Township trustees do not have the power to appropriate land for the purpose of erecting a building thereon to store fire equipment.

1946 OAG 1423. Authority given to township trustees to establish and maintain lines of fire alarm telegraph within limits of a township would include establishment of short wave radio equipment, by which fire calls could be transmitted to homes of volunteer firemen.

1934 OAG 3527. A board of township trustees has no authority to expend township funds to lay water lines and construct dams to impound water for fire protection purposes.

1931 OAG 3854. The statutes do not authorize the installation, by a board of township trustees, of a reservoir and water lines for providing a supply of water for fire protection.

4. Personnel

OAG 86-059. Pursuant to RC 505.011, a member of a board of township trustees may be a member of a private fire company that has entered into an agreement to furnish fire protection for the township, provided that he receives no compensation as a volunteer fireman.

OAG 86-059. A township trustee who serves, without compensation, as a member of a private fire company may, under RC 505.011, participate, in his capacity as trustee, in negotiating and voting upon contracts between the township and the private fire company; the fact that the trustee's adult son is also a member of the private fire company does not affect this conclusion.

OAG 86-014. A board of township trustees has the authority to appoint a "fire safety inspector" as defined in RC 3737.01(C).

1962 OAG 2785. Members of a private fire company which has contracted to provide fire services to a township, have implied authority to enter onto private property in performing their duties at the scene of a fire, but when in performing such duties damage is caused to private property, the liability of such members in not limited by RC 701.02.

1960 OAG 1166. A member of a board of township trustees may not be employed by the township to maintain and operate firefighting equipment and may not serve on a volunteer fire department which has entered into an agreement with the township to furnish fire protection, as such employment is incompatible with the office of member of a board of township trustees.

1956 OAG 7112. The township trustees may appoint a fire chief in each township or fire district in which a fire department has been established, but may not appoint an over-all fire chief for two or more districts or a chief or a volunteer private fire company with which it has contracted for fire protection.

1949 OAG 1188. Members of a volunteer fire department, who are employed under contract by a township are deemed township employees under GC 3298-57 (RC 505.41).

1934 OAG 2319. Township trustees of a township may legally provide for a reasonable fee to be paid volunteer firemen of the township who attend practice meetings of a volunteer fire company, for their time consumed at such meetings.

1931 OAG 3859. Board of township trustees may not legally spend money for the purpose of purchasing group insurance for the members of the volunteer fire department.

5. Joint action

52 Misc 101, 369 NE(2d) 819 (CP, Franklin 1977), In re Termeer. RC 505.371 is constitutional, and two or more individual townships, as well as one or more municipal corporations, may unite to create a joint fire district, having the power to conduct quasi-judicial proceedings on disciplinary matters.

OAG 88-074. When a board of township trustees and the legislative authority of a village agree pursuant to RC 505.37(B) to jointly provide fire protection services or facilities or contract pursuant to RC 9.60 to provide or obtain fire protection services, apparatus, or equipment, each party must perform the tasks that relate to its duties under the agreement, each may call upon its own legal counsel for advice, and the parties may allocate duties of record keeping in such manner as they see fit.

OAG 69-014. Township trustees may create a fire district covering the entire township, including a municipal corporation within the limits of such township, and the trustees and the council of the village may combine to buy necessary fire equipment, with the township trustees passing a levy for the purpose of purchasing such equipment.

OAG 66-114. A township fire department has the primary responsibility to fight fires within the township or in any subdivision which the township trustees have agreed to protect, notwithstanding that such fire may be in connection with a vehicle traveling on a limited access highway to which no convenient entrance

may be made within said township or protected subdivision, but agreements or contracts may be made, by the township or the protected subdivision, with other subdivisions whose fire-fighting facilities could more easily enter the limited access highway and reach the fire in the said township or protected subdivision; while a subdivision with convenient access to the highway may extend its fire-fighting services via the highway to the site of a fire in a neighboring township, there does not seem to be any duty to do so.

1963 OAG 16. A board of county commissioners may establish and operate a base radio station to receive and transmit official fire activity messages from and to the fire departments of political subdivisions in the county which operate fire departments and which may care to join in such network, provided that agreements are entered into between the county and the political subdivisions involved.

1958 OAG 3150. Where a township has joined with a city to purchase real property and thereafter the township and city shared the expense of constructing a fire station on such property, the township may sell its interest in such property either by public auction or by conveyance to the city in which the property is located.

1958 OAG 1696. Application of RC Ch 3310 to township and village which have entered into an agreement for joint action in the maintenance and operation of a fire department discussed.

1953 OAG 3054. Where neither township "A" nor township "B" houses a fire department, but participates with township "C" and village "X" (located within township "C"), in the joint purchase and maintenance of fire-fighting equipment housed within village "X" and operated by volunteer firemen from village "X" and township "C," for the protection of townships "A," "B," and "C" and village "X," neither township "A" nor township "B" is a township "having and maintaining therein a fire department," and the township trustees of townships "A" and "B" may, by contract, provide for reimbursement of township "C" for any pension or indemnity award assessed against township "C" for injuries or death of a fire department member.

1953 OAG 2459. Township trustees are not authorized to contract with a fire district comprising only a part of the township for fire protection for areas within the township but not within the district.

1951 OAG 2692. The only authority of township trustees to provide fire protection services to a township whereby separate portions thereof will be serviced by the facilities of different municipalities is that contained in this section.

1949 OAG 763. Township trustees, after creating fire district, may enter into contract with volunteer fire department which owns its own apparatus for fire protection for entire township exclusive of municipal corporation.

1948 OAG 3957. The trustees of a township who have established a fire district in a portion of their township are without authority to contract on behalf of such fire district for the services of the fire department of said township, but may make such contract with a municipality located in such township or with another political subdivision.

1945 OAG 231. Board of trustees of a township in which a fire district has been created may on behalf of such fire district enter into an agreement with another township or a municipality for the joint purchase, maintenance, use and operation of fire-fighting facilities, the portion of the expense thereof belonging to such district to be provided by a tax levied on the property in such district.

1945 OAG 231. Board of trustees of a township in which there is a municipal corporation may create one or more fire districts out of township not included within the corporate limits of such municipality, but there is no authority for creation of fire district comprising parts of two or more townships or including a municipality.

1944 OAG 6682. Trustees of township are without authority to contract with municipality for furnishing by such municipality of fire protection exclusively to public school buildings located within such township.

1940 OAG 2520. Township and a village cooperating in purchase of fire fighting equipment may not vote jointly as a unit upon the question of issuing bonds to finance the purchase of such equipment.

1930 OAG 2129. Several townships may not legally jointly own fire equipment for the mutual protection of the residents of such townships.

1928 OAG 2955. Township trustees may pay for the use of a fire department maintained by a neighboring political subdivision at an agreed price per year or per month, or for each fire as it occurs.

6. Financing

OAG 76-057; overruled in part by OAG 88-042. A metropolitan park district, organized and existing under RC Ch 1545, may pay for fire protection provided by a township within which one of its parks is located.

OAG 69-014. Township trustees may create a fire district covering the entire township, including a municipal corporation within the limits of such township, and the trustees and the council of the village may combine to buy necessary fire equipment, with the township trustees passing a levy for the purpose of purchasing such equipment.

1963 OAG 3533. Notes of a township issued by a board of township trustees under RC 505.37 may be offered for sale by the board to a bank by private negotiations with the bank, as such an offer would constitute an offer for sale on the open market within the purview of that section of law.

1963 OAG 166. Legislation adopted by a board of township trustees for the issuance of notes pursuant to RC 505.37 must also provide for levying and collecting annually by taxation amounts sufficient to pay the interest on and principal of such notes; but the amount necessary to be levied for such purpose is to be determined by the taxing officials at the time the levy is made, after taking into consideration other funds lawfully available to retire such notes.

1962 OAG 3385. A board of township trustees may not borrow money and issue a note therefor under RC 505.37 where the money is to be used to construct a building to house fire equipment, as the issuance of such notes is limited to cases where there is a "purchase" made from a "vendor"; and the construction of a building would necessarily entail some costs not involving purchases, and purchases involving more than one vendor.

1962 OAG 3385. Notes issued under RC 505.37 by a board of township trustees in the purchase of fire-fighting equipment, buildings, and sites for buildings must be offered for sale on the open market or given to the vendor if no sale is made, and the board may not deal directly with a bank, to the exclusion of others, in the issuance of such notes.

1962 OAG 3145. A board of township trustees may issue notes to cover deferred payments for the cost of remodeling the township firehouse, but the legislation authorizing the issuance of such notes must provide for a tax levy sufficient to pay the interest on and principal of such notes, and the proceeds of a tax levy previously adopted pursuant to RC 5705.19 may not be used for this purpose. (Modified by 1963 OAG 166.)

1962 OAG 3145. Where a board of township trustees elects to issue notes under RC 505.37, a certificate of the fiscal officer as required by RC 5705.41 must be obtained.

1961 OAG 2595. RC 505.37 authorizes a board of township trustees to purchase or construct the necessary buildings and sites for the maintenance and protection of fire-fighting equipment and to finance such purchase over a four year period by the issuance of notes.

1956 OAG 6609. Moneys in the general fund of a township may lawfully be expended in meeting a portion of the contract cost of constructing lines of fire alarm telegraph even though a special levy outside the ten-mill limitation has been approved by the township electors to raise funds for such purpose.

1954 OAG 4093. Township trustees and a village council may jointly construct a fire station out of a voted township bond issue

and general funds of the village without submitting such issue to an election.

1953 OAG 2839. A board of township trustees is without authority to let a contract for the construction of a firehouse unless a certificate as to the present availability of funds therefor can be supplied.

1952 OAG 1665. A township has authority to receive federal grants for the purpose of providing fire-fighting equipment for civil defense, and may use such grants in connection with its own funds for such purpose, and may use its equipment in cooperation with civil defense organizations in case of enemy attack.

1952 OAG 1415. Four year notes for the purchase of fire-fighting equipment cannot be issued to purchase land and buildings to maintain the equipment.

1952 OAG 1101. Township trustees may create one or more fire districts within the township, provide fire-fighting equipment, levy a tax therefor, and issue bonds up to $20,000 upon approval by the voters.

1952 OAG 1101. A fire district is a subdivision within the scope of the uniform tax levy law and the township trustees may submit to the voters a levy in excess of the ten-mill limitation.

1949 OAG 468. Notes of a township issued by township trustees for purchase of fire-fighting equipment are not required to be advertised or offered for public sale.

1947 OAG 2059. Cost of fire-fighting equipment purchased on deferred payment plan may not exceed $10,000.

1945 OAG 231. There is no authority in law for submitting to the voters of a fire district proposition to levy a tax upon the property of such district for the purpose of affording it fire protection.

1939 OAG 1350. Board of township trustees of a township may provide water main for fire protection purposes from moneys in the general fund of the township not otherwise appropriated, even though the township has not made a specific levy for such purpose.

1932 OAG 4354. Where bonds are issued by the trustees of a township, in which an incorporated village is located, for the purposes of providing fire apparatus or appliances, or buildings or sites therefor, the levy annually of a tax on all the taxable property of such township for the purpose of paying the interest and providing a sinking fund for the redemption at maturity of such bonds includes the taxable property within such village.

7. Ambulance service

OAG 90-078. An individual employed by a township as a paramedic, pursuant to RC 505.37, may operate, in his private capacity, a paramedic service, but such individual, pursuant to RC 511.13, may not enter into a contract to provide ambulance services or emergency medical services to the township employing him as a paramedic.

OAG 69-123. A board of township trustees may utilize funds acquired under RC 505.39 and RC 5705.19(I) for the purpose of furnishing ambulance service to its citizens, and such funds may be used when the service is furnished directly through the township fire department under RC 505.37 or indirectly by contract under RC 505.443.

OAG 69-038. A fire department, volunteer or hired, maintained by a township may operate an ambulance purchased under authority of RC 505.37 to protect property and lives against damages and accidents, and such use is not limited to emergency situations in conjunction with fire protection.

1963 OAG 560. Township trustees may only acquire and operate or contract for the operation of "life squads" or rescue vehicles when they are used by fire departments, volunteer or hired, in conjunction with fire protection.

1962 OAG 3332. A board of township trustees may acquire and operate an ambulance for the purpose of protecting property and lives against damages and accidents.

1953 OAG 2416. Township trustees are authorized to protect property and lives against damages and accidents and to acquire and operate emergency vehicles or rescue cars for such purposes, and may enter into an agreement with a voluntary fire company for the operation of any such equipment.

ANNOTATIONS FROM FORMER ANALOGOUS SECTION

505.42 OPERATION OF FIRE-FIGHTING EQUIPMENT

OAG 67-007. A township may purchase liability insurance to cover volunteer firemen in the operation of their personal automobiles, while such operation is in behalf of the township, and in the course of its business.

1962 OAG 2785. Members of a private fire company which has contracted to provide fire services to a township, have implied authority to enter onto private property in performing their duties at the scene of a fire, but when in performing such duties damage is caused to private property, the liability of such members is not limited by RC 701.02.

505.48 Township police district; composition; territorial limits; additions to district imposing tax

(A) The board of township trustees of any township may, by resolution adopted by two-thirds of the members of the board, create a township police district comprised of all or a portion of the unincorporated territory of the township as the resolution may specify. If the township police district does not include all of the unincorporated territory of the township, the resolution creating the township police district shall contain a complete and accurate description of the territory of the district. The territorial limits of the township police district may be altered by a resolution adopted by a two-thirds vote of the board of township trustees at any time one hundred twenty days or more after the district has been created and is operative. If the township police district imposes a tax, any territory proposed for addition to the district shall become part of the district only after all of the following have occurred:

(1) Adoption by two-thirds vote of the board of township trustees of a resolution approving the expansion of the territorial limits of the district;

(2) Adoption by a two-thirds vote of the board of township trustees of a resolution recommending the extension of the tax to the additional territory;

(3) Approval of the tax by the electors of the territory proposed for addition to the district.

Each resolution of the board adopted under division (A)(2) of this section shall state the name of the police district, a description of the territory to be added, and the rate and termination date of the tax, which shall be the rate and termination date of the tax currently in effect in the police district.

(B) The board of trustees shall certify each resolution adopted under division (A)(2) of this section to the board of elections in accordance with section 5705.19 of the Revised Code. The election required under division (A)(3) of this section shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.25 of the Revised Code, except that the question appearing on the ballot shall read:

"Shall the territory within _____

(Description of the proposed territory to be added) be added to _____ (name) township police district, and a property tax at a rate of taxation not exceeding _____ (here insert tax rate) be in effect for _____ (here insert the number of years the tax is to be in effect or "a continuing period of time," as applicable)?" If the question is approved by at least a majority of the electors voting

on it, the joinder shall be effective as of the first day of January of the year following approval, and on that date, the township police district tax shall be extended to the taxable property within the territory that has been added.

A township police district comprising only a part of the unincorporated territory of the township shall be given a separate and distinct name in the resolution authorizing its creation.

HISTORY: 1986 H 743, eff. 3-10-87
130 v H 744

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.15, 21.01, 21.03, 21.25, 21.251, 21.35, 35.03, 99.02, 99.03; Forms 13.08

CROSS REFERENCES

Uniform bond law, subdivision defined, 133.01
Limited self-government townships, police, 504.16
Constables, Ch 509
Actions against political subdivisions, negligence or omission in performing governmental or proprietary functions, 2744.01 et seq.
Warrantless arrest and detention, 2935.03
Workers' compensation for handicapped employees, police officer with cardiovascular, pulmonary, or respiratory disease considered handicapped, 4123.343
Traffic laws, power of arrest for violations on state highways, 4513.39

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 295; 20, Counties, Townships, and Municipal Corporations § 364, 365, 390
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 13, 132, 423 to 437

NOTES ON DECISIONS AND OPINIONS

OAG 88-036. If a township road district is created pursuant to RC 5573.21, the district is a subdivision for purposes of RC 5705.01, and the township trustees, as taxing authority of the district, may levy taxes only upon the taxable property of the township road district, and not upon property within the limits of a municipal corporation located in the township.

OAG 77-097. Where township voters pass a levy pursuant to RC 5705.19(J) for the stated purpose of "providing and maintaining motor vehicles, communications, and other equipment used directly in the operation" of the township police department, and there is located entirely within that township a chartered village which already has its own police force, the township trustees may not appropriate proceeds of that levy to the village for its police force, nor use such proceeds to fund its obligation under a contract for additional police protection for the township under RC 505.50 or RC 505.441.

OAG 77-054. The restrictions of RC 509.01 do not apply to officers of township police districts who are not constables.

OAG 71-076. Territorial jurisdiction of township police constable extends throughout county in which his township is located and can be extended by contract to township located in another county.

OAG 71-076. Territorial jurisdiction of township police officer is limited to unincorporated areas of township as specified by board of township trustees in resolution creating township police district, but may be extended to include another township police district by contract.

OAG 71-045. Cost of police protection and additional police protection provided by action of township under either RC 505.441 or RC 505.48 et seq. may not be met by contributions by residents, whether contractual or voluntary, but must be borne from public tax derived revenues.

OAG 71-045. Township police district may not obtain all police protection by contract with a municipality but may obtain additional police protection under such contract, after providing directly for basic police protection through employment of a chief of police, necessary patrolmen and acquisition of police equipment.

OAG 71-045. Township may contract with municipality under RC 505.441 for police protection or additional protection or under RC 505.50 for additional police protection for a police district, notwithstanding that township and municipality may be situated in different counties.

OAG 69-055; overruled in part by OAG 88-036. Tax levies made under authority of RC 509.01, RC 5705.06(F), RC 5573.13 and RC 5573.21 are to be made upon all the taxable property within the township, including the taxable property within any municipal corporations within such township, and are subject to the ten-mill limitation prescribed by RC 5705.02.

OAG 65-26. Members of a township district police force, created pursuant to RC 505.48 et seq., have no power to make arrests for violations enumerated in RC 4513.39 on state highways within the township.

1964 OAG 1255. When a township does not have located within it any municipality or portion thereof, the entire township may be created into a township police district, and the authority to use the general funds of the township would be no different from that which exists when the police district consists of less than the entire unincorporated territory of the township.

1964 OAG 1255. When there is located within a township a municipality or part thereof, the portion of the township in which the municipality is located may not be included in the township police district.

1964 OAG 1255. When a township police district is created by a board of trustees and such district does not include all of the township territory, no portion of the expenses of the district in providing police protection may be paid out of general funds of the township, but those current expenses which the township trustees are authorized to incur by RC 505.49, RC 505.50 and RC 505.54 may be incurred on behalf of the township as distinguished from on behalf of the police district alone, and if so incurred then may properly be considered expenses of the township rather than expenses of the police district.

507.01 Township clerk

A township clerk shall be elected at the general election in 1951, and quadrennially thereafter in each township, and he shall hold his office for a term of four years commencing on the first day of April next after his election.

HISTORY: 1982 S 139, eff. 3-15-83
1953 H 1; GC 3299

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.02, 13.01, 15.02; Forms 1.08

CROSS REFERENCES

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 375; 82, Schools, Universities, and Colleges §88
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 236, 249 to 255

NOTES ON DECISIONS AND OPINIONS

39 Misc(2d) 10, 531 NE(2d) 785 (CP, Trumbull 1988), Chronister v Trumbull County Prosecuting Attorney. The office of township clerk and employment as a deputy county auditor are incompatible.

OAG 87-085. A person may at the same time hold the positions of township clerk and clerk of a board of county commissioners in different counties, provided that it is physically possible for such person to perform the duties of both positions, and provided further that there is no contract between the county and township entered into under the authority of RC 307.15 which obligates the township to pay the county for services rendered or which otherwise directly involves either position.

OAG 86-057. To the extent that a township clerk's statutory duties consist of functions that need not, by their nature, be performed at a particular time or place or in a particular manner, the board of township trustees does not have authority to regulate the time, place, or manner in which such duties are performed.

OAG 86-057. A person may at the same time occupy the office of township clerk and serve as secretary of a city board of education, provided that it is physically possible for such person to perform the duties of both positions.

OAG 83-033. A timekeeper for the Ohio department of transportation, who is in the classified service of the state, may not serve as a township clerk if the clerk is elected in a partisan election; he may, however, serve as a township clerk if the election for clerk is nonpartisan in nature.

OAG 81-087. If it is physically possible for one person to hold both positions and if the holding of both positions is not prohibited by local law, the positions of township clerk and treasurer's assistant for a local board of education are compatible.

OAG 77-037. The position of township administrator is incompatible with that of township clerk.

OAG 71-065. Assuming there is no village ordinance to the contrary, member of village police department may also serve as clerk of township in which village is located, unless it is physically impossible for same person to perform duties of both offices.

OAG 66-093. The position of "inspector" under RC 319.59 is not incompatible with that of township clerk provided it is physically possible for one person to perform the duties of both offices.

1963 OAG 559. The position of township clerk is incompatible with the position of member of board of health of a general health district.

1962 OAG 2872. The positions of clerk of a township and fire prevention officer of the township are not incompatible, provided it is physically possible for one person to perform the duties of both positions.

1961 OAG 2480. The office of township clerk is not incompatible with the office of member of the board of education for the local school district in which the township is located.

1960 OAG 1663. The elective position of township clerk is incompatible with the position of state department of highways employee when the latter position is in the classified civil service, but is not incompatible if the latter position is not in the classified civil service and if it is physically possible for one person to perform the duties of both positions.

1960 OAG 1650. A clerk of a township elected pursuant to RC 507.01 may not at the same time hold the position of deputy county auditor of the county in which such township is located.

1960 OAG 1151. RC Ch 505 and RC Ch 507 do not authorize a board of township trustees to regulate the time the township clerk should devote to the duties of his office, and therefore such a board cannot require the clerk to be present in his office certain daytime hours each week.

1960 OAG 1151. A person may at the same time occupy the office of township clerk and be a full time employee of the county treasurer, provided it is physically possible for such person to perform the duties of both such positions.

1957 OAG 844. A township clerk cannot at the same time be a city street employee unless the city under its home rule powers relieves such employees from RC 143.41 (RC 124.57).

1952 OAG 1290. Employment as a laborer for a township is not incompatible with the position of township clerk of the same township.

1952 OAG 1116. The positions of township clerk and member of the board of directors of a county agricultural society are not incompatible.

1934 OAG 2365. Blindness does not disqualify a person from holding the office of township clerk.

1934 OAG 2365. A blind township clerk may retain his blind pension allowed him by the county commissioners if such commissioners determine that the amount of his fees and allowances for his services as township clerk are not sufficient to provide him with the necessities of life, that he has no other sufficient means of his own to maintain himself, and that, unless extended the relief authorized by law, he would become a charge upon the public or upon those not required by law to support him.

1931 OAG 2897. The offices of county recorder and township clerk are compatible and may be held by one and the same person, if it is physically possible for one person to perform the duties of both offices.

507.051 Duties; notification to board of elections

The clerk of a township shall notify the board of elections of all vacancies caused by death, resignation or otherwise in the elective offices of the township. Such notification shall be made in writing and filed not later than ten days after the vacancy occurs with the board of elections of the county in which the township is located.

The clerk of a township shall notify the board of elections of all changes in boundaries of that township. Such notification shall be made in writing and contain a plat clearly showing all boundary changes and shall be filed not later than ten days after the change of boundaries becomes effective with the board of election of the county in which the township is located.

HISTORY: 125 v 713, eff. 1-1-54

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 15.11

CROSS REFERENCES

Adjustment of disputed township boundaries, 503.05
Vacancy in elective office, trustees to appoint, 503.24

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 275 to 280

511.01 Town hall

If, in a township, a town hall is to be built, improved, enlarged, or removed at a cost greater than ten thousand dollars, the board of township trustees shall submit the question to the electors of such township and shall certify their resolution to the board of elections not later than four p.m. of the seventy-fifth day before the day of the election.

HISTORY: 1981 S 114, eff. 10-27-81
1980 H 1062; 132 v H 863; 125 v 713; 1953 H 1; GC 3395

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 35.03, 67.01, 67.02; Forms 17.04, 17.05

CROSS REFERENCES

Additional powers of township trustees, office space, 505.26

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 361, 387

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 541 to 545

NOTES ON DECISIONS AND OPINIONS

OAG 73-100. The question of construction or improvement of a town hall, at a cost greater than $10,000, may be, and the question of issuance of bonds to meet the cost of construction or improvement of a town hall must be submitted to the electorate by the board of township trustees at any election or at the same election.

OAG 69-132. If a township building is to be constructed or enlarged and the major portion of the cost is allocated to the meeting hall therein, it would be considered a town hall and subject to RC 511.01, but if the major portion of the cost is allocated to the office space designed therein, it would be considered an office building and subject to RC 505.26.

1961 OAG 2408. A board of township trustees may not improve a township hall at a cost in excess of $2,000 without submitting the question to the electors of the township.

1949 OAG 1103. A vote of the electors of a township is necessary before a town hall, the cost of which will exceed $2,000, can be built; this vote is necessary even though the funds to be used come from a permanent improvement fund and not the general fund of a township.

1934 OAG 3701. A township and village located in such township cannot unite in the erection of a new public building without submitting the same to a vote of the electors of both subdivisions as required by GC 3399 (RC 511.05) et seq., even though most of the material for said building is to be supplied from an old building which it is proposed to raze and which had been constructed jointly by such township and village.

1934 OAG 2404. A township hall cannot be built, removed, improved or enlarged but may be repaired at a cost to the township greater than $2,000 without submitting the question to the electors of the township, even though there are sufficient unencumbered funds in the general fund of the township to pay such entire cost.

ANNOTATIONS FROM FORMER ANALOGOUS SECTION

503.23 PLACE OF HOLDING ELECTIONS; ERECTION OF TOWN HALL

1958 OAG 2018. When a township and a village located in said township desire to jointly construct a public building, an application must be made by the freeholders of the township and of the village, a vote must be held and a two-thirds majority must be obtained in such election in order to authorize such joint action, whether or not a tax is to be levied to cover the cost of such project.

1955 OAG 5693. Township trustees may lease so much of the town hall as is not needed for township purposes for a period of one year or less.

1939 OAG 1036. Amount of rental to be paid for polling places, established in private buildings, is to be determined by local board of elections.

1939 OAG 1036. It is the duty of county board of elections to fix and provide places for registration, when required, and for holding primaries and elections, in all precincts in such county, including those located in townships.

1939 OAG 1036. Provisions of GC 4785-13 (RC 3501.11), subdivision b, and GC 3260 (RC 503.23) are irreconcilable and GC 3260, to extent that it requires local boards of township trustees to fix polling places, was repealed by implication by enactment of GC 4785-13, subdivision b.

1939 OAG 1036. Expenses of county board of elections for rental of polling places should be paid in all instances from county treasury in pursuance of appropriations by county commissioners upon vouchers of board of elections certified by its chairman or acting chairman and its clerk or deputy clerk, upon warrants of county auditor; and moneys so expended for a political subdivision within a county should be charged back to such subdivision for (a) primaries and elections in odd-numbered years, (b) special elections, and (c) conducting of registration within such subdivision, when required, and amount so charged should be withheld by county auditor from moneys payable thereto at next tax settlement.

1927 OAG 26. The trustees of a township may erect on a site which they have acquired by permanent lease or otherwise, in any election precinct within the township, a building or house to be used as a voting place, without submitting the question to a vote of the electors of said election precinct.

511.02 Election for tax levy; bonds may be issued

At the election provided for by section 511.01 of the Revised Code, if a majority of all the ballots cast are in the affirmative, the board of township trustees shall levy the necessary tax, which, in any year, shall not exceed four mills on the dollar valuation. Such tax shall not be levied for more than seven years. In anticipation of the collection of taxes, the board may borrow money and issue bonds for the whole or any part of such work, which bonds shall not bear interest to exceed the rate provided in section 9.95 of the Revised Code[3] payable annually.

HISTORY: 1981 S 114, eff. 10-27-81
1981 H 95; 1953 H 1; GC 3396

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 35.03; Forms 17.04

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 387, 397

NOTES ON DECISIONS AND OPINIONS

OAG 73-100. The question of construction or improvement of a town hall, at a cost greater than $10,000, may be, and the question of issuance of bonds to meet the cost of construction or improvement of a town hall must be submitted to the electorate by the board of township trustees at any election or at the same election.

1933 OAG 1829. A township and village located in such township cannot unite in the erection of a public building without submitting the same to a vote of the electors of both subdivisions.

1925 OAG 2309. Where an election was held to vote upon a town hall, in counting the ballots all the votes must be considered in determining a majority of the votes cast, in order to ascertain the result of the election.

511.27 Tax levy to defray expenses

(A) To defray the expenses of the township park district and for the purchasing, appropriating, operating, maintaining, and improving lands for parks or recreational purposes, the township board of park commissioners may levy a sufficient tax within the ten-mill limitation, not to exceed one mill on each dollar of valuation on all real and personal property within the township, and on all real and personal

[3]Prior and current versions differ although no amendment to this punctuation was indicated in 1981 S 114; "Code" appeared as "Code," in 1981 H 95.

property within any municipal corporation which is within the township, or which was within the township at the time that the park district was established, or the boundaries of which are coterminous with or include the township. Such levy shall be over and above all other taxes and limitations on such property authorized by law.

(B) Except as otherwise provided in division (C) of this section, the township board of park commissioners may, not less than seventy-five days before a general or primary election in any year, declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the district and that it is necessary to levy a tax in excess of such limitation for the use of the district. The resolution shall specify the purpose for which the taxes shall be used, the annual rate proposed, and the number of consecutive years the levy will be in effect. Upon the adoption of the resolution, the question of levying the taxes shall be submitted to the electors of the township and the electors of any municipal corporation which is within the township, or which was within the township at the time that the park district was established, or the boundaries of which are coterminous with or include the township. The rate submitted to the electors at any one time shall not exceed two mills annually upon each dollar of valuation. If a majority of the electors voting upon the question of the levy vote in favor thereof, the tax shall be levied on all real and personal property within the township and on all real and personal property within any municipal corporation which is within the township, or which was within the township at the time that the park district was established, or the boundaries of which are coterminous with or include the township, and such levy shall be over and above all other taxes and limitations on such property authorized by law.

(C) In any township park district that contains only unincorporated territory and where the township board of park commissioners is appointed by the board of township trustees, before a tax can be levied and certified to the county auditor pursuant to section 5705.34 of the Revised Code or before a resolution for a tax levy can be certified to the board of elections pursuant to section 511.28 of the Revised Code, the township board of park commissioners shall receive approval for its levy request from the board of township trustees. The township board of park commissioners shall adopt a resolution requesting the board of township trustees to approve the levy request, stating the annual rate of the proposed levy and the reason for the levy request. On receiving this request, the board of township trustees shall vote on whether to approve the request, and if a majority votes to approve it, shall issue a resolution approving such a levy at the requested rate.

HISTORY: 1990 S 60, eff. 7-18-90
1980 H 1062; 1977 H 187; 1974 H 1100; 1972 H 362; 1970 H 966; 130 v S 75; 1953 H 1; GC 3423

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 31.01, 31.24, 97.24, 97.25

CROSS REFERENCES

Acquisition of property for township park, tax levy, 505.261
Replacement levies, 5705.192
Township officers; power to tax; spending public money, O Const Art X §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 50, 130
Am Jur 2d: 59, Parks, Squares, and Playgrounds § 5

NOTES ON DECISIONS AND OPINIONS

OAG 66-160. If the constitutional ten-mill limitation has not been exceeded, only the township board of park commissioners, and not the township trustees, may levy a tax of up to one mill pursuant to RC 511.27 for park purposes within the township park district.

OAG 65-231. It would be an unlawful exercise of discretion for a township board of park commissioners to levy a tax under RC 511.27 where the property so taxed already is taxed in excess of one per cent of its true value, without submitting such levy to a vote of the people of the taxing district, and any such levy ordered without a vote would be unconstitutional and void.

OAG 65-39. Funds raised by a township recreation levy pursuant to RC 5705.19(H) may not be used to operate a free public park under the control of park commissioners of a township park district.

1964 OAG 1187. Funds for maintaining a public park under the control of the park commissioners of a township park district established under RC 511.18 may be secured by tax levies made by the park commissioners under RC 511.27.

1945 OAG 271. Funds for maintaining a public park under the control of the park commissioners of a township park district, established under GC 3415 (RC 511.18) et seq., may be secured by tax levies made by the park commissioners under the authority of this section; township trustees have no authority to appropriate or transfer township funds for the purpose of maintaining public parks under the control of park commissioners.

1944 OAG 7038. Where township park has been established by vote of electors of township, including those residing in municipality lying within such township, subsequent incorporation into village of remaining portion of such township will have no effect on board of park commissioners appointed for establishment and management of such park, or on power of such board to levy taxes as provided in GC 3423 (RC 511.27) on all property in such township.

1932 OAG 4881. A township park district is a "taxing unit" as such term is used in GC 5625-1 to 5625-39 (RC 5705.01 to RC 5705.47), and as such, has authority to levy taxes on the property within the township for the maintenance of township parks.

1932 OAG 4881. There is no legal duty on the township trustees to levy a tax for the maintenance of township parks in townships in which township park districts have been created.

511.28 Procedures for submitting levy

A copy of any resolution for a tax levy adopted by the township board of park commissioners as provided in section 511.27 of the Revised Code shall be certified by the clerk of the board of park commissioners to the board of elections of the proper county, together with a certified copy of the resolution approving the levy, passed by the board of township trustees if such a resolution is required by division (C) of section 511.27 of the Revised Code, not less than seventy-five days before a general or primary election in any year. The board of elections shall submit the proposal to the electors as provided in section 511.27 of the Revised Code at the succeeding general or primary election. A resolution to renew or replace an existing levy may not be placed on the ballot unless the question is submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year. The board of park commissioners shall cause notice that the vote will be taken to be published

once a week for four consecutive weeks prior to the election in a newspaper of general circulation in the county within which the park district is located. The notice shall state the purpose of the proposed levy, the annual rate proposed expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, the number of consecutive years during which the levy shall be in effect, and the time and place of the election.

The form of the ballots cast at the election shall be: "An additional tax for the benefit of (name of township park district) _____ for the purpose of (purpose stated in the order of the board) _____ at a rate not exceeding _____ mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) _____ for each one hundred dollars of valuation, for (number of years the levy is to run) _____.

	FOR THE TAX LEVY
	AGAINST THE TAX LEVY

"

If the levy submitted is a proposal to renew, replace, increase, or decrease an existing levy, the form of the ballot specified in this section may be changed by substituting for the words "An additional" at the beginning of the form, the words "A renewal of a" in the case of a proposal to renew an existing levy in the same amount; the words "A replacement of a" in the case of a proposal to replace an existing levy in the same amount; the words "A renewal of _____ mills and an increase of _____ mills to constitute a" or the words "A replacement of _____ mills and an increase of _____ mills to constitute a" in the case of an increase; or the words "A renewal of part of an existing levy, being a reduction of _____ mills, to constitute a" or the words "A replacement of part of an existing levy, being a reduction of _____ mills, to constitute a" in the case of a decrease in the proposed levy.

The question covered by the order shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election.

HISTORY: 1990 S 257, eff. 9-26-90
1990 S 60; 1986 H 555; 1985 H 95; 1980 H 1062; 1977 H 187

Note: A special endorsement by the Legislative Service Commission states, "Comparison of these amendments [1990 S 257, eff. 9-26-90 and 1990 S 60, eff. 7-18-90] in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment." In accordance with this endorsement, changes made by 1990 S 257, eff. 9-26-90 and 1990 S 60, eff. 7-18-90 have been incorporated in the above amendment. See *Baldwin's Ohio Legislative Service*, 1990 Laws of Ohio, pages 5-663 and 5-446, for original versions of these Acts.

Note: Former 511.28 repealed by 1977 H 187, eff. 8-26-77; 128 v 136; 125 v 713; 1953 H 1; GC 3424.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 97.24, 97.25

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Notice and Notices § 27 to 30, 33, 34; 86, Taxation § 50, 130

513.13 Submission of tax levy for operation expenses to electors

The board of elections of the county in which a joint township hospital district, or the most populous portion of such district, lies shall, by resolution approved by a two-thirds vote of the joint township district hospital board, place upon the ballot for submission to the electorate of such district, at the next primary or general election, occurring not less than seventy-five nor more than one hundred twenty days after the request is received from such joint township district hospital board, the question of levying a tax, not to exceed one mill outside the ten-mill limitation, for a period not to exceed five years, to provide funds for the payment of necessary expenses incurred in the operation of hospital facilities or, if required by agreement made under section 140.03 of the Revised Code, for costs of hospital facilities or current operating expenses of hospital facilities, or both. Such resolution shall be certified to the board of elections not later than four p.m. of the seventy-fifth day before the day of the election. If a majority of the electors in such district voting on the proposition, vote in favor thereof, the county auditor of each county in which such district lies shall annually place a levy on the tax duplicate against the property in such district, in the amount required by the joint board of trustees of the district, but not to exceed one mill.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 1971 S 343; 131 v H 553; 125 v 713; 1953 H 1; GC 3414-3

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 83.08

CROSS REFERENCES

Agreement between hospital agencies for hospital construction, operation, 140.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 55, Hospitals and Related Facilities; Health Care Providers § 30 to 32, 45

NOTES ON DECISIONS AND OPINIONS

OAG 71-039. A township, in acting to join an existing joint township hospital district, may be required, as a condition for joining, to levy a tax to pay such township's share of the bonded indebtedness of the district, which tax must be approved by sixty-five per cent of the township electors voting on such issue in a primary or general election.

1963 OAG 565. The position of member of board of governors of a joint township hospital district is incompatible with the office of county auditor of the county in which such hospital district is situated.

1957 OAG 1439. The proceeds of an operating tax levied in a joint township hospital district are subject to the control of the joint township district hospital board and are public moneys, and if erroneously placed under the control of a board of hospital governors must be recovered by the joint township district hospital board.

1957 OAG 772. Proceeds of a tax levy for operating expenses of a joint township hospital district may not be expended to pay the cost of construction of permanent improvements thereto.

513.14 Advertisement of proposed question

The board of elections shall advertise the proposed tax levy question mentioned in section 513.13 of the Revised Code, in two newspapers of opposite political faith, if two such newspapers are published in the joint township hospital district, otherwise, in one newspaper, published or of general circulation in the proposed township hospital district, once a week for three weeks immediately preceding such election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3414-4

517.04 Vote on establishment of cemetery

Before a purchase or appropriation of land for cemetery purposes is made or a conveyance is accepted, except where funds may be available for such purchase or appropriation of land for cemetery purposes under section 517.08 of the Revised Code, the question of the establishment of such cemetery, on the order of the board of township trustees or the written application of any six electors of the township, shall be submitted to a vote of the electors of such township at a regular annual election. Such order or application shall specify as nearly as possible the proposed location of the cemetery, and the estimated cost thereof, including enclosing and improving it.

HISTORY: 129 v 1589, eff. 9-28-61
1953 H 1; GC 3445

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 69.01, 69.04 to 69.06; Forms 17.13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Cemeteries and Dead Bodies § 4, 7, 23, 30
Am Jur 2d: 14, Cemeteries § 3 to 20

NOTES ON DECISIONS AND OPINIONS

OAG 76-050. A board of township trustees may use general revenue funds to purchase additional land for an existing township cemetery without levying the special tax provided in RC 517.13.

OAG 73-049. Application should be made to the court of common pleas for an order appointing the board of township trustees as a successor trustee of cemetery funds.

OAG 71-062. Moneys from the general fund of a township may not be expended to acquire land to establish a cemetery unless a vote is taken with respect thereto.

OAG 71-038. In acquiring a parcel of land for the establishment of a new township cemetery to relocate one that must be vacated, the township trustees may act (a) under RC 517.04 and RC 517.08 without submission of the question of establishment to the voters, if otherwise unobligated funds are available from the sale of cemetery lots or from the sale of the vacated cemetery or from both sources together, or (b) under RC 517.01 and RC 517.04, by submission of the question of the establishment to the voters if tax monies are required to effect the acquisition.

OAG 71-038. In establishing a township cemetery, a board of township trustees is not required to comply with a provision of the township zoning resolution that limits new cemeteries to a minimum of twenty acres.

OAG 66-163. The board of township trustees is required to accept a transfer of a public cemetery from a private cemetery association, and RC 517.04 does not require the board of township trustees to submit the question of acceptance to the electors.

OAG 66-163. RC 517.04 applies only to the establishment of a new cemetery and not to the transfer of an established cemetery, open to use by the public generally, by a private cemetery association to the board of township trustees.

1943 OAG 6359. Monies from general fund of township may not be expended to acquire land to establish cemetery, as provided for by GC 3441 (RC 517.01), unless vote is taken with respect thereto as provided for by this section.

517.05 Notice of election; ballots

On the making of an order or the filing of an application as provided by section 517.04 of the Revised Code, the clerk shall certify such order or application to the board of elections not later than four p.m. of the seventy-fifth day before the day of the election, and at least twenty days before an election, the township clerk shall post written notices in at least three public places in the township, that a vote will be taken on the question of the establishment of a cemetery. If a majority of the votes cast at such election on the proposition is in favor thereof, the board of township trustees shall procure the lands for that purpose and levy taxes as provided by section 517.03 of the Revised Code.

HISTORY: 1980 H 1062, eff. 3-23-81
125 v 713; 1953 H 1; GC 3446

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Forms 17.13 to 17.16

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Cemeteries and Dead Bodies § 3

TOWNSHIP ZONING

519.11 Zoning plan to be submitted to electors; majority vote required for approval; filing requirements

If the zoning resolution is adopted by the board of township trustees, such board shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the township included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the election. No zoning regulations shall be put into effect unless a majority of the vote cast on the issue is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect, if the plan was so approved.

Within five working days after the resolution's effective date, the board of township trustees shall file it, including text and maps, in the office of the county recorder. The board shall also file duplicates of the same documents with the regional or county planning commission, if one exists, within the same period.

The board shall file all resolutions, including text and maps, that are in effect on January 1, 1992, in the office of the county recorder within thirty working days after that date. The board shall also file duplicates of the same documents with the regional or county planning commission, if one exists, within the same period.

The failure to file a resolution, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the resolution and is not grounds for an appeal of any decision of the board of zoning appeals.

HISTORY: 1991 S 20, eff. 1-1-92
1980 H 1062; 125 v 713; 1953 H 1; GC 3180-35

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 59.10, 59.11; Forms 15.14

CROSS REFERENCES

County recorder informing board of filing requirements, 317.081
Filing fees, 317.32

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 154, 220, 235, 241; 37, Elections § 112; 38, Eminent Domain § 296
Am Jur 2d: 82, Zoning and Planning § 55, 58

NOTES ON DECISIONS AND OPINIONS

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976). Under O Const Art II, § 1f, municipal referendum powers are limited to questions which municipalities are "authorized by law to control by legislative action."

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976). A municipal charter provision which requires that any ordinance changing land use be ratified by the voters in a city-wide election constitutes an unlawful delegation of legislative power.

18 OS(2d) 66, 247 NE(2d) 481 (1969), State ex rel Stillo v Gwin. RC 3501.38 applies to a referendum on a township zoning resolution, and the petitions therefor require circulators' affidavits.

152 OS 139, 87 NE(2d) 342 (1949), Prosen v Duffy. Where a zoning plan is submitted to the electors residing in an unincorporated area of a township, the form of the ballot is controlled by GC 4785-103 (RC 3505.06), and the provision thereof, that "immediately below such title shall be printed the text describing the question or issue," does not require the printing on the ballot of the whole text of the zoning plan or an impracticable digest thereof, but does require the printing of language constituting a topic or theme describing the question or issue submitted.

76 Abs 439, 144 NE(2d) 917 (CP, Montgomery 1957), Henn v Universal Atlas Cement Co. It would be an abuse of judicial discretion and unconstitutional for a court of equity to prevent the creation of lawful uses even though such uses will be nonconforming in event a zoning plan is subsequently approved in the township.

76 Abs 439, 144 NE(2d) 917 (CP, Montgomery 1957), Henn v Universal Atlas Cement Co. The board of township trustees do not have the authority to regulate and enforce zoning until such time as a favorable vote of the electors is certified by the board of elections.

426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976), Eastlake v Forest City Enterprises. City charter provision requiring voter approval in referendum for any changes in land use agreed to by city council is valid.

OAG 71-038. In establishing a township cemetery, a board of township trustees is not required to comply with a provision of the township zoning resolution that limits new cemeteries to a minimum of twenty acres.

1964 OAG 1500. A comprehensive zoning plan adopted pursuant to RC Ch 519 may not be repealed for a part only of the territory included within the zoning plan but must be repealed vel non as a whole.

1958 OAG 1832. Where township trustees have elected to exercise zoning powers and created a zoning commission and thereafter a zoning plan is rejected by the electors and no township zoning regulations are in effect, such board of trustees may abolish the zoning commission.

1952 OAG 1829. The statutes make no provision as to the time at which a township zoning resolution may be submitted to the electorate at a special election nor for the latest date upon which such resolution may be certified to the county board of elections, so such certification must be within a reasonable time and such election may be called at the discretion of the township trustees.

1952 OAG 1459. A township zoning ordinance adopted under this section is not affected by the erection of a new township out of that portion of such township within the limits of a municipal corporation.

519.12 Amendments to zoning resolution; procedure; referendum; form of petition; filing requirements

(A) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution therefor by the board of township trustees, or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. The board of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee therefor to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the township trustees require such a fee, it shall be required generally, for each application. The board of township trustees shall upon the passage of such resolution certify it to the township zoning commission.

Upon the adoption of such motion, or the certification of such resolution or the filing of such application, the township zoning commission shall set a date for a public hearing thereon, which date shall not be less than twenty nor more than forty days from the date of the certification of such resolution or the date of adoption of such motion or the date of the filing of such application. Notice of such hearing shall be given by the township zoning commission by one publication in one or more newspapers of general circulation in the township at least ten days before the date of such hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the county auditor's current tax list. The failure of delivery of such notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing;

(2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the

names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the zoning commission;

(8) A statement that after the conclusion of such hearing the matter will be submitted to the board of township trustees for its action.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) A statement that after the conclusion of such hearing the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by the zoning commission.

(E) Within five days after the adoption of such motion or the certification of such resolution or the filing of such application the township zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the township zoning commission. Such recommendation shall be considered at the public hearing held by the township zoning commission on such proposed amendment.

The township zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment, or the approval of some modification thereof and submit such recommendation together with such application or resolution, the text and map pertaining thereto and the recommendation of the county or regional planning commission thereon to the board of township trustees.

The board of township trustees shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment, which date shall not be more than thirty days from the date of the receipt of such recommendation from the township zoning commission. Notice of such public hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of such hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and shall include all of the following:

(1) The name of the board that will be conducting the public hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the board that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after such public hearing the board shall either adopt or deny the recommendations of the zoning commission or adopt some modification thereof. In the event the board denies or modifies the recommendation of the township zoning commission the unanimous vote of the board shall be required.

Such amendment adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment there is presented to the board of township trustees a petition, signed by a number of registered electors residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board of township trustees to submit the amendment to the electors of such area for approval or rejection at a special election to be held on the day of the next primary or general election. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its con-

tents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM

(if the proposal is identified by a particular name or number, or both, these should be inserted here) _____

A proposal to amend the zoning map of the unincorporated area of _____ Township, _____ County, Ohio, adopted _____(date)_____ (followed by brief summary of the proposal).

To the Board of Township Trustees of _____ Township, _____ County, Ohio:

_____ County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of _____ Township, included within the _____ Township Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of _____ Township residing within the unincorporated area of the township included in the _____ Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on _____(date)_____, pursuant to section 519.12 of the Revised Code.

Signature	Street Address or R.F.D.	Township	Precinct	County	Date of Signing

STATEMENT OF CIRCULATOR

_____(name of circulator)_____ declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing _____(number)_____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____
(Signature of circulator)

_____
(Address)

_____
(City, village or township, and zip code)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH."

The petition shall be filed, accompanied by an appropriate map of the area affected by the zoning proposal, with the board of township trustees, which shall then transmit the petition within two weeks of its receipt to the board of elections, which shall determine the sufficiency and validity of the petition. The petition shall be certified to the board of elections not less than seventy-five days prior to the election at which the question is to be voted upon.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters it shall take immediate effect.

Within five working days after an amendment's effective date, the board of township trustees shall file the text and maps of the amendment in the office of the county recorder and with the regional or county planning commission, if one exists.

The board shall file all amendments, including text and maps, that are in effect on January 1, 1992, in the office of the county recorder within thirty working days after that date. The board shall also file duplicates of the same documents with the regional or county planning commission, if one exists, within the same period.

The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals.

HISTORY: 1991 S 20, eff. 1-1-92
1988 S 112; 1984 H 14; 1981 H 101; 132 v S 234; 128 v 128; 127 v 363; 126 v Pt II, 20; 1953 H 1; GC 3180-36

Penalty: 519.99(A)

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 17.06, 17.10, 59.09, 59.11, 59.13, 59.14; Forms 15.16 to 15.20

CROSS REFERENCES

Newspapers qualified for publication of legal notices, 7.12

County rules on sediment control and water management practices; hearings on amendments, 307.79

County recorder informing board of filing requirements, 317.081

Filing fees, 317.32

Zoning resolutions, solid waste facilities exempted from, 343.01

County and joint solid waste management plans, 3734.53

Local motor vehicle license tax, township tax for road construction and maintenance, 4504.18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 154, 220, 235, 242 to 244; 37, Elections § 110; 56, Initiative and Referendum § 7, 17, 38; 72, Notice and Notices § 27 to 35

Am Jur 2d: 82, Zoning and Planning § 47 to 59

NOTES ON DECISIONS AND OPINIONS

1. Constitutionality
2. In general
3. Application
4. Notice
5. Hearing and recommendation
6. Action by trustees
7. Referendum

1. Constitutionality

15 OS(2d) 195, 239 NE(2d) 80 (1968), Cook-Johnson Realty Co v Bertolini. Provision for a referendum on township zoning may be made by the general assembly, and RC 519.12, insofar as it grants a power of referendum to that portion of a township electorate to be

most affected by a zoning amendment passed by the board of township trustees, is constitutional.

2. In general

39 OS(3d) 292, 530 NE(2d) 869 (1988), State ex rel Williams v Iannucci. RC Ch 519 does not provide for initiated amendments to township zoning resolutions and RC 731.28, which applies to municipal corporations, will not be construed to apply to townships.

42 OS(2d) 263, 328 NE(2d) 395 (1975), Driscoll v Austintown Associates. The surrounding property owners are not necessary parties to a declaratory judgment action challenging the constitutionality of a township zoning ordinance as it applies to a specific parcel of property.

39 App(2d) 11, 314 NE(2d) 186 (1973), Crist v True. A "special session" of a board of township trustees held at the private residence of a township official does not qualify as a "public meeting" within the meaning of RC 519.12 and RC 121.22.

15 App(2d) 55, 238 NE(2d) 818 (1968), In re Appropriation for Highway Purposes; affirmed by 18 OS(2d) 214, 249 NE(2d) 48 (1969). A special written instruction before argument submitted to the jury, which states as a matter of law that real property of the condemnee bordering a strip of land of condemnee appropriated for highway use loses its status as commercial property and may not be used for commercial purposes under zoning regulations by reason of the highway project and improvement alone for which the appropriation was made, where the zoning regulations provide that zoning changes can be accomplished only by following RC 519.02 to RC 519.11, is erroneous and prejudicial to the state, requiring reversal.

113 App 523, 179 NE(2d) 360 (1960), State ex rel Bugden Development Co v Kiefaber. Where, after preliminary approval of a subdivision plat of undeveloped land, a zoning resolution materially increasing the lot size requirements is adopted, and thereafter the subdivider proceeds to install a sewer system in the subdivision, the fact that, in revising the plat to conform to present zoning requirements the number of lots will necessarily be reduced, with a possible substantial loss of profit, and the fact that considerable expense was incurred in constructing sewers—an expense knowingly and voluntarily assumed—will not support a claim of unreasonable hardship warranting the granting of a variance from the requirements of the zoning resolution.

104 App 260, 148 NE(2d) 523 (1957), State ex rel Cubbon v Winterfeld. RC 519.12 and RC 519.15 do not afford a plain and adequate remedy where there is a clear legal right to a certificate of occupancy under a nonconforming use.

98 App 283, 129 NE(2d) 209 (1954), State ex rel Euverard v Miller. Where property is situated at the intersection of two heavily traveled thoroughfares, in the midst of commercial establishments, and has little suitability for residential use, but rather is a prime business site, the zoning thereof for residential uses only has no tendency to promote the public health, safety, morals, convenience or general welfare, and bears no reasonable relation thereto and, as applied to such property, is arbitrary, unreasonable, and beyond the zoning power.

No. L-88-353 (6th Dist Ct App, Lucas, 3-17-89), Warner v Jerusalem Twp Bd of Zoning Appeals. Where a township in its zoning resolutions cites state statutes, any subsequent change in a statute does not automatically amend the zoning resolution, legislative action in compliance with RC 519.12 is required.

55 Abs 216, 89 NE(2d) 172 (App, Lake 1949), Burnett v Wooster. Any person adversely affected by board of township trustees' failure to comply with statutes relative to township zoning should pursue right of appeal under this section, and having an adequate remedy should not seek injunction.

OAG 81-065. Pursuant to RC Ch 519, a township may enact resolutions to regulate surface mining, so long as its resolutions do not come into direct conflict with RC Ch 1514, by which the general assembly regulates the method of surface mining, or other laws of the state.

OAG 81-065. Pursuant to RC 519.12, township trustees may amend their zoning resolution to prevent the mining for shale (surface mining) in the unincorporated area of the township if they find that such use of land would create a real or substantial risk to the public health, safety, morals or general welfare of the township's citizens.

OAG 72-118. After township zoning regulations have been enacted, any attempt to amend or supplement them should comply with the requirements of RC 519.12.

OAG 68-096. In the event of a conflict between RC 519.12 and RC 5511.01 any action by the board of township trustees to approve a request for a change in zoning may only be taken after RC 5511.01 has been complied with.

1956 OAG 7111. Township trustees may not require a board of education to secure a building permit for constructing a school building.

3. Application

108 App 299, 161 NE(2d) 498 (1958), Schlagheck v Winterfeld. An application seeking to amend a township zoning ordinance filed with the township zoning commission on June 7, 1957, and after further proceedings adopted by the board of township trustees on October 1, 1957, was a pending proceeding upon the effective date of RC Ch 2506, September 16, 1957, and an appeal taken from the action of such board proceeds under RC 519.12 and not under RC Ch 2506.

OAG 85-010. Where a three-member board of township trustees considers an application for a zoning change pursuant to RC 519.12 and one of the members withdraws from consideration of the matter due to a conflict of interest, the unanimity requirement of RC 519.12 is satisfied if the two remaining trustees concur in their vote either to deny or to modify the recommendation of the township zoning commission.

1959 OAG 895. A board of township trustees may not charge a fee as a condition precedent to the filing or submission of an application to amend a township zoning resolution.

4. Notice

23 App(2d) 163, 261 NE(2d) 351 (1970), Brown v Sperry. Requirement of RC 519.12 that notice of public hearing by board of township trustees on proposed zoning amendment "shall be given by the board by one publication ... at least fifteen days before the date of such hearing," is mandatory and resolution purporting to adopt proposed zoning amendment when such requirement has not been fulfilled is unauthorized and ineffective.

No. CA-3391 (5th Dist Ct App, Licking, 1-19-89), Moss v Leifheit. Notice of proposed zoning amendments by way of a newspaper advertisement that fails to specify where the proposed amendments can be inspected for at least fifteen days prior to a hearing thereon is insufficient under RC 519.12(D)(3).

OAG 72-118. A mere listing of the proposed amendments would not satisfy the requirement of RC 519.12 that a summary of the amendments be included in the notice of hearing before the board of township trustees, since a "summary" is required by the statute, and the listing of all sections of the proposed resolution would not constitute a summary of the same, "reduced to a narrow compass," and a "short, concise, succinct summing up" of the proposed zoning resolutions.

OAG 72-118. Publication of the revised map of the zoning districts before the hearing by the board of trustees is not required under RC 519.12, but the use of such a map may well facilitate the preparation of a readily understandable summary of the proposed amendments.

OAG 72-118. The inclusion of the entire resolution with all amendments in the notice of hearing before the township trustees would not satisfy the requirement of RC 519.12 that there be a summary of the amendments, but a brief disclosure of the contents of each of the 162 major sections, if that will apprise the various owners of all further limitations on the use of their land, will satisfy the statutory requirements.

OAG 72-118. Publication of notice at least fifteen days before a hearing by the zoning commission is required under RC 519.12; such notice should set forth the time and place of the hearing and should also contain a statement that, after the hearing, the matter will be referred to the regional planning commission, if one exists, or to the board of township trustees, as the case may be.

1963 OAG 77. The statements in paragraph 3, RC 519.12 relating to the contents of the written notice do not refer as such to the procedure to be followed under RC 519.12, but merely provide that the notices, in addition to other requirements, state the procedure applicable to the county or regional planning commission and township trustees as the case may be pursuant to paragraphs 4, 5 and 6 of said section.

5. Hearing and recommendation

108 App 299, 161 NE(2d) 498 (1958), Schlagheck v Winterfeld. In adopting or amending a township zoning ordinance, the board of township trustees exercises a legislative function and is not required to take testimony at its public hearing held pursuant to the provision of RC 519.12.

94 Abs 251, 200 NE(2d) 813 (App, Mahoning 1963), In re Request by Yeany. The provision in RC 519.12 that "after the conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission and to the board of township trustees as the case may be" is neither accurate nor mandatory and jurisdictional.

OAG 85-010. Pursuant to RC 519.12, a board of township trustees shall adopt, deny, or modify the recommendation of the township zoning commission with regard to a proposed amendment or supplement to a township zoning resolution within twenty days after a public hearing on the proposed amendment or supplement. If the board fails to take action within the twenty-day statutory period, it may be compelled to act by a writ of mandamus; however, failure of the board of township trustees to act within twenty days does not constitute approval of the zoning commission's recommendation.

6. Action by trustees

38 OS(2d) 310, 313 NE(2d) 366 (1974), Gray v Monclova Twp Trustees. Action by a board of township trustees adopting an amendment to a previously approved planned unit development plat is legislative action, and such action is entitled to a presumption of validity; the burden of rebutting that presumption is on the party challenging such amendment.

10 OS(2d) 227, 227 NE(2d) 210 (1967), Mac Realty, Inc v Commercial Industrial Enterprises, Inc. The effect of RC 519.12 is that the failure of the board of township trustees to vote unanimously to deny a recommendation of the township zoning commission results in an adoption of such recommendation.

45 App(2d) 288, 344 NE(2d) 156 (1975), Board of Township Trustees v Spring Creek Gravel Co. Where there is no record of the adoption of an amended zoning regulation by the township trustees, it is conclusively presumed that the trustees took no action and and that such amended zoning regulation did not become law, since statutes requiring a record of action by township trustees are mandatory where such action is legislative in nature.

OAG 85-010. Pursuant to RC 519.12, a board of township trustees shall adopt, deny, or modify the recommendation of the township zoning commission with regard to a proposed amendment or supplement to a township zoning resolution within twenty days after a public hearing on the proposed amendment or supplement. If the board fails to take action within the twenty-day statutory period, it may be compelled to act by a writ of mandamus; however, failure of the board of township trustees to act within twenty days does not constitute approval of the zoning commission's recommendation.

OAG 85-010. Where a three-member board of township trustees considers an application for a zoning change pursuant to RC 519.12 and one of the members withdraws from consideration of the matter due to a conflict of interest, the unanimity requirement of RC 519.12 is satisfied if the two remaining trustees concur in their vote either to deny or to modify the recommendation of the township zoning commission.

OAG 74-024. Only a township rural zoning commission, and not a board of township trustees, has authority to enter into a contract for the services of a planning consultant, within the limits of the money appropriated by the board for the purpose, under RC 519.05.

OAG 71-052. Board of township trustees has duty to determine whether petitions requesting referendum on zoning amendment filed with board are valid on their face for presentation to board of elections, but does not have power to inquire into other matters respecting said petitions.

OAG 71-038. In establishing a township cemetery, a board of township trustees is not required to comply with a provision of the township zoning resolution that limits new cemeteries to a minimum of twenty acres.

7. Referendum

53 Cin L Rev 381 (1984). Referendum Zoning: Legal Doctrine and Practice, Ronald H. Rosenberg.

12 OS(3d) 140, 12 OBR 180, 465 NE(2d) 883 (1984), Shelly & Sands, Inc v Franklin County Bd of Elections. A petition for a change in zoning to permit production of concrete at a site already used for a sand and gravel quarry is ambiguous and invalid where it refers to the continuation of the quarry operation, when such continuation is not in issue.

70 OS(2d) 125, 435 NE(2d) 1110 (1982), State ex rel Griffin v Krumholtz. A referendum petition will be rejected where it does not contain the prescribed election falsification statement.

52 OS(2d) 49, 369 NE(2d) 11 (1977), State ex rel English v Geauga County Bd of Elections. The sixty-day certification requirement in RC 3501.02(F) is applicable to the referendum procedure in RC 519.12.

48 OS(2d) 173, 357 NE(2d) 1079 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections. Where a referendum petition did not indicate that one of the paragraphs included in the title of the resolution to be voted on was not adopted by the township board of trustees, it did not fairly and accurately present the issues sought to be submitted to the electorate.

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976). Under O Const Art II, § 1f, municipal referendum powers are limited to questions which municipalities are "authorized by law to control by legislative action."

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976). A municipal charter provision which requires that any ordinance changing land use be ratified by the voters in a city-wide election constitutes an unlawful delegation of legislative power.

22 OS(2d) 197, 259 NE(2d) 501 (1970), Markus v Trumbull County Bd of Elections. Text of ballot statement resulting from referendum petition must fairly and accurately present question or issue to be decided in order to assure free, intelligent and informed vote by average citizen affected.

22 OS(2d) 197, 259 NE(2d) 501 (1970), Markus v Trumbull County Bd of Elections. Requirements of O Const Art II, § 1g do not apply to referendum zoning petition filed under RC 519.12.

8 App(3d) 424, 8 OBR 548, 457 NE(2d) 883 (Trumbull 1982), Howland Realty Co v Wolcott. A complainant who seeks declaratory relief in the court of common pleas from an action of a township board of trustees modifying or amending a zoning ordinance need not seek a referendum prior to filing his complaint.

50 App(2d) 1, 361 NE(2d) 477 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections; affirmed by 48 OS(2d) 173, 357 NE(2d) 1079 (1976). The requirements for referendum petitions under RC 519.12 are: (a) the petition must contain the number and a full and correct title of the zoning resolution; (b) the petition must contain the affidavit of the person soliciting signatures for the petition certifying that to the best of his or her knowledge and belief

each of the signatures is that of the person whose name it purports to be, that he believes such persons are electors of the township, and that such persons signed the petition with knowledge of its contents; and (c) if the petition contains any additional information it must be of such a character as to promote the attempt to fairly and accurately present the question or issue and must not in any way detract from a free, intelligent and informed choice by the average citizen who is requested to make a decision as to whether he should or should not sign such a petition.

50 App(2d) 1, 361 NE(2d) 477 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections; affirmed by 48 OS(2d) 173, 357 NE(2d) 1079 (1976). Where failure to comply with any one of the requirements mandated by RC 519.12 is demonstrated on the face of the referendum petition, the relator fails to meet his burden of establishing a clear right to the relief sought and consequently, a writ of mandamus will not lie.

42 App(2d) 56, 327 NE(2d) 789 (1974), State ex rel Diversified Realty, Inc v Perry Twp Bd of Trustees. RC 3501.38 is applicable to all referendum petitions filed pursuant to RC 519.12.

42 App(2d) 56, 327 NE(2d) 789 (1974), State ex rel Diversified Realty, Inc v Perry Twp Bd of Trustees. A board of elections has the duty, pursuant to RC 3501.11(K), to review, examine and certify the sufficiency and validity of referendum petitions filed pursuant to RC 519.12.

No. 1298 (9th Dist Ct App, Medina, 1-25-84), State ex rel McNulty v Liverpool Twp Bd of Trustees. A board of township trustees exceeds its authority under RC 519.12 when it withdraws its previously granted certification of a referendum petition; once a board has certified a referendum petition, it is up to the board of elections to determine its validity.

25 Misc 104, 266 NE(2d) 275 (CP, Clermont 1970), Sidwell v Clepper. Original petitions for referendum on township zoning act do not require appointment of a committee to serve on behalf of signers of petitions.

19 Misc 67, 250 NE(2d) 106 (CP, Trumbull 1968), Markus v Trumbull County Bd of Elections; affirmed by 22 OS(2d) 197, 254 NE(2d) 501 (1970). A board of elections will be permanently enjoined from placing on the ballot a referendum to a township zoning amendment where the petitions contained neither a copy nor summary of the proposed change, the circulator of the petitions did not state in his affidavit that each signer had knowledge of the proposed amendment, and the ballot contained no statement that only a portion of the landowners' property was to be rezoned or that a buffer strip would be constructed between the adjacent zones.

426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976), Eastlake v Forest City Enterprises, Inc. City charter provision requiring voter approval in referendum for any changes in land use agreed to by city council is valid.

OAG 88-005. When a proposed amendment to a township zoning resolution has been denied by the board of township trustees, the provisions of RC 519.12(H) for a referendum election do not apply.

1957 OAG 255. RC 519.12 does not permit the referendum petition to be directed to only one or more of the several sections of the amendment, but requires that it be directed to the entire amendment.

1956 OAG 6685. A petition demanding an election on a proposed amendment to a township zoning resolution, must contain the names of electors residing in the area then included in the existing zoning plan, equal to not less than eight per cent of the total vote cast for all candidates for governor by electors residing in the area at the last preceding general election at which a governor was elected, all of whom are entitled to vote on the issue presented.

519.25 Township zoning plan repeal; procedure; referendum

In any township in which there is in force a plan of township zoning, the plan may be repealed by the board of township trustees in the following manner:

(A) The board may adopt a resolution upon its own initiative.

(B) The board shall adopt a resolution if there is presented to it a petition, similar in all relevant aspects to that prescribed in section 519.12 of the Revised Code, signed by a number of qualified electors residing in the unincorporated area of such township included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting that the question of whether or not the plan of zoning in effect in such township shall be repealed be submitted to the electors residing in the unincorporated area of the township included in the zoning plan at a special election to be held on the day of the next primary or general election. The resolution adopted by the board of township trustees to cause such question to be submitted to the electors shall be certified to the board of elections not later than seventy-five days prior to the day of election at which said question is to be voted upon. In the event a majority of the vote cast on such question in the township is in favor of repeal of zoning, then such regulations shall no longer be of any effect. Not more than one such election shall be held in any two calendar years.

HISTORY: 1981 H 101, eff. 9-25-81
1980 H 1062; 127 v 363; 125 v 713; 1953 H 1; GC 3180-50

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 59.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 154, 220, 235, 245

Am Jur 2d: 82, Zoning and Planning § 10

Adoption of zoning ordinance or amendment thereto as subject of referendum. 72 ALR3d 1030

NOTES ON DECISIONS AND OPINIONS

OAG 72-003. A board of county commissioners is not authorized by RC 6103.02 to assent to a provision in the contract under which the municipal zoning ordinances take precedence over the zoning resolutions of the townships affected by the contract.

1964 OAG 1500. A comprehensive zoning plan adopted pursuant to RC Ch 519 may not be repealed for a part only of the territory included within the zoning plan, but must be repealed vel non as a whole.

1964 OAG 1500. The electors residing within the unincorporated area of the township included within the zoning plan shall vote upon the repeal of that zoning plan.

1964 OAG 1500. A referendum seeking repeal of a township zoning plan may be held in the same year the plan was approved by the electorate.

1962 OAG 2963. Repeal of township zoning pursuant to RC 519.25 is not a prerequisite to, nor the same as, a consideration of the question raised by RC 303.11 and RC 303.22.

1960 OAG 1990. A "primary election" is held only when one or more of the purposes stated in division (E) of RC 3501.01 are present, and the question of repeal of a township zoning plan, which must be submitted to the electors at the next primary or general election, may not be submitted for vote on the first Tuesday after the first Monday of May in a year if it would be the sole issue before the electors.

MUNICIPAL CORPORATIONS

703.01 Classification

Municipal corporations, which, at the last federal census, had a population of five thousand or more, or five thousand registered resident electors or resident voters as provided in section 703.011 of the Revised Code, are cities. All other municipal corporations are villages. Cities, which, at any federal census, have a population of less than five thousand, shall become villages. Villages, which, at any federal census, have a population of five thousand or more, shall become cities. No municipal corporation shall have its classification as a village changed to that of a city by virtue of there being counted, in determining the population of such municipal corporation, college or university students in attendance at an educational institution within the municipal corporation where the residential addresses of such students when not in attendance at the educational institution, or the residential addresses of the guardians of such students, as determined by the records of the institution kept by its registrar, are at a place other than the municipal corporation wherein such institution is located. After each decennial census the secretary of state shall issue a proclamation certifying the number of permanent residents in such municipal corporation and the number of students attending a college or university therein.

HISTORY: 126 v 419, eff. 8-30-55
1953 H 1; GC 3497

PRACTICE AND STUDY AIDS

Hausser and Van Aken, Ohio Real Estate Law and Practice, Text 14.55(B)
Baldwin's Ohio Township Law, Text 3.21, 57.01
Baldwin's Ohio School Law, Text 4.03(A), 4.05(C), 4.06
Gotherman & Babbit, Ohio Municipal Law, Text 1.27, 1.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 408, 409, 443
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 4 to 23, 105 to 109

NOTES ON DECISIONS AND OPINIONS

CONSTITUTIONALITY:

91 OS 220, 110 NE 471 (1915), Murray v State. O Const Art XVIII, § 1, classifying municipal corporations, is not self-executing, and GC 3497 (RC 703.01) et seq., regulating transition from one class to another, is not so obviously inconsistent with the construction as to be impliedly repealed thereby, and hence are in force; consequently, a village is not advanced to a city on an official census, other than federal, that it had the required population.

368 FSupp 999 (SD Ohio 1973), Headlee v Franklin County Bd of Elections. Statutory requirement that candidates in village elections be residents of the village for one year prior to the date of the election is invalid.

1928 OAG 1750. Under O Const Art XVIII, § 1 and this section, all municipal corporations having a population of less than five thousand are villages; where the term "village" is used in a statute, resort should be had to the last federal census for the purpose of determining whether a municipality is a city or a village.

---

9 Capital U Law Rev 621 (1980). Transition from Village to City Status, John E. Gotherman.

39 Cities & Villages 7 (January 1991). Village—City Transition.

56 OS(2d) 164, 383 NE(2d) 569 (1978), Carroll v Washington Twp Zoning Comm. 2721.12 does not apply to a declaratory judgment involving the constitutionality of a township zoning resolution, so service of a copy of the complaint on the attorney general is not required.

174 OS 135, 187 NE(2d) 33 (1962), Bd of Commrs of Lorain County v Elyria. Where the secretary of state issues a declaration that a village has achieved the status of a city during the pendency of an annexation proceeding concerning the village and a city, such change in status divests the board of county commissioners of jurisdiction of the annexation proceeding.

174 OS 98, 186 NE(2d) 848 (1962), Christensen v Hagedorn. The mayor of a village who holds over in his office after the village becomes a city by declaration of the secretary of state and serves during the period before a regular municipal election possesses only the powers and authority of a village mayor, and a patrolman appointed by such mayor does not attain civil service status.

163 OS 241, 126 NE(2d) 439 (1955), State ex rel Brubaker v Brown. A village census made by the census bureau at the village's request and pursuant to a contract between the village and the department of commerce is a federal census within the meaning of 703.01 and 703.06.

81 F(2d) 717 (6th Cir 1936), Oakwood v Hartford Accident & Indemnity Co. When boundaries and territory are the same, only the powers and privileges of the municipalities being somewhat restricted or enlarged, the corporate identity is not substantially affected.

81 F(2d) 717 (6th Cir 1936), Oakwood v Hartford Accident & Indemnity Co. Where village became a city having same boundaries, territory and substantially same population, surety or bond covering public deposit made by village is liable to city without necessity of reforming contract.

OAG 77-056. If the body of a dead person is not claimed by any person for private interment, the township, city or village of which the deceased was a resident is responsible for burial expenses if the deceased was a legal resident of the county and was not an inmate of an institution of this state.

OAG 67-065. Where the state board of housing has created a metropolitan housing authority pursuant to 3735.27 and there is no city in existence within the territorial limits of such housing authority, the two members of the authority normally appointed by the mayor of the most populous city in the territory may be appointed by the mayor of the most populous village in the territory included in the housing authority district.

1963 OAG 389. When the classification of a municipal corporation changes from that of a village to a city, the village ceases to exist and the officers of the village continue in office only until succeeded by the proper officers of the new municipal corporation at the regular municipal election.

1963 OAG 389. Members of the legislative authority of the former village who were elected to serve terms of four years in accordance with 731.09 do not continue as members of the legislative authority of the city until the expiration of such four-year period.

1962 OAG 3201. A board of county commissioners may enter into an agreement with the legislative authority of a village providing for the use of county equipment and labor to construct, improve, and repair the streets within such village, necessary materials to be furnished by the village; and the contract may provide that the county will be reimbursed on an actual hourly cost basis for the use of said equipment and labor.

1954 OAG 3608. A municipal corporation may not advance from the status of a village to that of a city on the basis of population increases disclosed by an interim census conducted prior to the regular decennial census, notwithstanding such interim census is or may be conducted by or under the authority of the federal bureau of the census and at the expense and request of the municipality.

1954 OAG 3606. An area upon incorporation may only acquire a status of a village regardless of its population, and may advance to the status of a city only by a proclamation of the secretary of state

based upon a federal census conducted subsequent in point of time to its original incorporation.

1941 OAG 3846. Where a village has adopted a charter prescribing its form of government and village subsequently becomes a city by reason of increase in population, it may immediately begin to carry on city functions imposed by the constitution or laws of the state.

SERB 86-035 (9-10-86), In re Fitzpatrick. Students who live outside a college town when not in attendance or whose parents reside outside the town, while not counted under RC 703.01 in reckoning whether the town is a village or a city, are counted in the federal census and thus also under RC 4117.01 in calculating whether a municipality has no duty to bargain with its employees because its population is under 5000.

703.011 Electors as basis for classification

In addition to the method of determining classifications of municipal corporations set out in section 703.01 of the Revised Code, villages, which at the last preceding general election had more than five thousand resident electors registered with the board of elections of the county in which the village is situated or, when more than five thousand resident electors have voted at the last preceding general election, in such village, shall become cities. In such case, the board of elections of the said county shall immediately certify to the secretary of state the number of resident electors registered or voting within said village, and the secretary of state, upon receiving said certification from the board of elections, certifying that there are five thousand or more resident electors registered or voting within said village, shall issue a proclamation to that effect. A copy of the proclamation shall forthwith be sent to the mayor of the village, which copy shall forthwith be transmitted to the legislative authority of the village, read therein, and made a part of the records thereof. Thirty days after the issuance of the proclamation the village shall be a city.

HISTORY: 126 v 419, eff. 8-30-55

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 57.01
Gotherman & Babbit, Ohio Municipal Law, Text 1.27, 1.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 408, 409, 443

703.07 Status of city or village officers and ordinances

Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new municipal corporation at the regular municipal election, and the ordinances thereof not inconsistent with the laws relating to the new municipal corporation shall continue in force until changed or repealed.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3499

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 1.30

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 443, 446, 447

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 54

NOTES ON DECISIONS AND OPINIONS

174 OS 98, 186 NE(2d) 848 (1962), Christensen v Hagedorn. The mayor of a village who holds over in his office after the village becomes a city by declaration of the secretary of state and serves during the period before a regular municipal election possesses only the powers and authority of a village mayor, and a patrolman appointed by such mayor does not attain civil service status.

125 OS 87, 180 NE 650 (1932), State ex rel Heffernan v Serp. The manner of determining the population of a municipality, and the time when a changed form of government shall become effective to conform to the changed status, are within the power of the general assembly.

125 OS 87, 180 NE 650 (1932), State ex rel Heffernan v Serp. It is the intent and meaning of 703.07 that village officers shall continue in office, with the powers and duties only of village officers until the first regular election after the proclamation of the secretary of state has been filed with the mayor of the municipality as provided by statute.

12 App(2d) 178, 231 NE(2d) 495 (1967), State ex rel Mrozik v Brunswick. A mayor of a noncharter city, whose status as mayor is created by 703.07 after the village of which he had been mayor was advanced to a city, is without authority to appoint a police officer to the office of chief of police of the newly created city.

12 App(2d) 59, 231 NE(2d) 85 (1967), State ex rel Prentice v Middleburg Heights. Where a municipality, following its transition from the status of a village to that of a city, adopts a charter for its government and such charter provides that the chief of police is placed in the unclassified service, the charter is controlling, so that a chief of police, appointed as such by the mayor of such village, continues to serve in such capacity after the adoption of the new charter and acquires no civil service status and has no appeal from the civil service commission to the court of common pleas.

OAG 74-007; modified by OAG 81-007. Where, pursuant to 5521.01, a village has requested and thereby obligated the director of transportation to make repairs on a section of highway, the obligation does not continue in effect after the village becomes a city.

1963 OAG 389. When the classification of a municipal corporation changes from that of a village to a city, the village ceases to exist and the officers of the village continue in office only until succeeded by the proper officers of the new municipal corporation at the regular municipal election.

1962 OAG 2929. Where a village becomes a city, the village officers continue in office until the city officers are elected and qualified, but have only the powers and duties of village officers during that period.

1955 OAG 5852. The officers of a village serving at the time of its transition to the status of a city continue to serve as such officers until the election and qualification of city officers, but may exercise only the powers given by the law to village officers.

1952 OAG 1402. Where as a result of a federal census a municipality has been changed from a village to a city, village employees other than policemen and firemen may be continued in office until a civil service commission has been appointed, and the council cannot place employees in a classified service unless a charter provision so providing has been enacted; police and firemen have tenure under GC 4384, 4384-1, and 4389 (RC 737.15, 737.16 and 737.22), and their status is subject to GC 486-15a and 486-17 (RC 143.34 and 143.26) et seq.

1943 OAG 6101. Unless provisions contained in charter provide otherwise, city which became such in 1941 by reason of proclamation of secretary of state based on 1940 federal census and issued prior to regular municipal election held in 1941, was required to elect city auditor at such election to serve for term of four years from first day of January, 1942.

703.20 Surrender of corporate power by villages

Villages may surrender their corporate powers upon the petition to the legislative authority of the village of at least forty per cent of the electors thereof, to be determined by the number voting at the last regular municipal elecion [*sic*], and by an affirmative vote of a majority of such electors at a special election, which shall be provided for by the legislative authority, and conducted, canvassed, and the result certified and made known as at regular municipal elections. If the result of the election is in favor of such surrender, the village clerk shall certify the result to the secretary of state and the county recorder, who shall record it in their respective offices, and thereupon the corporate powers of such village shall cease.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3513

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Forms 31.13 to 31.15
Gotherman & Babbit, Ohio Municipal Law, Text 3.64 to 3.66; Forms 3.21 to 3.23

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 444, 473, 474; 37, Elections § 10
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 91

NOTES ON DECISIONS AND OPINIONS

No. 46-CA-83 (5th Dist Ct App, Fairfield, 4-9-84), State ex rel Karr v Riffle. A writ of mandamus to compel a special election for disincorporation of a village is improperly denied on the ground that the petitioners have an adequate remedy at law because an election is being held on the governmental issue which the trial court believes is the original source of the petitioners' discontent.

52 Abs 575, 83 NE(2d) 824 (App Greene 1948), State ex rel Morgan v Hodge. Where requisite number of petitioners signed a petition for special election on question of surrender of corporate powers under authority of this section, it was duty of mayor and council to fix a date and canvass the petition to determine whether it bore enough valid signatures to require an election. In no view could they refuse to act, and mandamus will lie to require them to act.

703.22 Identical municipal and township boundaries

When the limits of a municipal corporation become identical with those of a township, all township offices shall be abolished, and the duties thereof shall be performed by the corresponding officers of the municipal corporation. All property, moneys, credits, books, records, and documents of such township shall be delivered to the legislative authority of such municipal corporation. All rights, interests, or claims in favor of or against the township may be enforced by or against such municipal corporation.

HISTORY: 132 v H 2, eff. 2-14-67
1953 H 1; GC 3512

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.23, 3.24, 97.17
Gotherman & Babbit, Ohio Municipal Law, Text 3.191

CROSS REFERENCES

Powers and duties of park board, 511.23
Petition for sale of park lands by park commissioners, 511.25
Disposition of money from sale of park lands, 511.26
Construction and meaning, "boards of township park commissioners", 511.35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 415, 444; 37, Elections § 41
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 40, 54

NOTES ON DECISIONS AND OPINIONS

160 OS 165, 114 NE(2d) 821 (1953), State ex rel Gilmore v Lorain County Bd of Elections. After the corporate limits of a village become identical with those of a township, the township may not be considered an "adjoining township" within the meaning of those words as set forth in the first sentence of GC 3577-1 (RC 709.39).

122 OS 311, 171 NE 404 (1930), State ex rel Vocke v Brooklyn Heights. Ordinance fixing salary of justice of peace, when township and village boundaries were identical, became inoperative after territory was annexed to city.

107 OS 154, 140 NE 650 (1923), Barth v State. Where the boundaries of a city have been enlarged to include an entire township, any claim which the township would have had to fines and forfeitures under the state prohibition law but for such merger now inures to the city.

4 App(3d) 213, 4 OBR 318, 447 NE(2d) 765 (Franklin 1982), Franklin Twp v Marble Cliff. RC 503.07 and 703.22 are not irreconcilable, and RC 703.22 does not limit the authority of the board of county commissioners to detach a municipal corporation from the rest of a township but, instead, only deals with the result of a detachment.

25 LR 367 (1927). As to validity and effect of this section, see letter of Gilbert Morgan.

OAG 90-071. It is not necessary for a municipality to seek a change in township boundaries pursuant to RC 503.02, rather than RC 503.07, when the proposed change will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with RC 703.22.

OAG 90-071. Pursuant to RC 503.07, a municipal corporation may petition for a change of township lines so that the lines become identical in part with the limits of the municipal corporation. Any parts of a township brought within a municipal corporation pursuant to such a change of township lines shall, in accordance with RC 503.14, be annexed to the township in which the municipal corporation or the greater part of it was previously situated. This procedure may be followed even though it will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with RC 703.22.

OAG 69-032. When a new township is created which conforms to the limits of a municipality and is created from part of the area of three different existing townships, the city ordinance which sets out the boundaries for the new township should describe the new boundaries of each of the three townships from which area was annexed and how it relates to the new township.

OAG 67-013. When a municipality, whose boundaries are coterminous with those of a township, annexes territory in an adjoining county, and then petitions for a change in township lines in that adjoining county to conform to the municipal boundaries, the residents of the annexed portion of the adjoining county who otherwise qualify, remain electors of that county and become electors of the municipality who vote at municipal precinct polling places, but cease to be electors of the township from which the territory which included their residence was annexed, and are not electors for any township offices or issues.

1963 OAG 606. The annexation of an area comprising a township park by a municipal corporation has no effect on the millage which may be claimed by the township board of park commissioners.

1962 OAG 3170. (1) When a new township is established out of the portion of a township comprising a city, the city takes title to cemetery property owned by the original township but lying entirely within the borders of the city; and the cemetery is operated by the director of public service of the city; personal property of the original township which was not divided at the time the municipal corporation was incorporated, and remained the property of the township, remains the property of said original township when the new township is established, and (2) where a special levy for the purpose of the township cemetery exists in the original township, the proceeds of such levy should be apportioned between the two townships, the amount due the new township being allocated to the city, and the city and the original township may unite in the management of the cemetery.

1957 OAG 153. Where a board of township trustees creates a fire district from part of a township, and purchases a fire truck to serve such fire district, the subsequent annexation of territory, including all of the fire district, to a municipal corporation does not give such municipal corporation any right of ownership in such fire truck.

1954 OAG 4642. Existence and operation of township government where township is within limits of a municipal corporation, in whole or in part, discussed at length.

1949 OAG 687. In granting a request of a village to reduce the boundaries of a township so that they will be co-extensive with those of the village, the village becomes the successor to the original township and all property, moneys, credits, records, etc., except such proportion of the moneys and credits as are apportioned to the township or townships into which the remaining territory of the township is merged and such property of the original township as may be situated in the remaining territory.

1944 OAG 6942. The statute does not require the council of a village which has become co-extensive with the township either to establish the office of justice of the peace and the office of constable or to regulate the disposition of their fees, their compensation, clerks or other officers and employees.

1944 OAG 6942. A justice of the peace and constable who have been duly elected and qualified in a municipality which is co-extensive with a township, are duly constituted as such officers notwithstanding failure of council to enact an ordinance providing offices, regulating disposition of their fees, their compensation, clerks and other officers and employees.

1944 OAG 6942. Where constable in township which is co-extensive with a village is in active military service and absent from the township, council of village is without power to declare his office vacant because of such absence.

1940 OAG 3134. When the corporate limits of a city have become identical with those of a township and the city council has, by ordinance, fixed the salary of the justice of the peace and the constable of said township, the council may at any time change, by ordinance, this mode of compensation to a fee basis, but the change may not be made to apply to incumbents of those offices during their existing terms.

1934 OAG 3197. A village council has power to repeal an ordinance enacted prior to the commencement of the term of office of the justice of the peace in the township having identical boundaries with the village, which ordinance places the office on a salary basis, after the term of office has commenced, when the justice refuses to serve, providing such repeal is effective before the justice is appointed to fill the vacancy caused by the failure of such justice to qualify.

1927 OAG 548. When the corporate limits of a city or village have become identical with those of a township and the council of the city or village has fixed the compensation to be paid to a justice of the peace as the amount of fees taxed and collected by said justice in the hearing of state cases, the council may later change the amount of compensation to be paid to said justice by the enactment of an ordinance providing for the payment of a definitely fixed salary.

705.92 Removal by recall; procedure

Any elective officer of a municipal corporation may be removed from office by the qualified voters of such municipal corporation. The procedure to effect such removal shall be:

(A) A petition signed by qualified electors equal in number to at least fifteen per cent of the total votes cast at the last preceding regular municipal election, and demanding the election of a successor to the person sought to be removed, shall be filed with the board of elections. Such petition shall contain a general statement in not more than two hundred words of the grounds upon which the removal of such person is sought. The form, sufficiency, and regularity of any such petition shall be determined as provided in the general election laws.

(B) If the petition is sufficient, and if the person whose removal is sought does not resign within five days after the sufficiency of the petition has been determined, the legislative authority shall thereupon order and fix a day for holding an election to determine the question of his removal, and for the selection of a successor to each officer named in said petition. Such election shall be held not less than thirty nor more than forty days from the time of the finding of the sufficiency of such petition. The election authorities shall publish notice and make all arrangements for holding such election, which shall be conducted and the result thereof returned and declared in all respects as are the results of regular municipal elections.

(C) The nomination of candidates to succeed each officer sought to be removed shall be made, without the intervention of a primary election, by filing with the election authorities, at least twenty days prior to such special election, a petition proposing a person for each such office, signed by electors equal in number to ten per cent of the total votes cast at the last preceding regular municipal election for the head of the ticket.

(D) The ballots at such recall election shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there shall be printed on the ballots, the two propositions in the order set forth:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Immediately to the left of the proposition shall be placed a square in which the electors, by making a cross (X) mark, may vote for either of such propositions.

Under each of such questions shall be placed the names of candidates to fill the vacancy. The name of the officer whose removal is sought shall not appear on the ballot as a candidate to succeed himself.

In any such election, if a majority of the votes cast on the question of removal are affirmative, the person whose removal is sought shall be removed from office upon the announcement of the official canvass of that election, and the candidate receiving the plurality of the votes cast for candidates for that office shall be declared elected. The successor of any person so removed shall hold office during the unexpired term of his predecessor. The question of the removal of any officer shall not be submitted to the electors until such officer has served for at least one year of the term during which he is sought to be recalled. The method of removal provided in this section, is in addition to such other methods as are provided by law. If, at any such recall

election, the incumbent whose removal is sought is not recalled, he shall be repaid his actual and legitimate expenses for such election from the treasury of the municipal corporation, but such sum shall not exceed fifty per cent of the sum which he is by law permitted to expend as a candidate at any regular municipal election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3515-71

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 15.23

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 493, 497, 501, 517; 21, Counties, Townships, and Municipal Corporations § 613, 614, 625, 665

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 131, 309 to 311

NOTES ON DECISIONS AND OPINIONS

45 OS(2d) 292, 345 NE(2d) 71 (1976), State ex rel Lockhart v Boberek. The provisions of 705.92, permitting recall of the elective officers of a municipal corporation, go into effect only to the extent that they have been adopted by the voters as part of a home rule charter.

No. 83-06-051 (12th Dist Ct App, Clermont, 7-21-83), State ex rel McVey v Banks. The statutory procedures and standards for municipal recall elections in cities governed by home rule charters are provided for in RC 705.92, where such city's charter provides that such recall procedures "shall be that provided by law."

OAG 89-050. When an amendment to a municipal charter adopted pursuant to O Const Art XVIII §7 and 9 provides for the recall of elected municipal officers and further directs that "the procedure for such recall shall be that provided by the laws of the State of Ohio," the amendment incorporates only the provisions of RC 705.92.

OAG 89-050. The procedure set forth in RC 705.91 for the adoption of the recall procedures of RC 705.92 applies only to cities exercising one of the optional statutory plans of government set forth in RC 705.41 to 705.86 and has no application to a charter municipality which chooses to incorporate statutory recall procedures into its charter pursuant to O Const Art XVIII §7, 8, and 9.

OAG 83-007. A member of a metropolitan housing authority, appointed by the mayor of a village without a charter provision purporting to provide for the recall of housing authority members, may not be removed from office by recall election.

OAG 77-101. A county officer may not be removed from office by recall election.

707.04 Portion of territory within three miles of existing municipal corporation

Prior to fixing the time and place of the public hearing pursuant to section 707.05 of the Revised Code, the board of county commissioners shall determine whether any of the area proposed to be incorporated includes territory within three miles of any portion of the boundary of an existing municipal corporation. If the board so finds, it shall make an order in its journal of such finding and forward a copy of such entry to the clerk of the legislative authority of such municipal corporation. The board shall thereafter take no action on the incorporation petition so long as any of the area proposed to be incorporated includes territory within three miles of the boundary limits of any existing municipal corporation. However, the board may proceed with the incorporation petition even though some or all of the territory proposed to be incorporated would be within the three-mile area if there is furnished the board of county commissioners a copy of a resolution, passed by the legislative authority of each existing municipal corporation within the three-mile area approving the petition for incorporation.

HISTORY: 1991 H 228, eff. 3-2-92
1986 H 428; 1983 H 39; 1978 H 218; 132 v S 221

Note: Former 707.04 repealed by 132 v S 221, eff. 12-1-67; 130 v S 3; 1953 H 1; GC 3519; see now 707.02 for provisions analogous to former 707.04.

Note: See 707.02 for annotations from former 707.04.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 21.31, 21.39, 25.03, 57.02 to 57.04

Gotherman & Babbit, Ohio Municipal Law, Text 3.061, 3.07; Forms 3.02, 3.03, 3.42

CROSS REFERENCES

Municipal corporations, appointments after certain incorporations, 124.411

Annexation petition, petition for restraining injunction, 709.07

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 417, 418, 420 to 423, 428, 430 to 432, 435, 440, 460, 462, 463

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 30 to 32

NOTES ON DECISIONS AND OPINIONS

10 App(2d) 143, 226 NE(2d) 771 (1967), Watson v Doolittle. In 707.04, 709.02, 709.13, 709.14, 709.22, 709.23, 709.24 and 709.35, by the use of the synonymous words "adjacent," "contiguous" and "adjoining," the legislature intended to restrict annexations to territory that is adjacent, contiguous and adjoining to a village or city.

OAG 69-118. The municipal corporation which wishes to annex territory which is situated within three miles of two or more municipal corporations must follow 707.01 through 707.14 so far as practicable in order to insure that the annexation procedure is not negated by a strict reading of the procedural requirements.

ANNOTATIONS FROM FORMER ANALOGOUS SECTION

707.02 QUALIFICATIONS FOR INCORPORATION

149 OS 231, 78 NE(2d) 370 (1948), Wachendorf v Shaver; 81 App 209, 78 NE(2d) 761 (1947), State ex rel Youngs v Bd of Elections of Lucas County. The words "any territory" used in GC 3526 (RC 707.15), comprehend and include platted as well as unplatted lands, and application for incorporation of platted lands may be properly made to either the county commissioners, under this section, or to the township trustees under GC 3526 (RC 707.15).

4 App 45, 21 CC(NS) 52 (1914), Bring v Hollis. The jurisdiction of the county commissioners in refusing to incorporate a village is political and not judicial, and therefore not reviewable on error.

1931 OAG 3593. When a petition is filed with county commissioners praying for the incorporation of a village from platted and unplatted lands, and subsequently another petition is filed by the residents of only the platted territory included in the first petition, requesting annexation to an adjacent municipal corporation, the county commissioners may not, after hearing the first petition, incorporate a village from the unplatted lands alone.

707.21 Election of officers; special election; term of office

The first election of officers for a municipal corporation organized under Chapter 707. of the Revised Code shall be held at the time of the next regular municipal election if one occurs not less than one hundred five nor more than one hundred eighty days after the creation of the municipal corporation. Otherwise a special election shall be held. Such special election may be held on the day of a primary or general election or on a date set by the board of elections. Nominations of candidates for election to municipal office at a special election shall be made by nominating petition and shall be signed by not less than twenty-five qualified electors nor more than fifty qualified electors of the township or of the portion thereof which has been incorporated into such municipal corporation, and be filed with the board of elections not less than sixty days before the day of the election.

Municipal officers elected at such special election shall hold office until the first day of January next after the first regular municipal election occurring not less than one hundred five days after the creation of such municipal corporation.

HISTORY: 1991 H 228, eff. 3-2-92
1981 H 235; 132 v S 221; 129 v 1267; 125 v 713; 1953 H 1; GC 3536

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 421, 422, 431, 432

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 249

NOTES ON DECISIONS AND OPINIONS

65 Abs 547, 115 NE(2d) 858 (App Montgomery 1953), State ex rel McKay v Bd of Elections of Montgomery County. There is nothing in the incorporation statutes or the detachment statutes which requires the conclusion that it was intended that there must be a deferment of the detachment proceedings until the officers of the village are elected and qualified.

1952 OAG 2103. Zoning regulations adopted by county commissioners covering a township which is afterwards incorporated as a village will remain in full force until the proceedings for the incorporation of such village are completed by the election of village officers.

1940 OAG 1696. Upon incorporation of a village, its officers may be elected at any time not exceeding six months after its incorporation, and there should be elected a mayor, treasurer, clerk, six members of council and a marshal.

1928 OAG 2717. Members of boards of education for newly created village school districts may be appointed by county commissioners or may be selected at a special election held pursuant to this section, in which case their respective terms will date from the first Monday in January after the last preceding regular election for such offices in November of odd numbered years, as provided by GC 4838 (RC 3313.62).

709.011 Duties of clerk; notification to board of elections

The clerk or clerk of council of a municipal corporation shall notify the board of elections of all vacancies caused by death, resignation, or otherwise in the elective offices of the municipal corporation. Such notification shall be made in writing and filed not later than ten days after the vacancy occurs with the board of elections of the county or counties in which the municipal corporation is located.

The clerk or clerk of council of a municipal corporation shall notify the board of elections of all changes in the boundaries of the municipal corporation. Such notification shall be made in writing and contain a plat clearly showing all boundary changes and shall be filed with the board of elections of the county or counties in which the municipal corporation is located within thirty days after such change occurs.

HISTORY: 132 v S 220, eff. 12-1-67
125 v 713

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.20, 13.495; Forms 3.41

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 71

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR2d 1279

709.17 Election on question of annexation; tax rate

A vote by the electors of the unincorporated area of the township shall be taken under the election laws of this state at the next general or primary election occurring not less than seventy-five days after the legislative authority of a municipal corporation certifies the ordinance mentioned in section 709.14 of the Revised Code to the board of elections. Thereupon all annexation proceedings shall be stayed until the result of the election is known. If a majority of the electors of such area voting in the election favor annexation, proceedings shall begin within ninety days to complete annexation, and if a majority of the electors voting in the election is against annexation, no further proceedings shall be had for at least five years.

If such territory is annexed subsequent to the day upon which taxes become a lien, the new municipal corporation tax rate shall not apply until the first day of January next following when the lien of the state for taxes levied attaches. In the meantime the old township tax rate shall apply.

HISTORY: 1983 S 58, eff. 10-14-83
1980 H 1062; 1973 S 44; 130 v H 1; 1953 H 1; GC 3561-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 55.11
Gotherman & Babbit, Ohio Municipal Law, Text 3.401

CROSS REFERENCES

Agricultural district, placing land into district, 929.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 448, 449, 451, 453, 458, 462, 466

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 62

Resistance to municipal taxation or assessments upon extension of municipal limits or boundary. 13 ALR2d 1297

NOTES ON DECISIONS AND OPINIONS

62 OS(2d) 241, 405 NE(2d) 262 (1980), Holcomb v Bd of Summit County Commrs. Where village passed an ordinance proposing annexation of township and an election was scheduled thereon and thereafter a group of landowners in the area petitioned for annexation of a portion of the area to a different city, county commissioners acted improperly in delaying action on section petition until after election.

167 OS 156, 146 NE(2d) 721 (1957), State ex rel Loofbourrow v Bd of Commrs of Franklin County. The election provided for in 709.17 operates as a veto upon such annexation proceedings if it is adverse to such annexation, but, if it is favorable to annexation, such election does not constitute a mandate to the county commissioners to act in a ministerial capacity to effectuate such annexation; the commissioners are still required to exercise their discretion to either allow or deny the petition for annexation, and their denial thereof in good faith, for the reasons that the territory proposed to be annexed is unreasonably large and that it is not right or equitable that the petition for annexation be allowed, is determinative of the issue. (See also State ex rel Loofbourrow v Bd of Commrs of Franklin County, 99 App 169, 132 NE(2d) 259 (1955).)

104 App 541, 150 NE(2d) 498 (1957), State ex rel Loofbourrow v Bd of Commrs of Franklin County; affirmed by 167 OS 156, 146 NE(2d) 721 (1957). A board of county commissioners has discretion to hear and determine whether a petition for annexation of unincorporated territory to a municipal corporation be granted or denied after a majority voted in favor of annexation. (See also State ex rel Loofbourrow v Bd of Commrs of Franklin County, 99 App 169, 132 NE(2d) 259 (1955).)

99 App 169, 132 NE(2d) 259 (1955), State ex rel Loofbourrow v Bd of Commrs of Franklin County. Where a petition for annexation filed under 709.15 is filed prior to the election called for by 709.17, such proceeding should be stayed under 709.17 until after the election. (See also State ex rel Loofbourrow v Bd of Commrs of Franklin County, 167 OS 156, 146 NE(2d) 721 (1957).)

99 App 169, 132 NE(2d) 259 (1955), State ex rel Loofbourrow v Bd of Commrs of Franklin County. 709.17 contemplates that the proceedings for annexation authorized by 709.14 et seq. be begun before the board of county commissioners prior to the election. (See also State ex rel Loofbourrow v Bd of Commrs of Franklin County, 167 OS 156, 146 NE(2d) 721 (1957).)

74 Abs 554, 142 NE(2d) 296 (CP Franklin 1956), McClintock v Cain. 709.17 has no application to annexation proceedings in which no election is required.

OAG 90-027. When a municipal corporation is an owner as defined in RC 709.02 and proceeds with an annexation on application of citizens, no election under RC 709.17 is required. When such municipal corporation proceeds with an annexation on its own application, the election under RC 709.17 is required to be held unless the only land to be annexed is owned by the municipality and such territory is located entirely within the same county as the municipal corporation seeking annexation.

1964 OAG 1184. The question of annexing contiguous territory to a municipal corporation must be submitted to a vote of the electors of the entire unincorporated area of the township and not merely to the electors of the territory to be annexed.

1960 OAG 1901. Where proceedings for the annexation of territory to a municipal corporation under Ch 709 have been completed by the adoption of an ordinance accepting such territory prior to the first day of October, property in such territory should be listed on the tax duplicate of such municipal corporation.

1957 OAG 1452. The effect of the transfer after tax lien date of school district territory on the authority of the receiving school district to levy a tax on the real property in such territory by action in the current year under 5705.34 discussed.

1956 OAG 7419. Where an application by a municipality to annex contiguous territory has been filed with the county commissioners, the proceedings thereon shall be stayed until the proposition has been submitted to and approved by a majority of the electors of the unincorporated area of the township voting thereon, and the fact that the area sought to be annexed belongs to the state of Ohio would not justify an omission to hold such election.

1951 OAG 567. Where proceedings have been instituted by a municipality to annex contiguous territory under GC 3558 (RC 709.13) et seq., and such proceedings were defeated by an adverse vote at an election held under GC 3651-1 (RC 709.17), the latter section did not bar application at any time for the annexation of said territory filed by the citizens residing therein.

1946 OAG 1399. Inmates of a county home which is situated on territory sought by a municipality to be annexed are, under GC 4785-33 (RC 3503.04), legal residents of territory and if they possess other qualifications of electors, are entitled to vote at an election held pursuant to this section on question of annexation.

1944 OAG 6759. When the council of municipality passes an ordinance looking to annexation to such municipality of territory contiguous thereto, pursuant to GC 3558 (RC 709.13) et seq., and there are no electors residing within the territory sought to be annexed, this section has no application, and county commissioners may upon filing of petition of municipality for such annexation proceed to a hearing and action on such petition.

709.29 Submission of question of annexation to a vote; procedure

Within thirty days after filing the conditions of annexation as provided by section 709.28 of the Revised Code with the legislative authorities of the municipal corporations, the legislative authorities of both such municipal corporations shall order the question of annexation, upon the conditions contained in the report of such commissioners, to be submitted to a vote at the next regular election or primary election, occurring not less than seventy-five days after the filing of such conditions with the board of elections.

Each ordinance shall prescribe the manner in which the submission shall be made and shall be published in its respective municipal corporation by posters or otherwise, for a period of at least twenty days, prior to the time fixed for the election, in such manner as the legislative authority deems most expedient, and a printed copy of such conditions shall be mailed to each voter of such municipal corporations, as shown by the registration books.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 129 v 1817; 1953 H 1; GC 3570

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.22, 3.48; Forms 3.63

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 62

709.30 Assent to annexation; election

The legislative authority of a city to which the annexation of another city or village or part thereof is sought as provided in sections 709.22 to 709.29, inclusive, of the Revised Code, may by ordinance, and the board of education of a city school district to which the annexation of another city school district, exempted village school district, or local school district containing a village is sought as provided in such sections may by resolution, assent to such

annexation and waive the submission of such question to the electors of the city or district to which such annexation is proposed. If, within thirty days of the passage or adoption of such ordinance or resolution, a petition, signed by twenty-five per cent of the voters of such district or city, is filed requesting that such election be held, such waiver shall be of no effect, and provision shall be made for the holding of such election as provided in section 709.29 of the Revised Code. Such petition shall be filed with the board of elections, and upon finding such a petition sufficient such board of elections shall notify the legislative authority or board of education affected thereby, and shall prepare to conduct such election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3570-1

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.481; Forms 3.64

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 62

709.31 Election results certified

If a majority of the electors of each municipal corporation, voting on the question submitted under section 709.29 of the Revised Code, are in favor of annexation, the board of elections shall thereupon certify the results of the election in each municipal corporation to the legislative authorities of both municipal corporations.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3571

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.482

709.39 Petition to submit question of detachment of territory; election; payment

The freehold electors owning lands in any portion of a village, such portion being contiguous to an adjoining township, and comprising not less than one thousand five hundred acres of land, may file a petition with the board of elections in such county requesting that an election be held to obtain the opinion of the freehold electors owning lands and residing within such portion of the village upon the question of the detachment of the portion from such village, or, upon the question of the detachment of such portion from the village and the erection of such detached portion into a new township. Such petition shall contain:

(A) An accurate description of the territory sought to be detached;

(B) An accurate map or plat thereof;

(C) If the erection of a new township is also sought, the name proposed for such new township;

(D) The name of a person to act as agent of the petitioners;

(E) Signatures equal in number to fifteen per cent of the total number of votes cast at the last general election in such territory.

Within ten days after the filing of such petition with the board the board shall determine whether the petition conforms to this section. If it does not conform, no further action shall be taken thereon. If it does conform, the board shall order an election, as prayed for in the petition, which election shall be held at a convenient place within the territory sought to be detached, on a day named by the board, which day shall be not less than seventy-five days thereafter. The board shall thereupon give ten days' notice of such election by publication in a newspaper of general circulation in such territory, and shall cause written or printed notices thereof to be posted in three or more public places in such territory. The election shall be conducted in the manner provided in Title XXXV of the Revised Code, and the judges and clerks thereof shall be designated by such board.

If no freehold electors own lands in the portion of the village seeking to be detached, the owners of lands within that portion may file a petition with the board of county commissioners requesting that the board proceed with the[4] detachment procedures, or with procedures for the detachment and erection of the portion of the village into a new township, pursuant to section 709.38 of the Revised Code. The petition shall contain the items required in divisions (A), (B), and (D) of this section, and signatures equal in number to at least a majority of the owners of land within the portion of the village seeking to be detached.

The ballots shall contain the words "for detachment," and "against detachment." If a majority of the ballots cast at such election are cast against detachment, no further proceedings shall be had in relation thereto for a period of two years. If a majority of the votes cast at such election are cast for detachment, the result of such election, together with the original petition and plat and a transcript of all the proceedings of such board in reference thereto shall be certified by the board and delivered to the county recorder, who shall forthwith make a record of the petition and plat and transcript of all the proceedings of the board and the result of the election, in the public book of records, and preserve in his office the original papers delivered to him by such board. The recorder shall certify thereon that the transcribed petition and map are properly recorded. When the recorder has made such record, he shall certify and forward to the secretary of state, a transcript thereof.

The detachment of such territory from the village shall thereupon be complete, and, if the petition included a request that such territory be erected into a new township, the territory shall thereupon constitute a new township, under the name and style specified in such petition. All expense involved in holding such election, and in the filing, recording, and transcribing of the records, provided for in this section, shall be defrayed by the petitioners, and the board and the recorder may require the payment thereof in

[4]Prior and current versions differ; although no amendment to this language was indicated in 1980 H 1062, "with the" appeared as "with" in 1978 H 732.

advance as a condition precedent to the taking by them, or either of them, of any action provided for in this section.

HISTORY: 1980 H 1062, eff. 3-23-81
1978 H 732; 1973 S 44; 1953 H 1; GC 3577-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 55.14, 55.17; Forms 31.09
Gotherman & Babbit, Ohio Municipal Law, Text 3.57 3.59 to 3.61; Forms 3.74

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463, 470
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 87

NOTES ON DECISIONS AND OPINIONS

CONSTITUTIONALITY:

28 CC(NS) 586, 30 CD 445 (1918), Newburgh Heights v French. This section is constitutional, although the city or village is thereby crippled financially.

---

167 OS 369, 148 NE(2d) 921 (1958), Beachwood v Bd of Elections of Cuyahoga County. The detachment of territory from a municipality does not fall within the sphere of local self-government but is a subject which requires the establishment of a uniform procedure throughout the state and is exclusively within the control of the general assembly.

160 OS 165, 114 NE(2d) 821 (1953), State ex rel Gilmore v Lorain County. Where a petition seeking detachment of an area from a village and its erection into a new township has been filed with a board of elections pursuant to GC 3577-1 (RC 709.39), it is the duty of that board, in determining whether the petition "conforms to the requirements" of that statute, to determine whether the area seeking detachment is in fact contiguous to an adjoining township.

160 OS 165, 114 NE(2d) 821 (1953), State ex rel Gilmore v Lorain County. After the corporate limits of a village become identical with those of a township, the township may not be considered an "adjoining township" within the meaning of those words as set forth in the first sentence of GC 3577-1 (RC 709.39).

123 OS 530, 176 NE 77 (1931), Leach v Collins. This section providing for a special election upon the question of the detachment of territory from a village and prescribing the form of ballot therefor, is controlling and exclusive.

123 OS 530, 176 NE 77 (1931), Leach v Collins. The enactment of GC 4785-103 (RC 3505.06) did not repeal this section by implication.

108 App 37, 160 NE(2d) 366 (1957), Stevens v Bd of Elections of Henry County. Where a referendum petition signer, an admittedly qualified elector, in a nonregistration area gives after his signature the name of his street but fails to give the number of his residence, such failure does not invalidate his signature.

85 Abs 321, 174 NE(2d) 287 (App Portage 1960), Durning v Bd of Elections of Portage County. Strict compliance with the requirements of 709.39 is a necessity.

85 Abs 232, 170 NE(2d) 520 (CP Allen 1960), Lima M & M Inc v Davis. The process of detachment from a village or annexation of a part of a village to a city can go on until there is finally a federal census taken, whether decennial or special, as requested by the village after it is properly formed, to determine whether it is entitled to the status of a city; the fact that some parties do or do not get to vote upon the question of detachment or annexation from a village is not of itself inequitable as this is purely a political matter.

72 Abs 386, 135 NE(2d) 882 (App Montgomery 1955), State ex rel Hunt v Montgomery County Bd of Elections. Where a detachment proposal is defeated at an election with regard to an area embracing 3090 acres, no election may be ordered within two years with respect to an 1882 acre tract, 1368 acres of which are a part of the 3090 acres.

71 Abs 385, 128 NE(2d) 460 (App Montgomery 1955), State ex rel Graef, Jr. v Bd of Elections, Montgomery County. If a petition for detachment conforms to the statute, the board of elections is required to order an election, regardless of the pendency of another suit by the village against the secretary of state to be declared a city.

71 Abs 164, 128 NE(2d) 276 (CP Montgomery 1955), State ex rel Coatney v Horstman. The court will not reverse the action of a board of elections in refusing to order an election on a detachment provision in the absence of a violation of a statute or abuse of discretion.

71 Abs 99, 128 NE(2d) 270 (CP Montgomery 1955), Brubaker v Montgomery County Bd of Elections. "Contiguous," as used in 709.39, defined.

71 Abs 99, 128 NE(2d) 270 (CP Montgomery 1955), Brubaker v Montgomery County Bd of Elections. Petition for detachment of a portion of Kettering upheld.

65 Abs 547, 115 NE(2d) 858 (App Montgomery 1953), State ex rel McKay v Bd of Elections of Montgomery County. GC 3577-1 (RC 709.39) expressly provides when the detachment from the village shall be complete, which is when the recorder has made a record of the proceedings incident to the election and certified and forwarded a transcript of such record to the secretary of state.

65 Abs 547, 115 NE(2d) 858 (App Montgomery 1953), State ex rel McKay v Bd of Elections of Montgomery County. There is nothing in the incorporation statutes or the detachment statutes which requires the conclusion that it was intended that there must be a deferment of the detachment proceedings until the officers of the village are elected and qualified.

65 Abs 547, 115 NE(2d) 858 (App Montgomery 1953), State ex rel McKay v Bd of Elections of Montgomery County. The requisite conditions to the submission of the question of detachment of territory are that the portion of the village to be detached shall be contiguous to an adjoining township, and comprise not less than one thousand five hundred acres of land, and these seem to be the extent of the physical limitations in such proceeding.

28 CC(NS) 586, 30 CD 445 (1918), Newburgh Heights v French. That signatures of petitioners for detachment of territory were procured by statements that the expenses, which this section says shall be defrayed by the petitioners, would be borne by parties interested, does not invalidate the election.

1929 OAG 519. Under this section, the petition may be filed with the board of elections, irrespective of whether such board is designated by statute as "board of deputy state supervisors and inspectors of elections" or "board of deputy state supervisors of elections."

709.44 Merger of municipalities; of municipality and unincorporated area of township

The territory of one or more municipal corporations, whether or not adjacent to one another, may be merged with that of an adjacent municipal corporation, and the unincorporated area of a township may be merged with a municipal corporation located adjacent to or wholly or partly within the township, in the manner provided in sections 709.43 to 709.48 of the Revised Code.

HISTORY: 1981 S 20, eff. 10-9-81
1969 H 590

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.49

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463, 464

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 81, 82

NOTES ON DECISIONS AND OPINIONS

OAG 90-042. Pursuant to RC 709.44, where a township consists of parcels of territory that are disconnected, the entire unincorporated territory of the township may be merged with a municipal corporation that is located wholly or partially within any portion of the township, or adjacent to the township, even if not all the parcels of the township are adjacent to the municipal corporation.

709.45 Petition; submission to electors; commission to set conditions

A petition may be filed with the board of elections proposing that one or more municipal corporations be merged with another municipal corporation, or that the unincorporated area of a township be merged with a municipal corporation located adjacent to or wholly or partly within the township, as provided by section 709.44 of the Revised Code. Such petition may be presented in separate petition papers. Each such petition paper shall contain, in concise language, the purpose of the petition and the names of not less than five electors of each such municipal corporation, or the names of not less than five electors of the unincorporated area of such township and the names of not less than five electors of the municipal corporation located adjacent to or wholly or partly within the township, to be nominated to serve as commissioners. The petition shall be governed by the rules of section 3501.38 of the Revised Code. Such petition shall contain signatures of electors of each municipal corporation or of the unincorporated area of the township proposed to be merged and signatures of electors of the municipal corporation with which merger is proposed, numbering not less than ten per cent of the number of electors residing in each such political subdivision who voted for the office of governor at the next preceding general election for such office. Such petition shall be filed with the board of elections of the county in which the largest portion of the population of the municipal corporation with which merger is proposed resides. Such board of elections shall cause the validity of all signatures to be ascertained and in doing so may require the assistance of boards of elections of other counties as the case requires. If the petition is sufficient, the board of elections of the county in which the petition is required to be filed shall submit the question: "Shall a commission be chosen to draw up a statement of conditions for merger of the political subdivisions of _____, _____, and _____?" for the approval or rejection of the electors of each political subdivision proposed to be merged and the electors of the municipal corporation to which merger is proposed at the next general election, in any year, occurring subsequent to the period ending seventy-five days after the filing of such petitions with the board. Provision shall be made on the ballot for the election, from each of the component political subdivisions, of five electors who shall constitute the commission to draw up the statement of conditions for merger of the political subdivisions. If any of the political subdivisions for which merger is proposed are located wholly or partially in a county other than the one in which the petition is required to be filed, the board of elections of the county in which such petition is filed shall, if the petition is found to be sufficient, certify the sufficiency of such petition and the statement of the issue to be voted on to the boards of elections of such other counties, the boards of elections of such other counties shall submit the question of merging and the names of candidates to be elected to the commission to draw up the statement of conditions for the approval or rejection of the electors in the portions of such political subdivisions within their respective counties, and upon the holding of such election, shall certify the result thereof to the board of elections of the county in which the petition is required to be filed.

HISTORY: 1988 S 38, § 3, eff. 7-20-89
1988 S 38, § 1; 1981 S 20; 1980 H 1062; 1969 H 590

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.50, 3.51, 3.56

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463, 464

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 71, 81, 82

NOTES ON DECISIONS AND OPINIONS

32 OS(3d) 352, 513 NE(2d) 769 (1987), State ex rel Toledo v Lucas County Bd of Commrs. After a petition is filed with a board of elections for the election of a merger commission for the merger of a municipal corporation and the unincorporated territory of a township, there is a clear legal duty upon a board of commissioners to refuse to accept for filing any petitions for annexation of land located within the township until the merger procedure has been exhausted by one of the conditions set forth in RC 709.48.

13 App(3d) 355, 13 OBR 436, 469 NE(2d) 906 (Summit 1983), Ambrose v Cole. Where a petition for the election of a merger commission for the merger of the unincorporated territory of a township and a municipal corporation is filed with the board of elections, such board of elections has a clear legal duty to refuse to accept any annexation petitions for filing until exhaustion of the merger procedure pursuant to one of the conditions set out in RC 709.48.

709.46 Effect of disapproval; procedures after approval; commission to formulate conditions of merger; submission to electors

If the question of merging a municipal corporation and the unincorporated territory of a township, as provided in section 709.45 of the Revised Code, is disapproved by a majority of those voting on it in the township proposed to be merged or in the municipal corporation with which merger is proposed, no further petitions shall be filed under that section proposing the same merger for at least three years after the date of such disapproval. If the question of merging as provided in section 709.45 of the Revised Code is approved by a majority of those voting on it in each political subdivision proposed to be merged and in the municipal corporation with which merger is proposed, the five candidates from each such political subdivision shall be elected to the commission to formulate the conditions of merging the political subdivisions. The first meeting of such commission shall be held in the chamber of the legislative authority of the municipal corporation which has the smallest population, or in the case of a merger of the unincorporated area of a township and a municipal corporation located adjacent to or wholly or partly within the township in the office of the board of township trustees, at nine a.m. on the tenth day after the certification of the election by the last of the respective boards of elections to make such certi-

fication, unless such day is a Saturday, Sunday, or holiday, in which case such first meeting shall be held on the next day thereafter which is not a Saturday, Sunday, or holiday. The clerk of the municipal legislative authority or of the board of township trustees in whose chamber or office the first meeting of the commission is held shall serve as temporary chairman until permanent officers are elected. The commission shall elect its own permanent officers and shall proceed to meet as often as necessary to formulate conditions for merger that are satisfactory to a majority of the members of such commission from each political subdivision. All meetings of a merger commission shall be subject to the requirements of section 121.22 of the Revised Code. The conditions of merger may provide for the election, prior to the merger, of new officers to govern the municipal corporation with which merger is proposed after the merger is complete, provided that such a provision does not conflict with the charter of the municipal corporation with which merger is proposed. In the case of a merger of a township and a municipal corporation, the merger conditions may also provide for the annexation of a school district located wholly within the township to the school district of the municipal corporation. As soon as the conditions have been agreed upon by a majority of the members of the commission from each political subdivision, this fact shall be reported to the board of elections of each of the counties in which the political subdivisions proposed for merger are located and the question shall be submitted to the voters at the next general election occurring after the commission is elected. Regardless of whether a merger commission of a township and a municipal corporation succeeds in reaching agreement, the commission shall cease to exist on the seventy-fifth day prior to the next general election after the commission is elected. The boards of elections shall submit the conditions of proposed merger for the approval or rejection of the electors in the portions of such political subdivisions within their respective counties and, upon the holding of such election, shall certify the results thereof to the board of elections of the county in which the petition is required to be filed.

HISTORY: 1981 S 20, eff. 10-9-81
1980 H 1062; 1969 H 590

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.51 to 3.53, 3.56

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463, 464

709.47 Effective date; form of government; succession to interests

If the conditions of merger agreed upon by a merger commission of a township and a municipal corporation are disapproved by a majority of those voting on them in the township proposed to be merged or in the municipal corporation with which merger is proposed, no further petitions shall be filed under section 709.45 of the Revised Code proposing the same merger for at least three years after the date of such disapproval. If the conditions of merger are approved by a majority of those voting on them in each political subdivision proposed to be merged and in the municipal corporation with which merger is proposed, the merger is effective on the first day of January of the year following the certification of the results of the election by the board of elections with which the petition is required to be filed, unless the conditions specify a different date, in which case the date specified is the effective date of merger. On and after such effective date the territory of each political subdivision proposed to be merged is annexed to and included in the territory and corporate boundaries of the municipal corporation with which the merger is proposed. The form of government, ordinances, resolutions, and other rules of the municipal corporation with which merger is proposed apply throughout such newly included territories to the extent they are not in conflict with the conditions approved by the electors. The charter, if any, of the municipal corporation with which merger is proposed applies throughout the newly included territories. The corporate existence and the offices of the municipal corporations or of the township proposed to be merged terminate on such date. The municipal corporation with which merger is proposed succeeds to the interests of the political subdivision proposed to be merged in:

(A) All moneys, taxes, and special assessments, whether such moneys, taxes, or special assessments are in the treasury, or in the process of collection;

(B) All property and interests in property, whether real or personal;

(C) All rights and interests in contracts or in securities, bonds, notes, or other instruments;

(D) All accounts receivable and rights of action;

(E) All other matters not included in division (A), (B), (C), or (D) of this section.

On and after such date the municipal corporation with which merger is proposed is liable for all outstanding franchises, contracts, debts, and other legal claims, actions, and obligations of the political subdivision proposed to be merged.

HISTORY: 1988 S 38, § 3, eff. 7-20-89
1988 S 38, § 1; 1981 S 20; 1969 H 590

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.53 to 3.56

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463, 464, 467

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 54, 81, 94 to 96

709.48 Suspension of right to file annexation petition while merger considered

On and after the date on which a petition is filed with the board of elections under section 709.45 of the Revised Code for the election of a merger commission for the merger of a municipal corporation and the unincorporated territory of a township, no petition for the annexation of any part of the unincorporated territory of the township shall be filed with a board of county commissioners under section 709.03 or 709.15 of the Revised Code, until one of the following occurs:

(A) The question of forming a merger commission is defeated at the election provided for under section 709.45 of the Revised Code by a majority of the electors of either

the municipal corporation or the unincorporated territory of the township in which the election is held.

(B) The merger commission elected pursuant to section 709.45 of the Revised Code fails to reach agreement on conditions of merger no later than the seventy-fifth day prior to the next general election after the commission was elected.

(C) The conditions of merger agreed upon by the merger commission are defeated by a majority of the electors of either the municipal corporation or the unincorporated territory of the township in which the election on the conditions is held.

HISTORY: 1981 S 20, eff. 10-9-81

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.56

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 462, 463, 464

NOTES ON DECISIONS AND OPINIONS

32 OS(3d) 352, 513 NE(2d) 769 (1987), State ex rel Toledo v Lucas County Bd of Commrs. After a petition is filed with a board of elections for the election of a merger commission for the merger of a municipal corporation and the unincorporated territory of a township, there is a clear legal duty upon a board of commissioners to refuse to accept for filing any petitions for annexation of land located within the township until the merger procedure has been exhausted by one of the conditions set forth in RC 709.48.

13 App(3d) 355, 13 OBR 436, 469 NE(2d) 906 (Summit 1983), Ambrose v Cole. Where a petition for the election of a merger commission for the merger of the unincorporated territory of a township and a municipal corporation is filed with the board of elections, such board of elections has a clear legal duty to refuse to accept any annexation petitions for filing until exhaustion of the merger procedure pursuant to one of the conditions set out in RC 709.48.

718.01 Uniform rates; limitation on rate without vote; prohibitions

(A) As used in this chapter:

(1) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

(2) "Schedule C" means internal revenue service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

(3) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(4) "Intangible income" means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code.

(B) No municipal corporation with respect to that income which it may tax shall tax such income at other than a uniform rate.

(C) No municipal corporation shall levy a tax on income at a rate in excess of one per cent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election. The legislative authority of the municipal corporation shall file with the board of elections at least seventy-five days before the day of the election a copy of the ordinance together with a resolution specifying the date the election is to be held and directing the board of elections to conduct the election. The ballot shall be in the following form: "Shall the Ordinance providing for a ... per cent levy on income for (Brief description of the purpose of the proposed levy) be passed?

FOR THE INCOME TAX

AGAINST THE INCOME TAX"

In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

(D) No municipal corporation shall exempt from such tax, compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession.

(E) Nothing in this section shall prevent a municipal corporation from permitting lawful deductions as prescribed by ordinance. If a taxpayer's taxable income includes income against which the taxpayer has taken a deduction for federal income tax purposes as reportable on the taxpayer's form 2106, and against which a like deduction has not been allowed by the municipal corporation, the municipal corporation shall deduct from the taxpayer's taxable income an amount equal to the deduction shown on such form allowable against such income, to the extent not otherwise so allowed as a deduction by the municipal corporation. In the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, no municipal corporation may tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the municipal corporation, a greater amount than the net profit reported by the taxpayer on schedule C filed in reference to the year in question as taxable income from such sole proprietorship, except as otherwise specifically provided by ordinance or regulation.

(F) No municipal corporation shall tax any of the following:

(1) The military pay or allowances of members of the armed forces of the United States;

(2) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities;

(3) Except as otherwise provided in division (G) of this section, intangible income.

(G) Any municipal corporation that taxes any type of intangible income on the effective date of this amendment pursuant to Section 3 of Amended Substitute Senate Bill 238 of the 116th General Assembly, may continue to tax that type of income after 1988 if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 vote in favor thereof at an election held on November 8, 1988.

(H) Nothing in this section or section 718.02 of the Revised Code, shall authorize the levy of any tax on income which a municipal corporation is not authorized to levy under existing laws or shall require a municipal corporation to allow a deduction from taxable income for losses incurred from a sole proprietorship or partnership.

HISTORY: 1988 S 386, eff. 3-29-88

1986 S 238; 1981 H 65; 1980 H 1062; 1975 H 1; 1974 H 916; 1973 S 44; 132 v S 500; 129 v 582; 127 v 91

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 19.26, 19.27, 19.29, 19.30; Forms 19.51, 19.52

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 66, Libraries § 13; 67, Markets and Marketing § 2; 86, Taxation § 323 to 325, 329 to 333

Am Jur 2d: 71, State and Local Taxation § 443, 448

NOTES ON DECISIONS AND OPINIONS

6 U Dayton L Rev 19 (1981). The Taxation of Family Religious Orders, Albert Feuer.

7 OS(2d) 73, 218 NE(2d) 608 (1966), East Ohio Gas Co v Akron. The general assembly, by levying a gross receipts tax upon public utilities, has preempted the power of a municipality to levy a tax upon the net income of a public utility doing business in that municipality.

2 OS(2d) 292, 208 NE(2d) 747 (1965), Thompson v Cincinnati. A resident of one municipal corporation who receives wages as a result of work and labor performed within another municipal corporation may be lawfully taxed on such wages by both municipal corporations.

40 App(3d) 71, 531 NE(2d) 1336 (Franklin 1987), Williams v Columbus. Although state and federal income tax laws permit a teacher's contribution to the state teachers retirement system to be treated as deferred income which is not taxed until actually received by the employee, a municipal corporation may levy an undeferred income tax on the portion of a teacher's salary which constitutes his or her contribution to the state teachers retirement system.

2 App(2d) 267, 207 NE(2d) 780 (1965), East Ohio Gas Co v Akron; affirmed by 7 OS(2d) 73, 218 NE(2d) 608 (1966). A municipal corporation may not levy a tax on the net income of a public utility.

118 App 59, 179 NE(2d) 370 (1962), Springfield v Saunders. The income received by a member of the national guard from full-time employment by the guard in a job which has the characteristics of civilian employment and is not inseparably connected with or related to his military status as a member of the guard, is not "military pay" within the purview of 718.01, and is not exempt from municipal income-taxation.

118 App 59, 179 NE(2d) 370 (1962), Springfield v Saunders. Full time air technicians employed by the air national guard are not exempt from municipal income taxes.

No. 82AP-570 (10th Dist Ct App, Franklin, 2-24-83), Columbus, Div of Income Tax v Firebaugh. Where a municipal income tax ordinance does not provide for a deduction of business expenses by employees, taxpayers are not entitled to take such deductions merely because they are allowed under federal income tax law.

58 Misc 1, 387 NE(2d) 657 (Muni Bellefontaine 1978), Bellefontaine v Krouse. An administrative supply technician of the Ohio national guard who receives compensation in such capacity from the United States army, is exempt from municipal income taxation by virtue of 718.01.

87 Abs 586, 179 NE(2d) 392 (CP Clark 1962), Springfield v Saunders; affirmed by 118 App 59, 179 NE(2d) 370(1963). That portion of the income or pay received by civilian air technicians for strictly military duty, if any, such as drill pay, etc., is not subject to municipal income tax, but all other income received by them in their employment as air technicians is not military pay, and is accordingly subject to municipal income taxation.

810 F(2d) 550 (6th Cir Ohio 1987), Firestone Tire & Rubber Co v Neusser. A general municipal income tax encompassing all earnings including amounts the worker directs his employer to divert to benefit plans is not precluded by the Retirement Income Security Act of 1974, 29 USC 1001 et seq., insofar as it taxes the retirement contributions.

OAG 79-020. Ohio national guard technicians are not exempt from municipal income taxation unless they are on active duty, as defined in 10 USC § 101(22) and 37 USC § 101(18), or are performing under the special circumstances outlined in 37 USC § 204 and 206.

OAG 76-016. 718.01 does not prohibit a municipality from levying an income tax at specified but varying rates for definite terms under the municipality's power to levy income taxes as conferred by O Const Art XVIII, § 3 and 7.

1959 OAG 859. A member of the national guard who is also a member of the Army or Air National Guard of the United States is a member of the armed forces of the United States within the purview of 718.01 and his military pay in such capacity is not subject to municipal income tax whether earned in part-time or in full-time work.

LEGISLATIVE AUTHORITY—CITY

731.01 Members of legislative authority; newly incorporated city

(A) Except as provided in divisions (B) and (D) of this section, the legislative power of each city shall be vested in, and exercised by, a legislative authority, composed of not fewer than seven members, four of whom shall be elected by wards and three of whom shall be elected by electors of the city at large. For the first twenty thousand inhabitants in any city, in addition to the original five thousand, there shall be two additional members of such legislative authority, elected by wards, and for every fifteen thousand inhabitants thereafter there shall be one additional member similarly elected. The total number of members of such legislative authority shall not exceed seventeen.

(B) The legislative power of a city may be vested in, and exercised by, a legislative authority composed of not fewer than five nor more than seventeen members, to be determined in the manner provided in this division, and in lieu of the number required in division (A) of this section. Under the alternative plan for the composition of the legislative authority, the number of members shall be fixed in a resolution which may be submitted to the electors for their approval or rejection by a two-thirds vote of the members of the legislative authority, or by the people through an initiative petition in accordance with section 731.28 of the Revised Code. Such a resolution passed by the legislative authority shall not be subject to veto by the mayor, need not be published, and shall be immediately effective for purposes of placing such issue on the ballot. The resolution shall be submitted to the electors at the next general or primary election occurring not less than seventy-five days after its passage by the legislative authority, or the certification of the text of a resolution proposed by initiative petition to the board of elections. The resolution shall specify the total number of members, the number to be elected from the city at large, and the number to be elected from wards. Members may all be elected from the city at large or all elected from wards, or some may be elected from the city at large and the remainder elected from wards, as determined by the resolution. A resolution that changes the total number of members shall specify the method by which the change in number is to take effect, but no reduction in the number of members shall terminate the term of an incumbent. When the number of members elected from wards is

changed, new ward boundaries shall be determined as provided in section 731.06 of the Revised Code.

(C) The number of members of the legislative authority determined under an alternative plan for the composition of the legislative authority under division (B) of this section may be changed or abandoned by a resolution submitted to the electors in the same manner as provided in division (B) of this section for a resolution to institute such an alternative plan. When the alternative plan for determining the number of members of the legislative authority under division (B) of this section is abandoned, the number of members of the legislative authority shall be determined by division (A) of this section.

(D) When a city has just been incorporated from township territory pursuant to Chapter 707. of the Revised Code, the legislative authority of the city initially shall be vested in and exercised by a legislative authority composed of not fewer than seven members elected by electors of the city at large. In all subsequent elections for the city legislative authority, the members shall be elected as provided in division (A) of this section.

HISTORY: 1991 H 228, eff. 3-2-92
1980 H 1062; 1979 H 575; 1970 H 994; 132 v H 31; 1953 H 1; GC 4206

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.05, 7.06, 7.09, 9.01, 9.03, 9.06, 9.07, 15.261, 15.262, 17.14; Forms 13.01, 13.14, 13.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 476, 507, 508; 21, Counties, Townships, and Municipal Corporations § 665

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 98, 102, 139, 140, 147

NOTES ON DECISIONS AND OPINIONS

9 Capital U Law Rev 621 (1980). Transition from Village to City Status, John E. Gotherman.

39 Cities & Villages 20 (January 1991). Surviving Redistricting Without Litigation, C. Robert Heath.

173 OS 402, 183 NE(2d) 376 (1962), State ex rel Scott v Masterson. Where the charter of a city provides that councilmen of the city shall be elected by wards which shall be nearly equal in population and further provides that the city council shall redivide the city after each decennial federal census for that purpose, there is a mandatory duty upon city council to comply with the charter.

OAG 72-014. Assuming there is no city ordinance to the contrary, city councilman may also serve as law clerk for county prosecutor's office so long as it is understood that he will not participate in the rare case in which county prosecutor is required to prosecute a member of city council.

1963 OAG 389. When the classification of a municipal corporation changes from that of a village to a city, the village ceases to exist and the officers of the village continue in office only until succeeded by the proper officers of the new municipal corporation at the regular municipal election.

1961 OAG 2393. Where the council of a city has, by ordinance, prescribed the salary of the clerk of the municipal court, the mayor of the city is without authority to veto the ordinance.

1955 OAG 5852. When a village becomes a city, the legislative body then in office must provide for the election of a new legislative body by dividing the city into wards.

1951 OAG 409. In a municipality having a population of less than 5,000 as ascertained by the 1940 federal census and an indicated population of more than 5,000 as ascertained by the unofficial preliminary figures of the 1950 federal census, the number of councilmen to be elected in September, 1951 will be determined by 1950 census figures.

1922 OAG p 72. The additional councilmen provided by this section to meet the requirements of the increase in population in municipalities, must, in accordance with the provisions of GC 4212 (RC 731.06) be elected at a regular municipal election, by the electors of the redistricted wards, created previously by council or the director of public service for that purpose.

Ethics Op 77-007. 102.02(A)(5) and (6) do not require that a city council candidate disclose the source of a personal loan against his standard life insurance policy on the financial disclosure statement filed with the Ohio ethics commission, but do require such candidate to disclose the names of all persons (including parent or child) residing or transacting business in the state, to whom he owes more than $1,000, or who owe him more than $1,000, either in his own name or in the name of another person, on the financial disclosure statement filed with the Ohio ethics commission.

Ethics Op 76-012. A city councilman is required by section 102.02(A)(3) to disclose the name of the partnership in which he has an investment of more than one thousand dollars and give a description of the nature of his investment.

Ethics Op 76-012. A city councilman who is a general partner in a partnership, which owns real property, is required by section 102.02(A)(4) to disclose, on his financial disclosure statement, partnership property.

Ethics Op 76-005. A city councilman is a "public official or employee" as that term is defined in section 102.01(B).

Ethics Op 76-005. A city councilman may not vote affirmatively for the city's acquisition of a specific parcel of property if the councilman is aware at the time he votes that the seller of the property intends to invest a portion of the purchase price in the councilman's business enterprise.

Ethics Op 75-036. Section 102.02(A) does not require a councilwoman, who must file a financial disclosure statement, to disclose sources of income of her spouse which exceed $500, unless the income as initially received by her spouse is specifically designated for the use and benefit of the councilwoman.

Ethics Op 75-032. A person who is appointed to the office of city councilman on December 30, 1974 and resigns from that office on January 2, 1975, is required to file a financial disclosure statement based on calendar year 1974, within fifteen days after he qualifies for office, but if he complies with this requirement, he is not required to file an additional financial disclosure statement based on calendar year 1974 on or before April 15, 1975. He will, however, be required to file a financial disclosure statement based on calendar year 1975, on or before April 15, 1976.

Ethics Op 75-031. A person seeking election to city council who voluntarily withdraws from an election within twenty days after filing his petition of candidacy is no longer a candidate within the purview of section 102.02(A) of the Revised Code, and therefore is not required to file a financial disclosure statement.

Ethics Op 75-030. A person may serve as a city councilman and as a volunteer fireman of the same city and receive compensation for rendering services in both positions without violating the prohibitions of section 102.04(B).

731.02 Qualifications of members of legislative authority

Members of the legislative authority at large shall have resided in their respective cities, and members from wards shall have resided in their respective wards, for at least one year next preceding their election. Each member of the legislative authority shall be an elector of the city, shall not hold any other public office, except that of notary public or member of the state militia, and shall not be interested in any contract with the city, and no such member may hold employment with said city. A member who ceases to possess any of such qualifications, or removes from his ward, if

elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit his office.

The purpose of establishing a one-year residency requirement in this section is to recognize that the state has a substantial and compelling interest in encouraging qualified candidacies for election to the office of member of the legislative authority of a city by ensuring that a candidate for such office has every opportunity to become knowledgeable with and concerned about the problems and needs of the area he seeks to represent. In enacting this requirement, the general assembly finds that the one-year period is reasonably related to this purpose, while leaving unimpaired a person's right to travel, to vote, and to be a candidate for public office.

HISTORY: 1980 H 1062, eff. 3-23-81
127 v 574; 1953 H 1; GC 4207

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.031 Chart 1, 9.08, 9.10, 9.14, 9.17, 15.21, 15.27, 31.05

CROSS REFERENCES

Interest of officer of issuer in lease or contract of industrial development bonds prohibited, 165.13

Community improvement corporation, designation as an agent of political subdivision, 1724.10

As to qualifications of electors generally, 3503.01 et seq.

Nuisances, receiver for abandoned unsafe building, 3767.41

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 505, 512, 514; 21, Counties, Townships, and Municipal Corporations § 602; 82, Schools, Universities, and Colleges § 88

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 147, 148

NOTES ON DECISIONS AND OPINIONS

1. Compatibility of offices
2. Wards
3. Qualifications and duties of office

1. Compatibility of offices

10 OS(2d) 60, 225 NE(2d) 238 (1967), State ex rel Platz v Mucci. A provision in a municipal charter that no city councilman may hold other public office or employment is valid.

140 OS 377, 44 NE(2d) 456 (1942), State ex rel Cooper v Roth. Service in military forces of United States is public employment, and by force of this section one who enters such military service forfeits his office as city councilman.

59 App(2d) 257, 394 NE(2d) 321 (1978), State ex rel Wolfe v Lorain County Bd of Elections. Title 35 and 705.12 impose no duty upon a county board of elections to recall the certificate of election of a municipal councilman-at-large who, prior to his election, was employed by the United States post office.

70 App 417, 46 NE(2d) 435 (1940), State ex rel Tilden v Harbourt; overruled by 103 App 214, 145 NE(2d) 200 (1956), Scarl v Small. Persons holding public office may not be members of city council and forfeit right to elective office when retaining such public office after date of assumption of office in council; forfeiture occurs immediately upon assumption of office, and thirty-day period provided by GC 4236 (RC 731.43) within which council may fill vacancies, runs from such time, and after such period only the mayor can name persons to fill the vacant offices.

70 App 417, 46 NE(2d) 435 (1940), State ex rel Tilden v Harbourt; overruled by 103 App 214, 145 NE(2d) 200 (1956), State ex rel Scarl v Small. Positions of registrar and professor in state university are public offices within meaning of this section and are disqualified and forfeit right to their elective offices when they retain their university positions after date of assumption of office, in council.

OAG 83-091. RC 731.02 prohibits a member of city council from holding the position of member of a board of education of a city school district.

OAG 79-111. The common law test of incompatibility is applicable to the simultaneous holding of a public office and a public employment by the same person. An individual is not precluded from holding office as municipal council member and employment as a special deputy sheriff at the same time, assuming that the special deputy holds a fiduciary relationship to the sheriff and, thus, is in the unclassified civil service. Where possible conflicts are remote and speculative, common law incompatibility or conflict of interest rules are not violated.

OAG 75-040. The position of service officer of the county soldiers and sailors relief commission is compatible with that of a councilman of a city located in the same county.

OAG 73-043. An employee of an insurance company which has contracts with a city cannot at the same time become a member of the city council.

OAG 73-016. A member of the board of trustees of a regional transit authority may not, at the same time, be an officer of a municipal corporation which is a member of that authority.

OAG 72-014. Assuming there is no city ordinance to the contrary, city councilman may also serve as law clerk for county prosecutor's office so long as it is understood that he will not participate in the rare case in which county prosecutor is required to prosecute a member of city council.

OAG 71-040. The office of councilman or the office of president of council of a city, each being elective offices, may not be held by one employed in the position of safety inspector II in the department of highways.

OAG 71-017. Member of city council governed by 731.02 may not serve as member of municipal charter commission created under O Const Art XVIII, § 8.

OAG 70-096. Person employed as statutory development specialist in department of urban affairs does not hold public office within meaning of 731.02, and therefore position of city councilman and statutory development specialist in department of urban affairs are not incompatible.

OAG 69-102. 731.02 forbids a member of city council from holding the position of a member of the board of trustees of a school district public library.

OAG 67-033. The supervisory position of crew chief and superintendent of roads in the county engineering department is not incompatible with the position of councilman.

OAG 65-60. The position of a member of city council can be held simultaneously with that of principal and teacher of a local elementary school.

1964 OAG 882. A member of a governing board of a community improvement corporation, designated as the agent of one or more political subdivisions, holds a public office as that term is used in 731.02 and 731.12, and therefore a councilman may not become a member of the governing board.

1958 OAG 1661. The office of city councilman and that of county civil defense director cannot be held simultaneously by the same person.

1956 OAG 6675. Employment by the turnpike commission is "public employment" within the meaning of 731.02.

1956 OAG 6674. 731.12 does not prohibit a member of village council from holding other public employment so long as such employment is not with said village, so that a member may simultaneously be employed by a board of township trustees as sexton of a township cemetery.

1953 OAG 2367. The president of a city council elected pursuant to GC 4272 (RC 733.09) is not a member of the council within the meaning of this section.

1952 OAG 2198. Members of the council of a noncharter city may not hold any other public office and may not exercise any appointing power or perform administrative duties.

1952 OAG 1116. A city councilman may not serve as township constable.

1951 OAG 803. Member of a municipal council is prohibited from serving as a member of recreation board.

1946 OAG 744. President of a city council elected pursuant to GC 4272 (RC 733.09), is not under any circumstances a member of city council and hence provision of section forbidding a member of council holding any other public office or employment does not apply to such president of council; however, office of president of council of a city is incompatible with position of relief director of relief area constituting such city, appointed pursuant to GC 3391-7 (Repealed).

1938 OAG 2772. Language "any other public office or employment" as contained in this section, and likewise in the charter of a charter city that has similar provisions, is not limited to other office or employment by the municipality but extends to all public office and employment and therefore prohibits the employment of an acting councilman as investigator of the division of aid for the aged of the county.

1934 OAG 3261. A member of city council may at the same time be a central committeeman.

1933 OAG 1999. A councilman of a city operating under the city manager plan of government may not hold the public employment of trustee of a county children's home at the same time. But if he resigns prior to the beginning of his term as such councilman, he becomes eligible to take his seat in the council of such city.

1932 OAG 4325. Where a councilman of a city which has no charter, is a member of the board of trustees of the firemen's pension or police relief fund, and has been elected secretary of such board, he may receive such compensation therefor as may be fixed by said board, in addition to his salary as councilman.

1929 OAG 1329. The inhibition against a councilman holding other public office or employment, relates to his term as councilman and not to some office or employment he held at the time of his election which was relinquished before he took office as councilman.

1929 OAG 626. A deputy state fire marshal may not hold the office of member of a city council.

1929 OAG 552. A teacher in the public schools is ineligible to membership in the council of a municipality.

1927 OAG 720. Membership in a municipal fire department does not disqualify such a fireman from being elected to the office of councilman of the municipality; and if after being elected councilman such person should continue to perform the duties of a fireman, that fact would not cause a forfeiture of his office as councilman but would disqualify him from receiving the privileges or emoluments of the position of fireman.

Ethics Op 78-005. 2921.42(A)(1) does not prohibit a county commissioner from voting to approve the issuance of an industrial revenue bond to a company which is a client of an accounting firm in which her husband is a partner, if the husband's sole interest is a distributive share of the fees earned by his firm for accounting services rendered to the company seeking the bond.

Ethics Op 78-003. A county commissioner may not knowingly have an interest in the profits or benefits of a public contract for commercial development financed through industrial revenue bonds.

Ethics Op 78-001. A member of city council is prohibited from knowingly having an interest in the profits or benefits of a contract for legal services between the city and the law firm with which he is associated.

Ethics Op 78-001. Ch 102 does not per se prohibit the appointment of a former member of city council, who is a law partner of a present member of city council, to the position of city solicitor.

2. Wards

173 OS 402, 183 NE(2d) 376 (1962), State ex rel Scott v Masterson. Where the charter of a city provides that councilmen of the city shall be elected by wards which shall be nearly equal in population and further provides that the city council shall redivide the city after each decennial federal census for that purpose, there is a mandatory duty upon city council to comply with the charter.

660 F(2d) 166 (6th Cir Ohio 1981), Akron v Bell. Requirement of city charter that candidate for election to city council representing a ward be a resident of ward for one year is valid.

3. Qualifications and duties of office

165 OS 441, 136 NE(2d) 43 (1956), State ex rel Bindas v Andrish. A charter municipality can determine upon qualifications for its councilmen which may be different from those provided by statute, and where the charter specifies certain qualifications for a councilman, the requirements of 731.02 will not apply in the absence of their adoption by other provisions of the charter.

17 Abs 341, 40 LR 285 (App Butler 1934), State ex rel Baden v Gibbons. This section has two distinct purposes: it first recites qualifications to be eligible to office of councilman and second provides that if one duly elected shall cease to possess these qualifications he shall forfeit his office.

22 CC(NS) 314, 28 CD 481 (1908), State ex rel Weber v Hathaway. The residence required by this section, to qualify one to be a councilman is the same as that of an elector; hence, removal of a councilman to another state, without any fixed intent either to stay or return, does not forfeit his office.

16 CC(NS) 339, 31 CD 534 (1909), State ex rel Billington v Merril. GC 4207, 4218 (RC 731.02, 731.12), that removal from the municipality forfeits a councilman's office is not violated by his marrying a wife in another county who continues to reside there (GC 4866 (RC 3347.03), paragraph 4 is not applicable).

1952 OAG 2198. The council of a noncharter city is without power to transfer the powers and duties of officers provided by the general laws of the state to other officers or boards of its own creation.

731.03 Election and term of members of legislative authority; election to change length of terms

(A) Except as otherwise provided in division (B) of this section, one member of the legislative authority of a city from each ward and such number of members thereof at large as is provided by section 731.01 of the Revised Code shall be chosen in each odd-numbered year. Members shall serve for a term of two years commencing on the first day of January next after their election.

(B) A city legislative authority may, by majority vote, adopt a resolution causing the board of elections to submit to the city electors the question of whether the terms of office of the members of the legislative authority should be changed from two to four years. The question may also ask whether the legislative authority should be authorized to establish staggered four-year terms of office among members of the legislative authority by fixing certain terms of office at two years for one term of office but then at four years thereafter. If the resolution calls for submission of the question about staggered terms, the resolution shall specify the number of members to be elected for four-year terms and the number to be elected for two-year terms at the next election for such members. The resolution shall also specify how many of those members elected to four-year terms and how many of those members elected to two-year terms shall be elected from the city at large, and how many from wards. If staggered terms of office are established, the legislative authority shall fix the length of the terms of office prior to

the last day fixed by law for filing as a candidate for such office. The question shall be voted upon at the next general election occurring not less than seventy-five days after the certification of the resolution to the board of elections. If a majority of the votes cast on the question is in the affirmative, the terms of office of the members of the legislative authority shall be four years effective on the first day of January following the next regular municipal election, except as may otherwise be provided by the legislative authority to establish staggered terms of office among members of the legislative authority.

A city legislative authority whose members' terms of office are four years may, by a majority vote, adopt a resolution establishing staggered four-year terms of office among members of the legislative authority by fixing certain terms of office at two years for one term of office but then at four years thereafter. The resolution shall specify the number of members to be elected for four-year terms and the number to be elected for two-year terms, and shall specify how many of those members elected to four-year terms and how many of those members elected to two-year terms shall be elected from the city at large, and how many from wards. If staggered terms of office are established, the legislative authority shall fix the length of the terms of office prior to the last day fixed by law for filing as a candidate for such office.

A city legislative authority whose members' terms of office are four years may, by majority vote, adopt a resolution causing the board of elections to submit to the city electors the question of whether the members' terms should be changed back from four to two years. The question shall be voted upon at the next general election occurring not less than seventy-five days after the certification of the resolution to the board of elections. If a majority of the votes cast on the question is in the affirmative, the terms of office of the members of the legislative authority shall be two years effective on the first day of January following the next regular municipal election.

HISTORY: 1987 S 144, eff. 10-1-87
1984 H 338; 1953 H 1; GC 4208

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.07, 9.07

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 508

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 147, 148, 255

NOTES ON DECISIONS AND OPINIONS

433 F(2d) 989 (6th Cir Ohio 1970), Bennett v Cleveland; cert denied 400 US 827, 91 SCt 53, 27 LEd(2d) 56 (1970). A federal complaint seeking a declaration that a municipal charter is unconstitutional under US Const Am 14 presents no substantial federal question and is properly dismissed where the challenged charter section provides that (1) the two primary candidates for a council seat who receive the most votes shall be the candidates for council, and (2) if a primary candidate receives a majority of votes cast he shall be the candidate at the regular election, unless no more than two people file petitions for the office, in which case those individuals shall be the candidates at the regular election and no primary election will be held.

OAG 75-040. The position of service officer of the county soldiers and sailors relief commission is compatible with that of a councilman of a city located in the same county.

1927 OAG 1429. When a deputy county surveyor is elected ward councilman and does not desire to relinquish his employment as deputy surveyor in order to qualify as a member of council, the present member of council from the ward in which such duly elected councilman resides continues in office until his successor is elected and qualified.

731.04 Officers of legislative authority

Within ten days from the commencement of their term, the members of the legislative authority of a city shall elect a president pro tempore, a clerk, and such other employees as are necessary, and fix their duties, bonds, and compensation. Such officers and employees shall serve for two years, unless the members of the legislative authority serve terms of four years pursuant to division (B) of section 731.03 of the Revised Code, in which case these officers and employees shall serve for four years, but may be removed at any time for cause, at a regular meeting of the legislative authority by a two-thirds vote of the members elected.

HISTORY: 1984 H 338, eff. 7-26-84
1953 H 1; GC 4210

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.031 Chart 1, 7.06, 7.10, 9.07, 9.11, 9.43, 13.50; Forms 13.03, 13.05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 503, 532, 539; 21, Counties, Townships, and Municipal Corporations § 644

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 110, 165

What constitutes requisite majority of members of municipal council voting on issue. 43 ALR2d 698

NOTES ON DECISIONS AND OPINIONS

149 OS 333, 78 NE(2d) 716 (1948), State ex rel Roberts v Snyder. Under provisions of this section and GC 4272 (RC 733.09), a duly elected president of a city council is empowered to vote in case of any tie; such authority includes right to vote in event of a tie in election of a clerk of the council.

33 Abs 26, 35 NE(2d) 987 (App Franklin 1940), State ex rel Holloway v Rhodes. Ten day provision of this section is directory only, and would not prevent the exercise of such power at a later date if and when a situation arises demanding it.

1962 OAG 3203. A member of the legislative authority of a municipal corporation appointed under 731.04 as president pro tempore of the legislative authority, may preside over such authority in the absence of the president thereof, and when so presiding is entitled to vote once where there is a roll-call on a question, and in other cases where his vote would change the result, but may not vote to create a tie vote and then vote to decide the tie.

1962 OAG 2746. A member of a board of education of a city school district may at the same time serve as clerk of a city council to which he is elected, provided the charter of the city does not contain a contrary provision in regard to such clerk, and provided it is physically possible for one person to perform the duties of such offices.

1952 OAG 1116. A school teacher may legally serve as clerk of the city council.

1927 OAG 326. The position of clerk of a city council is within the unclassified civil service. The position of assistant clerk of a city council is or is not within the unclassified civil service depending upon whether said council has fixed the duties of such assistant clerk as legislative in character or otherwise. If such duties are

legislative such position is within the unclassified civil service under subsection 5 of GC 486-8(a) (RC 143.08).

LEGISLATIVE AUTHORITY—VILLAGE

731.09 Members of village legislative authority; terms of office

The legislative power of each village shall be vested in, and exercised by, a legislative authority, composed of six members, who shall be elected by the electors of the village at large, for terms of four years. At the municipal election held in the year 1961 two members shall be elected for terms of two years and four members shall be elected for terms of four years. Except in villages where a primary election was held in 1961 for the nomination of candidates for member of the legislative authority, the four candidates who receive the greatest number of votes[5] cast shall be elected for terms of four years, and the two candidates who receive the next greatest number of the votes cast shall be elected for terms of two years.

All candidates nominated prior to June 8, 1961, except by primary election, shall have their names grouped together on the election ballot regardless of whether their nominating petition or declaration of candidacy designated that they were candidates for a two-year or a four-year term.

At the municipal election in 1963 and quadrennially thereafter, two members shall be elected for terms of four years.

At the municipal election in 1965 and quadrennially thereafter, four members shall be elected for terms of four years.

Beginning with the year 1964, all members of village council shall hold office for a term of four years.

HISTORY: 130 v H 1, eff. 1-23-63
129 v 326; 128 v 290; 1953 H 1; GC 4215

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.031 Chart 2, 7.20, 7.21, 9.03, 9.06, 9.07, 17.14

CROSS REFERENCES

Who are electors of municipality, 3503.01 et seq.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 507, 508, 531; 21, Counties, Townships, and Municipal Corporations § 665

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 140, 147, 148, 236, 255

NOTES ON DECISIONS AND OPINIONS

CONSTITUTIONALITY:

368 FSupp 999 (SD Ohio 1973), Headlee v Franklin County Bd of Elections. Statutory requirement that candidates in village elections be residents of the village for one year prior to the date of the election is invalid.

170 OS 375, 165 NE(2d) 644 (1960), State ex rel DeMatteo v Allen. The mayor of a village may cast a tie-breaking vote in a village council on a motion relative to appointment of a police chief.

OAG 92-001. Experience as a member of the legislative authority of a village, public school teacher, or trustee of a nonprofit corporation does not qualify as law enforcement experience for purposes of RC 311.01(B)(9).

OAG 82-085. A deputy sheriff in the classified service may not be a candidate for the position of village council member if such members are elected in a partisan election. He may, however, be a candidate for, and serve as a village council member if the election for such position is nonpartisan in nature.

OAG 70-038. Postal employee in federal classified service does not hold public office within the meaning of 731.12, and is therefore not barred from serving as village councilman, although he may be subject to applicable provisions of federal law governing political activity within federal service.

OAG 66-046; overruled in part by OAG 82-085. A person holding a position in the classified service of a state university could not at the same time become a candidate for, be elected to, or hold the office of member of village council.

1963 OAG 389. Members of the legislative authority of the former village who were elected to serve terms of four years in accordance with 731.09 do not continue as members of the legislative authority of the city until the expiration of such four-year period.

Ethics Op 76-002. Persons who are elected or appointed to or are candidates for village office are not required to file financial disclosure statements under section 102.02(A).

731.11 Vacancy when president pro tempore becomes mayor

When the president pro tempore of the legislative authority of a village becomes the mayor, the vacancy thus created shall be filled as provided in section 731.43 of the Revised Code, and the legislative authority shall elect another president pro tempore from its own number, who shall have the same rights, powers, and duties as his predecessor.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4217

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 17.14

CROSS REFERENCES

Filling of vacancies in offices, 733.31

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: Municipal Corporations, Counties, and Other Political Subdivisions § 254

NOTES ON DECISIONS AND OPINIONS

1948 OAG 3943. Under the provision of GC 4256 (RC 733.25), upon the resignation or death of the mayor of a village, the president pro tem of the council becomes the mayor, and his seat in the council is thereby vacated; thereupon it becomes the duty of the council under provisions of this section to fill such vacancy and to elect another member of council as president pro tem.

1948 OAG 3943. When the president pro tem of a village council who has succeeded to the office of mayor by reason of the death or resignation of the mayor, fails or refuses to take the oath of office

[5]Prior and current versions differ although no amendment to this language was indicated in 130 v H 1; "of votes" appeared as "of the votes" in 129 v 326.

or to give the required bond as such mayor for ten days, the council of said village may declare such office of mayor vacant, whereupon the newly elected president pro tem shall become the mayor.

731.12 Qualifications of members of village legislative authority

Each member of the legislative authority of a village shall have resided in the village one year next preceding his election, and shall be an elector of the village. No member of the legislative authority shall hold any other public office, be interested in any contract with the village, or hold employment with said village, except that such member may be a notary public, a member of the state militia, or a volunteer fireman of said village, provided that such member shall not receive any compensation for his services as a volunteer fireman of the village in addition to his regular compensation as a member of the legislative authority. Any member who ceases to possess any of such qualifications or who removes from the village shall forfeit his office.

The purpose of establishing a one-year residency requirement in this section is to recognize that the state has a substantial and compelling interest in encouraging qualified candidacies for election to the office of member of the legislative authority of a village by ensuring that a candidate for such office has every opportunity to become knowledgeable with and concerned about the problems and needs of the area he seeks to represent. In enacting this requirement, the general assembly finds that the one-year period is reasonably related to this purpose, while leaving unimpaired a person's right to travel, to vote, and to be a candidate for public office.

HISTORY: 1980 H 1062, eff. 3-23-81
131 v S 102; 126 v 287; 1953 H 1; GC 4218

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 9.08, 9.10, 15.27, 31.05

CROSS REFERENCES

Interest of officer of issuer in lease or contract of industrial development bonds prohibited, 165.13

Community improvement corporation, designation as an agent of political subdivision, 1724.10

Qualifications of electors of municipality, 3503.01 et seq.

Nuisances, receiver for abandoned unsafe building, 3767.41

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 505, 512, 514; 21, Counties, Townships, and Municipal Corporations § 602

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 147, 246, 247

NOTES ON DECISIONS AND OPINIONS

CONSTITUTIONALITY:

368 FSupp 999 (SD Ohio 1973), Headlee v Franklin County Bd of Elections. Statutory requirement that candidates in village elections be residents of the village for one year prior to the date of the election is invalid.

---

14 App(3d) 124, 14 OBR 139, 470 NE(2d) 224 (Summit 1984), Roseman v Reminderville. Where village officers have lived outside the village for over six months and made no attempt to resume residence within the village, they must forfeit their village offices pursuant to RC 731.12, despite their claims that the move is temporary, due to marital difficulties.

103 App 214, 145 NE(2d) 200 (1956), State ex rel Scarl v Small. A public school teacher is not holding public office within the meaning of 731.12.

30 Abs 61 (App Lorain 1938), State ex rel Vian v Bryan. Election and incumbency of a village councilman is a nullity, where such councilman was not a resident of village for one year prior to election day; and council committee has the power to fill incumbent's office by electing another councilman without bringing proceedings of ouster against present incumbent.

OAG 91-036. The position of president pro tempore of the legislative authority of a village is compatible with the position of bituminous plant inspector in the Ohio department of transportation, provided that the election to the legislative authority is nonpartisan.

OAG 90-059. The positions of clerk-treasurer of a local school district free public library and member of the legislative authority of a village within the jurisdiction of such library are statutorily incompatible under RC 731.12, which prohibits a member of the legislative authority of a village from holding any other public office.

OAG 89-069. The position of president of a board of education of a local school district is incompatible with the position of village council member.

OAG 89-069. The position of public school teacher in a local school district is compatible with the position of village council member.

OAG 82-085. A deputy sheriff in the unclassified service may serve as a member of a village legislative authority. However, a deputy sheriff in the classified service may not be a candidate for the position of village council member if such members are elected in a partisan election. He may be a candidate for, and serve as a village council member if the election for such position is nonpartisan in nature.

OAG 74-071; overruled in part by OAG 82-085. An employee in a county highway department, in the classified civil service, may not also serve as village councilman, because of the prohibition of political activity by classified employees in 124.57.

OAG 74-071; overruled in part by OAG 82-085. The position of employee in a county highway department, in the unclassified civil service, may be held simultaneously with that of village councilman.

OAG 71-048. Where only newspaper published in village is owned by husband of a village councilwoman, such newspaper is not prevented from publishing legal notices of the village, and such councilwoman may take reportorial notes during council sessions as a basis for articles to be published in said newspaper concerning such sessions.

OAG 70-038. Postal employee in federal classified service does not hold public office within the meaning of 731.12, and is therefore not barred from serving as village councilman, although he may be subject to applicable provisions of federal law governing political activity within federal service.

OAG 70-035. Positions of member of village council and special deputy sheriff are not incompatible.

OAG 70-002. The position of a village council member and the position of clerk of courts for the county court are incompatible offices and one individual may not hold both positions at the same time.

OAG 65-60. The position of a member of city council can be held simultaneously with that of principal and teacher of a local elementary school.

1964 OAG 882. A member of a governing board of a community improvement corporation, designated as the agent of one or more political subdivisions, holds a public office as that term is used in 731.02 and 731.12, and therefore a councilman may not become a member of the governing board.

1962 OAG 3494. A candidate who fails to file a statement of expenditures within the time prescribed by 3517.10 is barred from becoming a candidate in any future election for a period of five (or seven) years, but is not, by reason of such failure, barred from being appointed to a public office such as a member of the legislative authority of a village, and from serving in such capacity.

1956 OAG 6675. Employment by the turnpike commission is "public employment" within the meaning of 731.02.

1956 OAG 6674. 731.12 does not prohibit a member of village council from holding other public employment so long as such employment is not with said village, so that a member may simultaneously be employed by a board of township trustees as sexton of a township cemetery.

1955 OAG 5148. The date of election to be used in determining prior residence in a village of a candidate for member of the village legislative authority is the date of the general election, rather than the date when the results thereof are certified.

1950 OAG 1606; overruled by OAG 89-069. A teacher employed in the public schools of Ohio is ineligible to serve as a member of the village council.

1943 OAG 6568. A person who was elected to office of councilman of a village is not disqualified from holding office by reason of fact that he served as a precinct election officer in the election at which he was elected.

1933 OAG 833. A member of the city council who accepts the public employment of trustee of a county children's home, ipso facto forfeits his office of city councilman. He may not hold both offices at the same time.

1932 OAG 4847. When a justice of the peace is appointed to fill a vacancy in a village council, and does not resign from his office of justice of the peace, he becomes a de facto village councilman and his vote in council has legal effect. The village council, however, may declare the office to which the justice of the peace was appointed vacant or ouster proceedings may be instituted in court.

1930 OAG 2672. A member of a village council may hold the office of secretary of the county agricultural society.

1930 OAG 2165. A member of council of a village may not be employed as the driver of a school bus by the board of education.

1929 OAG 891. A principal in the public schools is ineligible to membership in the council of a municipality.

1928 OAG 2060. No member of the council of a village may legally hold any other public office or employment, except that of notary public or member of the state militia. The inhibition contained in the provisions of this section is not limited to holding another office in, or employment by, such village, but such inhibition extends to all other public offices and employments.

1927 OAG 1396; overruled by OAG 89-069. Under this section a janitor of a public school or an assistant in the county surveyor's office is ineligible to membership in a village council.

731.211 Advertising notice of proposed amendments to municipal charter

In accordance with Section 9 of Article XVIII, Ohio Constitution, notice of proposed amendments to municipal charters shall be given in one of the following ways:

(A) Not less than thirty days prior to the election at which the amendment is to be submitted to the electors, the clerk of the municipality shall mail a copy of the proposed charter amendment to each elector whose name appears upon the poll or registration books of the last regular or general election held therein.

(B) The full text of the proposed charter amendment shall be published once a week for not less than two consecutive weeks in a newspaper published in the municipal corporation, with the first publication being at least fifteen days prior to the election at which the amendment is to be submitted to the electors. If no newspaper is published in the municipal corporation, then such publication shall be made in a newspaper of general circulation within the municipal corporation.

HISTORY: 1971 S 1, eff. 6-11-71

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.74; Forms 7.13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 138, 249; 20, Counties, Townships, and Municipal Corporations § 493; 21, Counties, Townships, and Municipal Corporations § 677, 722; 72, Notice and Notices § 27 to 30, 32 to 34

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 51, 52, 350, 351

NOTES ON DECISIONS AND OPINIONS

33 Ohio St L J 589 (1972). Municipal Home Rule in Ohio Since 1960, John E. Gotherman.

MUNICIPAL INITIATIVE AND REFERENDUM

731.28 Ordinances and measures proposed by initiative petition

Ordinances and other measures providing for the exercise of any powers of government granted by the constitution or delegated to any municipal corporation by the general assembly may be proposed by initiative petition. Such initiative petition must contain the signatures of not less than ten per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the municipal corporation.

When a petition is filed with the city auditor or village clerk, signed by the required number of electors proposing an ordinance or other measure, such auditor or clerk shall, after ten days, transmit a certified copy of the text of the proposed ordinance or measure to the board of elections. The auditor or clerk shall transmit the petition to the board together with the certified copy of the proposed ordinance or other measure. The board shall examine all signatures on the petition to determine the number of electors of the municipal corporation who signed the petition. The board shall return the petition to the auditor or clerk within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition.

The board shall submit such proposed ordinance or measure for the approval or rejection of the electors of the municipal corporation at the next succeeding general election, occurring subsequent to seventy-five days after the auditor or clerk certifies the sufficiency and validity of the initiative petition to the board of elections. No ordinance or other measure proposed by initiative petition and approved by a majority of the electors voting upon the measure in such municipal corporation shall be subject to the veto of the mayor.

As used in this section, "certified copy" means a copy containing a written statement attesting it is a true and exact reproduction of the original proposed ordinance or other measure.

HISTORY: 1991 H 192, eff. 10-10-91
1980 H 1062; 126 v 205; 125 v 713; 1953 H 1; GC 4227-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.12(H), 59.13; Forms 39.04

Gotherman & Babbit, Ohio Municipal Law, Text 7.06, 7.67, 11.20, 11.62, 11.63, 11.72, 11.78, 43.29; Forms 13.14

CROSS REFERENCES

Limited self-government townships, initiative and referendum petitions, 504.14

Joint economic development districts, initiative and referendum, 715.10

Transfer of municipal powers to county; revocation; initiative and referendum, O Const Art X §1

Adopting and amending municipal charter; initiative and referendum, O Const Art XVIII §7, 8, 9

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 183, 252; 20, Counties, Townships, and Municipal Corporations § 494, 507; 21, Counties, Townships, and Municipal Corporations § 677, 716, 719, 751, 753, 756, 759 to 762, 764

Am Jur 2d: 42, Initiative and Referendum § 9

Capacity of taxpayers to maintain suit to enjoin submission of initiative, referendum, or recall measure to voters. 6 ALR2d 557

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, any time therefor. 27 ALR2d 604

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum. 33 ALR2d 1118

NOTES ON DECISIONS AND OPINIONS

1 Ohio St L J 292 (1935). Legal authority to propose construction or acquisition of municipal utilities by initiative petition, James R. Tritschler.

39 OS(3d) 292, 530 NE(2d) 869 (1988), State ex rel Williams v Iannucci. RC Ch 519 does not provide for initiated amendments to township zoning resolutions and RC 731.28, which applies to municipal corporations, will not be construed to apply to townships.

39 OS(3d) 292, 530 NE(2d) 869 (1988), State ex rel Williams v Iannucci. A city auditor lacks authority to refuse to certify the text of a proposed ordinance to the board of elections if it is signed by the required number of electors, and a writ of mandamus compelling the auditor to certify the text of the proposed ordinance to the board of elections will be granted.

25 OS(3d) 71, 25 OBR 125, 495 NE(2d) 380 (1986), Middletown v Ferguson; cert denied sub nom Stricklen v Middletown, 479 US 1034, 107 SCt 883, 93 LEd(2d) 837 (1987). An initiative ordinance which repeals all existing and future legislation concerning a half-completed improvement project constitutes a substantial impairment of contractual obligations and therefore it is unconstitutional.

13 OS(3d) 1, 13 OBR 377, 469 NE(2d) 842 (1984), State ex rel Walter v Edgar. RC 731.28 requires a city auditor to certify a proposal to the board of elections where the filing and signature requirements of that statute have been met; a claim by the auditor that a proposal is unconstitutional is premature.

68 OS(2d) 9, 426 NE(2d) 1389 (1981), State ex rel Stern v Quattrone. Where an initial attempted certification of an initiative petition was made eighty-two days before the election and until the filing of a protest fifty-six days before the election the board of elections had accepted it, the seventy-five day requirement of 731.28 is met and mandamus will lie to compel the board of elections to place the measure on the ballot.

66 OS(2d) 448, 423 NE(2d) 72 (1981), State ex rel Madison v Cotner. 731.41 excludes municipalities which have adopted charter provisions for referenda and initiatives from compliance with 731.28 through 731.41.

166 OS 301, 143 NE(2d) 127 (1957), State ex rel Blackwell v Bachrach. The provisions of 731.28 and 731.32 relative to the filing of an initiative petition with the city auditor or village clerk and to the certification of the ordinance or measure by such auditor or clerk to the board of elections do not apply to an initiative petition to amend a city charter, filed pursuant to O Const Art XVIII, § 9.

164 OS 247, 129 NE(2d) 809 (1955), Dubyak v Kovach. 731.29 provides the sole method by which a referendum petition may be filed in a municipality without its own initiative and referendum provisions, and requires that a referendum petition be filed upon any ordinance or any measure passed by a city council within thirty days from the presentation of such ordinance or other measure to the mayor of the city and makes no provision for a later filing, even though the measure is vetoed by the mayor and passed over his veto.

155 OS 529, 99 NE(2d) 659 (1951), State ex rel Sharpe v Hitt. Where an ordinance relating to parking spaces and the installation and use of parking meters in connection therewith is passed by a municipal council, even though enacted as an emergency measure effective immediately and thereby not subject to the referendum, the electors of the municipality may initiate an ordinance for the repeal of such legislation, and where the initiative petition prepared and formulated for such purpose conforms with this section and is duly filed, city auditor is under the mandatory duty to certify such petition to the board of elections.

138 OS 497, 37 NE(2d) 41 (1941), State ex rel Kittel v Bigelow. Determination by the legislative authority of a municipality that there are sufficient signatures on a petition to require submission of a proposed charter amendment to the electorate is conclusive in the absence of fraud or gross abuse of discretion.

138 OS 497, 37 NE(2d) 41 (1941), State ex rel Kittel v Bigelow. Where a petition has been filed with the legislative authority of a municipality requesting passage of ordinance submitting proposed charter amendment to electorate, and the legislative authority in fact passes an ordinance of submission by a vote of two-thirds or more of its members, any defects in the filing or signing of the petition become immaterial, even though the preamble of the ordinance recites that the legislative authority is acting in response to the petition.

127 OS 195, 187 NE 715 (1933), Youngstown v Craver. A charter city may adopt the provisions of the General Code relative to initiative and referendum and under these provisions may abolish its charter.

125 OS 165, 180 NE 704 (1932), James v Ketterer. A city charter did not provide for the submission of a resolution by initiative petition, nor for its submission to a referendum. In the absence of such provisions in the city charter, the city had a right to proceed under the general laws of the state to improve its streets.

122 OS 591, 173 NE 193 (1930), State ex rel Lowry v Weiss. Petition as to initiated ordinance filed with city auditor forty days before election, sufficient under this section although not certified to board of elections within forty days.

119 OS 210, 162 NE 807 (1928), State ex rel Diehl v Abele; overruled by 131 OS 356, 2 NE(2d) 862 (1936), State ex rel Didelius v City Comm of Sandusky. The general initiative and referendum provision of O Const Art II, § 1f, and the statute enacted in pursuance thereof cannot avail except upon the initial ordinance.

103 OS 286, 133 NE 556 (1921), Cincinnati v Hillenbrand. Under O Const Art II, § 1f, that initiative and referendum powers shall be exercised in the manner hereafter provided by law, GC 4227-1 to 4227-13 (RC 731.28 to 731.41) prescribes the manner.

66 App(3d) 286 (Erie 1990), State ex rel Citizens for a Responsive Government Committee v Widman. A writ of mandamus will not be issued to compel a city commission or its members to place an initiative petition which seeks a change in the form of municipal government on the next election ballot since as the petition alters only one out of eighty-five sections of the charter, it seeks to "amend" the charter and not to "abolish" it; therefore, RC 731.28 does not control and it has to be submitted to legislative authority for a determination of its validity pursuant to the provisions of O Const Art XVIII §9; the submission of a petition is not rendered unnecessary regardless of the number of voter's signatures on it, nor are amendments to charters seeking a change in the form of govern-

ment guaranteed placement on the ballot by O Const Art I §2 and Art II §1f.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. A charter city's own initiative and referendum provisions prevail over RC 731.28 which deals with ordinances and measures proposed by initiative petition, as expressly provided in RC 731.41.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. Where a city argues that an initiative ordinance violates the prohibition against the state passing any law which impairs the obligation of contract under US Const Art I §10, an impermissible impairment of existing city contract obligations is present when it prevents a party from fulfilling its obligations under the contract, and there is an accompanying decrease in the contract's value; to constitute an impermissible impairment, either the legislation or the initiative ordinance must alter the obligations between the parties to the contract.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. A court, in determining whether an initiative ordinance to repeal the provisions of a city's income tax credit ordinance operates as an unconstitutional impairment of the obligation of the city's contractual rights, should consider whether the initiative ordinance operates as substantial impairment of a contract right, and if the impairment is substantial, whether the prohibition of US Const Art I §10 can be harmonized with the initiative power reserved to the electorate and the reasonable necessity to serve an important public purpose; in determining if an impairment is substantial, the court should consider the extent that reasonable expectations in the contract have been disrupted and the extent of the party's reliance on the obligation impaired.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. An initiative ordinance to repeal the provisions of a city's income tax credit ordinance does not operate as a substantial impairment of the city's contractual relationship with third parties where the rights of the city's contracts for capital improvements will remain unchanged if the electorate approves the initiative since the initiative ordinance will not abrogate or repudiate the city's capital improvement contracts with third parties or repeal the city's power to perform them.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. Unless authorized by its charter, a city council has no power to limit the right of initiative reserved to the electorate on grounds of unconstitutionality, and if the petition is in proper form and contains sufficient signatures, the city's duty is to certify the initiative ordinance to the board of elections so that it can be placed on the ballot.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. The constitutionality of an initiative ordinance can be judicially determined only after its enactment and therefore, a court will not interfere with the legislative process by mandamus to block enactment of an ordinance because of claims that it is unconstitutional.

22 App(2d) 190, 259 NE(2d) 754 (1970), Edward Rose of Ohio, Inc v McLaughlin. 731.28, 731.29 and 731.32 requiring that proposed ordinances and initiative or referendum petitions be filed with city auditor or village clerk are mandatory, and where city has no official named auditor, these filings must be made with auditor in fact, who performs duties of auditor.

120 App 338, 195 NE(2d) 371 (1963), State ex rel Beckstedt v Eyrich. The word "certify," in 731.28 requires more than an intention or a verbal expression of an intention; it requires something, however informal, in writing, which is a communication of record to be construed and accepted by the board as a request to place an issue before the electors, and a letter from the city auditor requesting the board of elections to check the signatures on a petition is not such a certification.

120 App 338, 195 NE(2d) 371 (1963), State ex rel Beckstedt v Eyrich. A so-called "initiative petition" which does not propose any text of any ordinance or other measure and proposes no enactment, but merely seeks to have a municipal council embark on a course of conduct and contains no detail or direction as to how the proposed conduct should be undertaken or form which could be construed as legislation, is ineffective and does not constitute any "question" proposed by such "petition."

49 App 184, 195 NE 871 (1934), Ohio Power Co v Davidson. The ten-day period provided for in this section, after which the city auditor of a city or the village clerk of a village shall certify an initiative petition, is governed by the provisions of GC 10216 (RC 1.14), and when the tenth day falls on Sunday said ten-day period shall include all day Monday and such petition shall not be certified until after 12:00 midnight of that day.

21 App 465, 153 NE 217 (1926), Goodman v Hamilton. Municipal ordinance initiated by petition authorizing and directing city officer to enter into contract with company to supply gas to city is a legislative act, and hence valid under O Const Art II, § 1f, GC 4206 (RC 731.01) et seq., and this section, notwithstanding O Const Art XVIII, § 5, which is a mere limitation upon city council.

22 Misc 5, 255 NE(2d) 880 (CP Cuyahoga 1969), Storegard v Bd of Elections of Cuyahoga County. The requirement of 731.34 that an initiative petition be kept open for public inspection for ten days does not indicate that this period of inspection must be completed before the certification of the petition to the board of elections pursuant to 731.28.

22 Misc 5, 255 NE(2d) 880 (CP Cuyahoga 1969), Storegard v Bd of Elections of Cuyahoga County. When the city clerk, with whom an initiative petition should be filed, is on vacation and no other person has been designated to perform such duty, the filing of such a petition is complete when accepted for that purpose by the president of the city council.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. In the computation of the ninety-day period required by 731.28, the first day to be counted is the day following the filing of the initiative petition in the city auditor's office.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. Under 731.28 an initiated ordinance must be submitted at an election subsequent to ninety days from its certification to the board of elections, and so the election may not be utilized when it occurs on the ninetieth day after its certification.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. 731.34, requiring that an initiative petition be kept open for public inspection for ten days, and 731.28, which states that its certification to the board of elections shall be made "after ten days," must be read in pari materia, which results in the intention of the latter section being clearly that the certification may not lawfully occur earlier than the eleventh day after the filing of the petition in the auditor's office.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. Under 731.28 the city auditor is required to certify to the board of elections only the text of an ordinance proposed by initiative petition, and is required to retain the petition.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. The requirement of 713.12 that the legislative authority of a municipal corporation hold a public hearing on the passage of any ordinance does not apply to ordinances proposed by initiative petition.

60 Abs 555, 102 NE(2d) 481 (App Cuyahoga 1951), Geiger v Kobie. The question of a municipal corporation determining to dispose of its light plant being a legislative matter, the right to initiate an ordinance authorizing the city to enter into a contract for such purpose is authorized by O Const Art II, § 1f and this section.

23 Abs 403 (App Mahoning 1936), State ex rel Kalver v Lemon. There is no authority in law for a court to order a certified copy of the verified copy of the initiative petitions or ordinances filed with city clerk.

9 Abs 646, 34 LR 257 (App Cuyahoga 1931), Ferguson v Wiegand. The law of Ohio governing the application of O Const Art II, § 1f with reference to the initiative and referendum is found in this and following sections. (See also Wiegand v Ferguson, 124 OS 73, 177 NE 35 (1931).)

1963 OAG 107. The village council of Sebring cannot, by passage of resolution, place the issue of fluoridation of drinking water on the ballot.

1955 OAG 5983. Initiative and referendum may not be utilized by a municipality to abandon a previously adopted form of municipal government.

1949 OAG 4252 (Printed in 1948). When a municipal ordinance has been duly passed and the period allowed by law for filing a referendum petition has elapsed without any such petition being filed, such ordinance cannot be repealed by an ordinance thereafter approved by the electors pursuant to an initiative petition filed pursuant to this section, and such initiated ordinance is of no effect.

1933 OAG 19. Ordinances proposed and enacted by the people of a city or village by virtue of the power of the initiative are subject to the same limitations as are other ordinances of a municipality and may be amended or repealed at the will of the municipal council, unless the power to do so is qualified or limited by charter provisions.

1930 OAG 1547. GC 4227-1 to 4227-13 (RC 731.28 to 731.41), inclusive, are not in their entirety repealed by the election laws of the state of Ohio, GC 4785-1 (Repealed) et seq., but such provisions as contained in these sections of the old law relating to the initiative and referendum as to municipalities as are inconsistent with the new law are repealed by implication.

1925 OAG 2797. There is no provision of the constitution or statutes which prevents the council of a municipality from passing legislation within the scope of its powers inconsistent with a law that has been proposed by an initiative petition, pending the decision thereon at the election.

731.29 Ordinances and measures subject to referendum

Any ordinance or other measure passed by the legislative authority of a municipal corporation shall be subject to the referendum except as provided by section 731.30 of the Revised Code. No ordinance or other measure shall go into effect until thirty days after it is filed with the mayor of a city or passed by the legislative authority in a village, except as provided by such section.

When a petition, signed by ten per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the municipal corporation, is filed with the city auditor or village clerk within thirty days after any ordinance or other measure is filed with the mayor or passed by the legislative authority of a village, or in case the mayor has vetoed the ordinance or any measure and returned it to council, such petition may be filed within thirty days after the council has passed the ordinance or measure over his veto, ordering that such ordinance or measure be submitted to the electors of such municipal corporation for their approval or rejection, such auditor or clerk shall, after ten days, and not later than four p.m. of the seventy-fifth day before the day of election, transmit a certified copy of the text of the ordinance or measure to the board of elections. The auditor or clerk shall transmit the petition to the board together with the certified copy of the ordinance or measure. The board shall examine all signatures on the petition to determine the number of electors of the municipal corporation who signed the petition. The board shall return the petition to the auditor or clerk within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition. The board shall submit the ordinance or measure to the electors of the municipal corporation, for their approval or rejection, at the next succeeding general election occurring subsequent to seventy-five days after the auditor or clerk certifies the sufficiency and validity of the petition to the board of elections.

No such ordinance or measure shall go into effect until approved by the majority of those voting upon it. Sections 731.28 to 731.41 of the Revised Code do not prevent a municipal corporation, after the passage of any ordinance or other measure, from proceeding at once to give any notice or make any publication required by such ordinance or other measure.

As used in this section, "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original ordinance or other measure.

HISTORY: 1991 H 192, eff. 10-10-91
1980 H 1062; 129 v 324; 126 v 205; 125 v 713; 1953 H 1; GC 4227-2

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.17, 11.24, 11.63, 11.72, 11.77, 11.79, 37.57, 43.29; Forms 11.00

CROSS REFERENCES

Procedure for acquisition of public utility, 745.05

Levy of municipal motor vehicle license tax, hearing and referendum requirements, 4504.06

Local motor vehicle license tax, additional municipal tax, 4504.17, 4504.171, 4504.172

Transfer of municipal powers to county; revocation; initiative and referendum, O Const Art X §1

Adopting and amending municipal charter; initiative and referendum, O Const Art XVIII §7, 8, 9

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15; 10, Building, Zoning, and Land Controls § 138, 251, 252; 20, Counties, Townships, and Municipal Corporations § 459; 21, Counties, Townships, and Municipal Corporations § 677, 719, 723, 734, 751 to 754, 756, 760, 762, 764

Am Jur 2d: 42, Initiative and Referendum § 9

Capacity of taxpayers to maintain suit to enjoin submission of initiative, referendum, or recall measure to voters. 6 ALR2d 557

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum. 33 ALR2d 1118

NOTES ON DECISIONS AND OPINIONS

1. Referendum not applicable
2. Application of section
3. Filing and signature requirements
4. Election

1. Referendum not applicable

46 OS(2d) 207, 346 NE(2d) 764 (1976), State ex rel Srovnal v Linton. Where the city council, under favor of the city's planning and zoning code, by resolution confirms the action of the city planning and zoning commission granting a zoning use exception as to height regulations for a hotel and office building, which exception will not, in the judgment of the commission, substantially and permanently injure the appropriate use of neighboring property, and the applicant for such use exception files notarized consents of the owners of 89.47 percent of the area of the land deemed by the commission to be immediately affected by the proposed zoning use exception, such resolution is not legislative but is an administrative act and is not subject to the referendum provisions of 731.29.

27 OS(2d) 11, 271 NE(2d) 864 (1971), Myers v Schiering. Under O Const Art II, § 1f, municipal referendum powers are

limited to questions which municipalities are "authorized by law to control by legislative action," so that the passage by a city council of a resolution granting a permit for the operation of a sanitary landfill, pursuant to an existing zoning regulation, is not subject to referendum proceedings because it constitutes administrative action.

154 OS 213, 94 NE(2d) 697 (1950), State ex rel Fostoria v King. An ordinance enacted as an emergency pursuant to the provisions of GC 4227-3 (RC 731.30), is not subject to referendum under the provisions of this and following sections.

87 Abs 1, 176 NE(2d) 360 (CP Fayette 1961), Ohio Water Service Co v Washington. The legislative branch has exclusive authority to determine the existence of an emergency, whether an emergency really existed at the time when an ordinance was enacted is not subject for judicial inquiry.

1955 OAG 5983. Initiative and referendum may not be utilized by a municipality to abandon a previously adopted form of municipal government.

2. Application of section

11 Capital U Law Rev 695 (1982). State Police Power v Municipal Utility Power: A Challenge in Ohio for Reconciliation, George D. Vaubel.

55 OS(3d) 101, 564 NE(2d) 425 (1990), Rispo Realty & Development Co v Parma. A noncharter municipality may not pass a zoning ordinance that contains automatic referendum and ward veto provisions, since those provisions are in direct conflict with RC 713.12 and 731.29.

54 OS(2d) 416, 377 NE(2d) 507 (1978), State ex rel Ohio National Bank v Lancione. Referendum petitions in charter cities need not comply with 731.29 to 731.40.

46 OS(2d) 37, 346 NE(2d) 283 (1976), State ex rel Kennedy v Cuyahoga County Bd of Elections. Municipal requirement that clerk of council determine sufficiency of referendum petition did not negate duties imposed on board of elections by 3501.11.

16 OS(2d) 63, 242 NE(2d) 576 (1968), State ex rel Janik v Bd of Elections of Lorain County. A referendum on an ordinance fixing natural gas prices for a city is controlled exclusively by the provision of O Const Art XVIII, § 5 and 8, which are self-executing. (Followed in State ex rel Sheldon Gas Co v Bd of Elections of Hancock County, 48 OS(2d) 49, 356 NE(2d) 720 (1976).)

133 OS 499, 14 NE(2d) 772 (1938), State ex rel Mitchell v Council of Milan. Referendum provisions of O Const Art XVIII, § 5 are self-executing and, as applicable to subject matter therein comprehended, govern to exclusion of those contained in this and following sections.

117 OS 258, 158 NE 606 (1927), Dillon v Cleveland. GC 4227-1 to 4227-13 (RC 731.28 to 731.41) prescribe the procedure for initiative and referendum in cities having no charter and in cities having a charter which contains no initiative and referendum provision for its own ordinances and other legislative measures.

112 OS 688, 148 NE 232 (1925), Vansuch v State ex rel Fetch. Where no action is taken, within thirty days after its passage, to challenge by referendum or otherwise, and ordinance passed as an emergency ordinance in the manner prescribed by GC 4227-3 (RC 731.30) the question of its emergency character may not afterwards be inquired into.

99 OS 17, 122 NE 39 (1918), State ex rel Kahle v Rupert. A city auditor's conclusion that a petition does not conform to this section is not final. This is to be decided by the court in a suit either to restrain the auditor from certifying or to compel him to do so.

54 App(2d) 107, 375 NE(2d) 811 (1977), Walsh v Cincinnati City Council. A city council has no authority to declare an ordinance to be an emergency measure for reasons which are obviously illusory or tautological, and where an ordinance is passed as an emergency measure and, considering all the facts and circumstances, it is not to be effective within a reasonable time, it is invalid.

49 App(2d) 28, 358 NE(2d) 1375 (1974), Stradtman v Brunswick. Under 731.29, the filing of an ordinance with the mayor is effective when such is delivered and received at the mayor's office.

13 App(2d) 46, 233 NE(2d) 600 (1967), Korn v Dunahue. No referendum is necessary to the validity of an ordinance for the sale of a municipally owned utility; any referendum that is held thereon is governed by the general provisions of O Const Art II, § 1f, and by 731.29; it is not subject to the provisions of O Const Art XVIII, § 4, 5, and 8, which pertain to the purchase of a utility.

113 App 455, 178 NE(2d) 600 (1961), State ex rel Walters v Bellevue. A petition in a mandamus or mandatory injunction action states a cause of action upon issues joined to adduce evidence in support of the allegations as to whether an ordinance sought to be subject to referendum is an emergency ordinance and subject to referendum upon showing that ten petitions filed with the city auditor constituted ten per cent of electors who voted for governor at the next preceding election in the city of Bellevue, as provided by law.

99 App 314, 133 NE(2d) 139 (1955), State ex rel Johns v Bruss. An ordinance which recites that it is an emergency measure to take effect in two weeks takes effect in thirty days because emergency ordinances must take effect immediately.

65 App 84, 29 NE(2d) 236 (1940), W.B. Gibson Co v Warren Metropolitan Housing Authority. By virtue of this section, an ordinance for rezoning land is subject to a referendum, and such an ordinance is not within the exceptions of GC 4227-3 (RC 731.30).

60 App 54, 19 NE(2d) 531 (1938), Portmann v Bd of Elections of Stark County. When a referendum has been duly called under provisions of this section, upon a municipal ordinance or other measure, a mandatory injunction will lie to require the board of deputy supervisors of elections of the county to submit the same in a form that is intelligible and not misleading, and an elector of the municipality affected may maintain such an action.

54 App 510, 8 NE(2d) 254 (1936), State ex rel Schell v Abbott. Proceedings for a referendum on legislation enacted by a village council providing for the construction, acquisition or leasing of a new utility must be taken under O Const Art XVIII, § 4, 5 and 8, but proceedings for a referendum on legislation providing for the repair or extension of an existing utility must be taken under this and following sections.

No. 3617 (9th Dist Ct App, Lorain, 10-3-84), Mlakar v Koziura. Where taxpayers seek a writ of mandamus to compel a city auditor to certify referendum proceedings under RC 731.29 on an ordinance reclassifying land from residential to business use, and where an action at law for declaratory judgment cannot provide the right to a referendum sought, mandamus lies when the ordinance is found not to be of the emergency nature claimed.

84 Abs 464, 169 NE(2d) 640 (CP Clinton 1960), State ex rel Groghan v Rulon. Emergency clause of a municipal ordinance must contain the reason for enactment of such emergency clause.

64 Abs 371, 108 NE(2d) 387 (CP Hamilton 1952), Bd of Ed of Indian Hill Exempted School District v Bd of Ed of Hamilton County; affirmed by 62 Abs 545, 108 NE(2d) 225 (App Hamilton 1952). Where annexation petitions are initiated by the freeholders of the territory, the ordinance of acceptance is the final step in the proceedings.

27 NP(NS) 497 (1929), Burns v Marietta. The question whether an emergency exists in connection with a proposed municipal improvement is one for determination by the legislative branch of the government and such an ordinance is open to review by the courts in a proper proceeding within the ninety day limit, either as to the constitutionality of the vote or the emergency character of the act.

26 NP(NS) 151 (1925), State ex rel v Lemon. The duties of a city clerk in connection with a municipal referendum petition are purely ministerial, and any action of a judicial character by him is invalid, even though subsequently confirmed by an authorized judicial inquiry.

24 NP(NS) 177 (1921), Wagner v Leipsic; affirmed by 105 OS 466, 138 NE 863 (1922), Leipsic v Wagner. A village council may pass its preliminary ordinances and serve the required notices without waiting thirty days for a referendum petition to be filed, and if such petition is not filed within thirty days, the ordinances are valid.

13 NP(NS) 281, 22 D 458 (1912), Drum v Cleveland. The Crosser Referendum Act (GC 4227-2 (RC 731.29)), that no resolution, ordinance, etc., involving expenditures, etc., shall become effective in less than sixty days after its passage, forbids advertising a sale of bonds which had received a popular vote until sixty days had elapsed after the ordinance for the issue of the bonds.

12 NP(NS) 513, 22 D 419 (1912), Postna v Lakewood. Where a village has been advanced to the grade of a city, ordinances thereupon passed creating police and fire department involve the expenditure of money, and hence are subject to the referendum of this section, and do not become effective for sixty days after passage.

OAG 71-052. Board of township trustees has duty to determine whether petitions requesting referendum on zoning amendment filed with board are valid on their face for presentation to board of elections, but does not have power to inquire into other matters respecting said petitions.

1955 OAG 6014. A municipality with less than 16,000 population which has become a registration municipal corporation by ordinance may repeal such ordinance, and such action will be effective upon publication and a lapse of thirty days.

3. Filing and signature requirements

44 OS(2d) 36, 336 NE(2d) 635 (1975), State ex rel Donahue v Bellbrook. Where a municipality is a city, 731.29 requires a referendum petition to be filed with the city auditor, or, in the absence of an official so designated, with the official who in fact performs the duties of city auditor.

42 OS(2d) 454, 329 NE(2d) 678 (1975), State ex rel Bry v Kirk. A Xerox copy was not a verified copy within the meaning of 731.32.

33 OS(2d) 13, 293 NE(2d) 290 (1973), State ex rel Perk v Cotner. Clerk of Cleveland city council may not continue to invalidate signatures on original part-petitions after expiration of ten-day period.

170 OS 1, 161 NE(2d) 488 (1959), State ex rel Mika v Lemon. Where a city does not have charter provisions fixing its own methods of initiative and referendum, a referendum petition may be filed as to an ordinance of measure, passed by the council of such city, within thirty days from the presentation of such ordinance to the mayor of the city.

166 OS 166, 140 NE(2d) 563 (1957), State ex rel Endress v Wellington. There is no legislative provision for filing supplemental petitions or adding additional signatures to a referendum petition after expiration of the time specified in 731.29.

166 OS 154, 140 NE(2d) 555 (1957), Lynn v Supple. Where the withdrawal of a signature from a municipal referendum petition is in writing and is clear and unequivocal and where the identity of the party seeking to withdraw his signature from the petition as the one who wrote that signature is established, no other formalities with respect to such withdrawal are necessary in the absence of legislation requiring them.

166 OS 154, 140 NE(2d) 555 (1957), Lynn v Supple. In the absence of statutory provisions to the contrary, an elector signing a referendum petition authorized by law has a right to withdraw his name from such petition at any time before official action has been taken thereon and before an action in mandamus has been properly commenced to compel the taking of such action, although after the time within which such petition is required by law to be filed and after it actually has been filed.

164 OS 247, 129 NE(2d) 809 (1955), Dubyak v Kovach. 731.29 provides the sole method by which a referendum petition may be filed in a municipality without its own initiative and referendum provisions, and requires that a referendum petition be filed upon any ordinance or any measure passed by a city council within thirty days from the presentation of such ordinance or other measure to the mayor of the city and makes no provision for a later filing, even though the measure is vetoed by the mayor and passed over his veto.

99 OS 17, 122 NE 39 (1918), State ex rel Kahle v Rupert. Any signer of a petition may withdraw his name at any time before official action is taken. This right is recognized in this section, by ordering filing withheld until after ten days. Though the statute is silent as to the time of filing after ten days, it must be within a reasonable time or mandamus lies. He cannot arbitrarily hold back in order to permit withdrawals of names.

22 App(2d) 190, 259 NE(2d) 754 (1970), Edward Rose of Ohio, Inc v McLaughlin. 731.28, 731.29 and 731.32 requiring that proposed ordinances and initiative or referendum petitions be filed with city auditor or village clerk are mandatory, and where city has no official named auditor, these filings must be made with auditor in fact, who performs duties of auditor.

100 App 323, 136 NE(2d) 671 (1953), Zeiher v Egger. The basis upon which the number of signatures upon a municipal initiative or referendum petition in the city of Sandusky is to be determined is the total number of votes cast for governor within such municipality at the last preceding election therefor. (GC 4227-4 and 4785-182 (RC 731.21 and 3519.22) reconciled.)

54 App 510, 8 NE(2d) 254 (1936), State ex rel Schell v Abbott. Where referendum proceedings should properly have been taken under this statute, the referendum petition must be filed with the village clerk in order to constitute a compliance with the statute, and if filed otherwise it is not a legal petition.

9 App 221 (1917), Hamilton v Greevey. The thirty days within which by this section a referendum petition shall be filed is complied with by counting from the original passage of a resolution and from a passage over the mayor's veto and not from a second filing with the mayor after passage over this veto; such second filing not being necessary.

27 NP(NS) 221 (1927), Kuertz v Union Gas & Electric Co. The time for filing a referendum petition with the city auditor under this section is computed from the date of the filing of the ordinance with the mayor and not from the date of council's re-passage or approval of the ordinance notwithstanding its disapproval by the mayor.

26 NP(NS) 151 (1925), State ex rel v Lemon. Discussion as to the right of signers of municipal referendum petitions to withdraw their signatures and to revoke such withdrawals.

OAG 79-114. An ordinance passed by a noncharter city increasing the compensation of the mayor, auditor, and director of law, which has not been enacted as emergency legislation, will not become effective until the expiration of both the ten-day period required by 731.20 and the thirty-day period required by 731.29. In a noncharter city, the date of commencement of the terms of office of the municipal officer is set by statute and may not be altered by the officers' delaying the date of taking the oath of office or the giving of bond.

1932 OAG 4351. Names may be withdrawn from a village referendum petition at any time until it has been certified by the clerk to the board of elections, even though such certification is made after the expiration of the ten day period during which the clerk must keep the petition open for public inspection.

1932 OAG 4351. Names of subscribers to a village referendum petition may be withdrawn upon the request of such subscribers, and it is not necessary that the paper bearing such requests contain any affidavit either of the signers thereof or of the circulator thereof.

4. Election

13 App(2d) 46, 233 NE(2d) 600 (1967), Korn v Dunahue. Where a referendum election has not been challenged directly by an election contest, its validity may not be collaterally attacked.

16 Misc 127, 241 NE(2d) 177 (CP Erie 1968), Sartor v Huron. There is no limitation on the number of times that ordinances may be proposed by initiative petition for the repeal of the same existing ordinance, so that a demurrer must be sustained to a petition seeking an injunction to prevent the submission of the identical issue to the voters for the second time.

93 Abs 277, 197 NE(2d) 831 (App Columbiana 1963), State ex rel Winters v Applegate. A valid set of petitions does not lose its effectiveness during the course of litigation, but remains in abey-

ance, for years if necessary, until the litigation is disposed of, whereupon the question presented by it must be placed on the ballot at the first opportunity, notwithstanding that the wishes of the signers may have changed in the meantime.

1963 OAG 107. The village council of Sebring cannot, by passage of resolution, place the issue of fluoridation of drinking water on the ballot.

1924 OAG 1597. The "regular election" referred to in this section and GC 4840 (RC 3375.14), means the general election held in November of any year.

731.30 Application of sections

Whenever the legislative authority of a municipal corporation is required to pass more than one ordinance or other measure to complete the legislation necessary to make and pay for any public improvement, sections 731.28 to 731.41, inclusive, of the Revised Code shall apply only to the first ordinance or other measure required to be passed and not to any subsequent ordinances and other measures relating thereto. Ordinances or other measures providing for appropriations for the current expenses of any municipal corporation, or for street improvements petitioned for by the owners of a majority of the feet front of the property benefited and to be especially assessed for the cost thereof, and emergency ordinances or measures necessary for the immediate preservation of the public peace, health, or safety in such municipal corporation, shall go into immediate effect. Such emergency ordinances or measures must, upon a yea and nay vote, receive a two-thirds vote of all the members elected to the legislative authority, and the reasons for such necessity shall be set forth in one section of the ordinance or other measure.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-3

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 3.36, 9.36, 11.10, 11.16, 11.24, 11.66, 11.67, 17.38; Forms 11.00, 13.03, 13.08

CROSS REFERENCES

Levy of municipal motor vehicle license tax, hearing and referendum requirements, 4504.06

Local motor vehicle license tax, additional municipal tax, 4504.17, 4504.171, 4504.172

Adopting and amending municipal charter; initiative and referendum, O Const Art XVIII §7, 8, 9

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15; 10, Building, Zoning, and Land Controls § 138, 251, 252; 20, Counties, Townships, and Municipal Corporations § 459; 21, Counties, Townships, and Municipal Corporations § 677, 719, 723, 734, 751 to 753

Am Jur 2d: 42, Initiative and Referendum § 17 to 19; 56, Municipal Corporations, Counties; and Other Political Subdivisions § 353, 354

Conclusiveness of declaration of emergency in ordinance. 35 ALR2d 586

NOTES ON DECISIONS AND OPINIONS

1. Referendum powers and limitations
2. Effective date; emergency provision
3. Petition; voting procedure

1. Referendum powers and limitations

CONSTITUTIONALITY:

27 OS(2d) 11, 271 NE(2d) 864 (1971), Myers v Schiering. Under O Const Art II, § 1f, municipal referendum powers are limited to questions which municipalities are "authorized by law to control by legislative action," so that the passage by a city council of a resolution granting a permit for the operation of a sanitary landfill, pursuant to an existing zoning regulation, is not subject to referendum proceedings because it constitutes administrative action.

24 OS(2d) 147, 265 NE(2d) 273 (1970), State ex rel Bramblette v Yordy. Provision of charter of municipal corporation that ordinances providing "for raising revenue ... shall not be subject to referendum" is constitutional as applied to ordinance levying municipal income tax, and where such charter provision exists, there is no duty on part of municipal officers to certify such income tax ordinance to board of elections for referendum vote.

18 OS(2d) 59, 247 NE(2d) 310 (1969), State ex rel Brunthaver v Bauman. 731.30 is constitutional.

92 OS 375, 110 NE 937 (1915), Shryock v Zanesville. This section, for the exemption of emergency measures of a city, from the referendum is valid and not repugnant to O Const Art II.

---

62 OS(3d) 130 (1991), State ex rel Moore v Abrams. The preamble of an emergency municipal ordinance which declares the city council's determination to proceed with a downtown improvement program and authorizes the mayor to advertise for bids to construct the improvement sufficiently sets forth and defines the emergency in compliance with the city's charter where it declares that immediate action is necessary because the construction season is well underway; the preamble although inarticulate is not illusory or tautological since the linkage of improvement and lateness of the construction season with the concept of emergency is not so vague as to fail to apprise the voters that their representatives do have valid reasons for the necessity of declaring that the ordinance is an emergency and therefore, a writ of mandamus to compel a city council to submit the emergency ordinance on referendum to the electors of the city at the next general election is properly denied when the city charter exempts emergency ordinances from being subject to referendum.

54 OS(2d) 416, 377 NE(2d) 507 (1978), State ex rel Ohio National Bank v Lancione. Referendum petitions in charter cities need not comply with 731.29 to 731.40.

154 OS 213, 94 NE(2d) 697 (1950), State ex rel Fostoria v King. An ordinance enacted as an emergency pursuant to the provisions of this section is not subject to referendum under the provisions of GC 4227-2 (RC 731.29) et seq.

125 OS 165, 180 NE 704 (1932), James v Ketterer. Under this section a resolution of necessity is the first measure taken by the city in the process of legislation to improve a street.

13 App(3d) 405, 13 OBR 491, 469 NE(2d) 533 (Cuyahoga 1983), State ex rel Kleem v Kafer. Where several ordinances are required to make and pay for a public improvement, RC 731.30 provides that the referendum procedure may be used only to challenge the first ordinance dealing with the improvement and not subsequent ones.

54 App(2d) 107, 375 NE(2d) 811 (1977), Walsh v Cincinnati City Council. A city council has no authority to declare an ordinance to be an emergency measure for reasons which are obviously illusory or tautological, and where an ordinance is passed as an emergency measure and, considering all the facts and circumstances, it is not to be effective within a reasonable time, it is invalid.

113 App 455, 178 NE(2d) 600 (1961), State ex rel Walters v Bellevue. A petition in a mandamus or mandatory injunction action states a cause of action upon issues joined to adduce evidence in support of the allegations as to whether an ordinance sought to be subject to referendum is an emergency ordinance and subject to referendum upon showing that ten petitions filed with the city auditor constituted ten per cent of electors who voted for

governor at the next preceding election in the city of Bellevue, as provided by law.

101 App 279, 133 NE(2d) 616 (1956), Partain v Brooklyn. Even though an amendment to a zoning ordinance is adopted as an emergency measure and thereby defeats taxpayers' rights of referendum, such taxpayers cannot complain that the ordinance is invalid because of the loss of such rights, in view of the fact that such ordinance was adopted by vote of six to one.

65 App 84, 29 NE(2d) 236 (1940), W.B. Gibson Co v Warren Metropolitan Housing Authority. Where a resolution is passed by city council, authorizing and agreeing "among other things, to plan or replan, zone or rezone, any area in the city to an appropriate neighborhood classification for the construction of a housing project" and a rezoning ordinance is subsequently enacted, the resolution is not "the first ordinance or other measure" subject to referendum under this section.

19 NP(NS) 145, 26 D 344 (1916), McFarlan v Norwood; reversed by 26 CC(NS) 33, 28 CD 323 (1916). A resolution of intent is necessary before appropriating property for the extension of a street, and such extension is a public improvement under this section, subject to a referendum.

1924 OAG p 33. All actions of municipal councils are subject to the referendum excepting actions specifically exempted from such procedure by this section.

2. Effective date; emergency provision

62 OS(3d) 130 (1991), State ex rel Moore v Abrams. A municipal ordinance passed as an emergency measure is not invalid on the ground that the preamble of the ordinance omits reference to the public peace, property, health or safety where the municipal charter states that an emergency measure is an ordinance for such purposes since repeating the language in the ordinance would be redundant; stating that an emergency exists and why it was declared, which the preamble does, is sufficient.

62 OS(3d) 130 (1991), State ex rel Moore v Abrams. Where a court is faced with the issue of whether the preamble of a municipal ordinance passed as an emergency measure sufficiently sets forth and defines the emergency, the affidavits of city council members and a copy of the official minutes of the meeting at which the ordinance is passed are irrelevant to the issue of what the preamble stated since that issue is proved by examination of the preamble alone and what council members understood, believed, or even stated goes to the issue of whether an emergency really existed, which issue is unreviewable by the court.

156 OS 32, 100 NE(2d) 62 (1951), Youngstown v Aiello. Where a purported emergency ordinance enacted by the council of a municipality does not comply with this section, and therefore does not go into immediate effect and no proceeding to institute a referendum or other challenge is made until after the expiration of the time limited for such attack, such ordinance takes effect in the same manner as other regular ordinances.

156 OS 32, 100 NE(2d) 62 (1951), Youngstown v Aiello. A separate provision of an ordinance, "that this ordinance is hereby declared to be an emergency measure . . . " is ineffective to constitute the ordinance an emergency measure, where the reasons for the necessity are not announced and set forth in the emergency section.

156 OS 32, 100 NE(2d) 62 (1951), Youngstown v Aiello. The procedure of this section is mandatory, and the failure to comply with such requirements in the enactment of an ordinance, purported to be an emergency measure, prevents such ordinance from taking immediate effect.

156 OS 32, 100 NE(2d) 62 (1951), Youngstown v Aiello. "Emergency ordinances or measures necessary for the immediate preservation of the public peace, health or safety in such municipal corporation" go into immediate effect when enacted in accordance with this section.

154 OS 213, 94 NE(2d) 697 (1950), State ex rel Fostoria v King. The duty and responsibility of determining the emergency and the necessity that a measure go into immediate effect and of giving reasons for such necessity are placed by this section in the council or other body corresponding to the council of a municipality; such a determination by a municipal council and the soundness of the reasons stated by such council for such necessity are not subject to review by the courts.

126 OS 496, 186 NE 99 (1933), Holcomb v State ex rel Coney. The duty and responsibility of determining the emergency and the necessity that a measure go into immediate effect are confided to the legislative branch of government. If the prescribed procedure for enactment thereof is followed, such measure goes into effect immediately upon its passage.

112 OS 688, 148 NE 232 (1925), Vansuch v State ex rel Fetch. For the purpose of adjusting the finances of a municipality so as to enable it to live within its income, the council may by an emergency ordinance provide for the discharge of employees under civil service without violation of the civil service law.

62 App(3d) 498, 576 NE(2d) 814 (Montgomery 1990), State ex rel Emrick v Wasson. A provision of a municipal ordinance that "this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the inhabitants of the City of Germantown, and for the reason that immediate action is required . . . and shall take effect immediately upon its passage . . ." is ineffective to constitute an emergency measure when the city council in passing the ordinance has not followed the provisions of its city charter and announced in clear and specific terms the nature of the emergency and the necessity of the action taken.

99 App 314, 133 NE(2d) 139 (1955), State ex rel Johns v Bruss. An ordinance which recites that it is an emergency measure to take effect in two weeks takes effect in thirty days because emergency ordinances must take effect immediately. (Disapproved in State ex rel Lipovsky v Kizak, 15 OS(2d) 27, 238 NE(2d) 777 (1968), as stated in Walsh v Cincinnati City Council, 54 App(2d) 107, 375 NE(2d) 811 (1977).)

95 App 259, 119 NE(2d) 105 (1953), Brunner v Rhodes. An emergency regulation prescribed by a city board of health, which is expressly declared to be an emergency regulation and which recites the reasons for the emergency and requires the conclusion that conditions endangering public health exist and receives the vote of all but one of the board members, is not rendered invalid by reason of the fixing of its effective date more than one month after its enactment, but regulation which does not meet the requirements of an emergency measure and is not published is invalid.

95 App 259, 119 NE(2d) 105 (1953), Brunner v Rhodes. Orders and regulations prescribed by a city board of health and intended for the general public must be adopted, advertised, recorded and certified as are municipal ordinances, and in adopting emergency regulations intended for the general public a city board of health is relieved of the necessity of advertising, recording and certifying such regulations, but such board is not relieved from the requirement that such regulations otherwise shall be adopted as are ordinances.

36 App 434, 173 NE 309 (1930), Newcomerstown v State ex rel Blatt. Ordinance diminishing salary of village marshal, though termed emergency ordinance, could not be emergency ordinance contemplated by this section.

No. C-830674 (1st Dist Ct App, Hamilton, 1-11-84), Cincinnati ex rel Newberry v Brush. An emergency ordinance which declares that a bond issue is needed to provide orderly financing of certain improvements states valid legislative reasons for passage of the ordinance as an emergency measure.

29 Misc(2d) 15, 29 OBR 284, 504 NE(2d) 1227 (CP, Clermont 1984), Moscow v Moscow Village Council. A statement within an ordinance that it is "deemed an emergency for the preservation of the public health and welfare of said village because outstanding public funds must be properly placed in the immediate future" is insufficient to create an emergency ordinance because the reasons given are conclusory statements without factual support since the ordinance was enacted prior to the adoption of annual appropriation measures pursuant to county certification.

30 Misc 49, 284 NE(2d) 210 (CP Medina 1972), Tamele v Brinkman. 709.10 insofar as it provides for an effective date of an

annexation ordinance, is in irreconcilable conflict with 731.30, and, to the extent of conflict, 709.10, having been enacted by general assembly at a more recent date than 731.30, prevails.

87 Abs 1, 176 NE(2d) 360 (CP Fayette 1961), Ohio Water Service Co v Washington. The legislative branch has exclusive authority to determine the existence of an emergency; whether an emergency really existed at the time when an ordinance was enacted is not subject for judicial inquiry.

84 Abs 464, 169 NE(2d) 640 (CP Clinton 1960), State ex rel Groghan v Rulon. Emergency clause of a municipal ordinance must contain the reason for enactment of such emergency clause.

77 Abs 52, 146 NE(2d) 178 (CP Cuyahoga 1957), Miller v Cleveland. Under the Cleveland charter where an attempt to adopt an ordinance as an emergency measure fails, the ordinance is not invalid but becomes effective in the same manner as other regular ordinances.

73 Abs 481, 138 NE(2d) 180 (CP Cuyahoga 1955), Partain v Brooklyn; affirmed by 101 App 279, 133 NE(2d) 616 (1956). Where an ordinance is passed as an emergency measure by the required vote, and the emergency is recited in the ordinance, the validity of the emergency is not subject to attack, and where the period within which a referendum petition might have been filed has expired, the ordinance is immune from attack.

66 Abs 300, 113 NE(2d) 601 (App Mahoning 1952), State ex rel Geletka v Campbell. Where a zoning ordinance of a city was declared invalid by a court and the same day the city council published a thirty day notice of a public hearing on a new zoning ordinance, which ordinance was subsequently adopted with a purported emergency clause which did not set forth the reason for the emergency, an applicant for a building permit in the interim was entitled to a writ of mandamus ordering the issuance of such permit denied solely on a basis of non-compliance with the zoning ordinances.

24 Abs 696 (App Mahoning 1937), Goodman v Youngstown. Language of this section as well as constitutional provision specifically requires that reasons for necessity shall be set forth in one section of ordinance and mere statement that ordinance is necessary for preservation of public peace, health and safety is but a conclusion of council, without statement of any reason therefor and where ordinance has not been adopted pursuant to requirements of this section it is for that reason invalid, and operation thereof must be enjoined.

19 NP(NS) 145, 26 D 344 (1916), McFarlan v Norwood; reversed by 26 CC(NS) 33, 28 CD 323 (1916). "Measure" defined in this section.

1946 OAG 691. Ordinances providing for appropriations for current expenses of a municipal corporation, or for street improvements petitioned for by owners of majority of feet front of property benefited and to be especially assessed for cost thereof, and emergency ordinances or measures necessary for immediate preservation of public peace, health or safety, go into immediate effect as provided in section, notwithstanding provisions of GC 4230 (RC 731.23) requiring their publication.

1930 OAG 1547. This section repealed by implication insofar as it is inconsistent with GC 4785-175 (RC 3519.01) et seq.

1927 OAG 1009. Ordinances and measures enacted in the course of the legislation for a municipal improvement subsequent to the resolution of necessity therefor may be passed as emergency measures under authority of this section when in the sound judgment of council such emergency exists, and such ordinances or measures so passed do not require publication.

3. Petition; voting procedure

15 OS(2d) 27, 238 NE(2d) 777 (1968), State ex rel Lipovsky v Kizak. A mandamus action to require the clerk of a village council to certify a referendum petition directed against a village ordinance to a county board of elections will not lie, where the ordinance was duly passed as an emergency measure by the required number of votes of the members of the village council, and the provisions of 731.30 were substantially complied with, and the fact that the actual operation of the ordinance in the collection of an income tax was delayed for a short period of time (twenty days) is immaterial.

125 OS 165, 180 NE 704 (1932), James v Ketterer. When, in connection with the proposed improvement of a city street under the general laws of the state, the resolution of necessity is proposed by an initiative petition containing the requisite number of signers, is submitted to the voters of the city for approval and is approved by such voters, the law relative to initiative and referendum shall have no application to subsequent ordinances or other measures relating thereto. A referendum petition addressed to the ordinance to proceed with such improvement, passed immediately after the approval of the resolution of necessity, cannot be entertained.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. Unless authorized by its charter, a city council has no power to limit the right of initiative reserved to the electorate on grounds of unconstitutionality, and if the petition is in proper form and contains sufficient signatures, the city's duty is to certify the initiative ordinance to the board of elections so that it can be placed on the ballot.

84 Abs 464, 169 NE(2d) 640 (CP Clinton 1960), State ex rel Groghan v Rulon. Strict compliance with 731.17, 731.19, and 731.30 is mandatory, and "carried by full yea vote" in the clerk's record does not comply therewith.

731.31 Presentation of petition; effective date of ordinances

Any initiative or referendum petition may be presented in separate parts, but each part of any initiative petition shall contain a full and correct copy of the title and text of the proposed ordinance or other measure, and each part of any referendum petition shall contain the number and a full and correct copy of the title of the ordinance or other measure sought to be referred. Each signer of any such petition must be an elector of the municipal corporation in which the election, upon the ordinance or measure proposed by such initiative petition, or the ordinance or measure referred to by such referendum petition, is to be held. Petitions shall be governed in all other respects by the rules set forth in section 3501.38 of the Revised Code. In determining the validity of any such petition, all signatures which are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required by this section.

The petitions and signatures upon such petitions shall be prima facie presumed to be in all respects sufficient. No ordinance or other measure submitted to the electors of any municipal corporation, and receiving an affirmative majority of the votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the ordinance or measure was procured, nor shall the rejection, by a majority of the votes cast thereon, of any ordinance or other measure submitted to the electors of such municipal corporation, be held invalid for such insufficiency.

Ordinances proposed by initiative petition and referendums receiving an affirmative majority of the votes cast thereon, shall become effective on the fifth day after the day on which the board of elections certifies the official vote on such question.

HISTORY: 1980 H 1062, eff. 3-23-81
125 v 713; 1953 H 1; GC 4227-4

Prohibition: 731.36, 731.38, 731.40

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.72, 11.73, 11.75, 11.76, 11.81

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15; 10, Building, Zoning, and Land Controls § 138, 251, 252; 21, Counties, Townships, and Municipal Corporations § 677, 719, 734, 751, 753, 759, 760, 763, 765

Am Jur 2d: 42, Initiative and Referendum § 21 to 31, 37 to 40

NOTES ON DECISIONS AND OPINIONS

61 OS(3d) 595, 575 NE(2d) 835 (1991), State ex rel Esch v Lake County Bd of Elections. Strict compliance with the provisions of RC 731.31 is required; therefore, an initiative petition failing to include a title for the ordinance proposed by the petition must be rejected by the board of elections as noncomplying.

48 OS(2d) 29, 356 NE(2d) 716 (1976), State ex rel Evergreen Co v Bd of Elections of Franklin County. Referendum petitions were invalid where the statement of the notary public thereon recited only that the petition was acknowledged, even though the circulator's affidavit asserted he was duly sworn.

44 OS(2d) 33, 336 NE(2d) 849 (1975), State ex rel Barton v Butler County Bd of Elections. An initiative question may not be placed on the ballot where the petition therefor failed to include a statement of the circulator, made under penalty of election falsification, that he witnessed the affixing of every signature thereto.

12 OS(2d) 13, 231 NE(2d) 61 (1967), State ex rel Buchanon v Stillman. Where a board of elections has checked the signatures on petitions and determined that there are a sufficient number thereof that are valid, it may determine that such petitions are valid if the only protest against the petitions is based solely upon the failure of the circulator's affidavit to state "that all signers were to the best of his knowledge and belief qualified to sign."

175 OS 257, 193 NE(2d) 517 (1963), State ex rel Abrams v Bachrach. Omission from the affidavit of the circulator of an initiative petition of the statement that the signers signed with knowledge of the contents thereof invalidates the petition.

166 OS 301, 143 NE(2d) 127 (1957), State ex rel Blackwell v Bachrach. Where an initiative petition is captioned "Petition of Electors of the City of Cincinnati," a part petition containing an affidavit which recites that such part petition contains the signatures of a specified number of "electors" is not rendered defective by the fact alone that the affidavit does not also recite that such electors are electors of the city of Cincinnati.

166 OS 301, 143 NE(2d) 127 (1957), State ex rel Blackwell v Bachrach. In ascertaining the number of valid signatures on an initiative petition, the number of signatures actually found to be invalid, after a complete and final examination, is deducted from the total number of signatures on the entire petition, and any signatures which, for any reason, have not been examined are presumed to be valid.

166 OS 154, 140 NE(2d) 555 (1957), Lynn v Supple. Under 731.31 it is essential to the validity of a signature on a petition of an elector of a municipality where registrations are by precincts that such signature be followed by the correct precinct of the signer.

132 OS 477, 9 NE(2d) 148 (1937), State ex rel Poor v Addison. In a registration city, on an initiative petition, a signature not followed by the ward and precinct of the signer does not comply with this section, and cannot be held to be a valid and sufficient signature.

103 OS 286, 133 NE 556 (1921), Cincinnati v Hillenbrand. An initiative petition which includes a correct copy of the title and text of a proposed ordinance is sufficient to authorize the submission thereof to the people if the requirements of the statute in other respects are complied with.

65 App(2d) 160, 416 NE(2d) 626 (1979), State ex rel Hirsch v Lorain County Bd of Elections. 731.31 and 3501.38 require that each part of an initiative petition circulated separately shall contain an affidavit of the person soliciting the signatures stating (1) the number who signed each part, (2) his belief that the signatures are the genuine signatures of the persons whose names they purport to be, and (3) his belief that the signers are qualified to sign. The required affidavit cannot be supplied after filing.

65 App(2d) 160, 416 NE(2d) 626 (1979), State ex rel Hirsch v Lorain County Bd of Elections. An initiative petition to repeal and amend a section of the North Ridgeville zoning code must comply with 731.31, 3501.38 and § 13.4 of the charter of the city of North Ridgeville.

65 App(2d) 160, 416 NE(2d) 626 (1979), State ex rel Hirsch v Lorain County Bd of Elections. 731.31 and § 13.4 of the charter of the city of North Ridgeville require that any part of an initiative petition which is circulated separately must contain a full and correct copy of the title and text of the proposed ordinance.

59 App(2d) 175, 392 NE(2d) 1302 (1978), State ex rel Watkins v Quirk. The power of a municipal clerk of council to ascertain the sufficiency of a referendum petition is not co-extensive with that of a board of elections under 3501.11(K), and he possesses no judicial or quasi-judicial power in this regard, but is limited to an examination of the face of the petition.

50 App(2d) 1, 361 NE(2d) 477 (1976), State ex rel Schultz v Cuyahoga County Bd of Elections; affirmed by 48 OS(2d) 173, 357 NE(2d) 1079 (1976). The requirements for referendum petitions under 519.12 are: (a) the petition must contain the number and a full and correct title of the zoning resolution; (b) the petition must contain the affidavit of the person soliciting signatures for the petition certifying that to the best of his or her knowledge and belief each of the signatures is that of the person whose name it purports to be, that he believes such persons are electors of the township, and that such persons signed the petition with knowledge of its contents; and (c) if the petition contains any additional information it must be of such a character as to promote the attempt to fairly and accurately present the question or issue and must not in any way detract from a free, intelligent and informed choice by the average citizen who is requested to make a decision as to whether he should or should not sign such a petition.

120 App 338, 195 NE(2d) 371 (1963), State ex rel Beckstedt v Eyrich. A so-called "initiative petition" which does not propose any text of any ordinance or other measure and proposes no enactment, but merely seeks to have a municipal council embark on a course of conduct and contains no detail or direction as to how the proposed conduct should be undertaken or from which could be construed as legislation, is ineffective and does not constitute any "question" proposed by such "petition."

120 App 338, 195 NE(2d) 371 (1963), State ex rel Beckstedt v Eyrich. The word "certify," in 731.28 requires more than an intention or a verbal expression of an intention; it requires something, however informal, in writing, which is a communication of record to be construed and accepted by the board as a request to place an issue before the electors, and a letter from the city auditor requesting the board of elections to check the signatures on a petition is not such a certification.

100 App 323, 136 NE(2d) 671 (1953), Zeiher v Egger. The basis upon which the number of signatures upon a municipal initiative or referendum petition in the city of Sandusky is to be determined is the total number of votes cast for governor within such municipality at the last preceding election therefor. (GC 4227-4 and 4785-182 (RC 731.31 and 3519.22) reconciled.)

20 App 135, 153 NE 155 (1925), Hocking Power Co v Harrison. A municipal referendum petition is not rendered invalid by the failure of the signers to write after their names the name of the city, where the petition shows on its face that those signing it are residents of such city.

14 App 398, 32 CC(NS) 145 (1921), Ohio Valley Electric Railway Co v Hagerty. The petition for a referendum must comply strictly with the requirements of this section. The requirement that the solicitor of signatures in his affidavit shall state that the electors signed with knowledge of the contents thereof is mandatory, and, if omitted, the referendum election will be enjoined.

14 App 398, 32 CC(NS) 145 (1921), Ohio Valley Electric Railway Co v Hagerty. Statute requiring each part of a petition for a municipal referendum to contain an affidavit that the petitioning electors signed such petition with knowledge of the contents thereof is mandatory.

9 App 221 (1917), Hamilton v Greevey. Signatures to a referendum petition to a resolution of council before the mayor's veto and before passage over the veto are not too early. This section, requiring the signer to state the date of signing, does not require any particular date.

No. 90-L-15-128 (11th Dist Ct App, Lake, 10-31-90), State ex rel Esch v Lake County Bd of Elections; affirmed by 61 OS(3d) 595 (1991). The requirement of a full and correct copy of the title for the petition is mandatory and must be strictly complied with.

No. 87-C-54 (7th Dist Ct App, Columbiana, 11-1-88), Waste Technologies Industries v Columbiana County Bd of Elections. An initiative petition presented pursuant to RC 731.31 will not be declared invalid absent flagrant or fraudulent noncompliance with the requirements of the statute.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. An initiative petition of a zoning ordinance does not fail to comply with the requirement of 731.31 that it contain a full and correct copy of the title and text of the ordinance, by its failure to include a copy of the map or any more reference to it than the letter designation of the several areas thereon.

93 Abs 277, 197 NE(2d) 831 (App Columbiana 1963), State ex rel Winters v Applegate. That on initiative petitions certain signatures of husband and wife appeared in the same handwriting was not a ground for invalidating the entire petition.

75 Abs 444, 134 NE(2d) 93 (App Cuyahoga 1956), Lynn v Supple. Failure to include the signer's precinct or inclusion of the wrong precinct on a referendum petition invalidates the signature.

75 Abs 444, 134 NE(2d) 93 (App Cuyahoga 1956), Lynn v Supple. The signature of the signer of a referendum petition who has moved and inserts his new address and precinct but has not made such change with the board of elections is invalid.

73 Abs 204, 135 NE(2d) 92 (CP Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). No signature to an initiative petition can be rejected without a finding of its invalidity, and a finding means that there must be some final determination, after examination, that the signature is infected with some plausible legal defect.

26 NP(NS) 151 (1925), State ex rel v Lemon. A part of a municipal referendum petition is invalid and must be rejected if the affidavit thereto is not sworn to by the person who circulated it, or where there was a wholesale procuring of names in the confusion and distraction of a holiday crowd where it was impossible for the solicitor truthfully to make oath that to the best of his knowledge and belief the persons who signed did so with knowledge of the contents; or where the signers were known to the solicitor not to be electors of the city; or where the names were signed by others than the persons whose names were so written, unless signing was in the presence of and with the knowledge of and at the direction of the persons whose names were so written, though the solicitor may properly fill in other data, such as street addresses, etc.

26 NP(NS) 151 (1925), State ex rel v Lemon. Validity of a municipal referendum petition, or part of it, depends upon the existence and sufficiency of the accompanying affidavit, and this affidavit must show that each of the signatures attached to such part was made in the presence of the affiant.

1932 OAG 4351. A board of elections has the right to canvass signatures on a village referendum petition, and it is not required to submit the ordinance or other measure to the electors of the municipality for their approval or rejection if signatures on such petition are insufficient.

1932 OAG 4351. While there is no express authority for the village clerk to certify withdrawals from such a petition to the board of elections, where such certification has been made, such board would have the right to consider them along with petition and if signatures to the petition are insufficient by reason of such withdrawals, or for any other valid reason, it would not be required to submit the ordinance or other measure to the electors of the municipality.

731.32 Certified copy of proposed ordinance or measure filed with auditor or clerk

Whoever seeks to propose an ordinance or measure in a municipal corporation by initiative petition or files a referendum petition against any ordinance or measure shall, before circulating such petition, file a certified copy of the proposed ordinance or measure with the city auditor or the village clerk.

As used in this section, "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original proposed ordinance or measure or of the original ordinance or measure.

HISTORY: 1991 H 192, eff. 10-10-91
1953 H 1; GC 4227-6

Prohibition: 731.36(E)

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.72, 11.79

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15; 10, Building, Zoning, and Land Controls § 138, 251, 252; 21, Counties, Townships, and Municipal Corporations § 677, 719, 751, 753, 754, 759, 764

Am Jur 2d: 42, Initiative and Referendum § 32 to 36

NOTES ON DECISIONS AND OPINIONS

62 OS(3d) 174 (1991), State ex rel Shaw v Lynch. A city's clerk of council is relieved of any duty to certify and deliver referendum petitions on two proposed zoning ordinances to the county board of elections before the next general election where only substantial compliance with former RC 731.32 is achieved through the filing of "full and accurate" copies of the ordinances with the clerk and the city finance director rather than certified or verified copies of the ordinances; therefore, a writ of mandamus to compel the certification of the petitions by the clerk of council will be denied.

62 OS(3d) 174 (1991), State ex rel Shaw v Lynch. A city clerk of council is not estopped from asserting a party's noncompliance with former RC 731.32, which requires the filing of certified or verified copies of an ordinance, on the grounds that she led them to believe that "full and accurate" copies would be sufficient.

62 OS(3d) 174 (1991), State ex rel Shaw v Lynch. A city's clerk of council's rejection of referendum petitions on two proposed zoning ordinances for lack of verification required by former RC 731.32 is not improper on the ground that compliance with RC 731.32 is a quasi-judicial determination that is exclusively within the province of the board of elections, since the absence of verification or certification constitutes a procedural inadequacy and a city council has the authority to review petitions for procedural inadequacies, and the city charter gives the responsibility to review the sufficiency of referendum petitions to the city clerk of council.

62 OS(3d) 167 (1991), State ex rel Citizens for a Better Beachwood v Cuyahoga County Bd of Elections. A board of elections properly applies RC 731.32 in invalidating a referendum petition challenging a zoning ordinance and refusing to hold a referendum election where a verified copy of the ordinance has not been filed with the city auditor before circulation of the referendum petition, and although the city charter is silent on the requirement of RC 731.32 that copies of ordinances be filed with the city auditor, it expressly requires application of any state statute except where a contrary intent appears in the city's local law which makes RC 731.32 applicable and RC 731.41 inapplicable; thus, a request for a

writ of mandamus to compel the board to refer the zoning ordinance to voters at the next general election will be denied.

63 OS(2d) 333, 410 NE(2d) 1253 (1980), State ex rel Hirshler v Frazier. A copy of an ordinance that is certified rather than verified meets the requirements of 731.32.

46 OS(2d) 37, 346 NE(2d) 283 (1976), State ex rel Kennedy v Cuyahoga County Bd of Elections. Municipal requirement that clerk of council determine sufficiency of referendum petition did not negate duties imposed on board of elections by 3501.11.

42 OS(2d) 454, 329 NE(2d) 678 (1975), State ex rel Bry v Kirk. A Xerox copy was not a verified copy within the meaning of 731.32.

6 OS(2d) 1, 215 NE(2d) 592 (1966), State ex rel Nimon v Springdale. Where the charter of a municipal corporation provides for certain features of the initiative and referendum differing from the statutory provisions with relation thereto, and provides further that "all other matters relating to the question of the exercise of the power of referendum shall be regulated by the provisions of the Revised Code of Ohio relating to referendum petitions," but is silent with respect to language to be contained on a referendum petition or with respect to filing such petition with a village official prior to its circulation, such matters are controlled by 731.32 and 731.33, and 731.41 is inapplicable.

170 OS 1, 161 NE(2d) 488 (1959), State ex rel Mika v Lemon. The requirement of 731.32 that whoever seeks to propose an ordinance in a municipal corporation by initiative petition or files a referendum petition against any ordinance shall before circulating such petition file a verified copy of the proposed ordinance or measure with the city auditor or village clerk, is mandatory, and in the absence of compliance therewith no duty falls upon the city clerk to receive and file with the board of elections a referendum petition otherwise valid.

166 OS 301, 143 NE(2d) 127 (1957), State ex rel Blackwell v Bachrach. The provisions of 731.28 and 731.32 relative to the filing of an initiative petition with the city auditor or village clerk and to the certification of the ordinance or measure by such auditor or clerk to the board of elections do not apply to an initiative petition to amend a city charter, filed pursuant to O Const Art XVIII, § 9.

59 App(2d) 175, 392 NE(2d) 1302 (1978), State ex rel Watkins v Quirk. A municipal clerk of council does have authority to invalidate all signatures affixed to referendum part-petitions circulated in violation of 731.32.

22 App(2d) 190, 259 NE(2d) 754 (1970), Edward Rose of Ohio, Inc v McLaughlin. 731.28, 731.29 and 731.32 requiring that proposed ordinances and initiative or referendum petitions be filed with city auditor or village clerk are mandatory, and where city has no official named auditor, these filings must be made with auditor in fact, who performs duties of auditor.

20 App 135, 153 NE 155 (1925), Hocking Power Co v Harrison. The filing of a copy of an ordinance certified as true by the clerk of the council is a sufficient compliance with the provisions of this section as to filing a copy of the ordinance against which the referendum is invoked.

No. 90CA004798 (9th Dist Ct App, Lorain, 11-21-90), State ex rel Shaw v Lynch. A writ of mandamus to compel certification and delivery of initiative petitions to a board of elections for submission to a vote by electors will be denied where verified copies of the proposed ordinances, as required by RC 731.32, are not included with the notice of intent to circulate petitions.

93 Abs 277, 197 NE(2d) 831 (App Columbiana 1963), State ex rel Winters v Applegate. The filing of a verified copy of a proposed ordinance complies with 731.32.

73 Abs 204, 135 NE(2d) 92 (CP Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). A failure to comply with the requirements of 731.32 that a copy of a petition be filed with the city auditor (or finance director) before the petition is circulated for signatures does not invalidate the petition.

15 Abs 487 (CP Columbiana 1933), Ohio Power Co v Davidson; affirmed by 49 App 184, 195 NE 871 (1934). This section is mandatory.

31 NP(NS) 171 (1933), Hopkins v Marburger. This statute is mandatory and before an ordinance may be initiated, the following steps are essential: a. the ordinance to be submitted must be filed with the auditor; b. it must upon its face bear the statement of someone that it is the very ordinance which is to be submitted to the electors; c. the right to initiate an ordinance is personal and the copy filed must bear the name of some person who sponsors it.

31 NP(NS) 171 (1933), Hopkins v Marburger. Depositing a copy of an ordinance in the city auditor's office without formally filing the same, which does not bear the verification of any person upon its face nor the certificate of anyone thereon, is not a substantial compliance with the statute even though it be deposited there before the petitions are circulated and it be a true copy of the ordinance with regard to which initiative vote is desired.

731.33 Words which shall be printed in red

At the top of each part of the petition mentioned in section 731.32 of the Revised Code, the following words shall be printed in red:

NOTICE.

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-7

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.72

NOTES ON DECISIONS AND OPINIONS

6 OS(2d) 1, 215 NE(2d) 592 (1966), State ex rel Nimon v Springdale. Where the charter of a municipal corporation provides for certain features of the initiative and referendum differing from the statutory provisions with relation thereto, and provides further that "all other matters relating to the question of the exercise of the power of referendum shall be regulated by the provisions of the Revised Code of Ohio relating to referendum petitions," but is silent with respect to language to be contained on a referendum petition or with respect to filing such petition with a village official prior to its circulation, such matters are controlled by 731.32 and 731.33, and 731.41 is inapplicable.

15 App(2d) 222, 240 NE(2d) 871 (1968), Cloud v Bd of Elections of Clark County. Where a petition has been filed with the legislative authority of a municipality requesting the passage of an ordinance submitting a proposed charter amendment to the electorate, and the legislative authority in fact passes an ordinance of submission by unanimous vote of its members, no inquiry may thereafter be made into the form, substance or sufficiency of such petition.

731.34 Designation of committee filing petition; procedures

The petitioners may designate in any initiative or referendum petition a committee of not less than three of their number, who shall be regarded as filing the petition. After a petition has been filed with the city auditor or village clerk it shall be kept open for public inspection for ten days. If, after a petition proposing an ordinance or other measure has been filed with such auditor or clerk, the proposed ordinance or other measure, or a substitute for the pro-

posed ordinance or measure approved by such committee, is passed by the legislative authority of the municipal corporation, the majority of the committee shall notify the board of elections in writing and such proposed ordinance or measure shall not be submitted to a vote of the electors.

If, after a verified referendum petition has been filed against any ordinance or measure, the legislative authority of the municipal corporation repeals such ordinance or measure, or it is held to be invalid, the board of elections shall not submit such ordinance or measure to a vote of the electors.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-8

NOTES ON DECISIONS AND OPINIONS

6 OS(3d) 344, 6 OBR 399, 453 NE(2d) 644 (1983), State ex rel Lemaitre v Clyde. An ordinance granting power to city manager to adjust water and sewage rates could not be passed as an emergency measure.

174 OS 15, 185 NE(2d) 762 (1962), State ex rel Tester v Bd of Elections of Ottawa County. The council of a noncharter village can prevent the village electorate from voting to approve or reject an ordinance, which was not passed as an emergency ordinance and on which a valid referendum petition has been duly filed, by passing at one session after the filing of the referendum petition two consecutive emergency ordinances, one to repeal the ordinance under referendum and the other to reenact substantially the same ordinance as repealed; and it can do that although the sole purpose of council in passing the two new ordinances is to prevent a vote by the electorate on the legislation contained in the ordinance with respect to which the referendum petition was filed.

99 App 415, 119 NE(2d) 644 (1954), Heidtman v Shaker Heights; affirmed by 163 OS 109, 126 NE(2d) 138 (1955). Where the circulators of an initiative petition seeking enactment of an ordinance to establish the three-platoon system in the fire department had complied with all applicable provisions of the city charter and the laws of the state of Ohio, the city council had the clear duty to declare such petition sufficient and at once have the proposed ordinance read and referred to the applicable committee, and the rejection of the petition as insufficient by the council was an abuse of discretion.

22 Misc 5, 255 NE(2d) 880 (CP Cuyahoga 1969), Storegard v Bd of Elections of Cuyahoga County. 731.34 requires that the initiative petition be kept open for public inspection only at such times as the office of the city clerk is open by law during ten consecutive days.

22 Misc 5, 255 NE(2d) 880 (CP Cuyahoga 1969), Storegard v Bd of Elections of Cuyahoga County. The requirement of 731.34 that an initiative petition be kept open for public inspection for ten days does not indicate that this period of inspection must be completed before the certification of the petition to the board of elections pursuant to 731.28.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. Where an initiative petition is removed from the city auditor's office for the purpose of comparing names with those on registration lists at the board of elections, and so were not open for public inspection during such time, the auditor may not certify the ordinance to the board of elections until after the petition has been actually open for inspection for the required period.

16 Misc 211, 240 NE(2d) 896 (CP Cuyahoga 1968), Drockton v Bd of Elections of Cuyahoga County. 731.34, requiring that an initiative petition be kept open for public inspection for ten days, and 731.28, which states that its certification to the board of elections shall be made "after ten days," must be read in pari materia, which results in the intention of the latter section being clearly that the certification may not lawfully occur earlier than the eleventh day after the filing of the petition in the auditor's office.

67 Abs 132, 115 NE(2d) 429 (CP Cuyahoga 1953), Russell v Linton. Where a petition for an initiative election is filed and an action is thereafter filed seeking to enjoin the certification by the clerk to the board of elections, the initiating committee may properly become a new party defendant.

27 NP(NS) 221 (1927), Kuertz v Union Gas & Electric Co. The enactment of a contractual rate ordinance and the acceptance of same by the company constitutes a contract which cannot be impaired by council enacting an ordinance repealing the same after the referendum period has expired.

26 NP(NS) 151 (1925), State ex rel v Lemon. Discussion as to the right of signers of municipal referendum petitions to withdraw their signatures and to revoke such withdrawals.

731.35 Sworn itemized statement by circulator of petition

(A) The circulator of an initiative or referendum petition, or his agent, shall, within five days after such petition is filed with the city auditor or village clerk, file an itemized statement, made under penalty of election falsification, showing in detail:

(1) All moneys or things of value paid, given, or promised for circulating such petition;

(2) Full names and addresses of all persons to whom such payments or promises were made;

(3) Full names and addresses of all persons who contributed anything of value to be used in circulating such petitions;

(4) Time spent and salaries earned while circulating or soliciting signatures to petitions by persons who were regular salaried employees of some person who authorized them to solicit signatures for or circulate the petition as a part of their regular duties.

(B) The statement provided for in division (A) of this section shall not be required from persons who take no other part in circulating a petition than signing declarations to parts of the petition and soliciting signatures to them.

(C) Such statement shall be open to public inspection for a period of one year.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 4227-9

Prohibition: 731.36

NOTES ON DECISIONS AND OPINIONS

56 App(3d) 139, 565 NE(2d) 839 (Summit 1988), State ex rel Quist v Spraggins. Compliance with RC 731.35 is not a condition precedent to the validity of the referendum petition.

120 App 189, 201 NE(2d) 721 (1963), Gem Development Co v Clymer. A referendum petition directed to a city ordinance passed as an emergency measure providing for annexation of territory is not nullified because a sworn itemized statement was not filed within five days after the petition was filed by circulators who took no part in circulating petitions other than making affidavits to parts of the petition and soliciting signatures.

99 App 415, 119 NE(2d) 644 (1954), Heidtman v Shaker Heights; affirmed by 163 OS 109, 126 NE(2d) 138 (1955). Where the circulators of an initiative petition seeking enactment of an ordinance to establish the three-platoon system in the fire department had complied with all applicable provisions of the city charter and the laws of the state of Ohio, the city council had the clear duty to declare such petition sufficient and at once have the proposed ordinance read and referred to the applicable committee, and the rejection of the petition as insufficient by the council was an abuse of discretion.

No. 87-C-54 (7th Dist Ct App, Columbiana, 11-1-88), Waste Technologies Industries v Columbiana County Bd of Elections. Affidavits provided for in RC 731.35 are not required from circulators of initiative petitions who receive no consideration for their activities and who merely solicit signatures to the petitions.

731.36 Prohibited practices relative to petitions

No person shall, directly or indirectly:

(A) Willfully misrepresent the contents of any initiative or referendum petition;

(B) Pay or offer to pay any elector anything of value for signing an initiative or referendum petition;

(C) Promise to help another person to obtain appointment to any office provided for by the constitution or laws of this state or by the ordinances of any municipal corporation, or to any position or employment in the service of the state or any political subdivision thereof as a consideration for obtaining signatures to an initiative or referendum petition;

(D) Obtain signatures to any initiative or referendum petition as a consideration for the assistance or promise of assistance of another person in securing an appointment to any office or position provided for by the constitution or laws of this state or by the ordinance of any municipal corporation therein, or employment in the service of the state or any subdivision thereof;

(E) Alter, add to, or erase any signatures or names on the parts of a petition after such parts have been filed with the city auditor or village clerk;

(F) Fail to file the sworn itemized statement required in section 731.35 of the Revised Code.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-10

Penalty: 731.99(A)

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 42, Initiative and Referendum § 27 to 31

NOTES ON DECISIONS AND OPINIONS

120 App 189, 201 NE(2d) 721 (1963), Gem Development Co v Clymer. A referendum petition directed to a city ordinance passed as an emergency measure providing for annexation of territory is not nullified because a sworn itemized statement was not filed within five days after the petition was filed by circulators who took no part in circulating petitions other than making affidavits to parts of the petition and soliciting signatures.

731.38 Prohibition against accepting premium for signing

No person shall accept anything of value for signing an initiative or referendum petition.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-11

Penalty: 731.99(C)

731.39 Prohibition against destruction of petition during circulation

No person shall sell, purchase, steal, attempt to steal, or willfully destroy or mutilate an initiative or referendum petition which is being or has been lawfully circulated.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-11

Penalty: 731.99(D)

731.40 Prohibition against threats in securing signatures

No person shall, directly or indirectly, by intimidation or threats, influence or seek to influence any person to sign or abstain from signing, or to solicit signatures to or abstain from soliciting signatures to an initiative or referendum petition.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-11

Penalty: 731.99(B)

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.72

731.41 Charter municipal corporations

Sections 731.28 to 731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4227-12

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.67, 11.64, 11.65, 11.79

CROSS REFERENCES

Levy of municipal motor vehicle license tax, hearing and referendum requirements, 4504.06

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15; 10, Building, Zoning, and Land Controls § 138, 251, 252; 21, Counties, Townships, and Municipal Corporations § 677, 719, 751, 753, 758, 759
Am Jur 2d: 42, Initiative and Referendum § 7

NOTES ON DECISIONS AND OPINIONS

CONSTITUTIONALITY:

24 OS(2d) 147, 265 NE(2d) 273 (1970), State ex rel Bramblette v Yordy. Provision of charter of municipal corporation that ordinances providing "for raising revenue ... shall not be subject to referendum" is constitutional as applied to ordinance levying municipal income tax, and where such charter provision exists, there is no duty on part of municipal officers to certify such income tax ordinance to board of elections for referendum vote.

117 OS 258, 158 NE 606 (1927), Dillon v Cleveland. GC 4227-12 (RC 731.41) is not unconstitutional by reason of its recognition of the two classes of charter and noncharter municipalities.

No. CA 9368 (2d Dist Ct App, Montgomery, 7-28-86), State ex rel Lucas v Stivers. A provision of a charter of a municipal corporation that ordinances "relating to the appropriation of money" shall not be subject to initiative is constitutional.

---

62 OS(3d) 167 (1991), State ex rel Citizens for a Better Beachwood v Cuyahoga County Bd of Elections. A board of elections properly applies RC 731.32 in invalidating a referendum petition challenging a zoning ordinance and refusing to hold a referendum election where a verified copy of the ordinance has not been filed with the city auditor before circulation of the referendum petition, and although the city charter is silent on the requirement of RC 731.32 that copies of ordinances be filed with the city auditor, it expressly requires application of any state statute except where a contrary intent appears in the city's local law which makes RC 731.32 applicable and RC 731.41 inapplicable; thus, a request for a writ of mandamus to compel the board to refer the zoning ordinance to voters at the next general election will be denied.

66 OS(2d) 448, 423 NE(2d) 72 (1981), State ex rel Madison v Cotner. 731.41 excludes municipalities which have adopted charter provisions for referenda and initiatives from compliance with 731.28 through 731.41.

66 OS(2d) 448, 423 NE(2d) 72 (1981), State ex rel Madison v Cotner. 3501.38 has no applicability to petitions which are subject to compliance with the requirements of city charters.

54 OS(2d) 416, 377 NE(2d) 507 (1978), State ex rel Ohio National Bank v Lancione. Referendum petitions in charter cities need not comply with 731.29 to 731.40.

6 OS(2d) 1, 215 NE(2d) 592 (1966), State ex rel Nimon v Springdale. Where the charter of a municipal corporation provides for certain features of the initiative and referendum differing from the statutory provisions with relation thereto, and provides further that "all other matters relating to the question of the exercise of the power of referendum shall be regulated by the provisions of the Revised Code of Ohio relating to referendum petitions," but is silent with respect to language to be contained on a referendum petition or with respect to filing such petition with a village official prior to its circulation, such matters are controlled by 731.32 and 731.33, and 731.41 is inapplicable.

164 OS 247, 129 NE(2d) 809 (1955), Dubyak v Kovach. 731.29 provides the sole method by which a referendum petition may be filed in a municipality without its own initiative and referendum provisions, and requires that a referendum petition be filed upon any ordinance or any measure passed by a city council within thirty days from the presentation of such ordinance or other measure to the mayor of the city and makes no provision for a later filing, even though the measure is vetoed by the mayor and passed over his veto.

125 OS 165, 180 NE 704 (1932), James v Ketterer. If a city charter contains initiative and referendum provisions for ordinances, the city could not proceed either way it chose in the matter of street improvements, that is to say, under the charter or the general law. It would have to follow the charter.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. A charter city's own initiative and referendum provisions prevail over RC 731.28 which deals with ordinances and measures proposed by initiative petition, as expressly provided in RC 731.41.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. Unless authorized by its charter, a city council has no power to limit the right of initiative reserved to the electorate on grounds of unconstitutionality, and if the petition is in proper form and contains sufficient signatures, the city's duty is to certify the initiative ordinance to the board of elections so that it can be placed on the ballot.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. A city charter's initiative provisions must be liberally construed in favor of the power reserved to the electorate so as to permit rather than to obstruct its exercise and to promote the object sought.

63 App(3d) 728 (Hamilton 1989), State ex rel Bond v Montgomery. The constitutionality of an initiative ordinance can be judicially determined only after its enactment and therefore, a court will not interfere with the legislative process by mandamus to block enactment of an ordinance because of claims that it is unconstitutional.

59 App(2d) 175, 392 NE(2d) 1302 (1978), State ex rel Watkins v Quirk. The power of a municipal clerk of council to ascertain the sufficiency of a referendum petition is not co-extensive with that of a board of elections under 3501.11(K), and he possesses no judicial or quasi-judicial power in this regard, but is limited to an examination of the face of the petition.

15 App(2d) 222, 240 NE(2d) 871 (1968), Cloud v Bd of Elections of Clark County. Where a petition has been filed with the legislative authority of a municipality requesting the passage of an ordinance submitting a proposed charter amendment to the electorate, and the legislative authority in fact passes an ordinance of submission by unanimous vote of its members, no inquiry may thereafter be made into the form, substance or sufficiency of such petition.

9 Abs 646, 34 LR 257 (App Cuyahoga 1931), Ferguson v Wiegand. Where the charter of a charter city provides that ordinances may be initiated for the purpose of repealing, in whole or in part, existing ordinances, and ordinances initiated for such purpose are signed, filed and certified as sufficient, in accordance with the provisions of the charter, the ordinances thereby sought to be repealed must remain in abeyance until an election is held upon such initiated ordinances. (See also Wiegand v Ferguson, 124 OS 73, 177 NE 35 (1931).)

1955 OAG 5983. Initiative and referendum may not be utilized by a municipality to abandon a previously adopted form of municipal government.

MUNICIPAL OFFICERS

731.43 Vacancy in office of legislative authority

(A) When the office of a member of the legislative authority of a village becomes vacant, the vacancy shall be filled by election by the legislative authority for the unexpired term. If the legislative authority fails within thirty days to fill such vacancy, the mayor shall fill it by appointment except that, when the vacancy occurs because of operation of section 733.25 of the Revised Code, the successor shall hold office only for the period the president pro tempore of the legislative authority holds the office of mayor.

(B) Except as otherwise provided in this division, when the office of a member of the legislative authority of a city becomes vacant either because a member ceases to hold the office before the end of his term or because a member-elect fails to take office, the vacancy shall be filled for the remainder of the unexpired term by a person chosen by the residents of that city who are members of the county central committee of the political party by which the last occupant of that office or the member-elect was nominated. If the vacancy occurs in the office of a ward representative in a city where the political party which nominated the last occupant of that office is organized into a city controlling committee with more than one member from the ward where the vacancy exists, the members of the city controlling committee representing that ward shall choose the person to fill the vacancy.

(C) Not less than five nor more than forty-five days after a vacancy occurs, the specified members of the city or county committee shall meet to make an appointment to fill the vacancy. At least four days before the date of such meeting the chairman or secretary of the city or county

committee shall notify each committee member eligible to vote on filling the vacancy by first class mail of the date, time, and place of the meeting and its purpose. A majority of all eligible committee members constitutes a quorum, and a majority of the quorum is required to make the appointment. If election to the office so vacated took place at a nonpartisan election, or if the office was occupied by, or was to be occupied by a person not nominated at a primary election, or if the appointment was not made by the committee members in accordance with this section, the vacancy shall be filled in the same manner as a vacancy in the legislative authority of a village, as provided in this section.

HISTORY: 1990 S 196, eff. 6-21-90
1986 H 383; 1980 H 1026; 1971 H 194; 1953 H 1; GC 4236

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.07, 9.10

CROSS REFERENCES

Vacancy in office of mayor of cities, 733.08
Filling of vacancies in offices, 733.31

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251, 252; 20, Counties, Townships, and Municipal Corporations § 517, 531; 21, Counties, Townships, and Municipal Corporations § 608, 644, 677

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 155 to 167, 254

NOTES ON DECISIONS AND OPINIONS

7 OS(3d) 11, 7 OBR 404, 455 NE(2d) 667 (1983), Hitt v Tressler. RC 3515.14 does not give a court authority to order a new election.

63 OS(2d) 130, 407 NE(2d) 14 (1980), State ex rel Brown v Reesman. Mayor properly appointed Wooster city councilman to fill vacancy.

170 OS 323, 164 NE(2d) 417 (1960), State ex rel Allison v Jones. The attempt and failure to fill a vacancy in council within thirty days after the vacancy occurred does not authorize the mayor to fill such vacancy by appointment.

168 OS 461, 156 NE(2d) 131 (1959), State ex rel Devine v Hoermle. The portion of 731.43 authorizing the mayor of a municipal corporation to fill by appointment a vacancy in the office of a member of the legislative authority of such municipal corporation, conflicts with Sect 5 of the Columbus city charter providing that "vacancies in council shall be filled by the council for the remainder of the unexpired term." (See also State ex rel Allison v Jones, 170 OS 323, 164 NE(2d) 417 (1960).)

148 OS 45, 73 NE(2d) 195 (1947), State ex rel Flask v Collins. Where charter of city provides no method by which vacancy in its council may be filled and has provision that "in absence of such provisions as to any power, such power shall be exercised in manner now or hereafter prescribed by general laws of state, applicable to municipalities," vacancy in city council shall be filled in accordance with this section which requires mayor to fill vacancy, if council fails to do so within thirty days.

148 OS 45, 73 NE(2d) 195 (1947), State ex rel Flask v Collins. In case of vacancy in city council, to which this section applies, not filled by council within thirty days from time it occurs, mayor has mandatory duty to fill vacancy by appointment; if he in discharge of duty without any collusion with legislative branch of city, makes appointment to vacancy and his appointee qualifies for office under terms of charter, appointee is legally entitled to office and has right under GC 12307 (RC 2733.06) to have another person ousted therefrom who is unlawfully holding office and exercising its functions.

110 OS 413, 144 NE 264 (1924), State ex rel Christensen v Larsen. Where a village council, having ascertained and declared that a vacancy existed in that body by reason of the death of a member elect without qualifying as required by GC 4242 (RC 731.49), filled the vacancy pursuant to the provisions of this section, such appointment is valid.

70 App 417, 46 NE(2d) 435 (1940), State ex rel Tilden v Harbourt; overruled by 103 App 214, 145 NE(2d) 200 (1956), State ex rel Scarl v Small. Persons holding public office may not be members of city council (GC 4207 (RC 731.02)) and forfeit right to elective office when retaining such public office after date of assumption of office in council; forfeiture occurs immediately upon assumption of office, and thirty-day period provided by this section within which council may fill vacancies, runs from such time, and after such period only the mayor can name persons to fill the vacant offices.

OAG 70-157. Resignation which has become effective may not be withdrawn and position must be filled according to appropriate provisions for filling vacancy.

OAG 70-157. Immediate resignation of village councilman becomes effective when it is submitted to mayor and other council members.

1964 OAG 850. There is no authority for a special election to be held in a municipal corporation for the election of officers of a village where such village has abandoned one of the optional plans of municipal government authorized by Ch 705 and has returned to the form of municipal government authorized by the general provisions of municipal corporation law.

1963 OAG 389. 731.43 provides the sole statutory methods by which a vacancy in the office of a member of the legislative authority of a municipal corporation may be filled, and such section was not repealed by implication by the amendment of 3.02.

1962 OAG 3494. A candidate who fails to file a statement of expenditures within the time prescribed by 3517.10 is barred from becoming a candidate in any future election for a period of five (or seven) years, but is not, by reason of such failure, barred from being appointed to a public office such as a member of the legislative authority of a village, and from serving in such capacity.

1960 OAG 1681. Where in an election to fill a vacancy in the legislative authority of a city, a tie results, the president of the legislative authority is authorized to vote to decide the issue; and such right to vote is not precluded by a legislative rule which requires the filling of a vacancy by a majority vote of council, nor by a legislative rule which defines a majority to mean a simple majority of the members elected to council.

1960 OAG 1681. While under 731.43 no particular mode of election for filling a vacancy is specified, the legislative authority of a municipal corporation is authorized by 731.45 to adopt its own rules, and may require that a majority vote of the membership is necessary for election.

1960 OAG 1681. In an election under 731.43 where one member receives two votes, another receives two votes, a third receives one vote, and one member does not vote, four votes being required to elect under the rules, there is no existing tie within the purview of 733.09 authorizing the president of the legislative authority to vote, since there is not an equal division of the votes and a vote by the president could not, of itself, decide the issue; and the president in such an instance is not entitled to vote.

1940 OAG 3105. Where a vacancy exists in the membership of council of a village, which vacancy has existed for more than thirty days, the mayor may appoint a person having the legal qualifications, to fill such vacancy.

1940 OAG 3105. Where a vacancy in membership of village council is discovered to exist, the members of council may elect a qualified member to fill such office at any time during its existence, even though the election is held more than thirty days after the vacancy occurred; any appointment thereafter made by the mayor of the village to fill such vacancies is of no effect.

1934 OAG 2905. When a vacancy in a village council is discovered to have been in existence for a period of more than thirty days, such vacancy may be filled by council or by the mayor, whichever authority acts first. Under such circumstances, when a motion is made and seconded by council to appoint a person to fill such vacancy and a vote thereon deferred by the mayor, in refusing to entertain the motion, until after the mayor has made an appointment, the appointment made by the mayor is of no legal effect and the person thereafter appointed by council is the legally appointed incumbent to fill such vacancy.

1930 OAG 1465. Two newly elected members of a village council, not constituting a majority, have no power to fill four vacancies in such council, caused by the failure of four old members to hold over. Such vacancies should be filled by appointments of the village mayor after the expiration of the thirty-day period, as provided in this section.

731.49 Failure to take oath or give bond

The legislative authority of a municipal corporation may declare vacant the office of any person elected or appointed to such office who, within ten days after he has been notified of his appointment or election, or obligation to give a new or additional bond, fails to take the required official oath or to give any bond required of him.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4242

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 15.152

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 251, 252; 20, Counties, Townships, and Municipal Corporations § 517, 587; 21, Counties, Townships, and Municipal Corporations § 677

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 150

Public officer's bond as subject to forfeiture for malfeasance in office. 4 ALR2d 1348

NOTES ON DECISIONS AND OPINIONS

146 OS 467, 66 NE(2d) 531 (1946), State ex rel Jones v Farrar. Generally, statute providing time for performance of an official duty will be construed as directory so far as time for performance is concerned, especially where statute fixes time simply for convenience or orderly procedure; and, unless object or purpose of a statutory provision requiring some act to be performed within a specified period of time is discernible from language employed, statute is directory and not mandatory. This is true where a statute fixes time within which an official oath must be taken or given, although statute declares that office is forfeited by default; unless statute expressly declares that failure to take oath or to give bond by time prescribed ipso facto vacates office, oath may be taken and bond given at any time before term begins.

110 OS 413, 144 NE 264 (1924), State ex rel Christensen v Larsen. Where a village councilman was elected for another term but died before the end of his first term, an appointee to fill the vacancy can hold only to the beginning of the new term, for no vacancy in the new term existed until it began. Council having declared a vacancy by reason of death before qualifying under this section, filled the vacancy by appointment under GC 4236 (RC 731.43), and the appointment is valid.

733.02 Mayor of cities; election; term

The mayor of a city shall be elected for a term of four years, commencing on the first day of January next after his election. He shall be an elector of the city.

HISTORY: 131 v S 162, eff. 1-1-67
1953 H 1; GC 4249

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.11

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 618

NOTES ON DECISIONS AND OPINIONS

OAG 90-063. A mayor elected pursuant to RC 733.02 is not prohibited by RC 3357.05 from holding the position of technical college district trustee.

OAG 82-042. The position of deputy county treasurer is incompatible with that of mayor of a municipality within the same county.

1961 OAG 1993. A person may at the same time serve as mayor of a city and as teacher in the city school district providing it is physically possible for one person to discharge the duties of both positions.

1961 OAG 1989. The office of member of a county soldiers' relief commission is not incompatible with the office of mayor of a municipal corporation.

1956 OAG 6127. The office of mayor of a city is not per se incompatible with the position of deputy clerk of the court of common pleas, but may become so if the duties of each are so numerous or arduous as to render unlikely a proper execution of both.

733.08 Vacancy in office of mayor of cities

In case of the death, resignation, or removal of the mayor, the president of the legislative authority of the city shall become the mayor, and shall hold the office for the unexpired term. Thereupon the president pro tempore of such legislative authority shall become president thereof for the unexpired term, and shall have the same rights, duties, and powers as his predecessor. The vacancy thus created in the legislative authority shall be filled for the unexpired term as provided in section 731.43 of the Revised Code, and such legislative authority shall elect another president pro tempore to hold such office for the unexpired term.

HISTORY: 1984 H 338, eff. 7-26-84
1971 H 194; 1953 H 1; GC 4274

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.10, 7.15, 13.05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 571; 21, Counties, Townships, and Municipal Corporations § 608, 622, 644

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 254

NOTES ON DECISIONS AND OPINIONS

17 OS(3d) 61, 17 OBR 64, 477 NE(2d) 623 (1985), Chevalier v Brown. Where the secretary of state's office erroneously schedules an election to fill an unexpired mayoral term for a noncharter municipality, and where individuals relying upon the error file petitions for the mayoral election instead of for council elections, man-

damus does not lie to compel election officials to either hold the erroneously scheduled mayoral election or accept late petitions for council seats.

134 OS 206, 16 NE(2d) 334 (1938), State ex rel Bolsinger v Oridge. When a person, who is a president pro tem of a city council, becomes president by operation of law, he holds the office until the end of the term and until his successor is appointed or elected and qualified, by virtue of GC 8 (RC 3.01), but his right to hold the office ends with the expiration of the term which he is filling when his successor has been duly elected for the ensuing term at the last general election, has duly qualified and at the inception of his term has not resigned or abandoned the position or failed or refused to accept or assume the office.

OAG 80-046. Pursuant to 733.01 and 733.08, the legislative authority of a city that operates under a general statutory plan of municipal government may provide by ordinance or resolution for the appointment, by the city treasurer, of an individual to be known as the tax administrator to assist the treasurer in matters relating to income taxes. The individual so appointed must be an employee of the treasurer's office and be responsible to, and under the control of the city treasurer.

1962 OAG 3203. A member of the legislative authority of a municipal corporation appointed under 731.04 as president pro tempore of the legislative authority, may preside over such authority in the absence of the president thereof, and when so presiding is entitled to vote once where there is a roll call on a question, and in other cases where his vote would change the result, but may not vote to create a tie vote and then vote to decide the tie.

1935 OAG 4387. Abandonment of the office of mayor of a city constitutes implied resignation of the office, and is a ground for vacancy under this section.

733.09 President of legislative authority in cities; election to change length of term

(A) Except as otherwise provided in division (B) of this section, the president of the legislative authority of a city shall be elected for a term of two years, commencing on the first day of January next after his election. He shall be an elector of the city, and shall preside at all regular and special meetings of such legislative authority, but he shall have no vote therein except in case of a tie.

(B) A city legislative authority may, by majority vote, adopt a resolution causing the board of elections to submit to the city electors the question of whether the term of office of the president of the legislative authority should be changed from two to four years. The question shall be voted upon at the next general election occurring not less than seventy-five days after the certification of the resolution to the board of elections. If a majority of the votes cast on the question is in the affirmative, the term of office of the president of the legislative authority shall be four years effective on the first day of January following the next regular municipal election.

A city legislative authority whose president's term of office is four years may, by majority vote, adopt a resolution causing the board of elections to submit to the city electors the question of whether the president's term should be changed from four to two years. The question shall be voted upon at the next general election occurring not less than seventy-five days after the certification of the resolution to the board of elections. If a majority of the votes cast on the question is in the affirmative, the term of the office of the president of the legislative authority shall be two years effective on the first day of January following the next regular municipal election.

HISTORY: 1984 H 338, eff. 7-26-84
1953 H 1; GC 4272

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.07, 7.10, 9.07, 9.11, 11.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 530, 531; 21, Counties, Townships, and Municipal Corporations § 644

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 165

NOTES ON DECISIONS AND OPINIONS

41 OS(2d) 57, 322 NE(2d) 675 (1975), State ex rel Corrigan v Tudhope. As used in 733.09, "tie" means that in a two candidate race each candidate has received the same number of votes.

149 OS 333, 78 NE(2d) 716 (1948), State ex rel Roberts v Snyder. Under provisions of GC 4210 (RC 731.04) and this section a duly elected president of a city council is empowered to vote in case of any tie; such authority includes right to vote in event of a tie in election of a clerk of the council.

OAG 90-063. A city council president elected pursuant to RC 733.09 is not prohibited by RC 3357.05 from holding the position of technical college district trustee.

OAG 71-040. The office of councilman or the office of president of council of a city, each being elective offices, may not be held by one employed in the position of safety inspector II in the department of highways.

1962 OAG 3203. A member of the legislative authority of a municipal corporation appointed under 731.04 as president pro tempore of the legislative authority, may preside over such authority in the absence of the president thereof, and when so presiding is entitled to vote once where there is a roll call on a question, and in other cases where his vote would change the result, but may not vote to create a tie vote and then vote to decide the tie.

1960 OAG 1681. In an election under 731.43 where one member receives two votes, another receives two votes, a third receives one vote, and one member does not vote, four votes being required to elect under the rules, there is no existing tie within the purview of 733.09 authorizing the president of the legislative authority to vote, since there is not an equal division of the votes and a vote by the president could not, of itself, decide the issue; and the president in such an instance is not entitled to vote.

1953 OAG 2367. The president of a city council elected pursuant to this section is not a member of the council within the meaning of GC 4207 (RC 731.02).

1946 OAG 744. President of a city council elected pursuant to section, is not under any circumstances a member of city council and hence provision of GC 4207 (RC 731.02) forbidding a member of council holding any other public office or employment does not apply to such president of council; however, office of president of council of a city is incompatible with position of relief director of relief area constituting such city, appointed pursuant to GC 3391-7 (Repealed).

1937 OAG 1330. The president of council may not be compelled by mandamus or otherwise to cast the deciding vote in case of a tie should he desire not to do so.

1937 OAG 1330. The president of a city council has authority under this section to cast the deciding vote in the case of a tie upon a measure designated as an ordinance to increase the salaries of the regular policemen and regular firemen of such city.

733.10 City auditor

The auditor of a city shall be elected for a term of four years, commencing on the first day of January next after his election. He shall be an elector of the city.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4275

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.031 Chart 1, 7.14, 13.43

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 627

NOTES ON DECISIONS AND OPINIONS

OAG 81-004. The positions of city auditor and volunteer fire fighter for the city are incompatible, due to a conflict of interest.

1964 OAG 769. The office of member of a county soldier's relief commission is not incompatible with the office of auditor of a municipal corporation.

1962 OAG 2878. The positions of municipal auditor and member of a board of library trustees are not incompatible.

1943 OAG 6101. Unless provisions contained in its charter provide otherwise, city which became such in year 1941 by reason of proclamation of secretary of state based on 1940 federal census and issued prior to regular municipal election held in year 1941, was required to elect city auditor at such election to serve for term of four years from first day of January, 1942.

733.24 Mayor of village; election; term; qualifications; powers; duties

The mayor of a village shall be elected for a term of four years, commencing on the first day of January next after his election. He shall be an elector of the village and shall have resided in the village for at least one year immediately preceding his election. Such mayor shall be the chief conservator of the peace therein and shall have the powers and duties provided by law. He shall be the president of the legislative authority and shall preside at all regular and special meetings thereof, but shall have no vote except in case of a tie.

HISTORY: 1985 H 35, eff. 10-17-85
131 v S 162; 1953 H 1; GC 4255

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.22, 9.11, 11.15, 13.024

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 530, 531; 21, Counties, Townships, and Municipal Corporations § 618, 619, 644; 26, Criminal Law § 671; 72, Parliamentary Law § 3

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 165, 242, 281

NOTES ON DECISIONS AND OPINIONS

170 OS 375, 165 NE(2d) 644 (1960), State ex rel De Matteo v Allen. The mayor of a village may cast a tie-breaking vote in a village council on a motion relative to appointment of a police chief.

101 OS 275, 128 NE 140 (1920), State ex rel Keyser v Babst. An incumbent mayor who has been defeated on the face of the returns by an opponent to whom a certificate has been issued by the election officials is not justified in holding over after the expiration of his term, pending the decision of a contest filed by him.

25 App(2d) 58, 266 NE(2d) 248 (1970), In re Removal of Pickering. Village mayor, as the chief conservator of peace within his village, has positive duty to suppress any riot within the village and to disperse and apprehend rioters and, subject to the qualified requirements of 2923.51 to order rioters to desist and disperse to their several homes or lawful employments, may use such force as is necessary and proper to suppress the riot or disperse or apprehend rioters.

106 App 191, 154 NE(2d) 14 (1958), Babyak v Alten. The mayor of a village, as president of the legislative authority, is given the power to vote, in case of a tie, on either a resolution or an ordinance.

29 App 386, 163 NE 566 (1928), Wuebker v Hopkins. Council has no power by calling resolution an ordinance to divest mayor of authority to break tie by casting determining vote under this section that he would have had if measure had been properly denominated.

29 App 386, 163 NE 566 (1928), Wuebker v Hopkins. Where council is required to act by passage of ordinance, majority of council must concur therein, and mayor, in case of tie, cannot cast deciding vote.

No. 3494 (11th Dist Ct App, Trumbull, 9-13-85), Kibler v Muth. Where charges of insubordination, nonfeasance, and malfeasance made against a village marshal by the mayor are dismissed by vote of the village council, and where the marshal's later request that the village reimburse his legal expenses is defeated by the council with the mayor casting a tie-breaking vote, mandamus does not lie to compel reimbursement or to compel the mayor to pay the village's expenses in prosecuting the dismissed charges.

93 Abs 463, 199 NE(2d) 131 (CP Pickaway 1962), Shade v Bowers. Statements made by the mayor and the chief of police of a municipal corporation in the discharge of their official duties to the board of liquor control as to a renewal license relative to the manner that the plaintiff allegedly had conducted his business which resulted in a denial of a permit to the plaintiff are absolutely privileged.

OAG 87-013. The position of assignment commissioner and secretary for a municipal court judge exercising countywide jurisdiction and the position of mayor of a village within that county are compatible, provided it is physically possible for one person to discharge the duties of both positions.

OAG 82-042. The position of deputy county treasurer is incompatible with that of mayor of a municipality within the same county.

OAG 80-100. The president pro tempore of a village legislative authority retains his right to vote on all matters as a member of the council while acting as the presiding officer of a council meeting when the mayor is absent from the meeting.

OAG 72-029. When a vacancy exists on a board of trustees of public affairs and the person who is nominated by the mayor to fill the vacancy fails to receive the confirmation by the village council, the mayor may not appoint a person to serve as an "acting trustee"; the vacancy can be filled only through an appointment by the mayor, subject to confirmation by the village council.

1962 OAG 2797. One person may at the same time serve as an unclassified employee of the county auditor, not a deputy county auditor, and as mayor of a village in the county if it is physically possible for one person to perform the duties of both positions.

1961 OAG 1989. The office of member of a county soldiers relief commission is not incompatible with the office of mayor of a municipal corporation.

1954 OAG 3347. Amendment of 1905.21 renders the offices of village mayor and justice of the peace of the township in which such village is located incompatible.

1953 OAG 2999. The office of chief deputy in the office of auditor of a county is incompatible with the office of mayor of a village in the same county.

1939 OAG 993. Offices of mayor of a village and member of board of trustees of a school district public library located in the

village are incompatible, and cannot lawfully be held by the same person at the same time.

1934 OAG 2311. A village mayor cannot legally refuse to qualify for a second term to which he has been elected, and thereby hold office under a continuation of his first term of office.

1930 OAG 1465. When a newly elected mayor has not qualified, the old mayor holds over by the express terms of this section, and is the proper person to fill vacancies in the village council.

733.25 Vacancy in office of mayor of village

When the mayor is absent from the village, or is unable for any cause to perform his duties, the president pro tempore of the legislative authority shall be acting mayor. In case of the death, resignation, or removal of the mayor, such president pro tempore shall become the mayor and shall hold the office until his successor is elected and qualified. Such successor shall be elected to the office for the unexpired term, at the first regular municipal election that occurs more than forty days after the vacancy has occurred; except that when the unexpired term ends within one year immediately following the date of such election, an election to fill such unexpired term shall not be held and the president of the legislative authority of the city shall hold the office for such unexpired term.

HISTORY: 1971 H 194, eff. 2-17-72
1953 H 1; GC 4256

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 13.05

CROSS REFERENCES

Vacancy in office of legislative authority of municipal corporation, 731.43

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 517; 21, Counties, Townships, and Municipal Corporations § 608, 621, 622

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 242, 254, 255

NOTES ON DECISIONS AND OPINIONS

CONSTITUTIONALITY:

111 OS 23, 144 NE 734 (1924), State v Lanser. GC 4216 and 4256 (RC 731.10 and 733.25), in conferring judicial power on a member of the council as acting mayor, are not unconstitutional or in violation of O Const Art IV, § 10, which provides that all judicial officers shall be elected.

---

111 OS 23, 144 NE 734 (1924), State v Lanser. When the mayor of a village is absent from the village or is unable for any cause to perform his duties, the president pro tem of the council becomes acting mayor and is invested with all the powers of the mayor, including his judicial powers.

111 OS 23, 144 NE 734 (1924), State v Lanser. An affidavit sworn to before the president pro tem of the council in the absence of the mayor from the village or his inability to perform his duties is not void because the jurat is signed by the president pro tem as "vice mayor" instead of as "acting mayor."

40 App 346, 178 NE 320 (1931), Ambos v Campbell. In mayor's absence, president of council was acting mayor, with all mayor's powers.

OAG 80-100. The president pro tempore of a village legislative authority retains his right to vote on all matters as a member of the council while acting as the presiding officer of a council meeting when the mayor is absent from the meeting.

1964 OAG 850. There is no authority for a special election to be held in a municipal corporation for the election of officers of a village where such village has abandoned one of the optional plans of municipal government authorized by Ch 705 and has returned to the form of municipal government authorized by the general provisions of municipal corporation law.

1948 OAG 3943. When the president pro tem of a village council who has succeeded to the office of mayor by reason of the death or resignation of the mayor, with knowledge of such death or resignation fails or refuses to take the oath of office or to give the required bond as such mayor, and such failure or refusal continues for ten days, the council of said village may declare such office of mayor vacant, whereupon the newly elected president pro tem shall become the mayor.

1948 OAG 3943. Under the provision of this section, upon the resignation or death of the mayor of a village, the president pro tem of the council becomes the mayor, and his seat in the council is thereby vacated; thereupon it becomes the duty of the council under provisions of GC 4217 (RC 731.11) to fill such vacancy and to elect another member of council as president pro tem.

733.26 Election, term, and qualifications of village clerk

The village clerk shall be elected for a term of four years, commencing on the first day of April next after his election. He shall be an elector of the village.

HISTORY: 1982 S 139, eff. 3-15-83
131 v H 151; 1953 H 1; GC 4279

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.031 Chart 2, 13.49

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 536, 539; 21, Counties, Townships, and Municipal Corporations § 629

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 246 et seq.

NOTES ON DECISIONS AND OPINIONS

1958 OAG 2098. There is no impropriety in one person being employed as bookkeeper by the county auditor while serving at the same time as a village clerk.

1941 OAG 4560. Person appointed three days prior to general election in November, 1941, to fill vacancy in office of village clerk, to which office no candidate was elected at said election, may retain said office until his successor is elected at general election in November, 1943, and qualifies therefor.

1928 OAG 3135. The clerk of a noncharter village cannot legally perform the duties of clerk of the board of public affairs and clerk of the planning commission, in addition to his duties as clerk of the village, but may perform the duties of secretary of the board of sinking fund trustees, and is required to do so, unless the village council provides by ordinance for the appointment of a secretary to such board of trustees and fixes the duties, bond and compensation of such secretary, in which case the clerk of the village is ineligible to be appointed to the position.

Ethics Op 76-002. Persons who are elected or appointed to or are candidates for village office are not required to file financial disclosure statements under section 102.02(A).

733.261 Combined office of clerk and treasurer

(A) The legislative authority of a village may, by ordinance or resolution passed by at least a majority vote, combine the duties of the clerk and the treasurer into one office, to be known as the clerk-treasurer. The combination shall be effective on the first day of January following the next regular municipal election at which the village clerk is to be elected, provided that a clerk-treasurer shall be elected at such election pursuant to this section and shall be elected for a term of four years, commencing on the first day of April next after his election. Between the first day of January and the first day of April following such an election, the clerk shall perform the duties of clerk-treasurer. The legislative authority of the village shall file certification of such action with the board of elections not less than one hundred five days before the day of the next succeeding municipal primary election at which the village clerk is to be elected; provided that in villages under two thousand population in which no petition for a primary election was filed pursuant to section 3513.01 of the Revised Code, or in villages in which no primary is held pursuant to section 3513.02 of the Revised Code, such action shall be certified to the board of elections not less than one hundred five days before the next succeeding general election at which the village clerk is to be elected.

At such succeeding regular municipal election and thereafter, the clerk-treasurer shall be elected for a term of four years, commencing on the first day of April next after his election. He shall be an elector of the corporation.

(B) In addition to the circumstances described in division (A) of this section, when a vacancy exists in the office of village treasurer or village clerk the legislative authority of a village may, by ordinance or resolution passed by at least a majority vote, combine the duties of the clerk and the treasurer into one office, to be known as the clerk-treasurer. The combination shall be effective on the effective date of the ordinance or resolution combining the duties of the offices of clerk and treasurer. At the next regular municipal election at which the village clerk would have been elected and each four years thereafter, the clerk-treasurer shall be elected for a term of four years, commencing on the first day of April next after his election. He shall be an elector of the municipal corporation.

(C) The clerk-treasurer shall perform the duties provided by law for the clerk and the treasurer. All laws pertaining to the clerk and to the treasurer shall be construed to apply to the clerk-treasurer, provided that the initial compensation for the office of clerk-treasurer shall be established by the legislative authority and that action shall not be subject to section 731.13 of the Revised Code relating to the time when the compensation of village elected officials shall be fixed and pertaining to changes in compensation of officials during the term of office.

(D) The legislative authority of a village having a clerk-treasurer may separate the offices by ordinance or resolution passed by at least a majority vote. The action to separate the offices may be taken in either of the following circumstances:

(1) When a vacancy exists in the office of clerk-treasurer, in which case the separation shall be effective upon the effective date of the ordinance or resolution;

(2) When the action of the legislative authority is certified to and filed with the board of elections not less than one hundred five days before the day of the next succeeding primary election at which the village clerk and treasurer are to be elected; provided that in villages under two thousand population in which no petition for a primary election was filed pursuant to section 3513.01 of the Revised Code, or in villages in which no primary is held pursuant to section 3513.02 of the Revised Code, such action shall be certified to the board of elections not less than one hundred five days before the next succeeding general election at which the village clerk and treasurer are to be elected.

HISTORY: 1982 S 139, eff. 3-15-83
1977 H 579; 1971 S 281; 131 v H 151; 129 v 1560; 125 v 94

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.22, 13.45, 13.496, 17.13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 580

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 177, 180, 240, 283

NOTES ON DECISIONS AND OPINIONS

1957 OAG 616. Where the legislative authority of a village of a population of less than two thousand persons, holding no primary election, determines, by a majority vote, to combine the duties of clerk and treasurer into one office to be known as clerk-treasurer, under 733.261, such legislative authority shall file certification of such action with the board of elections of the county in which such municipal corporation is located not less than 105 days before the second Tuesday of May preceding the regular municipal election at which such clerk-treasurer shall be elected.

Ethics Op 76-002. Persons who are elected or appointed to or are candidates for village office are not required to file financial disclosure statements under section 102.02(A).

733.31 Filling of vacancies in offices

(A) Unless otherwise provided by law, vacancies arising in appointive and elective offices of villages shall be filled by appointment by the mayor for the remainder of the unexpired term, provided that:

(1) Vacancies in the office of mayor shall be filled in the manner provided by section 733.25 of the Revised Code;

(2) Vacancies in the membership of the legislative authority shall be filled in the manner provided by section 731.43 of the Revised Code;

(3) Vacancies in the office of president pro tempore of a village legislative authority shall be filled in the manner provided by section 731.11 of the Revised Code.

In the event of a vacancy in the office of village clerk or treasurer, the mayor may appoint a person to serve as an acting officer to perform the duties of the office until a permanent officer is appointed to fill the vacancy.

(B) Unless otherwise provided by law, vacancies arising in appointive offices of cities shall be filled by appointment by the mayor for the remainder of the unexpired term.

(C) Except under the circumstances described in section 733.08 of the Revised Code, where the president pro tempore becomes president of the legislative authority of a city, a vacancy in the office of president of the legislative authority of a city shall be filled in the same manner as provided in division (D) of this section. Vacancies in the office of mayor of a city shall be filled in the manner provided in section 733.08 of the Revised Code. Vacancies in the membership of the legislative authority of a city shall be

filled in the manner provided in section 731.43 of the Revised Code.

(D) In case of the death, resignation, removal, or disability of the director of law, auditor, or treasurer of a city and such vacancy occurs more than forty days before the next general election for such office, a successor shall be elected at such election for the unexpired term unless such term expires within one year immediately following the date of such general election. In either event, the vacancy shall be filled as provided in this section and the appointee shall hold his office until a successor is elected and qualified.

(1) The county central committee of the political party with which the last occupant of the office was affiliated, acting through its members who reside in the city where the vacancy occurs, shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, except that if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the members of the central committee who reside in the city where the vacancy occurs.

(2) Not less than five nor more than forty-five days after a vacancy occurs, the county central committee, acting through its members who reside in the city where the vacancy occurs, shall meet for the purpose of making an appointment. Not less than four days before the date of the meeting the chairman or secretary of the central committee shall send by first class mail to every member of such central committee who resides in the city where the vacancy occurs a written notice which shall state the time and place of such meeting and the purpose thereof. A majority of the members of the central committee present at such meeting may make the appointment.

(E) If the last occupant of the office or the officer-elect, as provided in division (D) of this section, was elected as an independent candidate, the mayor of the city shall make the appointment at the time the vacancy occurs.

(F) Appointments made under this section shall be certified by the appointing county central committee or by the mayor of the municipal corporation to the county board of elections and to the secretary of state. The persons so appointed and certified shall be entitled to all remuneration provided by law for the offices to which they are appointed.

(G) The mayor of the city may appoint a person to hold the city office of director of law, auditor, or treasurer as an acting officer and to perform the duties thereof between the occurrence of the vacancy and the time when the person appointed by the central committee qualifies and takes the office.

HISTORY: 1990 S 196, eff. 6-21-90
1977 H 219; 1975 S 97; 1971 H 194; 1953 H 1; GC 4252

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 13.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 168; 21, Counties, Townships, and Municipal Corporations § 608, 609; 22, Courts and Judges § 158, 198

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 254

Power to appoint public officer for term commencing at or after expiration of term of appointing officer or body. 75 ALR2d 1277

NOTES ON DECISIONS AND OPINIONS

OAG 76-013. 733.31 sets out the proper procedure to be followed for appointment to a vacancy resulting from death of an incumbent elected official, and 733.31, as it existed at the time the appointment was made, controls over 733.31 as it was thereafter amended; 3.02 is a general statute providing for the length of an appointee's term, and controls over the more specific terms of 733.31, where 733.31 contained no such specific terms at the time of appointment.

OAG 72-029. When a vacancy exists on a board of trustees of public affairs and the person who is nominated by the mayor to fill the vacancy fails to receive the confirmation by the village council, the mayor may not appoint a person to serve as an "acting trustee"; the vacancy can be filled only through an appointment by the mayor, subject to confirmation by the village council.

OAG 71-089. Mayor has authority to appoint city solicitor when office is vacant.

1937 OAG 572. An appointee appointed to fill a vacancy occurring in the office of auditor of a municipal corporation, pursuant to the provisions of this section, serves for the unexpired portion of the four year term; and the successor to the appointee is not elected until the regular municipal election in November, 1939.

1929 OAG 138. A vacancy caused by the death of a village clerk may be filled by the mayor of the village under this section.

733.49 City director of law

The city director of law shall be elected for a term of four years, commencing on the first day of January next after his election. He shall be an elector of the city.

HISTORY: 1977 H 219, eff. 11-1-77
131 v S 283; 1953 H 1; GC 4303

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.031 Chart 1, 7.16, 13.08

CROSS REFERENCES

Coastal management, action by city director of law, 1506.10
Ineligible as member of board of education, 3313.13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 611, 635

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 219 to 225, 247, 282

NOTES ON DECISIONS AND OPINIONS

56 OS(2d) 120, 382 NE(2d) 1358 (1978), State ex rel Kohl v Dunipace. A city charter may provide that the city solicitor need not be a resident of the city.

122 OS 470, 172 NE 287 (1930), State ex rel Bartlett v Davies. Where city attorney was re-elected and resigned before new term commenced, his successor, appointed by council, serves until predecessor's new term ends.

OAG 78-026. 120.39 prohibits a village solicitor, appointed pursuant to 733.48, and members of his office, his partners, and his employees from being appointed as counsel to represent an indigent criminal defendant under Ch 120.

OAG 71-089. City solicitor, whether elected or appointed, must be an elector of city.

OAG 71-089. Mayor has authority to appoint city solicitor when office is vacant.

OAG 67-115. A city with a statutory form of government cannot appoint a nonresident attorney as city solicitor.

OAG 67-115. A city may enter into a contract for legal services, approved by ordinance, with either a resident or nonresident attorney, when there is no city solicitor available or qualified to represent the interest of the city, which should provide a definite fee for ordinary services, and any additional compensation for extraordinary services should be agreed upon at that time.

OAG 67-112. While a city solicitor may not represent defendants in a criminal case wherein the state of Ohio is plaintiff, his law partner may represent an indicted defendant in the court of common pleas whether the city solicitor did or did not represent the state in the preliminary hearing.

733.50 Qualifications of city director of law

No person shall be eligible to the office of city director of law who is not an attorney at law, admitted to practice in this state.

HISTORY: 1977 H 219, eff. 11-1-77
1953 H 1; GC 4304

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.16, 13.08

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 611, 635

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 246, 282

NOTES ON DECISIONS AND OPINIONS

OAG 67-115. A city may enter into a contract for legal services, approved by ordinance, with either a resident or nonresident attorney, when there is no city solicitor available or qualified to represent the interest of the city, which should provide a definite fee for ordinary services, and any additional compensation for extraordinary services should be agreed upon at that time.

OAG 67-115. A city with a statutory form of government cannot appoint a nonresident attorney as city solicitor.

Ethics Op 89-015. RC 102.03 prohibits an individual from serving as a city law director where the law firm of which he is a member represents clients in adversarial actions against the city.

733.68 Qualifications of municipal officers; oaths

Except as otherwise provided by the Revised Code each officer of a municipal corporation, or of any department or board thereof, whether elected or appointed as a substitute for a regular officer, shall be an elector of the municipal corporation, and before entering upon his official duties shall take an oath to support the constitution of the United States and the constitution of this state, and an oath that he will faithfully, honestly, and impartially discharge the duties of his office. Such provisions as to official oaths shall extend to deputies, but they need not be electors.

HISTORY: 131 v H 358, eff. 9-6-65
1953 H 1; GC 4666

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 15.111, 15.141; Forms 15.31

CROSS REFERENCES

Deputies also required to take oath, 3.22
Oath of hospital trustees, 749.22
Oath of park trustees, 755.23

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 489, 566, 582, 584, 588; 21, Counties, Townships, and Municipal Corporations § 611, 631, 637, 640

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 231 et seq., 246 to 248; 63A, Public Officers and Employees § 4

Validity of governmental requirement of oath of allegiance or loyalty. 18 ALR2d 268

NOTES ON DECISIONS AND OPINIONS

49 App(2d) 185, 360 NE(2d) 708 (1975), Fraternal Order of Police Youngstown Lodge No. 28 v Hunter. A rule promulgated by the civil service commission of a municipality which makes any officer or employee not residing within the city limits after a specific date subject to dismissal, is invalid when applied to those employed before the enactment date, but is valid when applied to employees hired after the enactment date, where it is shown that the city has a compelling governmental interest in creating such a restriction.

106 App 393, 154 NE(2d) 823 (1958), State ex rel v Byomin. A deputy marshal or a policeman of a village need not be an elector thereof.

15 App 365, 32 CC(NS) 225 (1921), State ex rel Sturm v Bimeler. One elected to the office of mayor who fails to take the oath of office before some official authorized to administer oaths and fails to present his bond to council for approval as required by statute, but instead thereof appears before the incumbent mayor who refuses to administer the oath or receive the bond, must be regarded as having refused to accept the office, and a petition in mandamus praying that the incumbent mayor whose term of office has in the meantime expired be ousted, does not lie and will be dismissed.

46 Misc 47, 348 NE(2d) 156 (CP Cuyahoga 1975), Cleveland ex rel Kay v Riebe. 733.68 is not applicable to the city of Cleveland whose voters, by voting to have deleted from the city charter that section which required city employees to be residents of the city, have indicated that the qualifications listed in 733.68 are in conflict with their desires.

46 Misc 47, 348 NE(2d) 156 (CP Cuyahoga 1975), Cleveland ex rel Kay v Riebe. The Ohio constitution vests in cities adopting charters the power to prescribe the qualifications of their own municipal officers.

21 NP(NS) 340, 29 D 348 (1918), DeRomedis v Yorkville. A policeman is a public officer and hence by this section must be an elector of the municipality.

7 LR 337, 54 B 497 (1909), Garrison v Bricker. Failure of mayor to give bond does not vacate office.

OAG 71-089. City solicitor, whether elected or appointed, must be an elector of city.

OAG 67-115. A city may enter into a contract for legal services, approved by ordinance, with either a resident or nonresident attorney, when there is no city solicitor available or qualified to represent the interest of the city, which should provide a definite fee for ordinary services, and any additional compensation for extraordinary services should be agreed upon at that time.

OAG 67-115. A city with a statutory form of government cannot appoint a nonresident attorney as city solicitor.

1962 OAG 2856. A person who is nineteen years of age may hold the position of clerk of the board of trustees of public affairs of a village.

1958 OAG 1538. A village marshal appointed pursuant to 737.15 is required to be an elector of the village which he serves as marshal.

1957 OAG 1311. Residence requirements for firemen and the fire chief discussed.

1953 OAG 2318. Policemen, being officers of the state, are not such officers of a municipal corporation as are required to be electors within the corporation, but each municipality is free to determine for itself whether it will require policemen to be residents.

1928 OAG 2357. A city patrolman or policeman is an officer within the meaning of this section, and as such is required to be an elector of the city in and for which he is appointed.

733.72 Charges against municipal officers filed with probate judge; proceedings

When a complaint under oath is filed with the probate judge of the county in which a municipal corporation or the larger part thereof is situated, by any elector of the municipal corporation, signed and approved by four other electors thereof, the judge shall forthwith issue a citation to any person charged in the complaint for his appearance before the judge within ten days from the filing thereof, and shall also furnish the accused and the village solicitor or city director of law with a copy thereof. The complaint shall charge any of the following:

(A) That a member of the legislative authority of the municipal corporation has received, directly or indirectly, compensation for his services as a member thereof, as a committeeman, or otherwise, contrary to law;

(B) That a member of the legislative authority or an officer of the municipal corporation is or has been interested, directly or indirectly, in the profits of a contract, job, work, or service, or is or has been acting as a commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by the municipal corporation, contrary to law;

(C) That a member of the legislative authority or an officer of the municipal corporation has been guilty of misfeasance or malfeasance in office.

Before acting upon such complaint, the judge shall require the party complaining to furnish sufficient security for costs.

HISTORY: 1977 H 219, eff. 11-1-77
1953 H 1; GC 4670

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 13.04, 15.21, 15.22

CROSS REFERENCES

Restrictions on officers of issuer, 165.13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 150; 21, Counties, Townships, and Municipal Corporations § 606, 611, 623, 631, 637, 640

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 298, 299, 302, 316, 317, 319, 331

Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 ALR3d 1230

NOTES ON DECISIONS AND OPINIONS

38 OS(2d) 51, 309 NE(2d) 926 (1974), State ex rel Crebs v Court of Common Pleas, Wayne County. Prohibition does not lie to determine the constitutionality of a statute or ordinance where an adequate remedy at law by way of appeal is available.

22 OS(2d) 120, 258 NE(2d) 594 (1970), State ex rel Stokes v Probate Court of Cuyahoga County. 733.72 is quasi-penal in character and should be strictly construed, and so strictly construed, pertains solely to acts of misfeasance or malfeasance occurring in the then existing term of the office, and does not authorize removal for noncontinuing acts of misconduct occurring in a term prior to reelection of said officer by the electors of the municipality.

155 OS 329, 98 NE(2d) 807 (1951), In re Removal of Member of Council Joseph Coppola. A member of the council of a municipal corporation who has been interested, directly or indirectly, in the profits of a contract, job, work or service undertaken or prosecuted by the corporation, contrary to law, is subject to being charged in a complaint authorized by this section, whether the acts in violation of such section were performed by the member of council during his present term of office or a previous one.

25 App(2d) 58, 266 NE(2d) 248 (1970), In re Removal of Pickering. In proceedings on complaint filed under 733.72 to remove municipal officer from office the burden of proving disqualification of signers of complaint is on municipal officer, and in such proceedings evidence required to sustain removal of officer must be clear and convincing.

25 App(2d) 58, 266 NE(2d) 248 (1970), In re Removal of Pickering. Where there is evidence that a riot was taking place, that commands to disperse and use of tear gas proved insufficient and ineffectual to cause dispersal, that a shotgun loaded with birdshot was fired by the village mayor into the air and in direction of rioters, but there is no evidence that the shotgun was fired by him with intent to actually hit any rioter, or at a range that such would probably occur, and there is no evidence that any person was hit or injured by birdshot except one person whose wounds were merely superficial, there is no clear and convincing evidence that force used was more than was necessary and proper to suppress the riot or disperse or apprehend rioters, and no evidence that acts of mayor in such regard constituted misfeasance.

17 App(2d) 247, 246 NE(2d) 607 (1969), State ex rel Stokes v Probate Court of Cuyahoga County. 3.07 to 3.10 do not repeal by implication 733.72 to 733.77.

82 Abs 490, 159 NE(2d) 825 (CP Cuyahoga 1959), In re Shirer. When charges against a village marshal or chief of police are preferred by the mayor the hearing is to be conducted by the village council and not the probate court.

339 FSupp 1194 (ND Ohio 1972), Burks v Perk; reversed by 470 F(2d) 163 (6th Cir 1972). In action by members of city civil service commission against the mayor challenging the validity of proceedings for their removal, the federal courts will apply the doctrine of abstention to allow the Ohio courts to determine the validity of the city charter provisions providing therefor, but the state removal proceedings will be stayed until such determination is made by the state court.

1950 OAG 2181. The governor of Ohio does not have the legal power to remove a councilman from office.

1941 OAG 3883. Removal of director of public safety and service from office pursuant to this section and GC 4675 (RC 733.77), constitutes a removal for the current term and the officer may not thereafter be reappointed for that term.

735.28 Village board of trustees of public affairs; appointment; election; organization

In each village in which a water works, electric light plant, artificial or natural gas plant, or other similar public utility is situated, or when the legislative authority thereof orders a water works, electric light plant, natural or artificial gas plant, or other similar public utility, to be constructed, or to be leased or purchased from any individual, company, or corporation, or when such legislative authority determines to establish a schedule of rates or charges of rents for use of the sewerage system and sewage pumping, treatment, and disposal works of the village, such legislative authority shall establish a board of trustees of public affairs, which shall consist of three members who are residents of the village.

In the year 1967 one member shall be elected for a term of two years. In the year 1967 and quadrennially thereafter, two members of the board of trustees of public affairs shall

be elected for a term of four years; in the year 1969 and quadrennially thereafter, one member of the board of trustees of public affairs shall be elected for a term of four years; and thereafter all members shall have four year terms, except that members of boards of trustees of public affairs established after July 26, 1967 shall be elected as follows: at the next regular election of municipal officials occurring more than one hundred days after the appointment of the first members of such board as provided in this section, one member shall be elected for a term of two years and two members shall be elected for terms of four years each; and thereafter all such members shall be elected for terms of four years.

When the legislative authority establishes such board, the mayor shall appoint the members thereof, subject to the confirmation of the legislative authority. The successors of such appointed members shall be elected at the next regular election of municipal officers held in the village which occurs more than one hundred days after the appointment.

In case of a vacancy in such board from death, resignation, or otherwise, it shall be filled for the unexpired term by appointment by the mayor, subject to confirmation by the legislative authority.

The board shall organize by electing one of its members president. Unless the office of clerk of the board has been consolidated with the office of clerk of the village, as authorized by section 733.28 of the Revised Code, it may elect a clerk, who shall be known as the clerk of the board of trustees of public affairs.

HISTORY: 132 v H 1, eff. 2-21-67
131 v H 230; 129 v 1267; 1953 H 1; GC 4357 to 4360

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.031 Chart 2, 7.22, 13.48, 43.17; Forms 13.42

CROSS REFERENCES

Municipal services and utilities, 715.05 et seq.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 547, 578; 21, Counties, Townships, and Municipal Corporations § 803, 816, 819; 40, Energy § 107, 110; 54, Highways, Streets, and Bridges § 72; 92, Water § 255, 257

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 337 to 339

NOTES ON DECISIONS AND OPINIONS

43 App 545, 184 NE 37 (1932), Lake Shore Power Co v Edgerton. Village about to purchase electric light plant need not create board of trustees to manage plant before purchase is made.

4 Misc 1, 210 NE(2d) 912 (CP Tuscarawas 1964), Dennison v Martin; affirmed by Court of Appeals. 715.02 prevails over 743.19, 735.28, and 735.29.

OAG 72-029. When a vacancy exists on a board of trustees of public affairs and the person who is nominated by the mayor to fill the vacancy fails to receive the confirmation by the village council, the mayor may not appoint a person to serve as an "acting trustee"; the vacancy can be filled only through an appointment by the mayor, subject to confirmation by the village council.

OAG 70-113. Treasurer of village may not at same time be employed as clerk for board of trustees of public affairs and receive compensation for both positions.

OAG 70-070. Member of village board of trustees of public affairs forfeits his membership on such board when he ceases to be a resident of village.

OAG 69-150. A classified position in a county engineer's office is incompatible with an elected membership in a village board of trustees of public affairs, and such positions may not be held concurrently by the same person.

OAG 65-143. A village board of trustees cannot contribute funds to finance a community planning program.

1962 OAG 2856. A person who is nineteen years of age may hold the position of clerk of the board of trustees of public affairs of a village.

1958 OAG 1705. The office of county commissioner and member of the board of trustees of public affairs of a village are incompatible.

1951 OAG 788. In a village which has not created a board of trustees of public affairs, council may contract for the services of an engineer to make a survey and prepare plans for a utility, under GC 3982-2 (RC 743.29); where such board has been created, it is the duty of such board, when authorized by the council, to employ such engineer.

1935 OAG 3947. This section and GC 4361 (RC 735.29), do not require that a municipally owned bus line be managed, controlled and conducted by a board of trustees of public affairs.

1927 OAG 139. When the council of a village, by appropriate legislation sells and disposes of all the public utilities owned or operated by the village and thus terminates all the duties and powers of the board of public affairs for the village they thereby abolish the office of the board of public affairs and the board thereupon ceases to function.

743.24 Municipal corporations may contract for a water supply; contract to be submitted to a vote

A municipal corporation may contract with any individual or an incorporated company for supplying water for fire purposes, or for cisterns, reservoirs, streets, squares, and other public places within its limits, or for the purpose of supplying the citizens of such municipal corporation with water for such time, and upon such terms as is agreed upon. Such contract shall not be executed or binding upon the municipal corporation until it has been ratified by a vote of the electors thereof, at a special or general election. The municipal corporation shall have the same power to protect such water supply and prevent the pollution thereof as though the water works were owned by such municipal corporation.

HISTORY: 1953 H 1, eff. 10-1-53
GC 3981

CROSS REFERENCES

Powers and duties of village administrator, 735.273

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 92, Water § 224

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 564; 78, Waterworks and Water Companies § 13 to 18

NOTES ON DECISIONS AND OPINIONS

39 Cities & Villages 7 (October 1991). Contracting Out Wastewater Treatment Plant Operations & Maintenance, Adam Seidel.

4 Misc 111, 207 NE(2d) 405 (CP Paulding 1965), Cook v Paulding. Board of public affairs of village had authority in 1948 to enter into a lease designed to provide a source of water with which to supply the waterworks owned by it.

OAG 69-067. A village may enter into a contract with a nonprofit corporation whereby the corporation will supply water to the village without ratification of the contract by a vote of the electors of the village.

OAG 69-066. A village may not enter into a contract with a nonprofit corporation whereby the village is to supply water to the corporation, if the village waterworks does not possess a surplus of water.

OAG 69-066. A village may enter into a contract with a nonprofit water corporation whereby the corporation will supply bulk water to the village, to be used and distributed as the village sees fit, without ratification by a vote of the electors under 743.24.

1945 OAG 272. A municipality, having acquired land for the extension of its waterworks, may, pursuant to contract with the conservation and natural resources commission convey to the state of Ohio for the use of such commission, the said land or an interest therein, in consideration of the construction thereon by the commission of a dam and reservoir from which the municipality reserves the right to obtain its water supply.

1934 OAG 2475. Where council of a city enacts ordinance authorizing and directing director of public service to enter into a contract with a private water company for furnishing of water and service to city from and at various fire hydrants located on the mains of said company, for use of the fire department of city and for other public municipal purposes, it is not necessary to the validity of the contract entered into in pursuance of such ordinance, that the same be ratified by a vote of the electors of the city, unless such ratification is made necessary by reason of charter provisions. Where such an ordinance is enacted and a contract entered into in pursuance thereof, and water is furnished by the waterworks company to said city, in accordance with the terms of the contract and is used and consumed by said city for fire department and other municipal purposes, the city is liable to the waterworks company at rates fixed in the ordinance, for water so furnished and delivered to the city.

1922 OAG p 1090. Where a public service corporation has received a grant of the right to construct its works and to use and occupy the streets of the corporation in connection therewith, and which grant is not expressly stipulated to be exclusive, it acquires thereby no exclusive franchise or right which would prevent any other corporation or the municipality itself from exercising similar privileges.

749.02 Legislative authority may agree with charitable corporation for hospital service

The legislative authority of a municipal corporation may agree with a corporation organized for charitable purposes and not for profit, for the erection and management of a hospital suitably located for the treatment of the sick and disabled of such municipal corporation, or for an addition to such hospital, and for a permanent interest therein to such extent and upon such terms as are agreed upon between them, and the legislative authority shall provide for the payment of the amount agreed upon for such interest, either in one payment or in annual installments, as is agreed upon.

Such agreement shall not become operative until approved by a vote of the electors of the municipal corporation as provided in section 749.03 of the Revised Code.

HISTORY: 1991 S 233, § 1, eff. 11-15-91
1991 S 233, § 4, 5; 1989 H 332, § 1, 6, 22, H 24, § 2; 1987 H 499, § 1, 3; 1978 S 349; 1953 H 1; GC 4022

Note: The amendment of this section by 1987 H 499, § 3—as subsequently amended by 1989 H 332, § 6, to take effect 11-15-91—was repealed by 1991 S 233, § 4 and 5, eff. 11-15-91, thereby leaving in effect the section as amended by 1991 S 233, § 1, eff. 11-15-91. See *Baldwin's Ohio Legislative Service*, 1987 Laws of Ohio, page 5-225, 1989 Laws of Ohio, page 5-754, and 1991 Laws of Ohio, pages 5-840 and 5-854.

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 55, Hospitals and Related Facilities; Health Care Providers § 37, 40

Am Jur 2d: 40, Hospitals and Asylums § 2; 56, Municipal Corporations, Counties, and Other Political Subdivisions § 544

NOTES ON DECISIONS AND OPINIONS

OAG 73-112. A board of health of a city health district is, pursuant to 3709.282, authorized to conduct a family planning clinic, and such clinic as an agency of the state, is immune from liability in tort without regard to any distinction between governmental and proprietary functions.

OAG 67-078. City employees having ambulance duties in the police and fire departments must be under municipal civil service, and the director of public safety is the official who classifies the service in the police and fire departments pursuant to 737.13; city hospital employees having ambulance duties are subject to 143.08 and 143.30; the hiring authority is determined by the statute relating to the particular type of municipal hospital involved.

749.03 Submission of question to electors

Upon the execution of the agreement provided for in section 749.02 of the Revised Code the legislative authority of the municipal corporation shall submit to the electors thereof, at the next general election occurring not less than seventy-five days after the certification of the resolution to the board of elections, the question of the ratification of such agreement, and if the sum to be paid by the municipal corporation under the terms of such agreement is not available from current general revenues thereof, the legislative authority shall also submit to the electors, at the same election, the question of the issue of bonds of the municipal corporation in the amount specified in such agreement for the purpose of providing funds for the payment of such sum. The proceedings in the matter of such election and in the issuance and sale of such bonds shall be as provided by law for municipal bonds. Such agreement shall not be effective, and no bonds shall be issued, unless the electors approve of both the agreement and the bond issue, if the question of the issue of bonds is so submitted.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 1953 H 1; GC 4022-1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 55, Hospitals and Related Facilities; Health Care Providers § 37, 40

755.01 Board of park commissioners; election

When five per cent of the qualified electors of a city petition the board of elections of the county for the privilege of determining by ballot whether there shall be a board of park commissioners, such board shall submit at the next general election held within such city, or at a special election, if the petition requests a special election, the questions presented in the petition, to the electors of the city. Such special election shall be held at the usual place for holding municipal elections and shall be governed by the same rules, regulations, and laws as govern the holding of municipal elections.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4053

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 13.57, 27.05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 778; 72, Parks and Recreation Centers § 10

Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 125, 202, 210, 542; 59, Parks, Squares, and Playgrounds § 1 et seq., 14

NOTES ON DECISIONS AND OPINIONS

107 App 71, 152 NE(2d) 311 (1958), State ex rel Hauck v Bachrach; affirmed by 168 OS 268, 153 NE(2d) 671 (1958). The provisions of 755.01 et seq. relating to municipal boards of park commissioners, are operative in noncharter municipalities and in such charter cities as have made them operative therein, and where valid enactments of a charter municipality are in conflict therewith such statutes, and not the municipal enactments, must yield.

1934 OAG 2815. Employees of a board of park commissioners created by this section et seq., are within the classified civil service of such city. By virtue of GC 486-8 (RC 143.08) two secretaries, assistants or clerks and one personal stenographer of such board may be claimed as personal exemption, subject to rules or regulations applicable thereto.

PARK DISTRICTS

1515.24 Assessment procedures; maintenance fund; bonds and notes

Upon receipt of a certification made by the supervisors of a soil and water conservation district pursuant to section 1515.20 of the Revised Code, the board of county commissioners may levy upon the property within the project area an assessment at a uniform or varied rate based upon the benefit to the area certified by the supervisors, as necessary to pay the cost of construction of the improvement not otherwise funded and to repay advances made for purposes of the improvement from the fund created by section 1515.15 of the Revised Code. The board of county commissioners shall direct the person or authority preparing assessments to give primary consideration, in determining a parcel's estimated assessments relating to the disposal of water, to the potential increase in productivity that the parcel may experience as a result of the improvement and also to give consideration to the amount of water disposed of, the location of the property relative to the project, the value of the project to the watershed, and benefits as defined in division (F) of section 6131.01 of the Revised Code. Such part of the assessment as is found to benefit state, county, or township roads or highways or municipal streets shall be assessed against the state, county, township, or municipal corporation, respectively, payable from motor vehicle revenues. Such part of the assessment as is found to benefit property owned by any public corporation, any political subdivision of the state, or the state shall be assessed against the public corporation, the political subdivision, or the state and shall be paid out of the general funds or motor vehicle revenues of the public corporation, the political subdivision of the state, or the state, except as otherwise provided by law. The assessment shall be certified to the county auditor, and by him to the county treasurer. The collection of such assessment shall conform in all matters to Chapter 323. of the Revised Code. Any land owned and managed by the department of natural resources for wildlife, recreation, nature preserve, or forestry purposes is exempt from assessments if the director of natural resources determines that the land derives no benefit from the improvement. In making such a determination, the director shall consider the purposes for which the land is owned and managed and any relevant articles of dedication or existing management plans for the land. If the director determines that the land derives no benefit from the improvement, he shall notify the board of county commissioners, within thirty days after receiving the assessment notification required by this section, indicating that he has determined that the land is to be exempt and explaining his specific reason for making this determination. The board of county commissioners may, within thirty days after receiving the director's exemption notification, appeal this determination to the court of common pleas. If the court of common pleas finds in favor of the board of county commissioners, the department of natural resources shall pay all court costs and legal fees.

If the assessment is to be made at a varied rate, the board shall give notice by first class mail to every public and private property owner whose property is subject to assessment, at the tax mailing or other known address of the owner. Such notice shall contain a statement of the amount to be assessed against the property of the addressee and a statement that he may file an objection in writing at the office of the board of county commissioners within thirty days after the mailing of notice. If the residence of any owner cannot be ascertained, or if any mailed notice is returned undelivered, the board shall publish such notice to all such owners in a newspaper of general circulation within the project area, at least once each week for three weeks, which notice shall include the information contained in the mailed notice, but it shall state that the owner may file an objection in writing at the office of the board of county commissioners within thirty days after the last publication of such notice.

Upon receipt of objections as provided in this section, the board shall proceed within thirty days to hold a final hearing upon the objections by fixing a date and giving notice by first class mail to the objectors at such address as provided in filing his objection. If any mailed notice is returned undelivered, the board shall give due notice to such objectors in a newspaper of general circulation in the project area, stating the time, place, and purpose of the hearing. Upon hearing the objectors the board may amend and shall approve the final schedule of assessments by journal entry.

Any owner whose objection is not allowed may appeal within thirty days to the court of common pleas of the county in which the property is located.

Any moneys collected in excess of the amount needed for construction of the improvement and the subsequent first year's maintenance may be maintained in a fund to be used for maintenance of the improvement. In any year subsequent to a year in which an assessment for construction of an improvement levied under this section has been collected, and upon determination by the board of county commissioners that funds are not otherwise available for maintenance or repair of the improvement, the board shall levy upon the property within the project area an assessment for maintenance at a uniform percentage of all construction costs based upon the assessment schedule used in determining the construction assessment. Such assessment is not subject to the provisions concerning notice and petition contained in section 1515.25 of the Revised Code. An

assessment for maintenance shall not be levied in any year in which the unencumbered balance of funds available for maintenance of the improvements exceeds twenty per cent of the cost of construction of the improvement, except that the board may adjust the level of assessment within the twenty per cent limitation, or suspend temporarily the levying of an assessment, for maintenance purposes as maintenance funds are needed.

The board of county commissioners may issue bonds and notes as authorized by section 131.23 or 133.17 of the Revised Code.

HISTORY: 1989 H 230, eff. 10-30-89
1985 S 110; 1983 H 260; 1980 H 655; 1971 S 305; 1969 S 160

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

Baldwin's Ohio Civil Practice, Text 1.03(E)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 18, 19; 72, Notice and Notices § 27 to 36

Am Jur 2d: 70A, Special or Local Assessments § 76 et seq., 82 et seq., 117 to 122, 133 et seq.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property. 21 ALR2d 1273

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum. 33 ALR2d 1118

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service. 88 ALR2d 1250

NOTES ON DECISIONS AND OPINIONS

OAG 84-101. When an improvement has been constructed and paid for in the manner set forth in RC 1515.20, 1515.21, and 1515.24, and it becomes necessary to undertake maintenance or repair work as provided in RC 1515.08 and 1515.29, the costs of such work may be paid from the proceeds of assessments levied under RC 1515.24.

OAG 84-101. The provisions of RC 6137.08, which permit an owner who performs maintenance or repair work on a portion of an improvement to petition for a reduced maintenance assessment, do not apply to improvements constructed under RC Ch 1515.

OAG 84-101. A decision by a board of county commissioners to levy an assessment pursuant to RC 1515.24 for the costs of maintenance or repair of an improvement may be appealed in accordance with the provisions of RC Ch 2505 and Ch 2506.

OAG 84-101. When the board of supervisors of a soil and water conservation district determines that it is necessary to construct an improvement for purposes of flood control or water disposal, determines a benefited project area, and certifies these factors together with a plan for the proposed improvement to the board of county commissioners, pursuant to RC 1515.20, and the construction is approved by the commissioners, pursuant to RC 1515.21, the costs of construction of the improvement may be paid through assessments levied in accordance with RC 1515.24.

OAG 84-045. To the extent such costs are not otherwise funded, the costs of acquiring real property or interests therein in order to construct an improvement under RC Ch 1515 may be calculated as part of the costs of construction for which an assessment may be levied pursuant to RC 1515.24.

1515.26 Referendum

A petition for referendum filed under section 1515.25 of the Revised Code shall be signed by a number of owners of land within the project area representing at least twenty per cent of the parcels which are subject to the assessment, and filed with the clerk of the court of common pleas of the county containing the most land subject to assessment. When such a petition, ordering that an assessment be submitted to the electors of the project area for their approval or rejection, is filed with the clerk within the time prescribed by section 1515.25 of the Revised Code, the clerk shall, after ten days, and not later than four p.m. of the seventy-fifth day before the day of election, certify the assessment to the county boards of elections in the counties in which any part of the project area is located. The clerk shall retain the petition. The board of elections shall submit the assessment to the electors within that part of the project area, which is within its county for their approval or rejection, at the next succeeding primary or general election occurring subsequent to seventy-five days after the certifying of such petition to the board of elections, except that the board of county commissioners may conduct a special referendum, at a special election on a day selected in accordance with the requirements of section 3501.01 of the Revised Code, where the size and nature of the work of improvement are such that the conduct of the referendum at the next primary or general election would cause unnecessary delay. The board shall give due notice of the special referendum in a newspaper of general circulation within the project area, stating the purpose, time, and place. The ballot shall properly identify the question and provide for the marking of the ballot by the elector inserting an "X" mark favoring or opposing the assessment.

HISTORY: 1981 H 235, eff. 1-1-82
1980 H 1062; 1971 S 305; 1969 S 160

CROSS REFERENCES

Newspaper of general circulation, 7.12

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 18, 19

Am Jur 2d: 70A, Special or Local Assessments § 76 et seq., 82 et seq., 117 to 122, 133 et seq.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property. 21 ALR2d 1273

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum. 33 ALR2d 1118

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service. 88 ALR2d 1250

NOTES ON DECISIONS AND OPINIONS

48 OS(2d) 36, 356 NE(2d) 719 (1976), State ex rel Nolte v Defiance County Bd of Elections. In reviewing a referendum petition a board of elections is not required to review the assessments therein.

1515.28 Tax levy outside ten-mill limitation; election

A board of county commissioners may declare by resolution that it is necessary to levy a tax upon the property within the project area in order to pay the costs of the improvement not otherwise funded.

Such resolution shall specify the rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be in effect, which levy may include a levy upon the duplicate of the current year.

A copy of the resolution shall be certified to the board of elections for the county not less than seventy-five days before the general election in any year and said board shall submit the proposal to the electors within the project area at the succeeding November election in accordance with section 5705.25 of the Revised Code. For purposes of that section, the subdivision is the project area.

If the per cent required for approval of a levy as set forth in section 5705.26 of the Revised Code vote in favor thereof, the board of county commissioners may levy a tax within the project area, outside the ten-mill limitation, during the period and for the purpose stated in the resolution, or at any less rate or for any less number of years.

The board may issue bonds and notes in anticipation of the collection of taxes levied under this section, and notes in anticipation of the issuance of bonds.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 1969 S 160

CROSS REFERENCES

Levies in excess of ten-mill limitation, 5705.07

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 18, 19

Am Jur 2d: 70A, Special or Local Assessments § 76 et seq., 82 et seq., 117 to 122, 133 et seq.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property. 21 ALR2d 1273

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum. 33 ALR2d 1118

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service. 88 ALR2d 1250

1545.041 Conversion of township park district; resolution; election; ballot language; tax levies; board of park commissioners

(A) Any township park district created pursuant to section 511.18 of the Revised Code that includes park land located outside the township in which the park district was established may be converted under the procedures provided in this section into a park district to be operated and maintained as provided for in this chapter, provided that there is no existing park district created under section 1545.04 of the Revised Code in the county in which the township park district is located. The proposed park district shall include within its boundary all townships and municipal corporations in which lands owned by the township park district seeking conversion are located, and may include any other townships and municipal corporations in the county in which the township park district is located.

(B) Conversion of a township park district into a park district operated and maintained under this chapter shall be initiated by a resolution adopted by the board of park commissioners of the park district. Any resolution initiating a conversion shall include the following:

(1) The name of the township park district seeking conversion;

(2) The name of the proposed park district;

(3) An accurate description of the territory to be included in the proposed district;

(4) An accurate map or plat of the proposed park district. The resolution may also include a proposed tax levy for the operation and maintenance of the proposed park district. If such a tax levy is proposed, the resolution shall specify the annual rate of the tax, expressed in dollars and cents for each one hundred dollars of valuation and in mills for each dollar of valuation, and shall specify the number of consecutive years the levy will be in effect. The annual rate of such a tax may not be higher than the total combined millage of all levies then in effect for the benefit of the township park district named in the resolution.

(C) Upon adoption of the resolution provided for in division (B) of this section, the board of park commissioners of the township park district seeking conversion under this section shall certify the resolution to the board of elections of the county in which the park district is located no later than four p.m. of the seventy-fifth day before the day of the election at which the question will be voted upon. Upon certification of the resolution to the board, the board of elections shall make the necessary arrangements to submit the question of conversion of the township park into a park district operated and maintained under Chapter 1545. of the Revised Code, to the electors qualified to vote at the next primary or general election who reside in the territory of the proposed park district. The question shall provide for a tax levy if such a levy is specified in the resolution.

(D) The ballot submitted to the electors as provided in division (C) of this section shall contain the following language:

"Shall the _____ (name of the township park district seeking conversion) be converted into a park district to be operated and maintained under Chapter 1545. of the Revised Code under the name of _____ (name of proposed park district), which park district shall include the following townships and municipal corporations:

(Name townships and municipal corporations)

Approval of the proposed conversion will result in the termination of all existing tax levies voted for the benefit of _____ (name of the township park district sought to be converted) and in the levy of a new tax for the operation and maintenance of _____ (name of proposed park district) at a rate not exceeding ___ (number of mills) mills for each one dollar of valuation, which is ___ (rate expressed in dollars and cents) for each one hundred dollars of valuation, for ___ (number of years the millage is to be imposed) years, commencing on the ___ (year) tax duplicate.

For the proposed conversion

Against the proposed conversion

(E) If the proposed conversion is approved by at least a majority of the electors voting on the proposal, the township park district that seeks conversion shall become a park district subject to Chapter 1545. of the Revised Code effective the first day of January following approval by the voters. The park district shall have the name specified in the resolution, and effective the first day of January following approval by the voters, the following shall occur:

(1) The indebtedness of the former township park district shall be assumed by the new park district;

(2) All rights, assets, properties, and other interests of the former township park district shall become vested in the new park district, including the rights to any tax revenues previously vested in the former township park district; provided, that all tax levies in excess of the ten mill limita-

tion approved for the benefit of the former township park district shall be removed from the tax lists after the February settlement next succeeding the conversion. Any tax levy approved in connection with the conversion shall be certified as provided in section 5705.25 of the Revised Code.

(3) The members of the board of park commissioners of the former township park district shall be the members of the members [*sic*] of the board of park commissioners of the new park district, with all the same powers and duties as if appointed under section 1545.05 of the Revised Code. The term of each such commissioner shall expire on the first day of January of the year following the year in which his term would have expired under section 511.19 of the Revised Code. Thereafter, commissioners shall be appointed pursuant to section 1545.05 of the Revised Code.

HISTORY: 1987 H 231, eff. 10-5-87

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 97.171

CROSS REFERENCES

Board of elections, 3501.06

NOTES ON DECISIONS AND OPINIONS

No. 90-CA-00163 (7th Dist Ct App, Mahoning, 8-19-91), Tablack v McMahon. The enactment of a statute providing for the conversion of township park districts into county-wide park districts as part of a bill concerning funding and appropriations for government operations does not violate the "single subject requirement" of O Const Art II §15(D).

No. 90-CA-00163 (7th Dist Ct App, Mahoning, 8-19-91), Tablack v McMahon. The conversion of a lawfully created township park district into a county-wide park district pursuant to RC 1545.041 is not unconstitutional where the tax levy applies equally to all property owners within the new district, even though the result is an increase for some owners and a decrease for other owners from the tax rates prior to the conversion.

1545.21 Voted tax levy; anticipation bonds

The board of park commissioners, by resolution, may submit to the electors of the park district the question of levying taxes for the use of the district. Such resolution shall declare the necessity of levying such taxes, shall specify the purpose for which such taxes shall be used, the annual rate proposed, and the number of consecutive years such rate shall be levied. Such resolution shall be forthwith certified to the board of elections in each county in which any part of such district is located, not later than the seventy-fifth day before the day of the election, and the question of the levy of taxes as provided in such resolution shall be submitted to the electors of the district at a special election to be held on the day of the next ensuing primary or general election. The ballot shall set forth the purpose for which the taxes shall be levied, the annual rate of levy, and the number of years of such levy. If a majority of the electors voting upon the question of such levy vote in favor thereof, such taxes shall be levied and shall be in addition to the taxes authorized by section 1545.20 of the Revised Code, and all other taxes authorized by law. The rate submitted to the electors at any one time shall not exceed two mills annually upon each dollar of valuation. When a tax levy has been authorized as provided in this section or in section 1545.041 of the Revised Code, the board of park commissioners may issue bonds pursuant to section 133.22 of the Revised Code in anticipation of the collection of such levy, provided that such bonds shall be issued only for the purpose of acquiring and improving lands. Such levy, when collected, shall be applied in payment of the bonds so issued and the interest thereon. The amount of bonds so issued and outstanding at any time shall not exceed one per cent of the total tax valuation in such district. Such bonds shall bear interest at a rate not to exceed the rate determined as provided in section 9.95 of the Revised Code.

HISTORY: 1989 H 230, eff. 10-30-89
1987 H 231; 1984 H 37; 1982 H 323; 1981 H 95; 1980 H 1062; 1979 H 275; 1969 S 245, H 107; 127 v 700; 125 v 713; 1953 H 1; GC 2976-10i

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925
Gotherman & Babbit, Ohio Municipal Law, Text 51.10

CROSS REFERENCES

Replacement levies, 5705.192

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Parks and Recreation Centers § 24; 86, Taxation § 50, 130

NOTES ON DECISIONS AND OPINIONS

147 OS 66, 68 NE(2d) 317 (1946), Kinsey v Bower. Under this section board of park commissioners created pursuant to GC 2976-1 (RC 1545.01) et seq., may levy additional taxes only for specific purpose set forth in its resolution.

147 OS 66, 68 NE(2d) 317 (1946), Kinsey v Bower. Where tax levy is voted pursuant to statute in year of reassessment or any year prior thereto and such additional taxes are effective in year of reassessment or thereafter and are to be calculated on total valuation of property higher than that of year before reassessment, rate of such additional levies shall be reduced by county budget commission in same proportion in which total valuation of property in such taxing subdivision is increased by reassessment over total valuation of year preceding reassessment.

OAG 79-063. Nothing in OAG 79-063 should in any way be construed to limit the right of voters under RC 1545.21 to approve a park district levy in excess of the ten-mill aggregate limitation.

1545.36 Dissolution by petition of voters for election

(A) When the board of elections of the county in which a park district is located has had filed with it a petition calling for the dissolution of the district, and determines that the petition meets the requirements of this section and section 3501.38 of the Revised Code, the board shall place the issue of the dissolution on the ballot at the next special election to be held on the day of a general or primary election. Written notice of the filing of the petition shall be sent immediately to the board of park commissioners and the probate court that created the district.

(B) The petition shall:

(1) Be filed with the board no less than seventy-five days before the next election;

(2) Be supported by the signatures of at least twenty-five per cent of the number of voters in the district who voted in the preceding gubernatorial election.

(C) If the petition as filed does not have the required number of signatures and the time for filing has elapsed, the

board shall declare it invalid. No further petition for dissolution shall be received until after the next election is completed. On determination of these findings, the board shall send written notice of them to the principal circulator.

(D) (1) If a majority of the votes cast support the dissolution, the board shall immediately send written notice of the vote, citing the number of votes for and against the issue, to the probate court, to the board of park commissioners, and to the principal circulator. No park district shall be applied for within the dissolved district for a period of four years following the election in which the issue was supported.

(2) If the issue fails to obtain a majority of the votes cast, the board shall receive no further petition for dissolution until the fourth year following that in which the election failed, and shall send written notice of these results to the principal circulator and the board of park commissioners.

HISTORY: 1980 H 1062, eff. 3-23-81
1979 S 31

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Parks and Recreation Centers § 29
Am Jur 2d: 59, Parks, Squares, and Playgrounds § 35

COUNTY AGRICULTURAL SOCIETY

1711.15 Tax levy for county agricultural society

In any county in which there is a duly organized county agricultural society, the board of county commissioners may purchase or lease, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the county agricultural society, and may erect thereon suitable buildings and otherwise improve it.

In counties in which there is a county agricultural society which has purchased, or leased, for a term of not less than twenty years, real estate as a site on which to hold fairs or in which the title to such site is vested in fee in the county, the board may erect or repair buildings or otherwise improve such site and pay the rental thereof, or contribute to or pay any other form of indebtedness of the society, if the director of agriculture has certified to the board that the county agricultural society is complying with all laws and rules governing the operation of county agricultural societies. The board may appropriate from the general fund such an amount as it deems necessary for any of those purposes. If the amount appropriated to be expended in the purchase of such real estate or in the erection of buildings or other improvements or payments of rent or other forms of indebtedness of the society exceeds fifty thousand dollars in any one year, such expenditure shall not be made unless the question of a levy of the tax therefor is submitted to the qualified electors of the county at a general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election. This notice shall be given either by publishing it in one or more newspapers published and of general circulation in the county, or by mailing or otherwise distributing it to each elector in the county as far as is reasonably possible. The board shall pass a resolution authorizing the submission of the question to the electors and certify their action to the board of elections of the county which shall prepare and furnish the necessary ballots and other supplies. Such certification shall be made to the board of elections not later than four p.m. of the seventy-fifth day before the day of election. The form of the ballots cast at such election shall be:

"Agricultural tax—Yes."

"Agricultural tax—No."

If the majority of the vote cast is in favor of such tax, it may be levied and collected as other taxes.

The requirement that the question of a tax levy be submitted to the electors shall not apply where the funds to be expended have been received as reparation for damage to the fairground caused by use thereof for military purposes, or as insurance proceeds received in payment for property damaged or destroyed by fire or any other cause.

HISTORY: 1990 S 257, eff. 9-26-90
1986 H 555; 1980 H 1062; 1979 S 159; 131 v S 316; 125 v 713, 536; 1953 H 1; GC 9887

CROSS REFERENCES

County and independent fairs, OAC 901-5-01 et seq.

Newspaper of general circulation, defined, 7.12
Payment of recreational expenses, levy of tax, 755.18
Escheated lands, portion of proceeds to county agricultural society, 2105.09
Ohio fairs fund, distribution, 3769.082
Tax levies authorized by vote, 5705.07

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 13, 42, 44 to 46, 48, 50, 52, 53; 6, Associations and Corporations not for Profit § 151; 20, Counties, Townships, and Municipal Corporations § 237; 22, Courts and Judges § 173; 28, Criminal Law § 2178, 2322; 38, Eminent Domain § 30

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Conflicts of interest
3. Proper expenditures of funds

1. In general

OAG 88-026. Pursuant to RC 1702.58(B), special provisions of RC Ch 1711 relating to the organization, conduct, or government of county agricultural societies or independent agricultural societies govern to the exclusion of provisions of RC Ch 1702 on the same subject; however, when there is no special provision governing a certain aspect of the operation of county agricultural societies or independent agricultural societies, then the appropriate provisions of RC Ch 1702 govern that aspect of the operation of nonprofit county agricultural societies or nonprofit independent agricultural societies.

1957 OAG 516; overruled in part by OAG 88-026. Where a board of county commissioners erects a building on county-owned land with title to such building in the county, and where such land and building is occupied by the county agricultural society, control and management of such land and building is vested in the society so long as such premises are occupied by the society and used by it for holding agricultural fairs. The holding of one agricultural fair each year agreeably to the requirements of the director of agriculture satisfies such condition.

1957 OAG 516; overruled in part by OAG 88-026. A county agricultural society can lawfully participate in the promotion of a hockey team, and the rentals received by the society from a hockey team or similar sporting or entertainment enterprises which use the real property owned by or under the control and management of the society are not public funds.

1957 OAG 516; overruled in part by OAG 88-026. When a board of county commissioners erects or improves a building for a

county agricultural society and title to such building and the land on which it is erected is in the society, exclusive control and management of such land and building is in the society.

1950 OAG 2528. The provisions of statute which authorizes the commissioners in any county in which there is a duly organized county agricultural society, to acquire and hold title to real estate upon which to hold fairs and to erect suitable buildings thereon does not provide an exclusive method of financing the purchase of such real estate or the erections of such buildings and bonds for such purposes may be issued by such county commissioners pursuant to GC 2293-1 (RC 133.01) et seq.

1944 OAG 7186. A board of county commissioners cannot grant funds to independent agricultural societies, under and by virtue of this section, to erect, repair or improve buildings situated on a tract of land where such society holds its fair.

1940 OAG 1871. In counties wherein there is a county agricultural society which has purchased, or leased, real estate for a term of not less than twenty years, a site whereon to hold fairs or where the title to such site is vested in fee in the county, the county commissioners, if they think it is for the best interest of the county, and society, may contribute to or pay indebtedness of the society incurred in the operation of fairs, in accordance with the provisions and requirements of statute.

1939 OAG 1247. Funds appropriated by county commissioners under authority of statute may be used only for purpose of paying preexisting indebtedness of a county agricultural society and may not be used by society as a general operating fund.

1935 OAG 4138. The county commissioners have the authority to purchase the fair grounds from the county agricultural society, and such society has the authority to sell its fair grounds to the county, whereon to hold fairs under the management and control of the society, for the purpose of using the proceeds of said sale to pay the indebtedness of such society.

1931 OAG 3377. County commissioners may, within the limitations of statute, appropriate money for the purpose of paying the preexisting indebtedness of a county society, where society holds a lease for not less than twenty years upon lands for the purpose of holding fairs. The fact that an annual exhibition is not held is not necessarily determinative of its right to exercise such power.

1931 OAG 3377. Where it is the purpose of a county society to cease holding fairs, the county commissioners are without power to appropriate money under statute.

1922 OAG p 480. The word "improvement" occurring in this section construed to authorize the erection of an exhibit building upon the grounds of a county agricultural society.

1922 OAG p 480. County agricultural societies organized previous to the enactment of GC 9885 to GC 9890 (RC 1711.13 to RC 1711.19) deemed to be such county societies as may receive the benefits afforded by statute.

1921 OAG p 157. Money raised by county commissioners for the benefit of county agricultural societies, in accordance with the provisions of statute, is a fund properly within the control of said agricultural society, and the county commissioners or auditor are warranted in turning over said fund to the proper officer of the county agricultural society.

2. Conflicts of interest

1959 OAG 779. A member of a board of county commissioners which is authorized to appropriate funds to a county agricultural society cannot act as fair manager of the county agricultural society of the same county.

1959 OAG 198. A member of the board of county commissioners may not at the same time hold the position of director or officer of a county or independent agricultural society.

3. Proper expenditures of funds

OAG 81-018. The authority of a county to make appropriations to an independent agricultural society pursuant to RC 1711.17 is not conditioned upon county ownership of the real estate on which the independent agricultural society holds its fairs, nor is it limited to indebtedness related to such real estate.

OAG 65-76. Funds appropriated by a board of county commissioners pursuant to RC 1711.15 for the payment of the indebtedness of an agricultural society cannot be expended for the payment of the accumulated monthly salary of its secretary, which item is a current operating expense rather than a preexisting indebtedness.

1958 OAG 2115. Moneys received by a county agricultural society or independent agricultural society under the provisions of RC 3769.082(A) may not be used to pay debts incurred in operations in years prior to that in which the actual distribution of such moneys is made.

1956 OAG 6546. County commissioners may appropriate funds to a county agricultural society for erecting a grandstand on the fairgrounds and the disbursement may be in a lump sum; and the funds so appropriated may be accumulated from year to year.

1951 OAG 626. A board of county commissioners has authority to expend funds for erection of buildings necessary to house caretaker of fairgrounds.

1945 OAG 647. The commissioners of a county wherein there is a county agricultural society which owns, or has leased for a term of twenty years or more, a site whereon to hold fairs, or where title to such site is vested in fee in county, are empowered by this section to appropriate from general fund not to exceed in the aggregate the sum of $10,000 in any year, for purposes of constructing a race track and making other authorized improvements thereon, in addition to proceeds of a special tax levy approved by electors at November election in the next preceding year, for purpose of erecting thereon a coliseum for fair purposes.

1938 OAG 2887. Provisions of statute empower board of county commissioners to appropriate funds for payment of preexisting indebtedness of a county agricultural society when the suspension of activities of such society is conditioned on the payment of the indebtedness of the society.

1930 OAG 1937. In counties wherein there is a county agricultural society which owns in fee simple the fairgrounds and the appurtenances thereto, the county commissioners may install lighting equipment therein under statute.

1930 OAG 1361. Where a county agricultural society has purchased a site whereon to hold fairs and has incurred an indebtedness, the county commissioners may provide for the payment of such indebtedness out of the proceeds of a special tax levy authorized by the electors of the county under statute or out of the proceeds of bonds issued on the approval of the electors of the county as provided in GC 9888 (RC 1711.18), et seq.

1925 OAG 2141. County commissioners may not legally pay out money for the payment of the rental on a lease held by a county agricultural society unless the county society has expended a like amount for lease or improvement of such site.

1711.17 County joint ownership

In any counties in which there is a duly organized independent agricultural society, the respective boards of county commissioners may purchase or lease jointly, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the society, and may erect suitable buildings and otherwise improve the property, and pay the rental thereof, or contribute to or pay any other form of indebtedness of the society, if the director of agriculture has certified to the board that the independent agricultural society is complying with all laws and rules governing the operation of county agricultural societies. The boards may appropriate from their respective general funds such an amount as they consider necessary for any of those purposes. If the total amount appropriated from one or more boards of county commissioners for the joint purchase of such real estate, for the erection of build-

ings or other improvements, or for the payment of rent or other forms of indebtedness of the society exceeds fifty thousand dollars in any one year, such expenditure shall not be made unless the question of a levy of a tax for that purpose is submitted to the qualified electors of the counties at a general election, a notice of which, specifying the amount to be levied, has been given at least thirty days previous to such election, in one or more newspapers published and of general circulation in the counties. The boards shall pass resolutions authorizing the submission of the question to the electors and certify their action to the boards of elections of the counties, which shall prepare and furnish the necessary ballots and other supplies. Such certification shall be made to the board of elections not later than four p.m. of the seventy-fifth day before the day of the election. The form of the ballots cast at such election shall be as follows: "Shall the board of commissioners of _____ County be authorized to levy a tax for the benefit of the _____ independent agricultural society for the purpose of _____ (here state the purpose of the tax), at a rate not exceeding _____ mills for each one dollar of valuation, which amounts to _____ dollars for each one hundred dollars of valuation, for _____ (here state the number of years the tax will be levied)?

	For the Tax Levy
	Against the Tax Levy

"

If the majority of the votes cast is in favor of such tax in each county, it may be levied and collected as other taxes.

HISTORY: 1992 S 243, eff. 8-19-92
1980 H 1062; 1979 S 159; 125 v 536; 1953 H 1; GC 9887-2

CROSS REFERENCES

Newspaper of general circulation defined, 7.12
Joint use of fairgrounds, 755.35
Tax levies authorized by vote, 5705.07

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 13, 42, 44 to 46, 48, 50, 52, 53; 6, Associations and Corporations not for Profit § 151; 20, Counties, Townships, and Municipal Corporations § 237; 22, Courts and Judges § 173; 28, Criminal Law § 2178, 2322; 38, Eminent Domain § 30

NOTES ON DECISIONS AND OPINIONS

OAG 81-018. The authority of a county to make appropriations to an independent agricultural society pursuant to RC 1711.17 is not conditioned upon county ownership of the real estate on which the independent agricultural society holds its fairs, nor is it limited to indebtedness related to such real estate.

1959 OAG 198. A member of the board of county commissioners may not at the same time hold the position of director or officer of a county or independent agricultural society.

1711.18 Issuance of county bonds to pay debts of county society

In a county in which there is a county agricultural society indebted fifteen thousand dollars or more, and such society has purchased a fairground or title to such fairground is vested in fee in the county, the board of county commissioners, upon the presentation of a petition signed by not less than five hundred resident electors of the county praying for the submission to the electors of the county of the question whether or not county bonds shall be issued and sold to liquidate such indebtedness, shall, by resolution within ten days thereafter, fix a date, which shall be within thirty days, upon which the question of issuing and selling such bonds, in the necessary amount and denomination, shall be submitted to the electors of the county. The board also shall cause a copy of such resolution to be certified to the county board of elections and such board of elections, within ten days after such certification, shall proceed to make the necessary arrangements for the submission of such question to such electors at the time fixed by such resolution.

Such election shall be held at the regular places of voting in the county and shall be conducted, canvassed, and certified, except as otherwise provided by law, as are elections of county officers. The county board of elections must give fifteen days' notice of such submission by publication in one or more newspapers published in the county once a week for two consecutive weeks, stating the amount of bonds to be issued, the purpose for which they are to be issued, and the time and places of holding such election. Those who vote in favor of the proposition shall have written or printed on their ballots "for the issue of bonds" and those who vote against it shall have written or printed on their ballots "against the issue of bonds." If a majority of those voting upon the question of issuing the bonds vote in favor thereof, then and only then shall they be issued and the tax provided for in section 1711.20 of the Revised Code be levied.

HISTORY: 1953 H 1, eff. 10-1-53
GC 9888, 9889

CROSS REFERENCES

Issuance of bonds for acquisition of recreational lands and facilities, 755.17

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 13, 42, 44 to 46, 48, 50, 52, 53; 6, Associations and Corporations not for Profit § 151; 20, Counties, Townships, and Municipal Corporations § 237; 22, Courts and Judges § 173; 28, Criminal Law § 2178, 2322; 38, Eminent Domain § 30; 72, Notice and Notices § 27 to 30, 33, 34

Am Jur 2d: 64, Public Securities and Obligations § 50 et seq., 118, 125 et seq.

NOTES ON DECISIONS AND OPINIONS

1958 OAG 2115. Moneys received by a county agricultural society or independent agricultural society under the provisions of RC 3769.082(A) may not be used to pay debts incurred in operations in years prior to that in which the actual distribution of such moneys is made.

1927 OAG 95. The county commissioners may, by a vote of the people, issue bonds under authority of GC 9888 to GC 9893 (RC 1711.18 to RC 1711.21), in the manner prescribed by GC 5649-9a (Repealed) et seq., to liquidate an indebtedness of a county agricultural society, when the same amounts to $15,000 or more.

MUNICIPAL COURT

1901.02 Territorial jurisdiction; definitions

(A) The municipal courts established by section 1901.01 of the Revised Code have jurisdiction within the corporate limits of their respective municipal corporations and are courts of record. Each of the courts shall be styled "_____ municipal court," inserting the name of the municipal corporation, except the following courts, which shall be styled as set forth below:

(1) The municipal court established in Chesapeake, which shall be styled and known as the "Lawrence county municipal court";

(2) The municipal court established in Cincinnati, which shall be styled and known as the "Hamilton county municipal court";

(3) The municipal court established in Ravenna, which shall be styled and known as the "Portage county municipal court";

(4) The municipal court established in Athens, which shall be styled and known as the "Athens county municipal court";

(5) The municipal court established in Columbus, which shall be styled and known as the "Franklin county municipal court";

(6) The municipal court established in London, which shall be styled and known as the "Madison county municipal court";

(7) The municipal court established in Newark, which shall be styled and known as the "Licking county municipal court";

(8) The municipal court established in Wooster, which shall be styled and known as the "Wayne county municipal court";

(9) The municipal court established in Wapakoneta, which shall be styled and known as the "Auglaize county municipal court";

(10) The municipal court established in Troy, which shall be styled and known as the "Miami county municipal court";

(11) The municipal court established in Bucyrus, which shall be styled and known as the "Crawford county municipal court";

(12) The municipal court established in Logan, which shall be styled and known as the "Hocking county municipal court";

(13) The municipal court established in Urbana, which shall be styled and known as the "Champaign county municipal court";

(14) The municipal court established in Jackson, which shall be styled and known as the "Jackson county municipal court";

(15) The municipal court established in Springfield, which shall be styled and known as the "Clark county municipal court";

(16) The municipal court established in Kenton, which shall be styled and known as the "Hardin county municipal court";

(17) The municipal court established in Batavia, which shall be styled and known as the "Clermont county municipal court";

(18) The municipal court established in Wilmington, which, beginning July 1, 1992, shall be styled and known as the "Clinton county municipal court."

(B) In addition to the jurisdiction set forth in division (A) of this section, the municipal courts established by section 1901.01 of the Revised Code have jurisdiction as follows:

The Akron municipal court has jurisdiction within Bath, Northampton, Richfield, and Springfield townships, and within the municipal corporations of Fairlawn, Lakemore, and Mogadore, in Summit county.

The Alliance municipal court has jurisdiction within Lexington, Marlboro, Paris, and Washington townships in Stark county.

The Ashland municipal court has jurisdiction within Ashland county.

The Ashtabula municipal court has jurisdiction within Ashtabula, Plymouth, and Saybrook townships in Ashtabula county.

The Athens county municipal court has jurisdiction within Athens county.

The Auglaize county municipal court has jurisdiction within Auglaize county.

The Avon Lake municipal court has jurisdiction within the municipal corporations of Avon and Sheffield in Lorain county.

The Barberton municipal court has jurisdiction within Coventry, Franklin, and Green townships, within all of Copley township except within the municipal corporation of Fairlawn, and within the municipal corporations of Clinton and Norton, in Summit county.

The Bedford municipal court has jurisdiction within the municipal corporations of Bedford Heights, Oakwood, Glenwillow, Solon, Bentleyville, Chagrin Falls, Moreland Hills, Orange, Warrensville Heights, North Randall, and Woodmere, and within Warrensville and Chagrin Falls townships, in Cuyahoga county.

The Bellefontaine municipal court has jurisdiction within Logan county.

The Bellevue municipal court has jurisdiction within Lyme and Sherman townships in Huron county and within York township in Sandusky county.

The Berea municipal court has jurisdiction within the municipal corporations of Strongsville, Middleburgh Heights, Brook Park, Westview, and Olmsted Falls, and within Olmsted township, in Cuyahoga county.

The Bowling Green municipal court has jurisdiction within the municipal corporations of Bairdstown, Bloomdale, Bradner, Custar, Cygnet, Grand Rapids, Haskins, Hoytville, Jerry City, Milton Center, North Baltimore, Pemberville, Portage, Rising Sun, Tontogany, Wayne, and Weston, and within Bloom, Center, Freedom, Grand Rapids, Henry, Jackson, Liberty, Middleton, Milton, Montgomery, Plain, Portage, Washington, Webster, and Weston townships in Wood county.

The Bryan municipal court has jurisdiction within Williams county.

The Cambridge municipal court has jurisdiction within Guernsey county.

The Campbell municipal court has jurisdiction within Coitsville township in Mahoning county.

The Canton municipal court has jurisdiction within Canton, Lake, Nimishillen, Osnaburg, Pike, Plain, and Sandy townships in Stark county.

The Celina municipal court has jurisdiction within Mercer county.

The Champaign county municipal court has jurisdiction within Champaign county.

The Chardon municipal court has jurisdiction within Geauga county.

The Chillicothe municipal court has jurisdiction within Ross county.

The Circleville municipal court has jurisdiction within Pickaway county.

The Clark county municipal court has jurisdiction within Clark county.

The Clermont county municipal court has jurisdiction within Clermont county.

The Cleveland municipal court has jurisdiction within the municipal corporation of Bratenahl in Cuyahoga county.

Beginning July 1, 1992, the Clinton county municipal court has jurisdiction within Clinton county.

The Coshocton municipal court has jurisdiction within Coshocton county.

The Crawford county municipal court has jurisdiction within Crawford county.

The Cuyahoga Falls municipal court has jurisdiction within Boston, Hudson, Northfield Center, Sagamore Hills, and Twinsburg townships, and within the municipal corporations of Boston Heights, Hudson, Munroe Falls, Northfield, Peninsula, Reminderville, Silver Lake, Stow, Tallmadge, Twinsburg, and Macedonia, in Summit county.

The Defiance municipal court has jurisdiction within Defiance county.

The Delaware municipal court has jurisdiction within Delaware county.

The East Liverpool municipal court has jurisdiction within Liverpool and St. Clair townships in Columbiana county.

The Eaton municipal court has jurisdiction within Preble county.

The Elyria municipal court has jurisdiction within the municipal corporations of Grafton, LaGrange, and North Ridgeville, and within Elyria, Carlisle, Eaton, Columbia, Grafton, and LaGrange townships, in Lorain county.

The Fairborn municipal court has jurisdiction within the municipal corporation of Beavercreek and within Bath and Beavercreek townships in Greene county.

The Findlay municipal court has jurisdiction within all of Hancock county except within Washington township.

The Fostoria municipal court has jurisdiction within Loudon and Jackson townships in Seneca county, within Washington township in Hancock county, and within Perry township in Wood county.

The Franklin municipal court has jurisdiction within Franklin township in Warren county.

The Franklin county municipal court has jurisdiction within Franklin county.

The Fremont municipal court has jurisdiction within Ballville and Sandusky townships in Sandusky county.

The Gallipolis municipal court has jurisdiction within Gallia county.

The Garfield Heights municipal court has jurisdiction within the municipal corporations of Maple Heights, Walton Hills, Valley View, Cuyahoga Heights, Newburgh Heights, Independence, and Brecksville in Cuyahoga county.

The Girard municipal court has jurisdiction within Liberty, Vienna, and Hubbard townships in Trumbull county.

The Hamilton municipal court has jurisdiction within Ross and St. Clair townships in Butler county.

The Hamilton county municipal court has jurisdiction within Hamilton county.

The Hardin county municipal court has jurisdiction within Hardin county.

The Hillsboro municipal court has jurisdiction within all of Highland county except within Madison township.

The Hocking county municipal court has jurisdiction within Hocking county.

The Huron municipal court has jurisdiction within all of Huron township in Erie county except within the municipal corporation of Sandusky.

The Ironton municipal court has jurisdiction within Aid, Decatur, Elizabeth, Hamilton, Lawrence, Upper, and Washington townships in Lawrence county.

The Jackson county municipal court has jurisdiction within Jackson county.

The Kettering municipal court has jurisdiction within the municipal corporations of Centerville and Moraine, and within Washington township, in Montgomery county.

The Lancaster municipal court has jurisdiction within Fairfield county.

The Lawrence county municipal court has jurisdiction within the townships of Fayette, Mason, Perry, Rome, Symmes, Union, and Windsor in Lawrence county.

The Lebanon municipal court has jurisdiction within Turtlecreek township in Warren county.

The Licking county municipal court has jurisdiction within Licking county.

The Lima municipal court has jurisdiction within Allen county.

The Lorain municipal court has jurisdiction within the municipal corporation of Sheffield Lake, and within Sheffield township, in Lorain county.

The Lyndhurst municipal court has jurisdiction within the municipal corporations of Mayfield Heights, Gates Mills, Mayfield, Highland Heights, and Richmond Heights in Cuyahoga county.

The Madison county municipal court has jurisdiction within Madison county.

The Mansfield municipal court has jurisdiction within Madison, Springfield, Sandusky, Franklin, Weller, Mifflin, Troy, Washington, Monroe, Perry, Jefferson, and Worthington townships, and within sections 35-36-31 and 32 of Butler township, in Richland county.

The Marietta municipal court has jurisdiction within Washington county.

The Marion municipal court has jurisdiction within Marion county.

The Marysville municipal court has jurisdiction within Union county.

The Mason municipal court has jurisdiction within Deerfield township in Warren county.

The Massillon municipal court has jurisdiction within Bethlehem, Perry, Sugar Creek, Tuscarawas, Lawrence, and Jackson townships in Stark county.

The Maumee municipal court has jurisdiction within the municipal corporations of Waterville and Whitehouse, within Waterville and Providence townships, and within those portions of Springfield, Monclova, and Swanton townships lying south of the northerly boundary line of the Ohio turnpike, in Lucas county.

The Medina municipal court has jurisdiction within the municipal corporations of Briarwood Beach, Brunswick, Chippewa-on-the-Lake, and Spenser and within the townships of Brunswick Hills, Chatham, Granger, Hinckley, Lafayette, Litchfield, Liverpool, Medina, Montville, Spencer, and York townships, in Medina county.

The Mentor municipal court has jurisdiction within the municipal corporation of Mentor-on-the-Lake in Lake county.

The Miami county municipal court has jurisdiction within Miami county and within the part of the municipal corporation of Bradford that is located in Darke county.

The Miamisburg municipal court has jurisdiction within the municipal corporations of Germantown and West Carrollton, and within German and Miami townships in Montgomery county.

The Middletown municipal court has jurisdiction within Madison township, and within all of Lemon township, except within the municipal corporation of Monroe, in Butler county.

The Mount Vernon municipal court has jurisdiction within Knox county.

The Napoleon municipal court has jurisdiction within Henry county.

The New Philadelphia municipal court has jurisdiction within the municipal corporation of Dover, and within Auburn, Bucks, Fairfield, Goshen, Jefferson, Warren, York, Dover, Franklin, Lawrence, Sandy, Sugarcreek, and Wayne townships in Tuscarawas county.

The Newton Falls municipal court has jurisdiction within Bristol, Bloomfield, Lordstown, Newton, Braceville, Southington, Farmington, and Mesopotamia townships in Trumbull county.

The Niles municipal court has jurisdiction within the municipal corporation of McDonald, and within Weathersfield township in Trumbull county.

The Norwalk municipal court has jurisdiction within all of Huron county except within the municipal corporation of Bellevue and except within Lyme and Sherman townships.

The Oberlin municipal court has jurisdiction within the municipal corporations of Amherst, Kipton, Rochester, South Amherst, and Wellington, and within Henrietta, Russia, Camden, Pittsfield, Brighton, Wellington, Penfield, Rochester, and Huntington townships, and within all of Amherst township except within the municipal corporation of Lorain, in Lorain county.

The Oregon municipal court has jurisdiction within the municipal corporation of Harbor View, and within Jerusalem township, in Lucas county, and north within Maumee Bay and Lake Erie to the boundary line between Ohio and Michigan between the easterly boundary of the court and the easterly boundary of the Toledo municipal court.

The Painesville municipal court has jurisdiction within Painesville, Perry, Leroy, Concord, and Madison townships in Lake county.

The Parma municipal court has jurisdiction within the municipal corporations of Parma Heights, Brooklyn, Linndale, North Royalton, Broadview Heights, Seven Hills, and Brooklyn Heights in Cuyahoga county.

The Perrysburg municipal court has jurisdiction within the municipal corporations of Luckey, Millbury, Northwood, Rossford, and Walbridge, and within Perrysburg, Lake, and Troy townships, in Wood county.

The Portage county municipal court has jurisdiction within Portage county.

The Port Clinton municipal court has jurisdiction within Ottawa county.

The Portsmouth municipal court has jurisdiction within Scioto county.

The Rocky River municipal court has jurisdiction within the municipal corporations of Bay Village, Westlake, Fairview Park, and North Olmsted, and within Riveredge township, in Cuyahoga county.

The Sandusky municipal court has jurisdiction within the municipal corporations of Castalia and Bay View, and within Perkins township, in Erie county.

The Shaker Heights municipal court has jurisdiction within the municipal corporations of University Heights, Beachwood, Pepper Pike, and Hunting Valley in Cuyahoga county.

The Shelby municipal court has jurisdiction within Sharon, Jackson, Cass, Plymouth, and Blooming Grove townships, and within all of Butler township except sections 35-36-31 and 32, in Richland county.

The Sidney municipal court has jurisdiction within Shelby county.

The Struthers municipal court has jurisdiction within the municipal corporations of Lowellville, New Middleton, and Poland, and within Poland and Springfield townships in Mahoning county.

The Sylvania municipal court has jurisdiction within the municipal corporations of Berkey and Holland, and within Sylvania, Richfield, Spencer, and Harding townships, and within those portions of Swanton, Monclova, and Springfield townships lying north of the northerly boundary line of the Ohio turnpike, in Lucas county.

The Tiffin municipal court has jurisdiction within Adams, Big Spring, Bloom, Clinton, Eden, Hopewell, Liberty, Pleasant, Reed, Scipio, Seneca, Thompson, and Venice townships in Seneca county.

The Toledo municipal court has jurisdiction within Washington township, and within the municipal corporation of Ottawa Hills, in Lucas county.

The Upper Sandusky municipal court has jurisdiction within Wyandot county.

The Vandalia municipal court has jurisdiction within the municipal corporations of Clayton, Englewood, and Union, and within Butler, Harrison, and Randolph townships, in Montgomery county.

The Van Wert municipal court has jurisdiction within Van Wert county.

The Vermilion municipal court has jurisdiction within the townships of Vermilion and Florence in Erie county and within all of Brownhelm township except within the municipal corporation of Lorain, in Lorain county.

The Wadsworth municipal court has jurisdiction within the municipal corporations of Gloria Glens Park, Lodi, Seville, and Westfield Center, and within Guilford, Harrisville, Homer, Sharon, Wadsworth, and Westfield townships in Medina county.

The Warren municipal court has jurisdiction within Warren and Champion townships, and within all of Howland township except within the municipal corporation of Niles, in Trumbull county.

The Washington Court House municipal court has jurisdiction within Fayette county.

The Wayne county municipal court has jurisdiction within Wayne county.

The Willoughby municipal court has jurisdiction within the municipal corporations of Eastlake, Wickliffe, Willowick, Willoughby Hills, Kirtland, Kirtland Hills, Waite Hill, Timberlake, and Lakeline, and within Kirtland township, in Lake county.

Through June 30, 1992, the Wilmington municipal court has jurisdiction within Clinton county.

The Xenia municipal court has jurisdiction within Caesarcreek, Cedarville, Jefferson, Miami, New Jasper, Ross, Silvercreek, Spring Valley, Sugarcreek, and Xenia townships in Greene county.

(C) As used in this section:

(1) "Within a township" includes all land, including, but not limited to, any part of any municipal corporation, that is physically located within the territorial boundaries of that township, whether or not that land or municipal corporation is governmentally a part of the township.

(2) "Within a municipal corporation" includes all land within the territorial boundaries of the municipal corporation and any townships that are coextensive with the municipal corporation.

HISTORY: 1992 S 273, eff. 3-6-92
1991 H 200; 1988 H 802, H 739, S 319; 1987 S 171; 1986 H 159, H 815; 1982 H 869; 1980 H 961; 1977 H 312; 1975 H 205; 1971 H 92; 1970 H 639, H 1151; 132 v S 451, H 529, H 255, H 361, H 354, H 13; 131 v H 667; 130 v H 266; 128 v 389; 127 v 636; 126 v 853; 125 v 496; 1953 H 1; GC 1582

UNCODIFIED LAW

1988 H 802, § 3, eff. 12-15-88, reads:

The amendments made by this act to section 1901.02 of the Revised Code that specifically include certain municipal corporations within the jurisdiction of the Bowling Green, Cuyahoga Falls, Elyria, Fairborn, Maumee, Medina, Miamisburg, Niles, Oberlin, Perrysburg, Struthers, Sylvania, Vandalia, and Wadsworth Municipal Courts, and that modify the definition of "within a township" in division (C)(1) of that section are not intended to change the jurisdiction of the specified municipal courts but rather are intended to do all of the following:

(A) Clarify that the listed municipal corporations currently are within the jurisdiction of the specified municipal courts because those municipal corporations each were within the jurisdiction of the specified municipal court prior to the effective date of Am. Sub. H.B. 159 of the 116th General Assembly, because they each are within a township that was specified as being within the jurisdiction of the specified municipal court by that act and that still is within the jurisdiction of the specified municipal court, and because they were not removed from the jurisdiction of the particular court by that act;

(B) Ensure that the intent of the General Assembly, as expressed in Am. Sub. H.B. 159 of the 116th General Assembly, to retain the listed municipal corporations within the jurisdiction of the specified municipal courts is effectuated by an interpretation of section 1901.02 of the Revised Code that is consistent with that intent;

(C) Clarify that the definition of "within a township" that is contained in division (C)(1) of section 1901.02 of the Revised Code and that was enacted in Am. Sub. H.B. 159 of the 116th General Assembly was intended to include and does include all land, including, but not limited to, any part of a municipal corporation that is completely within the territorial boundaries of the specified township, regardless of whether any territory or any territorial boundary of the municipal corporation touches any boundary of the specified township.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Civil Practice, Text 1.03(F)
White, Ohio Landlord-Tenant Law (2d Ed.), Text 21.02(C)

CROSS REFERENCES

Partition fence action where fence on township line, venue, 971.17
Powers and jurisdiction of judges, O Const Art IV §18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 4, Appellate Review § 28; 22, Courts and Judges § 22, 28, 32, 169, 362, 366, 367; 26, Criminal Law § 672, 673; 63, Judgment § 489
Am Jur 2d: 20, Courts § 20 to 22, 30, 87 to 91

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Jurisdiction
   a. In general
   b. Territorial
   c. Subject matter
   d. Concurrent
   e. Specific courts

1. Constitutional issues

472 F(2d) 214 (6th Cir Ohio 1972), Gilday v Hamilton County Bd of Elections. Statutes assigning to municipal court of Hamilton county a substantially fewer number of judges on the basis of population than number accorded to other counties was not a denial of equal protection where there was no contention that hearings failed to comply with the requirement of the due process clause that litigants be accorded a meaningful hearing.

2. In general

51 Misc 61, 366 NE(2d) 304 (Muni, Wadsworth 1977), State v Veal. RC 1901.02 is within the meaning of RC 1.48, a statute having prospective application only.

839 F(2d) 275 (6th Cir Ohio 1988), Mallory v Eyrich. Allegations that the merger more than twenty years ago of the Cincinnati municipal court into the Hamilton County municipal court violated the Voting Rights Act of 1965, 42 USC 1973 et seq. as it was amended in 1982, because the percentage of black people in the county is smaller than that in the city alone so that blacks are "disenfranchised" by being less able to elect black judges, are sufficient to state a claim for relief under the federal statute.

1960 OAG 1175. When the territory of a municipal court or courts is expanded to include all of the area of an existing county court, the existing county court is abolished, and the term of the incumbent county court judge and his right to salary are terminated.

3. Jurisdiction

a. In general

163 OS 220, 126 NE(2d) 326 (1955), Gibson v Summers Construction Co. A municipal court established by RC 1901.01 that is not among the courts whose jurisdiction is extended by RC 1901.02 has no jurisdiction beyond the territorial limits of the municipality, notwithstanding language in RC 1901.19 stating municipal courts have jurisdiction within the county they sit in over civil actions for money only in an amount greater than the jurisdiction of justices of the peace.

120 App 249, 198 NE(2d) 674 (1964), Jacubenta v Dunbar. An action may be brought in a municipal court in a county in which there is more than one municipal court against a resident of another county for injuries resulting from the negligent operation of a motor vehicle within the territory of such municipal court, and such municipal court may acquire jurisdiction over the person of a defendant who resides in another county, and may, where it has jurisdiction of the subject matter of the action, issue summons to the sheriff of another county for service on a defendant as in other civil actions, and through such service acquire jurisdiction over the person of such defendant.

96 App 307, 119 NE(2d) 637 (1954), Gibson v Summers Construction Co; affirmed by 163 OS 220, 126 NE(2d) 326 (1955). So far as RC 1901.02 and RC 1901.19 are in direct conflict, the provisions of RC 1901.02, being special and specific, prevail in defining jurisdictional limits of a municipal court.

51 Misc 61, 366 NE(2d) 304 (Muni, Wadsworth 1977), State v Veal. Municipal courts, being statutory courts, must necessarily be guided in the exercise of their territorial and subject-matter jurisdiction exclusively and entirely by statute.

8 Misc 176, 221 NE(2d) 488 (Muni, Akron 1966), Carbin v Major. An action to recover for alleged negligence occurring within the territorial limits of a municipal court may be brought in such court, and service may be obtained on a defendant residing within the county but outside the jurisdiction of the municipal court.

b. Territorial

28 OS(2d) 207, 277 NE(2d) 227 (1971), Fairborn v Munkus. Municipal police officer may make arrest for a violation of municipal ordinance, upon a properly issued warrant, anywhere within jurisdictional limits of the issuing court.

23 App(3d) 85, 23 OBR 150, 491 NE(2d) 345 (Warren 1985), Brooks v Hurst Buick-Pontiac-Olds-GMC, Inc. Municipal courts' jurisdiction is not territorial; the territorial limits of RC 1901.02 are limits on venue only and may be waived by failure to move for a change of venue, notwithstanding a motion raising the issue but erroneously seeking dismissal for lack of jurisdiction.

No. 89 CA 32 (2d Dist Ct App, Greene, 3-20-90), State v Simons. A municipality which has not detached itself from a township is considered to be "within a township" for jurisdictional purposes of RC 1901.02(C)(1).

55 Misc(2d) 3, 563 NE(2d) 57 (Muni, Hamilton County 1989), State v Currens. The Hamilton County Municipal Court has no jurisdiction over acts occurring upon the waters of the Ohio River.

OAG 73-113. A municipality has authority to provide by ordinance for compensation of counsel assigned to represent indigents accused before the municipal court of violations of municipal ordinances; except that if the jurisdiction of the municipal court extends beyond the territorial limits of the municipality, it has authority to compensate such counsel only in cases involving violations of municipal ordinances.

OAG 66-001. Prosecution for violation of Ohio liquor laws may be instituted by and through the prosecuting attorneys of the respective counties along the south shore of Lake Erie in their respective common pleas courts for such liquor law violations committed on the "Ohio waters" of Lake Erie within their respective county boundaries as such boundaries are defined by statute.

1960 OAG 1619. Where a municipal court has territorial jurisdiction in municipal corporations and townships which extend from the shores of Lake Erie southward, such municipal court, unless specifically authorized by statute, does not have jurisdiction over a case involving a violation set forth in RC 1531.18, where the violation occurred in the waters of Lake Erie off the shores of one of said municipal corporations or townships.

c. Subject matter

12 OS(2d) 26, 231 NE(2d) 70 (1967), State ex rel Foreman v Bellefontaine Municipal Court. A municipal court has the power to grant relief by declaratory judgments within the limits of its jurisdiction of the subject matter, but does not have authority to declare certain tax ordinances of a city invalid and to prohibit the county auditor from making assessments under such ordinance.

75 Abs 430, 144 NE(2d) 255 (App, Columbiana 1955), State v Titak. Action of municipal judge in binding defendant accused of driving while intoxicated over to grand jury rather than trying the case on the merits was proper unless challenged by mandamus.

d. Concurrent

49 OS(2d) 195, 360 NE(2d) 704 (1977), State ex rel Brady v Howell. Both the Franklin county municipal court and the mayor's court in New Albany have jurisdiction to hear a case involving an arrest for exceeding the posted speed limit in the village of New Albany, located in Franklin county.

OAG 66-001. The municipal courts of Vermilion and Oberlin do not have concurrent jurisdiction between the easterly and westerly lines of Vermilion-on-the-Lake northerly beyond the south shore of Lake Erie to the international boundary line between the United States and Canada.

e. Specific courts

163 OS 220, 126 NE(2d) 326 (1955), Gibson v Summers Construction Co. The Euclid municipal court does not have jurisdiction outside the city of Euclid.

161 OS 463, 119 NE(2d) 635 (1954), State ex rel Clair v Beacham. The Willoughby municipal court has jurisdiction within Willoughby and Kirtland townships. Willoughby township is the area prescribed by the county commissioners, and does not include the village of Willowick. A township is that territory duly included therein from time to time by action of the county commissioner under GC 3245 (RC 503.02) et seq.

106 App 481, 151 NE(2d) 672 (1958), State v Zdovc. The Parma municipal court has jurisdiction to try a defendant charged with driving while intoxicated in the village of Brooklyn and arrested in such village by a Parma police officer where such defendant is physically before the court and its jurisdiction has been duly invoked by the filing of a valid affidavit charging the offense.

55 Misc(2d) 3, 563 NE(2d) 57 (Muni, Hamilton County 1989), State v Currens. The Hamilton County Municipal Court has no jurisdiction over acts occurring upon the waters of the Ohio River.

51 Misc 61, 366 NE(2d) 304 (Muni, Wadsworth 1977), State v Veal. The Wadsworth municipal court is without jurisdiction to consider criminal matters arising within the township of Guilford prior to January 1, 1977.

66 Abs 568, 113 NE(2d) 35 (Muni, Euclid 1952), Beacon Mutual Indemnity Co v Ostrovecky. The Euclid municipal court has county-wide jurisdiction in motor vehicle damage cases even though the accident occurs outside Euclid and the defendant is served by mail at his residence in South Euclid.

1964 OAG 1339. RC 1901.023 enlarges the jurisdiction of the Port Clinton municipal court to include generally that territory situated northerly beyond the south shore of Lake Erie to the international boundary line between the United States and Canada and between the easterly and westerly boundary lines of the said court except Put-In-Bay township of Ottawa county, which is expressly excluded from such jurisdiction by reason of the language of RC 1901.02.

1901.051 Judges of housing divisions and environmental division

(A) The housing division of the Cleveland municipal court shall consist of one full-time judge. The judge of the housing division shall be elected specifically as the housing division judge and shall be the judge of the Cleveland municipal court whose term began January 2, 1978, and his successors.

(B) The housing division of the Toledo municipal court shall consist of one full-time judge. The judge of the housing division shall be elected specifically as the housing division judge and shall be the judge of the Toledo municipal court whose term begins January 1, 1988, and his successors.

(C) The environmental division of the Franklin county municipal court shall consist of one full-time judge. The judge of the environmental division shall be elected specifically as the environmental division judge and shall be the

judge of the Franklin county municipal court whose term begins January 8, 1992, and his successors.

HISTORY: 1991 H 200, eff. 7-8-91
1987 H 170; 1979 S 35

CROSS REFERENCES

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 169, 362, 368

1901.06 Qualifications and election of judge

A municipal judge during his term of office shall be a qualified elector and a resident of the territory of the court to which he is elected or appointed. A municipal judge shall have been admitted to the practice of law in this state and shall have been, for a total of at least six years preceding his appointment or the commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both.

Except as provided in section 1901.08 of the Revised Code, the first election of any newly created office of a municipal judge shall be held at the next regular municipal election occurring not less than one hundred days after the creation of the office. The institution of a new municipal court shall take place on the first day of January next after the first election for the court.

HISTORY: 1986 H 159, eff. 3-19-87
1971 H 18; 1953 H 1; GC 1586

CROSS REFERENCES

Judge may not perform duties until commissioned by governor, 107.05

Time for holding elections, 3501.02

Qualifications of electors, 3503.01 to 3503.07; O Const Art V §1, O Const Art V §6

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 22, 32, 33, 38, 39, 77, 169, 362; 79, Quo Warranto § 12

Am Jur 2d: 46, Judges § 7 to 10

Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Qualifications of judges
a. In general
b. Admission to practice and good standing
c. Practice of law

1. Constitutional issues

175 OS 253, 193 NE(2d) 392 (1963), State ex rel Williams v Trumbull County Bd of Elections. RC 1901.06 is constitutional and a board of elections is authorized to determine whether a candidate for municipal judge is qualified as an attorney.

164 OS 193, 129 NE(2d) 623 (1955), State ex rel Flynn v Cuyahoga County Bd of Elections; overruled on other grounds by 1 OS(3d) 272, 1 OBR 382, 439 NE(2d) 891 (1982), State ex rel Schenck v Shattuck. RC 1901.06 is constitutional.

OAG 73-082. O Const Art IV, § 6(B), prohibits an assistant county prosecuting attorney from also serving as a part-time municipal court judge.

2. In general

839 F(2d) 275 (6th Cir Ohio 1988), Mallory v Eyrich. The Voting Rights Act of 1965, 42 USC 1973 et seq, applies to judicial as well as legislative elections.

1964 OAG 1017. The authority to designate an additional judge under RC 1901.10 is in the chief justice of the supreme court upon written request of the judge or presiding judge of the municipal court, and if the chief justice reports that no municipal judge is available to serve by designation, the judges of the municipal court may appoint a substitute judge.

3. Qualifications of judges

a. In general

66 App(3d) 757 (Montgomery 1990), Leach v Dixon. The judgment of an acting municipal court judge lacking the residency requirements of RC 1901.06, but meeting all other qualifications, is not subject to vacation due to his nonresidency in the jurisdiction of the court.

OAG 86-002. Pursuant to RC 1901.10 and RC 1901.12, when a municipal court has only one judge, that judge may appoint a substitute to serve as acting judge while the municipal court judge is on vacation or otherwise temporarily absent or incapacitated. The acting judge must have the qualifications set forth in RC 1901.06 and is entitled to be paid in the same manner and at the same rate as the incumbent judge.

b. Admission to practice and good standing

168 OS 338, 154 NE(2d) 751 (1958), State ex rel Saxbe v Franko. An indefinite suspension from the practice of law works a forfeiture of the office of municipal judge and is a ground for removal.

OAG 73-007. A disbarred attorney cannot hold the position of attorney examiner or any other position with the board of tax appeals in which he would perform duties similar to the duties of an attorney examiner.

c. Practice of law

63 OS(3d) 136 (1992), State ex rel Carr v Cuyahoga County Bd of Elections. The period during which a candidate for municipal court judge has been admitted to the bar but has not filed a certificate of registration under Gov Bar VI may not be counted toward the six-year legal experience requirement of RC 1901.06.

1 OS(3d) 272, 1 OBR 382, 439 NE(2d) 891 (1982), State ex rel Schenk v Shattuck. A lawyer employed as a referee is engaged in the "practice of law."

165 OS 447, 136 NE(2d) 47 (1956), State ex rel Devine v Schwarzwalder. Service as an attorney examiner and as chief of the permit division in the department of liquor control is "actively engaging in the practice of law" within the meaning of RC 1901.06.

164 OS 193, 129 NE(2d) 623 (1955), State ex rel Flynn v Cuyahoga County Bd of Elections; overruled on other grounds by 1 OS(3d) 272, 1 OBR 382, 439 NE(2d) 891 (1982), State ex rel Schenck v Shattuck. Service as municipal court referee is not the practice of law within the meaning of RC 1901.06.

1901.07 Term of office of judge; nominations

(A) All municipal court judges shall be elected on the nonpartisan ballot for terms of six years. In a municipal court in which only one judge is to be elected in any one year, his term commences on the first day of January after the election. In a municipal court in which two or more judges are to be elected in any one year, their terms commence on successive days beginning the first day of January, following the election, unless otherwise provided by section 1901.08 of the Revised Code.

(B) All candidates for municipal judge may be nominated either by nominating petition or by primary election, except that if the jurisdiction of a municipal court extends only to the corporate limits of the municipal corporation in which the court is located and that municipal corporation operates under a charter, all candidates shall be nominated in the same manner provided in the charter for the office of municipal judge, or if no specific provisions are made in the charter for the office of municipal judge, in the same manner as the charter prescribes for the nomination and election of the legislative authority of the municipal corporation.

If a municipal corporation that has a municipal court has a charter that specifies a primary date other than the first Tuesday after the first Monday in May, and if the jurisdiction of the court extends beyond the corporate limits of the municipal corporation, all candidates for the office of municipal judge of that court shall be nominated only by petition.

If no charter provisions apply, all candidates for party nomination to the office of municipal judge shall file a declaration of candidacy and petition not later than four p.m. of the seventy-fifth day before the first Tuesday after the first Monday in May, in the form prescribed by section 3513.07 of the Revised Code. The petition shall conform to the requirements provided for such petitions of candidacy contained in section 3513.05 of the Revised Code. If no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to the office of municipal judge, or if the number of persons filing the declarations of candidacy for nominations as candidates of one political party for election to the office does not exceed the number of candidates that that party is entitled to nominate as its candidates for election to the office, no primary election shall be held for the purpose of nominating candidates of that party for election to the office, and the candidates shall be issued certificates of nomination in the manner set forth in section 3513.02 of the Revised Code.

If no charter provisions apply, nonpartisan candidates filing nominating petitions for the office of municipal judge shall file them not later than four p.m. of the day before the first Tuesday after the first Monday in May, in the form prescribed by section 3513.261 of the Revised Code. The petition shall conform to the requirements provided for such petitions of candidacy contained in section 3513.257 of the Revised Code.

The nominating petition or declaration of candidacy for a municipal judge shall contain a designation of the term for which the candidate seeks election. At the following regular municipal election, the candidacies of the judges nominated shall be submitted to the electors of the territory on a nonpartisan, judicial ballot in the same manner as provided for judges of the court of common pleas, except that, in a municipal corporation operating under a charter, all candidates for municipal judge shall be elected in conformity with the charter if provisions are made in the charter for the election of municipal judges.

(C) Notwithstanding divisions (A) and (B) of this section, in the following municipal courts, the judges shall be nominated and elected as follows:

(1) In the Cleveland municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least one thousand electors of the territory of the court. It shall be in the statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Cleveland for filing petitions of candidates for municipal offices. Each elector shall have the right to sign petitions for as many candidates as are to be elected, but no more. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(2) In the Toledo municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least one thousand electors of the territory of the court. It shall be in the statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Toledo for filing nominating petitions for city council. Each elector shall have the right to sign petitions for as many candidates as are to be elected, but no more. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(3) In the Akron municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least two hundred fifty electors of the territory of the court. It shall be in statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Akron for filing nominating petitions of candidates for municipal offices. Each elector shall have the right to sign petitions for as many candidates as are to be elected, but no more. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(4) In the Hamilton county municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least one thousand electors of the territory of the court, which petitions shall be signed, verified, and filed in the manner and within the time required by law for nominating petitions for members of council of the city of Cincinnati. The judges shall be elected by the electors of the territory of the court at the regular municipal election and in the manner provided by law for the election of judges of the court of common pleas.

(5) In the Franklin county municipal court, the judges shall be nominated only by petition. The petition shall be signed by at least one thousand electors of the territory of the court. The petition shall be in the statutory form and shall be filed in the manner and within the time prescribed by the charter of the city of Columbus for filing petitions of candidates for municipal offices. The judges shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges of the court of common pleas.

(6) In the Auglaize, Clermont, Crawford, Hocking, Jackson, Lawrence, Madison, Miami, Portage, and Wayne county municipal courts, the judges shall be nominated only by petition. The petitions shall be signed by at least two hundred fifty electors of the territory of the court and shall conform to the provisions of this section.

(D) As used in this section, as to an election for either a full or an unexpired term, "the territory within the jurisdiction of the court" means such territory as it will be on the first day of January after the election.

HISTORY: 1991 H 200, eff. 7-8-91
1988 H 708; 1986 H 159, H 524; 1985 S 65; 1983 S 213; 1981 H 1; 1980 H 1062, H 961; 1977 H 312; 1975 H 205; 1974 H 662; 1973 H 8; 1971 S 460, H 629; 1969 H 844; 132 v H 255, H 361, H 354; 131 v H 667; 130 v H 266; 128 v 389; 127 v 636; 126 v 853; 125 v 496; 1953 H 1; GC 1587

CROSS REFERENCES

Nonpartisan ballots, 3505.04
Declaration of candidacy for judge; candidate for any unexpired term, 3513.08, 3513.28
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 22, 34 to 36, 77, 169, 187, 362
Am Jur 2d: 46, Judges § 10, 13, 14

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Time to file nominating petition
3. Party nomination or endorsement
4. Charter municipalities

1. In general

28 OS(2d) 7, 274 NE(2d) 560 (1971), State ex rel Leis v Hamilton County Bd of Elections. An act of general assembly enlarging territory of municipal court and specifying times for electing two more judges than the court previously had, but three less than the total which would have been warranted by the general provisions of RC 1901.05 relating to additional judges "by acquisition of territory," overrides the general provisions; and those three additional judicial offices are not created by RC 1901.05.

717 FSupp 540 (SD Ohio 1989), Mallory v Eyrich. Where plaintiffs in a federal suit claim that election of municipal judges "at large" violates 42 USC 1973 because it results in the city's black minority having "less opportunity to participate in the political process and to elect representatives of their choice," and where the government defendants consent to have judgment taken against them and to have the federal court devise a remedy, the federal court will decline this invitation to usurp the function of the Ohio legislature by fashioning a remedy to a violation that may not even exist; whether to elect municipal judges at-large or in districts is a legislative problem and, at a time of growing public dismay at the power wielded by judges over every facet of contemporary life, the court is somewhat startled to note that one of the plaintiffs in the suit is the majority leader of the Ohio house of representatives; the court also takes judicial notice that the plaintiffs and the defendants who wish to confess judgment here are all members of the same political party.

2. Time to file nominating petition

28 OS(2d) 12, 274 NE(2d) 458 (1971), State ex rel Fahrig v Brown. Where a candidate for office filed nominating petitions for an office which were declined because the census did not reflect that the office would be subject to election, but such figures did establish that it would be at a date after the deadline for filing, there is no clear duty requiring such petitions to be accepted relating back to the statutory date for filing.

160 OS 184, 115 NE(2d) 1 (1953), State ex rel Easton v Brown. Neither the statutory nor the charter provisions relating to the election of judges of the municipal court of Cleveland establish a method for the formal nomination of candidates by petition for an unexpired term when the vacancy occurs after the final date fixed for filing nominating petitions, so that mandamus will not issue to compel the acceptance of a relator's nominating petition and the placing of his name on the ballot.

3. Party nomination or endorsement

20 OS(2d) 29, 252 NE(2d) 289 (1969), State ex rel Flex v Gwin. Where a declared candidate for public office is found to be ineligible there is, in effect, an involuntary withdrawal, a withdrawal by operation of law, and, under RC 3513.31, another candidate may be appointed by a county district central committee to take his place.

22 Misc 48, 257 NE(2d) 914 (CP, Cuyahoga 1969), Jenkins v Porter. An action by a candidate nominated at a partisan primary for an injunction and damages against the executive committee of the same party for its endorsement of a candidate nominated by a nonpartisan petition fails to show irreparable damages and presents only a political issue, so that relief must be denied.

4. Charter municipalities

65 App(2d) 23, 413 NE(2d) 855 (1979), State ex rel Froelich v Montgomery County Bd of Elections. Since the Dayton charter contains provisions and forms for the content of nominating petitions and since the Revised Code incorporates charter provisions for the nomination of clerk of the municipal court, the court must look exclusively to the charter for the law that governs this case. Neither the court nor the parties may pick and choose state statutes at variance with the charter when the charter is responsive to the question.

88 Abs 140, 179 NE(2d) 182 (CP, Montgomery 1961), State ex rel Jackson v Horstman. The candidate for office of municipal judge in the charter city of Dayton is required by paragraph two of RC 1901.07 to file for nomination in 1961 in the same manner as that which the charter provides for nomination and election of the city commissioners according to sections 7, 8 and 9 of that charter.

1901.08 Election of judges

The number of, and the time for election of, judges of the following municipal courts and the beginning of their terms shall be as follows:

In the Akron municipal court, two full-time judges shall be elected in 1951, two full-time judges shall be elected in 1953, one full-time judge shall be elected in 1967, and one full-time judge shall be elected in 1975.

In the Alliance municipal court, one full-time judge shall be elected in 1953.

In the Ashland municipal court, one full-time judge shall be elected in 1951.

In the Ashtabula municipal court, one full-time judge shall be elected in 1953.

In the Athens county municipal court, one full-time judge shall be elected in 1967.

In the Auglaize county municipal court, one full-time judge shall be elected in 1975.

In the Avon Lake municipal court, one part-time judge shall be elected in 1957.

In the Barberton municipal court, one full-time judge shall be elected in 1969, and one full-time judge shall be elected in 1971.

In the Bedford municipal court, one full-time judge shall be elected in 1975, and one full-time judge shall be elected in 1979.

In the Bellefontaine municipal court, one part-time judge shall be elected in 1951.

In the Bellevue municipal court, one part-time judge shall be elected in 1951.

In the Berea municipal court, one part-time judge shall be elected in 1957, his term to commence on the first day of

January next after his election, and one part-time judge shall be elected in 1981[6], his term to commence on the second day of January next after his election. The part-time judge elected in 1987 whose term commenced on January 1, 1988, shall serve until December 31, 1993, and the office of that judge is abolished, effective on the earlier of December 31, 1993, or the date on which that judge resigns, retires, or otherwise vacates his judicial office.

In the Bowling Green municipal court, one full-time judge shall be elected in 1983.

In the Bryan municipal court, one full-time judge shall be elected in 1965.

In the Cambridge municipal court, one full-time judge shall be elected in 1951.

In the Campbell municipal court, one part-time judge shall be elected in 1963.

In the Canton municipal court, one full-time judge shall be elected in 1951, one full-time judge shall be elected in 1969, and two full-time judges shall be elected in 1977.

In the Celina municipal court, one full-time judge shall be elected in 1957.

In the Champaign county municipal court, one part-time judge shall be elected in 1983.

In the Chardon municipal court, one part-time judge shall be elected in 1963.

In the Chillicothe municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1977.

In the Circleville municipal court, one full-time judge shall be elected in 1953.

In the Clark county municipal court, one full-time judge shall be elected in 1989, and two full-time judges shall be elected in 1991. The full-time judges of the Springfield municipal court who were elected in 1983 and 1985 shall serve as the judges of the Clark county municipal court from January 1, 1988, until the end of their respective terms.

In the Clermont county municipal court, two full-time judges shall be elected in 1991.

In the Cleveland municipal court, six full-time judges shall be elected in 1975, three full-time judges shall be elected in 1953, and four full-time judges shall be elected in 1955.

In the Cleveland Heights municipal court, one full-time judge shall be elected in 1957.

In the Clinton county municipal court, one full-time judge shall be elected in 1997. The full-time judge of the Wilmington municipal court who was elected in 1991 shall serve as the judge of the Clinton county municipal court from July 1, 1992, until the end of his term on December 31, 1997.

In the Conneaut municipal court, one full-time judge shall be elected in 1953.

In the Coshocton municipal court, one full-time judge shall be elected in 1951.

In the Crawford county municipal court, one full-time judge shall be elected in 1977.

In the Cuyahoga Falls municipal court, one full-time judge shall be elected in 1953, and one full-time judge shall be elected in 1967.

In the Dayton municipal court, three full-time judges shall be elected in 1987, their terms to commence on successive days beginning on the first day of January next after their election, and two full-time judges shall be elected in 1955, their terms to commence on successive days beginning on the second day of January next after their election.

In the Defiance municipal court, one full-time judge shall be elected in 1957.

In the Delaware municipal court, one full-time judge shall be elected in 1953.

In the East Cleveland municipal court, one full-time judge shall be elected in 1957.

In the East Liverpool municipal court, one full-time judge shall be elected in 1953.

In the Eaton municipal court, one full-time judge shall be elected in 1973.

In the Elyria municipal court, one full-time judge shall be elected in 1955, and one full-time judge shall be elected in 1973.

In the Euclid municipal court, one full-time judge shall be elected in 1951.

In the Fairborn municipal court, one full-time judge shall be elected in 1977.

In the Fairfield municipal court, one full-time judge shall be elected in 1989.

In the Findlay municipal court, one full-time judge shall be elected in 1955.

In the Fostoria municipal court, one full-time judge shall be elected in 1975.

In the Franklin municipal court, one part-time judge shall be elected in 1951.

In the Franklin county municipal court, two full-time judges shall be elected in 1969, three full-time judges shall be elected in 1971, seven full-time judges shall be elected in 1967, one full-time judge shall be elected in 1975, and one full-time judge shall be elected in 1991.

In the Fremont municipal court, one full-time judge shall be elected in 1975.

In the Gallipolis municipal court, one full-time judge shall be elected in 1981.

In the Garfield Heights municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1981.

In the Girard municipal court, one full-time judge shall be elected in 1963.

In the Hamilton municipal court, one full-time judge shall be elected in 1953.

In the Hamilton county municipal court, five full-time judges shall be elected in 1967, five full-time judges shall be elected in 1971, two full-time judges shall be elected in 1981, and two full-time judges shall be elected in 1983. All terms of judges of the Hamilton county municipal court shall commence on the first day of January next after their election, except that the terms of the additional judges to be elected in 1981 shall commence on January 2, 1982, and January 3, 1982, and that the terms of the additional judges to be elected in 1983 shall commence on January 4, 1984, and January 5, 1984.

In the Hardin county municipal court, one part-time judge shall be elected in 1989.

In the Hillsboro municipal court, one part-time judge shall be elected in 1957.

In the Hocking county municipal court, one full-time judge shall be elected in 1977.

In the Huron municipal court, one part-time judge shall be elected in 1967.

[6]So in original; should this read "1991"?

In the Ironton municipal court, one full-time judge shall be elected in 1951.

In the Jackson county municipal court, one part-time judge shall be elected in 1977.

In the Kettering municipal court, one full-time judge shall be elected in 1971, and one full-time judge shall be elected in 1975.

In the Lakewood municipal court, one full-time judge shall be elected in 1955.

In the Lancaster municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1979.

In the Lawrence county municipal court, one part-time judge shall be elected in 1981.

In the Lebanon municipal court, one part-time judge shall be elected in 1955.

In the Licking county municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1971.

In the Lima municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1967.

In the Lorain municipal court, one full-time judge shall be elected in 1953, and one full-time judge shall be elected in 1973.

In the Lyndhurst municipal court, one part-time judge shall be elected in 1957.

In the Madison county municipal court, one full-time judge shall be elected in 1981.

In the Mansfield municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1969.

In the Marietta municipal court, one full-time judge shall be elected in 1957.

In the Marion municipal court, one full-time judge shall be elected in 1951.

In the Marysville municipal court, one part-time judge shall be elected in 1963.

In the Mason municipal court, one part-time judge shall be elected in 1965.

In the Massillon municipal court, one full-time judge shall be elected in 1953, and one full-time judge shall be elected in 1971.

In the Maumee municipal court, one full-time judge shall be elected in 1963.

In the Medina municipal court, one full-time judge shall be elected in 1957.

In the Mentor municipal court, one full-time judge shall be elected in 1971.

In the Miami county municipal court, one full-time judge shall be elected in 1975, and one full-time judge shall be elected in 1979.

In the Miamisburg municipal court, one part-time judge shall be elected in 1951.

In the Middletown municipal court, one full-time judge shall be elected in 1953.

In the Mount Vernon municipal court, one full-time judge shall be elected in 1951.

In the Napoleon municipal court, one part-time judge shall be elected in 1963.

In the New Philadelphia municipal court, one full-time judge shall be elected in 1975.

In the Newton Falls municipal court, one full-time judge shall be elected in 1963.

In the Niles municipal court, one full-time judge shall be elected in 1951.

In the Norwalk municipal court, one full-time judge shall be elected in 1975.

In the Oakwood municipal court, one part-time judge shall be elected in 1953.

In the Oberlin municipal court, one full-time judge shall be elected in 1989.

In the Oregon municipal court, one full-time judge shall be elected in 1963.

In the Painesville municipal court, one full-time judge shall be elected in 1951.

In the Parma municipal court, one full-time judge shall be elected in 1951, one full-time judge shall be elected in 1967, and one full-time judge shall be elected in 1971.

In the Perrysburg municipal court, one full-time judge shall be elected in 1977.

In the Portage county municipal court, two full-time judges shall be elected in 1979, and one full-time judge shall be elected in 1971.

In the Port Clinton municipal court, one full-time judge shall be elected in 1953.

In the Portsmouth municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1985.

In the Rocky River municipal court, one full-time judge shall be elected in 1957, and one full-time judge shall be elected in 1971.

In the Sandusky municipal court, one full-time judge shall be elected in 1953.

In the Shaker Heights municipal court, one full-time judge shall be elected in 1957.

In the Shelby municipal court, one part-time judge shall be elected in 1957.

In the Sidney municipal court, one part-time judge shall be elected in 1953.

In the South Euclid municipal court, one part-time judge shall be elected in 1951.

In the Springfield municipal court, two full-time judges shall be elected in 1985, and one full-time judge shall be elected in 1983, all of whom shall serve as the judges of the Springfield municipal court through December 31, 1987, and as the judges of the Clark county municipal court from January 1, 1988, until the end of their respective terms.

In the Steubenville municipal court, one full-time judge shall be elected in 1953.

In the Struthers municipal court, one part-time judge shall be elected in 1963.

In the Sylvania municipal court, one full-time judge shall be elected in 1963.

In the Tiffin municipal court, one full-time judge shall be elected in 1953.

In the Toledo municipal court, two full-time judges shall be elected in 1971, four full-time judges shall be elected in 1975, and one full-time judge shall be elected in 1973.

In the Upper Sandusky municipal court, one part-time judge shall be elected in 1957.

In the Vandalia municipal court, one full-time judge shall be elected in 1959.

In the Van Wert municipal court, one full-time judge shall be elected in 1957.

In the Vermilion municipal court, one part-time judge shall be elected in 1965.

In the Wadsworth municipal court, one full-time judge shall be elected in 1981.

In the Warren municipal court, one full-time judge shall be elected in 1951, and one full-time judge shall be elected in 1971.

In the Washington Court House municipal court, one part-time judge shall be elected in 1951.

In the Wayne county municipal court, one full-time judge shall be elected in 1975, and one full-time judge shall be elected in 1979.

In the Willoughby municipal court, one full-time judge shall be elected in 1951.

In the Wilmington municipal court, one full-time judge shall be elected in 1991, who shall serve as the judge of the Wilmington municipal court through June 30, 1992, and as the judge of the Clinton county municipal court from July 1, 1992, until the end of his term on December 31, 1997.

In the Xenia municipal court, one full-time judge shall be elected in 1977.

In the Youngstown municipal court, one full-time judge shall be elected in 1951, and two full-time judges shall be elected in 1953.

In the Zanesville municipal court, one full-time judge shall be elected in 1953.

HISTORY: 1992 S 273, eff. 3-6-92
1991 H 200; 1988 H 739; 1987 S 171; 1986 H 159; 1984 H 113; 1981 S 51, H 296; 1980 H 961; 1978 H 422, H 720; 1977 H 312, H 138; 1975 H 205; 1973 S 393, H 8; 1972 H 1067; 1971 H 629, H 352; 1970 H 639, H 1151; 1969 H 844; 132 v S 451, H 255, H 529, H 361, H 354; 131 v H 667; 130 v H 266; 128 v 389; 127 v 636; 126 v 853; 125 v 496; 1953 H 1; GC 1588

UNCODIFIED LAW

1991 H 200, § 5 and 6, eff. 7-8-91, read:

Section 5. The Clermont County County Court authorized in the version of section 1907.11 of the Revised Code that was in effect immediately prior to the effective date of this act shall remain in effect until the establishment of the Clermont County Municipal Court on January 1, 1992. Upon the establishment of the Clermont County Municipal Court on January 1, 1992, pursuant to section 1901.06 of the Revised Code, the former Clermont County County Court is abolished.

Section 6. The judges of the county courts listed in section 1907.11 of the Revised Code, as amended by this act, are the same judges of the county courts authorized in the version of section 1907.11 of the Revised Code that was in effect immediately prior to the effective date of this act.

CROSS REFERENCES

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 22, 33, 77, 89, 101, 169, 362

NOTES ON DECISIONS AND OPINIONS

28 OS(2d) 7, 274 NE(2d) 560 (1971), State ex rel Leis v Hamilton County Bd of Elections. The number of additional judges which a municipal court shall have "as a result of a new decennial federal census" equals the difference between (a) the number of judges court would have by applying the formula in second paragraph of RC 1901.05 to the population of the territory of the court as revealed by new census, and (b) number of judges court would have by applying the same formula to population of territory according to the prior census.

28 OS(2d) 7, 274 NE(2d) 560 (1971), State ex rel Leis v Hamilton County Bd of Elections. An act of general assembly enlarging territory of municipal court and specifying times for electing two more judges than the court previously had, but three less than the total which would have been warranted by the general provisions of RC 1901.05 relating to additional judges "by acquisition of territory," overrides the general provisions; and those three additional judicial offices are not created by RC 1901.05.

166 OS 388, 143 NE(2d) 579 (1957), Kovachy v Cleveland. Where a judge of the municipal court of Cleveland automatically continued in office as a judge of the Cleveland municipal court, he was continuing in his unexpired term and hence not entitled to an increased salary.

OAG 75-091. RC 1901.11 requires that the annual compensation to be paid municipal court judges, designated as "full-time" pursuant to RC 1901.08, is computed by adding eighteen cents per capita—for the population of the appropriate territory—to $21,000, but by also restricting that annual compensation to the lesser of (a) the amount of compensation of the judge of the appropriate county common pleas court, reduced by $2,000, or (b) $31,000.

1964 OAG 781. The offices of "part time" municipal court judge and "part time" village solicitor are incompatible where the jurisdiction of the municipal court includes the village which the village solicitor serves.

1901.10 Oath of office; vacancy; appointment or election of substitute; additional judges

(A)(1)(a) The judges of the municipal court and officers of the court shall take an oath of office, as provided in section 3.23 of the Revised Code. The office of judge of the municipal court is subject to forfeiture, and the judge may be removed from office, for the causes and by the procedure provided in sections 3.07 to 3.10 of the Revised Code. A vacancy in the office of judge exists upon the death, resignation, forfeiture, removal from office, or absence from official duties for a period of six consecutive months, as determined under this section, of the judge and also by reason of the expiration of the term of an incumbent when no successor has been elected or qualified. The chief justice of the supreme court may designate a judge of another municipal court to act until that vacancy is filled in accordance with section 107.08 of the Revised Code. A vacancy resulting from the absence of a municipal judge from official duties for a period of six consecutive months shall be determined and declared by the legislative authority.

(b) If a vacancy occurs after the one-hundredth day before the first Tuesday after the first Monday in May and prior to the fortieth day before the day of the general election, all candidates for election to such unexpired term for the office of judge or clerk of the municipal court shall file nominating petitions with the board of elections not later than four p.m. on the tenth day following the day on which the vacancy occurs, provided that when the vacancy occurs fewer than six days before the fortieth day before the general election, the deadline for filing shall be four p.m. on the thirty-sixth day before the day of the general election.

(c) Except as otherwise provided in division (A)(1)(d) of this section, each nominating petition shall be in the form prescribed in section 3513.261 of the Revised Code and shall be signed by qualified electors of the territory of the municipal court not less in number than one per cent of the number of electors who voted for governor at the next preceding regular state election in the territory over which such

court has jurisdiction, or twenty-five hundred electors, whichever is the lesser number.

(d) For any such vacancy occurring in the office of judge or clerk of a municipal court named in division (C)(1), (2), (3), (4), (5), or (6) of section 1901.07 of the Revised Code, each nominating petition shall be signed by qualified electors of the territory of the municipal court not less in number than one per cent of the number of electors who voted for governor at the next preceding regular state election in the territory over which the court has jurisdiction, or the number of qualified electors required to sign a nominating petition in each of those divisions, as applicable to each particular court, whichever is the lesser number.

(e) No nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating in number more than twice the minimum aggregate number of signatures required by this section.

(2) If a judge of a municipal court that has only one judge is temporarily absent or incapacitated, the judge may appoint a substitute who has the qualifications required by section 1901.06 of the Revised Code, and, if the judge is unable to make the appointment, the chief executive shall appoint a substitute. The appointee shall serve during the absence or incapacity of the incumbent, shall have the jurisdiction and powers conferred upon the judge of the municipal court, and shall be styled "acting judge." He shall sign all process and records during the time he is serving, and shall perform all acts pertaining to the office, except that of removal and appointment of officers of the court. All courts shall take judicial notice of the selection and powers of the acting judge, who shall be paid in the same manner and at the same rate as the incumbent judge, except that, if the acting judge is entitled to compensation under division (A)(5) of section 141.04 of the Revised Code, then section 1901.121 of the Revised Code shall govern its payment.

(B) When the volume of cases pending in any municipal court necessitates an additional judge, the chief justice of the supreme court, upon written request of the judge or presiding judge of that municipal court, may designate a judge of another municipal court to serve for any period of time that he may prescribe. In addition to the annual salary provided for in section 1901.11 of the Revised Code, and, if the judge is entitled to compensation under division (A)(5) of section 141.04 of the Revised Code in connection with his own court, in addition to that compensation, each judge while holding court outside his territory on the designation of the chief justice shall receive thirty dollars or the difference between the per diem compensation of the judge so assigned and the per diem compensation of the judges of the court to which he is assigned calculated on the basis of two hundred fifty working days per year, whichever is the greater, for each day of such assignment, and his actual and necessary expenses, to be paid from the city treasury or, in the case of a county-operated municipal court, from the county treasury.

If a request is made by a judge or the presiding judge of a municipal court to designate a judge of another municipal court because of the volume of cases in the court for which the request is made and the chief justice reports, in writing, that no municipal judge is available to serve by designation, the judges of the court requesting the designation may appoint a substitute as provided in division (A)(2) of this section, who may serve for any period of time that is prescribed by the chief justice. The substitute judge shall be paid in the same manner and at the same rate as the incumbent judges, except that, if he is entitled to compensation under division (A)(5) of section 141.04 of the Revised Code, then section 1901.121 of the Revised Code shall govern its payment.

HISTORY: 1991 S 8, eff. 5-21-91
1988 S 386; 1986 H 159; 1983 S 213; 1978 H 280; 1975 H 205; 1974 H 662; 1973 H 578; 131 v H 12; 126 v 853; 1953 H 1; GC 1590

PRACTICE AND STUDY AIDS

Giannelli, Ohio Evidence Manual, Author's Comment § 201.03

CROSS REFERENCES

Administration of oath of office, 3.24
Filling vacancy in judgeship, O Const Art IV §13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 22, 42, 78, 101, 147, 150, 154, 156, 157, 169, 362
Am Jur 2d: 46, Judges § 12, 248 et seq.
Power to appoint judge for term commencing at or after expiration of term of appointing officer or body. 75 ALR2d 1282

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. Acting, substitute, or additional judge
   a. In general
   b. Qualifications
   c. Compensation

1. Constitutional issues

76 App 228, 62 NE(2d) 589 (1945), Blanton v Littrell. GC 1579-85, providing for appointment of acting judge of municipal court of Dayton by chief justice thereof, when an incumbent judge of such court is temporarily absent or incapacitated from acting, is constitutional.

67 App 248, 36 NE(2d) 422 (1940), State v Partanen. Person arraigned and convicted before judge temporarily appointed under GC 1579-1073 (Repealed) has not been deprived of his right to appear before a magistrate and be informed of the charges placed against him, guaranteed under GC 13433-1 (RC 2937.02), nor has he been deprived of "due process of law."

OAG 86-025. Absent statutory authority therefor, O Const Art IV, § 6(B) prohibits a municipal court judge from participating in an "in lieu of salary increase" pick up plan, whereby the appropriate public employer assumes and pays the employee contributions to the public employees retirement system on behalf of the judge, and does not impose a commensurate reduction in the judge's salary. A municipal court judge may, however, participate in a "salary reduction" pick up plan, under which the appropriate public employer assumes and pays the employee contributions to the public employees retirement system on behalf of the judge, and reduces the judge's salary by the amount of such contributions. Any such plan must be qualified with the internal revenue service prior to implementation to insure favorable tax treatment is received.

OAG 73-082. O Const Art IV, § 6(B), prohibits an assistant county prosecuting attorney from also serving as a part-time municipal court judge.

2. Acting, substitute, or additional judge

a. In general

6 OS(3d) 21, 6 OBR 18, 450 NE(2d) 1176 (1983), State ex rel Sowell v Lovinger. Mandamus will lie to challenge the assignment of an action to an acting judge whose appointment is alleged to be unlawful.

48 App(3d) 106, 548 NE(2d) 319 (Trumbull 1988), In re McClung. An acting judge is vested with the same jurisdiction and power under RC 1901.10 as an elected municipal court judge.

13 App(3d) 291, 13 OBR 356, 469 NE(2d) 566 (Cuyahoga 1984), Huffman v Shaffer. Where a retired judge who has been appointed as an acting municipal court judge renders a decision beyond his certification date, such decision may not be attacked as long as the record shows a colorable title to appointment as a substitute and the judge was a de facto acting municipal judge.

No. 45529 (8th Dist Ct App, Cuyahoga, 5-3-84), State ex rel Sowell v Lovinger. RC 2937.20 specifically applies to the appointment of a substitute judge where an affidavit of prejudice is filed against a municipal judge and therefore takes precedence over the provisions of RC 1901.10.

OAG 90-089. Pursuant to O Const Art IV §6(B) and RC 1901.11(D), an individual may not serve simultaneously as an acting judge and referee of a municipal court.

OAG 86-002. Pursuant to RC 1901.10 and RC 1901.12, when a municipal court has only one judge, that judge may appoint a substitute to serve as acting judge while the municipal court judge is on vacation or otherwise temporarily absent or incapacitated.

1964 OAG 1017. An additional judge may be designated for a municipal court when the volume of pending cases in the municipal court necessitates an additional judge.

1964 OAG 1017. The authority to designate an additional judge under RC 1901.10 is in the chief justice of the supreme court upon written request of the judge or presiding judge of the municipal court, and if the chief justice reports that no municipal judge is available to serve by designation, the judges of the municipal court may appoint a substitute judge.

Bd of Commrs on Grievances & Discipline Op 88-005 (4-25-88). An acting judge appointed by the judge of a municipal court pursuant to RC 1901.10 may not hear cases where one of the lawyers involved is related within the third degree, as defined in CJC Canon 3, to the appointing judge.

Bd of Commrs on Grievances & Discipline Op 87-049 (12-18-87). An "acting judge," as referred to in RC 1901.10(A), must comply with the Code of Judicial Conduct while acting as judge, except for Code of Jud Cond Canon 5C(2), (3), D, E, F, and G, and Canon 6C; further, one who has been an acting judge should not act as a lawyer in a proceeding in which he or she served as a judge or in any other related proceeding.

b. Qualifications

OAG 86-002. An acting judge must have the qualifications set forth in RC 1901.06.

OAG 86-002. Pursuant to RC 141.04 and RC 1901.11, a common pleas judge may not serve as acting judge of a municipal court under RC 1901.10 or RC 1901.12.

OAG 65-061. A member of the state board of education may not accept an appointment by a municipal judge as substitute during the judge's vacation period.

1964 OAG 1023. The offices of "part time" municipal court judge and "part time" village solicitor are incompatible where the jurisdiction of the municipal court includes the village which the solicitor serves.

1964 OAG 781. The offices of "part time" municipal court judge and "part time" village solicitor are incompatible where the jurisdiction of the municipal court includes the village which the village solicitor serves.

c. Compensation

OAG 86-002. An acting judge is entitled to be paid in the same manner and at the same rate as the incumbent judge.

OAG 73-083. An acting judge of a municipal court must be paid in the same manner and at the same rate as the incumbent judge.

OAG 73-083. In calculating the per diem compensation rate of an acting municipal court judge, the total salary of the incumbent judge is divided by the annual number of working days of the court.

1964 OAG 1491. The city council of the city in which a municipal court is located is the sole authority to prescribe additional compensation for a judge of that court, notwithstanding the territorial jurisdiction of the court extends beyond the territorial boundaries of the city.

1901.31 Clerks; deputy clerks; powers and duties

The clerk and deputy clerks of a municipal court shall be selected, be compensated, give bond, and have powers and duties as follows:

(A) There shall be a clerk of the court who is appointed or elected as follows:

(1)(a) Except in the Akron, Clermont county, Hamilton county, Portage county, and Wayne county municipal courts, if the population of the territory equals or exceeds one hundred thousand at the regular municipal election next preceding the expiration of the term of the present clerk, the clerk shall be nominated and elected by the qualified electors of the territory in the manner that is provided for the nomination and election of judges in section 1901.07 of the Revised Code.

The clerk so elected shall hold office for a term of six years, which term shall commence on the first day of January next after his election and continue until his successor is elected and qualified.

(b) In the Hamilton county municipal court, the clerk of courts of Hamilton county shall be the clerk of the municipal court and may appoint an assistant clerk who shall receive the compensation, payable out of the treasury of Hamilton county in semimonthly installments, that the board of county commissioners prescribes. The clerk of courts of Hamilton county, acting as the clerk of the Hamilton county municipal court and assuming the duties of that office, shall receive compensation at one-fourth the rate that is prescribed for the clerks of courts of common pleas as determined in accordance with the population of the county and the rates set forth in sections 325.08 and 325.18 of the Revised Code. This compensation shall be paid from the county treasury in semimonthly installments and is in addition to the annual compensation that is received for the performance of the duties of the clerk of courts of Hamilton county, as provided in sections 325.08 and 325.18 of the Revised Code.

(c) In the Portage county and Wayne county municipal courts, the clerks of courts of Portage county and Wayne county shall be the clerks, respectively, of the Portage county and Wayne county municipal courts and may appoint a chief deputy clerk for each branch that is established pursuant to section 1901.311 of the Revised Code, and assistant clerks as the judges of the municipal court determine are necessary, all of whom shall receive the compensation that the legislative authority prescribes. The clerks of courts of Portage county and Wayne county, acting as the clerks of the Portage county and Wayne county municipal courts and assuming the duties of these offices, shall receive compensation at the rate of four thousand eight hundred dollars per year payable from the county treasury in semimonthly installments.

(d) Except as otherwise provided in division (A)(1)(d) of this section, in the Akron municipal court, candidates for election to the office of clerk of the court shall be nominated by primary election. The primary election shall be held on the day specified in the charter of the city of Akron for the nomination of municipal officers. Notwithstanding section 3513.257 of the Revised Code, the nominating petitions of independent candidates shall be signed by at least

two hundred fifty qualified electors of the territory of the court.

The candidates shall file a declaration of candidacy and petition, or a nominating petition, whichever is applicable, not later than four p.m. of the seventy-fifth day before the day of the primary election, in the form prescribed by section 3513.07 or 3513.261 of the Revised Code. The declaration of candidacy and petition, or the nominating petition, shall conform to the applicable requirements of section 3513.05 or 3513.257 of the Revised Code.

If no valid declaration of candidacy and petition is filed by any person for nomination as a candidate of a particular political party for election to the office of clerk of the Akron municipal court, a primary election shall not be held for the purpose of nominating a candidate of that party for election to that office. If only one person files a valid declaration of candidacy and petition for nomination as a candidate of a particular political party for election to that office, a primary election shall not be held for the purpose of nominating a candidate of that party for election to that office, and the candidate shall be issued a certificate of nomination in the manner set forth in section 3513.02 of the Revised Code.

Declarations of candidacy and petitions, nominating petitions, and certificates of nomination for the office of clerk of the Akron municipal court shall contain a designation of the term for which the candidate seeks election. At the following regular municipal election, all candidates for the office shall be submitted to the qualified electors of the territory of the court in the manner that is provided in section 1901.07 of the Revised Code for the election of the judges of the court. The clerk so elected shall hold office for a term of six years, which term shall commence on the first day of January next after his election, and continue until his successor is elected and qualified.

(e) In the Clermont county municipal court, the clerk of courts of Clermont county shall be the clerk of the municipal court. The clerk of courts of Clermont county, acting as the clerk of the Clermont county municipal court and assuming the duties of that office, shall receive compensation at one-fourth the rate that is prescribed for the clerks of courts of common pleas as determined in accordance with the population of the county and the rates set forth in sections 325.08 and 325.18 of the Revised Code. This compensation shall be paid from the county treasury in semimonthly installments and is in addition to the annual compensation that is received for the performance of the duties of the clerk of courts of Clermont county, as provided in sections 325.08 and 325.18 of the Revised Code.

(2)(a) Except in the Alliance, Auglaize county, Lorain, Massillon, and Youngstown municipal courts, if the population of the territory is less than one hundred thousand, the clerk shall be appointed by the court, and the clerk shall hold office until his successor is appointed and qualified.

(b) In the Alliance, Lorain, Massillon, and Youngstown municipal courts, the clerk shall be elected for a term of office as described in division (A)(1)(a) of this section.

(c) In the Auglaize county municipal court, the clerk of courts of Auglaize county shall be the clerk of the municipal court and may appoint a chief deputy clerk for each branch that is established pursuant to section 1901.311 of the Revised Code, and assistant clerks as the judge of the court determines are necessary, all of whom shall receive the compensation that the legislative authority prescribes. The clerk of courts of Auglaize county, acting as the clerk of the Auglaize county municipal court and assuming the duties of that office, shall receive compensation at the rate of one thousand eight hundred dollars per year payable from the county treasury in semimonthly installments.

(3) During the temporary absence of the clerk due to illness, vacation, or other proper cause, the court may appoint a temporary clerk, who shall be paid the same compensation and have the same authority and perform the same duties, as the clerk.

(B) Except in the Clermont county, Hamilton county, Portage county, and Wayne county municipal courts, if a vacancy occurs in the office of the clerk of the Alliance, Lorain, Massillon, or Youngstown municipal court or occurs in the office of the clerk of a municipal court for which the population of the territory equals or exceeds one hundred thousand because the clerk ceases to hold the office before the end of his term or because a clerk-elect fails to take office, the vacancy shall be filled, until a successor is elected and qualified, by a person chosen by the residents of the territory of the court who are members of the county central committee of the political party by which the last occupant of that office or the clerk-elect was nominated. Not less than five nor more than fifteen days after a vacancy occurs, those members of that county central committee shall meet to make an appointment to fill the vacancy. At least four days before the date of the meeting, the chairman or a secretary of the county central committee shall notify each such committee member by first class mail of the date, time, and place of the meeting and its purpose. A majority of all such committee members constitutes a quorum, and a majority of the quorum is required to make the appointment. If the office so vacated was occupied or was to be occupied by a person not nominated at a primary election, or if the appointment was not made by the committee members in accordance with this division, the court shall make an appointment to fill the vacancy. A successor shall be elected to fill the office for the unexpired term at the first municipal election that is held more than one hundred twenty days after the vacancy occurred.

(C) In a municipal court, other than the Auglaize county municipal court, for which the population of the territory is less than one hundred thousand, the clerk of a municipal court shall receive the annual compensation that the legislative authority prescribes. In a municipal court other than the Clermont county, Hamilton county, Portage county, and Wayne county municipal courts for which the population of the territory is one hundred thousand or more, the clerk of a municipal court shall receive annual compensation in a sum equal to eighty-five per cent of the salary of a judge of the court. The compensation is payable in semimonthly installments from the same sources and in the same manner as provided in section 1901.11 of the Revised Code.

(D) Before entering upon the duties of his office, the clerk of a municipal court shall give bond of not less than six thousand dollars to be determined by the judges of the court, conditioned upon the faithful performance of his duties as clerk.

(E) The clerk of a municipal court may do all of the following: administer oaths, take affidavits, and issue executions upon any judgment rendered in the court, including a judgment for unpaid costs; issue, sign, and attach the seal of the court to all writs, process, subpoenas, and papers issuing out of the court; and approve all bonds, sureties, recognizances, and undertakings fixed by any

judge of the court or by law. He shall do all of the following: file and safely keep all journals, records, books, and papers belonging or appertaining to the court; record the proceedings of the court; perform all other duties that the judges of the court may prescribe; and keep a book showing all receipts and disbursements, which book shall be open for public inspection at all times.

The clerk shall prepare and maintain a general index, a docket, and other records that the court, by rule, requires, all of which shall be the public records of the court. In the docket, the clerk shall enter, at the time of the commencement of an action, the names of the parties in full, the names of the counsel, and the nature of the proceedings. Under proper dates, he shall note the filing of the complaint, issuing of summons or other process, returns, and any subsequent pleadings. He shall also enter all reports, verdicts, orders, judgments, and proceedings of the court, clearly specifying the relief granted or orders made in each action. The court may order an extended record of any of the above to be made and entered, under the proper action heading, upon the docket at the request of any party to the case, the expense of which record may be taxed as costs in the case or may be required to be prepaid by the party demanding the record, upon order of the court.

(F) The clerk of a municipal court shall receive, collect, and issue receipts for all costs, fees, fines, bail, and other moneys payable to the office or to any officer of the court. He shall each month disburse to the proper persons or officers, and take receipts for, all costs, fees, fines, bail, and other moneys that he collects. Subject to section 3375.50 of the Revised Code and to any other section of the Revised Code that requires a specific manner of disbursement of any moneys received by a municipal court and except for the Hamilton county and Lawrence county municipal courts, the clerk shall pay all fines received for violation of municipal ordinances into the treasury of the municipal corporation the ordinance of which was violated and shall pay all fines received for violation of township resolutions adopted pursuant to Chapter 504. of the Revised Code into the treasury of the township the resolution of which was violated. Subject to section 1901.024 of the Revised Code, in the Hamilton county and Lawrence county municipal courts, the clerk shall pay fifty per cent of the fines received for violation of municipal ordinances and fifty per cent of the fines received for violation of township resolutions adopted pursuant to Chapter 504. of the Revised Code into the treasury of the county. Subject to sections 3375.50, 3375.53, and 5503.04 of the Revised Code and to any other section of the Revised Code that requires a specific manner of disbursement of any moneys received by a municipal court, the clerk shall pay all fines collected for the violation of state laws into the county treasury. Except in a county-operated municipal court, the clerk shall pay all costs and fees the disbursement of which is not otherwise provided for in the Revised Code into the city treasury. The clerk of a county-operated municipal court shall pay the costs and fees the disbursement of which is not otherwise provided for in the Revised Code into the county treasury. Moneys deposited as security for costs shall be retained pending the litigation. The clerk shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office. On the expiration of the term of the clerk, he shall deliver the records to his successor. He shall have other powers and duties as are prescribed by rule or order of the court.

(G) All moneys paid into a municipal court shall be noted on the record of the case in which they are paid and shall be deposited in a state or national bank, or a domestic savings and loan association, as defined in section 1151.01 of the Revised Code, that is selected by the clerk. Any interest received upon the deposits shall be paid into the city treasury, except that in a county-operated municipal court, the interest shall be paid into the treasury of the county in which the court is located.

On the first Monday in January of each year, the clerk shall make a list of the titles of all cases in the court that were finally determined more than one year past in which there remains unclaimed in the possession of the clerk any funds, or any part of a deposit for security of costs not consumed by the costs in the case. The clerk shall give notice of the moneys to the parties who are entitled to the moneys or to their attorneys of record. All the moneys remaining unclaimed on the first day of April of each year shall be paid by the clerk to the city treasurer, except that in a county-operated municipal court, the moneys shall be paid to the treasurer of the county in which the court is located. Any part of the moneys shall be paid by the treasurer at any time to the person who has the right to the moneys, upon proper certification of the clerk.

(H) Deputy clerks may be appointed by the clerk and shall receive the compensation, payable in semimonthly installments out of the city treasury, that the clerk may prescribe, except that the compensation of any deputy clerk of a county-operated municipal court shall be paid out of the treasury of the county in which the court is located. Each deputy clerk shall take an oath of office before entering upon the duties of his office and, when so qualified, may perform the duties appertaining to the office of the clerk. The clerk may require any of the deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of his duties.

(I) For the purposes of this section, whenever the population of the territory of a municipal court falls below one hundred thousand but not below ninety thousand, and the population of the territory prior to the most recent regular federal census exceeded one hundred thousand, the legislative authority of the municipal corporation may declare, by resolution, that the territory shall be considered to have a population of at least one hundred thousand.

(J) The clerk or a deputy clerk shall be in attendance at all sessions of the municipal court, although not necessarily in the courtroom, and may administer oaths to witnesses and jurors and receive verdicts.

HISTORY: 1992 S 105, eff. 6-23-92
1991 H 200, H 77, H 61; 1990 H 737; 1988 H 708; 1986 H 159, S 54; 1985 H 201; 1984 H 37; 1981 H 121; 1980 H 961, H 1026; 1978 H 494, H 422; 1977 H 517, H 312; 1976 H 375; 1975 H 205, H 49; 132 v S 493, H 361, H 354; 131 v H 667; 125 v 496; 1953 H 1; GC 1610

UNCODIFIED LAW

1992 S 105, § 4, eff. 3-24-92, reads:

Except in the second paragraph of its division (F), section 1901.31 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 77 and Am. Sub. H.B. 200 of the 119th General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that

such is the resulting version in effect prior to the effective date of this act.

The second paragraph of division (F) of section 1901.31 of the Revised Code was amended, in inconsistent form, by both Sub. H.B. 77 and Am. Sub. H.B. 200 of the 119th General Assembly. The amendments of the two acts, although inconsistent in form, are not substantively irreconcilable. The second paragraph of division (F) of section 1901.31 and division (E) of section 4513.263 of the Revised Code are therefore amended by this act to reconcile the amendments. The second paragraph of division (F) of section 1901.31 of the Revised Code is presented in this act as it results from its amendment by Sub. H.B. 77; the paragraph is stricken through in confirmation of the amendment by Am. Sub. H.B. 200 (which also struck through the paragraph). The substance of the Sub. H.B. 77 amendment to the paragraph (which provides for forwarding to the treasurer of state, fines collected for violations of political subdivision seat belt laws) is transferred to division (E) of section 4513.263 of the Revised Code. These reconciling amendments, prepared in pursuance of the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized where not substantively irreconcilable, are corrective in purpose and are not substantive.

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Crim R 55
Baldwin's Ohio Township Law, Text 3.16

CROSS REFERENCES

Security required for funds deposited by clerk, 131.11

Clerk released from liability for loss of public funds, when, 131.18 et seq.

Dog control ordinances, disposition of fines for violations, 955.99

Cleveland municipal court clerk to be administrative assistant for small claims division, 1925.01

Duties of clerk of court, 2303.31

Deposit of rent by tenants, duties of clerk of court, 5321.08

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 1, Acknowledgments, Affidavits, Oaths, and Notaries § 41; 62, Judgment § 69, 70

Am Jur 2d: 15A, Clerks of Court § 39 et seq.

Liability of clerk of court or surety on bond for negligent or wrongful acts of deputies or assistants. 71 ALR2d 1140

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Appointment or election
3. Compatible offices
4. Compensation
5. Powers and duties
6. Receipts and disbursements

1. In general

48 OS(2d) 379, 358 NE(2d) 615 (1976), State ex rel Lippitt v Edgecomb. Supreme court affirmed an appellate court judgment that evidence was inconclusive to show that the temporary docket of a municipal court regarding drunken driving arrests was a public record.

56 App(2d) 109, 381 NE(2d) 955 (1978), Dalton v Hysell. A clerk of courts who negligently fails to perform a ministerial duty and thereby proximately causes injury to another has no immunity from an action for damages.

73 Abs 214, 137 NE(2d) 163 (App, Montgomery 1955), State ex rel Focke v Price; affirmed by 165 OS 340, 135 NE(2d) 407 (1956). A deputy clerk of the municipal court has authority to issue a warrant for the arrest of a person charged with a misdemeanor.

OAG 80-073. Pursuant to O Const Art II, § 20, a clerk of court who is assigned the duties of administrator may not receive additional compensation for the performance of those duties.

OAG 80-073. A municipal court has no authority to appoint an administrator who serves the entire court, although it may appoint an administrator for the small claims division of the court.

OAG 73-113. A municipality has authority to provide by ordinance for compensation of counsel assigned to represent indigents accused before the municipal court of violations of municipal ordinances; except that if the jurisdiction of the municipal court extends beyond the territorial limits of the municipality, it has authority to compensate such counsel only in cases involving violations of municipal ordinances.

1953 OAG 2442. The compensation of judges and clerks of municipal courts for which provision is made in GC 1591 (RC 1901.11) and this section, should be taken into account in the determination of the amounts payable monthly to a county law library association.

2. Appointment or election

28 OS(2d) 12, 274 NE(2d) 458 (1971), State ex rel Fahrig v Brown. Where a candidate for office filed nominating petitions for an office which were declined because the census did not reflect that the office would be subject to election, but such figures did establish that it would be at a date after the deadline for filing, there is no clear duty requiring such petitions to be accepted relating back to the statutory date for filing.

65 App(2d) 23, 413 NE(2d) 855 (1979), State ex rel Froelich v Montgomery County Bd of Elections. Since the Dayton charter contains provisions and forms for the content of nominating petitions and since the Revised Code incorporates charter provisions for the nomination of clerk of the municipal court, the court must look exclusively to the charter for the law that governs this case. Neither the court nor the parties may pick and choose state statutes at variance with the charter when the charter is responsive to the question.

OAG 84-028. A municipal court clerk may not appoint deputy sheriffs of the county in which the municipal court is located as deputy clerks of the court.

OAG 80-073. A municipal court has no authority to appoint an administrator who serves the entire court, although it may appoint an administrator for the small claims division of the court.

3. Compatible offices

OAG 88-093. A municipal court clerk may not appoint a municipal police officer who serves within the court's jurisdiction to the position of deputy municipal court clerk.

OAG 80-073. Pursuant to O Const Art II, § 20, a clerk of court who is assigned the duties of administrator may not receive additional compensation for the performance of those duties.

OAG 80-073. Whether the office of clerk of court and the position of administrator of small claims court are incompatible is a factual determination, depending on the duties assigned.

1963 OAG 132. The office of village marshal is incompatible with the position of deputy clerk of courts of a municipal court.

1957 OAG 1379. A deputy clerk appointed pursuant to RC 1901.31 may serve in such capacity for two municipal courts if physically possible.

4. Compensation

57 OS(3d) 73, 565 NE(2d) 829 (1991), State ex rel O'Farrell v New Philadelphia City Council. A court or clerk need not prepare a journal entry when determining compensation of its employees.

57 OS(3d) 73, 565 NE(2d) 829 (1991), State ex rel O'Farrell v New Philadelphia City Council. The municipal judge and clerk of the court, not the city council, are empowered to determine compensation of municipal court employees, e.g., probation officer/bailiff, deputy bailiff, and deputy clerk. A municipal legislative authority is required to fund these positions at the rates determined by the judge and clerk absent a showing that the request is unreasonable or an abuse of discretion.

18 OS(3d) 157, 18 OBR 214, 480 NE(2d) 443 (1985), State ex rel Cramer v Crawford County Bd of Commrs. In order for county

commissioners to prevail on the contention that a municipal court clerk has classified certain employees as deputy clerks solely for the purpose of obtaining the authority to determine their salaries, and without regard to their actual duties, there must be clear evidence of an abuse of discretion, since the court has wide discretion to prescribe duties of deputy clerks pursuant to RC 1901.31(F) and RC 1901.31(H).

18 OS(3d) 157, 18 OBR 214, 480 NE(2d) 443 (1985), State ex rel Cramer v Crawford County Bd of Commrs. Since the legislative authority is empowered to set the salary of a municipal court clerk, it is not required to honor even a reasonable salary request from the court and clerk, provided only that the legislative authority does not act in a manner which impairs the court's administration of justice.

9 OS(3d) 132, 9 OBR 382, 459 NE(2d) 213 (1984), State ex rel Durkin v Youngstown City Council. RC 1901.31(H) imposes a mandatory duty upon the legislative authority to fund the deputy clerk salaries prescribed by the clerk of courts, who is not required to establish the reasonableness of such salaries.

6 OS(3d) 132, 6 OBR 189, 451 NE(2d) 794 (1983), Schultz v Garrett. Where a statute setting forth the formula for the compensation of an officer is effective before the commencement of such officer's term, any salary increase which results from a change in one of the factors used by the statute to calculate the compensation is payable to the officer.

29 OS(2d) 114, 279 NE(2d) 870 (1972), State ex rel Edgecomb v Rosen; overruled by 6 OS(3d) 132, 6 OBR 189, 451 NE(2d) 794 (1983), Schultz v Garrett. Where general assembly by legislative enactment increases salary of a municipal court judge, thus entitling clerk of municipal court to increase in salary under RC 1901.31(C), such increase is not payable to an incumbent clerk during his existing term.

9 App(2d) 30, 222 NE(2d) 798 (1966), State ex rel Huppert v Sparma. Mandamus will issue to compel a city council to appropriate such sum of money as may be necessary to pay deputy clerks of a municipal court such compensation as the clerk has prescribed.

OAG 90-110. A municipal court employee is entitled to receive sick leave benefits as fixed by his compensating authority, subject to the statutory minimum prescribed by RC 124.38(A).

OAG 90-110. The various compensating authorities within a municipal court may prescribe vacation leave and holiday benefits as part of the compensation of the employees whose compensation they fix; such compensating authorities are given discretion to determine, upon examination of the operation of the municipal court served by such employees, whether its employees are county employees for purposes of the minimum vacation and holiday benefits prescribed by RC 325.19.

OAG 88-014. An elected municipal court clerk is entitled to receive any salary increase which results from application of the formula contained in RC 1901.31(C) to increases in the salary of a municipal court judge caused by amendments to RC 141.04 and 1901.11, and such increase in salary for the municipal court clerk does not violate O Const Art II §20 when paid to the clerk while in term.

OAG 86-025. O Const Art II, § 20, prohibits the clerk of the Massillon municipal court from participating in an "in lieu of salary increase" pick up plan, whereby the appropriate public employer assumes and pays the employee contributions to the public employees retirement system on behalf of the clerk, and does not impose a commensurate reduction in the clerk's salary, unless a statute enacted prior to the commencement of his term authorizes him to participate in such a plan. Such clerk may, however, participate in a "salary reduction" pick up plan, under which the appropriate public employer assumes and pays the employee contributions to the public employees retirement system on behalf of the clerk, and reduces the clerk's salary by the amount of such contributions, whether such plan is instituted before or during his term of office. Any such plan must be qualified with the internal revenue service prior to implementation to insure favorable tax treatment is received.

OAG 81-020. A municipal court clerk may not receive additional compensation for the performance of the duties of an assignment commissioner, typist, stenographer, or statistical clerk of the court, because the duties of these court aides fall within the scope of the office of the clerk.

OAG 80-073. A municipal court has no authority to fix the compensation of an administrator of the small claims division of the court.

OAG 80-014. RC 1901.31(H) gives the clerk of a municipal court the sole power to fix the salaries of the deputy clerks of the court. Regardless of RC 1901.36 and any charter provisions or ordinances, neither the legislative authority of a municipal corporation nor the city manager, if any, has the authority to fix the deputy clerks' salaries.

OAG 77-082. Where the general assembly by legislative enactment increases the compensation of a clerk of courts of a county, thus entitling the clerk of a municipal court to an increase in salary under RC 1901.31, such an increase is not payable to an incumbent clerk of a municipal court during his existing term.

OAG 65-056. Lawrence county is required to pay two-fifths of the increase in the salary of the clerk of the municipal court of Ironton, when the increase has been authorized by the Ironton city council, and two-fifths of the increase in the salary of the bailiff of said court when the increase has been authorized by the court, even though the amount of the increase is not included in the appropriations for the year 1965 made by the board of county commissioners.

1961 OAG 2393. Where the council of a city has, by ordinance, prescribed the salary of the clerk of the municipal court, the mayor of the city is without authority to veto the ordinance.

1957 OAG 1379. The salary of a deputy clerk of a municipal court may be based on the volume of work done, or may be a straight salary, or may be a combination of the two.

1953 OAG 2442. The compensation of judges and clerks of municipal courts for which provision is made in GC 1591 (RC 1901.11) and this section, should be taken into account in the determination of the amounts payable monthly to a county law library association.

5. Powers and duties

20 OS(3d) 30, 20 OBR 279, 485 NE(2d) 706 (1985), State ex rel Mothers Against Drunk Drivers v Gosser. A local court rule requiring the court clerk not to accept for filing and not to disclose any documents in traffic and criminal cases other than complaints, motions, memoranda, entries, and verdicts is void, as it conflicts with the clerk's statutory duty under RC 1901.31(E) to keep such records, and conflicts with the duty under RC 149.43(B) to permit public access to such records.

9 App(3d) 218, 9 OBR 368, 459 NE(2d) 618 (Summit 1983), Dugan v Akron Civil Service Comm. The Akron civil service commission has no jurisdiction to determine the validity of the discharge of deputy clerks of the Akron Municipal Court.

73 Abs 214, 137 NE(2d) 163 (App, Montgomery 1955), State ex rel Focke v Price; affirmed by 165 OS 340, 135 NE(2d) 407 (1956). A deputy clerk of the municipal court has authority to issue a warrant for the arrest of a person charged with a misdemeanor.

864 F(2d) 416 (6th Cir Ohio 1988), Foster v Walsh. A court clerk issuing a warrant at the direction of a state judge is absolutely immune to suit for this act because it is "truly judicial" in nature, even if an error is made in carrying out the judge's instructions; as a result, a civil rights suit against the clerk under 42 USC 1983 based upon the warrant must be dismissed.

OAG 84-028. A municipal court clerk may not appoint deputy sheriffs of the county in which the municipal court is located as deputy clerks of the court.

OAG 80-073. Pursuant to O Const Art II, § 20, a clerk of court who is assigned the duties of administrator may not receive additional compensation for the performance of those duties.

OAG 80-073. A municipal court has no authority to appoint an administrator who serves the entire court, although it may appoint an administrator for the small claims division of the court.

OAG 80-073. A municipal court has no authority to fix the compensation of an administrator of the small claims division of the court.

OAG 80-014. RC 1901.31(H) gives the clerk of a municipal court the sole power to fix the salaries of the deputy clerks of the court. Regardless of RC 1901.36 and any charter provisions or ordinances, neither the legislative authority of a municipal corporation nor the city manager, if any, has the authority to fix the deputy clerks' salaries.

1961 OAG 2384. Where a person is convicted of a misdemeanor in a municipal or county court, is committed to the county jail for failure to pay the fine and costs, and wishes to pay the amount of the unpaid fine and costs in order to be released, such payment must be paid to the appropriate clerk of court before the prisoner may be released; and the county sheriff is without authority to collect the amount and release the prisoner without an appropriate authorization from the clerk.

6. Receipts and disbursements

4 App(3d) 254, 4 OBR 471, 448 NE(2d) 458 (Montgomery 1982), Kettering v Berger. A municipal court judge who keeps money gratuitously given him for having performed marriage services is in violation of O Const Art IV, § 6(B), and is accountable for payment of the money to the clerk of the municipal court.

OAG 82-054. A probate court judge may not invest prepaid and unearned costs in United States treasury bills; rather, such costs must be held by the court or deposited as provided in RC 2335.25. Where such funds are deposited or invested any interest earned thereon should be paid into the county treasury to the credit of the general fund.

OAG 77-088. In an unsuccessful criminal prosecution, brought in a municipal court for an alleged violation of state law, fees for witnesses and jurors, and other court costs, are to be paid by the county.

OAG 75-045. Under RC 1901.34 and RC 3375.50, the costs collected by the clerk of a municipal court in a state criminal proceeding are to be paid into the county treasury.

OAG 73-113. A municipality has authority to provide by ordinance for compensation of counsel assigned to represent indigents accused before the municipal court of violations of municipal ordinances; except that if the jurisdiction of the municipal court extends beyond the territorial limits of the municipality, it has authority to compensate such counsel only in cases involving violations of municipal ordinances.

OAG 65-190; overruled in part by OAG 82-054. Where the clerk of municipal court holds money which comes into his custody by virtue of RC 1901.31(F), the clerk may deposit such funds in a state or national bank under RC 1901.31(G) and subject to RC 131.11; any interest earned and paid upon such deposits should accrue to the party to whom the principal of the fund is properly payable under RC 2919.02.

1964 OAG 1410. In cases involving a violation of a state statute, other than traffic laws, and in the absence of any statutory provision for a specific distribution of the fine, bail or other money held by the clerk of municipal courts, such fine or bail should be distributed in accordance with RC 2937.36 and RC 1901.31(F).

1964 OAG 1410. When a bail bond is posted in connection with a charge of burglary under RC 2907.15 which does not prescribe a fine as a part of the sentence, and it is ordered forfeited by the municipal court, such bail bond is subject to RC 1901.31(F) and RC 2937.36.

1964 OAG 1410. When a recognizance bond posted in a municipal court under RC 2947.16 is ordered forfeited by the court, such recognizance bond is subject to RC 1901.31(F) and RC 2937.36, and required to be distributed to the county treasury after deduction of municipal court costs.

1964 OAG 1410. When a bail bond posted in a municipal court in connection with a charge of assault and battery under RC 2901.25 is ordered forfeited by the court, such bail bond is subject to RC 1901.31(F) and RC 2937.36, and required to be distributed to the county treasury after deduction of the municipal court costs.

1962 OAG 3241. Under division (F) of RC 1901.31 and under RC 4513.35, fines collected under RC 4511.01 to RC 4511.78, inclusive, RC 4511.99, and RC 4513.01 to RC 4513.37, inclusive, in other than state highway patrol cases, are paid into the county treasury, subject to payments to the county law library.

1962 OAG 3241. Money collected by a clerk of a municipal court from a bail bond forfeiture under RC 4511.01 to RC 4511.78, RC 4511.99, and RC 4513.01 to RC 4513.37, inclusive, where the arrest was not made by a state highway patrolman, should be distributed as provided in RC 1901.31 and RC 4513.35, as if the amount of the forfeiture were imposed as a fine for the offense charged, except that the clerk may satisfy the amount of the accrued costs in the case out of the amount of the bail before making such distribution.

1961 OAG 2384. Where a person is convicted of a misdemeanor in a municipal or county court, is committed to the county jail for failure to pay the fine and costs, and wishes to pay the amount of the unpaid fine and costs in order to be released, such payment must be paid to the appropriate clerk of court before the prisoner may be released; and the county sheriff is without authority to collect the amount and release the prisoner without an appropriate authorization from the clerk.

1961 OAG 2309. Where a jury trial case involving a violation of a municipal ordinance is certified to the court of common pleas of the county, and said court imposes a fine for the violation, the amount of the fine collected should be paid into the treasury of the county, and the treasurer of the municipal corporation is not authorized to demand and receive such fine.

COUNTY COURT

1907.11 Number of judges

(A) Each county court district shall have the following county court judges, to be elected as follows:

In the Adams county county court, one part-time judge shall be elected in 1982.

In the Ashtabula county county court, one part-time judge shall be elected in 1980, and one part-time judge shall be elected in 1982.

In the Belmont county county court, one part-time judge shall be elected in 1980, and two part-time judges shall be elected in 1982.

In the Brown county county court, two part-time judges shall be elected in 1982.

In the Butler county county court, one part-time judge shall be elected in 1980, and two part-time judges shall be elected in 1982.

In the Carroll county county court, one part-time judge shall be elected in 1982.

In the Columbiana county county court, one part-time judge shall be elected in 1980, and two part-time judges shall be elected in 1982.

In the Darke county county court, one part-time judge shall be elected in 1980, and one part-time judge shall be elected in 1982.

In the Erie county county court, one part-time judge shall be elected in 1982.

In the Fulton county county court, one part-time judge shall be elected in 1980, and one part-time judge shall be elected in 1982.

In the Harrison county county court, one part-time judge shall be elected in 1982.

In the Highland county county court, one part-time judge shall be elected in 1982.

In the Holmes county county court, one part-time judge shall be elected in 1982.

In the Jefferson county county court, one part-time judge shall be elected in 1980, and two part-time judges shall be elected in 1982.

In the Mahoning county county court, one part-time judge shall be elected in 1980, and three part-time judges shall be elected in 1982.

In the Meigs county county court, one part-time judge shall be elected in 1982.

In the Monroe county county court, one part-time judge shall be elected in 1982.

In the Montgomery county county court, three part-time judges shall be elected in 1980, and two part-time judges shall be elected in 1982.

In the Morgan county county court, one part-time judge shall be elected in 1982.

In the Morrow county county court, one part-time judge shall be elected in 1982.

In the Muskingum county county court, one part-time judge shall be elected in 1980, and one part-time judge shall be elected in 1982.

In the Noble county county court, one part-time judge shall be elected in 1982.

In the Paulding county county court, one part-time judge shall be elected in 1982.

In the Perry county county court, one part-time judge shall be elected in 1982.

In the Pike county county court, one part-time judge shall be elected in 1982.

In the Putnam county county court, one part-time judge shall be elected in 1980, and one part-time judge shall be elected in 1982.

In the Sandusky county county court, two part-time judges shall be elected in 1982.

In the Trumbull county county court, two part-time judges shall be elected in 1982.

In the Tuscarawas county county court, one part-time judge shall be elected in 1982.

In the Vinton county county court, one part-time judge shall be elected in 1982.

In the Warren county county court, one part-time judge shall be elected in 1980, and one part-time judge shall be elected in 1982.

(B)(1) Additional judges shall be elected at the next regular election for a county court judge as provided in section 1907.13 of the Revised Code.

(2) Vacancies caused by the death or the resignation from, forfeiture of, or removal from office of a judge shall be filled in accordance with section 107.08 of the Revised Code, except as provided in section 1907.15 of the Revised Code.

HISTORY: 1991 H 200, eff. 7-8-91
1986 H 158

Note: 1907.11 is former 1907.041 amended and recodified by 1986 H 158, eff. 3-17-87; 129 v 478; 128 v 823; 127 v 978.

Note: Former 1907.11 repealed by 127 v 978, 1039, eff. 1-1-58; 126 v 276; 1953 H 1; GC 1723.

UNCODIFIED LAW

1991 H 200, § 5 and 6, eff. 7-8-91, read:

Section 5. The Clermont County County Court authorized in the version of section 1907.11 of the Revised Code that was in effect immediately prior to the effective date of this act shall remain in effect until the establishment of the Clermont County Municipal Court on January 1, 1992. Upon the establishment of the Clermont County Municipal Court on January 1, 1992, pursuant to section 1901.06 of the Revised Code, the former Clermont County County Court is abolished.

Section 6. The judges of the county courts listed in section 1907.11 of the Revised Code, as amended by this act, are the same judges of the county courts authorized in the version of section 1907.11 of the Revised Code that was in effect immediately prior to the effective date of this act.

CROSS REFERENCES

Changes in number of judges, O Const Art IV §15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 23, 31, 150, 154, 157, 374

NOTES ON DECISIONS AND OPINIONS

707 FSupp 947 (SD Ohio 1989), Mallory v Eyrich. Selection of judges for a court having jurisdiction throughout a county does not violate the Voting Rights Act of 1965, 42 USC 1973 et seq., simply because the judges are elected "at large"; a violation is shown, however, by proof (1) a minority group that votes largely for the same party is sufficiently numerous and geographically compact that it would constitute a majority in a single-member district, and (2) the white majority also votes as a group to such a degree that it is usually able to defeat the candidate a federal court finds to be preferred by the minority; the fact a black candidate has received wide support from white voters is held "sufficient to support a finding that whites do not regularly vote as a bloc to defeat blacks' preferred candidates."

OAG 66-176. The person appointed by the governor to a vacancy in the office of county judge shall hold office until his successor is elected and has qualified. (Annotation from former RC 1907.041.)

OAG 66-176. A candidate for the office of county judge cannot qualify himself after August 8, 1966, and have his name placed on the ballot at the election to be held in November 1966. (Annotation from former RC 1907.041.)

OAG 66-029. The court of common pleas should make a determination whether it is necessary to reduce the number of county court judges under the criterion established in RC 1907.041, and if it is determined that the number should not be reduced, the governor may fill any vacancy which exists. (Annotation from former RC 1907.041.)

OAG 66-029. Regardless of reductions in population in a county court district the office of one of several county court judges is not automatically abolished by the derogation of a portion of the county court district's area of jurisdiction. (Annotation from former RC 1907.041.)

OAG 65-007. A nominating petition filed pursuant to RC 1907.051 and 3513.261 is void where it states that the candidate is seeking election at the general election in November to a full term as county court judge and there is no full term for which an election could be held at that time, and a favorable vote cast by the electors for such candidate for a full term as judge of the county court is ineffective. (Annotation from former RC 1907.041.)

1963 OAG 479. Creation of new municipal courts without county wide jurisdiction whereby all or part of the territory assigned to certain county court judges is preempted does not abolish the office of county court judge or judges who were elected as such for a term certain in a county court district comprised of all the area of an entire county outside of the then existing municipal courts territorial jurisdiction. (Annotation from former RC 1907.041.)

1962 OAG 2786. In county court districts having an even number of judges, half of said judges should be elected in 1962 for a

four-year term and half should be elected for a two-year term. (Annotation from former RC 1907.041.)

1957 OAG 812. A county court judge must be a resident elector of the county court district in which he is elected or appointed. (Annotation from former RC 1907.041.)

1907.13 Qualifications of judges; terms; nominations; elections

A county court judge, during his term of office, shall be a qualified elector and a resident of the county court district in which he is elected or appointed. Every county court judge shall have been admitted to the practice of law in this state and shall have been, for a total of at least two years preceding his appointment or the commencement of his term, engaged in the practice of law in this state. The requirements relative to the admission to the bar of this state and the practice of law in this state do not apply to any judge who is holding office on November 1, 1962, and who is subsequently a candidate to succeed himself.

Judges shall be elected by the electors of the county court district at the general election in even-numbered years as set forth in section 1907.11 of the Revised Code for a term of six years commencing on the first day of January next following the election for the county court. Their successors shall be elected in even-numbered years every six years.

All candidates for county court judge shall be nominated by petition. The nominating petition shall be in the general form and signed and verified as prescribed by section 3513.261 of the Revised Code, and shall be signed by qualified electors of the county court district not less in number than one per cent of the number of electors who voted for governor at the next preceding regular state election in the district. No such nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating in number more than twice the minimum aggregate number of signatures required by this section. A nominating petition shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the general election.

HISTORY: 1991 H 200, eff. 7-8-91
1986 H 158

Note: 1907.13 is former 1907.051 amended and recodified by 1986 H 158, eff. 3-17-87; 1980 H 1062; 1978 H 422; 1971 H 18; 128 v 823; 127 v 978.

Note: Former 1907.13 repealed by 127 v 978, 1039, eff. 1-1-58; 1953 H 1; GC 1725.

CROSS REFERENCES

Vacancy in office of judge, 107.08
Qualifications of electors, 3503.01 to 3503.07; O Const Art V §1, O Const Art V §6
Nonpartisan ballots, 3505.04
Declaration of candidacy for judge; candidate for any unexpired term, 3513.08, 3513.28
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 32 to 36, 38, 39
Am Jur 2d: 46, Judges § 7 to 10, 14, 15
Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Qualifications of judge
   a. In general
   b. Compatible and incompatible offices
3. Nomination

1. In general

707 FSupp 947 (SD Ohio 1989), Mallory v Eyrich. Selection of judges for a court having jurisdiction throughout a county does not violate the Voting Rights Act of 1965, 42 USC 1973 et seq., simply because the judges are elected "at large"; a violation is shown, however, by proof (1) a minority group that votes largely for the same party is sufficiently numerous and geographically compact that it would constitute a majority in a single-member district, and (2) the white majority also votes as a group to such a degree that it is usually able to defeat the candidate a federal court finds to be preferred by the minority; the fact a black candidate has received wide support from white voters is held "sufficient to support a finding that whites do not regularly vote as a bloc to defeat blacks' preferred candidates."

OAG 66-176. The person appointed by the governor to a vacancy in the office of county judge shall hold office until his successor is elected and has qualified. (Annotation from former RC 1907.051.)

1963 OAG 479. Creation of new municipal courts without county-wide jurisdiction whereby all or part of the territory assigned to certain county court judges is preempted does not abolish the office of county court judge or judges who were elected as such for a term certain in a county court district comprised of all the area of an entire county outside of the then existing municipal courts territorial jurisdiction. (Annotation from former RC 1907.051.)

1962 OAG 2786. In county court districts having an even number of judges, half of said judges should be elected in 1962 for a four-year term and half should be elected for a two-year term. (Annotation from former RC 1907.051.)

1961 OAG 2396. Where pursuant to the 1960 federal decennial census an additional judge is elected in a county court district for a term commencing on January 1, 1963, the court of common pleas of the district should designate the area of jurisdiction and location of court of each judge in the district by that date. (Annotation from former RC 1907.051.)

1961 OAG 2396. Where a court of common pleas assigns areas of jurisdiction to judges of a county court district, the court may establish areas made up of townships and portions of townships in order to make each area in the district as equal in population to others in the district as is possible under existing conditions. (Annotation from former RC 1907.051.)

1957 OAG 812. County court judges must be elected by the electors of the entire county court district in which the office of such judge is created rather than by the area of jurisdiction designated by RC 1907.071. (Annotation from former RC 1907.051.)

2. Qualifications of judge

a. In general

OAG 66-176. A candidate for the office of county judge cannot qualify himself after August 8, 1966, and have his name placed on the ballot at the election to be held in November 1966. (Annotation from former RC 1907.051.)

1958 OAG 2295. A candidate for election to the office of county court judge must be an elector of the county court district involved. (Annotation from former RC 1907.051.)

1957 OAG 812. A county court judge must be a resident elector of the county court district in which he is elected or appointed. (Annotation from former RC 1907.051.)

b. Compatible and incompatible offices

OAG 91-010. An individual elected under RC 1907.13 as a judge of a county court may be employed, pursuant to RC 309.09(A), as a township solicitor in an area of jurisdiction not under his control as county court judge, provided the individual, as township solicitor, does not engage in the practice of law in matters pending or originating in that county court during his term of office, and further provided that he is not in violation of any local departmental regulations, charter provisions or ordinances, or statutory provisions, rules, or canons subject to interpretation by the Ohio ethics commission pursuant to RC 102.08 or the board of commissioners on grievances and discipline of the supreme court pursuant to Gov Bar R V(2)(b).

OAG 71-005. Offices of county judge of county court and assistant city solicitor of municipality in adjoining county are compatible, provided it is physically possible for one person to discharge duties of both offices. (Annotation from former RC 1907.051.)

OAG 66-138. The offices of a "part time" village solicitor and acting county court judge are incompatible, and if there are no persons possessing the qualifications required by RC 1907.061 who do not hold incompatible positions, then no appointment as acting county court judge can properly be made. (Annotation from former RC 1907.051.)

OAG 65-006. The position of county court judge and the position of county law librarian are incompatible. (Annotation from former RC 1907.051.)

1960 OAG 1177. There is no incompatibility between the offices of member of a board of elections and county court judge unless the county court judge is currently a candidate for elective office. (Annotation from former RC 1907.051.)

1958 OAG 1807. The offices of county court judge and the position of school teacher are not incompatible. (Annotation from former RC 1907.051.)

1958 OAG 1807. The offices of county court judge and member of a school board are compatible. (Annotation from former RC 1907.051.)

1958 OAG 1667. The office of county court judge is compatible with that of deputy registrar of motor vehicles, provided it is physically possible to properly attend to the duties of both. (Annotation from former RC 1907.051.)

1958 OAG 1648. The office of judge of the county court is incompatible with the position of county veterans service officer. (Annotation from former RC 1907.051.)

3. Nomination

OAG 66-176. A candidate for the office of county judge cannot qualify himself after August 8, 1966, and have his name placed on the ballot at the election to be held in November 1966. (Annotation from former RC 1907.051.)

OAG 65-007. A nominating petition filed pursuant to RC 1907.051 and RC 3513.261 is void where it states that the candidate is seeking election at the general election in November to a full term as county court judge and there is no full term for which an election could be held at that time, and a favorable vote cast by the electors for such candidate for a full term as judge of the county court is ineffective. (Annotation from former RC 1907.051.)

COURT OF COMMON PLEAS

2301.01 Courts of common pleas; election of judges

There shall be a court of common pleas in each county held by one or more judges, each of whom has been admitted to practice as an attorney at law in this state and has, for a total of at least six years preceding his appointment or commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both, resides in said county, and is elected by the electors therein. Each judge shall be elected for six years at the general election next preceding the year in which the term, as provided in sections 2301.02 and 2301.03 of the Revised Code, commences, and his successor shall be elected at the general election next preceding the expiration of such term.

HISTORY: 1971 H 18, eff. 7-1-72
1953 H 1; Source—GC 1532

CROSS REFERENCES

Removal from office, 3.07 to 3.10
Oath of office of judges, 3.23
Vacancy in office of judge, how filled, 107.08; O Const IV §13
Appeals from administrative decisions, 119.12
Compensation of judges, 141.04 to 141.07
Administrative expenses; request for appropriation of from county commissioners, action in court of appeals, 307.01
Liability insurance for judges, 307.441
Assistant prosecutor, appointment, 309.06
Vacancy or disability of sheriff, 311.03
Order to coroner to change decision on cause of death, 313.19
Ineligibility of judge to hold certain offices, 319.07
Examination of offices of county treasurer and auditor, 321.41
Bank liquidation, review by court of action of taking possession of bank, 1113.17
Consumer sales practices, jurisdiction of, 1345.04
County court judge, approval of bond by common pleas court judge, 1907.14
Judge of probate division, election, qualification, term, 2101.02
Judgments by confession, absence of common pleas judge, 2101.34
Judge of court of common pleas to act as probate judge, when, 2101.36, 2101.37
Complaint for payment or distribution by fiduciary, probate court may send case to common pleas court, 2109.60
Creation and powers of juvenile court, assignment of judge, 2151.07 to 2151.24
Transfer of child to juvenile court, 2151.25
Child support enforcement advisory committee, membership on, 2301.35
Backlog of cases, assignment of visiting judges, 2303.281, 2503.04
Jurisdiction of common pleas court, trial transfer, 2305.01
Disqualification, removal of residence of common pleas judge, 2701.03, 2701.04
Court constables, appointment, duties, compensation, 2701.07, 2701.08
Retirement, removal or suspension of judge, 2701.11
Enforcing arbitration agreement; appointment of arbitrator, 2711.03, 2711.04
Marital conciliation procedures, determination of necessity of by common pleas court, 3117.01
Nonpartisan ballots, 3505.04
Declaration of candidacy for judge in primary election, 3513.08
Primary election ballots, 3513.16
Nominating petitions for judge and candidate for any unexpired term, 3513.28
Prohibition of practice of law by judge, 4705.01
Appeal from decision of county board of revision, 5717.05
Conservancy districts, jurisdiction of common pleas court over, 6101.07
Petition for county drainage improvements, procedure in common pleas court, appointment of arbitration board, 6131.04
Assignment of temporary judge by supreme court, O Const Art IV §5
Election of judges; maximum age; compensation, O Const Art IV §6
Changes in number of judges, O Const Art IV §15

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

Disability of judge, during trial, after verdict or findings, Civ R 63; Crim R 25

Administrative judge; assignment of cases to judges, C P Sup R 3, 4

Assignment of judges during emergency, C P Sup R 14

Conduct of candidate for judicial office, Code of Jud Cond Canon 7

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 4, Appellate Review § 174; 13, Cancellation and Reformation of Instruments § 89; 22, Courts and Judges § 16, 17, 31, 33, 35, 38, 39; 46, Family Law § 374

Am Jur 2d: 20, Courts § 3; 46, Judges § 3, 7 to 10, 14

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498

NOTES ON DECISIONS AND OPINIONS

1 OS(3d) 272, 1 OBR 382, 439 NE(2d) 891 (1982), State ex rel Schenck v Shattuck. Employment as a court referee constitutes the practice of law for purposes of RC 2301.01.

168 OS 249, 153 NE(2d) 393 (1958), State ex rel Peirce v Stark County Elections Bd. Where a relator files an action in prohibition challenging the qualifications of a candidate for common pleas judge after the date on which the candidate could voluntarily withdraw and after the time during which the vacancy could have been filled, his unexplained dilatoriness will deprive him of the relief sought.

47 App(3d) 15, 546 NE(2d) 1337 (Franklin 1988), Hubner v Sigall. A "court" is an incorporeal, political being, composed of one or more judges who sit at fixed times and places attended by proper officers under lawful authority to administer justice; the word "court" in a statute is not always synonymous with the word "judge" but in a broad sense also includes the jury or may even be taken to mean "jury" alone in a particular instance when the jury is trier of fact.

3 App(2d) 226, 210 NE(2d) 138 (1964), State v Phipps. The official act of a single judge of a court of common pleas composed of two or more judges is the act of the court; concurrence of the other judge or judges in such act is not necessary to its validity.

OAG 73-074. A vacancy was created on the Hamilton county court of common pleas, division of domestic relations, by the indefinite suspension from the practice of law and resultant disqualification of an incumbent judge of that court, which the governor may fill by appointment pursuant to O Const Art IV §13.

2301.02 Number of judges for each county; terms of office

The number of judges of the court of common pleas for each county, the time for the next election of the judges in the several counties, and the beginning of their terms shall be as follows:

(A) In Adams, Ashland, Fayette, and Pike counties, one judge, elected in 1956, term to begin February 9, 1957;

In Brown, Crawford, Defiance, Delaware, Highland, Holmes, Morgan, Ottawa, and Union counties, one judge, in 1954, term to begin February 9, 1955;

In Auglaize county, one judge, in 1956, term to begin January 9, 1957;

In Coshocton, Darke, Fulton, Gallia, Guernsey, Hardin, Jackson, Knox, Logan, Madison, Mercer, Monroe, Morrow, Paulding, Vinton, and Wyandot counties, one judge, in 1956, term to begin January 1, 1957;

In Carroll, Champaign, Clinton, Hocking, Meigs, Pickaway, Preble, Shelby, Van Wert, and Williams counties, one judge, in 1952, term to begin January 1, 1953;

In Harrison and Noble counties, one judge, in 1954, term to begin April 18, 1955;

In Henry and Putnam counties, one judge, in 1956, term to begin May 9, 1957;

In Huron county, one judge, in 1952, term to begin May 14, 1953;

In Perry county, one judge, in 1954, term to begin July 6, 1956;

In Sandusky county, two judges, one to be elected in 1954, term to begin February 10, 1955, and one to be elected in 1978, term to begin January 1, 1979;

(B) In Allen county, three judges, one to be elected in 1956, term to begin February 9, 1957, the second to be elected in 1958, term to begin January 1, 1959, and the third to be elected in 1992, term to begin January 1, 1993;

In Ashtabula county, three judges, one to be elected in 1954, term to begin February 9, 1955, one to be elected in 1960, term to begin January 1, 1961, and one to be elected in 1978, term to begin January 2, 1979;

In Athens county, two judges, one to be elected in 1954, term to begin February 9, 1955, and one to be elected in 1990, term to begin July 1, 1991;

In Erie county, two judges, one in 1956, term to begin January 1, 1957, the second to be elected in 1970, term to begin January 2, 1971;

In Fairfield county, two judges, one in 1954, term to begin February 9, 1955, the second to be elected in 1970, term to begin January 1, 1971;

In Geauga county, two judges, one to be elected in 1956, term to begin January 1, 1957, the second to be elected in 1976, term to begin January 1, 1977;

In Greene county, three judges, one to be elected in 1956, term to begin February 9, 1957, the second to be elected in 1960, term to begin January 1, 1961, and the third to be elected in 1978, term to begin January 2, 1979;

In Hancock county, two judges, one to be elected in 1952, term to begin January 1, 1953, the second to be elected in 1978, term to begin January 1, 1979;

In Lawrence county, two judges, one to be elected in 1954, term to begin February 9, 1955, the second to be elected in 1976, term to begin January 1, 1977;

In Marion county, two judges, one to be elected in 1952, term to begin January 1, 1953, the second to be elected in 1976, term to begin January 2, 1977;

In Medina county, two judges, one to be elected in 1956, term to begin January 1, 1957, the second to be elected in 1966, term to begin January 1, 1967;

In Miami county, two judges, one in 1954, term to begin February 9, 1955, and one to be elected in 1970, term to begin on January 1, 1971;

In Muskingum county, two judges, one to be elected in 1968, term to begin August 9, 1969, and one to be elected in 1978, term to begin January 1, 1979;

In Portage county, three judges, one to be elected in 1956, term to begin January 1, 1957, the second to be elected in 1960, term to begin January 1, 1961, and the third to be elected in 1986, term to begin January 2, 1987;

In Ross county, two judges, one to be elected in 1956, term to begin February 9, 1957, the second to be elected in 1976, term to begin January 1, 1977;

In Scioto county, two judges, one to be elected in 1954, term to begin February 10, 1955, the second to be elected in 1960, term to begin January 1, 1961;

In Seneca county, two judges, one to be elected in 1956, term to begin January 1, 1957, and the second to be elected in 1986, term to begin January 2, 1987;

In Warren county, three judges, one elected in 1954, term to begin February 9, 1955, the second to be elected in 1970, term to begin January 1, 1971, and the third to be elected in 1986, term to begin January 1, 1987;

In Washington county, two judges, one to be elected in 1952, term to begin January 1, 1953, and one to be elected in 1986, term to begin January 1, 1987;

In Wood county, three judges, one elected in 1968, term beginning January 1, 1969, the second to be elected in 1970, term to begin January 2, 1971, and the third to be elected in 1990, term to begin January 1, 1991;

In Belmont and Jefferson counties, two judges, in 1954, terms to begin January 1, 1955, and February 9, 1955, respectively;

In Clark county, three judges, one to be elected in 1952, term to begin January 1, 1953, the second to be elected in 1956, term to begin January 2, 1957, and the third to be elected in 1986, term to begin January 3, 1987. The existing term of office of the judge elected in 1979 is extended through January 2, 1987.

In Clermont county, four judges, one to be elected in 1956, term to begin January 1, 1957, the second to be elected in 1964, term to begin January 1, 1965, the third to be elected in 1982, term to begin January 2, 1983, and the fourth to be elected in 1986, term to begin January 2, 1987;

In Columbiana county, two judges, one to be elected in 1952, term to begin January 1, 1953, the second to be elected in 1956, term to begin January 1, 1957;

In Lake county, five judges, one to be elected in 1958, term to begin January 1, 1959, the second to be elected in 1960, term to begin January 2, 1961, the third to be elected in 1964, term to begin January 3, 1965, the fourth and fifth to be elected in 1978, terms to begin on January 4, 1979, and January 5, 1979, respectively;

In Licking county, three judges, one to be elected in 1954, term to begin February 9, 1955, one to be elected in 1964, term to begin January 1, 1965, and one to be elected in 1990, term to begin January 1, 1991;

In Lorain county, six judges, two to be elected in 1952, terms to begin January 1, 1953, and January 2, 1953, respectively, one to be elected in 1958, term to begin January 3, 1959, one to be elected in 1968, term to begin January 1, 1969, and two to be elected in 1988, terms to begin January 4, 1989, and January 5, 1989, respectively;

In Butler county, eight judges, one to be elected in 1956, term to begin January 1, 1957; two to be elected in 1954, terms to begin January 1, 1955, and February 9, 1955, respectively; one to be elected in 1968, term to begin January 2, 1969; one to be elected in 1986, term to begin January 3, 1987; two to be elected in 1988, terms to begin January 1, 1989, and January 2, 1989, respectively; and one to be elected in 1992, term to begin January 4, 1993;

In Richland county, three judges, one to be elected in 1956, term to begin January 1, 1957, the second to be elected in 1960, term to begin February 9, 1961, the third to be elected in 1968, term to begin January 2, 1969;

In Tuscarawas county, two judges, one to be elected in 1956, term to begin January 1, 1957, and the second to be elected in 1960, term to begin January 2, 1961;

In Wayne county, two judges, one elected in 1956, term beginning January 1, 1957, and one to be elected in 1968, term to begin January 2, 1969;

In Trumbull county, five judges, one to be elected in 1952, term to begin January 1, 1953, the second to be elected in 1954, term to begin January 1, 1955, the third to be elected in 1956, term to begin January 1, 1957, the fourth to be elected in 1964, term to begin January 1, 1965, the fifth to be elected in 1976, term to begin January 2, 1977;

(C) In Cuyahoga county, thirty-nine judges; eight to be elected in 1954, terms to begin on successive days beginning from January 1, 1955, to January 7, 1955, and February 9, 1955, respectively; eight to be elected in 1956, terms to begin on successive days beginning from January 1, 1957, to January 8, 1957; three to be elected in 1952, terms to begin from January 1, 1953, to January 3, 1953; two to be elected in 1960, terms to begin on January 8, 1961, and January 9, 1961, respectively; two to be elected in 1964, terms to begin January 4, 1965, and January 5, 1965, respectively; one to be elected in 1966, term to begin on January 10, 1967; four to be elected in 1968, terms to begin on successive days beginning from January 9, 1969, to January 12, 1969; two to be elected in 1974, terms to begin on January 18, 1975, and January 19, 1975, respectively; five to be elected in 1976, terms to begin on successive days beginning January 6, 1977, to January 10, 1977; two to be elected in 1982, terms to begin January 11, 1983, and January 12, 1983, respectively; and two to be elected in 1986, terms to begin January 13, 1987, and January 14, 1987, respectively;

In Franklin county, twenty judges; two to be elected in 1954, terms to begin January 1, 1955, and February 9, 1955, respectively; four to be elected in 1956, terms to begin January 1, 1957, to January 4, 1957; four to be elected in 1958, terms to begin January 1, 1959, to January 4, 1959; three to be elected in 1968, terms to begin January 5, 1969, to January 7, 1969; three to be elected in 1976, terms to begin on successive days beginning January 5, 1977, to January 7, 1977; one to be elected in 1982, term to begin January 8, 1983; one to be elected in 1986, term to begin January 9, 1987; and two to be elected in 1990, terms to begin July 1, 1991, and July 2, 1991, respectively;

In Hamilton county, nineteen judges; eight to be elected in 1966, terms to begin January 1, 1967, January 2, 1967, and from February 9, 1967, to February 14, 1967, respectively; five to be elected in 1956, terms to begin from January 1, 1957, to January 5, 1957; one to be elected in 1964, term to begin January 1, 1965; one to be elected in 1974, term to begin January 15, 1975; one to be elected in 1980, term to begin January 16, 1981; two to be elected at large in the general election in 1982, terms to begin April 1, 1983; and one to be elected in 1990, term to begin July 1, 1991;

In Lucas county, fourteen judges; two to be elected in 1954, terms to begin January 1, 1955, and February 9, 1955, respectively; two to be elected in 1956, terms to begin January 1, 1957, and October 29, 1957, respectively; two to be elected in 1952, terms to begin January 1, 1953, and January 2, 1953, respectively; one to be elected in 1964, term to begin January 3, 1965; one to be elected in 1968, term to begin January 4, 1969; two to be elected in 1976, terms to begin January 4, 1977, and January 5, 1977, respectively; one to be elected in 1982, term to begin January 6, 1983; one to be elected in 1988, term to begin January 7, 1989; one to be elected in 1990, term to begin January 2, 1991; and one to be elected in 1992, term to begin January 2, 1993;

In Mahoning county, seven judges; three to be elected in 1954, terms to begin January 1, 1955, January 2, 1955, and February 9, 1955, respectively; one to be elected in 1956, term to begin January 1, 1957; one to be elected in 1952, term to begin January 1, 1953; one to be elected in 1968, term to begin January 2, 1969; and one to be elected in 1990, term to begin July 1, 1991;

In Montgomery county, fifteen judges; three to be elected in 1954, terms to begin January 1, 1955, January 2, 1955, and January 3, 1955, respectively; four to be elected in 1952, terms to begin January 1, 1953, January 2, 1953, July 1, 1953, July 2, 1953, respectively; one to be elected in 1964, term to begin January 3, 1965; one to be elected in 1968, term to begin January 3, 1969; three to be elected in 1976, terms to begin on successive days beginning January 4, 1977, to January 6, 1977; two to be elected in 1990, terms to begin July 1, 1991, and July 2, 1991, respectively; and one to be elected in 1992, term to begin January 1, 1993.

In Stark county, eight judges; one to be elected in 1958, term to begin on January 2, 1959; two to be elected in 1954, terms to begin on January 1, 1955, and February 9, 1955, respectively; two to be elected in 1952, terms to begin January 1, 1953, and April 16, 1953, respectively; one to be elected in 1966, term to begin on January 4, 1967; and two to be elected in 1992, terms to begin January 1, 1993, and January 2, 1993, respectively;

In Summit county, eleven judges; four to be elected in 1954, terms to begin January 1, 1955, January 2, 1955, January 3, 1955, and February 9, 1955, respectively; three to be elected in 1958, terms to begin January 1, 1959, January 2, 1959, and May 17, 1959, respectively; one to be elected in 1966, term to begin January 4, 1967; one to be elected in 1968, term to begin January 5, 1969; one to be elected in 1990, term to begin May 1, 1991; and one to be elected in 1992, term to begin January 6, 1993.

Notwithstanding the foregoing provisions, in any county having two or more judges of the court of common pleas, in which more than one-third of such judges plus one were previously elected at the same election, should the office of one such judge so elected become vacant more than forty days prior to the second general election preceding the expiration of such judge's term, the office which such judge had filled shall be abolished as of the date of the next general election and a new office of judge of the court of common pleas shall be created. The judge who is to fill such new office shall be elected for a six-year term at the next general election, and his term shall commence on the first day of the year following such general election, on which day no other judge's term begins so that the number of judges which such county shall elect shall not be reduced.

Judges of the probate division of the court of common pleas are judges of the court of common pleas, but shall be elected pursuant to sections 2101.02 and 2101.021 of the Revised Code, except in Adams, Harrison, Henry, Morgan, Morrow, Noble, and Wyandot counties in which the judge of the court of common pleas elected pursuant to this section shall also serve as judge of the probate division.

HISTORY: 1992 S 273, eff. 3-6-92
1991 H 200; 1990 H 211, H 648, H 390; 1988 H 802, S 283; 1987 S 171; 1986 H 815; 1984 H 113; 1982 H 869; 1980 H 961; 1978 H 246; 1976 H 468; 1973 S 201; 1970 H 1140; 1969 H 7; 132 v H 880; 131 v H 165; 130 v H 151; 128 v 147; 127 v 475; 126 v 778; 1953 H 1; Source—GC 1532, 1532-1, 1532-2

UNCODIFIED LAW

1990 H 648, § 4 and 5, eff. 3-21-90, read:

Section 4. Notwithstanding sections 3513.05 and 3513.257 of the Revised Code, each person desiring to become a candidate at the general election to be held on November 6, 1990, for election to the new judgeships of the Athens, Hamilton, and Mahoning County Courts of Common Pleas that are created by this act and that are to be elected in 1990, shall file a nominating petition and statement of candidacy, as provided in section 3513.261 of the Revised Code, not later than four p.m. on August 23, 1990. Notwithstanding section 3513.257 of the Revised Code, the nominating petition of each such candidate shall contain a minimum of seven hundred fifty signatures of qualified electors of the respective counties, except that no nominating petition shall be accepted for filing or filed if the petition appears on its face to contain or is known to contain signatures aggregating in number more than one thousand five hundred. The nominating petitions of such candidates shall be processed as set forth in section 3513.263 of the Revised Code. The names of the candidates, whose petition papers shall be determined by the board with whom the petition papers were filed to be valid, shall be printed on the ballot as set forth in section 3505.04 of the Revised Code.

Section 5. Notwithstanding the provisions of section 3513.04 of the Revised Code, a person who sought a party nomination for an office or position by declaration of candidacy at the primary election held on May 8, 1990, may be a candidate at the general election to be held on November 6, 1990, for election to the new judgeships of the Athens and Hamilton County Courts of Common Pleas that are created by this act and that are to be elected in 1990, by filing a nominating petition and statement of candidacy in accordance with Section 4 of this act. Notwithstanding the provisions of section 3513.04 of the Revised Code, a person who sought a party nomination for an office or position, other than the office or position of member of the Ohio House of Representatives, by declaration of candidacy at the primary election held on May 8, 1990, may be a candidate at the general election to be held on November 6, 1990, for election to the new judgeship of the Mahoning County Court of Common Pleas that is created by this act and that is to be elected in 1990, by filing a nominating petition and statement of candidacy in accordance with Section 4 of this act.

CROSS REFERENCES

Removal from office, 3.07 to 3.10

Backlog of cases, assignment of visiting judges, 2503.04, 2503.281

Assignment of temporary judge by supreme court, O Const Art IV §5

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Filling vacancy in judgeship, O Const Art IV §13

Changes in number of judges, O Const Art IV §15

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

Assignment of judges during emergency, C P Sup R 14

Judge's administrative responsibilities, Code of Jud Cond Canon 3

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 4, Appellate Review § 174; 13, Cancellation and Reformation of Instruments § 89; 22, Courts and Judges § 16, 17, 31, 33, 35, 38, 39; 46, Family Law § 374

Am Jur 2d: 20, Courts § 4, 20 to 22; 46, Judges § 5, 7 to 10, 14, 15

Findings, report, or the like of judge or person acting in judicial capacity as privileged. 42 ALR2d 825

Relationship to attorney as disqualifying judge. 50 ALR2d 143

Time for asserting disqualification. 73 ALR2d 1238

Power to appoint judge for term commencing at or after expiration of term of appointing officer or body. 75 ALR2d 1282

Substitution of judge in criminal case. 83 ALR2d 1032

Propriety and permissibility of judge engaging in practice of law. 89 ALR2d 886

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

170 OS 273, 164 NE(2d) 407 (1960), State ex rel Gusweiler v Hamilton County Elections Bd. The last paragraph of RC 2301.02 is in direct conflict with O Const Art IV §13, and is, therefore, unconstitutional.

15 App(3d) 101, 15 OBR 191, 472 NE(2d) 1134 (Summit 1984), State ex rel Morgan v Arshinkoff. RC 2301.02 stands in direct conflict with O Const Art IV §13 and is unconstitutional insofar as it purports to abolish judicial offices held for unexpired terms and to create new offices to replace them.

2. In general

68 App(3d) 783 (Huron 1990), Shaver v Standard Oil Co. The resident judge of a one-judge county court of common pleas may, upon taking office, properly determine class certification of a pending action which was presided over by an assigned judge.

349 FSupp 569 (ND Ohio 1972), Buchanan v Gilligan. The Ohio constitutional and statutory provisions with respect to the number of common pleas judges is valid inasmuch as the one man-one vote principle cannot be applied to judicial elections.

OAG 75-057. A county which has one judge of the court of common pleas and one judge of the probate division of that same court does have two judges of the court of common pleas, and the compensation of the county's law librarian is, therefore, not limited under RC 3375.48 to $500 per annum.

2301.03 Judges of the divisions of domestic relations

(A) In Franklin county, the judges of the court of common pleas whose terms begin on January 1, 1953, January 2, 1953, January 5, 1969, and January 5, 1977, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Franklin county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, all parentage proceedings under Chapter 3111. of the Revised Code over which the juvenile court has jurisdiction, and all divorce, dissolution, legal separation, and annulment cases shall be assigned to them. In addition to his regular duties, the judge who is senior in point of service shall serve on the children services board, the county advisory board, and shall be the administrator of the domestic relations court, its subdivisions and departments.

(B)(1) In Hamilton county, the judge of the court of common pleas, whose term begins on January 1, 1957, and successors, and the judge of the court of common pleas, whose term begins on February 14, 1967, and successors, shall be the juvenile judges as provided in Chapter 2151. of the Revised Code, with the powers and jurisdiction conferred by that chapter.

(2) The judges of the court of common pleas whose terms begin on January 5, 1957, January 16, 1981, and July 1, 1991, and successors, shall be elected and designated as judges of the court of common pleas, division of domestic relations, and shall have assigned to them all divorce, dissolution, legal separation, and annulment cases coming before the court. On or after the first day of July and before the first day of August of 1991 and each year thereafter, a majority of the judges of the division of domestic relations shall elect one of the judges of the division as administrative judge of that division. If a majority of the judges of the division of domestic relations are unable in 1991 or any year thereafter for any reason to elect an administrative judge for the division before the first day of August of that year, a majority of the judges of the Hamilton county court of common pleas, as soon as possible after that date, shall elect one of the judges of the division of domestic relations as administrative judge of that division. The term of the administrative judge shall begin on the earlier of the first day of August of the year in which he is elected or the date on which he is elected by a majority of the judges of the Hamilton county court of common pleas and shall terminate on the date on which his successor is elected in the following year.

In addition to his regular duties, the administrative judge of the division of domestic relations shall be the administrator of the domestic relations court, its subdivisions and departments, and shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution, legal separation, and annulment cases, including any referees considered necessary by the judges in the discharge of their various duties.

The administrative judge of the division of domestic relations also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and he shall fix the duties of its personnel. The duties of the personnel, in addition to those provided for in other sections of the Revised Code, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, and counseling and conciliation services that may be made available to persons requesting them, whether or not the persons are parties to an action pending in the court.

The board of county commissioners shall appropriate the sum of money each year as will meet all the administrative expenses of the court of domestic relations, including reasonable expenses of the domestic relations judges and the court counselors and other employees designated to conduct the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, conciliation and counseling, and all matters relating to such cases and counseling, and the expenses involved in the attendance of court personnel at domestic relations and welfare conferences designated by the court, and the further sum each year as will provide for the adequate operation of the court of domestic relations.

The compensation and expenses of all employees, and the salary and expenses of the judges shall be paid by the county treasurer from the money appropriated for the operation of the court, upon the warrant of the county auditor, certified to by the administrative judge of the division of domestic relations.

The summonses, warrants, citations, subpoenas, and other writs of the court may issue to a bailiff, constable, or staff investigator of the court, or to the sheriff of any county, or any marshal, constable, or police officer, and the provisions of law relating to the subpoenaing of witnesses in other cases shall apply insofar as they are applicable. When a summons, warrant, citation, subpoena, or other

writ is issued to an officer, other than a bailiff, constable, or staff investigator of the court, the expense of serving it shall be assessed as a part of the costs in the case involved.

(C) In Lorain county, the judges of the court of common pleas whose terms begin on January 3, 1959, and January 4, 1989, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Lorain county, and shall be elected and designated as the judges of the court of common pleas, division of domestic relations. They shall have all of the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution, legal separation, and annulment cases shall be assigned to them, except in such cases as should for some special reason be assigned to some other judge of the court of common pleas.

(D)(1) In Lucas county, the judges of the court of common pleas whose terms begin on January 1, 1955, and January 3, 1965, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Lucas county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. All divorce, dissolution, legal separation, and annulment cases shall be assigned to them.

The judge of the division of domestic relations, senior in point of service, shall be considered as the presiding judge of the court of common pleas, division of domestic relations, and shall be charged exclusively with the assignment and division of the work of the division, and the employment and supervision of all other personnel of the domestic relations division.

(2) The judges of the court of common pleas whose terms begin on January 5, 1977, and January 2, 1991, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Lucas county, shall be elected and designated as judges of the court of common pleas, juvenile division, and shall be the juvenile judges as provided in Chapter 2151. of the Revised Code with the powers and jurisdictions conferred by that chapter. In addition to his regular duties, the judge of the court of common pleas, juvenile division, senior in point of service, shall be the administrator of the juvenile division, its subdivisions and departments, and shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating juvenile cases, including any references considered necessary by the judges of the division in the discharge of their various duties.

The judge of the court of common pleas, juvenile division, senior in point of service, also shall designate the title, compensation, expense allowance, hours, leaves of absence, and vacation of the personnel of the division, and fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties include the handling, servicing, and investigation of juvenile cases and counseling and conciliation services that may be made available to persons requesting them, whether or not the persons are parties to an action pending in the court.

(3) If one of the judges of the court of common pleas, division of domestic relations, or one of the judges of the juvenile division, is sick, absent, unable to perform his duties, or the volume of cases pending in his court necessitates it, the duties shall be performed by the judges of the other of such divisions.

(E)(1) In Mahoning county, the judge of the court of common pleas whose term began on January 1, 1955, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Mahoning county, and shall be elected and designated as judge of the court of common pleas, division of domestic relations, and shall have assigned to him all the divorce, dissolution, legal separation, and annulment cases coming before the court. In addition to his regular duties, the judge of the court of common pleas, division of domestic relations, shall be the administrator of the domestic relations court, its subdivisions and departments, and shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution, legal separation, and annulment cases, including any references considered necessary in the discharge of his various duties.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, and counseling and conciliation services made available to persons requesting them, whether or not the persons are parties to an action pending in the court.

(2) The judge of the court of common pleas whose term began on January 2, 1969, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Mahoning county, shall be elected and designated as judge of court of common pleas, juvenile division, and shall be the juvenile judge as provided in Chapter 2151. of the Revised Code, with the powers and jurisdictions conferred by that chapter. In addition to his regular duties, the judge of the court of common pleas, juvenile division, shall be the administrator of the juvenile court, its subdivisions and departments, and shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating juvenile cases, including any references considered necessary by the judge, in the discharge of his various duties.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division, and fix the duties of the personnel of the division. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and counseling and conciliation services made available to persons requesting them, whether or not the persons are parties to an action pending in the court.

(3) If a judge of the court of common pleas, division of domestic relations or juvenile division, is sick, absent, unable to perform his duties, or the volume of cases pending in his court necessitates it, his duties shall be performed by another judge of the court of common pleas.

(F)(1) In Montgomery county, the judges of the court of common pleas whose terms begin on January 2, 1953, and January 4, 1977, and successors, shall have the same quali-

fications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Montgomery county and shall be elected and designated as judges of the court of common pleas, division of domestic relations. These judges shall have assigned to them all divorce, dissolution, legal separation, and annulment cases.

The judge of the division of domestic relations, senior in point of service, shall be charged exclusively with the assignment and division of the work of the division, and shall have charge of the employment and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution, legal separation, and annulment cases, including any necessary referees, except those employees who may be appointed by the judge, junior in point of service, under this section and sections 2301.12, 2301.18, and 2301.19 of the Revised Code. The judge of the division of domestic relations, senior in point of service, also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties.

(2) The judges of the court of common pleas whose terms begin on January 1, 1953, and January 1, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Montgomery county, shall be elected and designated as judges of the court of common pleas, juvenile division, and shall be, and have the powers and jurisdiction of, the juvenile judge as provided in Chapter 2151. of the Revised Code.

In addition to his regular duties, the judge of the court of common pleas, juvenile division, senior in point of service, shall be the administrator of the juvenile division and its subdivisions and departments, and shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division, including any necessary referees, who are engaged in handling, servicing, or investigating juvenile cases. The judge, senior in point of service, also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of juvenile cases and of any counseling and conciliation services that are available upon request to persons regardless of whether or not they are parties to an action pending in the division.

If one of the judges of the court of common pleas, division of domestic relations, or one of the judges of the court of common pleas, juvenile division, is sick, absent, unable to perform his duties, or the volume of cases pending in his division necessitates it, the duties of that judge may be performed by the judge or judges of the other of those divisions.

(G) In Richland county, the judge of the court of common pleas whose term begins on January 1, 1957, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Richland county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. He shall have all of the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution, legal separation, and annulment cases shall be assigned to him, except in cases that for some special reason are assigned to some other judge of the court of common pleas.

(H) In Stark county, the judges of the court of common pleas whose terms begin on January 1, 1953, January 2, 1959, and January 1, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Stark county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution, legal separation, and annulment cases, except cases that are assigned to some other judge of the court of common pleas for some special reason, shall be assigned to the judges.

The judge of the division of domestic relations, second most senior in point of service, shall have charge of the employment and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution, legal separation, and annulment cases, and necessary referees required for his respective court.

The judge of the division of domestic relations, senior in point of service, shall be charged exclusively with the administration of sections 2151.13, 2151.16, 2151.17, and 2151.18 of the Revised Code, and with the assignment and division of the work of the division, and the employment and supervision of all other personnel of the division, including but not limited to, his necessary referees, but excepting those employees who may be appointed by the judge second most senior in point of service. The senior judge shall further serve as administrator of the bureau of aid to dependent children, and shall serve in every other position where the statutes permit or require a juvenile judge to serve.

(I) In Summit county:

(1) The judges of the court of common pleas whose terms begin on January 4, 1967, and January 6, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Summit county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. The judges of the division of domestic relations shall have assigned to them and hear all divorce, dissolution, legal separation, and annulment cases that come before the court.

The judge of the division of domestic relations, senior in point of service, shall be the administrator of the domestic relations division and its subdivisions and departments and shall have charge of the employment, assignment, and supervision of the personnel of the division, including any necessary referees, who are engaged in handling, servicing, or investigating divorce, dissolution, legal separation, and annulment cases. That judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases and of any counseling and conciliation services that are available upon request to all

persons regardless of whether they are parties to an action pending in the division.

(2) The judge of the court of common pleas whose term begins on January 1, 1955, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Summit county, shall be elected and designated as judge of the court of common pleas, juvenile division, and shall be, and have the powers and jurisdiction of, the juvenile judge as provided in Chapter 2151. of the Revised Code.

The juvenile judge shall be the administrator of the juvenile division and its subdivisions and departments, and shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division, including any necessary referees, who are engaged in handling, servicing, or investigating juvenile cases. The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division and shall fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of juvenile cases and of any counseling and conciliation services that are available upon request to persons regardless of whether or not they are parties to an action pending in the division.

(J) In Trumbull county, the judges of the court of common pleas whose terms begin on January 1, 1953, and January 2, 1977, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Trumbull county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution, legal separation, and annulment cases shall be assigned to them, except cases that for some special reason are assigned to some other judge of the court of common pleas.

(K) In Butler county:

(1) The judges of the court of common pleas whose terms begin on January 1, 1957, and January 4, 1993, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Butler county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. The judges of the division of domestic relations shall have assigned to them all the divorce, dissolution, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge senior in point of service shall be charged with the assignment and division of the work of the division and with the employment and supervision of all other personnel of the domestic relations division.

The judge senior in point of service also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(2) The judge of the court of common pleas whose term begins on January 3, 1987, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Butler county, shall be elected and designated as judge of the court of common pleas, juvenile division, and, on and after January 3, 1987, shall be the juvenile judge as provided in Chapter 2151. of the Revised Code with the powers and jurisdictions conferred by that chapter. The judge of the court of common pleas, juvenile division, shall be the administrator of the juvenile court and its subdivisions and departments. The judge shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division who are engaged in handling, servicing, or investigating juvenile cases, including any referees whom the judge considers necessary for the discharge of his various duties.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division, and fix their duties. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(3) If a judge of the court of common pleas, division of domestic relations or juvenile division, is sick, absent, or unable to perform his duties, or the volume of cases pending in the judge's division necessitates it, the duties of that judge shall be performed by the other judges of the domestic relations and juvenile divisions.

(L)(1) In Cuyahoga county, the judges of the court of common pleas whose terms begin on January 8, 1961, January 9, 1961, January 18, 1975, January 19, 1975, and January 13, 1987, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Cuyahoga county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to all divorce, dissolution, legal separation, and annulment cases, except in cases that are assigned to some other judge of the court of common pleas for some special reason.

(2) The administrative judge is administrator of the domestic relations division, its subdivisions and departments, and has the following powers concerning division personnel:

(a) Full charge of the employment, assignment, and supervision;

(b) Sole determination of compensation, duties, expenses, allowances, hours, leaves, and vacations.

(3) "Division personnel" include persons employed or referees engaged in hearing, servicing, investigating, counseling, or conciliating divorce, dissolution, legal separation, and annulment matters.

(M) In Lake county:

(1) The judge of the court of common pleas whose term begins on January 2, 1961, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges

of the court of common pleas of Lake county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. The judge shall have assigned to him all the divorce, dissolution, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division, and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(2) The judge of the court of common pleas whose term begins on January 4, 1979, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Lake county, shall be elected and designated as judge of the court of common pleas, juvenile division, and shall be the juvenile judge as provided in Chapter 2151. of the Revised Code with the powers and jurisdictions conferred by that chapter. The judge of the court of common pleas, juvenile division, shall be the administrator of the juvenile court and its subdivisions and departments. The judge shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division who are engaged in handling, servicing, or investigating juvenile cases, including any referees whom the judge considers necessary for the discharge of his various duties.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the division, and fix their duties. The duties of the personnel, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(3) If a judge of the court of common pleas, division of domestic relations or juvenile division, is sick, absent, or unable to perform his duties, or the volume of cases pending in the judge's division necessitates it, the duties of that judge shall be performed by the other judges of the domestic relations and juvenile divisions.

(N) In Erie county, the judge of the court of common pleas whose term begins on January 2, 1971, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judge of the court of common pleas of Erie county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. He shall have all the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, parentage proceedings over which the juvenile court has jurisdiction, and divorce, dissolution, legal separation, and annulment cases shall be assigned to him, except cases that for some special reason are assigned to some other judge.

(O) In Greene county, on and after January 1, 1985, the judge of the court of common pleas whose term begins on January 1, 1961, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Greene county, and shall be elected and designated as the judge of the court of common pleas, division of domestic relations. The judge shall have assigned to him all divorce, dissolution, legal separation, annulment, uniform reciprocal support enforcement, and domestic violence cases, and all other cases related to domestic relations, except cases that for some special reason are assigned to some other judge of the court of common pleas.

The judge shall be charged with the assignment and division of the work of the division, and with the employment and supervision of all other personnel of the domestic relations division. He also shall designate the title, compensation, hours, leaves of absence, and vacations for the personnel of the division, and shall fix their duties. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases and the provision of counseling and conciliation services that the court considers necessary and makes available to persons who request the services, whether or not the persons are parties in an action pending in the court. The compensation for the personnel shall be paid from the overall court budget, and shall be included in the appropriations for the existing judges of the general division of the court of common pleas.

If one of the judges of the court of common pleas, general division, is sick, absent, or unable to perform his duties, or the volume of cases pending in the general division necessitates it, the duties of that judge of the general division shall be performed by the judge of the division of domestic relations.

(P) In Portage county, the judge of the court of common pleas, whose term begins January 2, 1987, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Portage county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. The judge shall have assigned to him all the divorce, dissolution, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division, and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(Q) In Clermont county, the judge of the court of common pleas, whose term begins January 2, 1987, and successors shall have the same qualifications, exercise the same

powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Clermont county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. The judge shall have assigned to him all the divorce, dissolution, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division, and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(R) In Warren county, the judge of the court of common pleas, whose term begins January 1, 1987, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Warren county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. The judge shall have assigned to him all the divorce, dissolution, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division, and with the employment and supervision of all other personnel of the domestic relations division.

The judge also shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and fix their duties. The duties of the personnel, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(S) In Licking county, the judge of the court of common pleas, whose term begins January 1, 1991, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Licking county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. The judge shall have assigned to him all the divorce, dissolution, legal separation, and annulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, child custody, and visitation, and all post decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of the personnel of the division.

The judge shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, child custody, and visitation, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(T) In Allen county, the judge of the court of common pleas, whose term begins January 1, 1993, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Allen county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. The judge shall have assigned to him all the divorce, dissolution, legal separation, and annulment cases, all cases arising under Chapter 3111. of the Revised Code, all proceedings involving child support, child custody, and visitation, and all post decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the court of common pleas. The judge shall be charged with the assignment and division of the work of the division and with the employment and supervision of the personnel of the division.

The judge shall designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division and shall fix the duties of the personnel of the division. The duties of the personnel of the division, in addition to other statutory duties, shall include the handling, servicing, and investigation of divorce, dissolution, legal separation, and annulment cases, cases arising under Chapter 3111. of the Revised Code, and proceedings involving child support, child custody, and visitation, and providing any counseling and conciliation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services.

(U) If a judge of the court of common pleas, division of domestic relations, or juvenile judge, of any of the counties mentioned in this section is sick, absent, unable to perform his duties, or the volume of cases pending in his court necessitates it, his duties shall be performed by another judge of the court of common pleas of that county, assigned for that purpose by the chief justice or presiding judge of the court of common pleas of that county to act in place of or in conjunction with him, as the case may require.

HISTORY: 1992 S 273, eff. 3-6-92
1990 H 211, H 514, H 837, H 648, H 390; 1987 S 171; 1986 H 815; 1984 H 113, H 82; 1982 H 245; 1980 H 961; 1978 H 246; 1976 H 468; 1975 S 145, H 1; 1974 H 233, H 818; 1973 S 201; 1969 S 49, H 7; 132 v H 880; 131 v H 165; 130 v H 151, H 467; 128 v 147; 127 v 475; 126 v 778; 125 v 896; 1953 H 1; Source—GC 1532, 1532-1, 1532-2

Note: Guidelines for Assignment of Judges were announced by the Chief Justice of the Ohio Supreme Court on 5-24-88, but not adopted as rules pursuant to O Const Art IV §5. For the full text, see 37 OS(3d) xxxix, 61 OBar A-2 (6-13-88).

UNCODIFIED LAW

1990 H 837, § 6, eff. 7-3-90, reads: Notwithstanding any provision of division (B)(2) of section 2301.03 of the Revised Code, as amended by this act, that provides otherwise, upon the effective date of this act, the judge of the Hamilton County Court of Common Pleas, division of domestic relations, senior in point of service shall serve as the administrator of the division of domestic relations until the later of August 1, 1991, or, if a majority of the judges of the division of domestic relations of the Hamilton County Court of Common Pleas are unable to elect an administrative judge by that date for any reason, the date on which an administrative judge is elected in 1991 by a majority of the judges of the Hamilton County Court of Common Pleas, and, during that period of time, shall perform all of the functions of the administrative judge of the division of domestic relations as set forth in division (B)(2) of section 2301.03 of the Revised Code, as amended by this act.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Domestic Relations Law, Text 15.08, 59.01(A)
Merrick-Rippner, Ohio Probate Law (4th Ed.), Text 217.05

CROSS REFERENCES

Creation and powers of juvenile court; assignment of judge, 2151.07
Juvenile court in Hamilton county, 2151.08
Child support enforcement advisory committee, membership on, 2301.35
Conciliation judges for marital controversies, 3117.02
General assembly to grant no divorce or exercise judicial power, O Const Art II §32
Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 4, Appellate Review § 174; 13, Cancellation and Reformation of Instruments § 89; 22, Courts and Judges § 16, 17, 31, 33, 35, 38, 39; 46, Family Law § 374
Am Jur 2d: 46, Judges § 7 to 10, 14
Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498

NOTES ON DECISIONS AND OPINIONS

16 App(3d) 93, 16 OBR 98, 474 NE(2d) 662 (Cuyahoga 1984), Price v Price. After a divorce action has reached final judgment in a domestic relations court, exclusive jurisdiction of the court ends, and a common pleas court, general division, shares concurrent jurisdiction to vacate that judgment.

114 App 304, 182 NE(2d) 10 (1961), State ex rel Shonk v Crist. The court of common pleas, division of domestic relations, is without jurisdiction to commit an adult to the Lima state hospital as a psychopathic offender for "the crime of acting in a way tending to cause delinquency in a minor child," where the acts charged do not involve "a sex offense, or in which abnormal sexual tendencies are displayed."

95 App 126, 117 NE(2d) 711 (1953), Ezzo v Ezzo. A cause instituted by a petition to vacate or modify on the ground of fraud a divorce decree rendered by the court of common pleas of Franklin County, division of domestic relations, which petition states causes of action in equity and law not strictly predicated on the divorce decree, may be heard and determined by a judge of such court of common pleas immaterially whether he acts in that capacity or as a judge of such division.

OAG 92-009. In the Franklin County Court of Common Pleas, division of domestic relations, a judge's status as senior in point of service or as administrative judge of the division confers no authority upon the judge to act unilaterally with respect to the employment of personnel for the division.

OAG 76-031. Employees within the court of common pleas, division of domestic relations, are unclassified civil service employees.

1960 OAG 1922. The court of common pleas in any county having two judges of the court of common pleas may appoint an assignment commissioner, but such commissioner should be appointed pursuant to RC 2335.04, and his compensation may not exceed $1800 per year.

2303.01 Clerk of the court of common pleas

There shall be elected quadrennially in each county, a clerk of the court of common pleas, who shall assume office on the first Monday of January next after his election and who shall hold said office for a period of four years.

HISTORY: 1953 H 1, eff. 10-1-53
GC 2867

CROSS REFERENCES

A person may hold but one of certain offices, 3.11
Release of clerk from liability for loss of public funds, 131.18 to 131.20
Member of county records commission, 149.38
Filling vacancy, 305.02
Failure to perform duties; absence; office deemed vacant, 305.03
Liability insurance for clerk, deputies, 307.441
Compensation, 325.08, 325.18
Prohibition against soliciting campaign contributions from employees, 2921.431

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 63; 22, Courts and Judges § 184, 189, 196, 197
Am Jur 2d: 15A, Clerks of Court § 1

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

90 OS 219, 107 NE 517 (1914), State ex rel Young v Cox. GC 2867 ((former RS 1240) RC 2303.01), providing for a biennial election in each county of a clerk of the court of common pleas who shall hold his office two years beginning on the first Monday of August next after his election, is a valid legislative enactment and is not in conflict with the constitution of this state.

2. In general

176 OS 191, 198 NE(2d) 459 (1964), State ex rel Cofall v Cuyahoga County Elections Bd. Nomination petition was not invalid where office sought was described as "clerk of courts."

132 OS 421, 8 NE(2d) 434 (1937), State ex rel Kopp v Blackburn. A person elected to the office of clerk of the court of common pleas continues to hold such office by virtue of GC 8 (RC 3.01), until his successor is elected or appointed and qualified, while a person appointed to fill a vacancy therein continues to hold such office by virtue of GC 10(RC 3.02), until his successor is elected and qualified.

122 OS 621, 174 NE 251 (1930), State ex rel Klein v Bernon. Since this section makes special provision for the election of the clerk of common pleas, GC 10 (RC 3.02), providing for the election of the successor to an elective officer, whose office has become vacant, at the first general election for the office that occurs more than thirty days after the vacancy, does not apply, as GC 10 (RC 3.02) specifically exempts cases which have been otherwise provided by law. (See also 1949 OAG 800.)

OAG 81-020. A municipal court clerk may not receive additional compensation for the performance of the duties of an assignment commissioner, typist, stenographer, or statistical clerk for the court, because the duties of these court aides fall within the scope of the office of clerk.

1959 OAG 120. There is no incompatibility between the office of clerk of courts and the position of director of a county agricultural society.

1951 OAG 224; modified by OAG 81-020. The clerk of courts may be appointed to the position of assignment commissioner, provided for by GC 3007-1 (RC 2335.04), provided it is physically possible for him to perform the duties of both offices, and he may receive the salary provided by law for both offices.

1949 OAG 800. The term of the clerk pro tempore of the court of common pleas ends when his successor is elected and qualified; said election of the successor shall be at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred; the candidates for said office shall run for the unexpired term of the original clerk of common pleas court and not for the full four-year term.

1936 OAG 5420. An amendment of the law changing the term of an elective office, which amendment becomes effective after candidates for such office have been nominated but before the date of election, is controlling as to the term of any candidate elected at such election.

1930 OAG 2706. The clerk of the common pleas court of Lucas county is the clerk of the court of common pleas, division of domestic relations, in and for Lucas county, and as such clerk, he is required to keep the records and journals, collect and disburse funds in all cases brought in such court, including cases in which this court exercises jurisdiction as a juvenile court in the same manner as those duties are performed for the other branch of the common pleas court of Lucas county.

Ethics Op 77-002. A county clerk of courts is a "public official or employee" as that term is defined in RC 102.01(B), and is under the jurisdiction of the Ohio ethics commission for the purposes of the Ohio ethics law.

COMMISSIONERS OF JURORS

2313.06 Poll lists

On or before the last day of December of each year, unless otherwise ordered by the court of common pleas, the board of elections for each county shall compile and file with the commissioners of jurors of the county a certified, current list containing the names, addresses, dates of birth, and social security numbers, if the numbers are available, of all the electors of the county shown on the registration lists for the next preceding general election. On or before the last day of December of each year, unless otherwise ordered by the court of common pleas of any particular county, the registrar of motor vehicles shall compile and file with the commissioners of jurors of each county a certified, current list containing the names, addresses, dates of birth, duration of residence in this state, citizenship status, and social security numbers, if the numbers are available, of all residents of the particular county who have been issued, on or after January 1, 1984, a commercial driver's license pursuant to Chapter 4506. or a driver's license pursuant to Chapter 4507. of the Revised Code that is valid and current on the date of the compilation of the list, who are or will be eighteen years of age or older as of the day of the general election of the year the list is filed, and who, regardless of whether they actually are registered to vote, would be electors if they were registered to vote.

HISTORY: 1989 H 381, eff. 7-1-89
1984 H 183; 1977 S 125; 1953 H 1; GC 11419-8

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Crim R 6
Dill Calloway, Ohio Nursing Law, Text 13.05(A)

CROSS REFERENCES

Application for and issuance of driver's license; registrar to maintain list for jury service, 4507.21

Driver's license law, records and proceedings of registrar, not applicable to poll lists, 4507.25

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Aliens and Citizens § 12; 23, Courts and Judges § 469; 64, Jury § 64

Validity of enactment requiring juror to be an elector or voter or have qualifications thereof. 78 ALR3d 1147

Validity of requirement of practice of selecting prospective jurors exclusively from list of registered voters. 80 ALR3d 869

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

31 OS(2d) 106, 285 NE(2d) 751 (1972), State v Johnson. A defendant is not denied due process of law where the composition of special venire called for his trial was constituted in such manner that only qualified electors were eligible for jury duty (RC 2945.18, 2945.19, 2313.06 and 2313.08 are constitutional).

2. In general

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. 1977 S 125, § 1, 2, 3, and 4, took immediate effect because the law contained an appropriation item.

33 Misc 159, 293 NE(2d) 895 (Muni, Akron 1972), State v Willis. The panel from which jurors are drawn must include electors from eighteen to twenty-one years of age.

15 Misc 215, 237 NE(2d) 629 (CP, Marion 1968), Baker v Keller. As used in O Const Art V §6, "idiot" means a person who has been without understanding since birth and "insane person" means one who has suffered such a deprivation of reason that he is no longer capable of understanding and acting with discretion and judgment in the ordinary affairs of life.

15 Misc 215, 237 NE(2d) 629 (CP, Marion 1968), Baker v Keller. A new trial is not warranted on a showing of a juror's record of hospitalization for mental illness where it appears that such juror had extensive lucid intervals, and there was no evidence of active manifestations of such illness at or near the time of trial, since such evidence does not disclose that the juror at the time of trial lacked any of the qualifications of an elector.

1931 OAG 3827. Boards of elections may employ the necessary clerical help for the preparation of the lists required by this section.

COURT OF APPEALS

2501.01 Court of appeals districts

The state shall be divided into twelve judicial court of appeals districts. The counties constituting the districts are as follows:

(A) First district: Hamilton;

(B) Second district: Darke, Miami, Montgomery, Champaign, Clark, and Greene;

(C) Third district: Mercer, Van Wert, Paulding, Defiance, Henry, Putnam, Allen, Auglaize, Hancock, Hardin, Logan, Union, Seneca, Shelby, Marion, Wyandot, and Crawford;

(D) Fourth district: Adams, Highland, Pickaway, Ross, Pike, Scioto, Lawrence, Gallia, Jackson, Meigs, Vinton, Hocking, Athens, and Washington;

(E) Fifth district: Morrow, Richland, Ashland, Knox, Licking, Fairfield, Perry, Morgan, Muskingum, Guernsey, Coshocton, Holmes, Stark, Tuscarawas, and Delaware;

(F) Sixth district: Williams, Fulton, Wood, Lucas, Ottawa, Sandusky, Erie, and Huron;

(G) Seventh district: Mahoning, Columbiana, Carroll, Jefferson, Harrison, Belmont, Noble, and Monroe;

(H) Eighth district: Cuyahoga;

(I) Ninth district: Lorain, Medina, Wayne, and Summit;

(J) Tenth district: Franklin;

(K) Eleventh district: Lake, Ashtabula, Geauga, Trumbull, and Portage;

(L) Twelfth district: Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble, and Warren.

HISTORY: 1980 S 13, eff. 7-25-80
132 v H 105; 126 v 420; 1953 H 1; GC 14227

PRACTICE AND STUDY AIDS

Whiteside, Ohio Appellate Practice, Text 1.04(A)

CROSS REFERENCES

Creation and jurisdiction of courts of appeals, O Const Art IV, § 3

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 12, 31, 33, 35, 56

2501.011 Districts with additional judges

(A) There shall be two additional judges of the court of appeals of the fifth district, composed of Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas counties.

One of the additional judges of the fifth district court of appeals shall be elected at the general election in 1980 for a term of six years beginning February 10, 1981. One of the additional judges of the fifth district court of appeals shall be elected at the general election in 1982 for a term of six years beginning February 10, 1983. The additional judges shall thereafter be elected to hold terms of six years.

In the fifth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(B) There shall be two additional judges of the court of appeals of the sixth district, composed of Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams, and Wood counties.

One of the additional judges of the sixth district court of appeals shall be elected at the general election in 1980 for a term of six years beginning February 10, 1981. One of the additional judges of the sixth district court of appeals shall be elected at the general election in 1990 for a term of six years beginning on February 10, 1991. The additional judges shall thereafter be elected to hold terms of six years.

In the sixth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(C) The judges provided for in this section and sections 2501.012 and 2501.013 of the Revised Code shall exercise the same powers and jurisdiction and perform the same duties as the judges of the courts of appeals; and shall receive the same compensation, as provided by law, for the judges of the courts of appeals.

HISTORY: 1990 H 390, eff. 1-17-90
1980 S 13; 132 v H 105; 126 v 420

CROSS REFERENCES

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Filling vacancy in judgeship, O Const Art IV §13

Changes in number of judges, O Const Art IV §15

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 31, 33, 35

2501.012 Additional judges for eighth, ninth, tenth, eleventh, and twelfth districts

(A) There shall be nine additional judges of the court of appeals of the eighth district, composed of Cuyahoga county.

Three of the additional judges of the eighth district court of appeals shall be elected at the general election in 1962 for a term of six years, their terms to commence on successive days beginning on the first day of January, 1963. Three of the additional judges of the eighth district court of appeals shall be elected at the general election in 1976 for a term of six years, their terms to commence on successive days beginning on the first day of January, 1977. Three of the additional judges of the eighth district court of appeals shall be elected at the general election in 1990 for a term of six years, their terms to commence on successive days beginning on February 10, 1991. The additional judges shall thereafter be elected to hold terms of six years.

In the eighth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(B) There shall be two additional judges of the court of appeals of the ninth district, composed of Lorain, Medina, Summit, and Wayne counties.

One of the additional judges of the ninth district court of appeals shall be elected at the general election in 1980 for a term of six years beginning February 10, 1981. One of the additional judges of the ninth district court of appeals shall be elected at the general election in 1986 for a term of six years beginning February 11, 1987. The additional judges shall thereafter be elected to hold terms of six years.

In the ninth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(C) There shall be five additional judges of the court of appeals of the tenth district, composed of Franklin county.

One of the additional judges of the tenth district court of appeals shall be elected at the general election in 1962 for a term of six years beginning January 1, 1963. One of the additional judges of the tenth district court of appeals shall be elected at the general election in 1970 for a term of six years beginning February 10, 1971. One of the additional judges of the tenth district court of appeals shall be elected at the general election in 1980 for a term of six years beginning January 2, 1981. One of the additional judges of the tenth district court of appeals shall be elected at the general election in 1986 for a term of six years beginning January 3, 1987. One of the additional judges of the tenth district court of appeals shall be elected at the general election in 1990 for a term of six years beginning July 1, 1991. The additional judges shall thereafter be elected to hold terms of six years.

In the tenth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(D) There shall be one additional judge of the court of appeals of the eleventh district, composed of Lake, Ashtabula, Geauga, Trumbull, and Portgage [*sic*] counties.

The additional judge shall be elected at the general election in 1990 for a term of six years beginning February 10, 1991. The additional judge shall thereafter be elected to hold terms of six years.

In the eleventh district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(E) There shall be one additional judge of the court of appeals of the twelfth district, composed of Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble, and Warren counties.

The additional judge shall be elected at the general election in 1986 for a term of six years beginning February 10, 1987. The additional judge shall thereafter be elected to hold terms of six years.

In the twelfth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(F) Any judge of the court of appeals may be assigned by the chief justice of the supreme court to hold court in another district and shall hold court in the district to which he is assigned.

HISTORY: 1990 H 648, eff. 3-21-90
1990 H 390; 1986 H 815; 1984 H 113; 1980 S 13; 1976 H 468; 1970 H 858; 132 v H 624; 129 v 11

UNCODIFIED LAW

1990 H 648, § 6 and 7, eff. 3-21-90, read:

Section 6. Notwithstanding sections 3513.05 and 3513.257 of the Revised Code, each person desiring to become a candidate at the general election to be held on November 6, 1990, for election to the new judgeship of the Tenth District Court of Appeals that is created by this act and that is to be elected in 1990, shall file a nominating petition and statement of candidacy, as provided in section 3513.261 of the Revised Code, not later than four p.m. on August 23, 1990. Notwithstanding section 3513.257 of the Revised Code, the nominating petition of each such candidate shall contain a minimum of seven hundred fifty signatures of qualified electors of the court of appeals district, except that no nominating petition shall be accepted for filing or filed if the petition appears on its face to contain or is known to contain signatures aggregating in number more than one thousand five hundred. The nominating petitions of such candidates shall be processed as set forth in section 3513.263 of the Revised Code. The names of the candidates, whose petition papers shall be determined by the board with whom the petition papers were filed to be valid, shall be printed on the ballot as set forth in section 3505.04 of the Revised Code.

Section 7. Notwithstanding the provisions of section 3513.04 of the Revised Code, a person who sought a party nomination for an office or position by declaration of candidacy at the primary election held on May 8, 1990, may be a candidate at the general election to be held on November 6, 1990, for election to the new judgeship of the Tenth District Court of Appeals that is created by this act and that is to be elected in 1990, by filing a nominating petition and statement of candidacy in accordance with Section 6 of this act.

CROSS REFERENCES

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Filling vacancy in judgeship, O Const Art IV §13

Changes in number of judges, courts, districts, O Const Art IV §15

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 31, 35, 56

2501.013 Additional judges for first, second, third, and fourth districts

(A) There shall be three additional judges of the court of appeals of the first district, composed of Hamilton county.

The additional three judges shall be elected at the general election in 1976 for terms of six years, their terms to commence on successive days beginning on the tenth day of February, 1977. The additional judges shall thereafter be elected to hold terms of six years.

In the first district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(B) There shall be two additional judges of the court of appeals of the second district, composed of Champaign, Clark, Darke, Greene, Miami, and Montgomery counties.

One of the additional judges of the second district court of appeals shall be elected at the general election in 1980 for a term of six years beginning February 10, 1981. One of the additional judges of the second district court of appeals shall be elected at the general election in 1986 for a term of six years beginning February 11, 1987. The additional judges shall thereafter be elected to hold terms of six years.

In the second district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(C) There shall be one additional judge of the court of appeals of the third district, composed of Mercer, Van Wert, Paulding, Defiance, Henry, Putnam, Allen, Auglaize, Hancock, Hardin, Logan, Union, Seneca, Shelby, Marion, Wyandot, and Crawford counties.

The additional judge shall be elected at the general election in 1986 for a term of six years beginning February 11, 1987. The additional judge shall thereafter be elected to hold terms of six years.

In the third district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in

accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

(D) There shall be one additional judge of the court of appeals of the fourth district, composed of Adams, Highland, Pickaway, Ross, Pike, Scioto, Lawrence, Gallia, Jackson, Meigs, Vinton, Hocking, Athens, and Washington counties.

The additional judge shall be elected at the general election in 1988 for a term of six years beginning February 10, 1989. The additional judge shall thereafter be elected to hold terms of six years.

In the fourth district, any three judges shall comprise the court of appeals in the hearing and disposition of cases in accordance with any local rules of practice and procedure that may be adopted by the judges of the court.

HISTORY: 1987 S 171, eff. 10-20-87
1986 H 815; 1984 H 113; 1980 S 13; 1976 H 468

CROSS REFERENCES

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

Filling vacancy in judgeship, O Const Art IV §13

Changes in number of judges, courts, districts, O Const Art IV §15

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 31, 35

2501.02 Qualifications and term of judges; jurisdiction; issuance of writs

Each judge of a court of appeals shall have been admitted to practice as an attorney at law in this state and have, for a total of six years preceding his appointment or commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both. One judge shall be chosen in each court of appeals district every two years, and shall hold office for six years, beginning on the ninth day of February next after his election. In addition to the original jurisdiction conferred by Section 3 of Article IV, Ohio Constitution, the court shall have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.

The court, on good cause shown, may issue writs of supersedeas in any case, and all other writs, not specially provided for or prohibited by statute, necessary to enforce the administration of justice.

HISTORY: 1986 H 412, eff. 3-17-87
1975 H 85; 1971 H 18, H 1; 129 v 582; 126 v 56; 1953 H 1; GC 1514

PRACTICE AND STUDY AIDS

Baldwin's Ohio Domestic Relations Law, Text Ch 67

Baldwin's Ohio Civil Practice, Text 1.03(D)

Merrick-Rippner, Ohio Probate Law (4th Ed.), Text 223.09(L), 223.14(A), 225.05

Whiteside, Ohio Appellate Practice, Text 1.04(B), 1.10(B), 7.03(A)

Kurtz & Giannelli, Ohio Juvenile Law (2d Ed.), Text 15.02(A)(B)

CROSS REFERENCES

Oath of office of judges and other officers, 3.23

Public officers, ethics, Ch 102

Judge of court of record ineligible to perform duties until commissioned by governor, 107.05

Courts of appeals judges, appointment by governor to fill vacancy, 107.08

Fees or additional compensation unlawful, 141.13

Certain officials ineligible to office of county auditor, 319.07

Corporations, judicial dissolution, 1701.91

Nonprofit corporations, judicial dissolution, 1702.52

Execution against property, court of appeals judgments, 2329.50

Procedure on appeal, Ch 2505

Removal of residence of court of appeals judge, 2701.04

Transmitting commission to judge of court of appeals, 2701.06

Court constables; duties and compensation, 2701.07, 2701.08

Removal, suspension, or retirement of judge, 2701.11, 2701.12

Writ of habeas corpus, court of appeals may grant, 2725.02

Injunctions, power of court of appeals to grant, 2727.03, 2727.05

Receivership, appointment powers of judges of courts of appeals, 2735.01 to 2735.03

Bribery of public servant, disqualification from office, 2921.02

Public servants, dereliction of duty, 2921.44

Appellate review of judgments and final orders in criminal cases, 2953.02

Contest of election, jurisdiction of courts of appeals, 3515.08

Vesting of judicial power, O Const Art IV §1

Courts of appeals, O Const Art IV §3

Qualifications and terms of office for judges, O Const Art IV §6, O Const Art XVII §1

How vacancies in elective offices to be filled, O Const Art IV §13, O Const Art XVII §2

Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

Mandatory continuing legal education for the judiciary, Gov Jud R 4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 1, Abstracts and Land Titles § 44; 2, Administrative Law § 181; 4, Appellate Review § 1, 13, 36, 234; 13, Cancellation and Reformation of Instruments § 63, 110; 19, Conversion and Replevin § 175; 19, Cotenancy and Partition § 167; 22, Courts and Judges § 33, 36, 38; 38, Eminent Domain § 384; 46, Family Law § 583, 584; 52, Guaranty and Suretyship § 237; 69, Mortgages and Deeds of Trust § 390; 73, Parties § 126, 129

Am Jur 2d: 20, Courts § 91, 107 to 110; 46, Judges 7, 8

Questions or legal theories affecting trust estates as subject to consideration on appeal though not raised below. 11 ALR2d 317

Formal requirements of judgment or order as regards appealability. 73 ALR2d 1417

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Jurisdiction
   a. In general
   b. Extraordinary writs
4. Final appealable judgment or order

1. Constitutional issues

5 OS(2d) 89, 214 NE(2d) 92 (1966), In re Receivership of Wisser & Gabler. RC 2501.02 is constitutional.

56 App(3d) 173, 565 NE(2d) 882 (Lake 1989), Kondrat v Ralph Ingersoll Publishing Co. A court of appeals has no authority to determine issues on the disqualification of a trial court judge. (See also Beer v Griffith, 54 OS(2d) 440, 377 NE(2d) 775 (1978).)

117 App 393, 191 NE(2d) 552 (1963), Weiss v Kearns. RC 2501.02 and RC 2505.21 are constitutional.

2. In general

37 OS(3d) 246, 525 NE(2d) 756 (1988), State ex rel Ohio State Racing Comm v Walton. Where a trial court denies a proper motion for change of venue based on the theory that the moving party has waived his right to proper venue by seeking intervention and where none of the justifications for venue under Civ R 3 exist in the county where the case is pending, a writ of prohibition prohibiting the trial court from further proceedings in the pending case and a writ of mandamus compelling the change of venue to a proper county shall be granted.

17 App(3d) 111, 17 OBR 173, 477 NE(2d) 662 (Cuyahoga 1984), Kane v Ford Motor Co. When an appeal is perfected, the trial court is divested of jurisdiction over the particular area of the action pertaining to the final order, judgment, or decree for which review is sought.

6 App(2d) 62, 216 NE(2d) 391 (1966), Pfeifle v Schneider; affirmed by 10 OS(2d) 197, 226 NE(2d) 719 (1967). The executors of an estate may appeal on questions of law in their official capacity from an order of the probate court imposing a succession tax on property held in an inter vivos trust when, by provisions of the will of the settlor, such settlor's probate estate is specifically held liable for the payment of the tax on the nonprobate property.

119 App 271, 199 NE(2d) 886 (1963), Jefferson Local School Dist Bd of Ed v Columbus City School Dist Bd of Ed. The requirements of former rule V(A)(3) of the court of appeals, that a party making application to present additional evidence "shall briefly set out the subject matter of such additional evidence and the reason that its admission is in the interest of justice," are controlling in such matter, and are not met by vague implications of bad faith and the mere assertion of certain reservations or commissions in the stipulations at the trial level.

No. 7586 (2d Dist Ct App, Montgomery, 4-7-82), Seibel v Seibel. Where a motion for new trial fails to disclose facts in support of the subsections of Civ R 59, and the affidavit in support of said motion is not related to the subsections and does not include new matter, it is not an abuse of discretion for the trial court to deny the motion. Moreover, where there is no jury and trial has been waived by stipulation of the parties, the most that can be granted under Civ R 59(A) is opening of the judgment for new testimony.

3. Jurisdiction

a. In general

2 OS(3d) 154, 2 OBR 699, 443 NE(2d) 516 (1983), In re Hartman. RC 2501.02 grants the courts of appeals jurisdiction over appeals from juvenile court judgments and final orders rendered in juvenile traffic offender proceedings.

63 App(3d) 653 (Greene 1990), Morningstar v Morningstar. An appellate court may issue a declaratory judgment to give effect to its interpretation of a trial court's judgment; therefore, such a declaratory judgment will be entered to make a property division in a divorce proceeding binding upon the parties in a foreclosure action against real estate which is marital property.

28 App(3d) 60, 28 OBR 72, 501 NE(2d) 682 (Franklin 1986), State v Milo. A court of appeals has no jurisdiction to entertain an appeal from an order of a common pleas court in another appellate district.

14 App(3d) 183, 14 OBR 201, 470 NE(2d) 454 (Cuyahoga 1984), State ex rel Gangale v Khal. Where a court of appeals dismisses a complaint in mandamus for failure to state a cause of action, the court loses jurisdiction over any accompanying cross-claims or counterclaims where the court could not have exercised jurisdiction over such claims as original actions.

17 App(2d) 69, 244 NE(2d) 494 (1969), Sellman v Schaaf. The statutory grant of jurisdiction to the courts of appeals in RC 2501.02 does not provide for the appeal of part of a case but only in the appeal of completed cases.

15 App(2d) 233, 240 NE(2d) 566 (1968), Johnston v Miller. Where there is a joinder of legal and equitable causes of action, there is no provision for separate appeals from the judgments entered upon each of such causes of action; the appeal must be directed to the entire case.

b. Extraordinary writs

60 OS(3d) 76, 572 NE(2d) 679 (1991), State ex rel Pollock v Franklin County Common Pleas Court. A petition seeking a writ of prohibition and/or mandamus shall be dismissed where it is unclear what relief is sought and the petition fails to state a claim upon which relief could be granted.

59 OS(3d) 194, 571 NE(2d) 724 (1991), State ex rel Children's Medical Center v Brown. Prohibition will not lie to prevent a court from enforcing a discovery order where the court has jurisdiction to issue an order to compel and an adequate remedy at law, i.e., appeal, is available.

54 OS(3d) 48, 1990 SERB 4-71, 562 NE(2d) 125 (1990), Office of Collective Bargaining v SERB. When a court patently and unambiguously lacks jurisdiction to consider a matter, a writ of prohibition will issue to prevent assumption of jurisdiction regardless of whether the lower court has ruled on the question of its jurisdiction.

50 OS(3d) 180, 553 NE(2d) 655 (1990), State ex rel Cully v Flanagan. A bailiff's enforcement of a writ of restitution in a forcible entry and detainer action is not an exercise of judicial or quasi-judicial power; as a consequence, no action in prohibition lies against the bailiff to prevent him from proceeding with eviction before resolution of the tenant's counterclaim; the tenant may also appeal the eviction and thus has an adequate remedy at law.

50 OS(3d) 180, 553 NE(2d) 655 (1990), State ex rel Cully v Flanagan. An action in prohibition will lie only where (1) the court or officer against whom it is sought is about to exercise judicial or quasi-judicial power, (2) the exercise of such power is unauthorized by law, and (3) it appears that the refusal of the writ would result in injury for which there is no adequate remedy in the ordinary course of the law.

50 OS(3d) 71, 552 NE(2d) 906 (1990), Martin v Lucas County Common Pleas Court Judges. A unit of procedendo compels a lower court to proceed to judgment and a writ of mandamus orders a public official to perform a clear legal duty; neither may compel someone to perform a duty already performed.

22 OS(3d) 161, 22 OBR 235, 489 NE(2d) 822 (1986), In re McDowell. In the absence of emergency, a writ of prohibition is void if issued without notice to the court against which it is directed.

No. L-90-197 (6th Dist Ct App, Lucas, 9-6-91), Galloway v Lucas County Children Services Bd. Although RC 2151.35(B)(3) and Juv R 34(C) require that final judgment in the dispositional phase of an institutional child custody action be rendered within seven days of the dispositional hearing, failure to render judgment within seven days does not require reversal of the judgment ultimately rendered; procedendo is the proper remedy to compel a court to comply with the time limits.

No. L-85-316 (6th Dist Ct App, Lucas, 9-17-85), State ex rel Swanson v Grigsby. A writ of procedendo will not issue to control or interfere with ordinary court procedures, such as the grant of a continuance pending the outcome of an appeal from a ruling on a motion.

No. 8-269 (11th Dist Ct App, Lake, 1-25-82), State ex rel Shoop v Mitrovich; affirmed by 4 OS(3d) 220, 4 OBR 575, 448 NE(2d) 800 (1983). A writ of prohibition will not lie against a trial court's order of contempt for violation of the court's ex parte order, since an appeal from a contempt order is an available remedy and prohibition may not be substituted for appeal.

1988 SERB 4-134 (2d Dist Ct App, Montgomery, 10-7-88), State ex rel Trotwood Madison City School Dist Bd of Ed v SERB. An alternative writ of prohibition and temporary restraining order will not be granted pending a decision on the merits of an application for a writ of prohibition, where the issue in the case is whether to prevent the state employment relations board from conducting a representation election arising from an election petition filed contrary to the dictates of RC 4117.07 because more than 120 days before the end of the current contract; the only "harm" at present threatening the employer seeking the writ is the necessity of attending a prehearing conference, and this is not "irreparable."

4. Final appealable judgment or order

62 OS(3d) 419 (1992), Rath v Williamson. A writ of prohibition to prevent a trial court from releasing certain of relator's medical records, including results of a blood test is denied on the grounds that a writ of prohibition is not available for determination of the admissibility of evidence in a trial court having jurisdiction of the parties and the subject matter and since the trial court's order releasing the records is interlocutory and does not involve a usurpation of judicial power.

52 OS(3d) 155, 556 NE(2d) 1169 (1990), In re Murray. An adjudication by a juvenile court that a child is "neglected" or "dependent" as defined in RC Ch 2151, followed by a disposition awarding temporary custody to a public children services agency pursuant to RC 2151.353(A)(2), constitutes a "final order" within the meaning of RC 2505.02 and is appealable to the court of appeals pursuant to RC 2501.02.

39 OS(2d) 84, 314 NE(2d) 158 (1974), In re Becker. An order by a juvenile court pursuant to RC 2151.26 transferring a child to the court of common pleas for criminal prosecution is not a final appealable order.

61 App(3d) 788, 573 NE(2d) 1170 (Lucas 1989), Smith v Lucas County Children Services Bd. The order of a juvenile court modifying a temporary custody order is a final appealable order.

49 App(3d) 14, 550 NE(2d) 549 (Lucas 1989), Ackerman v Lucas County Children Services Bd. Temporary custody orders entered pursuant to Juv R 34 are final, appealable orders when entered.

55 App(2d) 257, 380 NE(2d) 753 (1977), State v Janney. A finding of not guilty by reason of insanity is not a final judgment or order appealable to a court of appeals.

37 App(2d) 7, 306 NE(2d) 166 (1973), In re Bolden. A finding of delinquency by the juvenile court accompanied only by a commitment to the temporary custody of the Ohio youth commission for the purpose of diagnostic study and report as provided by RC 5139.05(B) is not a final order subject to appeal, and such commitment constitutes merely a procedural incident.

1 App(2d) 349, 204 NE(2d) 699 (1965), Mories v Hendy. A judgment or order setting aside a release of negligence liability for equitable reasons, other than fraud in the factum, entered pursuant to a first stated cause of action therefor joined with a second stated cause of action for the negligence liability so released, is not in itself a final appealable order.

1 App(2d) 57, 203 NE(2d) 501 (1963), In re Rule. An order modifying a previously-entered temporary custody order which was made in disposition of a finding that a child is neglected constitutes a final appealable order.

SUPREME COURT JUSTICES

2503.01 Number and qualifications of justices

The supreme court shall consist of a chief justice and six justices, each of whom has been admitted to practice as an attorney at law in this state and has, for a total of at least six years preceding his appointment or commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction of the United States, or both.

HISTORY: 1971 H 18, eff. 7-1-72
1953 H 1; GC 1466

CROSS REFERENCES

Oath of office of judges and other officers, 3.23
Compensation of justices, death benefit, 141.04
Fees or additional compensation unlawful, 141.13
Certain officials ineligible to office of county auditor, 319.07
Removal of residence of judge, 2701.04
Commission to judge of supreme court, 2701.05
Retirement, removal, or suspension of judge, 2701.11
Organization and jurisdiction of supreme court, O Const Art IV §2
Election of justices and judges, compensation, O Const Art IV §6
Filling vacancy in judgeship, O Const Art IV §13
Filling of vacancies, O Const Art IV §13, O Const Art XVII §2
Changes in number of judges, O Const Art IV §15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 14, 28, 31, 38
Am Jur 2d: 46, Judges § 8, 9
Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498

NOTES ON DECISIONS AND OPINIONS

47 App(3d) 15, 546 NE(2d) 1337 (Franklin 1988), Hubner v Sigall. A "court" is an incorporeal, political being, composed of one or more judges who sit at fixed times and places attended by proper officers under lawful authority to administer justice; the word "court" in a statute is not always synonymous with the word "judge" but in a broad sense also includes the jury or may even be taken to mean "jury" alone in a particular instance when the jury is trier of fact.

2503.02 Chief justice; election; term

A chief justice of the supreme court shall be elected every six years and shall hold office for six years commencing on the first day of January next after his election. Vacancies occurring in the office of chief justice shall be filled in the manner prescribed for the filling of vacancies in the office of judge of the supreme court.

HISTORY: 1953 H 1, eff. 10-1-53
GC 1467

CROSS REFERENCES

Oath of office of judges and other officers, 3.23
Compensation of judges, 141.04
Traveling expenses of chief justice, 141.08
Fees or additional compensation unlawful, 141.13
Removal of residence of judge, 2701.04
Retirement, removal, or suspension of judge, 2701.11
Commission to judge of supreme court, 2701.15
Organization and jurisdiction of supreme court, O Const Art IV §2
Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6
Filling vacancy in judgeship, O Const Art IV §13, O Const Art XVII §2
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 33, 35, 36, 87, 156
Am Jur 2d: 46, Judges § 9, 10, 14

2503.03 Election of judges; term

Two judges of the supreme court shall be chosen in each even-numbered year. Each judge shall hold office for six years. The term of one of such judges shall commence on the first day of January next after his election and the term of the other judge shall commence on the second day of January next after his election.

HISTORY: 1953 H 1, eff. 10-1-53
GC 1468

CROSS REFERENCES

Removal of residence of judge, 2701.04
Retirement, removal or suspension of judge, 2701.11
Organization and jurisdiction of supreme court, O Const Art IV §2
Filling of vacancies, O Const Art IV §13, O Const Art XVII §2
Time for holding elections for state and local officers; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22 Courts and Judges § 33, 35, 36, 87, 156
Am Jur 2d: 46, Judges § 9, 10, 14

JUDGE, REMOVAL OF RESIDENCE

2701.04 Removal of residence of judge

If a judge of the supreme court removes his residence from this state, or a judge of the court of appeals from his district, or a judge of the court of common pleas from his county, he is deemed to have resigned and vacated his office. Thereupon the governor shall fill such vacancy.

HISTORY: 1953 H 1, eff. 10-1-53
GC 1688

CROSS REFERENCES

Filling vacancy in judgeship, O Const Art IV §13, Art XVII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 39, 155, 157
Am Jur 2d: 46, Judges § 17

OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

2921.01 Definitions

As used in sections 2921.01 to 2921.45 of the Revised Code:

(A) "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers.

(B) "Public servant" means any of the following:

(1) Any public official;

(2) Any person performing ad hoc a governmental function, including without limitation a juror, member of a temporary commission, master, arbitrator, advisor, or consultant;

(3) A candidate for public office, whether or not he is elected or appointed to the office for which he is a candidate. A person is a candidate for purposes of this division if he has been nominated according to law for election or appointment to public office, or if he has filed a petition or petitions as required by law to have his name placed on the ballot in a primary, general, or special election, or if he campaigns as a write-in candidate in any primary, general, or special election.

(C) "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which he directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

(D) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.

(E) "Detention" means arrest, confinement in any vehicle subsequent to an arrest, confinement in any facility for custody of persons charged with or convicted of crime or alleged or found to be delinquent or unruly, confinement in any vehicle for transportation to or from any such facility, detention for extradition or deportation, or, except as provided in this division, supervision by any employee of any such facility that is incidental to confinement in the facility but that occurs outside the facility. For a person confined in a county jail who participates in a county jail industry program pursuant to section 5147.30 of the Revised Code, "detention" includes time spent at an assigned work site and going to and from the work site. Detention does not include supervision of probation or parole, or constraint incidental to release on bail.

(F) "Detention facility" means any place used for the confinement of a person charged with or convicted of crime or alleged or found to be delinquent or unruly.

(G) "Valuable thing or valuable benefit" includes, but is not limited to, a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.

(H) "Campaign committee," "contribution," "political action committee," and "political party" have the same meanings as in section 3517.01 of the Revised Code.

(I) "Provider agreement" and "medical assistance program" have the same meanings as in section 2913.40 of the Revised Code.

HISTORY: 1992 S 37, eff. 7-31-92
1990 H 51; 1988 H 708; 1986 H 428, H 300, H 340; 1972 H 511

Note: Former 2921.01 repealed by 1972 H 511, eff. 1-1-74; 1953 H 1; GC 12392.

COMMENTARY

Legislative Service Commission

1973: This section contains a variety of definitions used in Ch 2921.

"Public official" includes any elected or appointed officer, employee, or agent of the state, county, township, city, village, or other political subdivision, whether the position is temporary or permanent. Legislators, judges, and law enforcement officers are expressly designated as public officials.

"Public servant" is more broadly defined than public official, and includes public officials as well as persons performing special, one-time duties, such as jurors, members of temporary commissions, masters, arbitrators, advisors, and consultants. "Public servant" also includes candidates for public office, regardless of whether their candidacy is ultimately successful. A person is said to be a candidate if he is regularly nominated, files nominating petitions, or conducts a write-in campaign.

"Party official" is broadly defined to include officials from precinct committeemen through party chairmen, as well as party employees, assistants, or advisors who participate in directing or conducting the affairs of a political party regardless of their relative position in the organization.

"Official proceeding" is defined as any proceeding before a governmental body or officer empowered to take evidence under oath. It includes legislative committee hearings, court proceedings, administrative hearings, and various peripheral proceedings such as the taking of depositions.

"Detention" includes arrest, which may be with or without confinement. It also includes confinement in a lock-up, jail, workhouse, juvenile detention facility, Ohio Youth Commission facility, or penal or reformatory institution. Detention also includes detention pending extradition or deportation. The definition expressly excludes the supervision and restraint incidental to probation, parole, and release on bail.

"Detention facility" is broadly defined to include any temporary or permanent lock-up, jail, workhouse, or juvenile or adult penal or reformatory facility.

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Text 31.04(B); Elements of Crimes; Statutory Charges

Baldwin's Ohio School Law, Text 45.01(C), 45.05, 45.09, 45.11

Gotherman & Babbit, Ohio Municipal Law, Text 41.03, 41.04

CROSS REFERENCES

Means of preventing detention in a "prison facility," bail and additional costs, 2743.70

Actions against political subdivisions, injury or death at detention facility, 2744.02

Aggravated riot, 2917.02

Drug abuse, detention facility defined, 2925.11

Criteria for imposing death or imprisonment for a capital offense, 2929.04

Conduct of body cavity and strip searches, not applicable to persons serving sentences in detention facility, 2933.32

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Civil Servants and Other Public Officers and Employees § 7 to 11; 15, Civil Servants and Other Public Officers and Employees § 292, 293, 295 to 299; 28, Criminal Law § 2048, 2144, 2145, 2149, 2173; 37, Elections § 90, 245

Furnishing public official with meals, lodging, or travel, or receipt of such benefits, as bribery. 67 ALR3d 1231

NOTES ON DECISIONS AND OPINIONS

65 OS(2d) 117, 418 NE(2d) 1359 (1981), State v Reed. A person is under "detention," as that term is used in RC 2921.34, when he is arrested and the arresting officer has established control over his person.

29 App(3d) 281, 29 OBR 345, 504 NE(2d) 1204 (Franklin 1986), Columbus v Nickles. A paramedic is a public official for purposes of a municipal ordinance prohibiting the obstruction of official business.

21 App(3d) 297, 21 OBR 443, 488 NE(2d) 495 (Cuyahoga 1985), State v Blagajevic. A janitor employed at a municipal police storage garage, under the auspices of the Comprehensive Employment and Training Act, who does not participate in the state retirement plan or receive benefits accorded other city workers is not a "public official" subject to the penalties imposed by RC 2921.41.

No. 1459 (11th Dist Ct App, Geauga, 12-15-89), State v Kreischer. A maintenance employee employed under the Job Partnership Training Act, is not a public official as defined by RC 2921.01, thus a conviction under RC 2921.41 is improper.

OAG 92-010. An individual whose pretrial release is conditioned upon his remaining in his residence and being subject to supervision by law enforcement officers through an electronic monitoring device is not in detention, as defined by RC 2921.01(E), for purposes of RC 2921.34(A), and thus the individual does not violate RC 2921.34(A) when he removes his electronic monitoring device or leaves his residence without authority from the court.

OAG 87-019. The executive director of a metropolitan housing authority is a "public servant" as that term is defined in RC 2921.01(B).

2921.02 Bribery

(A) No person, with purpose to corrupt a public servant or party official, or improperly to influence him with respect to the discharge of his duty, whether before or after he is elected, appointed, qualified, employed, summoned, or sworn, shall promise, offer, or give any valuable thing or valuable benefit.

(B) No person, either before or after he is elected, appointed, qualified, employed, summoned, or sworn as a public servant or party official, shall knowingly solicit or accept for himself or another person any valuable thing or valuable benefit to corrupt or improperly influence him or another public servant or party official with respect to the discharge of his or the other public servant's or party official's duty.

(C) No person, with purpose to corrupt a witness or improperly to influence him with respect to his testimony in an official proceeding, either before or after he is subpoenaed or sworn, shall promise, offer, or give him or another person any valuable thing or valuable benefit.

(D) No person, either before or after he is subpoenaed or sworn as a witness, shall knowingly solicit or accept for himself or another person any valuable thing or valuable benefit to corrupt or improperly influence him with respect to his testimony in an official proceeding.

(E) Whoever violates this section is guilty of bribery, a felony of the third degree.

(F) A public servant or party official who is convicted of bribery is forever disqualified from holding any public office, employment, or position of trust in this state.

HISTORY: 1986 H 300, eff. 9-17-86
1972 H 511

Note: Former 2921.02 repealed by 1972 H 511, eff. 1-1-74; 1953 H 1; GC 12393.

Note: 2921.02 contains provisions analogous to former 125.23 and 3329.11, repealed by 1972 H 511, eff. 1-1-74.

COMMENTARY

Legislative Service Commission

1973: This section broadly restates the former law relating to bribery and soliciting bribes, consolidating several sections which dealt with specific officers or positions of public trust. Bribery of or soliciting bribes by political party officials is included in this section, and the definition of public servant, found in section 2921.01

of the Revised Code, is broad enough to include every category of public servant found in former law. Also, under this section, the bribe given or solicited may include either a valuable thing or a valuable benefit, as under former law.

In addition to penal sanctions against bribery, the section provides that persons convicted of bribery are disqualified forever from holding any public office, employment, or position of trust in the state.

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Elements of Crimes; Statutory Charges

Baldwin's Ohio Township Law, Text 11.15

Gotherman & Babbit, Ohio Municipal Law, Text 15.11, 15.263

CROSS REFERENCES

Parole and community services, restoration of rights of persons convicted of bribery, OAC 5120:1-1-14

Payment to financial institution for assembling customer's records at request of third party, exemptions for criminal prosecutions, 9.02

Public officials, restrictions during and after employment, bribery prohibited, 102.03

Offenses against justice and public administration, no person convicted of shall be on board of directors of bank, 1115.021

Purposely and knowingly, defined, 2901.22

Corrupt activity, defined, 2923.31

Penalties and sentencing, Ch 2929

Interception of communications, definitions, 2933.51

Pre-trial diversion programs for adult offenders, limits, 2935.36

Bribery, 3599.01

Fire marshal and assistants forbidden to accept gift or gratuity from hotel, 3731.20

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 6, Arbitration and Award § 48; 6, Attorneys at Law § 29, 30, 62; 9, Boats, Ships, and Shipping § 34; 15, Civil Servants and Other Public Officers and Employees § 52, 135, 285, 291, 292; 26, Criminal Law § 422; 28, Criminal Law § 2047, 2049 to 2064 to 2064; 89, Trial § 54

Am Jur 2d: 12, Bribery § 1 to 18

Admissibility, in prosecution for bribery or accepting bribes, of evidence tending to show the commission of other bribery or acceptance of bribe. 20 ALR2d 1012

Bribery in athletic contest. 49 ALR2d 1234

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

Recovery of money paid, or property transferred, as a bribe. 60 ALR2d 1273

Entrapment to commit bribery or offer to bribe. 69 ALR2d 1397

Validity and construction of statutes punishing commercial bribery. 1 ALR3d 1350; 58 ALR Fed 797

Criminal liability of corporation for bribery or conspiracy to bribe public official. 52 ALR3d 1274

Furnishing public official with meals, lodging, or travel, or receipt of such benefits, as bribery. 67 ALR3d 1231

What constitutes the taking of money or other things of value under color of office. 70 ALR3d 1153

Criminal offense of bribery as affected by lack of authority of state public officer or employee. 73 ALR3d 374

Validity of state statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 ALR4th 1202

Validity, construction, and application of state statutes imposing criminal penalties for influencing, intimidating, or tampering with witness. 8 ALR4th 769

Venue in bribery cases where crime is committed partly in one county and partly in another. 11 ALR4th 704

Construction and application of 18 USCS § 1503 making it a federal offense to endeavor to influence, intimidate, impede, or injure witness, juror, or officer in federal court, or to obstruct the due administration of justice. 20 ALR Fed 731

Consummation of offense under 18 USCS § 201(b) of giving, offering, or promising bribe to public official, as affected by fact that latter is not corrupted or refuses to accept bribe, or object of bribe was not attained. 20 ALR Fed 950

Who is public official within meaning of federal statute punishing bribery of public officials (18 USCS § 201). 65 ALR Fed 461

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Culpable mental state
4. Valuable thing or benefit
5. Bribery of public servant; soliciting bribe
   a. In general
   b. Public official
   c. Juror
   d. Witness
   e. Soliciting bribe
6. Evidence
7. Conviction as ground for disbarment

1. Constitutional issues

3 App(3d) 108, 3 OBR 123, 444 NE(2d) 92 (1982), State v Bissantz. RC 2921.02 is constitutional.

13 App(2d) 185, 234 NE(2d) 611 (1967), State v McKinley. Inquiries made by a police officer during the commission of a crime, such as bribery, do not constitute custodial interrogation. (Annotation from former RC 2917.01.)

2. In general

19 Am Crim L Rev 409 (1981). Bribery, Robert J. O'Regan.

122 OS 156, 171 NE 27 (1930), Fleming v State; appeal dismissed by 282 US 800, 51 SCt 39, 75 LEd 719 (1930). An indictment for accepting money and proof of receiving a check for that sum is not a fatal variance prejudicial to the defendant. (Annotation from former RC 2917.01.)

39 App(3d) 194, 530 NE(2d) 940 (Cuyahoga 1987), State v Bolar. 7 USC 2011 does not preempt or preclude concurrent enforcement of supplementary state statutes outlawing the misuse of federal food stamps; thus, the state may properly prosecute food stamp violators for various state offenses such as (1) theft, under RC 2913.02; (2) criminal simulation, under RC 2913.32; (3) tampering with records, under RC 2913.42; (4) receiving stolen property, under RC 2913.51; (5) bribery, under RC 2921.02; or (6) theft in office, under RC 2921.41.

38 App(3d) 133, 528 NE(2d) 950 (Cuyahoga 1987), State v Flors. It is not necessary for the state to prove which public official a defendant sought to influence in a prosecution for bribery pursuant to RC 2921.02, because a defendant can commit bribery without knowing which public official will be influenced or whether that official will receive any payment in return; consequently, a conviction for bribery based on dealings with a "friend of a friend" will be upheld where such dealings are evidence of a purpose to obtain special treatment by nonlegal means.

34 App 536, 171 NE 407 (1929), Fleming v State; affirmed by 122 OS 156, 171 NE 27 (1930); appeal dismissed by 282 US 800, 51 SCt 39, 75 LEd 719 (1930). Instruction, in bribery prosecution, to effect that bribery concerns and must apply to act to happen in future, held not proper; severity of sentence for bribery is matter resting in sound discretion of trial court, and not subject to review by court of appeals. (Annotation from former RC 2917.01.)

No. C-820786 (1st Dist Ct App, Hamilton, 7-27-83), State v Folchi. Where a defendant is indicted for the crime of bribery, the court commits prejudicial error in instructing the jury on conspiracy and co-conspirators.

3. Culpable mental state

3 App(3d) 108, 3 OBR 123, 444 NE(2d) 92 (Clermont 1982), State v Bissantz. It is not necessary for the state to prove a defen-

dant acted with purpose or intent to convict him of violating RC 2921.02(B).

712 FSupp 112 (ND Ohio 1989), United States v Anthony. To convict a federal official under 18 USC 201(c)(1)(B), forbidding unlawful gratuities, all that need be proven is that the official accepted a thing of value because of his position "otherwise than as provided by law for the proper discharge of official duty"; no specific intent need be shown, for the gravamen of the offense is not an intent to be corrupted or influenced but simply acceptance of the unauthorized compensation.

4. Valuable thing or benefit

107 OS 475, 141 NE 19 (1923), Scott v State. A substantial favor asked by a public official is a "valuable thing" under this section. (Annotation from former RC 2917.01.)

3 App(3d) 108, 3 OBR 123, 444 NE(2d) 92 (Clermont 1982), State v Bissantz. A job commitment is a "valuable thing" within the meaning of RC 2921.02(B).

5. Bribery of public servant; soliciting bribe

a. In general

40 OS(3d) 112, 532 NE(2d) 126 (1988), State v Bissantz. A conviction of bribery in office under RC 2921.02(B) may be expunged pursuant to RC 2953.31 through 2953.36.

113 OS 187, 148 NE 834 (1925), Curtis v State. If a bribe is received, it is not necessary that the act for which it is given actually be accomplished; the crime is complete when money is received to influence official action. (Annotation from former RC 2917.01.)

38 App(3d) 133, 528 NE(2d) 950 (Cuyahoga 1987), State v Flors. It is not necessary for the state to prove which public official a defendant sought to influence in a prosecution for bribery pursuant to RC 2921.02, because a defendant can commit bribery without knowing which public official will be influenced or whether that official will receive any payment in return; consequently, a conviction for bribery based on dealings with a "friend of a friend" will be upheld where such dealings are evidence of a purpose to obtain special treatment by nonlegal means.

b. Public official

40 OS(3d) 112, 532 NE(2d) 126 (1988), State v Bissantz. A person convicted of bribery in office under RC 2921.02(B) is forever barred from holding public office in this state, even where such conviction is subsequently expunged pursuant to RC 2953.31 through 2953.36.

18 OS(3d) 38, 18 OBR 75, 479 NE(2d) 857 (1985), State v Italiano; cert denied 474 US 904, 106 SCt 234, 88 LEd(2d) 232 (1985). For purposes of a prosecution for bribery of a public official, the official "duty" can be one arising from usage rather than from a written rule or regulation.

18 OS(3d) 38, 18 OBR 75, 479 NE(2d) 857 (1985), State v Italiano; cert denied 474 US 904, 106 SCt 234, 88 LEd(2d) 232 (1985). It is not a defense to a charge of bribery that the official bribed did not have the ultimate authority to do the act sought, provided that the money was paid in exchange for the official's efforts to influence the acts or judgment of others.

140 OS 190, 42 NE(2d) 896 (1942), State v Costanzo. An indictment, which charges accused with bribery by corruptly giving another person money to influence his action, opinion or judgment in a matter pending, is not insufficient merely because the only allegation with respect to the position held by the person alleged to have been bribed is that he "was duly appointed, qualified and acting senior assistant mechanical engineer of the city of Cleveland and in said position was an agent and employee of said city of Cleveland." (Annotation from former RC 2917.01.)

111 SCt 1807, 114 LEd(2d) 307 (1991), McCormick v United States. Legislators do not commit the federal crime of extortion under 18 USC 1951, the Hobbs Act, by acting for constituents' benefit or supporting legislation furthering constituents' interests shortly before or after they solicit or receive campaign contributions from those constituents; property is extorted within the comprehension of the Hobbs Act only when an official asserts that his official conduct will be controlled by the terms of the promise or undertaking.

c. Juror

87 Abs 475, 167 NE(2d) 897 (App, Columbiana 1960), State v Cunningham. Conviction of attempting to corrupt a juror sustained although defendant attempted to corrupt a "Donald Lockhart" whereas the jury commissioners erroneously summoned a "Donald Lockwood." (Annotation from former RC 2917.05.)

d. Witness

55 App(3d) 70, 562 NE(2d) 941 (Cuyahoga 1989), State v Jurek. The crime of bribery of a witness is committed where an attorney offers a complaining witness $1000 to request that charges against his client be dropped.

114 App 339, 179 NE(2d) 108 (1961), State v Lieberman. An attempt to bribe within the proscription of RC 2917.06 is corrupt action; and an offer of "any valuable thing" to influence the testimony of one who has factual knowledge relevant to grand jury proceedings pending against another is a violation of RC 2917.07. (Annotation from former RC 2917.06.)

114 App 339, 179 NE(2d) 108 (1961), State v Lieberman. Where an offer of "any valuable thing" is made to influence the testimony of a person who has factual knowledge relevant to (but has not been subpoenaed or sworn in) grand jury proceedings pending against another, the ultimate and essential facts of, and the evidence used to prove, the offerer's violation of RC 2917.06 are identical to those which prove a violation of RC 2917.07, and there is but one offense, and the defendant-offerer may be sentenced only once; the failure of the defendant to challenge the sentencing under both statutes in the trial court does not waive the error of imposing two sentences under the two statutes. (Annotation from former RC 2917.06.)

114 App 339, 179 NE(2d) 108 (1961), State v Lieberman. RC 2917.06 makes it a crime to offer or promise "any valuable thing" to one who has knowledge of facts which are pertinent or relevant to grand jury proceedings pending against another but who has not testified or even been sworn or subpoenaed. (Annotation from former RC 2917.06.)

114 App 339, 179 NE(2d) 108 (1961), State v Lieberman. A person who offers "any valuable thing" to another for the purpose of inducing such other person to testify contrary to such other person's beliefs as to the facts violates RC 2917.06, regardless of the offerer's belief as to the facts and regardless of what a jury might ultimately find such facts to be; and it is not necessary that such other person be, in fact, influenced. (Annotation from former RC 2917.06.)

e. Soliciting bribe

70 App(2d) 171, 435 NE(2d) 680 (1980), State v Seneff. A police officer who solicits and receives a reward from the owner of stolen property before returning the property to the owner is guilty of bribery, even though the police officer recovered the property in his off-duty hours, and solicited and received the reward in his off-duty hours.

6. Evidence

113 OS 187, 148 NE 834 (1925), Curtis v State. See as to evidence and instructions on trial for bribery. (Annotation from former RC 2917.01.)

426 F(2d) 1288 (6th Cir Ohio 1970), Birns v Perini; cert denied 402 US 950, 91 SCt 1609, 29 LEd(2d) 120 (1971). Where an individual arrested for involvement in the "numbers racket" is tried for bribery of one of the arresting officers, introduction into evidence at the state bribery trial of testimony about items that had been suppressed at the defendant's separate trial on a numbers charge is not improper where the state cannot prove its case without referring to the arrest and the numbers prosecution.

426 F(2d) 1288 (6th Cir Ohio 1970), Birns v Perini; cert denied 402 US 950, 91 SCt 1609, 29 LEd(2d) 120 (1971). In a state bribery

trial where conservations between the defendant and an officer with a transmitter are testified to by the officer who monitored the broadcast outside in his cruiser, any error from nondisclosure of the fact an automobile accident caused the outside officer to leave the cruiser for awhile is harmless where he simply corroborated the testimony of his fellow officer and where the defendant's own testimony was substantially similar.

7. Conviction as ground for disbarment

57 OS(2d) 11, 385 NE(2d) 294 (1979), Medina County Bar Assn v Haddad. Attorney convicted of offering and giving a bribe to a prosecuting attorney should be disbarred rather than indefinitely suspended.

28 OS(2d) 40, 274 NE(2d) 763 (1971), Cleveland Bar Assn v Fatica. Conviction of a violation of RC 2917.01 justified disbarment. (Annotation from former RC 2917.01.)

2921.42 Having an unlawful interest in a public contract

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

(2) Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;

(3) During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization, and not let by competitive bidding, or let by competitive bidding in which his is not the lowest and best bid;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected;

(5) Have an interest in the profits or benefits of a public contract which is not let by competitive bidding when required by law, and which involves more than one hundred fifty dollars.

(B) In the absence of bribery or a purpose to defraud, a public servant, member of his family, or any of his associates shall not be considered as having an interest in a public contract or the investment of public funds, when all of the following apply:

(1) The interest of such person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, which is the contractor on the public contract involved, or which is the issuer of the security in which public funds are invested;

(2) The shares owned or controlled by such person do not exceed five per cent of the outstanding shares of the corporation, and the amount due such person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization;

(3) Such person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving his exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public servant, member of his family, or one of his business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public servant's becoming associated with the political subdivision or governmental agency or instrumentality involved;

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public servant, member of his family, or business associate, and the public servant takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (2) of this section is a felony of the fourth degree. Violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree.

(E) As used in this section, "public contract" means any of the following:

(1) The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either;

(2) A contract for the design, construction, alteration, repair, or maintenance of any public property.

HISTORY: 1972 H 511, eff. 1-1-74

Note: 2921.42 contains provisions analogous to former 152.03 and 5909.18, repealed by 1972 H 511, eff. 1-1-74.

COMMENTARY

Legislative Service Commission

1973: This section consolidates and expands upon former prohibitions in the criminal code relating to public officials having an improper interest in certain contracts. It includes contracts for services by or for the use of public agencies or the state and its subdivisions, and also includes a provision specifically prohibiting public officers from employing their position to broker or facilitate brokering the investment of public funds when they or their family or associates will reap unconscionable benefits thereby.

The purpose of this section is to insure that public agencies stand on at least an equal footing with others with respect to necessary business dealings. Accordingly, the section does not prohibit public servants from all dealings in which they may have some interest, no matter how remote or above-board. It prohibits only those dealings in which there is a risk that private considerations may detract from serving the public interests. Thus, there is no violation of this section where a public servant's connection with a contracting party is as a stockholder or creditor with a strictly limited stake which is fully revealed, provided there is no purpose to defraud. Similarly, there is no violation of the section when obtaining necessary supplies or services from a contractor in which a public servant has an interest, as part of a course of dealing

established before the public servant assumed office, provided the transaction is at arm's length, and provided the agency's only alternatives to dealing with the contractor are to pay more or do without the supplies or services involved.

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Elements of Crimes; Statutory Charges

Baldwin's Ohio Township Law, Text 11.15, 11.18, 13.15, 19.03; Forms 1.13

Baldwin's Ohio School Law, Text 3.02(C), 9.03, 34.09(A), 45.01(B), 45.03, 45.04, 45.05, 45.08, 45.09

Gotherman & Babbit, Ohio Municipal Law, Text 9.17, 9.19, 15.22, 15.281, 15.51, 15.72, 31.05

CROSS REFERENCES

Ethics commission, advisory opinion concerning conflicts of interest, OAC 102-1-01 et seq.

Ethics commission, advisory opinions, OAC 102-1-03

Governor may remove or suspend appointee to public office, 3.04

Payment to financial institution for assembling customer's records at request of third party, exemptions for criminal prosecutions, 9.02

Ethics commission, investigation of complaint against public officials and employees, 102.06

Recommendations and opinions of commissions, immunity from prosecution, 102.08

Public officers—ethics; financial disclosure, distribution of forms and law, notice to ethics commission of appointments, 102.09

Classified civil service, tenure of office, reduction, suspension and removal, appeal, 124.34

Sale or lease of state land to Ohio building authority, agreement for goods or services, 152.06

Public works commission, small government capital improvements commission, public official as member, unlawful interest in public contract not present, 164.02

District public works integrating committees, public officials as members, unlawful interest in public contract not present, 164.04

Interest in county contracts prohibited; exceptions, 305.27

Offenses against justice and public administration, no person convicted of shall be on board of directors of bank, 1115.021

Purposely and knowingly, defined, 2901.22

"Defraud," defined, 2913.01

Corrupt activity, defined, 2923.31

Penalties and sentencing, Ch 2929

Arts facilities commission acquiring government property not public contract, 3383.05

Housing authority members and employees shall have no interest in contracts, 3735.29

County mental retardation and developmental disabilities boards, direct services contracts, applicability, 5126.032

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agency and Independent Contractors § 108; 14, Cemeteries and Dead Bodies § 22; 15, Civil Servants and Other Public Officers and Employees § 226 to 229, 291, 292, 299; 29, Criminal Law § 2366; 37, Elections § 90, 114, 245; 78, Public Works and Contracts § 11

Am Jur 2d: 63A, Public Officers and Employees § 331 to 347, 386 to 389, 411; 64, Public Works and Contracts § 55

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Authorization of public contract subject to interest
   a. In general
   b. Public official
   c. Family members
   d. Business associates
3. Public investments subject to interest
4. Interest in profits or benefits of public contract
   a. In general
   b. Municipal officials
   c. County officials
   d. Township officials
   e. School district officials
   f. Other public officials or employees
5. Incompatible offices
6. Permitted transactions
   a. In general
   b. Arm's length contract exception

1. In general

34 Ohio St L J 949 (1973). CONSTITUTIONAL LAW—First Amendment—State Regulation of Partisan Political Activities of Public Employees—Broadrick v. Oklahoma, Note.

33 Ohio School Bds Assn J 6 (December 1989). Conflict: does it affect you?, Tom McGinty.

27 Ohio School Bds Assn J 15 (1983). Ohio Ethics Commission Advisory Opinions: Ethical Restrictions on School Board Members, James M. Long.

27 Ohio School Bds Assn J 12 (1983). Ohio Ethics Commission Advisory Opinions: School Board Members and Public Contracts, James M. Long.

36 OS(3d) 190, 522 NE(2d) 555 (1988), State v Pinkney. Knowledge by a public official that certain conduct is unlawful is not an element of the crime of his "knowingly" authorizing a public contract in which he has an interest, as set forth in RC 2921.42(A).

5 OS(3d) 41, 5 OBR 99, 448 NE(2d) 1159 (1983), State ex rel Evans v Bainbridge Twp Trustees. Where a case is brought on the claim that a township trustee violated RC 2921.42(A)(1) and that a resolution he voted on is void for that one reason, an appeals court errs in reversing a dismissal on the ground that the resolution was void for the separate reason that the trustees failed to append a certificate of fund availability to the resolution as required by RC 5705.41.

38 OS(2d) 51, 309 NE(2d) 926 (1974), State ex rel Crebs v Wayne County Court of Common Pleas. Prohibition does not lie to determine the constitutionality of a statute or ordinance where an adequate remedy at law by way of appeal is available. (Annotation from former RC 733.78.)

20 OS(2d) 37, 252 NE(2d) 639 (1969), State ex rel Kendzia v Carney. A mayor of a city who has pled guilty to a violation of RC 2919.10 is disqualified from running for election as mayor. (Annotation from former RC 2919.10.)

119 OS 462, 164 NE 512 (1928), Wright v Clark. Neither fraud, nor conspiracy, nor unreasonable profits, are necessary elements of a cause of action for recovery of money from an officer of a city or village, under this section. (Annotation from former RC 733.78.)

75 Abs 257, 136 NE(2d) 457 (CP, Belmont 1955), Bethesda v Mallonee. Where a municipal corporation seeks to recover money paid upon a construction contract upon the ground of illegality thereof due to participation of a councilman therein, it must offer to tender back the building constructed. (Annotation from former RC 2919.10.)

OAG 91-014. Members of the emergency response commission who have been appointed under RC 3750.02 and members of a local emergency planning committee who have been appointed pursuant to RC 3750.03 are entitled to immunity from criminal prosecutions, civil suits, and actions for removal from office or employment for violations of RC Ch 102, 2921.42, or 2921.43 in the circumstances prescribed by RC 102.08.

Bd of Commrs on Grievances & Discipline Op 91-011 (4-12-91). The Code of Judicial Conduct, the Ohio Ethics Law RC Ch 102, and related statutes (RC 2921.42 and 2921.43) prohibit a municipal judge from serving as a member or officer of the board of directors of a nonprofit corporation providing services to the municipal court by contract with the city.

Ethics Op 91-010. RC 2921.42(A)(4) and 2921.43(A) prohibit a state officer or employee from accepting or using, for personal

travel, a discounted or free "frequent flyer" airline ticket or other benefit from an airline if she has obtained the ticket or other benefit from the purchase of airline tickets, for use in official travel, by the department, division, agency, institution, or other entity with which she is connected.

Ethics Op 91-001. RC 505.011 does not provide an exemption from the prohibitions of RC 2921.42(A)(1) and 102.03.

Ethics Op 90-005. A board of education will be deemed to "authorize" all school district purchases for purposes of RC 2921.42(A)(1) and 2921.42(A)(3), unless the board has passed a general resolution dispensing with the adoption of resolutions authorizing purchases and approving payments, in accordance with the requirements of RC 3313.18.

Ethics Op 85-005. Members of the technical advisory committee appointed under RC 1551.35 are not "public officials" or "public employees" for purposes of RC 2921.42.

Ethics Op 83-008. RC 2921.42 and related statutes do not prohibit a city council member who is affiliated with the mayor in a legal professional corporation from voting on an ordinance increasing the salary of the office of mayor, effective during the next term following an election.

Ethics Op 83-004. Where Ohio ethics law and related statutes conflict with the provisions of a city charter, the state criminal statutes prevail.

Ethics Op 83-002. Ohio ethics law and related statutes do not prohibit a city council member from being affiliated in a legal association with the city law director, provided that: (1) only expenses, and not profits, are shared by the association; and (2) the council member does not participate in discussions, vote, or otherwise use the authority or influence of his office to secure approval of a contract between the city and the law director.

Ethics Op 82-003. RC 2921.42 does not prohibit a school board member, whose spouse is a teacher and member of the teachers' union in the school district, from voting on a master contract between the school district and the teachers' union.

Ethics Op 78-004. For purposes of RC 2921.42, the term "public official" comprehends a corporation appointed to serve as city engineer, and a member or employee of the corporation designated to serve in the capacity of city engineer; RC 102.03(D) prohibits the city engineer from using or attempting to use the position to secure anything of value for himself that would not ordinarily accrue to him and of such a nature as to manifest a substantial and improper influence upon the exercise of his duties.

2. Authorization of public contract subject to interest

a. In general

OAG 85-099. An individual may serve as county auditor even though his son is a member of a board of education of a city school district within the same county.

Ethics Op 88-001. RC 2921.42(A)(1) and 102.03(D) prohibit a physician who is employed by the department of mental retardation and developmental disabilities from authorizing, or using the authority or influence of his employment to secure authorization of a contract under which he would provide on-call medical services to the department.

Ethics Op 79-005. A member of a village council is prohibited from knowingly authorizing, voting, or otherwise using his office to secure approval of a roof repair contract between the village and a corporation in which he, a member of his family or any of his business associates has an interest and is prohibited from knowingly having an interest in such a contract.

b. Public official

36 OS(3d) 190, 522 NE(2d) 555 (1988), State v Pinkney. Knowledge by a public official that certain conduct is unlawful is not an element of the crime of his "knowingly" authorizing a public contract in which he has an interest, as set forth in RC 2921.42(A).

6 OS(3d) 59, 6 OBR 103, 451 NE(2d) 744 (1983), State v Jacobozzi. Where a city agency awards a rehabilitation grant for property of which the agency chairman was formerly co-owner and in which his wife still had a half interest at the time of the award, a conviction of the agency chairman for having an interest in a contract prohibited by RC 2921.42 is defective for failure to preclude all reasonable theories of innocence where (1) the chairman and his wife had quitclaimed the property to a third person; (2) a later title examination revealed that the deed transferred only the dower interest but not the ownership interest of the wife, possibly because of inartful draftsmanship or a scrivener's error; and (3) soon after the discovery of the deed's inadequacy the wife quitclaimed her remaining interest to the third person without further consideration.

No. 50718 (8th Dist Ct App, Cuyahoga, 3-12-87), State v Pinkney; affirmed by 36 OS(3d) 190, 522 NE(2d) 555 (1988). A member of a port authority board of directors violates RC 2921.42(A)(1) where, under the authority of his public office, he signs a check for the purchase of liability insurance for board members from his own insurance company.

Ethics Op 91-007. The clerk of a city council and the city treasurer are not prohibited by RC 102.03 or 2921.42 from accepting an increase in compensation enacted by city council during their current term of office unless a local provision authorizes the clerk or treasurer to exercise discretionary authority with respect to the enactment of legislation, the appropriation of city funds, or the establishment of the compensation for their respective positions.

Ethics Op 90-003. RC 2921.42(A)(4) prohibits a member of a board of education who is a store owner from selling merchandise to the school district with which he serves, unless he is able to meet the exception of RC 2921.42(C).

Ethics Op 90-003. RC 2921.42(A)(4) prohibits a member of a board of education from knowingly selling goods to a band parent boosters club when the goods will be purchased for the use of the school district with which he serves, unless he is able to meet the exception of RC 2921.42(C).

Ethics Op 89-015. The Ohio ethics law and related statutes do not prohibit two or more members of the same law firm or other business associates from simultaneously serving as public officials within the same political subdivision; however, the ethics law and related statutes restrict the conduct of public officials with respect to business associates.

Ethics Op 89-004. A member of a board of county commissioners is prohibited by RC 2921.42(A)(4) from having an interest in a public contract entered into by or for the use of a regional transit authority where the board of county commissioners participated in the creation of the authority and the county is included within the transit authority's jurisdiction.

Ethics Op 89-004. RC 2921.42(A)(1) prohibits a member of a board of county commissioners from authorizing, or using the authority or influence of his office to secure authorization of, a public contract in which he, a member of his family, or any of his business associates has an interest, where the public contract is entered into by a regional transit authority which the board of county commissioners participated in creating and which includes the county.

Ethics Op 88-008. RC 2921.42(A)(4) prohibits a member of city council from serving as a director of an insurance company which has entered into a contract with any agency, board, department, or office of the city, unless all of the criteria for the exemption of RC 2921.42(C) are met.

Ethics Op 88-008. RC 2921(A)(3) prohibits a member of city council from serving as a director of an insurance company which has entered into a public contract approved or authorized by city council where the contract was not competitively bid, not the lowest and best bid, and (1) the establishment or operation of the insurance company is dependent upon receipt of the contract, (2) the creation or continuation of the official's position with the insurance company is dependent upon the award of the contract, (3) the proceeds from the contract would be used by the insurance company to compensate the official or as a basis for the official's compensation, or (4) the official would otherwise profit from the contract; the prohibition applies for one year after the city council member leaves office, but does not apply to any contract approved or authorized by city council prior to the member's election or appointment.

Ethics Op 88-008. RC 2921.42(A)(1) prohibits a member of city council from voting, discussing, deliberating, or otherwise using his official authority or influence, formally or informally, to secure a contract between the city and an insurance company he serves as director.

Ethics Op 88-006. A city officer or employee is prohibited by RC 2921.42(A)(4) from purchasing real property from the city under a land reutilization program, where he would be required by the city to construct an improvement upon the property or otherwise use such property for a specific purpose, unless all of the criteria for the exemption of RC 2921.42(C) are met.

Ethics Op 88-006. RC 2921.42(A)(1) prohibits a city officer or employee from voting, discussing, deliberating, or otherwise using his official authority or influence, formally or informally, to secure real property from the city under a land reutilization program.

Ethics Op 88-006. RC 2921.42(A)(3) prohibits a city officer or employee whose approval is necessary to the sale of real property by the city under a land reutilization program, or who serves as a member of a legislative body, board, or commission which must approve the sale, from purchasing such property where there is no competitive bidding process.

Ethics Op 88-003. RC 2921.42(A)(4) prohibits a county officer, employee, or agent from conveying real property he owns to the board of county commissioners, where the board seeks to acquire such property by direct purchase or through eminent domain proceedings, unless all of the criteria for the exemption of RC 2921.42(C) are met; under RC 2921.42(C)(2) it must be demonstrated that the property of the county official is either the least costly property for the county or is uniquely suited to meet the requirements of the board of county commissioners because of its location, size, or other characteristics.

Ethics Op 88-003. RC 2921.42(A)(1) and 102.03(D) prohibit a county officer or employee from voting, deliberating, participating in discussions, or otherwise authorizing or using the authority or influence of his position to secure the acquisition of his property by the county.

Ethics Op 88-003. RC 2921.42(A)(3) prohibits a county commissioner, or other county official who has the authority to acquire property or who serves on a board or commission with such authority, from profiting by an acquisition of real property authorized by him or by his board or commission, where this acquisition is not made pursuant to competitive bidding or is awarded under competitive bidding to a bid other than the lowest and best one.

Ethics Op 87-003 (4-9-87). Members of the Ohio children's trust fund board are forbidden by RC 2921.42(A)(4) to serve as trustees or officers of a nonprofit corporation that has been granted funds by the board or that is awarded funds by an umbrella organization given money by the board.

Ethics Op 87-003 (4-9-87). The standards in RC 2921.42(C) for judging when a public official may have an interest in a public contract are strictly applied against the official.

Ethics Op 87-003 (4-9-87). The "continuing course of dealing" exception in RC 2921.42(C) applies only to services rendered during the term of a contract entered before the interested official was appointed; the awarding of a second contract after appointment does not establish a "continuing course of dealing."

Ethics Op 87-003 (4-9-87). The Ohio children's trust fund board is invested with independent power under RC 3109.16 and 3109.17 to allocate public funds and perform other sovereign duties on behalf of the state; its members are accordingly "public officials" for purposes of RC 2921.42.

Ethics Op 87-002. Members of a county board of elections are sufficiently "connected" with the county, for purposes of RC 2921.42, that they are forbidden to sell property or services to the county unless the transaction is exempt under RC 2921.42(C).

Ethics Op 85-010. RC 2921.42(A)(1) prohibits a member of a city board of building appeals who is an architect or engineer from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which he, a family member, or a business associate has an interest.

Ethics Op 85-007. RC 102.03(D) prohibits a county treasurer from participating in a decision or authorizing a transaction involving a bank if he has a personal, financial stake in the decision or transaction.

Ethics Op 85-001. RC 2921.42(A)(1) prohibits a park manager employed by the department of natural resources from authorizing, or otherwise using the authority or influence of his office to secure approval of, a contract between the department and his private company to provide machine repair and maintenance services in his park and elsewhere in the state park system.

Ethics Op 84-014. RC 2921.42(A)(1) prohibits a city fire chief from knowingly authorizing, or otherwise using the authority or influence of his office to secure approval of, a contract between the city and a fire equipment firm with which he is associated.

Ethics Op 84-013. RC 2921.42(A)(1) prohibits a city employee from knowingly authorizing or using the authority or influence of his office to secure approval of a contract between the city and a computer software firm with which he is associated.

Ethics Op 84-009. RC 2921.42(A)(1) forbids a professional staff member of a community developmental center run by the department of mental retardation and developmental disabilities to authorize, or use the influence of his office to secure approval of placement of department clients in a group home run by a corporation that he serves as an employee or consultant.

c. Family members

32 Ohio School Bds Assn J 2 (November 1988). "Innocent" board member is guilty, Richard J. Dickinson. (Ed. note: For a school board to hire the law firm of a board member's husband is said to create a conflict of interest forbidden by RC 3313.33, even when the act is not unethical under RC 2921.42 because the attorney's wife did not vote to hire her husband.)

63 App(3d) 555, 579 NE(2d) 525 (Lawrence 1990), Scherer v Rock Hill Local School Dist Bd of Ed. An assistant school nurse's employment contract with a board of education is not void merely because her husband is a member of the board at the time her contract is approved where the husband receives only an indirect benefit from his wife's employment, which does not constitute a pecuniary interest and was not violative of either RC 3319.21 or 3313.33, and moreover, since RC 3319.21 is only applicable to voting on positions for teachers or instructors, it is inapplicable to void an assistant school nurse's employment contract.

Ethics Op 90-010. RC 2921.42(A)(1) prohibits a city director of service and safety from authorizing or otherwise using the authority or influence of his office to secure the employment of his son by the fire department of the city which he serves even if (1) the son has scored the highest on an examination which was administered by a municipal civil service commission to screen potential applicants, (2) the son has been recommended for employment by the city fire chief, and (3) the director has not participated in interviewing the three eligible candidates.

Ethics Op 89-008. Neither RC 2921.42(A)(1) nor 102.03(D) prohibits a city council member from voting, deliberating, participating in discussions, or otherwise authorizing or using the authority or influence of his position with regard to an application for a property tax abatement submitted by a company which employs a member of the official's family, if the family member has no definite and direct pecuniary or fiduciary interest in the award of the abatement and does not receive a definite and direct benefit therefrom.

Ethics Op 89-005. A member of a school district board of education whose spouse is employed by the school district is not prohibited by Ohio ethics law and related statutes from voting to accept or reject a proposed collective bargaining agreement between the school district and the employees' labor organization, unless his spouse is an officer, board member, or member of the negotiating team or committee of the employee organization.

Ethics Op 89-005. A member of a school district board of education who is a teacher in another school district and a member of an employee labor organization by virtue of that employment is not prohibited by Ohio ethics law and related statutes from participat-

ing in discussions or voting on a proposed collective bargaining agreement between the employee organization and the school district of which he is a board member.

Ethics Op 89-004. RC 2921.42(A)(1) prohibits a member of a board of county commissioners from authorizing, or using the authority or influence of his office to secure authorization of, a public contract in which he, a member of his family, or any of his business associates has an interest, where the public contract is entered into by a regional transit authority which the board of county commissioners participated in creating and which includes the county.

Ethics Op 88-007. RC 2921.42(A)(1) prohibits a member of a board of education from authorizing, voting, deliberating, participating in discussions, or otherwise using her authority or influence, formally or informally, to secure authorization, modification, or renewal of a contract between the board of education and her spouse's law firm.

Ethics Op 88-007. RC 2921.42(A)(4) does not prohibit a person from serving as a member of a board of education, where her spouse is a partner in a law firm which has entered into a contract with the board of education, unless the person would derive some direct interest or benefit from the board's employment of her spouse's law firm.

Ethics Op 86-010. A city treasurer is forbidden to appoint her sister as city income tax director by RC 2921.42.

Ethics Op 85-015. The discretion conferred on sheriffs by RC 311.04 and RC 341.20 to appoint deputies and other employees does not override the criminal prohibition under RC 2921.42 against an official act securing authorization of a public contract in which a member of the official's family has an interest.

Ethics Op 82-003. RC 2921.42(A)(1) prohibits a school board member, whose spouse is a teacher in the school district, from authorizing, voting, or otherwise using the authority or influence of his office, to secure approval of an individual contract with his spouse.

Ethics Op 81-004. RC 2921.42(A)(1) prohibits a county auditor from authorizing a property reappraisal contract with a company owned by his son.

Ethics Op 80-001. For purposes of RC 2921.42 the term "a member of his family" includes, but is not limited to: grandparents, parents, spouse, children, whether dependent or not, grandchildren, brothers and sisters, or any person related by blood or marriage and residing in the same household.

Ethics Op 80-001. A city council member is prohibited from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which his brother has an interest.

d. Business associates

Bd of Commrs on Grievances & Discipline Op 91-023 (10-18-91). RC 2921.42(A)(1) prohibits a part-time judge from appointing an attorney in his/her law firm to the position of referee.

Ethics Op 90-007. RC 2921.42(A)(1) prohibits a county prosecutor from authorizing or using the authority or influence of his office, formally or informally, to secure authorization of a contract between a township which he is statutorily required to represent and his law partner in private practice.

Ethics Op 89-008. RC 2921.42(A)(1) and 102.03(D) prohibit a city council member from voting, deliberating, participating in discussions, or otherwise authorizing or using the official authority or influence of his position with regard to an application for a property tax abatement submitted by a company with which he is employed.

Ethics Op 89-008. Neither RC 2921.42(A)(1) nor 102.03(D) prohibits a city council member who is a member of a labor organization from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his position with regard to an application for a property tax abatement submitted by a company which employs members of the labor organization to which he belongs if he is not employed by the applicant company, and is not an officer, board member, or member of the negotiating team of the labor organization.

Ethics Op 89-006. RC 2921.42(A)(1) prohibits an Ohio department of mental health official or employee from using the authority or influence of his office, either formally or informally, to secure the award of a grant to a college or university with which he is employed.

Ethics Op 89-004. RC 2921.42(A)(1) prohibits a member of a board of county commissioners from authorizing, or using the authority or influence of his office to secure authorization of, a public contract in which he, a member of his family, or any of his business associates has an interest, where the public contract is entered into by a regional transit authority which the board of county commissioners participated in creating and which includes the county.

Ethics Op 85-008. RC 2921.42(A)(1) prohibits a city council member from authorizing or otherwise using the authority or influence of his office to secure approval of a public contract between the city and his employer, including any renewal, extension, or material change in the terms or conditions of the existing franchise agreement.

Ethics Op 85-008. RC 2921.42(A)(1) prohibits a city councilman employed as a systems manager for a cable television enterprise from participating in discussions, voting, or otherwise using his office to secure approval, renewal, or modification of a franchise agreement between the cable company and the city; where the councilman is a middle level manager with neither an ownership nor fiduciary interest in the firm, he does not possess an "interest" in the firm such as is forbidden by RC 2921.42(A)(4).

Ethics Op 85-004. Partners in general or limited partnerships are "business associates" for purposes of RC 2921.42 regardless of the extent of their interests in the common association.

Ethics Op 84-008. RC 2921.42(A)(1) prohibits an employee of a state commission from serving as a member of or consultant to a commission task force on computerization or otherwise using the authority or influence of his office to secure authorization of a public contract for computer services in which he or a business associate has an interest; further, RC 2921.42(A)(4) prohibits an employee of a state commission from having an interest in a computer service contract between the commission and a manufacturer or its agent with whom he is associated in business.

Ethics Op 81-001. RC 2921.42 prohibits a member of city council from knowingly authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which his employer has an interest.

Ethics Op 80-003. A school board member may not knowingly authorize, vote, or otherwise use the authority or influence of his office to secure approval of a public contract for the purchase or servicing of school buses involving the automobile dealership by which he is employed.

Ethics Op 78-006. Pursuant to RC 2921.42(A)(1), a member of a board of education is prohibited from voting to approve or otherwise knowingly use the authority or influence of his office to secure authorization of a contract for the purchase of school buses in which his employer has an interest, even though the board member does not have a prohibited interest in the contract.

3. Public investments subject to interest

Ethics Op 91-011. RC 2921.42(A)(4) prohibits a city officer or employee from lease-purchasing or buying from the city a housing unit constructed on city property and financed by the city as part of a community development and revitalization project unless all of the criteria of RC 2921.42(C) are met.

Ethics Op 91-011. If the demand for resources which a city furnishes in its program to purchase or acquire community development and revitalization services exceeds supply, then the "unobtainable elsewhere" exception of RC 2921.42(C)(2) cannot be met by a city officer or employee; however, if the supply of resources which the city furnishes exceeds demand, then a city officer or employee who desires to participate in the city's program may meet the RC 2921.42(C)(2) exception as long as all qualified and inter-

ested persons who are not city officers and employees have been served and resources still remain.

Ethics Op 89-011. For purposes of RC 2921.42(A)(4), a creditor has an interest in the contracts of a debtor corporation unless he is able to meet all of the criteria for the exemption of RC 2921.42(B).

Ethics Op 84-011. RC 2921.42(A)(4) prohibits a city employee from receiving a federally funded housing rehabilitation grant or loan from the city unless all the criteria for the exemption of RC 2921.42(C) are met.

Ethics Op 79-004. A member of the Ohio development financing commission may not knowingly participate in discussions, voting or otherwise use the authority or influence of his office to secure approval of an application or to secure the investment or use of public funds to guarantee any mortgage in which the corporation with which he serves as an officer and employee is a participant.

4. Interest in profits or benefits of public contract

a. In general

Ethics Op 89-011. RC 2921.42(B) provides that, in the absence of bribery or fraud, a public servant shall not be considered to have an "interest" in a public contract with his own political subdivision when (1) the public servant's interest in a corporation doing business with his own political subdivision is limited to being a creditor of the corporation, (2) the amount due the public servant does not exceed five per cent of the total indebtedness of the corporation, and (3) the public servant files with the political subdivision an affidavit giving his exact status in connection with the corporation.

Ethics Op 89-011. As used in RC 2921.42(B), the term "creditor" includes the beneficiary of an irrevocable trust that is created as a method of meeting the debtor's obligation to pay a pre-existing debt.

Ethics Op 89-011. RC 2921.42(A)(4) prohibits a corporation from entering into a contract with a metropolitan housing authority, where the corporation is obligated to pay a member of the metropolitan housing authority an amount which is over five per cent of the total indebtedness of the corporation, unless all of the criteria for the exemption of RC 2921.42(C) are met.

Ethics Op 89-004. RC 2921.42(A)(4) prohibits a public official from having an interest in the public contracts entered into by all of the political subdivisions, governmental agencies, and instrumentalities with which he is connected.

Ethics Op 87-003. The interests forbidden by RC 2921.42 may be pecuniary or fiduciary in nature, but must be definite and direct.

Ethics Op 78-005. As used in RC 2921.42, "interest" in a public contract must be a definite, direct interest in order to constitute a violation.

b. Municipal officials

155 OS 329, 98 NE(2d) 807 (1951), In re Removal of Member of Council. Under this section and GC 4670 (RC 733.72) a member of the council of a municipal corporation who has been interested, directly or indirectly, in the profits of a contract, job, work or service undertaken or prosecuted by the corporation, contrary to law, is subject to being charged in a complaint authorized by GC 4670 (RC 733.72), whether the acts in violation of such section were performed by the member of council during his present term of office or a previous one. (Annotation from former RC 733.78.)

119 OS 462, 164 NE 512 (1928), Wright v Clark. The engineer of a city or village is an officer within the meaning of this section and therefore inhibited from becoming interested in the expenditure of money of the corporation other than payment of his fixed compensation. (Annotation from former RC 733.78.)

24 App 251, 157 NE 410 (1927), Stone v Osborn. Sale of municipal light plant and grant of franchise to member of municipal board of trustees, who continued as member until two days before he submitted bid for property is not fradulent or in violation of GC 12910 (RC 2919.08) or GC 12911 (RC 2919.09). (Annotation from former RC 2919.08.)

44 Abs 208, 62 NE(2d) 716 (App, Franklin 1945), Halliday v Norfolk & Western RR. See for a good example of a municipal official taking improper interest in a contract for the purchase of land for public use. (Annotation from former RC 2919.08.)

OAG 66-152. Regular policemen or patrolmen employed by a municipal corporation are subject to RC 2919.08. (Annotation from former RC 2919.08.)

Ethics Op 91-011. RC 2921.42(A)(3) prohibits a city officer or employee whose approval is necessary for the lease-purchase or sale by the city of a housing unit constructed on city property and financed by the city as part of a community development and revitalization project or who serves as a member of a legislative body, board or commission which must approve the lease-purchase or sale, from lease-purchasing or buying a unit where there is no competitive bidding process.

Ethics Op 91-011. RC 2921.42(A)(1) and 102.03(D) prohibit a city officer or employee from voting, discussing, deliberating, recommending, or otherwise using his official authority or influence, formally or informally, to secure from the city a housing unit constructed on city property and financed by the city as part of a community development and revitalization project for himself or a member of his family.

Ethics Op 89-012. A city law director is not required by any provision of law to provide legal services to a port authority created by the city he serves and therefore he is not prohibited by RC 2921.43(A) from accepting or soliciting compensation from the port authority for legal services provided; RC 102.03(E) and 2921.42(A)(4), however, prohibit a city law director from accepting or soliciting compensation for providing legal services to a port authority created by the city with which he serves.

Ethics Op 89-008. RC 2921.42(A)(4) prohibits a member of city council from having a definite and direct pecuniary or fiduciary interest in a tax abatement granted by the city to a company which employs the council member.

Ethics Op 89-008. RC 2921.42(A)(3) prohibits a city council member from profiting from the award of a tax abatement authorized by city council while he is a member thereof.

Ethics Op 85-010. RC 2921.42(A)(4) prohibits a member of a city board of building appeals who is an architect or engineer from having an interest in the profits or benefits of a public contract with the city with which he is connected.

Ethics Op 84-014. RC 2921.42(A)(4) prohibits a city fire chief from knowingly having any interest in the profits or benefits of a contract between the city and a fire equipment firm with which he is associated.

Ethics Op 84-013. RC 2921.42(A)(4) prohibits a city employee from knowingly soliciting or receiving a commission, payment, or fee, or having any other interest in the profits or benefits of a contract between the city and a computer software firm with which he is associated.

Ethics Op 83-005. Ohio ethics law and related statutes prohibit a city employee from receiving a federally funded loan or grant from the city division of community development.

Ethics Op 80-007. RC 2921.42 prohibits a city council member from knowingly participating in discussions or voting to approve a public contract for downtown revitalization project which would benefit his property.

Ethics Op 78-004. A city engineer is forbidden by RC 2921.42(A)(4) to knowingly have an interest in the profits or benefits of a contract for engineering services by or for the use of the city he serves.

Ethics Op 78-001. A member of city council is prohibited from knowingly having an interest in the profits or benefits of a contract for legal services between the city and the law firm with which he is associated.

c. County officials

Ethics Op 90-007. RC 2921.42(A)(4) prohibits a county prosecutor from having an interest in a contract entered into by a township within his county for legal services.

Ethics Op 89-004. A member of a board of county commissioners is prohibited by RC 2921.42(A)(4) from having an interest in a

public contract entered into by or for the use of a regional transit authority where the board of county commissioners participated in the creation of the authority and the county is included within the transit authority's jurisdiction.

Ethics Op 85-003. The wife of a county engineer cannot be employed by the same county where her position would provide the engineer with insurance coverage not otherwise available to him.

Ethics Op 84-002. RC 2921.42(A)(4) prohibits a private law firm consisting of two assistant county prosecutors from being retained to represent the county on collective bargaining issues.

Ethics Op 80-006. A county commissioner is prohibited by RC 2921.42(A)(4) from knowingly having an interest in the profits or benefits of a public contract, including an industrial revenue bond, entered into by or for the use of the county with which he serves.

Ethics Op 79-001. Division (A)(1) of RC 2921.42 prohibits a county prosecuting attorney from knowingly authorizing or using the authority or influence of his office to secure authorization of a public contract, including a contract with the county welfare department to provide child support enforcement, in which he has an interest, directly or indirectly.

Ethics Op 79-001. Division (A)(4) of RC 2921.42 prohibits a county prosecuting attorney from knowingly having a personal interest in the profits or benefits of a contract with the county welfare department to provide child support enforcement.

Ethics Op 78-003. A county commissioner may not knowingly have an interest in the profits or benefits of a public contract for commercial development financed through industrial revenue bonds.

d. Township officials

124 OS 465, 179 NE 350 (1931), State v Moon. It is not essential to conviction of township trustee charged with a violation of this section to prove that a profit was realized out of the transaction to which he became an interested party while serving as such officer, where the record discloses that bills for services for the township ostensibly rendered by another, but in fact by the employees of the said trustee, in the use of a truck owned by him, were presented by and the entire contract price paid to him. (Annotation from former RC 2919.10.)

OAG 82-008. The provision of RC 511.13 prohibiting members of a board of township trustees, township officers, and township employees from having an interest in contracts entered by the board applies to every such contract unless the interested individual has an interest permitted by RC 511.13; RC 511.13 appears to contain a broader prohibition than RC 2921.42.

Ethics Op 91-001. Due to the exemption provided by RC 505.011, a township trustee is not prohibited from serving as a full-time paid employee of a private fire company which is under contract to provide fire protection services to the township which he serves, despite the prohibitions of RC 2921.42(A)(3) and 2921.42(A)(4).

Ethics Op 91-001. RC 2921.42(A)(1) and 102.03(D) prohibit a township trustee who serves as an employee of a private fire company which is under contract to provide fire protection services to the township from discussing, deliberating, voting, or otherwise using the authority or influence of his position, either formally or informally, to authorize, secure, renew, modify, or renegotiate a contract between his employing fire company and the township, and from signing warrants and checks to the company for services provided under the contract.

e. School district officials

Ethics Op 90-005. RC 2921.42(A)(4) prohibits a member of a board of education from having an interest in purchases made by the school district, regardless of whether such purchases are made by school district employees on a casual, "as needed" basis or pursuant to a formal contract.

Ethics Op 90-005. RC 2921.42(A)(3) prohibits a member of a board of education from profiting from a purchase authorized by the board of education where the purchase was not competitively bid and the board member's bid was not the lowest and best bid, even though the profit is of a minimal amount; RC 2921.42(A)(1) prohibits a member of a board of education from authorizing, or using the authority or influence of his position to secure authorization of, purchases in which he, a member of his family, or any of his business associates has an interest.

Ethics Op 90-003. RC 2921.42(A)(3) prohibits a member of a board of education who is a store owner from profiting from the sale of merchandise when the sale was approved or authorized by him or by the board of education, and where the merchandise was not sold through competitive bidding, or where his was not the lowest and best bid.

Ethics Op 90-003. RC 2921.42(A)(1) prohibits a member of a board of education from discussing, deliberating, voting, or otherwise using the authority or influence of his position as a school board member, either formally or informally, to secure the purchase from his store of merchandise by or for the use of the school district with which he serves.

Ethics Op 87-008. RC 2921.42(A)(3) forbids a board of education member to accept employment with the board for one year after leaving office where the employment was approved while he was a member of the board.

Ethics Op 78-002. A school district transportation director is person employed by a governmental entity and is therefore subject to RC Ch 102. As such he is subject to restrictions with respect to representations before the district, using his official position to secure anything of value for himself, receiving compensation other than from the school district. In addition, RC 2921.42 prohibits a school district transportation director from knowingly having an interest in the profits or benefits of a contract entered into by or for the use of the school district.

f. Other public officials or employees

OAG 83-037. A legal adviser of a metropolitan housing authority who sells a parcel of his land to a city is not placed in violation of RC 2921.42(A)(4) or RC 3735.29 by the city's later reselling of the property to the housing authority that the adviser serves.

OAG 83-024. A member of a metropolitan housing authority is prohibited by RC 2921.42(A)(4) and RC 3735.29 from serving on the board of trustees of a nonprofit corporation that contracts with the housing authority.

Ethics Op 91-009. RC 2921.42(A)(3) prohibits a former chief deputy administrator for a board of county commissioners, for one year after he leaves his public position, from occupying a position of profit in the prosecution of a public contract which he authorized and which was not let by competitive bidding to the lowest and best bidder.

Ethics Op 89-006. RC 2921.42(A)(4) prohibits an official or employee of the Ohio department of mental health from providing teaching or training services to a college or university that receives a grant from the department where the official or employee would have a definite and direct interest in the grant as a result of his position with the college or university.

Ethics Op 89-006. RC 2921.42(A)(3) prohibits an Ohio department of mental health official or employee from profiting from a grant authorized by him or by a board or commission of which he is a member where the grant is not awarded through competitive bidding and is not the lowest and best bid.

Ethics Op 85-013. RC 2921.42(A)(1) forbids a radio technician of the division of wildlife of the department of natural resources to knowingly use his office to secure approval of a contract with the department to provide radio repair services in his private capacity; similarly, RC 2921.42(A)(4) forbids him to knowingly have an interest in the profits of a contract to provide such services to the department.

Ethics Op 85-001. RC 2921.42(A)(4) prohibits a park manager employed by the department of natural resources from having an interest in a contract with the department to provide machine repair and maintenance services in his park and elsewhere in the state park system unless RC 2921.42(C) is satisfied.

Ethics Op 85-001. RC 2921.42(A)(5) and RC 102.04(B) prohibit a park manager employed by the department of natural resources from contracting with the department to provide machine repair

and maintenance services in his park and elsewhere in the state park system except by competitive bidding.

5. Incompatible offices

OAG 84-097. Pursuant to RC 305.27, 2921.42, and principles of common law regarding conflicts of interest, neither an elected or appointed county officer nor a county employee may serve as a trustee of a nonprofit hospital corporation with which the county contracts for the provision of hospital services and the management and operation of hospital facilities owned by the county; when a county contracts for such services with a nonprofit hospital corporation whose membership is composed of the board of trustees of a parent corporation, RC 305.27, RC 2921.42 and common law principles regarding conflicts of interest prohibit a county officer or employee from serving as a trustee of such parent corporation.

Ethics Op 91-005. RC 2921.42(A)(3) prohibits a former county commissioner, for a period of one year after leaving office, from being employed for compensation by a joint solid waste management district if he served on the board of county commissioners when the board of commissioners entered into, and ratified, the agreement creating the solid waste management district.

Ethics Op 85-009. Ohio ethics law and related statutes do not, per se, prohibit an officer and part owner of a private company that sells fund raising services to building principals, parent groups, and school activity sponsors in school districts from serving as a member of a board of education, but RC 2921.42(A)(1) prohibits that individual, if elected, from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a contract with a building principal or school activity group in his district, and RC 2921.42(A)(4) prohibits such a school board member from having an interest in the profits or benefits of a contract with a building principal or school activity group for the use of the schools in his district.

Ethics Op 85-008. Ohio ethics law and related statutes do not, per se, prohibit a systems manager for a firm operating a cable television franchise under an agreement with a city from being a candidate for city council, but would condition his conduct if elected.

Ethics Op 85-006. A realtor is not forbidden to serve on a city planning commission by RC 102.03(D).

Ethics Op 84-001. The Ohio ethics law and RC 2921.42 do not prohibit a city fire chief or other city official or employee from serving on the board of a nonprofit corporation created by the city and other jurisdictions to provide contract paramedic services, provided that he is serving in his official capacity as designated by city council, and that no other conflict of interest exists.

Ethics Op 83-010. RC 2921.42(A)(4) does not prohibit a city council member from serving on the board of a nonprofit research and community development corporation that contracts with the city, provided the council member serves on the board in his official capacity as directed by council.

Ethics Op 83-003. RC 2921.42 prohibits the chief financial officer of a state university from serving on the board of directors of a bank that is a university depository.

Ethics Op 82-006. RC 102.04(A) prohibits a physician who is a member of the state medical board from receiving direct or indirect compensation for services rendered as a consultant to the department of mental retardation and developmental disabilities and as a provider for the department of public welfare.

Ethics Op 82-004. RC 2921.42(A)(4) does not prohibit a city administrator or council member from serving on the board of a nonprofit corporation that receives funds through the city under a state litter control grant if he serves in his official capacity as required under the terms of the grant.

Ethics Op 82-002. An examiner employed by the state auditor is forbidden by RC 102.03 to seek employment with a city while he is auditing its accounts.

Ethics Op 82-002. RC 102.03(A) prohibits a former examiner of the state auditor's office from representing a city by which he is currently employed in front of the auditor's office on any matter in which he personally participated while employed by the state auditor.

Ethics Op 81-008. RC 2921.42(A)(4) prohibits a city council member from serving on the board of a non-profit corporation that contracts to sell goods or services to the city.

Ethics Op 81-005. RC 2921.42(A)(4) prohibits a public official, including city officials and employees, from knowingly having an interest in the profits or benefits of a public contract entered into by or for the use of the city with which he serves; and, therefore, a city official or employee may not serve as an officer or board member of an undesignated community improvement corporation established by the city.

Ethics Op 81-003. The Ohio ethics law and RC 2921.42 prohibit a board member of a private contract agency from serving on a county board of mental retardation and developmental disabilities.

6. Permitted transactions

a. In general

OAG 76-019. RC 2921.42 does not prohibit public school administrators and employees involved in driver training programs pursuant to RC 3301.17 from being employed by, involved in the operation of, or holding an interest in a commercial driver training facility.

Ethics Op 91-002. RC 2921.42(A)(4) and 102.03(E) do not prohibit a city council member from serving as an unpaid volunteer paramedic with the fire department of the city, provided he receives no definite and direct personal pecuniary benefit from such service.

Ethics Op 90-003. Ohio ethics law does not prohibit a member of a board of education who is the owner of a store from donating goods or services to the school district with which he serves provided that he receives no pecuniary gain from the donation and he does not use the donation to secure anything of value for himself or his business.

Ethics Op 88-008. The exemption of RC 2921.42(C)(2) for services furnished as part of a "continuing course of dealing" can be established where the contract existing prior to the time a city council member becomes associated with the city is automatically renewed after the council member's election or appointment, if provision for automatic renewal is a term of the existing contract and the contract is renewed without action of any office, department, or agency of the city; but if the existing contract is renewed by action of the city, modified, extended, or otherwise changed after the city council member's election or appointment, he cannot meet the "continuing course of dealing" exception even where the change is negotiated or executed by an agency of the city other than council.

Ethics Op 88-001. RC 2921.42(A)(4) prohibits a physician who is employed by the department of mental retardation and developmental disabilities from contracting with the department to provide on-call medical services, unless all of the criteria for the exemption of RC 2921.42(C) are met.

Ethics Op 87-003 (4-9-87). The standard for the exception under RC 2921.42(C)(2) is that supplies or services be unavailable at a cost either lower than or the same as that set by the interested party; thus, an uninterested party bidding the same price must be preferred.

Ethics Op 85-011. Neither RC 102.03 nor RC 2921.42 prohibits the wife of a city law director from leasing space in a building constructed by a developer on land purchased from the city under a revolving loan program, provided that the law director does not use his official position to secure the lease for his spouse.

Ethics Op 85-011. Ohio ethics law and related statutes do not prohibit the spouse of a city law director from leasing retail space in a building constructed by a developer on land purchased from the city under a revolving loan program, provided that the law director does not use his official position to secure the lease for his spouse.

Ethics Op 85-002. A mayor's brother who is a partner and officer of a firm that contracts with a developer to find tenants for

property renovated with a loan from the city does not have an interest in the loan sufficiently definite and direct to be an "interest" in a public contract for purposes of RC 2921.42.

Ethics Op 85-002. A mayor's brother who contracts with a bank to negotiate a lease and option to buy concerning land on which a commercial office will be built with a city financing grant does not have an "interest" in the grant sufficiently definite and direct to come within RC 2921.42.

Ethics Op 84-003. The Ohio ethics law and related statutes do not prohibit a township from acquiring, either by direct purchase or eminent domain proceeding, real property owned by the wife of a township trustee, provided that the township trustee does not participate in discussions, deliberations, or votes, or otherwise use the authority or influence of his office, to secure approval of the acquisition or appropriation.

Ethics Op 83-009. The Ohio ethics law and RC 102.03, RC 102.04, and RC 2921.42 do not prohibit a county prosecutor from representing a joint ambulance district in his private capacity, provided that the representation is not before agencies of the county, and not on a matter in which he personally participated as a public official.

Ethics Op 83-006. RC 2921.42 does not prohibit a city employee from purchasing unclaimed items at a public police auction.

Ethics Op 79-009. The ethics law does not per se prohibit an employee of the division of parks and recreation from bidding on a concessions contract with the division provided that (1) he is not involved with the issuance of the contract, (2) he does not use his position to secure approval of the contract, and (3) the contract procedure is in accordance with RC 1501.091. An employee is not prohibited from resigning from the division and then contracting with the division.

Ethics Op 78-005. RC 2921.42(A)(1) does not prohibit a county commissioner from voting to approve the issuance of an industrial revenue bond to a company which is a client of an accounting firm in which her husband is a partner, if the husband's sole interest is a distributive share of the fees earned by his firm for accounting services rendered to the company seeking the bond.

b. Arm's length contract exception

OAG 84-006. The exemption of RC 2921.42(C) does not apply to RC 511.13.

OAG 84-006. RC 2921.42(A)(4) prohibits a township trustee from having an interest in a contract between the township and his private business firm to provide equipment and services to the township, unless all the requirements of RC 2921.42(C) are met.

Ethics Op 85-007. A county treasurer is not, per se, prohibited from serving on the board of directors of a bank that is a depository of county funds, because RC 135.11 and RC 135.38 provide an exemption from the prohibition of RC 2921.42(A)(4).

Ethics Op 84-011. The criteria for the exemption of RC 2921.42(C) are strictly applied; the requirement of RC 2921.42(C)(2) that the services that are the subject of the contract be "unobtainable elsewhere for the same or lower cost" must be demonstrated by some objective standard, based on the facts and circumstances of the particular case.

Ethics Op 84-006. The exemption of RC 2921.42(C) does not apply to RC 511.13.

Ethics Op 84-006. RC 2921.42(A)(4) forbids a township trustee to have an interest in a contract between the township and his private business for the supply of equipment and services to the township unless the requirements of RC 2921.42(C) are satisfied.

Ethics Op 83-004. RC 2921.42(A)(4) prohibits a city police officer from contracting to sell trophies and awards to the city department of recreation and parks unless all the requirements of RC 2921.42(C) are met; these requirements are strictly applied; the requirement of RC 2921.42(C)(2) that the goods be "unobtainable elsewhere for the same or lower cost" must be demonstrated by some objective standard, and although competitive bidding helps to demonstrate compliance with the requirement, it is not determinative.

Ethics Op 82-007. The Ohio ethics law and related statutes do not prohibit a partner in a public accounting firm, that has a professional services contract with a regional sewer district, from accepting an appointment to the board of trustees of the sewer district, provided that all elements of RC 2921.42(C) are met.

Ethics Op 82-007. The exemption of RC 2921.42(C)(2), for services being furnished as part of a "continuing course of dealing," applies only to services provided during the term of an existing contract between a public accounting firm and a regional sewer district.

2921.43 Soliciting or receiving improper compensation

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform his official duties.

(B) No public servant for his own personal or business use and no person for his own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to his compensation, duties, placement, location, promotion, or other material aspects of his employment.

(C) No person for the benefit of a political party, campaign committee, or political action committee shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to his compensation, duties, placement, location, promotion, or other material aspects of his employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment, or position of trust in this state for a period of seven years from the date of conviction.

(F) Divisions (A), (B), and (C) of this section do not prohibit any person from making voluntary contributions to a political party, campaign committee, or political action committee or prohibit a political party, campaign committee, or political action committee from accepting voluntary contributions.

HISTORY: 1986 H 300, eff. 9-17-86
1974 S 46; 1972 H 511

COMMENTARY

Legislative Service Commission

1973: This section consolidates two former prohibitions against public servants soliciting or receiving excessive fees or extra compensation to perform their duties, or receiving any reward or kickback in consideration of appointing a public employee to his job. Under the former law, the kickback or "flower fund" provision applied only to county officers, whereas under this section it applies to all public servants. A former provision disqualifying offenders from office for a specified period is retained.

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Elements of Crimes; Statutory Charges

Baldwin's Ohio Township Law, Text 11.15, 19.03, 39.02, 39.13

Baldwin's Ohio School Law, Text 5.04(A), 45.01(B), 45.04, 45.11

Gotherman & Babbit, Ohio Municipal Law, Text 9.19, 15.51, 15.72, 31.05

CROSS REFERENCES

Governor may remove or suspend appointee to public office, 3.04

Payment to financial institution for assembling customer's records at request of third party, exemptions for criminal prosecutions, 9.02

Ethics commission, investigation of complaint against public officials and employees, 102.06

Recommendations and opinions of commissions, immunity from prosecution, 102.08

Operations improvement task force, compensation, 107.40

Classified civil service, tenure of office, reduction, suspension and removal, appeal, 124.34

Knowingly, defined, 2901.22

Corrupt activity, defined, 2923.31

Penalties and sentencing, Ch 2929

No extra compensation after service rendered or contract made, O Const Art II §29

Compensation of elective state officers; no reduction during term, O Const Art III §19

Election, term, and compensation of judges; assignment of retired judges, O Const Art IV §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 52, 135, 291, 292, 298, 386; 26, Criminal Law § 442; 28, Criminal Law § 1956

Am Jur 2d: 12, Bribery § 12; 63A, Public Officers and Employees § 431 to 486

NOTES ON DECISIONS AND OPINIONS

38 OS(2d) 51, 309 NE(2d) 926 (1974), State ex rel Crebs v Wayne County Common Pleas Court. Prohibition does not lie to determine the constitutionality of a statute or ordinance where an adequate remedy at law by way of appeal is available. (Annotation from former RC 733.78.)

87 App 487, 93 NE(2d) 328 (1949), Petermann v Tepe. Municipal civil service commissioner may not receive compensation for legal services rendered to the city at the request of the solicitor and the service director of the city. (Annotation from former RC 733.78.)

OAG 91-014. Members of the emergency response commission who have been appointed under RC 3750.02 and members of a local emergency planning committee who have been appointed pursuant to RC 3750.03 are entitled to immunity from criminal prosecutions, civil suits, and actions for removal from office or employment for violations of RC Ch 102, 2921.42, or 2921.43 in the circumstances prescribed by RC 102.08.

OAG 87-019. A violation of RC 2921.43(C) by an executive director of a metropolitan housing authority constitutes misconduct in office for the purposes of RC 2901.13(C).

OAG 84-019. An employee of a county board of mental retardation and developmental disabilities may not receive a fee for performing his official duties from a private nonprofit corporation which has contracted with the board.

OAG 81-013. Money received by a deputy sheriff employed and paid by a private industry as part of an undercover operation to collect evidence for a criminal prosecution must be paid into the county treasury to the credit of the general county fund.

OAG 65-150. RC 733.78 and 2919.10 apply only to the public officers specified therein, and preclude any of such officers from receiving any fixed compensation from the municipal corporation or township other than the maximum specifically allocated by law as compensation for such office; however, such statutes do not preclude any of the specified public officers from holding other positions in public service without additional compensation. (Annotation from former RC 733.78.)

Bd of Commrs on Grievances & Discipline Op 91-011 (4-12-91). The Code of Judicial Conduct, the Ohio Ethics Law RC Ch 102, and related statutes (RC 2921.42 and 2921.43) prohibit a municipal judge from serving as a member or officer of the board of directors of a nonprofit corporation providing services to the municipal court by contract with the city.

Ethics Op 91-010. RC 2921.42(A)(4) and 2921.43(A) prohibit a state officer or employee from accepting or using, for personal travel, a discounted or free "frequent flyer" airline ticket or other benefit from an airline if she has obtained the ticket or other benefit from the purchase of airline tickets, for use in official travel, by the department, division, agency, institution, or other entity with which she is connected.

Ethics Op 90-007. RC 102.03(E) and 2921.43(A) prohibit a county prosecutor from receiving a distributive share of client fees received by his law partner for representing township trustees the prosecutor is statutorily required to represent.

Ethics Op 90-001. RC 102.03(F) and 2921.43(A) prohibit a vendor who is doing or seeking to do business with an office, department, or agency of a political subdivision from promising or giving travel, meal, and lodging expenses incurred in inspecting and observing the vendor's product to the officials and employees of the office, department, or agency, even though the expenses are limited to those which are essential to the conduct of official business and are incurred in connection with the official's or employee's duty to inspect and observe the vendor's products in operation at existing facilities.

Ethics Op 90-001. RC 102.03(F) and 2921.43(A) prohibit a vendor who is doing or seeking to do business with an office, department, or agency of a political subdivision from promising or giving travel, meal, and lodging expenses to the officials and employees of the office, department, or agency, even if the vendor's products and services are sold to the political subdivision pursuant to competitive bidding and the vendor has submitted the lowest and best bid.

Ethics Op 89-014. RC 102.03(D), 102.03(E) and 2921.43(A) prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company that is doing or seeking to do business with his county department, even though the expenses are incurred in connection with the official's or employee's duty to inspect and observe the company's products in operation at facilities located within and outside the county.

Ethics Op 89-014. RC 102.03(D), 102.03(E) and 2921.43(A) prohibit a county official or employee from accepting, soliciting, or using his position to secure travel, meal, and lodging expenses from a company doing or seeking to do business with his county, even if the county and the company enter into a written agreement which states that the county is under no obligation to purchase the company's products and services if county officials or employees accept payment of expenses from the company.

Ethics Op 89-012. A city law director is required by RC 3313.35 to provide legal services to a city school district as part of his official duties, and is accordingly prohibited by RC 2921.43(A) from accepting or soliciting additional compensation from the school district for legal services provided.

Ethics Op 89-012. A city law director is not required by any provision of law to provide legal services to a port authority created by the city he serves and therefore he is not prohibited by RC 2921.43(A) from accepting or soliciting compensation from the port authority for legal services provided; RC 102.03(E) and 2921.42(A)(4), however, prohibit a city law director from accepting or soliciting compensation for providing legal services to a port authority created by the city with which he serves.

2921.431 Soliciting political contributions from public employees

(A) As used in this section:

(1) "Campaign committee" and "political party" have the same meaning as in section 3517.01 of the Revised Code;

(2) "Contribution" means a loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, transfer of funds, or the transfer of anything of value, regardless of the purpose for which the transfer is made.

(B) No county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, county commissioner, prosecuting attorney, coroner, or other person at the direction or request of a county officer shall solicit any contribution from any public servant who functions or is employed in or by the same department, division, office, or other governmental unit as the county officer, except that a county officer or other person at the direction or request of a county officer for the benefit of a political party or campaign committee may solicit a contribution, not more than twice in any calendar year, from any public servant who functions or is employed in or by the same department, division, office, or other governmental unit as the county officer, and the political party or campaign committee shall report any such contribution in the same manner as a contribution made to influence the results of an election.

(C) Division (B) of this section shall not be construed to prohibit a county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, county commissioner, prosecuting attorney, coroner, or other person at the direction or request of a county officer from soliciting a written authorization under section 3599.031 of the Revised Code from a public servant who is employed in or by the same department, division, office, or other governmental unit as the county officer, except that such a solicitation shall not be made more than twice in any calendar year.

(D) Whoever violates division (B) of this section is guilty of soliciting improper contributions, a misdemeanor of the first degree.

HISTORY: 1976 H 784, eff. 12-6-76

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Elements of Crimes; Statutory Charges

CROSS REFERENCES

Penalties and sentencing, Ch 2929

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 29, Criminal Law § 2365

CONVICTED FELONS

2951.09 Procedure against defendant; rights of citizenship restored; journal entry

When a defendant on probation is brought before the judge or magistrate under section 2951.08 of the Revised Code, the judge or magistrate immediately shall inquire into the conduct of the defendant, and may terminate the probation and impose any sentence that originally could have been imposed or continue the probation and remand the defendant to the custody of the probation authority, at any time during the probationary period. When the ends of justice will be served and the good conduct of the person so held warrants it, the judge or magistrate may terminate the period of probation. At the end or termination of the period of probation, the jurisdiction of the judge or magistrate to impose sentence ceases and the defendant shall be discharged. If the defendant was convicted of or pleaded guilty to a felony, the judge of the court of common pleas may restore his rights of citizenship, of which he may or shall have been deprived by reason of his conviction under section 2961.01 of the Revised Code, and, if the court restores his citizenship, an entry to that effect shall be made on the journal of the court in the action in which the conviction or plea of guilty was entered.

A probation officer shall receive necessary expenses in the performance of his duties.

HISTORY: 1990 S 258, eff. 11-20-90
1953 H 1; GC 13452-7

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1990 Laws of Ohio, S 258—LSC Analysis, p 5-954

Schroeder-Katz, Ohio Criminal Law, Crim R 32.3

Kurtz & Giannelli, Ohio Juvenile Law (2d Ed.), Text 15.01(C)

CROSS REFERENCES

Probation after serving thirty days of sentence, 2947.061

Revoking probation; hearing, Crim R 32.3

Criminal case time limits, C P Sup R 8

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 26, Criminal Law § 422; 27, Criminal Law § 1374, 1380 to 1385; 28, Criminal Law § 1692 to 1714; 29, Criminal Law § 2278; 53, Habeas Corpus and Post Conviction Remedies § 33

Am Jur 2d: 21, Criminal Law § 567 to 579; 25, Drugs Narcotics, and Poisons § 82

Right to notice and hearing on revocation. 29 ALR2d 1074; 44 ALR3d 306

Propriety, in imposing sentence for original offense after revocation of probation, of considering acts because of which probation was revoked. 65 ALR3d 1100

Acquittal in criminal proceeding as precluding revocation of probation on same charge. 76 ALR3d 564

Admissibility in state probation revocation proceedings, of evidence obtained through illegal search and seizure. 77 ALR3d 636

Admissibility in state probation revocation proceedings, of incriminating statement obtained in violation of Miranda rule. 77 ALR3d 669

Validity of state statute imposing mandatory sentence or prohibiting granting of probation or suspension of sentence for narcotics offenses. 81 ALR3d 1192

Admissibility of hearsay evidence in probation revocation hearings. 11 ALR4th 999

Power of court, after expiration of probation term, to revoke or modify probation for violations committed during the probation term. 13 ALR4th 1240

Power of court to revoke probation for acts committed after imposition of sentence but prior to commencement of probation term. 22 ALR4th 755

Propriety of increased sentence following revocation of probation. 23 ALR4th 883

Revocation of probation based on defendant's misrepresentation or concealment of information from trial courts. 36 ALR4th 1182

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Probation period
4. Revocation of probation

1. Constitutional issues

6 OS(3d) 244, 6 OBR 312, 452 NE(2d) 1292 (1983), State v McMullen. A judge may, pursuant to RC 2951.09, impose a longer sentence after revocation of a defendant's probation without violating the defendant's constitutional right against double jeopardy.

42 OS(2d) 102, 326 NE(2d) 259 (1975), State v Miller. Where at a probation revocation hearing the trial court permits a probation officer who did not prepare the entries in the probation department record to testify as to the contents of that record and the probation officer who prepared the entries does not appear, there is a denial of the probationer's right to confront the witnesses against him, and, where the record does not show that the probation officer who prepared the entries was unavailable or that a specific finding was made of good cause for not allowing confrontation, there is a denial of the minimum requirements of due process of law required for probation revocation proceedings.

70 App(3d) 147 (Huron 1990), State v Alderman. Admission of a probation officer's unsubstantiated hearsay testimony about a probationer's prior convictions in another county during a probation revocation hearing without a ruling by the court showing good cause for the admission of the hearsay violates the probationer's due process rights.

63 App(3d) 721, 580 NE(2d) 34 (Summit 1989), State v Hutchison. Where the judge in a probation violation hearing was the trial judge on the initial charges against the defendant, he is well aware of the defendant's mental condition and additionally, he is presented with numerous records which illustrate the defendant's mental illness so that it is not an abuse of discretion or a denial of due process for the judge to deny the defendant's request for a continuance of the probation violation hearing in order to permit the defendant to obtain the presence of the evaluation psychologist, his treating psychologist and social worker.

62 App(3d) 848, 577 NE(2d) 710 (Hamilton 1989), State v Henderson. Due process does not require that a written statement of the evidence finding probable cause to revoke probation be issued.

56 App(3d) 105, 564 NE(2d) 1070 (Cuyahoga 1988), State v Armstrong. A probationer's right to notice and the opportunity to present evidence and cross-examine witnesses at a hearing before a neutral arbiter can be waived.

7 App(3d) 81, 7 OBR 94, 454 NE(2d) 554 (Franklin 1982), State v Woods. A person who claims that because of indigency he cannot make the restitution payments required as a condition of his probation, must demonstrate that he has made a good faith effort within the limits of his ability to comply with the terms of the probation, and it is not a denial of equal protection to revoke the probation of a person who fails to meet this burden.

No. CA86-09-139 (12th Dist Ct App, Butler, 3-2-87), State v Blankenship. Defendant has no right to a trial by jury on issue of revocation of his probation; under RC 2951.09, such determination is exclusively in the province of the trial court.

No. 8256 (2d Dist Ct App, Montgomery, 10-19-83), State v Burkholder. The exclusionary rule governing illegally seized evidence applies to a convicted felon in a revocation of probation proceeding.

461 US 660, 103 SCt 2064, 76 LEd(2d) 221 (1983), Bearden v Georgia. An automatic revocation of probation solely because of probationer's failure to meet probation condition that he pay fine or make restitution, absent findings that probationer willfully refused to make bona fide efforts to pay or that alternative forms of punishment, other than imprisonment, are inadequate to meet state's interests in punishment and deterrence, violates US Const Am 14. (Ed. note: Georgia law construed in light of federal constitution.)

2. In general

23 Clev St L Rev 151 (Winter 1974). The Right to Counsel and Due Process in Probation Revocation Proceedings: Gagnon v. Scarpelli, Note.

167 OS 119, 146 NE(2d) 865 (1957), State v Theisen. The inquiry contemplated by RC 2951.09 may be summary and informal so long as it is an inquiry so fitted in its range to the needs of the occasion as to justify the conclusion that the trial court has not abused its discretion in failing to carry the probe deeper, and a court in making such inquiry is not bound by the usual rules of evidence prescribed for a criminal trial, and its consideration of evidence tending to show a violation of the terms of probation is subject only to the exercise of sound judicial discretion.

56 App(3d) 141, 565 NE(2d) 848 (Stark 1988), State v Jackson. The subject matter jurisdiction of a sentencing court terminates at the end of the probation period; at that point, the trial court loses its legal power to act, regardless of the fact that the alleged probation violation occurred during the period of probation and could have resulted, if timely prosecuted, in a revocation and imposition of sentence.

10 App(3d) 312, 10 OBR 517, 462 NE(2d) 441 (Warren 1983), State v McKnight. In cases of probation violation, it is within the trial court's sound discretion to decide whether to appoint counsel for the defendant and whether to revoke the defendant's probation due to the violation.

10 App(3d) 172, 10 OBR 242, 461 NE(2d) 1 (Marion 1982), State ex rel Freeman v Rehabilitation & Correction Dept. The provisions of RC 2929.51(A), RC 2951.02(A), and Crim R 32 provide that probation follows sentencing and the suspension of its execution, instead of sentencing following revocation of probation; by adopting these statutes and rule, the authority of a trial court, pursuant to RC 2951.09, to "impose any sentence which might originally have been imposed" following revocation of probation, was repealed by implication.

42 App(2d) 35, 327 NE(2d) 791 (1974), State v Mingua. A revocation of the probation status of an accused may only be accomplished after two separate hearings are conducted: the first to determine if probable cause exists to force a probationer to answer formal charges against him; and the second, if such cause exists, to examine the total evidence presented.

29 App(2d) 241, 281 NE(2d) 17 (1972), State v Smith. RC 2951.09 contemplates a judicial inquiry into the conduct of a defendant when the revocation of his probation is in issue.

14 App(2d) 59, 237 NE(2d) 147 (1968), State v Poffenbaugh. Under RC 2947.061 a defendant, who has filed a motion to suspend further execution of sentence and requesting probation, is not entitled to a hearing on the motion, as there is no clear statutory expression in that section conferring upon the defendant the right to such a hearing.

3. Probation period

43 App(3d) 124, 539 NE(2d) 634 (Lucas 1987), State v O'Leary. Where no action is taken to institute a probation violation hearing during the original probation period, a sentencing court loses juris-

diction to impose the suspended sentence once the original probation period expires.

35 App(3d) 107, 519 NE(2d) 860 (Cuyahoga 1987), Lakewood v Davies. A trial court lacks jurisdiction to execute a defendant's original sentence after the term of defendant's probation has expired.

7 App(3d) 262, 7 OBR 342, 454 NE(2d) 1356 (Hamilton 1982), State v Wallace. Where a complaint is signed and an official warrant is issued for the arrest of the defendant to answer a probation violation within defendant's one year probationary period, but defendant is not arrested until after the probationary period has passed, trial court erred in dismissing the complaint for want of jurisdiction.

12 Misc 164, 230 NE(2d) 694 (CP, Madison 1967), Miller v Haskins. A court has no authority to impose sentence on an alleged probation violator after the term of the probation has expired where there is no showing that the probation period was suspended.

461 US 660, 103 SCt 2064, 76 LEd(2d) 221 (1983), Bearden v Georgia. An automatic revocation of probation solely because of probationer's failure to meet probation condition that he pay fine or make restitution, absent findings that probationer willfully refused to make bona fide efforts to pay or that alternative forms of punishment, other than imprisonment, are inadequate to meet state's interests in punishment and deterrence, violates US Const Am 14. (Ed. note: Georgia law construed in light of federal constitution.)

4. Revocation of probation

60 OS(3d) 81, 573 NE(2d) 602 (1991), State v Draper. The authority conferred upon a trial court by RC 2951.09 to revoke the probation of an offender and impose a greater sentence of incarceration is limited to probation granted pursuant to RC 2929.51(A) and 2951.02.

60 OS(3d) 81, 573 NE(2d) 602 (1991), State v Draper. While RC 2951.09 authorizes a trial court to revoke shock probation granted an offender pursuant to RC 2929.51(B) and 2947.061 for violation of the terms thereof, the court may not impose a term of incarceration in excess of the original sentence.

58 OS(3d) 78, 567 NE(2d) 1306 (1991), State v Yates. The expiring of a probation period ends the jurisdiction of the trial court to impose a suspended sentence for violation of probation conditions.

68 App(3d) 184 (Franklin 1990), Columbus v Hayes. The revocation of a motorist's probation and the reimposition of 174 days of suspended jail time is improper where it is based solely on the motorist's subsequent conviction for failing to stop at a stop sign.

66 App(3d) 52, 583 NE(2d) 414 (Stark 1990), State v Bell. Due process does not require a court to consider the defense of insanity in parole revocation proceedings; therefore, a trial court does not err when it revokes a defendant's probation for an assault committed while she was allegedly insane; the welfare and safety of society outweigh the interest of the probationer who has violated a condition of probation while sane or insane.

66 App(3d) 52, 583 NE(2d) 414 (Stark 1990), State v Bell. The denial of a competency hearing prior to a trial court conducting probation revocation proceedings does not constitute an abuse of discretion where although a doctor's report concluded that the defendant was incompetent to stand trial, it did not state that the defendant was incompetent to proceed in the probation revocation hearing, and indicated that the defendant understood that she was charged with a probation violation and that she could be returned to a hospital or reformatory.

66 App(3d) 52, 583 NE(2d) 414 (Stark 1990), State v Bell. The revocation of a defendant's probation does not constitute cruel and unusual punishment despite the defendant's contention that she committed her probation violation while insane since a court in refusing to recognize the insanity defense in a revocation proceeding is not imposing criminal punishment on the defendant for her present excusable conduct, but rather the criminal punishment results from the past conduct which was not excused by insanity and for which the defendant has been duly convicted; additionally, the evidence indicates that the defendant was not incompetent to assist her counsel in the probation revocation proceeding.

63 App(3d) 721, 580 NE(2d) 34 (Summit 1989), State v Hutchison. In a probation revocation hearing, a trial court does not err in rejecting a defendant's plea of not guilty by reason of insanity since a revocation decision involves two analytically distinct components: (1) whether the parolee has in fact acted in violation of one or more conditions of his probation, and (2) whether the probationer should be committed to prison or whether other steps should be taken to protect society and improve the chances of rehabilitation, and the defense of insanity is irrelevant to the first component because the concern is whether the law was obeyed, not whether it was culpably broken, and under the second component, although fundamental fairness requires the court to consider evidence of the defendant's mental state, the purpose of the hearing is to determine whether alternatives to incarceration which have been made available to the defendant should remain open to him, not to determine whether the defendant should be held responsible for the acts with which he is charged; the court considered the defendant's mental state when determining what disposition should be made after it was established that the defendant violated his conditions of parole since although the defendant was sentenced to a state institution, the trial court ordered him to receive treatment at a forensic center.

63 App(3d) 721, 580 NE(2d) 34 (Summit 1989), State v Hutchison. The purpose of the revocation process is to protect the public either by further attempted rehabilitation, or by revocation.

63 App(3d) 721, 580 NE(2d) 34 (Summit 1989), State v Hutchison. In a probation violation hearing, a trial court does not abuse its discretion in denying an examination to determine if the defendant was insane at the time of the violation of his condition of probation since the defendant may not present a defense of not guilty by reason of insanity in a probation violation hearing and there was sufficient medical evidence before the court for it to consider the defendant's mental condition.

63 App(3d) 721, 580 NE(2d) 34 (Summit 1989), State v Hutchison. A trial court does not abuse its discretion in finding that a defendant knowingly violated the conditions of his probation where the evidence shows that the defendant left the state and failed to continue with a treatment program that was designed to help him with his mental problems.

62 App(3d) 848, 577 NE(2d) 710 (Hamilton 1989), State v Henderson. Due process does not require that a written statement of the evidence finding probable cause to revoke probation be issued.

62 App(3d) 848, 577 NE(2d) 710 (Hamilton 1989), State v Henderson. A probationer who states to a probation officer that he does not need to work due to income received from a pension and drug sales, who crumples and discards his copy of probation conditions, and who exhibits a surly attitude to the probation officer is properly subject to probation revocation.

57 App(3d) 36, 565 NE(2d) 1286 (Cuyahoga 1989), State v Conti. RC 2929.41(B)(3) does not dictate when probation must be revoked, but merely provides that, in the event of revocation, the sentence for the new offense must run consecutively to any previous sentence ordered into execution; the revocation of probation and imposition of a previous sentence is discretionary with the trial judge.

56 App(3d) 141, 565 NE(2d) 848 (Stark 1988), State v Jackson. The subject matter jurisdiction of a sentencing court terminates at the end of the probation period; at that point, the trial court loses its legal power to act, regardless of the fact that the alleged probation violation occurred during the period of probation and could have resulted, if timely prosecuted, in a revocation and imposition of sentence.

50 App(3d) 56, 552 NE(2d) 957 (Franklin 1988), State v Qualls. The concern of a parole authority is whether a law has been broken, not whether it has been culpably broken; thus, a court considering whether to revoke parole need only consider whether an act was committed and, with fundamental fairness, revoke parole for acts committed while the parolee is insane.

48 App(3d) 106, 548 NE(2d) 319 (Trumbull 1988), In re McClung. A probationer discharged under a valid court order who has served the time called for by the order cannot be imprisoned again for the same offense although he remains under the court's jurisdiction for purposes of probation; a bench warrant stating the probationer was released in error and calling for him to serve the balance of the original sentence seeks to imprison him for the conviction even though he had been discharged under the earlier release motion and is accordingly invalid, not because it violates the right to not be placed in double jeopardy but because the court no longer has jurisdiction over the matter; because the individual is restrained under a void judgment a writ of habeas corpus is appropriate.

48 App(3d) 99, 548 NE(2d) 312 (Washington 1988), State v Collier. Revoking of a felon's probation following convictions of drunk driving and resisting arrest is not unconstitutional punishment of the status of being an alcoholic but instead permissible punishment of conduct.

48 App(3d) 72, 548 NE(2d) 246 (Franklin 1988), Dragon v State. A civil action under RC 2743.48 for an award to compensate for wrongful imprisonment is not available where the cause of imprisonment was an incorrect revoking of probation.

43 App(3d) 184, 540 NE(2d) 300 (Cuyahoga 1988), State v Williams. A defendant must be given written notice of an alleged probation violation and a preliminary hearing must be held prior to the revocation of a defendant's probation.

39 App(3d) 112, 529 NE(2d) 951 (Clark 1987), State v Carreker. Reasonable diligence in the disposition of probation revocation proceedings should be exercised under principals of fundamental fairness since there is no applicable statute or rule establishing a definite time for holding a probation revocation hearing; reasonableness in such matters must be dictated by the particular circumstances in each case.

39 App(3d) 112, 529 NE(2d) 951 (Clark 1987), State v Carreker. A probation revocation hearing held seventeen months after the probation violation occurs is not prejudicial to a defendant who is already incarcerated as a result of a conviction for the offense which constitutes the probation violation, and where the hearing takes place well within the probationary period originally imposed.

35 App(3d) 159, 520 NE(2d) 264 (Sandusky 1987), State v Murr. Absent evidence of undue bias, hostility, or non-neutrality on the part of the judge in making his determination, the trial court which placed a defendant on probation will be considered a "neutral and detached" hearing body for purposes of ordering defendant's probation revoked.

10 App(3d) 172, 10 OBR 242, 461 NE(2d) 1 (Marion 1982), State ex rel Freeman v Dept of Rehabilitation & Correction. Where a trial court has revoked probation, it is not authorized to reduce a previously imposed sentence for the crimes involved in the revocation of probation.

42 App(2d) 35, 327 NE(2d) 791 (1974), State v Mingua. Although the quantum of evidence required to support a probation revocation need not be "beyond a reasonable doubt," it must be "substantial," and such evidence must meet the test of competency.

No. CA90-03-022 (12th Dist Ct App, Clermont, 11-26-90), State v Sharp. A trial court errs in increasing a defendant's sentence following the revocation of shock probation, where the defendant has already served a portion of the initial sentence prior to the grant of shock probation.

No. CA86-09-139 (12th Dist Ct App, Butler, 3-2-87), State v Blankenship. Defendant has no right to a hearing to determine his competency to stand trial under RC 2945.371 prior to a hearing on revocation of his probation.

No. CA86-09-139 (12th Dist Ct App, Butler, 3-2-87), State v Blankenship. Defendant has no right to a trial by jury on issue of revocation of his probation; under RC 2951.09, such determination is exclusively in the province of the trial court.

57 Misc(2d) 1, 565 NE(2d) 894 (Muni, Bowling Green 1989), Portage v Pennington. A referee in a municipal court who is an attorney at law admitted to practice in this state may hear misdemeanor criminal cases referred to him by the judge for report and recommendation; this authority includes the power to dispose of probation violation charges where the probationer waives his rights and admits the violation, and the referee reports his findings and recommendations, including the imposition of any jail sentence.

2961.01 Civil rights of convicted felons

A person convicted of a felony under the laws of this or any other state or the United States, unless his conviction is reversed or annulled, is incompetent to be an elector or juror, or to hold an office of honor, trust, or profit. When any such person is granted probation, parole, or a conditional pardon, he is competent to be an elector during the period of probation or parole or until the conditions of his pardon have been performed or have transpired, and thereafter following his final discharge. The full pardon of a convict restores the rights and privileges so forfeited under this section, but a pardon shall not release a convict from the costs of his conviction in this state, unless so specified.

HISTORY: 1972 H 511, eff. 1-1-74
1953 H 1; GC 13458-1

Note: 2961.01 contains provisions analogous to former 2961.02, repealed by 1972 H 511, eff. 1-1-74.

COMMENTARY

Legislative Service Commission

1973: This section permits a person convicted of felony to vote from and after the time he is granted probation, parole, or a conditional pardon. Under former law, a convicted felon was disabled from voting, sitting as a juror, or holding an office of honor, trust, or profit. The disabilities as to jury service and holding office are continued under this section, regardless of whether the convicted felon is placed on probation, paroled, or granted a conditional pardon. These disabilities may be removed, however, pursuant to section 2951.09 of the Revised Code, although it is not clear under that section whether relief from disability can be granted only to a person placed on probation as opposed to persons granted parole or a conditional pardon.

PRACTICE AND STUDY AIDS

Schroeder-Katz, Ohio Criminal Law, Text 37.04(A); Crim R 24
Baldwin's Ohio Legal Forms, Form 101.01(D)
Gotherman & Babbit, Ohio Municipal Law, Text 15.11

CROSS REFERENCES

Parole and community services, restoration of inmates' rights, OAC 5120:1-1-14

Procedure against defendant, rights of citizenship restored, journal entry, 2951.09
Administrative release of parole violator, 2967.17
Convicted felons forbidden to serve as election officers, 3501.27
Challenging voters, 3505.19 to 3505.21
Bribery as ground for forfeiture of office, 3599.01
Sale of vote or registration excludes seller from suffrage and public office for five years, 3599.02
Second offender under election laws disenfranchised, 3599.39
Certain crimes disqualifying applicant for hazardous waste disposal permit, 3734.44
Lottery sales agents, conviction of crime of moral turpitude as disqualification, 3770.05
Ineligibility to hold office, O Const Art II §5
Convicted felons may be barred from voting or holding office, O Const Art V §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 52, 186; 26, Criminal Law § 422; 28, Criminal Law § 1628, 1670; 37, Elections § 50, 70; 46, Family Law § 508; 73, Penal Institutions § 62

Am Jur 2d: 15, Civil Rights § 1 to 4; 21, 21A, Criminal Law § 24, 25, 1022 to 1035

Provisions of religious facilities for prisoners. 12 ALR3d 1276

Admissibility, and prejudicial effect of admission, of "mug shot," "rogues gallery" photograph, or photograph taken in prison, of defendant in criminal trial. 30 ALR3d 908

Censorship of convicted prisoner's "legal" mail. 47 ALR3d 1150

Censorship of convicted prisoner's "nonlegal" mail. 47 ALR3d 1192

Cruel and unusual punishment: prison conditions as amounting to cruel and unusual punishment. 51 ALR3d 111

Mail censorship and evidentiary use of unconvicted prisoner's mail. 52 ALR3d 548

Civil action: right in absence of express statutory authorization, of one convicted of crime and imprisoned or paroled, to prosecute civil action. 74 ALR3d 680

Death: civil liability of prison or jail authorities for self-inflicted injury or death of prisoner. 79 ALR3d 1210

Wills: convict's capacity to make a will. 84 ALR3d 479

Right of incarcerated mother to retain custody of infant in penal institution. 14 ALR4th 748

Right of jailed or imprisoned parent to visit from minor child. 15 ALR4th 1234

Sufficiency of access to legal research facilities afforded defendant confined in state prison or local jail. 23 ALR4th 590

State regulation of conjugal or overnight familial visits in penal and correctional institutions. 29 ALR4th 1216

Construction and application of state statute providing compensation for wrongful conviction and incarceration. 34 ALR4th 648

Search: fourth amendment as protecting prisoners against unreasonable searches or seizures. 32 ALR Fed 601

Propriety of monitoring of telephone calls to or from prison inmates under Title III of Omnibus Crime Control and Safe Streets Act (18 USCS § 2510 et seq.) prohibiting judicially unauthorized interception of wire or oral communications. 61 ALR Fed 825

Validity under federal law of prison regulations relating to inmates' hair length and style. 62 ALR Fed 473

NOTES ON DECISIONS AND OPINIONS

5 Capital L Rev 293 (1976). Prison Escape: Justification as a Defense—People v. Lovercamp, Note.

5 Capital L Rev 139 (1976). One Step Beyond Confinement: The Adult Criminal Offender's Right to Rehabilitation, Note.

62 App(3d) 848, 577 NE(2d) 710 (Hamilton 1989), State v Henderson. A probationer's right to free speech is not violated by a condition of probation requiring him to conduct himself "appropriately at all times and answer all questions by probation department personnel truthfully" to the best of his ability.

62 App(3d) 417, 575 NE(2d) 1186 (Franklin 1989), Hughes v Brown. There is no requirement for a hearing pursuant to RC 3.07 prior to forfeiture of a public office where the officeholder has been convicted of a felony; the appeal of a felony conviction does not operate to negate the conviction.

3 App(3d) 40, 3 OBR 43, 443 NE(2d) 1034 (Cuyahoga 1982), State ex rel Corrigan v Barnes. RC 2961.01 does not conflict with the home rule provisions of the Ohio Constitution because such statute does not solely establish the qualifications for the office of city councilman and involves a statewide concern, i.e. the punishment of felony offenders.

3 App(3d) 40, 3 OBR 43, 443 NE(2d) 1034 (Cuyahoga 1982), State ex rel Corrigan v Barnes. An amendment to RC 2961.01 by 1972 H 511, eff. 1-1-74, which makes the statute applicable to persons convicted of felonies under federal law, may not constitutionally be applied with respect to acts committed prior to January 1, 1974.

91 Abs 1, 188 NE(2d) 91 (CP, Tuscarawas 1963), Firestone v Freiling. Where prospective jurors on voir dire examination by the court in a personal injury case remained silent when asked whether any of them had been convicted of a felony, and it is disclosed, or could have been disclosed by the exercise of due diligence during the trial, that one of the jurors had been convicted of a felony, such silence does not constitute cause for a new trial unless it is shown that such juror was partial, biased or prejudiced so as to affect the substantial rights of a party.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. A federal parolee is entitled to vote in an Ohio election.

471 US 222, 105 SCt 1916, 85 LEd(2d) 222 (1985), Hunter v Underwood. A state constitutional provision disenfranchising individuals convicted of misdemeanors involving moral turpitude which are committed by more blacks than whites violates US Const Am 14 only where it is proved that racial reasons were a substantial factor behind its enactment and where the state does not show that the provision would have been enacted if not for this consideration.

899 F(2d) 543 (6th Cir Ohio 1990), United States v Cassidy. No express restriction on firearms privileges need be contained in a statute or certificate restoring civil rights, for purposes of determining whether an individual is a "convicted felon" prohibited from owning firearms.

745 F(2d) 1040 (6th Cir Ohio 1984), Darks v Cincinnati. A municipal code provision limiting eligibility for dance hall licenses to "reputable person[s] of good moral character", when uniformly applied to deny such licenses to individuals with felony records, creates not an irrebuttable presumption but a valid substantive rule of law which may protect the community from illegal activities and a disreputable clientele.

1962 OAG 3242. A person who is convicted of a felony is incompetent to be an elector or juror, or to hold an office of honor, trust, or profit, but does not lose his citizen rights generally, and does not lose his citizenship within the purview of RC 5907.04, which requires that to be admitted to the Ohio Soldiers' and Sailors' Home, the applicant must have been a citizen of Ohio five consecutive years or more at the date of making application for admission.

2967.16 Final release of paroled prisoners

When a paroled prisoner has faithfully performed the conditions and obligations of his parole and has obeyed the rules and regulations adopted by the adult parole authority that apply to him, the authority upon the recommendation of the superintendent of parole supervision may enter upon its minutes a final release and thereupon shall issue to the paroled prisoner a certificate of final release, but no such release shall be granted earlier than one year after the prisoner is released from the institution on parole unless his maximum sentence has expired prior thereto, and in the case of a prisoner whose minimum sentence is life imprisonment, no such release shall be granted earlier than five years after the prisoner is released from the institution on parole.

A prisoner who has served the maximum term of his sentence or who has been granted his final release by the adult parole authority shall be restored to the rights and privileges forfeited by his conviction.

HISTORY: 131 v H 848, eff. 11-1-65
130 v Pt 2, H 28

PRACTICE AND STUDY AIDS

Giannelli, Ohio Evidence Manual, Author's Comment § 609.06

CROSS REFERENCES

Discharge from parole, OAC 5120:1-1-13 et seq.

Adult parole authority, glossary of terms, OAC 5120:1-3-05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 26, Criminal Law § 422; 27, Criminal Law § 1390; 28, Criminal Law § 1644; 61, Intoxicating Liquors § 120
Am Jur 2d: 59, Pardon and Parole § 77 to 89

NOTES ON DECISIONS AND OPINIONS

50 OS(2d) 351, 364 NE(2d) 286 (1977), Stahl v Shoemaker. Habeas corpus will not lie to challenge the action of the adult parole authority rather than the jurisdiction of the court responsible for his commitment.

157 OS 463, 105 NE(2d) 643 (1952), State ex rel Newman v Lowery. The pardon and parole commission can rescind an order granting a parole effective on or after a future date. (Annotation from former RC 2965.17.)

97 App 477, 124 NE(2d) 453 (1954), State v Hawkins. The punishment of one convicted of murder in the second degree is not life imprisonment, and such imprisonment is only "until legally released," and upon appeal of such conviction any judge of the court of appeals may admit such defendant to bail. (Annotation from former RC 2965.17.) (But see State v Sheppard, 97 App 493, 124 NE(2d) 730 (1955), and 97 App 489, 123 NE(2d) 544 (1955).)

72 Abs 337, 135 NE(2d) 90 (CP, Franklin 1954), State ex rel Mason v Alvis. Where a prisoner's parole hearing was delayed following his conviction by an institutional court of the penitentiary, and he has not served the minimum sentence, he is not entitled to parole as of right merely by virtue of RC 2965.31. (Annotation from former RC 2965.17.)

899 F(2d) 543 (6th Cir Ohio 1990), United States v Cassidy. No express restriction on firearms privileges need be contained in a statute or certificate restoring civil rights, for purposes of determining whether an individual is a "convicted felon" prohibited from owning firearms.

351 FSupp 1012 (SD Ohio 1972), White v Gilligan. Ohio rule that time spent in a county jail prior to a felony conviction cannot be credited against statutorily fixed sentences ultimately imposed because such time is not imprisonment within the meaning of RC 1.05 where the maximum term prescribed for the offense is longer than one year, is a violation of the Equal Protection Clause of the US Constitution.

EDUCATION

3301.06 Vacancies

A vacancy in the state board of education may be caused by death, nonresidence, resignation, removal from office, failure of a person elected to qualify within ten days after the organization of the board or of his election, removal from the district of election, or absence from any two consecutive regular meetings of the board if such absence is caused by reasons declared insufficient by a vote of seven members of the board. When such vacancy occurs, the governor shall, within a period of thirty days and with the advice and consent of the senate, appoint a qualified person residing in the district in which the vacancy occurred to fill such vacancy until the next general election at which members of the state board of education are elected, at which time a qualified elector residing in the district in which the vacancy occurred shall be elected for the unexpired term. Such member shall assume office at the next succeeding meeting of the board.

HISTORY: 1992 S 162, eff. 5-19-92
128 v 934; 126 v 655; 1953 H 1; GC 154-55

Note: 3301.06 contains provisions analogous to 3313.11 prior to its amendment by 126 v 655, eff. 1-3-56.

Note: See now 3301.10 for provisions analogous to ones contained in 3301.06 prior to its amendment by 126 v 655, eff. 1-3-56.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 3.02(A)(D)

CROSS REFERENCES

Vacancy by death or withdrawal of nominee, 3513.31
How vacancies in elective offices to be filled, O Const Art XVII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 54
Am Jur 2d: 68, Schools § 37, 38, 42, 43

3301.16 Classifying and chartering schools; definitions

Pursuant to standards prescribed by the state board of education as provided in division (D) of section 3301.07 of the Revised Code, such board shall classify and charter school districts and individual schools within each district. Such board shall revoke the charter of any school district or school which fails to meet the standards for elementary and high schools as prescribed by the board. In the issuance and revocation of school district or school charters, the state board of education shall be governed by the provisions of Chapter 119. of the Revised Code. In case a school district charter is revoked pursuant to this section, the state board of education may dissolve the school district and transfer its territory to one or more adjacent districts. An equitable division of the funds, property, and indebtedness of the school district shall be made by the state board of education among the receiving districts. The board of education of a receiving district shall accept such territory pursuant to the order of the state board of education. Prior to dissolving the school district, the state board of education shall notify the appropriate county board of education and all adjacent school district boards of education of its intention to do so. Boards so notified may make recommendations to the state board of education regarding the proposed dissolution and subsequent transfer of territory. Except as provided in section 3301.161 of the Revised Code, the transfer ordered by the state board of education shall become effective on the date specified by the state board, but the date shall be at least thirty days following the date of issuance of the order.

A high school is one of higher grade than an elementary school, in which instruction and training are given in accordance with sections 3301.07 and 3313.60 of the Revised Code and which also offers other subjects of study more advanced than those taught in the elementary schools and such other subjects as may be approved by the state board of education.

An elementary school is one in which instruction and training are given in accordance with sections 3301.07 and 3313.60 of the Revised Code and which offers such other subjects as may be approved by the state board of education. In districts wherein a junior high school is maintained, the elementary schools in that district may be considered to include only the work of the first six school years inclusive, plus the kindergarten year.

HISTORY: 1973 H 159, eff. 9-30-75
1970 S 197; 132 v S 350; 126 v 655

Note: 3301.16 contains provisions analogous to former 3301.03, repealed by 126 v 655, eff. 1-3-56.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 3.03(C), 4.09(D), 4.13, 26.05(A), 26.19, 30.07(B)

CROSS REFERENCES

Chartering of nonpublic schools, OAC 3301-39-04
Procedures of the state board of education in a request for transfer of territory, OAC 3301-89-02

Dissolution of district, 3311.217
Transfer of territory within county district, 3311.22
School district must maintain public school, 3311.29
Special instruction schools, 3313.53
Free schooling for residents, tuition for nonresidents, 3313.64
Tuition adjustments based on amount of basic aid, institution defined, 3317.082

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 4, 5, 56, 75, 328
Am Jur 2d: 68, Schools § 2, 3, 22 et seq.

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

116 App 515, 189 NE(2d) 81 (1962), Aberdeen-Huntington Bd of Ed v State Board of Education. The provisions of RC Ch 3301 giving certain powers to the state board of education, pursuant to which minimum standards are established for elementary and secondary schools, are constitutional.

2. In general

64 OS(2d) 98, 413 NE(2d) 1184 (1980), Stromberg v Bratenahl Bd of Ed. After is has been determined through extensive litigation that a local school district failed to meet the standards established by statute and was regularly dissolved, that determination is res judicata as to every question which might properly have been litigated; therefore, a taxpayer has no private right to relitigate the same public issues determined in the prior litigation.

53 OS(2d) 173, 373 NE(2d) 1238 (1978), State ex rel Bratenahl Local School Dist Bd of Ed v State Board of Education. The refusal of the state board of education to grant a local school district an additional exception to the requirements of RC 3311.29 does not constitute an "adjudication" within the meaning of RC 119.01.

47 OS(2d) 181, 351 NE(2d) 750 (1976), State v Whisner. Where the "minimum standards" promulgated by the state board of education are so comprehensive in scope and effect as to eradicate the distinction between public and non-public education, application of these "minimum standards" to defendants, parents of children attending a non-public religious school, abrogates their fundamental freedom, protected by the Liberty Clause of US Const Am 14, to direct the upbringing and education, secular or religious, of their children.

7 App(3d) 163, 7 OBR 208, 454 NE(2d) 957 (Paulding 1982), Ferris v Paulding Exempted Village School Dist Bd of Ed. There is no restriction or limitation upon the authority of a board of education of an exempted village school district to terminate an entire grade at one chartered school within the system and transfer the grade or assign all the pupils from the grade to another chartered school within the system that meets the minimum standards for schools within that system.

7 App(3d) 163, 7 OBR 208, 454 NE(2d) 957 (Paulding 1982), Ferris v Paulding Exempted Village School Dist Bd of Ed. There is no specific statutory requirement that a school is required to have a charter to operate, that if it did not have one it could not operate, or that if it had one it would have to operate all grades included in its charter.

65 App(2d) 90, 416 NE(2d) 642 (1979), Akron v Lane. The term "school," in the context of RC 3321.03 and 3321.04, refers to a school chartered by the state pursuant to RC 3301.16, and the term "special education program," in the context of RC 3321.03 and 3321.04, refers to a special education program operated pursuant to state board of education standards and authorization.

443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979), Dayton Bd of Ed v Brinkman. Where it was held in an earlier case that a board of education was intentionally operating a dual school system in 1954, and was thereafter under a continuing duty to eradicate the efforts of that system, the board's failure to fulfill its affirmative duty to eliminate the continuing systemwide effects of its prior discrimination can be traced back to the purposefully dual system of the 1950's in holding the board responsible for the current systemwide segregation, and in justifying a systemwide remedy.

433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977), Milliken v Bradley. As part of a desegregation decree, a court can order compensatory or remedial education programs for school children who have been subjected to past acts of de jure discrimination, and the court does not abuse its discretion by including in its order specific programs such as in-service training for teachers and administrators, counseling, and a comprehensive reading program, which were proposed by local school authorities.

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must be first shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. Desegregation, in the sense of dismantling a dual school system, does not require any particular racial balance. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. A federal court may not impose a multi-district, areawide remedy for single-district de jure school segregation violations, where there is no finding that the other included school districts have failed to operate unitary school systems or have committed acts that effected segregation within the other districts, and there is no claim or finding that the school district boundary lines were established with the purpose of fostering racial segregation. (See also Milliken v Bradley, 97 SCt 2749, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

402 US 1, 91 SCt 1267, 28 LEd(2d) 554 (1971), Swann v Charlotte-Mecklenburg Bd of Ed. Today's objective is to eliminate from the public schools all vestiges of state-imposed segregation that were held violative of equal protection guarantees by Brown v Board of Education, 347 US 483, 74 SCt 686, 98 LEd 873 (1954). (Ed. note: North Carolina law construed in light of federal constitution.)

349 US 294, 75 SCt 753, 99 LEd 1083 (1955), Brown v Topeka Bd of Ed. The burden rests upon the board of education to establish that additional time is necessary to carry out the court's ruling that racial segregation in public schools is unconstitutional, and that such time is consistent with good faith compliance at the earliest practicable date; to that end the courts may consider problems related to administration, the physical condition of the school, the school transportation system, personnel, and the revision of local laws and regulations which may be necessary in solving those problems.

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. By statute enacted in 1887, the state of Ohio abolished the dual system of education. The district court, however, found the Dayton city school district to be in noncompliance with this statutory mandate and with the Equal Protection Clause of the Fourteenth Amendment. (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. Since the adopted "Dayton Plan" fails to eliminate the continuing effects of past segregation, it is constitutionally inadequate. (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. The terms of the Equal Educational Opportunity Act of 1974 did not limit the nature or scope of the remedy in this case. (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. Brinkman v Gilligan was remanded to the district court for proceedings to formulate a desegregation plan for the Dayton school system consistent with the remedial guidelines outlined in Keyes v School District No. 1, Denver, 413 US 189, 93 SCt 2686, 37 LEd(2d) 548 (1973) and Swann v Charlotte-Mecklenburg Bd of Ed (N Car.), 402 US 1, 91 SCt 1267, 28 LEd(2d) 554 (1971) that all vestiges of state-imposed segregation must be eliminated. In formulating a desegregation plan, the district court will adhere to the guidelines enunciated by the Supreme Court in Milliken v Bradley, 418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974); reversing Bradley v Milliken, 484 F(2d) 215 (6th Cir Michigan 1973). Once the plaintiffs and appellants have shown that state-imposed segregation existed at the time of Brown v Board of Education, 347 US 483, 74 SCt 686, 98 LEd 873 (1954), (or any point thereafter), school authorities "automatically assume an affirmative duty ... to eliminate from the public schools within their school system all vestiges of state-imposed school segregation." When such a showing has been made, "racially neutral plans which fail to counteract the continuing effects of past school segregation are inadequate" (Keyes). (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. Governor, attorney general, state board of education and superintendent of public instruction were proper parties in school desegregation case. (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

228 F(2d) 853, 73 Abs 23 (6th Cir Ohio 1956), Clemons v Hillsboro Bd of Ed. The Hillsboro board of education abused its discretion and violated state and constitutional law in assigning colored children to segregated schools, and such segregation will be enjoined.

429 FSupp 229 (SD Ohio 1977), Penick v Columbus Bd of Ed; modified by 583 F(2d) 787 (6th Cir Ohio 1978); affirmed by 443 US 449, 99 SCt 2941, 61 LEd(2d) 666 (1979). The law of Ohio requires the state board of education to act to assure that school children enjoy full range of constitutional rights, and failure of state officials to act with full knowledge of the results of such failure provides a basis for an inference that they intended to accept local district acts and shared their intent to segregate.

OAG 77-074. A teacher in a public school must be given credit for years of service, as that term is defined in RC 3317.13(A)(2), for the service rendered in a non-public school while such school had a charter issued by the state board of education.

OAG 77-074. The term "chartered," as used in RC 3317.13(A)(2), as amended by 1976 H 295, eff. 9-1-76, refers to charters issued to non-public schools by the state board of education, pursuant to RC 3301.16.

OAG 71-036. Filing of referendum petition pursuant to RC 3301.161 against transfer of local school district suspends not only transfer order made by department of education, pending outcome of vote thereon, but also companion order of dissolution of such district.

1959 OAG 345. The state board of education in reaching a determination of the qualification of a school for the granting of a high school charter, is governed by the provisions of RC Ch 119.

3311.052 Election of county board of education; term

At the first general election occurring more than seventy-five days after the provisions of section 3311.051 of the Revised Code become applicable in a county school district, a five member county board of education shall be elected from the qualified electors residing in the county school district territory. All qualified electors, regardless of service on any board of education, shall be eligible for office. The candidates for such county board of education shall be nominated in the manner set forth in section 3513.254 of the Revised Code. The term of office of each member so elected shall be determined by lot at the initial organization meeting of the board. If the election occurs in an even numbered year, two members elected shall each serve terms of one year or until their successors are elected and qualified, and three members elected shall each serve terms of three years or until their successors are elected and qualified. If the election occurs in an odd numbered year, two members elected shall each serve terms of two years or until their successors are elected and qualified, and three members elected shall each serve terms of four years or until their successors are elected and qualified. All subsequent terms of office shall be for four year terms. The term of office of each member shall begin on the first day of January immediately following his election, except that the terms of office for members initially elected to a county board of education pursuant to this section shall start on the Monday following the general election, and shall terminate on the last day of December in the appropriate year.

HISTORY: 1980 H 1062, eff. 3-23-81
131 v H 634

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 4.15(D)

CROSS REFERENCES

Time for holding elections; terms of office, O Const Art XVII §1

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 38 to 41

NOTES ON DECISIONS AND OPINIONS

61 OS(2d) 298, 401 NE(2d) 445 (1980), Wiss v Cuyahoga County Bd of Elections. Resident of Bratenahl was ineligible to run as a candidate for the Cuyahoga county board of education.

OAG 74-034. A person in the classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by RC 124.57, because that section only prohibits partisan political activity.

3311.053 Joint county school districts

The boards of education of up to five adjoining county school districts may, by identical resolutions adopted by a majority of the members of each board within any sixty-day period, combine such school districts into one county school district. The resolutions shall state the name of the new district, which may be styled as a "joint county school district." A copy of each resolution shall be filed with the state board of education. Thirty days after the date on which the last resolution has been filed with the state board, the county boards of the participating districts shall be dissolved and a new board of education established. The initial members of such board shall be appointed as follows:

(A) If two county districts combine, each district's board, prior to its dissolution, shall appoint two members to the new board and the four members so selected shall select a fifth member within ten days of the date on which the last of the four members is appointed.

(B) If three county districts combine, each district's board, prior to its dissolution, shall appoint one member to the new board and the three members so selected shall select the remaining two members of the board within ten days of the date on which the last of the three members is appointed.

(C) If four county districts combine, each district's board, prior to its dissolution, shall appoint one member to the new board and the four members so selected shall select the remaining member of the board within ten days of the date on which the last of the four members is appointed.

(D) If five county districts combine, each district's board, prior to its dissolution, shall appoint one member to the new board.

If the members appointed to a new board by the boards of the combining districts are unable to agree on the selection of the remaining members of the new board within ten days, the probate judge of the county in which the greatest number of pupils under the supervision of the new county district reside shall appoint the remaining members.

Electors of the new district shall elect a new board of education at the next general election occurring in an odd-numbered year and more than seventy-five days after the date of the appointment of the last member to the initial board. Members shall serve for the duration of the term to which they are elected or until their successors are elected and qualified. At such election, two members shall be elected to terms of two years and three members shall be elected to terms of four years. Thereafter, their successors shall be elected in the same manner and for the same terms as members of boards of education of all county school districts. Each candidate for election as a member of the county board of education shall file a nominating petition in accordance with section 3513.255 of the Revised Code.

The funds of each former county school district shall be paid over in full to the board of education of the new school district, and the legal title to all property of the former boards of education shall become vested in the new board of education.

The board of a school district created under this section shall honor all contracts made by the former boards of education.

HISTORY: 1989 S 140, eff. 10-2-89

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140—LSC Analysis, p 5-481

Baldwin's Ohio School Law, Text 4.03(B), 4.06(E), 6.14(A), 7.08, 40.10(C)

CROSS REFERENCES

Prosecuting attorney as counsel for board of education, 3313.35

Offices of joint county board of education, 3319.19

3311.06 Definitions; territory must be contiguous; procedure when part of district is annexed by municipal corporation; annexation of territory by municipal corporation served by urban school district; division of funds

(A) As used in this section:

(1) "Annexation" and "annexed" mean annexation for municipal purposes under sections 709.02 to 709.37 of the Revised Code.

(2) "Annexed territory" means territory that has been annexed for municipal purposes to a city served by an urban school district, but on September 24, 1986, has not been transferred to the urban school district.

(3) "Urban school district" means a city school district with an average daily membership for the 1985-1986 school year in excess of twenty thousand that is the school district of a city that contains annexed territory.

(4) "Annexation agreement" means an agreement entered into under division (F) of this section that has been approved by the state board of education or an agreement entered into prior to September 24, 1986, that meets the requirements of division (F) of this section and has been filed with the state board.

(B) The territory included within the boundaries of a city, local, exempted village, or joint vocational school district shall be contiguous except where a natural island forms an integral part of the district, where the state board of education authorizes a noncontiguous school district, as provided in division (E)(1) of this section, or where a local school district is created pursuant to section 3311.26 of the Revised Code from one or more local school districts, one of which has entered into an agreement under section 3313.42 of the Revised Code.

(C)(1) When all of the territory of a school district is annexed to a city or village, such territory thereby becomes a part of the city school district or the school district of which the village is a part, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part.

(2) When the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory becomes part of the city school district or the school district of which the village is a part only upon approval by the state board of education, unless the district in which the territory is located is a party to an annexation agreement with the city school district.

Any urban school district that has not entered into an annexation agreement with any other school district whose territory would be affected by any transfer under this division and that desires to negotiate the terms of transfer with any such district shall conduct any negotiations under division (F) of this section as part of entering into an annexation agreement with such a district.

Any school district, except an urban school district, desiring state board approval of a transfer under this division shall make a good faith effort to negotiate the terms of transfer with any other school district whose territory would be affected by the transfer. Before the state board may approve any transfer of territory to a school district, except an urban school district, under this section, it must receive the following:

(a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;

(b) Evidence determined to be sufficient by the state board to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations;

(c) If any negotiations took place, a statement signed by all boards that participated in the negotiations, listing the

terms agreed on and the points on which no agreement could be reached.

(D) The state board of education shall adopt rules governing negotiations held by any school district except an urban school district pursuant to division (C)(2) of this section. The rules shall encourage the realization of the following goals:

(1) A discussion by the negotiating districts of the present and future educational needs of the pupils in each district;

(2) The educational, financial, and territorial stability of each district affected by the transfer;

(3) The assurance of appropriate educational programs, services, and opportunities for all the pupils in each participating district, and adequate planning for the facilities needed to provide these programs, services, and opportunities.

Districts involved in negotiations under such rules may agree to share revenues from the property included in the territory to be transferred, establish cooperative programs between the participating districts, and establish mechanisms for the settlement of any future boundary disputes.

(E)(1) If territory annexed after September 24, 1986, is part of a school district that is a party to an annexation agreement with the urban school district serving the annexing city, the transfer of such territory shall be governed by the agreement. If the agreement does not specify how the territory is to be dealt with, the boards of education of the district in which the territory is located and the urban school district shall negotiate with regard to the transfer of the territory which shall be transferred to the urban school district unless, not later than ninety days after the effective date of municipal annexation, the boards of education of both districts, by resolution adopted by a majority of the members of each board, agree that the territory will not be transferred and so inform the state board of education.

If territory is transferred under this division the transfer shall take effect on the first day of July occurring not sooner than ninety-one days after the effective date of the municipal annexation. Territory transferred under this division need not be contiguous to the district to which it is transferred.

(2) Territory annexed prior to September 24, 1986, by a city served by an urban school district shall not be subject to transfer under this section if the district in which the territory is located is a party to an annexation agreement or becomes a party to such an agreement not later than ninety days after September 24, 1986. If the district does not become a party to an annexation agreement within the ninety-day period, transfer of territory shall be governed by division (C)(2) of this section. If the district subsequently becomes a party to an agreement, territory annexed prior to September 24, 1986, other than territory annexed under division (C)(2) of this section prior to the effective date of the agreement, shall not be subject to transfer under this section.

(F) An urban school district may enter into a comprehensive agreement with one or more school districts under which transfers of territory annexed by the city served by the urban school district after September 24, 1986, shall be governed by the agreement. Such agreement must provide for the establishment of a cooperative education program under section 3313.842 of the Revised Code in which all the parties to the agreement are participants and must be approved by resolution of the majority of the members of each of the boards of education of the school districts that are parties to it. An agreement may provide for interdistrict payments based on local revenue growth resulting from development in any territory annexed by the city served by the urban school district.

An agreement entered into under this division may be altered, modified, or terminated only by agreement, by resolution approved by the majority of the members of each board of education, of all school districts that are parties to the agreement, except that with regard to any provision that affects only the urban school district and one of the other districts that is a party, that district and the urban district may modify or alter the agreement by resolution approved by the majority of the members of the board of that district and the urban district.

If an agreement provides for interdistrict payments, each party to the agreement, except any school district specifically exempted by the agreement, shall agree to make an annual payment to the urban school district with respect to any of its territory that is annexed territory in an amount not to exceed the amount certified for that year under section 3317.029 of the Revised Code. The agreement may provide that all or any part of the payment shall be waived if the urban school district receives its payment with respect to such annexed territory under section 3317.029 of the Revised Code and that all or any part of such payment may be waived if the urban school district does not receive its payment with respect to such annexed territory under such section.

With respect to territory that is transferred to the urban school district after September 24, 1986, the agreement may provide for annual payments by the urban school district to the school district whose territory is transferred to the urban school district subsequent to annexation by the city served by the urban school district.

(G) In the event territory is transferred from one school district to another under this section, an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the state board of education and that board's decision shall be final. Such division shall not include funds payable to or received by a school district under Chapter 3317. of the Revised Code or payable to or received by a school district from the United States or any department or agency thereof. In the event such transferred territory includes real property owned by a school district, the state board of education, as part of such division of funds and indebtedness, shall determine the true value in money of such real property and all buildings or other improvements thereon. The board of education of the school district receiving such territory shall forthwith pay to the board of education of the school district losing such territory such true value in money of such real property, buildings, and improvements less such percentage of the true value in money of each school building located on such real property as is represented by the ratio of the total enrollment in day classes of the pupils residing in the territory transferred enrolled at such school building in the school year in which such annexation proceedings were commenced to the total enrollment in day classes of all pupils residing in the school district losing such territory enrolled at such school building in such school year. The school district receiving such payment shall place the proceeds thereof in its sinking fund or bond retirement fund.

(H) The state board of education, before approving such transfer of territory, shall determine that such payment has been made and shall apportion to the acquiring school district such percentage of the indebtedness of the school district losing the territory as is represented by the ratio that the assessed valuation of the territory transferred bears to the total assessed valuation of the entire school district losing the territory as of the effective date of the transfer, provided that in ascertaining the indebtedness of the school district losing the territory the state board of education shall disregard such percentage of the par value of the outstanding and unpaid bonds and notes of said school district issued for construction or improvement of the school building or buildings for which payment was made by the acquiring district as is equal to the percentage by which the true value in money of such building or buildings was reduced in fixing the amount of said payment.

(I) No transfer of school district territory or division of funds and indebtedness incident thereto, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section regardless of the date of the commencement of such annexation proceedings, and this section applies to all proceedings for such transfers and divisions of funds and indebtedness pending or commenced on or after October 2, 1959.

HISTORY: 1989 S 140, eff. 10-2-89
1988 H 549, H 708; 1986 S 298; 1981 S 20; 132 v H 565; 129 v 582; 128 v 328; 126 v 302; 125 v 903; 1953 H 1; GC 4830-5

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140—LSC Analysis, p 5-481
Baldwin's Ohio School Law, Text 4.03(D), 4.05(B), 4.07(A), 4.08, 4.11(B), 4.13, 4.14(B)
Gotherman & Babbit, Ohio Municipal Law, Text 2.42(A)

CROSS REFERENCES

Transfers of territory, OAC Ch 3301-89
Policies of state board of education in a request for transfer of territory, OAC 3301-89-01

Annexation for school purposes, 709.25
Merger of township and municipal corporation; conditions may provide for annexation of school district, 709.46
Foundation program subsidy to assist school districts in making payments pursuant to annexation agreements, 3317.029
Tax levy law, transfer of funds, 5705.14
Tax levy law, transfer of public funds, exceptions, 5705.15
Laws other than school laws to take effect only on approval of general assembly, O Const Art II §26

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 2, Administrative Law § 157; 82, Schools, Universities, and Colleges § 71, 73, 423
Am Jur 2d: 68, Schools § 25 to 30

NOTES ON DECISIONS AND OPINIONS

1. Division of funds and debts
   a. Constitutional issues
   b. In general
2. Approval of transfer
   a. Constitutional issues
   b. In general
3. Annexation by municipality; petition
4. Contiguous territory
5. Appeal
6. Segregation of pupils

1. Division of funds and debts

a. Constitutional issues

45 OS(2d) 117, 341 NE(2d) 594 (1976), Grandview Heights City School District Bd of Ed v State Bd of Ed. O Const Art II §26 expressly sanctions both the delegation of legislative authority by the general assembly in RC 3311.06 and the exercise of that authority by the state board of education, and RC 3311.06 is therefore constitutional.

173 OS 130, 180 NE(2d) 576 (1962), Jefferson Bd of Ed v Columbus Bd of Ed. The form of RC 3311.06 enacted in 1955 is constitutionally valid although some of the provisions therein for transfer of territory are not to take effect without the approval of the state board of education and the general assembly gave that board no guides or standards for such approval.

172 OS 533, 179 NE(2d) 347 (1961), State ex rel Whitehall Bd of Ed v Columbus Bd of Ed. RC 3311.06 is constitutional.

82 Abs 102, 165 NE(2d) 247 (CP, Franklin 1958), State ex rel Columbus Bd of Ed v Dunn; affirmed by 110 App 329, 163 NE(2d) 694 (1959). RC 3311.06 is unconstitutional as applied to the facts of the case.

b. In general

172 OS 533, 179 NE(2d) 347 (1961), State ex rel Whitehall Bd of Ed v Columbus Bd of Ed. The state board of education has authority to direct an equitable division of the funds and indebtedness between school districts in the case territory is transferred from one school district to another.

119 OS 475, 164 NE 516 (1928), State ex rel South Zanesville Bd of Ed v Bateman. Any indebtedness on school property in territory annexed means such indebtedness as, in the ordinary course of the administration of school affairs in the original district by which the indebtedness has been incurred, would have been paid by the levy and collection of taxes upon the taxable property in the territory annexed.

110 App 527, 166 NE(2d) 253 (1959), State ex rel Columbus Bd of Ed v State Board of Education. The state board of education in making the determination as required by RC 3311.06 is not subject to the provisions of RC Ch 119, but where the board does not make an equitable division of funds and indebtedness, an original action in mandamus is possible.

65 App 273, 29 NE(2d) 878 (1939), State ex rel Van Buren Twp Bd of Ed v Oakwood Bd of Ed. Fact that an amount claimed by a school district is in dispute and is unascertained does not prevent an action in mandamus to compel an annexing school district to levy and collect taxes necessary to pay its proportionate share of annexed district's indebtedness; such action in mandamus is a cause arising upon a liability created by statute and is subject to statute of limitations provided in GC 11222 (RC 2305.07), but under GC 286-3 (RC 117.13) the statute does not begin to run until the filing of the report called for in GC 286 (RC 117.10) with the officer or legal counsel whose duty it is to institute civil actions for the enforcement thereof.

65 App 273, 29 NE(2d) 878 (1939), State ex rel Van Buren Twp Bd of Ed v Oakwood Bd of Ed. Where part of a rural school district has been annexed by an adjoining city school district, the annexing district must assume its proportionate share of the rural district's indebtedness, and under GC 286 (RC 117.10), the board of education of the rural district may maintain an action in mandamus to compel the annexing school district to levy and collect such taxes necessary to pay this assumed debt where an examiner of the bureau of inspection of public offices has filed a report showing that the annexing district has failed to pay its proportionate share.

65 App 273, 29 NE(2d) 878 (1939), State ex rel Van Buren Twp Bd of Ed v Oakwood Bd of Ed. Annexation of certain territory of a rural school district by one city school district does not affect the obligation originally attaching to another city school district to pay its proportionate share of the indebtedness of the rural district, assumed by a prior annexation of different territory of the rural district.

20 Misc 243, 253 NE(2d) 836 (CP, Erie 1969), In re Margaretta Local School District, Transfer of Funds. RC 3311.06 clearly expresses the legislative intent that no transfer of school district territory or division of funds and indebtedness incident thereto, shall be completed in any other manner than that prescribed thereby, so that funds received by a school district for real property lost to the district by reason of annexation must be deposited in the bond retirement fund of said district.

No. 75 CV-06-2482 (CP, Franklin 1975), In re Transfer of Territory From Van Buren Local School Dist. Service is normally construed to have been completed upon mailing. Mailing of a corrected referee's report five days from the date on which the original report was delivered to the agency complies with the mandate of RC 119.09.

1964 OAG 1300. When territory is transferred from one school district to another under RC 3311.06, the terms for compensating the relinquishing school district for any property concomitantly transferred are set forth in that section.

1957 OAG 1452. The effect of the transfer after tax lien date of school district territory on the authority of the receiving school district to levy a tax on the real property in such territory by action in the current year under RC 5705.34 discussed.

1940 OAG 2453. The law makes no provision for the division of funds between two school districts a portion of one of which automatically becomes a part of a city or village school district by reason of the annexation of a portion of its territory to the city or village.

1940 OAG 2453. Proceeds of tax levies for school purposes made by a school district, a portion of whose territory has later been annexed to an adjoining city or village, should be paid to and retained by the district which made the levy.

1933 OAG 1590. When a portion of the territory of a rural school district is annexed to a contiguous city and the city school district receiving such territory thereby assumes a portion of the bonded indebtedness of the rural school district represented by a certain issue of bonds, refunding, bonds should be issued by the rural school district.

1928 OAG 3108. "Any indebtedness on the school property in the territory annexed" means such indebtedness as, in the ordinary course of the administration of school affairs in the original district by which the indebtedness has been incurred, would have been paid by the levy and collection of taxes upon the taxable property in the territory annexed.

1928 OAG 1946. Where a contract has been let for improvement of school property within territory annexed to a city or village, proceeds from sale of bonds issued for such improvement should be paid to and distributed by board of education of the school district assuming the obligation; and tax should be levied by such board to pay such bonds and the proceeds thereof paid to the board of education of the school district from which such territory was detached. Tax levied by city or village school district to which the territory was annexed must be within fifteen mill limitation.

1928 OAG 1946. When territory is annexed to a city or village school district, the city or village school district thus acquiring territory becomes vested with the legal title to school property lying within the territory annexed and automatically assumes any indebtedness on such property.

2. Approval of transfer

a. Constitutional issues

45 OS(2d) 117, 341 NE(2d) 589 (1976), Grandview Heights City School Dist Bd of Ed v State Board of Education. RC 3311.06 is constitutional.

b. In general

172 OS 237, 175 NE(2d) 91 (1961), State ex rel Worthington Bd of Ed v Columbus Bd of Ed. Statement by state board of education of its intention to approve transfer of territory of a school district did not constitute approval of the transfer and hence such transfer was not completed.

167 OS 543, 150 NE(2d) 407 (1958), Marion Local School Dist Bd of Ed v Marion County Bd of Ed. The provisions of RC Ch 3311, relative to the transfer of territory of school districts and the creation of new school districts by a county board of education, limit the right to protest the action of a county board exclusively to qualified electors, and give to local boards no voice in transfer proceedings and no right to protest the transfer of territory.

107 App 345, 159 NE(2d) 252 (1958), Bohley v Patry. The provisions of RC 3311.06 that when territory is annexed to a city which comprises a part but not all of the territory of a school district, the said territory shall become a part of the city school district "only upon approval by the state board of education," are remedial; and the part thereof which states that "After the effective date of this section, no action with regard to the transfer of school district territory pursuant to annexation to a municipality shall be completed in any other manner than that prescribed by this section," is an "express" provision that it shall affect pending annexation proceedings.

20 Misc 243, 253 NE(2d) 836 (CP, Erie 1969), In re Margaretta Local School Dist, Transfer of Funds. RC 3311.06 clearly expresses the legislative intent that no transfer of school district territory or division of funds and indebtedness incident thereto, shall be completed in any other manner than that prescribed by this section. It is required that funds received by a school district for real property lost to the district by reason of annexation shall be deposited in the bond retirement fund of said district.

20 Misc 243, 253 NE(2d) 836 (CP, Erie 1969), In re Margaretta Local School Dist, Transfer of Funds. RC 3311.06, 5705.14 and 5705.15 must be construed as laws in pari materia, and accordingly, the funds received for the property lost to the school district having been properly deposited in the bond retirement fund, any application for an order to transfer funds therefrom shall be brought pursuant to RC 5705.14.

No. 75 CV-06-2545 (CP, Franklin 1975), Woodridge Local School Dist Bd of Ed v State Board of Education. The apportionment provision in RC 3311.06 is designed to give a remedy to a party in an action in mandamus to compel an apportionment of indebtedness if one is not readily available on the effective date of the transfer for tax purposes.

82 Abs 102, 165 NE(2d) 247 RC (CP, Franklin 1958), State ex rel Columbus Bd of Ed v Dunn; affirmed by 110 App 329, 163 NE(2d) 694 (1959). The discretion granted to the state board of education to approve or reject the annexation of territory to a city or village where such territory comprises part but not all the territory of a school district cannot be exercised so as to create, permit, or allow to continue in existence a mandated tax rate of more than ten mills.

1964 OAG 1300. When a city or village annexes territory comprising only a part of a school district, title to a permanent branch of a school district library located within that annexed territory will vest in the city board of education or the board of education of which the village is a part only upon approval by the state board of education of the inclusion of the annexed territory within the school district of the city, and if the board does not approve the inclusion of the annexed territory within the school district of the annexing city or village, the library may continue to operate as a permanent branch of the school district library system.

1959 OAG 753. Where a city annexes part of the territory of a local school district and the transfer of territory has been approved by the state board of education, title to school buildings, school real estate and school facilities, located in such annexed territory, becomes vested in the board of education of the city school district.

1957 OAG 913. The state board of education does not have the authority to approve the transfer for school purposes of a part but not all of the territory which has been annexed to a municipality.

3. Annexation by municipality; petition

21 Ohio St L J 364 (1960). An analysis of the problems concerning municipal annexation in Ohio, Alba L. Whiteside.

172 OS 185, 174 NE(2d) 259 (1961), Bennett v Diefenbach. An action to enjoin the auditor and clerk of a municipality from taking favorable action on a petition by a resident freeholder for the annexation of territory to the municipality, which petition contains the language, "for municipal purposes," does not properly raise a constitutional question concerning the application of RC 3311.06.

172 OS 185, 174 NE(2d) 259 (1961), Bennett v Diefenbach. A petition by a resident freeholder for the annexation of territory, which contains the language, "for municipal purposes, according to the statutes of Ohio," is neither misleading nor inaccurate.

168 OS 495, 156 NE(2d) 315 (1959), Alexander v Toledo. The appearance, on the ballot used in an election to determine whether a township should be annexed to a city, of the words "for municipal purposes only, but not for school purposes" invalidates the election.

2 App(2d) 45, 206 NE(2d) 431 (1965), State ex rel Huntington National Bank v Thomas. Construction of a government owned reservoir across a school district does not by operation of law effect a transfer of any part of the district to any other district, and an erroneous transfer thereof on the tax duplicate will be remedied by mandamus.

113 App 302, 178 NE(2d) 101 (1960), Bennett v Diefenbach; affirmed by 172 OS 185, 174 NE(2d) 259 (1961). Inclusion in a petition by freeholders for annexation of territory to a municipality of the phrase "for municipal purposes only" does not invalidate the proceedings of the board of county commissioners incident to the hearing and allowance of such petition by such board.

74 Abs 554, 142 NE(2d) 296 (CP, Franklin 1956), McClintock v Cain. The mere disarrangement of school districts in a township is no valid ground for refusing to annex territory within said township to a municipality, and no valid objection can be lodged against such annexation, because it will necessitate a rearrangement of school districts and the financial burdens of the rest of the township will be somewhat increased.

64 Abs 371, 108 NE(2d) 387 (CP, Hamilton 1952), Indian Hill Exempted Village School Dist Bd of Ed v Hamilton County Bd of Ed; affirmed by 62 Abs 545, 108 NE(2d) 225 (App, Hamilton 1952). This section applies when territory is annexed to villages and local school districts, as well as to city and exempted village school districts.

1964 OAG 1300. When the entire school district, in which is located a permanent branch of a school district library organized pursuant to RC 3375.15, is annexed by a city or village, title to the library vests in the board of education of the city or the school district of which the village is a part.

1956 OAG 6808. The amendment of RC 3311.06 effective September 29, 1955, did not affect annexation petitions pending when such amendment became effective.

1955 OAG 5955. Where a village occupies portions of two or more school districts, and territory located in one is annexed to the village, the annexed territory is not transferred from the district of which it is a part.

1955 OAG 4734. The board of education of a local school district has no right to expend funds in support of or in opposition to pending annexation proceedings which would change the limits of the district.

1940 OAG 2453. When territory which is no part of any municipality is annexed to a contiguous city or village and such territory thus automatically becomes a part of the city or village school district, duties and obligations as to furnishing of educational advantages for school children residing in the territory annexed, devolve upon the school district of which the annexed territory becomes a part.

1928 OAG 1946. When all the territory in a rural or village school district is annexed to a contiguous city or village school district, the rural or village school district thus annexed is extinguished, its board of education abolished, and the board of education of the city or village school district acquiring such territory becomes charged with all the obligations of the school district.

4. Contiguous territory

7 OS(2d) 41, 218 NE(2d) 180 (1966), State ex rel Pioneer Joint Vocational School Dist Bd of Ed v Schumann. Noncontiguous school districts may unite to form a joint vocational school district.

121 OS 213, 167 NE 872 (1929), Warren Twp Rural School Dist Bd of Ed v Warren City School Dist Bd of Ed. Territories connected by only two-foot strip are not contiguous.

62 App(3d) 308, 575 NE(2d) 503 (Franklin 1990), Garfield Heights City School Dist v State Bd of Ed. Where the proposed transfer of property from one school district to another will result in the boundary lines between a municipality and a school district being continguous, it is in compliance with the applicable statutes, despite an allegation that the lines will not be coterminous if the proposed transfer is implemented.

1962 OAG 3333. A joint vocational school district covers the territory of two or more school districts within a county, and there is no requirement that said school districts be contiguous.

1961 OAG 2049. Territory of a school district may not be transferred to another school district under RC 3311.06 if such transfer would leave the original school district with two noncontiguous territories; and the state board of education is without authority to approve such a transfer under that section.

1959 OAG 572. A school district may not be annexed to another district with which it is not contiguous.

1957 OAG 1308. In the course of municipal annexation proceedings involving an area located in a school district other than that of the city concerned, where the boundaries of the annexed area, and those of the two school districts involved, are such that in one such district the boundaries are not contiguous, and where contiguity as to both school districts can be attained by a transfer of such isolated annexed area to the school district of the city concerned, it becomes the duty of the state board of education to approve such transfer.

1951 OAG 796. Where it is sought to transfer territory from one local school district to another, the territory transferred must be contiguous to the district to which it is to be transferred; where territory to be transferred is separated from the district to which it is to be annexed by a privately owned lane fifteen and one-half feet in width, it is not "contiguous" to such district.

1927 OAG 756. Territory which is annexed to a city becomes a part of the city school district, and the legal title of the school property in such territory for school purposes becomes vested in the board of education of the city school district; any indebtedness on the school property of such annexed territory should be assumed by the city school district board of education, but if there is no school property included in the annexed territory, the city school district has no responsibility for any other indebtedness. (See also 1927 OAG 803, 1927 OAG 1127, 1928 OAG 1914.)

5. Appeal

51 OS(3d) 189, 555 NE(2d) 931 (1990), Union Title Co v State Bd of Ed. The act of the state board of education disapproving a transfer of territory request pursuant to RC 3311.06 is a quasi-judicial act and, as such, is appealable under RC 119.12, where the affected parties are provided with notice, a hearing, and the opportunity to present evidence pursuant to OAC Ch 3301-89.

66 OS(2d) 152, 420 NE(2d) 990 (1981), Marion City School Dist Bd of Ed v Elgin Local School Dist Bd of Ed. The act of the Ohio state board of education disapproving a transfer of territory pursuant to RC 3311.06 is a legislative act, and, as such, is not appealable pursuant to RC 119.12.

4 App(3d) 78, 4 OBR 130, 446 NE(2d) 493 (Franklin 1982), In re Transfer of Territory from Cleveland City School Dist. The act of the Ohio state board of education disapproving a transfer of territory pursuant to RC 3311.24 is similar to disapproval of a transfer pursuant to RC 3311.06 and, as such, is a legislative act, which is not appealable pursuant to RC 119.12.

110 App 527, 166 NE(2d) 253 (1959), State ex rel Columbus Bd of Ed v State Board of Education. State board of education, in making the determination required by RC 3311.06, is not subject to

the provisions of the administrative procedure act; its action in such matter is final, and a school district board of education may not appeal therefrom.

110 App 329, 163 NE(2d) 694 (1959), State ex rel Columbus Bd of Ed v Dunn. Where, in a mandamus action by a local board of education against the county auditor to require the listing of certain real property for taxation within the local school district over which such board has jurisdiction and the certification to the county treasurer for collection of the levies of such local board on such real property, the trial court so orders and the county auditor complies with such order and does not appeal therefrom, the questions pending on an appeal from such order by the state board of education, an intervening respondent in the trial court, are, in the absence of a suspension or stay of such order or an application therefor, moot, and will not be determined by the court of appeals.

6. Segregation of pupils

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must be first shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. Desegregation, in the sense of dismantling a dual school system, does not require any particular racial balance. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. A federal court may not impose a multi-district, areawide remedy for single-district de jure school segregation violations, where there is no finding that the other included school districts have failed to operate unitary school systems or have committed acts that effected segregation within the other districts, and there is no claim or finding that the school district boundary lines were established with the purpose of fostering racial segregation. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

402 US 1, 91 SCt 1267, 28 LEd(2d) 554 (1971), Swann v Charlotte-Mecklenburg Bd of Ed. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole; while the existence of a small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of system which still practices segregation by law, such schools require close scrutiny by court. (Ed. note: North Carolina law construed in light of federal constitution.)

349 US 294, 75 SCt 753, 99 LEd 1083 (1955), Brown v Topeka Bd of Ed. The burden rests upon the board of education to establish that additional time is necessary to carry out the court's ruling that racial segregation in public schools is unconstitutional, and that such time is consistent with good faith compliance at the earliest practicable date; to that end the courts may consider problems related to administration, the physical condition of the school, the school transportation system, personnel, and the revision of local laws and regulations which may be necessary in solving those problems. (See also Clemons v Hillsboro Bd of Ed, 228 F(2d) 853, 73 Abs 23 (6th Cir Ohio 1956).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. By statute enacted in 1887, the state of Ohio abolished the dual system of education. The district court, however, found the Dayton city school district to be in noncompliance with this statutory mandate and with the Equal Protection Clause of the Fourteenth Amendment. (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. Since the adopted "Dayton Plan" fails to eliminate the continuing effects of past segregation, it is constitutionally inadequate. (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. The terms of the Equal Educational Opportunity Act of 1974 did not limit the nature or scope of the remedy in this case. (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. Brinkman v Gilligan was remanded to the district court for proceedings to formulate a desegregation plan for the Dayton school system consistent with the remedial guidelines outlined in Keyes v School District No. 1, Denver, 413 US 189, 93 SCt 2686, 37 LEd(2d) 548 (1973) and Swann v Charlotte-Mecklenburg Bd of Ed (N Car.), 402 US 1, 91 SCt 1267, 28 LEd(2d) 554 (1971) that all vestiges of state-imposed segregation must be eliminated. In formulating a desegregation plan, the district court will adhere to the guidelines enunciated by the Supreme Court in Milliken v Bradley, 418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974). Once the plaintiffs and appellants have shown that state-imposed segregation existed at the time of Brown v Board of Education, 347 US 483, 74 SCt 686, 98 LEd 873 (1954), (or any point thereafter), school authorities "automatically assume an affirmative duty . . . to eliminate from the public schools within their school system all vestiges of state-imposed school segregation." When such a showing has been made, "racially neutral plans which fail to counteract the continuing effects of past school segregation are inadequate" (Keyes). (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

228 F(2d) 853, 73 Abs 23 (6th Cir Ohio 1956), Clemons v Hillsboro Bd of Ed. The Hillsboro board of education abused its discretion and violated state and constitutional law in assigning colored children to segregated schools, and such segregation will be enjoined.

3311.21 Tax levy; notes; renewal levies

(A) In addition to the resolutions authorized by sections 5705.194, 5705.21, 5705.212, and 5705.213 of the Revised Code, the board of education of a joint vocational school district by a vote of two-thirds of its full membership may at any time adopt a resolution declaring the necessity to levy a tax in excess of the ten-mill limitation for a period not to exceed ten years to provide funds for any one or more of the following purposes, which may be stated in the following manner in such resolution, the ballot, and the notice of election: purchasing a site or enlargement thereof and for the erection and equipment of buildings; for the purpose of enlarging, improving, or rebuilding thereof; for the purpose of providing for the current expenses of the joint vocational school district; or for a continuing period for the purpose of providing for the current expenses of the joint vocational school district. The resolution shall specify the amount of the proposed rate and, if a renewal, whether the levy is to renew all, or a portion of, the existing levy, and shall specify the first year in which the levy will be imposed. If the levy provides for but is not limited to current expenses, the resolution shall apportion the annual rate of the levy between current expenses and the other purpose or purposes. Such apportionment may but need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for current expenses and the other purpose or purposes shall be limited by such apportionment. The portion of the rate actually levied for current expenses shall be used in applying division (A) of section 3317.01 of the Revised Code, and the portion of the rate apportioned to the other purpose or purposes shall be used in applying division (B) of this section. On the adoption of such resolution the joint vocational school district

board of education shall certify the resolution to the board of elections of the county containing the most populous portion of the joint vocational school district, which board shall receive resolutions for filing and send them to the boards of elections of each county in which territory of the joint vocational school district is located, furnish all ballots for the election as provided in section 3505.071 of the Revised Code, and prepare the election notice; and the board of elections of each county in which the territory of the district is located shall make the other necessary arrangements for the submission of the question to the electors of the joint vocational school district at the next primary or general election occurring not less than seventy-five days after the resolution was received from the joint vocational school district board of education, or at a special election to be held at a time designated by the joint vocational school district board of education consistent with the requirements of section 3501.01 of the Revised Code, which date shall not be earlier than seventy-five days after the adoption and certification of the resolution.

The board of elections of the county or counties in which territory of the joint vocational school district is located shall cause to be published in one or more newspapers of general circulation in such district an advertisement of the proposed tax levy question together with a statement of the amount of the proposed levy once each week for three consecutive weeks, prior to the election at which the question is to appear on the ballot.

If a majority of the electors voting on the question of levying such tax vote in favor of the levy, the joint vocational school district board of education shall annually make the levy within the district at the rate specified in the resolution and ballot or at any lesser rate, and the county auditor of each affected county shall annually place the levy on the tax list and duplicate of each school district in his county participating in the joint vocational school district. The taxes realized from the levy shall be collected at the same time and in the same manner as other taxes on the duplicate, and the taxes, when collected, shall be paid to the treasurer of the joint vocational school district and deposited by him to a special fund, which shall be established by the joint vocational school district board of education for all revenue derived from any tax levied pursuant to this section and for the proceeds of anticipation notes which shall be deposited in such fund. After the approval of the levy, the joint vocational school district board of education may anticipate a fraction of the proceeds of the levy and from time to time, during the life of the levy, but in any year prior to the time when the tax collection from the levy so anticipated can be made for that year, issue anticipation notes in an amount not exceeding fifty per cent of the estimated proceeds of the levy to be collected in each year up to a period of five years after the date of the issuance of the notes, less an amount equal to the proceeds of the levy obligated for each year by the issuance of anticipation notes, provided that the total amount maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of the levy for that year. Each issue of notes shall be sold as provided in Chapter 133.[7] of the Revised Code, and shall, except for such limitation that the total amount of such notes maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of the levy for that year, mature serially in substantially equal installments, during each year over a period not to exceed five years after their issuance.

(B) Prior to the application of section 319.301 of the Revised Code, the rate of a levy that is limited to, or to the extent that it is apportioned to, purposes other than current expenses shall be reduced in the same proportion in which the district's total valuation increases during the life of the levy because of additions to such valuation that have resulted from improvements added to the tax list and duplicate.

(C) The form of ballot cast at an election under division (A) of this section shall be as prescribed by section 5705.25 of the Revised Code.

HISTORY: 1990 S 257, eff. 9-26-90
1990 S 218; 1989 H 230; 1983 H 372; 1981 H 1, H 235; 1980 H 1238, H 1062, H 810; 1979 H 44; 1976 H 920; 1975 H 1; 1973 S 44; 1972 S 455; 1969 H 1; 132 v H 1005, S 350, H 82; 130 v H 597; 129 v 1544; 1953 H 1; GC 4830-20

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

Baldwin's Ohio School Law, Text 27.10(A), 27.11, 41.23(B)(C); Forms 40.31 to 40.33

CROSS REFERENCES

Replacement levies, 5705.192

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 111, 395; 86, Taxation § 139

Am Jur 2d: 68, Schools § 78 to 84

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 ALR2d 559

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

49 App(2d) 409, 361 NE(2d) 273 (1976), Mercure v Columbiana School Dist Bd of Ed. The creation of a joint vocational school district pursuant to RC 3311.18 and the levying of additional taxes pursuant to RC 3311.20, 3311.21 and O Const Art XII §2, which do not require approval of the majority of the electors of each school district that is a part of such joint vocational school district when the majority of the electors of the entire district approve such action is constitutionally valid.

2. In general

54 OS(2d) 384, 377 NE(2d) 758 (1978), State ex rel Vantage Joint Vocational School Dist Bd of Ed v Hoffman. Where there was no joinder as contemplated by RC 3311.213 permitting the spreading of the tax levies of a vocational district over the territory of any one or more of local school districts, and where there was no evidence of any joinder other than the involuntary limited joinder resulting from an assignment by the state board of education under RC 3313.90 and 3313.91, there was no clear legal duty on the part of the county treasurers and auditors involved to levy or collect taxes of the joint school district.

[7]Prior and current versions differ; although no amendment to this language was indicated in 1990 S 257, "Chapter 133." appeared as "this chapter" in 1990 S 218.

49 App(2d) 409, 361 NE(2d) 273 (1976), Mercure v Columbiana School Dist Bd of Ed. When a joint vocational school district is created pursuant to RC 3311.18, it is a separate governmental entity with the authority to impose additional taxes pursuant to RC 3311.20, 3311.21 and O Const Art XII §2.

OAG 76-021. RC 3311.20 and 3311.21 allow the board of education of a joint vocational school district to levy a tax in excess of the "ten mill limitation" and thus do not conflict with RC 5705.02.

OAG 76-021. O Const Art XII §2 allows the outstanding tax levies of a joint vocational school district to be applied in a school district which is added to the joint vocational school district after such tax levies have received proper approval.

OAG 65-167. A joint vocational school district is an entity in itself, separate and apart from any other school district.

OAG 65-167. When any school district proposes that bonds be submitted to popular vote in an amount which, after the issuance of such bonds, will make the net indebtedness of such school district no more than four per cent of the total value of all property in such school district, as listed and assessed for taxation, the consent of the department of taxation is not required; the question of whether the four per cent limit will be exceeded is to be determined by relation of the net indebtedness of the school district proposing the issuance of bonds to the total value, as listed and assessed for taxation, of all property in the school district proposing the issuance of bonds.

OAG 65-167. When any school district proposes that bonds be submitted to popular vote in an amount which, after the issuance of such bonds, will make the net indebtedness of such school district exceed four per cent of the total value of all property in such school district, as listed and assessed for taxation, the consent of the department of taxation is required, but such consent should not be withheld solely because the proposing school district is participating in a joint vocational school district, or is a joint vocational school district with participating school districts, the aggregate net indebtedness of which exceeds the limits applicable to each separately; however, in determining whether to grant or refuse such consent the effect of the aggregate net indebtedness should be given consideration in deciding whether the people of the proposing district will be unreasonably burdened.

1964 OAG 1523. The revenue received from a special levy in excess of the ten-mill limitation for current operating expenses may not lawfully be used to enlarge or improve existing buildings.

1964 OAG 1523. A board of education of a joint vocational school district may declare by resolution the necessity to levy a tax in excess of the ten-mill limitation and that there shall be a levy upon the duplicate of the current year; and the fact that such board of education did not come into legal existence until the fifteenth day of June does not prevent such levy upon the current duplicate.

1963 OAG 662. A bond issue or levy proposed for the use of a joint vocational school district must be submitted to the electors of all of the individual school districts which are at that time participating districts.

1962 OAG 3333. A joint vocational school district may issue notes for one-half of the anticipated revenue of a tax levy, voted for a specified period of years not exceeding ten, for the purpose of erecting or enlarging buildings and purchasing equipment.

3311.22 Transfer of territory within county district

A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to at least fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district, or districts proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts to another local school district or districts within the county school district. Such transfers may be made only to local school districts adjoining the school district that is proposed to be transferred, unless the board of education of the district proposed to be transferred has entered into an agreement pursuant to section 3313.42 of the Revised Code, in which case such transfers may be made to any local school district within the county school district.

When a county board of education adopts a resolution proposing a transfer of school territory it shall forthwith file a copy of such resolution, together with an accurate map of the territory described in the resolution, with the board of education of each school district whose boundaries would be altered by such proposal. A county board of education proposing a transfer of territory under the provisions of this section shall at its next regular meeting that occurs not earlier than thirty days after the adoption by the county board of a resolution proposing such transfer, adopt a resolution making the transfer effective at any time prior to the next succeeding first day of July, unless, prior to the expiration of such thirty-day period, qualified electors residing in the area proposed to be transferred, equal in number to a majority of the qualified electors voting at the last general election, file a petition of referendum against such transfer.

Any petition of transfer or petition of referendum filed under the provisions of this section shall be filed at the office of the county superintendent of schools. The person presenting the petition shall be given a receipt containing thereon the time of day, the date, and the purpose of the petition.

The county superintendent shall cause the board of elections to check the sufficiency of signatures on any petition of transfer or petition of referendum filed under this section and, if found to be sufficient, he shall present the petition to the county board of education at a meeting of the board which shall occur not later than thirty days following the filing of the petition.

Upon presentation to the county board of education of a proposal to transfer territory as requested by petition of fifty-five per cent of the qualified electors voting at the last general election or a petition of referendum against a proposal of the county board to transfer territory, the county board shall promptly certify the proposal to the board of elections for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than seventy-five days after the date of such certification, or at a special election, the date of which shall be specified in the certification, which date shall not be less than seventy-five days after the date of such certification. Signatures on a petition of transfer or petition of referendum may be withdrawn up to and including the above mentioned meeting of the county board of education only by order of the board upon testimony of the petitioner concerned under oath before the board that his signature was obtained by fraud, duress, or misrepresentation.

If a petition is filed with the county board of education which proposes the transfer of a part or all of the territory included in a resolution of transfer previously adopted by the county board of education, no action shall be taken on such petition if within the thirty-day period after the adoption of the resolution of transfer a referendum petition is filed. After the election, if the proposed transfer fails to receive a majority vote, action on such petition shall then be processed under this section as though originally filed under the provisions hereof. If no referendum petition is filed within the thirty-day period after the adoption of the

resolution of transfer, no action shall be taken on such petition.

If a petition is filed with the county board of education which proposes the transfer of a part or all of the territory included in a petition previously filed by electors no action shall be taken on such new petition.

Upon certification of a proposal to the board or boards of elections pursuant to this section, the board or boards of elections shall make the necessary arrangements for the submission of such question to the electors of the county or counties qualified to vote thereon, and the election shall be conducted and canvassed and the results shall be certified in the same manner as in regular elections for the election of members of a board of education.

The persons qualified to vote upon a proposal are the electors residing in the district or districts containing territory that is proposed to be transferred. If the proposed transfer be approved by at least a majority of the electors voting on the proposal, the county board of education shall make such transfer at any time prior to the next succeeding first day of July. If the proposed transfer is not approved by at least a majority of the electors voting on the proposal, the question of transferring any property included in the territory covered by the proposal shall not be submitted to electors at any election prior to the first general election the date of which is at least two years after the date of the original election, or the first primary election held in an even-numbered year the date of which is at least two years after the date of the original election. A transfer shall be subject to the approval of the receiving board or boards of education, unless the proposal was initiated by the county board, in which case, if the transfer is opposed by the board of education offered the territory, the local board may, within thirty days, following the receipt of the notice of transfer, appeal to the state board of education which shall then either approve or disapprove the transfer.

Following an election upon a proposed transfer initiated by a petition the board of education that is offered territory shall, within thirty days following receipt of the proposal, either accept or reject the transfer.

When an entire school district is proposed to be transferred to two or more school districts and the offer is rejected by any one of the receiving boards of education, none of the territory included in the proposal shall be transferred.

Upon the acceptance of territory by the receiving board or boards of education the county board of education offering the territory shall file with the county auditor and with the state board of education an accurate map showing the boundaries of the territory transferred.

Upon the making of such transfer, the net indebtedness of the former district from which territory was transferred shall be apportioned between the acquiring school district and that portion of the former school district remaining after the transfer in the ratio which the assessed valuation of the territory transferred to the acquiring school district bears to the assessed valuation of the original school district as of the effective date of the transfer. As used in this section "net indebtedness" means the difference between the par value of the outstanding and unpaid bonds and notes of the school district and the amount held in the sinking fund and other indebtedness retirement funds for their redemption.

If an entire district is transferred, any indebtedness of the former district incurred as a result of a loan made under section 3317.64 of the Revised Code is hereby canceled and such indebtedness shall not be apportioned among any districts acquiring the territory.

Upon the making of any transfer under this section, the funds of the district from which territory was transferred shall be divided equitably by the county board between the acquiring district and any part of the original district remaining after the transfer.

If an entire district is transferred the board of education of such district is thereby abolished or if a member of the board of education lives in that part of a school district transferred the member becomes a nonresident of the school district from which the territory was transferred and he ceases to be a member of the board of education of such district.

The legal title of all property of the board of education in the territory transferred shall become vested in the board of education of the school district to which such territory is transferred.

Subsequent to June 30, 1959, if an entire district is transferred, foundation program moneys accruing to a district accepting school territory under the provisions of this section or former section 3311.22 of the Revised Code, shall not be less, in any year during the next succeeding three years following the transfer, than the sum of the amounts received by the districts separately in the year in which the transfer was consummated.

HISTORY: 1988 H 549, eff. 6-24-88
1988 H 302; 1986 H 489; 1980 H 1062; 1973 H 336, S 44; 129 v 1781; 128 v 510; 127 v 204; 1953 H 1; GC 4831

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 4.07(A)(C), 4.09(C), 4.10, 4.12, 4.13, 4.15(A)

CROSS REFERENCES

Policies of state board of education in request for transfer of territory, OAC 3301-89-01

Minimum amounts to be paid to school districts, 3317.04

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 74, 77, 78, 97
Am Jur 2d: 68, Schools § 25 to 31

NOTES ON DECISIONS AND OPINIONS

1. General procedure
2. Petition
3. Powers of boards; superintendent of public instruction
4. Transfer of territory; segregation of pupils

1. General procedure

170 OS 415, 165 NE(2d) 918 (1960), State ex rel Carmean v Bd of Ed of Hardin County. The general assembly, by inserting the phrase "notwithstanding sections 3311.22, 3311.23, and 3311.26 of the Revised Code," in RC 3311.261 clearly indicated its intent that proceedings under such section should take precedence over pending proceedings previously instituted under the other enumerated sections.

83 App 61, 72 NE(2d) 921 (1947), Smith v Ray; affirmed by 149 OS 394, 79 NE(2d) 116 (1948). All sections in the school code are in pari materia and must be construed together.

66 App 267, 31 NE(2d) 702 (1940), Berea Rural School Dist Bd of Ed v Hamilton County Bd of Ed. Failure of a county board of education to file a map with the state director of education conforming to a proposed consolidation of school districts adopted by

resolution of such county board of education under former GC 4736 (RC 3311.22), did not warrant permanent injunction against such consolidation but prevents the consolidation until such map is filed or duty of the county board to prepare and file map has expired; filing of a map, subsequent to the adoption of the resolution, showing a plan of organization different from that proposed by the resolution, does not constitute abandonment of resolution.

1964 OAG 961. A county board of education may not accept a petition for transfer of territory or transfer territory of a local school district when such territory is a part of territory previously accepted by, but prior to the effective date of transfer to, an adjoining exempted village school district.

1962 OAG 3407. The words "area affected" as appearing in the first paragraph of RC 3311.22 and 3311.231 refer to the portion of the school district or districts proposed to be transferred.

1962 OAG 3336. Where the state board of education has proposed the creation of a new school district, and before the question is placed on the ballot for consideration by the electors concerned, a proposal is filed with a county superintendent of schools affecting any of the territory affected by the proposal of the state board, the proposal of the state board may not be placed on the ballot while the other proposal is subject to an election.

1939 OAG 1339. A transfer of school territory to a district where by vote of the people the schools have been centralized under GC 4726 will not cause a decentralization of the schools in the district to which the territory has been transferred. (See also 1939 OAG 960, 1938 OAG 3434.)

2. Petition

28 OS(2d) 1, 274 NE(2d) 459 (1971), State ex rel Dennis v Miller. Referendum petition which has been declared valid by board of elections is not rendered invalid by subsequent addition of another signature.

112 App 66, 175 NE(2d) 305 (1959), State ex rel Muter v Mercer County Bd of Ed. RC 3311.22, 3311.231 and 3311.261 are in pari materia and must be construed together; and the provisions of RC 3311.22 and 3311.231 relative to the right of a petition signer to withdraw his signature apply with equal force to a petition filed under RC 3311.261.

1962 OAG 3407. A petition filed under either RC 3311.22 or 3311.231 proposing the transfer of school district territory may contain only signatures of qualified electors of the area proposed to be transferred.

1962 OAG 3336. Where a petition of transfer of part of a school district is filed with the county superintendent of schools, and the petition is signed by one person, the petition is sufficient if the one signature is equal in number to at least fifty-five per cent of the qualified voters voting at the last general election within that portion of the school district proposed to be transferred.

1958 OAG 1918. If a county board of education has proposed a transfer of a part or all of one or more local school districts to an adjoining district or districts within the county school district, and such proposal has been filed with the county board of elections for submission to the electors and thereafter a petition signed by fifty-five per cent or more of the electors proposing a transfer on a different basis of part or all of the same territory is filed with the county board of education, such petition would be too late for consideration and the election already set in motion should proceed, but if such proposition has not been certified to the board, consideration should be given to it.

1958 OAG 1750. A petition for transfer of school district territory within a county school district filed prior to January 1, 1958, was a nonofficial act, did not initiate proceedings for a transfer, and was not a proceeding for transfer within the meaning of RC 1.20 or 3311.341.

1946 OAG 804. When, pursuant to GC 4831-13 (RC 3311.23), a petition is filed on or before February first in any even numbered year with county board of education, signed by seventy-five per cent or more of qualified electors praying for transfer of territory to an adjoining county school district, it is duty of board to include proposed transfer in forthcoming plan to be made and adopted by it on or before first Monday in February next following in an even numbered year.

3. Powers of boards; superintendent of public instruction

175 OS 114, 191 NE(2d) 723 (1963), State ex rel Hover v Wolven. Duties, as prescribed by statute, of membership on a local school district board of education and on a county board of education in the same county at the same time by one individual are such under the Ohio statutes as to render such dual membership incompatible.

167 OS 543, 150 NE(2d) 407 (1958), Marion Local School Dist Bd of Ed v Marion County Bd of Ed. A local board of education does not have the power to employ counsel and challenge in the courts the validity and propriety of a change in the boundaries of its district.

167 OS 543, 150 NE(2d) 407 (1958), Marion Local School Dist Bd of Ed v Marion County Bd of Ed. The provisions of RC Ch 3311 limit the right to protest the action of a county board exclusively to qualified electors, and give to local boards no voice in transfer proceedings and no right to protest the transfer of territory. The board has no legal interest in the action of the county boards and is not entitled to maintain the action.

149 OS 394, 79 NE(2d) 116 (1948), Smith v Ray. Under GC 4831 (RC 3311.22) et seq. (120 v 509), power of state superintendent of public instruction was limited to approval or modification of a plan submitted by a county board of education for territorial organization of school districts; where superintendent substituted a new and different plan of territorial organization for one proposed and submitted by a county board, he exceeded his authority.

137 OS 578, 31 NE(2d) 850 (1941), Anderson v Hancock County Bd of Ed. Under former school foundation law, county board of education had no power to modify or change a plan of organization previously adopted except in the same manner provided for its adoption.

120 App 258, 201 NE(2d) 909 (1962), Anderson v Logan County Bd of Ed. In an appeal on questions of law and fact from a judgment refusing to grant an injunction restraining a county board of education from certifying to the county board of elections a petition proposing the transfer of school territory, and to restrain the board of elections from submitting the proposal at an election, where it appears that, since the judgment denying the injunction was rendered, the certification, the board of education has made the certification, the election has been held and the transfer approved, but it is not clear that the board of education has completed its functions by transferring the territory, the issues involved, although moot as to the board of elections, are not moot as to the board of education, and a motion to dismiss the appeal on the ground that the issues involved have become moot will be overruled.

66 App 267, 31 NE(2d) 702 (1940), Berea Rural School Dist Bd of Ed v Hamilton County Bd of Ed. Power in county board of education to create new school districts was not limited or qualified by former School Foundation Act, GC 7600-1 et seq.

1959 OAG 104. Where the state board of education has initiated proceedings for consolidation of two or more local school districts located in different counties, the county board of education having supervision of one such local district is without power to receive and certify to the board of elections of its county, a petition by the electors for transfer of a portion of their district until such proceedings by the state board of education have been completed, and the consolidated district has been assigned to one of the several county districts.

1956 OAG 6356. The county board of education has the sole power and discretion to transfer part or all of the territory of a local school district within the county district to an adjoining local school district, and in the absence of proof of fraud or gross abuse by the county board, its discretion in ordering such transfer is limited only by the right of a majority of the electors residing in the territory proposed to be transferred to file a written remonstrance against such transfer; neither the board of education nor the elec-

tors in the district to which such transfer is proposed to be made have any right of protest or remonstrance.

1946 OAG 804. When a petition for transfer of territory of local school district is filed, praying for transfer of territory in a local school district of any county to another county district, no obligation rests upon board of education of county to which transfer is proposed to be made, to take any action looking to change in boundaries of its own districts.

1945 OAG 594. County board of education is authorized to include in a plan of territorial organization of the county school district, the transfer of part or all of a local district which operates no schools, to an adjoining county, city or exempted village school district.

1945 OAG 594. When a county board of education has provided, in a plan of territorial organization of local school districts under its supervision adopted on or before the first Monday in February, 1946, for transfer of part or all of territory of a local district operating no schools to another school district, and a protest against such transfer has been filed, said county board may, but is not required again to propose such transfer and include it in a plan which it may adopt in any following even numbered year.

1945 OAG 594. Superintendent of public instruction may approve, with such modifications as he deems proper, a plan of territorial organization submitted to him by a county board of education, but he may not inaugurate changes affecting any local district or districts, as to which changes protests have been filed.

1945 OAG 445. It became mandatory on October 12, 1945, for the board of education of a county school district having a local district in which no schools are operated, to adopt, prior to the first Monday in February, 1946, a new plan of territorial organization of school districts and to make provision in such plan of organization for the dissolution of such local school district.

1944 OAG 6703. Even though county board of education may not contemplate making changes in territorial organization of school districts upon adoption of its biannual plan of territorial organization, it is duty of board to carry out procedural steps for adoption and consummation of such plan.

1944 OAG 6703. When a plan of territorial organization is adopted by county board of education, proper procedural steps thereafter taken and plan is submitted to superintendent of public instruction and approved by him, and no protest is made to action of superintendent of public instruction, whereupon plan becomes final, so far as the procedure thus far taken is concerned, no changes involving transfers of territory may thereafter be made in said plan of organization without approval of superintendent of public instruction.

4. Transfer of territory; segregation of pupils

164 OS 293, 130 NE(2d) 361 (1955), Guthery v Marion County Bd of Ed. A county board of education has authority to transfer an uninhabited tract of land from one school district to another.

141 OS 128, 46 NE(2d) 861 (1943), State ex rel Schweinhagen v Underhill. Where schools were centralized, county board of education not required to transfer any part of such centralized district to another district.

83 App 61, 72 NE(2d) 921 (1947), Smith v Ray; affirmed by 149 OS 394, 79 NE(2d) 116 (1948). Legislative intent was that no plan of organization be approved and made final if objections are filed unless the boards and electors of the affected districts have been heard thereon.

349 US 294, 75 SCt 753, 99 LEd 1083 (1955), Brown v Topeka Bd of Ed. The burden rests upon the board of education to establish that additional time is necessary to carry out the court's ruling that racial segregation in public schools is unconstitutional, and that such time is consistent with good faith compliance at the earliest practicable date; to that end the courts may consider problems related to administration, the physical condition of the school, the school transportation system, personnel, and the revision of local laws and regulations which may be necessary in solving those problems.

228 F(2d) 853, 73 Abs 23 (6th Cir Ohio 1956), Clemons v Hillsboro Bd of Ed. The Hillsboro board of education abused its discretion and violated state and constitutional law in assigning colored children to segregated schools, and such segregation will be enjoined.

1959 OAG 119. Where a public school library has been established by the board of education of a local school district which has subsequently been transferred to and become a part of another district, such library falls under the dominion and control of the district to which the transfer has been made, and members of the board of library trustees theretofore appointed will continue to hold their offices until the expiration of their respective terms, at which time their successors will be appointed by the board of education of the enlarged district.

1956 OAG 7420. Tax consequences and distribution of funds resulting from transfer of territory from one school district to another or creation of two districts from former district discussed.

1956 OAG 6356. Where a school district consolidation involves the union of two or more existing districts having in effect special tax levies at varying rates, and a question is involved of applying a uniform levy throughout the consolidated district at a rate higher than that voted in one or more of the constituent districts, such consolidation may more appropriately be effected under RC 3311.26 than under RC 3311.22.

1954 OAG 4145. RC 3311.22 and 3311.23 remain in force, but the authority granted therein to make transfers of territory is suspended pending final action on a plan of county wide reorganization filed under RC 3311.31.

1954 OAG 3732. Upon the dissolution of a school district which does not maintain public schools within its area, it is the duty of the county board of education to select the district or districts to which the territory of such dissolved district is to be joined, and the plan of distribution of territory so made is to be submitted to the electors of such dissolved district for their approval, the form of ballot being governed by RC 3505.08.

1951 OAG 225. Limited contracts made with teachers by boards of education in districts which afterwards merged are binding upon the board of education of the merged district, except when it comes necessary to reduce the number of teachers by reason of such merger.

1950 OAG 2592. The board of education of a school district newly created under this section is not required under GC 4842-14 (RC 3319.18) to recognize the validity of the contract of a teacher who is completing the second year of a five-year limited contract theretofore executed by the board of education which was abolished as an incident to the creation of such new district. (See also 1951 OAG 225.)

1944 OAG 6703. Where county board of education creates a new school district by combining into one district all the territory of two existing districts, one of which had an unexpired voted tax levy outside the ten-mill limitation, the taxing authority of the newly created district may lawfully spread the said voted levy over all the territory of consolidated district.

3311.231 Transfer of local district territory to city, exempted village or adjoining county district

A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to not less than fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district.

A county board of education adopting a resolution proposing a transfer of school territory under this section shall

file a copy of such resolution together with an accurate map of the territory described in the resolution, with the board of education of each school district whose boundaries would be altered by such proposal. Where a transfer of territory is proposed by a county board of education under this section, the county board shall, at its next regular meeting that occurs not earlier than the thirtieth day after the adoption by the county board of the resolution proposing such transfer, adopt a resolution making the transfer as originally proposed, effective at any time prior to the next succeeding first day of July, unless, prior to the expiration of such thirty-day period, qualified electors residing in the area proposed to be transferred, equal in number to a majority of the qualified electors voting at the last general election, file a petition of referendum against such transfer.

Any petition of transfer or petition of referendum under the provisions of this section shall be filed at the office of the county superintendent of schools. The person presenting the petition shall be given a receipt containing thereon the time of day, the date, and the purpose of the petition.

The county superintendent shall cause the board of elections to check the sufficiency of signatures on any such petition, and, if found to be sufficient, he shall present the petition to the county board of education at a meeting of said board which shall occur not later than thirty days following the filing of said petition.

The county board of education shall promptly certify the proposal to the board of elections of such counties in which school districts whose boundaries would be altered by such proposal are located for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than seventy-five days after the date of such certification or at a special election, the date of which shall be specified in the certification, which date shall not be less than seventy-five days after the date of such certification.

Signatures on a petition of transfer or petition of referendum may be withdrawn up to and including the above mentioned meeting of the county board of education only by order of the board upon testimony of the petitioner concerned under oath before the board that his signature was obtained by fraud, duress, or misrepresentation.

If a petition is filed with the county board of education which proposes the transfer of a part or all of the territory included either in a petition previously filed by electors or in a resolution of transfer previously adopted by the county board of education, no action shall be taken on such new petition as long as the previously initiated proposal is pending before the board or is subject to an election.

Upon certification of a proposal to the board or boards of elections pursuant to this section, the board or boards of elections shall make the necessary arrangements for the submission of such question to the electors of the county or counties qualified to vote thereon, and the election shall be conducted and canvassed and the results shall be certified in the same manner as in regular elections for the election of members of a board of education.

The persons qualified to vote upon a proposal are the electors residing in the district or districts containing territory that is proposed to be transferred. If the proposed transfer is approved by at least a majority of the electors voting on the proposal, the county board of education shall make such transfer at any time prior to the next succeeding first day of July, subject to the approval of the receiving board of education in case of a transfer to a city or exempted village school district, and subject to the approval of the county board of education of the receiving county, in case of a transfer to a county school district. If the proposed transfer is not approved by at least a majority of the electors voting on the proposal, the question of transferring any property included in the territory covered by the proposal shall not be submitted to electors at any election prior to the first general election the date of which is at least two years after the date of the original election, or the first primary election held in an even-numbered year the date of which is at least two years after the date of the original election.

Where a territory is transferred under this section to a city or exempted village school district, the board of education of such district shall, and where territory is transferred to a county school district the board of education of such county school district shall, within thirty days following receipt of the proposal, either accept or reject the transfer.

Where a county board of education adopts a resolution accepting territory transferred to the county school district under the provisions of sections 3311.231 and 3311.24 of the Revised Code, the county board shall, at the time of the adoption of the resolution accepting the territory, designate the school district to which the accepted territory shall be annexed.

When an entire school district is proposed to be transferred to two or more adjoining school districts and the offer is rejected by any one of the receiving boards of education, none of the territory included in the proposal shall be transferred.

Upon the acceptance of territory by the receiving board or boards of education the county board of education offering the territory shall file with the county auditor of each county affected by the transfer and with the state board of education an accurate map showing the boundaries of the territory transferred.

Upon the making of such transfer, the net indebtedness of the former district from which territory was transferred shall be apportioned between the acquiring school district and the portion of the former school district remaining after the transfer in the ratio which the assessed valuation of the territory transferred to the acquiring school district bears to the assessed valuation of the original school district as of the effective date of the transfer. As used in this section "net indebtedness" means the difference between the par value of the outstanding and unpaid bonds and notes of the school district and the amount held in the sinking fund and other indebtedness retirement funds for their redemption.

If an entire district is transferred, any indebtedness of the former district incurred as a result of a loan made under section 3317.64 of the Revised Code is hereby canceled and such indebtedness shall not be apportioned among any districts acquiring the territory.

Upon the making of any transfer under this section, the funds of the district from which territory was transferred shall be divided equitably by the county board, between the acquiring district and any part of the original district remaining after the transfer.

If an entire district is transferred the board of education of such district is thereby abolished or if a member of the board of education lives in that part of a school district transferred the member becomes a nonresident of the school district from which the territory was transferred and

he ceases to be a member of the board of education of such district.

The legal title of all property of the board of education in the territory transferred shall become vested in the board of education of the school district to which such territory is transferred.

If an entire district is transferred, foundation program moneys accruing to a district receiving school territory under the provisions of this section shall not be less, in any year during the next succeeding three years following the transfer, than the sum of the amounts received by the districts separately in the year in which the transfer was consummated.

HISTORY: 1988 H 302, eff. 5-31-88
1986 H 489; 1980 H 1062; 1973 H 336, S 44; 129 v 582; 128 v 510; 127 v 204

Note: 3311.231 contains provisions analogous to former 3311.23, repealed by 127 v 204, eff. 1-1-58.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 4.07(A)(C), 4.09(C), 4.10, 4.12, 4.13, 4.14(A), 4.15(A)

CROSS REFERENCES

Policies of state board of education in request for transfer of territory, OAC 3301-89-01

Petition of referendum against transfer of school district, 3301.161

Minimum amounts to be paid to school districts, 3317.04

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 72, 74, 75, 78, 80, 97

Am Jur 2d: 68, Schools § 25 to 31

NOTES ON DECISIONS AND OPINIONS

1. Desegregation
2. Transfer of territory generally
a. Constitutional issues
b. In general
3. Petition
4. School district officers
5. Election on transfer; ballot

1. Desegregation

443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979), Dayton Bd of Ed v Brinkman. Where it was held in an earlier case that a board of education was intentionally operating a dual school system in 1954, and was thereafter under a continuing duty to eradicate the effects of that system, the board's failure to fulfill its affirmative duty to eliminate the continuing systemwide effects of its prior discrimination can be traced back to the purposefully dual system of the 1950's in holding the board responsible for the current systemwide segregation, and in justifying a systemwide remedy.

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must be first shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. Desegregation, in the sense of dismantling a dual school system, does not require any particular racial balance. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974), Milliken v Bradley. A federal court may not impose a multi-district, areawide remedy for single-district de jure school segregation violations, where there is no finding that the other included school districts have failed to operate unitary school systems or have committed acts that effected segregation within the other districts, and there is no claim or finding that the school district boundary lines were established with the purpose of fostering racial segregation. (See also Milliken v Bradley, 433 US 267, 97 SCt 2749, 53 LEd(2d) 745 (1977).)

402 US 1, 91 SCt 1267, 28 LEd(2d) 554 (1971), Swann v Charlotte-Mecklenburg Bd of Ed. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole; while the existence of a small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of system which still practices segregation by law, such schools require close scrutiny by court. (Ed. note: North Carolina law construed in light of federal constitution.)

503 F(2d) 684 (6th Cir Ohio 1974), Brinkman v Gilligan. Brinkman v Gilligan was remanded to the district court for proceedings to formulate a desegregation plan for the Dayton school system consistent with the remedial guidelines outlined in Keyes v School District No. 1, Denver, 413 US 189, 93 SCt 2686, 37 LEd(2d) 548 (1973) and Swann v Charlotte-Mecklenburg Bd of Ed (N Car.), 402 US 1, 91 SCt 1267, 37 LEd(2d) 554 (1971) that all vestiges of state-imposed segregation must be eliminated. In formulating a desegregation plan, the district court will adhere to the guidelines enunciated by the Supreme Court in Milliken v Bradley, 418 US 717, 94 SCt 3112, 41 LEd(2d) 1069 (1974). Once the plaintiffs and appellants have shown that state-imposed segregation existed at the time of Brown v Board of Education, 347 US 483, 74 SCt 686, 98 LEd 873 (1954), (or any point thereafter), school authorities "automatically assume an affirmative duty ... to eliminate from the public schools within their school system all vestiges of state-imposed school segregation." When such a showing has been made, "racially neutral plans which fail to counteract the continuing effects of past school segregation are inadequate" (Keyes). (See also Dayton Bd of Ed v Brinkman, 443 US 526, 99 SCt 2971, 61 LEd(2d) 720 (1979).)

2. Transfer of territory generally

a. Constitutional issues

83 App 61, 72 NE(2d) 921 (1947), Smith v Ray; affirmed by 149 OS 394, 79 NE(2d) 116 (1948). Superintendent of public instruction in approving or modifying plan of territorial organization of local school districts, performs an administrative function; the powers conferred being administrative rather than legislative in character, former GC 4831-11 (Repealed) is constitutional.

b. In general

45 OS(2d) 210, 343 NE(2d) 110 (1976), State ex rel Summit County Bd of Ed v Medina County Bd of Ed. Pursuant to RC 5705.03, only the taxing authority of the taxing subdivision in which property is located on the date of the tax levy is authorized to levy real and personal property taxes thereon for the year.

7 OS(2d) 41, 218 NE(2d) 180 (1966), State ex rel Pioneer Joint Vocational School Dist Bd of Ed v Schumann. Noncontiguous school districts may unite to form a joint vocational school district.

171 OS 80, 167 NE(2d) 766 (1960), State ex rel Smith v Fairfield County Bd of Ed. There is no authority by law by which a county board of education can transfer the territory of a local school district in one county to a local school district in an adjoining county.

160 OS 175, 115 NE(2d) 157 (1953), State ex rel Core v Green. The general assembly has the power to provide for the creation of school districts, for changes and modifications thereof, and for the methods by which changes and modifications may be accomplished, and, where it has provided methods by which changes in school districts may be made, such provisions constitute remedial legislation and ordinarily may be abolished or modified, even with respect to elections already held, without impinging upon any constitutional rights.

149 OS 394, 79 NE(2d) 116 (1948), Smith v Ray. The state superintendent of public instruction exceeds the powers conferred upon him by statute and is chargeable with an abuse of discretion where he substitutes a new and different plan of territorial organization for the one proposed and submitted by a county board.

31 App(2d) 25, 285 NE(2d) 385 (1972), McKinney v Brown. After two school districts have been merged, an elector of one of the districts does not have capacity or standing to challenge previous action by county board of education.

7 App(2d) 116, 219 NE(2d) 50 (1966), Emmert v Hardin County Bd of Ed. Where a county board of education has adopted a resolution proposing a transfer of school district territory, purportedly under RC 3311.231 but, in such adoption, has placed qualifications or conditions upon its operation, and such qualifications or conditions have not been fulfilled, such resolution is void and of no effect and will not support a subsequent resolution purporting to make such transfer or any other subsequent transfer proceedings based thereon, and all such subsequent resolutions or proceedings are likewise void and of no effect.

7 App(2d) 116, 219 NE(2d) 50 (1966), Emmert v Hardin County Bd of Ed. It is not contemplated under RC 3311.231 that a county board of education in its adoption of a resolution proposing the transfer of school district territory may impose qualifications or conditions upon the operation of such resolution.

108 App 246, 161 NE(2d) 404 (1958), Wadsworth v Ottawa County Bd of Ed. An action for a declaratory judgment by an elector on behalf of himself and other electors similarly situated with a common interest in the construction of RC 3311.231 and 3311.261 is proper and authorized to secure a determination of the respective rights thereunder.

64 Abs 371, 108 NE(2d) 387 (CP, Hamilton 1952), Indian Hill Exempted Village School Dist Bd of Ed v Hamilton County Bd of Ed; affirmed by 62 Abs 545, 108 NE(2d) 225 (App, Hamilton 1952). This section authorizes transfers to and from local school districts, as well as to and from city school districts and exempted village school districts.

OAG 68-100. A local school district transferred to an adjoining county school district pursuant to RC 3311.231 may not be transferred as and remain an independent local school district but must be annexed to an existing local, city or exempted village school district.

OAG 68-100. There is no provision in RC 3311.231 for a referendum on the question of the choice of the school district to which such territory shall be annexed.

OAG 66-040. A school district to which another school district is to be transferred pursuant to RC 3311.231 may, subsequent to the election in the district to be transferred, approve said transfer, and prior to the effective date of said transfer, levy a tax outside the ten-mill limitation imposed by O Const Art XII §2, and subsequent to the effective date of the transfer, levy said tax against the whole of the new taxing district.

1963 OAG 96. Territory which is the subject of a resolution or petition of transfer under RC 3311.321 does not pass or vest in the acquiring school district for any purpose until the effective date of the transfer.

1963 OAG 96. A county board of education may by resolution propose a prospective transfer of territory under RC 3311.231 where reasonable to an orderly transition from one school district to another.

1962 OAG 3407. The words "area affected" as appearing in the first paragraph of RC 3311.22 and 3311.231 refer to the portion of the school district or districts proposed to be transferred.

1960 OAG 1373. When one school district is transferred to another pursuant to RC 3311.231 the tax levy of the receiving district for school purposes inside the ten-mill limitation would apply to the entire newly consolidated district unless the application of such rate would force an infringement of the ten-mill limitation of O Const Art XII §2, when, if such were the result, the inside tax levy for the newly consolidated school district would be the maximum tax levy which would allow for inside levies of no more than ten mills throughout the entire consolidated school district.

1960 OAG 1303. RC 3311.231 sets forth an exception to the general rule in RC 3317.02 with respect to the maintenance of a ten-mill levy.

1960 OAG 1154. Where an entire local school district is transferred to another local school district, foundation moneys accruing to the receiving district are determined in accordance with RC 3317.02; and such moneys may not be less, in any year during the next succeeding three years following the transfer, than the sum of the amounts actually received by the two districts separately in the year in which the transfer was consummated.

1959 OAG 572. A school district may not be annexed to another district with which it is not contiguous.

1959 OAG 282. RC 3311.231 provides the method by which a local school district may be transferred to an adjoining city school district.

3. Petition

112 App 66, 175 NE(2d) 305 (1959), State ex rel Muter v Mercer County Bd of Ed. RC 3311.22, 3311.231 and 3311.261 are in pari materia and must be construed together; and the provisions of RC 3311.22 and RC 3311.231 relative to the right of a petition signer to withdraw his signature apply with equal force to a petition filed under RC 3311.261.

108 App 246, 161 NE(2d) 404 (1958), Wadsworth v Ottawa County Bd of Ed. In an action for a declaratory judgment, where the defendant county board of education has before it two petitions of electors under each of RC 3311.231 and 3311.261, the petitioners under the latter section would be legally affected and are necessary parties to the action, and failure to make such petitioners parties deprives the court of jurisdiction of the action.

93 Abs 447, 198 NE(2d) 775 (App, Columbiana 1962), State ex rel Johnson v Columbiana County Bd of Ed. Where a petition was filed proposing to transfer a township school district to an adjoining school district two days before a merger between such district and another district became effective, the sufficiency of the petition should be judged on the basis of whether the petition contained sufficient signatures within the district as constituted on the date the petition was filed, and the persons qualified to vote would be the electors residing in the district as merged.

OAG 71-036. Filing of referendum petition pursuant to RC 3301.161 against transfer of local school district suspends not only transfer order made by department of education, pending outcome of vote thereon, but also companion order of dissolution of such district.

OAG 69-088. The signers of the petition provided for in RC 3311.231 need not themselves have voted in the last general election but the number of qualified electors residing in the local school district affected who sign must be not less than fifty-five per cent of those who voted in that school district in the last general election.

OAG 68-074. A petition of transfer circulated pursuant to RC 3311.231 is invalid if it does not bear the affidavit of the circulator or circulators.

OAG 65-1. A referendum petition circulated pursuant to RC 3311.231 is invalid if it does not bear the affidavit of the circulator or circulators as prescribed by RC 3501.38.

1964 OAG 904. A petition for transfer filed by electors pursuant to RC 3311.231 takes precedence over a later resolution filed by a county board of education under authority of RC 3311.26.

1962 OAG 3407. A petition filed under either RC 3311.22 or 3311.231 proposing the transfer of school district territory may contain only signatures of qualified electors of the area proposed to be transferred.

1962 OAG 3336. Where a petition of transfer of part of a school district is filed with the county superintendent of schools, and the petition is signed by one person, the petition is sufficient if the one signature is equal in number to at least fifty-five per cent of the qualified voters voting at the last general election within that portion of the school district proposed to be transferred.

4. School district officers

1961 OAG 2468. A person may not simultaneously serve as executive head of a local school district and as superintendent of the county school district in which the local school district is located.

5. Election on transfer; ballot

17 OS(2d) 63, 245 NE(2d) 730 (1969), State ex rel Erwin v Jackson County School Dist Bd of Ed. Where a petition for the transfer of a portion of the territory in a proposed new school district is filed after the date upon which the resolution proposed to create the new district is adopted by the county board, and where no referendum against such proposed new district is filed within the required time as provided in RC 3311.26, then all the electors of the newly created district are eligible to vote upon the petition for transfer according to RC 3311.231.

177 OS 25, 201 NE(2d) 599 (1964), State ex rel Lavelle v Dailey. Once a petition for transfer of territory to another school district is found sufficient by the board of elections, the board of education has a mandatory duty to certify it to the boards of elections involved.

62 Abs 337, 107 NE(2d) 753 (App, Hamilton 1951), Terrace Park Bd of Ed v Guckenberger. "Local school districts" and "exempted village school districts" are included in this section, and the residents of a part of a village lying within a local school district which includes all of another village may initiate an election to transfer the territory to the school district of the village in which they reside.

OAG 65-1. In a referendum election held pursuant to RC 3311.231 all the resident electors of the district from which territory is proposed to be transferred are eligible to vote.

1963 OAG 17. A school board does not have a choice as to whether a proposed transfer of school territory shall be submitted to the voters at the next primary election or at the next general election after the expiration of the sixty-day waiting period required by RC 3311.231.

1963 OAG 17. A proposed transfer of school territory under authority of RC 3311.231 should not be submitted to the voters at primary election time where a primary election on questions set out in RC 3501.01(E) is not otherwise required to be held.

1962 OAG 3336. Where the state board of education has proposed the creation of a new school district, and before the question is placed on the ballot for consideration by the electors concerned, a proposal is filed with a county superintendent of schools affecting any of the territory affected by the proposal of the state board, the proposal of the state board may not be placed on the ballot while the other proposal is subject to an election.

1959 OAG 694. Although a county board of education may have acted illegally in certifying a proposal for consolidation of school territory to the board of elections, the illegality of such action can only be established by judicial decree, and the board of elections, in the absence of such decree, must submit the proposal as certified.

1959 OAG 694. A proposition for consolidation of school territory initiated by a county board of education and a proposal for transfer of a local school district to an exempted village or city district presented by petition of the electors of such district, cannot both be submitted to the electors at the same election; and if a proposal for consolidation has been certified to the board of elections for submission at the next general election, a subsequently certified proposal cannot be submitted at the same election, and it must be disregarded by the board of elections.

1959 OAG 694. Where a county board of education has proposed to consolidate two or more local school districts, and before such proposition has been certified to the board of elections for submission to the electors, a petition is filed by the electors in one of said districts praying for transfer of its territory to an adjoining exempted village or city district, the proposition of such petition, if found to be in regular order, should be certified to the board of elections and the proposal initiated by the board should be withheld.

1959 OAG 572. Where a county board of education has adopted a resolution proposing to create a new school district by consolidating two or more districts, and before such proposal has been certified to the board of elections for submission to the electors, more than fifty-five per cent of the electors residing in one of such districts file with said board a petition praying to be annexed to an adjoining exempted village district, it is the duty of said county board to certify the proposal of such petition to the board of elections and to disregard the original proposal of the board to create a new district.

3311.26 Creation of new local district

A county board of education may, by resolution adopted by majority vote of its full membership, propose the creation of a new local school district from one or more local school districts or parts thereof, including the creation of a local district with noncontiguous territory from one or more local school districts if one of those districts has entered into an agreement under section 3313.42 of the Revised Code. Such proposal shall include an accurate map showing the territory affected. After the adoption of the resolution, the county board shall file a copy of such proposal with the board of education of each school district whose boundaries would be altered by such proposal.

A county board of education proposing the creation of a new district under this section, shall at its next regular meeting that occurs not earlier than thirty days after the adoption by the county board of the resolution proposing such creation, adopt a resolution making the creation effective prior to the next succeeding first day of July, unless, prior to the expiration of such thirty-day period, qualified electors residing in the area included in such proposed new district, equal in number to thirty-five per cent of the qualified electors voting at the last general election, file a petition of referendum against the creation of the proposed new district.

A petition of referendum filed under this section shall be filed at the office of the county superintendent of schools. The person presenting the petition shall be given a receipt containing thereon the time of day, the date, and the purpose of the petition.

If a petition of referendum is filed, the county board of education shall, at the next regular meeting of the county board, certify the proposal to the board of elections for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than seventy-five days after the date of such certification, or at a special election, the date of which shall be specified in the certification, which date shall not be less than seventy-five days after the date of such certification.

Upon certification of a proposal to the board or boards of elections pursuant to this section, the board or boards of elections shall make the necessary arrangements for the submission of such question to the electors of the county or counties qualified to vote thereon, and the election shall be conducted and canvassed and the results shall be certified in the same manner as in regular elections for the election of members of a board of education.

The persons qualified to vote upon a proposal are the electors residing in the proposed new districts.

If the proposed district be approved by at least a majority of the electors voting on the proposal, the county board shall then create such new district prior to the next succeeding first day of July, and shall so notify the state board of education.

Upon the creation of such district, the indebtedness of each former district becoming in its entirety a part of the new district shall be assumed in full by the new district. Upon the creation of such district, that part of the net indebtedness of each former district becoming only in part a part of the new district shall be assumed by the new district which bears the same ratio to the entire net indebtedness of the former district as the assessed valuation of the part taken by the new district bears to the entire assessed valuation of the former district as fixed on the effective date of transfer. As used in this section, "net indebtedness" means the difference between the par value of the outstanding and unpaid bonds and notes of the school district and the amount held in the sinking fund and other indebtedness retirement funds for their redemption. Upon the creation of such district, the funds of each former district becoming in its entirety a part of the new district shall be paid over in full to the new district. Upon the creation of such district, the funds of each former district becoming only in part a part of the new district shall be divided equitably by the county board between the new district and that part of the former district not included in the new district as such funds existed on the effective date of the creation of the new district.

The county board of education, shall, following the election, file with the county auditor of each county affected by the creation of a new district an accurate map showing the boundaries of such newly created district.

When a new local school district is so created within a county school district, a board of education for such newly created district shall be appointed by the county board of education. The members of such appointed board of education shall hold their office until their successors are elected and qualified. A board of education shall be elected for such newly created district at the next general election held in an odd numbered year occurring more than thirty days after the appointment of the board of education of such newly created district. At such election two members shall be elected for a term of two years and three members shall be elected for a term of four years, and, thereafter, their successors shall be elected in the same manner and for the same terms as members of the board of education of a local school district.

The legal title of all property of the board of education in the territory taken shall become vested in the board of education of the newly created school district.

Foundation program moneys accruing to a district created under the provisions of this section or previous section 3311.26 of the Revised Code, shall not be less, in any year during the next succeeding three years following the creation, than the sum of the amounts received by the districts separately in the year in which the creation of the district became effective.

Consolidations of school districts which include all of the schools of a county and which become effective on or after July 1, 1959, shall be governed and included under this section.

HISTORY: 1988 H 549, eff. 6-24-88
1980 H 1062; 1973 H 336, S 44; 129 v 1628; 128 v 510; 127 v 204; 1953 H 1; GC 4831-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 4.05(B), 4.07(A), 4.09(C), 4.10, 4.12, 4.13, 4.15(B), 27.08(B)

CROSS REFERENCES

Minimum amounts to be paid to school districts, 3317.04
Status of nonteaching employees in new district, 3319.181

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 74, 78, 80, 97
Am Jur 2d: 68, Schools § 25 to 31

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general
3. Scope and limitation
4. Remonstrance
5. Tax

1. Constitutional issues

155 OS 287, 98 NE(2d) 827 (1951), Iddings v Jefferson County Bd of Ed. Former GC 4831-1 (RC 3311.26) held constitutional.

2. In general

175 OS 114, 191 NE(2d) 723 (1963), State ex rel Hover v Wolven. Duties, as prescribed by statute, of membership on a local school district board of education and on a county board of education in the same county at the same time by one individual are such under the Ohio statutes as to render such dual membership incompatible.

107 App 98, 152 NE(2d) 358 (1957), State ex rel Johnson v Butler County Bd of Ed. The power and the duty of determining whether two local school districts should be consolidated rests with the county board of education and is of a continuing nature, requiring the exercise of the sound discretion of the members of the board, and the fact that such board of education has taken one or more steps toward consolidation does not commit it to a nondiscretionary duty to complete such consolidation.

97 App 507, 127 NE(2d) 623 (1954), Smith v Hamilton County Bd of Ed. Constitutional and statutory requirements and procedures for consolidation of three local school districts into one discussed in detail.

79 App 323, 73 NE(2d) 524 (1946), Heid v Hartline. Provision that a plan of organization adopted by a county board of education "shall" include matters designated in the three following subdivisions of section, is mandatory.

90 Abs 496, 189 NE(2d) 726 (App, Columbiana 1959), Laughlin v Columbiana County Bd of Ed. On the evidence local school district had come into legal existence.

349 US 294, 75 SCt 753, 99 LEd 1083 (1955), Brown v Topeka Bd of Ed. The burden rests upon the board of education to establish that additional time is necessary to carry out the court's ruling that racial segregation in public schools is unconstitutional, and that such time is consistent with good faith compliance at the earliest practicable date; to that end the courts may consider problems related to administration, the physical condition of the school, the school transportation system, personnel, and the revision of local laws and regulations which may be necessary in solving those problems.

228 F(2d) 853, 73 Abs 23 (6th Cir Ohio 1956), Clemons v Hillsboro Bd of Ed. The Hillsboro board of education abused its discretion and violated state and constitutional law in assigning colored children to segregated schools, and such segregation will be enjoined.

1962 OAG 3196. Where a board of education certifies a proposal to the board of elections, the board of elections has the duty to prepare the ballot to be submitted to the electors, and such ballot should be in accord with RC 3505.06. If more than one county is involved, the board of elections of the county containing the most populous portion of the proposed district should prepare and furnish all necessary ballots.

1962 OAG 3196. Where under RC 3311.26 a petition of referendum is filed against the creation of a new district, the county

board of education should certify the proposal to the board of elections of each county in which the proposed district is to be located.

1962 OAG 3196. The duty of determining the sufficiency of the form, content and signatures of a petition or referendum filed under RC 3311.26 is invested in the county board of education.

1961 OAG 2120. Where a county board of education has adopted a resolution proposing the creation of a new local school district, the creation of the district is effective at the expiration of the thirtieth day after the adoption of the resolution, unless a petition of referendum has been filed within that period.

1960 OAG 1263. When several school districts are consolidated into one new school district the contracts of teachers employed by the former board of education become the obligations of the new consolidated board of education, and the salary schedule adopted by such consolidated board cannot operate to reduce the salary of any teacher on a continuing contract or of any teacher on a limited contract during its term unless such salary reduction is part of a uniform deduction.

1959 OAG 893. In an election pursuant to RC 3311.26 for the creation of a new local school district, where parts of the school districts involved are located in different counties, a separate certification of the proposal should be made by the county board of education to the board of elections in each county involved, and all electors residing in the area included in the proposed new districts are eligible to vote at such election.

1959 OAG 694. Although a county board of education may have acted illegally in certifying a proposal for consolidation of school territory to the board of elections, the illegality of such action can only be established by judicial decree, and the board of elections, in the absence of such decree, must submit the proposal as certified.

1959 OAG 694. A proposition for consolidation of school territory initiated by a county board of education and a proposal for transfer of a local school district to an exempted village or city district presented by petition of the electors of such district, cannot both be submitted to the electors at the same election; and if a proposal for consolidation has been certified to the board of elections for submission at the next general election, a subsequently certified proposal cannot be submitted at the same election, and it must be disregarded by the board of elections.

1959 OAG 694. Where a county board of education has proposed to consolidate two or more local school districts, and before such proposition has been certified to the board of elections for submission to the electors, a petition is filed by the electors in one of said districts praying for transfer of its territory to an adjoining exempted village or city district, the proposition of such petition, if found to be in regular order, should be certified to the board of elections and the proposal initiated by the board should be withheld.

1959 OAG 671. Where, at an election held in 1955, following the organization of a local school district, two members of a local board of education were elected for a period of two years and three for a period of four years, and no election was held in 1957 to fill the expiring terms of the two-year members, they will hold over until December 31, 1961; and at the election to be held in November 1959 only three members shall be elected for four-year terms to succeed those whose terms expire December 31, 1959.

1959 OAG 572. Where a county board of education has adopted a resolution proposing to create a new school district by consolidating two or more districts, and before such proposal has been certified to the board of elections for submission to the electors, more than fifty-five per cent of the electors residing in one of such districts file with said board a petition praying to be annexed to an adjoining exempted village district, it is the duty of said county board to certify the proposal of such petition to the board of elections and to disregard the original proposal of the board to create a new district.

1958 OAG 1857. The majority vote required to approve a proposal for the creation of a new local school district is a majority in the existing local school district, the boundaries of which are to be altered under the proposal.

1954 OAG 4585. In a reorganization of school districts, the boards of education of neither district has any duty to approve or power to override the vote of the electors provided for in RC 3311.31, and once the electors have approved such reorganization, the provisions of RC 3311.23, 3311.24 and 3311.26 are only to be resorted to for the purposes of: (1) an equitable division of funds and indebtedness of the districts involved, (2) the filing with the county auditor of a map of the territory transferred, and (3) the appointment by the county board of education of a board of education for the newly created district.

1951 OAG 225. Where limited contracts with teachers have been made by boards of education in districts which were thereafter merged, such contracts are binding upon the board of education of such merged district, except that in case it becomes necessary by reason of such merger to reduce the number of teachers, such reduction shall be made in the manner set forth in GC 4842-13 (RC 3319.17). (See also 1950 OAG 2592.)

3. Scope and limitation

170 OS 415, 165 NE(2d) 918 (1960), State ex rel Carmean v Hardin County Bd of Ed. The general assembly, by inserting the phrase "notwithstanding sections 3311.22, 3311.23, and 3311.26 of the Revised Code," in RC 3311.261 clearly indicated its intent that proceedings under such section should take precedence over pending proceedings previously instituted under the other enumerated sections.

167 OS 543, 150 NE(2d) 407 (1958), Marion Local School Dist Bd of Ed v Marion County Bd of Ed. The provisions of RC Ch 3311, relative to the transfer of territory of school districts and the creation of new school districts by a county board of education, limit the right to protest the action of a county board exclusively to qualified electors, and give to local boards no voice in transfer proceedings and no right to protest the transfer of territory.

161 OS 537, 119 NE(2d) 886 (1954), State ex rel Evendale Local School Dist Bd of Ed v Griffin. A writ of mandamus ordering the clerk of a local board of education, pursuant to a resolution passed by the board, to execute a promissory note obligating the local school district in a substantial amount in connection with a building program initiated by such board will not be issued where it appears that the legal existence of such local school district and its board is at least doubtful by reason of a prior resolution passed by the county board of education abolishing such local school district, which resolution of abolishment may or may not be effective depending largely on the final outcome of an action instituted in the court of common pleas challenging its efficacy and validity.

112 App 248, 176 NE(2d) 174 (1959), State ex rel Carmean v Hardin County Bd of Ed; affirmed by 170 OS 415, 165 NE(2d) 918 (1960). The adoption of a resolution by a county board of education proposing the creation of a new local school district to include the area of four local school districts does not constitute such an assumption of jurisdiction over the transfer of the territory of one of such four local school districts as to prevent any transfer of such local school district other than that thereby proposed until jurisdiction over the same is exhausted, where the county board of education has not certified any proposal in respect to the creation of such new local school district to the board of elections for submission to the voters.

79 App 323, 73 NE(2d) 524 (1946), Heid v Hartline. Adoption by county board of education of a plan of territorial reorganization of subordinate school districts within county, which plan contains no matter responsive to requirements of this section concerning "pupils affected" is illegal and void and in such a case there can be no waiver thereafter of said requirements; reorganization plan may not subsequently be corrected by superintendent or by county board of education except in same manner provided for adoption of plan.

OAG 68-100. A local school district transferred to an adjoining county school district pursuant to RC 3311.231 may not be transferred as and remain an independent local school district but must

be annexed to an existing local, city or exempted village school district.

1964 OAG 904. A petition for transfer filed by electors pursuant to RC 3311.231 takes precedence over a later resolution filed by a county board of education under authority of RC 3311.26.

1958 OAG 1857. A county board of education can divide a local school district into two new districts, provided that each district shall maintain a high school.

1956 OAG 6354. The board of education of a newly created school district has authority to submit the issuance of bonds for any authorized purpose to the electors at the following November election.

1956 OAG 6354. The boards of education of school districts combined into a new local school district are abolished and their powers terminated.

1955 OAG 5811. Where several new local school districts are created by division of a local school district, a school bus contract for the original district is binding on the several districts and the county board of education must consider the contract in dividing funds.

1952 OAG 1693. Where two or more local school districts have been consolidated and the members of the boards of education of such constituent districts have, prior thereto, provided by resolution for their own compensation the amount of such compensation remaining unpaid at the date of such consolidation constitutes an indebtedness of such local district which is assumed by the consolidated district and payment thereof should be provided for by the board of such consolidated district. However, where the members of the boards of education of such constituent districts have failed, prior to the date of such consolidation, to provide by resolution for their own compensation, the board of such consolidated district is without legal authority to make provision therefor.

1949 OAG 1070. When county board of education creates new local school district, old school district ceases to exist.

1949 OAG 1070. Candidates seeking election as members to a board of education of a newly created school district are entitled to have their names placed on the ballot if petitions are filed within the statutory period and are otherwise sufficient in law.

1949 OAG 1070. Nominating petitions filed by candidates seeking election as members to a board of education of a school district which has been abolished are invalid.

1949 OAG 1070. Appointed members to a board of education of a newly created local school district hold office until their successors are elected at the general election and upon qualification of the members elected thereby.

4. Remonstrance

17 OS(2d) 63, 245 NE(2d) 730 (1969), State ex rel Erwin v Jackson County Bd of Ed. Where a petition for the transfer of a portion of the territory in a proposed new school district is filed after the date upon which the resolution proposed to create the new district is adopted by the county board, and where no referendum against such proposed new district is filed within the required time as provided in RC 3311.26, then all the electors of the newly created district are eligible to vote upon the petition for transfer according to RC 3311.231.

17 OS(2d) 63, 245 NE(2d) 730 (1969), State ex rel Erwin v Jackson County Bd of Ed. After the date upon which a proposal for the creation of a new district has been properly adopted by a county board of education, a referendum may be filed pursuant to RC 3311.26 against the proposed new district within thirty days, and all the electors of the proposed new district are eligible to vote upon such referendum.

155 OS 287, 98 NE(2d) 827 (1951), Iddings v Jefferson County Bd of Ed. Where county board of education creates a new local school district, such action of the county board shall not take effect if a majority of the qualified electors residing in the territory included in the newly created district and voting at the last general election shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against such action.

155 OS 287, 98 NE(2d) 827 (1951), Iddings v Jefferson County Bd of Ed. Remonstrance is not effective unless signed by a majority of the qualified electors residing in the territory included in such newly created district who actually voted at the last general election.

154 OS 281, 95 NE(2d) 691 (1950), State ex rel Willis v Large. In quo warranto brought by member of board of education of local district alleging that publication of notice of adoption of a resolution by the county board of education to consolidate certain local school districts set forth an erroneous date of adoption thereby reducing the time for objections thereto, demurrer to the petition will be sustained where petition contained no allegation of fact indicating relator had been prejudiced, that any electors had been deprived of the right to remonstrate, that the offices of members of the board of the consolidated school district had been unlawfully created and that there was a usurpation of such offices.

31 App(2d) 25, 285 NE(2d) 385 (1972), McKinney v Brown. After two school districts have been merged, an elector of one of the districts does not have capacity or standing to challenge previous action by county board of education.

99 App 65, 130 NE(2d) 857 (1955), Stilwell v Hamilton County Bd of Ed. Where written remonstrances are filed with a county board of education against the action proposed by such board's resolution of October 29, 1953, abolishing certain school districts and creating a new district in such territory, RC 3311.26 limits remonstrators to those residents of the territory who voted at the general election held on November 4, 1952, and it is not an abuse of discretion for such county board to disregard or ignore the fact that another general election would intervene during the thirty-day period in which remonstrances might be filed.

99 App 65, 130 NE(2d) 857 (1955), Stilwell v Hamilton County Bd of Ed. It is not unlawful for a county board of education, in determining the number of required remonstrants under RC 3311.26 to disregard deaths and removals of voters subsequent to the last general election.

99 App 65, 130 NE(2d) 857 (1955), Stilwell v Hamilton County Bd of Ed. In order to set aside or nullify a resolution of consolidation, the burden of proof rests upon the party complaining to show that the action of the county board of education was unreasonable and arbitrary, or that it, in some substantial way to the prejudice of the remonstrants, failed to follow the law.

67 Abs 528, 116 NE(2d) 610 (CP, Ashtabula 1953), Kerwin v Ashtabula County Bd of Ed. A resident and qualified elector of a school district has standing to challenge the action of a board of education in rejecting a remonstrance petition.

67 Abs 528, 116 NE(2d) 610 (CP, Ashtabula 1953), Kerwin v Ashtabula County Bd of Ed. It is not a ground for the rejection of a signature to a remonstrance petition that the signer did not read the petition and misunderstood its significance.

67 Abs 528, 116 NE(2d) 610 (CP, Ashtabula 1953), Kerwin v Ashtabula County Bd of Ed. A county board of education in determining the total eligible to sign a remonstrance petition on which the majority should be computed should first ascertain the persons who actually voted in the last general election, then subtract from that list all those persons who, either because of decease or departure, did not live in the territory involved on the thirtieth day; and finally subtract from the list anyone who voted in the last general election but who, on the 30th day, was no longer a qualified elector of the territory involved.

67 Abs 528, 116 NE(2d) 610 (CP, Ashtabula 1953), Kerwin v Ashtabula County Bd of Ed. Limitations upon the right to withdraw signatures from a remonstrance petition are invalid, but cancellation of the withdrawal by petition is valid.

OAG 68-100. There is no provision in RC 3311.231 for a referendum on the question of the choice of the school district to which such territory shall be annexed.

1957 OAG 1212. Where the taxing authority of a school district has initiated a proposal to levy a tax for current operating expenses

and where the legal existence of such district is terminated by consolidation of such school district with another to form a new local school district prior to the date of the election at which such proposal is to be submitted to the electors, the submission of such proposal thereafter either to the electors of such constituent district, or of such consolidated district, is not authorized.

1956 OAG 6356. The county board of education has the sole power and discretion to transfer part or all of the territory of a local school district within the county district to an adjoining local school district, and in the absence of proof of fraud or gross abuse by the county board, its discretion in ordering such transfer is limited only by the right of a majority of the electors residing in the territory proposed to be transferred to file a written remonstrance against such transfer; neither the board of education nor the electors in the district to which such transfer is proposed to be made have any right of protest or remonstrance.

1953 OAG 3150. There is no process provided by the law whereby the electors of a local school district or of any portion thereof may require the division of such territory into smaller districts or the erection of a new district out of any portion of the existing district, but a county board of education may create one or more new local school districts from all or parts of an existing local school district unless a majority of the qualified electors residing in the territory included within such newly created district voting at the last general election shall within thirty days from the time such action is taken, file with said board a written remonstrance against such action.

1949 OAG 1211. The deletion of names on a remonstrance by means of a later petition reduces the number of signatures on said remonstrance. Signers to a remonstrance may delete their names by means of signing a later petition before and up to the end of period allowed for filing of the remonstrance.

1949 OAG 1211. A person becoming deceased or having moved from a newly created school district fails to meet the qualifications of an eligible signer.

1949 OAG 1211. In the absence of legislative direction, the board of education may adopt a reasonable method of ascertaining the total number of persons who satisfy all the qualifications as signers.

5. Tax

173 OS 201, 180 NE(2d) 834 (1962), Kellenberger v Ross County Bd of Ed. The additional levy voted outside the tax limitation in one school district is valid as to the combined district, where the district so voting is combined with another district not included in the former district at the time of the vote and which did not vote on such levy and was not a part of the taxing district at the time of such vote.

OAG 66-098. When a new local school district is created pursuant to RC 3311.26, by combining two local school districts, each of which was a participating member of separate joint vocational school districts, the newly created local school district does not automatically become a participating district of either joint vocational school district.

OAG 66-098. When a new local school district is created pursuant to RC 3311.26 there may be spread over the entire district so created the larger of any levies voted and authorized in the districts out of which said new local district was created, to the extent necessary to meet the obligations of the new district for which said levies were authorized, and the bonded indebtedness of the abolished districts, including their share of any indebtedness devolving upon them by reason of their past participation in a joint vocational school district, becomes an obligation of the new school district.

OAG 66-040. A school district to which another school district is to be transferred pursuant to RC 3311.231 may, subsequent to the election in the district to be transferred, approve said transfer, and prior to the effective date of said transfer, levy a tax outside the ten-mill limitation imposed by O Const Art XII §2, and subsequent to the effective date of the transfer, levy said tax against the whole of the new taxing district.

OAG 65-111. Upon the consolidation of two local school districts the computation of the maximum limit on the authority to levy taxes of the board of education of the new school district should include all existing tax levies authorized by the electors of the former school districts.

1956 OAG 7420. Tax consequences and distribution of funds resulting from transfer of territory from one school district to another or creation of two districts from former district discussed.

1956 OAG 6356. Where a school district consolidation involves the union of two or more existing districts having in effect special tax levies at varying rates, and a question is involved of applying a uniform levy throughout the consolidated district at a rate higher than that voted in one or more of the constituent districts, such consolidation may more appropriately be effected under RC 3311.26 than under 3311.22.

1956 OAG 6354. Upon the creation of a new school district by the consolidation of two districts each of which had an unexpired voted tax levy in unequal amounts for operating expenses, the board of education of the newly created district is authorized to levy a tax upon the property of the entire new district in an amount not in excess of the higher of such voted levies.

1956 OAG 6354. A new local school district becomes effective and becomes a taxing district on the thirty-first day after the action of the county board, provided no remonstrance has been filed.

1956 OAG 6354. Upon the creation of a new local school district, its board of education must make an annual tax budget for it and there is no authority for making separate budgets for each of the districts from which it was formed.

3311.261 Consolidation of school districts

Notwithstanding sections 3311.22, 3311.23 and 3311.26 of the Revised Code, until January 1, 1959, a county board of education may consolidate a school district having only an elementary school or schools with one or more adjoining local, exempted village, or city school district or districts having a high school, upon receipt of a petition requesting such consolidation signed by qualified electors of the district equal in number to at least fifty-five percent of the qualified electors voting at the last general election residing within such elementary school district. If such petition is signed by qualified electors of the district equal in number to at least seventy-five percent of the qualified electors voting at the last general election residing within such elementary school district the county board of education shall make such transfer. Such transfer shall be subject to the approval of the board or boards of education to which the district is being transferred.

The receiving district board or boards of education shall immediately file with the county auditor of each county affected an accurate map showing the boundaries of the enlarged district.

As of the effective date of such transfer the net indebtedness of the transferred district shall be apportioned between the acquiring school districts, or if all the district is transferred the net indebtedness shall be assumed in full by the acquiring district. If the net indebtedness is apportioned it shall be so done in the ratio which the assessed valuation of the territory transferred to each acquiring school district bears to the assessed valuation of the original school district as of the effective date of the transfer. As used in this section "net indebtedness" means the difference between the par value of the outstanding and unpaid bonds and notes of the school district and the amount held in the sinking fund and other indebtedness retirement funds for their redemption.

As of the effective date of such transfer, the funds of the transferred district shall be divided equitably by the county board, with the approval of the superintendent of public instruction, between the acquiring districts. If the district be transferred to only one district, the funds shall be transferred to said district.

As of the effective date of the transfer, legal title of all property of the transferred district shall become vested in the board of education of the school district or districts to which such territory is transferred.

HISTORY: 127 v 204, eff. 1-1-58

CROSS REFERENCES

Status of nonteaching employees in new district, 3319.181
State library board to approve, adjust and define boundaries of library district upon consolidation, 3375.01

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 26

NOTES ON DECISIONS AND OPINIONS

170 OS 415, 165 NE(2d) 918 (1960), State ex rel Carmean v Hardin County Bd of Ed. The phrase, "last general election," as used in RC 3311.261 is an event which may be accurately described without pinpointing the exact date thereof, and, under such section, the insertion of an erroneous date in a petition was mere surplusage which did not invalidate the petition.

170 OS 415, 165 NE(2d) 918 (1960), State ex rel Carmean v Hardin County Bd of Ed. Whether the repeal of a statute is accomplished by the enactment of new legislation incident to the repeal or whether the effectiveness of a statute terminates as a result of an expiration date contained in the act itself, the ultimate result is the same, and proceedings properly commenced under such repealed or expired statute are subject to the saving provisions contained in RC 1.20 and 1.21.

170 OS 415, 165 NE(2d) 918 (1960), State ex rel Carmean v Hardin County Bd of Ed. The general assembly, by inserting the phrase "notwithstanding sections 3311.22, 3311.23, and 3311.26 of the Revised Code," in RC 3311.261 clearly indicated its intent that proceedings under such section should take precedence over pending proceedings previously instituted under the other enumerated sections.

112 App 248, 176 NE(2d) 174 (1959), State ex rel Carmean v Hardin County Bd of Ed; affirmed by 170 OS 415, 165 NE(2d) 918 (1960). The words, "last general election," in RC 3311.261 refer to the last general election prior to the receipt by the county board of education of the petition referred to therein.

112 App 248, 176 NE(2d) 174 (1959), State ex rel Carmean v Hardin County Bd of Ed; affirmed by 170 OS 415, 165 NE(2d) 918 (1960). In a petition presented to a county superintendent of schools on December 10, 1958, seeking the consolidation of certain school districts and alleging that the signers thereon "represented more than seventy-five percent of the number of votes cast in such district at the last general election November 5, 1957," the words, "at the last general election November 5, 1957," are mere surplusage, where the last general election prior to the filing of such petition was November 4, 1958, and their presence in the allegations of such petition does not make the petition either void or voidable.

112 App 248, 176 NE(2d) 174 (1959), State ex rel Carmean v Hardin County Bd of Ed; affirmed by 170 OS 415, 165 NE(2d) 918 (1960). A petition which requests a consolidation of a local school district with a city school district and is signed by individuals who are, in fact, "qualified electors of the district equal in number to at least seventy-five percent of the qualified electors voting at the last general election residing within such elementary school district" is legally sufficient without any allegations as to the qualifications of the signers.

112 App 66, 175 NE(2d) 305 (1959), State ex rel Muter v Mercer County Bd of Ed. A petition requesting the transfer of territory from a local school district is not legally before the county board of education, where such petition is filed directly with the county board of education and not at the office of the county superintendent of schools as required, and no check of the sufficiency of the signatures thereon is made by the board of elections as required but is made by the board of education; and subsequent acts taken in regard to such petition by the board of education are invalid.

112 App 66, 175 NE(2d) 305 (1959), State ex rel Muter v Mercer County Bd of Ed. RC 3311.22, 3311.231 and 3311.261 are in pari materia and must be construed together; and the provisions of RC 3311.22 and 3311.231 relative to the right of a petition signer to withdraw his signature apply with equal force to a petition filed under RC 3311.261.

108 App 246, 161 NE(2d) 404 (1958), Wadsworth v Ottawa County Bd of Ed. An action for a declaratory judgment by an elector on behalf of himself and other electors similarly situated with a common interest in the construction of RC 3311.231 and 3311.261 is proper and authorized to secure a determination of the respective rights thereunder.

108 App 246, 161 NE(2d) 404 (1958), Wadsworth v Ottawa County Bd of Ed. In an action for a declaratory judgment, where the defendant county board of education has before it two petitions of electors under each of RC 3311.231 and 3311.261, the petitioners under the latter section would be legally affected and are necessary parties to the action, and failure to make such petitioners parties deprives the court of jurisdiction of the action.

1959 OAG 532. Where, pursuant to a proper petition under RC 3311.261, a county school board has transferred territory in accord with such petition, the boards of education of each district receiving such territory must approve such transfer; if such approval by all of the districts so affected was not given before January 1, 1959, the entire proposal must be deemed to have failed.

1959 OAG 532. If a petition for consolidation of a school district is submitted by the voters in a school district having only an elementary school, invoking RC 3311.261, and the signatures obtained represent seventy-five per cent of such electors who voted at the last general election residing within such elementary school district, the county board of education shall transfer such territory as petitioned. A county board having thus acted on or before January 1, 1959, has completed its duty and a rescission by this board, at a special meeting, after January 1, 1959, is an unauthorized act and is without legal effect.

1958 OAG 2343. Where a county board of education divides a school district having only elementary schools, and consolidates such divided portions with two school districts which have high schools, the net indebtedness of the divided district must be apportioned to the acquiring districts in the ratio which the assessed valuation of the territory transferred to each bears to the assessed valuation of the original transferred district as of the effective date of the transfer, and the funds of the transferred district must be divided equitably by the county board, with the approval of the superintendent of public instruction, between the acquiring districts.

3311.50 County school financing districts; city, local, or exempted village school district joining or withdrawing from county school district

(A) As used in this section, "county school financing district" means a taxing district consisting of the following territory:

(1) The territory that constitutes the county school district on the date that the county board of education of that district adopts a resolution under division (B) of this section declaring that the county school district is a county school financing district, exclusive of any territory subse-

quently withdrawn from the district under division (D) of this section;

(2) Any territory that has been added to the county school financing district under this section.

A county school financing district may include the territory of a city, local, or exempted village school district whose territory also is included in the territory of one or more other county school financing districts.

(B) The board of education of any county school district may, by resolution, declare that the territory of the county school district is a county school financing district. The resolution shall state the purpose for which the county school financing district is created which may be for any one or more of the following purposes:

(1) To levy taxes for the provision of special education by the school districts that are a part of the district, including taxes for permanent improvements for special education;

(2) To levy taxes for the provision of specified educational programs and services by the school districts that are a part of the district, as identified in the resolution creating the district, including the levying of taxes for permanent improvements for those programs and services;

(3) To levy taxes for permanent improvements of school districts that are a part of the district.

The board of education of the county school district that creates a county school financing district shall serve as the taxing authority of the district and may use county school board employees to perform any of the functions necessary in the performance of its duties as a taxing authority. A county school financing district shall not employ any personnel.

With the approval of a majority of the members of the board of education of each school district within the territory of the county school financing district, the taxing authority of the financing district may amend the resolution creating the district to broaden or narrow the purposes for which it was created.

A county board of education may create more than one county school financing district. If a county board of education creates more than one such district, it shall clearly distinguish among the districts it creates by including a designation of each district's purpose in the district's name.

(C) A majority of the members of a board of education of a city, local, or exempted village school district may adopt a resolution requesting that its territory be joined with the territory of any county school financing district. Copies of the resolution shall be filed with the state board of education and the taxing authority of the county school financing district. Within sixty days of its receipt of such a resolution, the county school financing district's taxing authority shall vote on the question of whether to accept the school district's territory as part of the county school financing district. If a majority of the members of the taxing authority vote to accept the territory, the school district's territory shall thereupon become a part of the county school financing district unless the county school financing district has in effect a tax imposed under section 5705.215 of the Revised Code. If the county school financing district has such a tax in effect, the taxing authority shall certify a copy of its resolution accepting the school district's territory to the school district's board of education, which may then adopt a resolution, with the affirmative vote of a majority of its members, proposing the submission to the electors of the question of whether the district's territory shall become a part of the county school financing district and subject to the taxes imposed by the financing district. The resolution shall set forth the date on which the question shall be submitted to the electors, which shall be at a special election held on a date specified in the resolution, which shall not be earlier than seventy-five days after the adoption and certification of the resolution. A copy of the resolution shall immediately be certified to the board of elections of the proper county, which shall make arrangements for the submission of the proposal to the electors of the school district. The board of the joining district shall publish notice of the election in one or more newspapers of general circulation in the county once a week for four consecutive weeks. The question appearing on the ballot shall read:

"Shall the territory within _____ (name of the school district proposing to join the county school financing district) _____ be added to _____ (name) _____ county school financing district, and a property tax for the purposes of _____ (here insert purposes) _____ at a rate of taxation not exceeding _____ (here insert the outstanding tax rate) _____ be in effect for _____ (here insert the number of years the tax is to be in effect or "a continuing period of time," as applicable) . . .?"

If the proposal is approved by a majority of the electors voting on it, the joinder shall take effect on the first day of July following the date of the election, and the county board of elections shall notify the county auditor of each county in which the school district joining its territory to the county school financing district is located.

(D) The board of any city, local, or exempted village school district whose territory is part of a county school financing district may withdraw its territory from the county school financing district thirty days after submitting to the county board that is the taxing authority of the district and the state board a resolution proclaiming such withdrawal, adopted by a majority vote of its members, but any county school financing district tax levied in such territory on the effective date of the withdrawal shall remain in effect in such territory until such tax expires or is renewed. No board may adopt a resolution withdrawing from a county school financing district that would take effect during the forty-five days preceding the date of an election at which a levy proposed under section 5705.215 of the Revised Code is to be voted upon.

(E) A city, local, or exempted village school district does not lose its separate identity or legal existence by reason of joining its territory to a county school financing district under this section and a county school district does not lose its separate identity or legal existence by reason of creating a county school financing district that accepts or loses territory under this section.

HISTORY: 1990 H 777, eff. 4-26-90
1990 H 434; 1989 S 140; 1988 S 247

Note: The amendment of this section by 1990 H 777, eff. 4-26-90, was identical to its amendment by 1990 H 434, eff. 4-13-90.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140—LSC Analysis, p 5-481
Baldwin's Ohio School Law, Text 4.03(B), 40.10(C)

CROSS REFERENCES

County school district, defined, 3311.05

Tax levy law, taxing authority defined, 5705.01

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 24, 26, 30

3313.01 Membership of boards of county, local, and exempted village school districts

In county, local, and exempted village school districts, the board of education shall consist of five members who shall be electors residing in the territory composing the respective districts and shall be elected at large in their respective districts.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4832

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.02(A)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 82, 86, 88, 89
Am Jur 2d: 68, Schools § 37, 39

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Compatible offices
3. Incompatible offices
4. Election procedures and vacancies

1. In general

41 OS(2d) 147 (1975), Board of Education v Fulton County Budget Comm. Various statutes in RC Ch 5715 provide the board of tax appeals with a procedure to detect and correct noncompliance by county auditors with the board's uniform valuation rules.

41 OS(2d) 147 (1975), Board of Education v Fulton County Budget Comm. RC 5715.23 requires each county auditor annually to transmit to the board an abstract of the real property of each taxing district in his county.

106 OS 224, 140 NE 183 (1922), State ex rel Maxwell v Wilson. GC 4729, 4731, and 4748 et seq., providing for the organization of school districts, election of members thereof, and vacancies therein, are constitutional.

94 OS 420, 115 NE 37 (1915), Cline v Martin. GC 4729 (RC 3313.01) for election of county boards by presidents of village and rural districts, though a law of a general nature, has a uniform operation because its classification is based on substantial differences.

5 App 380, 116 NE 1087 (1916), Wogoman v Perry Twp Bd of Ed; affirmed by 95 OS 409, 116 NE 1085 (1916). The discretion of the county board, under GC 4728 (RC 3313.01) et seq., to transfer territory cannot be reviewed by the courts in the absence of fraud or gross abuse of discretion.

5 App 90 (1915), Cline v Martin; affirmed by 94 OS 420, 115 NE 37 (1915). Under O Const, Art VI, § 3, as amended in 1912, the legislature has full power to provide for the public school system and GC 4728 (RC 3313.01) et seq. is within the limits of that power.

OAG 71-015. A local school district is not entitled to representation on board of joint vocational school district.

1944 OAG 6703. A transfer of territory from one school district to another may not lawfully be made until it may be done in pursuance of plans for territorial organization of school districts as provided by this and following sections, which became effective September 16, 1943.

1930 OAG 1913. Members of boards of education in village school districts may not lawfully be compensated for their services as such officials.

1930 OAG p 1363. When a board of education, by acquiescence of a majority of the board, conducts its proceedings in a manner other than in strict accord with parliamentary law, it will be considered as having tacitly suspended such rules and its action will be construed as being regular and proper.

1930 OAG p 1363. A board of education may lawfully adopt a motion to rescind its former action without the intervention of a motion to reconsider, if done without objection and by a majority vote of the board, regardless of what the general rules of order adopted by the board or its standing rules may provide with respect thereto.

1926 OAG 3902. The board of education of a rural or village school district is without authority to pay items of traveling expense incurred by the clerk of said board.

1917 OAG p 1898. Although the territory of the newly created village district, together with the territory annexed to it for school purposes, may be the same as that which was originally a rural school district, yet there is a new school district and a new board of education should be elected.

1915 OAG p 1001. Board of education of a county school district has no authority in law to publish the report of the schools of said district for the school year.

Ethics Op 90-003. RC 2921.42(A)(4) prohibits a member of a board of education who is a store owner from selling merchandise to the school district with which he serves, unless he is able to meet the exception of RC 2921.42(C).

Ethics Op 90-003. RC 2921.42(A)(3) prohibits a member of a board of education who is a store owner from profiting from the sale of merchandise when the sale was approved or authorized by him or by the board of education, and where the merchandise was not sold through competitive bidding, or where his was not the lowest and best bid.

Ethics Op 90-003. RC 2921.42(A)(4) prohibits a member of a board of education from knowingly selling goods to a band parent boosters club when the goods will be purchased for the use of the school district with which he serves, unless he is able to meet the exception of RC 2921.42(C).

Ethics Op 90-003. RC 2921.42(A)(1) prohibits a member of a board of education from discussing, deliberating, voting, or otherwise using the authority or influence of his position as a school board member, either formally or informally, to secure the purchase from his store of merchandise by or for the use of the school district with which he serves.

Ethics Op 90-003. RC 102.03(D) prohibits a board of education member from using the authority or influence of his office over school personnel or students in the school district to secure business for his store.

Ethics Op 85-009. An officer and part owner of a private company that sells fund raising services to school principals and school activity groups is not, as such, forbidden by law to serve as a board of education member, but he is forbidden by RC 2921.42 to (1) authorize, vote, or otherwise use his office as a board member to secure approval of a contract with a principal or activity group in the district or (2) have an interest in the profits or benefits of such a contract.

2. Compatible offices

OAG 83-016. If it is physically possible for one person to hold both positions and if the holding of both positions is not prohibited by local law, the position of township trustee and member of a county board of education are compatible.

OAG 71-081. Individual who teaches in vocational school district which comprises more than one county, may file for election to county school board of one of those counties, although he could not be appointed as that county's representative on board of education of joint vocational school district.

1961 OAG 2480. The office of township clerk is not incompatible with the office of member of the board of education for the local school district in which the township is located.

1934 OAG 2155. The offices of mayor of an incorporated village and member of a rural board of education are compatible.

1932 OAG p 221. Since the language of GC 4728 (RC 3313.01) specifically provides that the offices of member of the village board of education and member of the county board of education may be held by the same person, the name of a candidate may appear upon the ballot submitted to the electors at an election for both offices.

1931 OAG 3272. Under GC 4728 (RC 3313.01) a vice-president of a board of education of a rural school district may be appointed as a member of the county board of education and occupy both positions concurrently.

1927 OAG p 881. There is no constitutional or statutory inhibition preventing a member of a county board of education from serving at the same time as a member of the general assembly.

1927 OAG p 16. The office of member of a county board of education may be held by a member of a village board of education.

3. Incompatible offices

OAG 88-011. The positions of member of a board of county commissioners and member of a board of education of a local school district located in whole or in part within the same county are incompatible.

OAG 86-060. The position of member of the board of health of the general health district of a county is incompatible with the position of member of the board of education of a local school district when part of the territory of the local school district and some of the facilities of the local school district are located within the general health district.

OAG 86-004. A judge of a municipal court is prohibited by O Const Art IV §6(b) and RC 1901.11 from holding the position of member of a board of education of a local school district.

OAG 84-003. The positions of teacher's aide in a local school district and member of the county board of education in the same county are imcompatible.

OAG 83-070. The positions of a member of a county board of education and administrator of a local school district within the same county are incompatible.

OAG 75-009. There is a conflict of interest when a member of a board of education becomes a land appraiser for the county auditor with the responsibility of assisting the auditor in determining the taxable value of real property within his own school district.

OAG 71-081. Individual who teaches in vocational school district which comprises more than one county, may file for election to county school board of one of those counties, although he could not be appointed as that county's representative on board of education of joint vocational school district.

OAG 66-060. The position of member of the board of education of a local school district and the position of township trustee of a township within that local school district are incompatible.

1961 OAG 2206. One person may not simultaneously serve as member of a county board of education and as an employee (sanitarian) of the board of health of the general health district of the county.

1960 OAG 1491. One person may not at the same time serve as a member of a county board of education and as a member of a local board of education in the same county.

1933 OAG 2055. A person may not at the same time hold the offices of member of the county board of education, township trustee and mayor of an incorporated village.

4. Election procedures and vacancies

106 OS 224, 140 NE 183 (1922), State ex rel Maxwell v Wilson. There is no vacancy in the office of a member of the board of education, where such member, who has been duly elected, takes the official oath at any time during the first day of the official term and "before entering" upon his official duties.

1959 OAG 671. Where, at an election held in 1955, following the organization of a local school district, two members of a local board of education were elected for a period of two years and three for a period of four years, and no election was held in 1957 to fill the expiring terms of the two-year members, they will hold over until December 31, 1961; and at the election to be held in November 1959 only three members shall be elected for four-year terms to succeed those whose terms expire December 31, 1959.

1934 OAG 2295. Where in an election for members of a rural board of education, the returns certified to the county board of elections by the precinct officials are such as to enable the board to determine which candidates are elected, it is the duty of the said county board of elections to canvass the vote and declare such persons elected, and there is no authority in the said board to withhold such declaration because of claimed irregularities in connection with the election.

1934 OAG 2295. There should be an election in each rural school district on the first Tuesday after the first Monday of Nov. of each odd numbered year, for the election of such a number of members of the board of education of said district as there are members of said board of education whose regular term expires on the first Monday of the following January. At such election no more than the said number can lawfully be elected.

1930 OAG p 1479. Vacancies in a county board of education shall be filled by a majority vote of the remaining members of said board.

1928 OAG 1770. When the entire personnel of a board of education consists of persons who are holding over, after the expiration of the regular statutory period fixed by law, an entire new board consisting of five members should be elected at the regular time for electing township officers. Each member so elected shall be elected for a period of four years.

1928 OAG 1770. When members of a board of education hold over their term of office, their successors should be elected at the first regular time for the election of township officers which occurs during said hold-over period.

1927 OAG p 1354. When a village school district within a county school district becomes an exempted village school district, a member of the county board of education who resides within such village school district becomes a nonresident of the county school district and a vacancy is thereby created on the county board of education.

1927 OAG p 693. Nominations of candidates for member of the board of education in rural school districts shall be made by nominating papers duly signed by not less than twenty-five qualified electors of said rural district for each candidate to be nominated in such rural school district.

1917 OAG p 1898. In a newly created village school district a special election may be held for members of the board of education of such school district.

3313.02 Membership of boards in city school districts

In city school districts containing, according to the last federal census, a population of less than fifty thousand persons, the board of education shall consist of not less than three nor more than five members elected at large by the qualified electors of such district.

In city school districts containing, according to the last federal census, a population of fifty thousand or more, but less than one hundred fifty thousand persons, the board shall consist of not less than two nor more than seven members elected at large and not more than two members elected from subdistricts by the qualified electors of their respective subdistricts.

In city school districts containing, according to the last federal census, a population of one hundred fifty thousand persons or more, the board shall consist of not less than five nor more than seven members elected at large by the qualified electors of such district.

HISTORY: 1953 H 1, eff. 10-1-53
GC 4832-1

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 4.15(C), 5.02(B)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 125; 82, Schools, Universities, and Colleges § 82, 86, 89, 97
Am Jur 2d: 12, Bonds § 1 to 24; 68, Schools § 37 to 39

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

90 OS 243, 107 NE 537 (1914), State ex rel Ach v Evans. The Jung Small School Board Act, GC 4698 to GC 4707 (RC 3313.02), is constitutional. The classification of school districts by population is by a proper standard and reasonable; therefore, it is a general law of uniform operation. The referendum provision for a vote at an election not less than one hundred twenty days distant is reasonable and constitutional (O Const Art VI §3).

2. In general

OAG 90-083. The positions of city school district board of education member and trustee of a township located within such district are incompatible; a member of such board of education impliedly resigns from that position when he subsequently is elected and qualified as a trustee of a township located within such district.

OAG 86-016. One person may not serve simultaneously as superintendent of a county board of mental retardation and developmental disabilities and member of a board of education of a city school district.

OAG 85-099. An individual may serve as county auditor even though his son is a member of a board of education of a city school district within the same county.

OAG 85-006. If a board of education determines that a member of the board has, after accepting his office as a member of the board, accepted a second office whose duties are incompatible with those of a member of the board of education, the board may determine that the member has, in effect, resigned from the board of education, may recognize a vacancy on the board, and may fill the vacancy pursuant to RC 3313.11.

OAG 85-006. The offices of member of the board of education of a local school district and trustee of a township which is located within the school district are incompatible.

OAG 85-006. If an individual simultaneously accepts the office of member of the board of education of a local school district and the office of trustee of a township which is located within the school district, the board of education may request that a prosecuting attorney or the attorney general bring an action in quo warranto under RC 2733.05 to determine the authority of the individual to continue to serve in both offices.

OAG 79-049; overruled by OAG 81-100. A person may serve concurrently as a member of a community board of mental health and mental retardation and as a member of a city board of education.

OAG 75-009. There is a conflict of interest when a member of a board of education becomes a land appraiser for the county auditor with the responsibility of assisting the auditor in determining the taxable value of real property within his own school district.

OAG 74-006. A member of a board of education may also serve as a member of a board of elections if he is not a candidate for an elective office other than those specifically excepted by RC 3501.15.

OAG 69-133. The positions of an assistant prosecuting attorney and a member of a board of education are not compatible and may not be concurrently held by the same individual.

1962 OAG 2746. A member of a board of education of a city school district may at the same time serve as clerk of a city council to which he is elected, provided the charter of the city does not contain a contrary provision in regard to such clerk, and provided it is physically possible for one person to perform the duties of such offices.

1934 OAG 2598. Member of a city board of education may at the same time hold the office of mayor of a city, in the absence of a charter provision with respect thereto.

1934 OAG 2289. In the absence of a federal order to the contrary, an assistant United States district attorney may at the same time hold the office of member of a board of education of a city school district if it is physically possible to perform the duties of both positions.

1934 OAG 2289. The director of public welfare of the city of Toledo may at the same time hold the office of member of a board of education of a city school district if it is physically possible to perform the duties of both positions.

1930 OAG p 1338. When the board of education of a city school district having a population of less than 150,000 is composed in part of members elected from subdistricts, the terms of office of said subdistrict members automatically expire upon the attainment, in accordance with the federal census of 1930, of a population of 150,000 persons or more.

1921 OAG p 162. City board of education of seven members elected at large where census shows increase in population of city, status of board not changed.

1920 OAG p 879. In passing from one class or kind of city school district to a different one, when, after the official announcement of the census of the district, it becomes known that a change of status of the district has been produced by a change in population, city boards of education must conform to and apply the law found in GC 4698 (RC 3313.02), GC 4699 (RC 3313.03), GC 4701 (Repealed), and GC 4702 (RC 3313.08).

Ethics Op 85-009. An officer and part owner of a private company that sells fund raising services to school principals and school activity groups is not, as such, forbidden by law to serve as a board of education member, but he is forbidden by RC 2921.42 to (1) authorize, vote, or otherwise use his office as a board member to secure approval of a contract with a principal or activity group in the district or (2) have an interest in the profits or benefits of such a contract.

Ethics Op 74-001. A lawyer who is a member of a city school district board of education is not in violation of RC 102.04 when he represents clients before state administrative agencies.

3313.11 Vacancies in the board

A vacancy in any board of education may be caused by death, nonresidence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment or election, removal from the district, or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, not earlier than ten days after such vacancy occurs. A majority vote of all the remaining members of the board may fill any such vacancy. Immediately after such a vote, the treasurer of the board of education shall give written notice to the board of elections responsible for conducting elections for that school district that a vacancy has been filled, and the name of the person appointed to fill the vacancy. Each person selected by the board or probate court to fill a vacancy shall hold office for the shorter of the following periods: until the completion of

the unexpired term, or until the first day of January immediately following the next regular board of education election taking place more than ninety days after a person is selected by the board or probate court to fill the vacancy. At that election, a special election to fill the vacancy shall be held in accordance with laws controlling regular elections for board of education members, except that no such special election shall be held if the unexpired term ends on or before the first day of January immediately following that regular board of education election. The term of a person chosen at a special election under this section shall begin on the first day of January immediately following the election, and he shall serve for the remainder of the unexpired term. Whenever the need for a special election under this section becomes known, the board of education shall immediately give written notice of this fact to the board of elections responsible for conducting the regular board of education election for that school district.

The term of a board of education member shall not be lengthened by his resignation and subsequent selection by the board or probate court under this section.

HISTORY: 1986 H 555, eff. 2-26-86
1976 H 1207; 125 v 713, 516; 1953 H 1; GC 4832-10

Note: See now 3301.06 for provisions analogous to ones contained in 3313.11 prior to its amendment by 126 v 655, eff. 1-3-56.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.03(C); Forms 5.05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 96
Am Jur 2d: 68, Schools § 42, 43

NOTES ON DECISIONS AND OPINIONS

175 OS 114, 191 NE(2d) 723 (1963), State ex rel Hover v Wolven. Duties, as prescribed by statute, of membership on a local school district board of education and on a county board of education in the same county at the same time by one individual are such under the Ohio statutes as to render such dual membership incompatible.

162 OS 254, 122 NE(2d) 780 (1954), State ex rel Paul v Russell. A county board of education member duly appointed to a vacancy may continue to serve for the unexpired term as a de facto member after the next regular election when doing so under color of authority and no successor is elected or appointed therefor.

134 OS 480, 17 NE(2d) 729 (1938), State ex rel Henry v Triplett. A vacancy in office of member of board of education in rural school district, which results from tie vote at general election under such circumstances that choice cannot be determined by lot due to fact that tie is found to exist by court in election contest (county board of elections having found contestee had more votes than contestor and having declared and certified contestee to have been elected), may be filled by board of education of the district, or, if such board fails to fill the vacancy within thirty days after it occurs, then by county board of education of county to which such district belongs.

134 OS 480, 17 NE(2d) 729 (1938), State ex rel Henry v Triplett. GC 4745 and 4748 (RC 3313.09 and 3313.11), which have been reenacted several times with minor changes in wording but with the intention of leaving both in force, must be harmonized and construed together, and that end can be accomplished only be giving full effect to GC 4748 (RC 3313.11).

126 OS 203, 184 NE 757 (1933), State ex rel Westcott v Ring. Nonresidence is one ground, that a separate and distinct ground is removal from the district, thus apparently indicating the legislative intent to distinguish between nonresidence, as such, and removal from the district, as two entirely separate and different things.

126 OS 203, 184 NE 757 (1933), State ex rel Westcott v Ring. The official acts of a member of a county board of education, duly elected, qualified and acting, are valid, in the absence of fraud or collusion, as the acts of a de facto officer, even though there is pending before a court of proper jurisdiction a proceeding to declare a vacancy in such position, the acts of such member being valid until the determination of such question by the court.

99 OS 32, 121 NE 823 (1918), State ex rel Leighley v Eikenberry. A removal from office of a school director for absence from meetings for ninety days is void if he was present at the October meeting and January meeting and missed those of November and December.

94 App 381, 115 NE(2d) 409 (1953), State ex rel Meyers v Baldwin. A vacancy on a board of education may be filled only by a majority vote of all the remaining members of the board; when the four remaining members of a board of education, the fifth member having resigned, attend a meeting of the board, and two of the members leave the meeting after the transaction of some matters of business, the two members who remain in attendance at the meeting may not fill such vacancy.

10 App 205 (1918), State ex rel Mittendorf v Hensing. The provision, that on resignation of a member of a school board the board shall fill the vacancy "at its next regular or special meeting," is directory, and the vacancy may be filled at the same meeting at which a member resigns, for the board could have adjourned and immediately reconvened in a special meeting.

6 Abs 651 (App, Adams 1928), Foster v State. This section provides the only authority for filling an unexpired term of a school board member by election.

OAG 85-006. If a board of education determines that a member of the board has, after accepting his office as a member of the board, accepted a second office whose duties are incompatible with those of a member of the board of education, the board may determine that the member has, in effect, resigned from the board of education, may recognize a vacancy on the board, and may fill the vacancy pursuant to RC 3313.11.

OAG 77-042. The provisions of 1976 H 1207 are prospective and do not affect vacancies in boards of education that were filled prior to August 31, 1976. Persons appointed prior to August 31, 1976 to boards of education shall fill such vacancies for the unexpired term as provided by RC 3313.11 prior to amendment by 1976 H 1207, eff. 8-31-76.

OAG 70-060. Where member of a school board failed to be re-elected at last general election and thereafter resigned from board, he is eligible and can be elected by school board to fill a vacancy for a two-year unexpired term on the board created by resignation of another member.

OAG 68-113. When the president of a county board of education resigns, the vice president automatically becomes president for the remainder of the term of such office, the board appoints a new member to the board and the board elects one of its members vice president for the remainder of the term of such office.

1963 OAG 103. The office of deputy clerk of the board of elections is compatible with the office of member of the board of education of a local school district, but no person shall serve as a deputy clerk of the board of elections who is a candidate for election to the office of member of a board of education of a local school district.

1963 OAG 24. Where a member of a county board of education submits his unconditional resignation to the board at a meeting thereof, a vacancy on the board exists and the resignation may not thereafter be withdrawn.

1961 OAG 2439. Vacancies occurring in a board of education are to be filled pursuant to RC 3313.11, which operates as a special exception to the general provisions of RC 3.02, which latter section does not apply to the filling of vacancies in boards of education.

1952 OAG 1250. The term "next regular municipal election" designates the odd numbered year next following the creation of a vacancy in any board of education as the time for the election of a person to fill such vacancy and is not limited to vacancies occurring in city boards of education.

1951 OAG 851. Unless otherwise provided by statute, the resignation of a public officer, whether or not accepted, creates a vacancy, at least to the extent of giving jurisdiction to appoint or elect a successor.

1950 OAG 1364. A special election is permitted to be held only when authorized by statute; there are no provisions for the holding of a special election for the offices of member of a board of education and township trustee; such elections under the provisions of GC 4785-4 (RC 3501.02) are to be held in odd numbered years.

1942 OAG 5609. When member of board of education is inducted into armed forces of United States, and by reason thereof, is absent from meetings for period of ninety days, remaining members may, in their discretion, declare by proper action duly taken, that the reasons for such absence are insufficient, and thereby cause a vacancy to exist in such board which may be filled as provided by law.

1932 OAG 4046. Where two persons are to be elected at large to membership on a board of education and one of the two successful candidates dies before he qualifies, neither of the incumbents whose term expires on the first Monday in January after said election has the right to hold over until the next general election at which members of boards of education are elected. In such event, at the commencement of the term in January following said election, a vacancy exists which the board is authorized to fill, by election, at its first regular or special meeting, or as soon thereafter as possible.

1931 OAG 3845. Upon the failure of a person elected as member of a board of education to qualify as required by law, a vacancy is created which the remaining members of the board are required to fill at its next regular or special meeting or as soon thereafter as possible.

1929 OAG p 1914. Where, in an election of members of a village board of education, the returns certified to the board of education by the precinct officials are such as to enable the board to determine which candidates are elected, it is the duty of the board of education to canvass the vote and declare such persons elected, and there is no authority in the board to withhold such declaration because of claimed irregularities in connection with the election.

1929 OAG p 1564. Electors of a village school district are given no authority by law to fill a vacancy in a board of education, but such vacancy must be filled for the unexpired term by a majority vote of the remaining members of the board.

1929 OAG p 1327. A meeting of a board of education, after its having been duly convened, may be adjourned and continued at another location, upon the affirmative assent of a majority of the members present, and voting, providing a quorum exists.

1929 OAG p 1327. No business can regularly be entered upon by a board of education until a quorum is present; nor can any business be regularly proceeded with when it appears that the members present are reduced below that number.

1929 OAG p 1327. Three members of an exempted village, village or rural board of education constitute a quorum.

1929 OAG p 1327. The permanent removal of a member of a board of education from his school district creates a vacancy in the office. Temporary removal does not. The intention of the member, to be gathered from all the circumstances attendant upon his removal, is the controlling factor in determining whether a removal is temporary or permanent.

1929 OAG p 576. Resignations of members of a board of education take effect from the time of their presentation and need not be formally accepted.

1929 OAG p 576. When a person is elected to fill a vacancy occurring in the membership of a board of education, the person so elected is elected for the unexpired term of the person whose place had become vacant.

1929 OAG p 576. Where all the members of a board of education resign except one, the remaining one member is authorized to fill the vacancies created by the resignation of the other members.

3313.261 Duties of treasurer; notification to board of elections

The treasurer of a county, city, exempted village, or local board of education shall notify the board of elections of all changes in the boundaries of the school district. Such notification shall be made in writing and contain a plat clearly showing all boundary changes and shall be filed not later than ten days after the change of boundaries becomes effective with the board of election [*sic*] of the county or counties in which the school district is located.

HISTORY: 1979 H 1, eff. 5-16-79
125 v 713

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 6.08(C)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 97

3313.85 Probate court or county board shall act when the local board fails to act

If the board of education of any city, exempted village, or county school district fails to perform the duties imposed upon it or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the probate court of the county in which such district is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board.

If the board of any local school district fails to perform the duties imposed upon it or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the county board of education in which such district is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board.

HISTORY: 125 v 531, eff. 10-1-53
1953 H 1; GC 4846

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 5.10

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 47, 117

NOTES ON DECISIONS AND OPINIONS

175 OS 114, 191 NE(2d) 723 (1963), State ex rel Hover v Wolven. Duties, as prescribed by statute, of membership on a local school district board of education and on a county board of education in the same county at the same time by one individual are such under the Ohio statutes as to render such dual membership incompatible.

162 OS 254, 122 NE(2d) 780 (1954), State ex rel Paul v Russell. The probate court is authorized to fill a vacancy on a county board of education existing more than thirty days, even though such thirty-day period occurred prior to the effective date of the statute.

127 OS 81, 186 NE 731 (1933), Rutherford v Port Homer Rural School Dist Bd of Ed. By statute when a county board of education is required to employ teachers for a county children's home, the approval of the superintendent of such home is unnecessary.

109 OS 133, 141 NE 851 (1923), State ex rel Masters v Beamer. The duty to provide school privileges including that of furnishing high school branches within four miles of a child's residence either

by transportation or board and lodging under this section is mandatory.

109 OS 133, 141 NE 851 (1923), State ex rel Masters v Beamer. Mandamus lies to compel a county board of education to perform the acts necessary to provide high school branches or to make them accessible to all children of school age within the district, where the district board of education has failed to provide such facilities.

45 App 365, 187 NE 196 (1933), In re Whisner. A member of a board of education cannot be said to have willfully neglected to perform an official duty, within the meaning of GC 10-1 (RC 3.07), because he persistently voted to elect a particular teacher, with the result that the election had to be made by the county board.

19 App 18 (1923), Batavia Village Bd of Ed v Clermont County Bd of Ed. Transfer of funds from village school district to reimburse county board of education for money paid to parent for transportation charges will be enjoined, where the parent did not pursue his proper remedy either by compelling the village board to furnish transportation or having some action taken by the county board to secure transportation.

39 Misc 108, 315 NE(2d) 848 (CP, Cuyahoga 1974), Sorin v Warrensville Heights Bd of Ed. Where, in an inquiry conducted by a board of education with regard to the conduct of the superintendent of schools, a panel of such body investigates, prosecutes, appears as the primary witness, and renders judgment, such procedure denies to such person due process of law.

39 Misc 108, 315 NE(2d) 848 (CP, Cuyahoga 1974), Sorin v Warrensville Heights Bd of Ed. Where, in a proceeding conducted pursuant to 3319.16, a board of education exhibits definite bias and prejudice, and the charges put forth are specious and not in compliance with the statute, the subject of the inquiry may be awarded reasonable attorney fees.

1960 OAG 1845. It is impossible to lay down any comprehensive general rule for the guidance of boards of education in maintaining the schools of the district where there are insufficient funds to pay the cost thereof; each district presents its own problem.

1960 OAG 1845. There is no authority for a board of county commissioners to loan, grant or transfer money from the county general fund to the board of education of a local school district.

1960 OAG 1491. One person may not at the same time serve as a member of a county board of education and as a member of a local board of education in the same county.

1957 OAG 1145. Boards of education other than county boards may expend funds for the purchase and installation of warning systems in schools under their control.

1947 OAG 2039. Where all members of board of education of city school district resign at same time, this section imposes duty on probate court of county in which district is located to fill each of vacancies by appointment for unexpired terms of members resigning; when one or more vacancies occur in board and board fails to fill vacancy within thirty days after it occurs, probate court is required to fill vacancies as promptly as possible, and it is not authorized to act in place of board until the beginning of a new term or terms of persons elected to succeed former encumbents.

1935 OAG 3994. Where a board of education enters into a contract with the driver of a school bus to drive that bus over a certain designated route for the transportation of school children, at a specified salary, and it later becomes necessary, in order to transport children who do not reside upon the original route provided for, to increase the mileage to be covered as provided for in the original contract, the board may lawfully modify the said contract and pay to the said driver an additional sum in consideration of the additional services to be rendered in the carrying out of said contract as so modified.

1932 OAG p 858. Payments made to a de facto officer for services rendered may not be made the subject of a finding for recovery in the absence of fraud, collusion or excess payments for such services.

1931 OAG 3596. Even though there are no public funds immediately available to meet the cost thereof, the members of a board of education are not personally liable for the cost that may accumulate in connection with the operation of the public schools of its district provided they act in good faith and within the law directing the operation of the schools, unless they specifically assume personal responsibility for said expense.

1929 OAG 1335. Where a claim has been held up by litigation in court, which litigation has been dismissed without prejudice, the claim may now be paid in the same manner it might have been paid originally.

1928 OAG 1577. When a vacancy occurs in the board of education of a village or rural school district, said vacancy should be filled by a majority vote of the remaining members, by election for the unexpired term. If said board fails to fill such vacancy for a period of thirty days after the same occurs, it becomes the duty of the county board of education to fill such vacancy.

1927 OAG 1288. The position of principal or superintendent of the schools of a rural or village school district, or teacher in such schools, is incompatible with membership on the county board of education for the county school district to which such rural or village school district belongs.

3318.06 Resolution relative to tax levy in excess of ten-mill limitation; bond issue; submission to electors

After receipt of the conditional approval of the state board of education, the school district board by a majority of all of its members shall, if it desires to proceed with the project, declare all of the following by resolution:

(A) That with a net bonded indebtedness of within five thousand dollars of seven per cent of the total value of all property in the school district as listed and assessed for taxation on the tax duplicate, the district is unable to provide adequate classroom facilities without assistance from the state;

(B) That to qualify for such state assistance it is necessary to levy a tax outside the ten-mill limitation for the purpose of paying the cost of the purchase of classroom facilities from the state;

(C) That the question of such tax levy shall be submitted to the electors of the school district at the next general or primary election, if there be a general or primary election not less than seventy-five and not more than ninety-five days after the day of the adoption of such resolution or, if not, at a special election to be held at a time specified in the resolution which shall be not less than seventy-five days after the day of the adoption of the resolution and which shall be in accordance with the requirements of section 3501.01 of the Revised Code.

Such resolution shall also state, if such be the case, that the question of issuing bonds of the board shall be combined in a single proposal with the question of such tax levy. More than one election under this section may be held in any one calendar year. Such resolution shall specify that the rate which it is necessary to levy shall be at the rate of one-half mill for each one dollar of valuation except that in those years in which the tax rate for debt service outside the ten-mill limitation is less than three and one-half mills, the rate shall be increased to that rate which is the difference between four mills and the tax rate for debt service outside the ten-mill limitation, and that such tax shall be levied until the purchase price is paid but in no case longer than twenty-three years. A copy of such resolution shall after its passage and not less than seventy-five days prior to the date set therein for the election be certified to the county board of elections.

If the question of issuing bonds of the board is to be combined with the question of levying a tax for the purchase of classroom facilities from the state, the resolu-

tion of the school district board, in addition to meeting other applicable requirements of section 133.18 of the Revised Code, shall state that the amount of bonds to be issued will be whatever amount may be necessary to raise the net bonded indebtedness of the school district to within five thousand dollars of seven per cent of the total tax valuation of the school district for the year in which such resolution is adopted and state that the maximum maturity of the bonds which, notwithstanding section 133.20 of the Revised Code, may be any number of years not exceeding twenty-three as determined by the board. In estimating the amount of bonds to be issued, the board shall take into consideration the amount of moneys then in the bond retirement fund and the amount of moneys to be collected for and disbursed from the bond retirement fund during the remainder of the year in which the resolution of necessity is adopted.

Notice of the election shall include the fact that the tax levy shall be at the rate of one-half mill for each one dollar of valuation except that in those years in which the tax rate for debt service outside the ten-mill limitation is less than three and one-half mills, the rate shall be increased to that rate which is the difference between four mills and the tax rate for debt service outside the ten-mill limitation, and that the levy shall be made until the purchase price is paid but in no case longer than twenty-three years.

The form of the ballot to be used at such election shall be:

"A majority affirmative vote is necessary for passage.

"Shall bonds be issued by the Board of Education of the _____ (here insert name of school district) for the purpose of _____ (here insert purpose of bond issue) in an amount sufficient to raise the net indebtedness of the school district to within five thousand dollars of seven per cent of the total value of all property in the school district as listed and assessed for taxation on the tax duplicate for the year _____ (here insert year in which the resolution declaring the necessity of the election was adopted) and a levy of taxes be made outside of the ten-mill limitation for a maximum period of _____ (here insert longest maturity) years to pay the principal and interest of such bonds, the amount of such bonds being estimated to be _____ (here insert estimated amount of bond issue) for which the levy of taxes is estimated by the county auditor to average _____ (here insert number of mills) mills for each one dollar of valuation, which amounts to _____ (here insert rate expressed in dollars and cents) for each one hundred dollars of valuation?"

and

"Shall an additional levy of taxes be made for the benefit of the _____ (name of school district) for the purpose of paying the cost of the purchase of classroom facilities from the state at the rate of one-half mill for each one dollar of valuation except that in those years in which the tax rate for debt service outside the ten-mill limitation is less than three and one-half mills, the rate shall be increased to that rate which is the difference between four mills and the tax rate for debt service outside the ten-mill limitation, until the purchase price is paid but in no case longer than twenty-three years?

	FOR THE BOND ISSUE AND TAX LEVY
	AGAINST THE BOND ISSUE AND TAX LEVY

"

Where it is not necessary to include the question of issuing bonds of the school district board with the question of levying a tax for the purchase of classroom facilities from the state, the first paragraph of the foregoing ballot form shall be omitted and the question to be voted on shall be "For the Tax Levy" and "Against the Tax Levy."

If a majority of those voting upon a proposition hereunder which includes the question of issuing bonds vote in favor thereof, and if the agreement provided for by section 3318.08 of the Revised Code has been entered into, the school district board may proceed under Chapter 133. of the Revised Code, with the issuance of bonds or bond anticipation notes in accordance with the terms of the agreement.

HISTORY: 1989 H 230, eff. 10-30-89
1984 H 180; 1981 H 235; 1980 H 1062; 1973 S 44; 131 v S 238; 128 v 501; 127 v 396

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925
Baldwin's Ohio School Law, Text 41.27(B), 41.28(A)(C)(E)(F)

CROSS REFERENCES

Submission of question of issuing bonds for permanent improvements to electors of school district, 133.18

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 139; 87, Taxation § 904
Am Jur 2d: 26, Elections § 183 to 315; 68, Schools § 81 to 84
Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax. 68 ALR2d 1041

3318.07 Certification of results of election

The board of elections shall certify the result of the election to the tax commissioner, to the auditor of the county or counties in which the school district is located, to the treasurer of the school district board, and to the state board of education. The necessary tax levy for debt service on the bonds shall be included in the annual tax budget that is certified to the county budget commission.

HISTORY: 1983 H 260, eff. 9-27-83
1979 H 1; 1976 H 920; 132 v H 1; 131 v S 238; 127 v 396

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 41.28(F), 41.32

CROSS REFERENCES

Submission of question of issuing bonds for permanent improvements to electors of school district, 133.18

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 26, Elections § 304

3354.12 Levies for capital and operating expenses; sources of funds

(A) Upon the request by resolution approved by the board of trustees of a community college district, and upon certification to the board of elections not less than seventy-five days prior to the election, the boards of elections of the county or counties comprising such district shall place upon the ballot in their respective counties the question of levying a tax on all the taxable property in the community college district outside the ten-mill limitation, for a specified period of years or for a continuing period of time, to provide funds for any one or more of the following purposes: the acquisition of sites, the erection, furnishing, and equipment of buildings, the acquisition, construction, or improvement of any property which the board of trustees of a community college district is authorized to acquire, construct, or improve and which has an estimated life of usefulness of five years or more as certified by the fiscal officer, and the payment of operating costs. Not more than two special elections shall be held in any one calendar year. Levies for a continuing period of time adopted under this section may be reduced in accordance with section 5705.261 of the Revised Code.

If such proposal is to be or include the renewal of an existing levy at the expiration thereof, the ballot for such election shall state whether it is a renewal of a tax; a renewal of a stated number of mills and an increase of a stated number of mills, or a renewal of a part of an existing levy with a reduction of a stated number of mills; the year of the tax duplicate on which such renewal will first be made; and if earlier, the year of the tax duplicate on which such additional levy will first be made, which may include the tax duplicate for the current year unless the election is to be held after the first Tuesday after the first Monday in November of the current tax year. The ballot shall also state the period of years for such levy or that it is for a continuing period of time. If a levy for a continuing period of time provides for but is not limited to current expenses, the resolution of the board of trustees providing for the election on such levy shall apportion the annual rate of the levy between current expenses and the other purpose or purposes. Such apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for current expenses and the other purpose or purposes shall be limited by such apportionment. The portion of the rate apportioned to the other purpose or purposes shall be reduced as provided in division (B) of this section.

If a majority of the electors in such district voting on such question approve thereof, the county auditor or auditors of the county or counties comprising such district shall annually, for the applicable years, place such levy on the tax duplicate in such district, in an amount determined by the board of trustees, but not to exceed the amount set forth in the proposition approved by the electors.

The boards of trustees of a community college district shall establish a special fund for all revenue derived from any tax levied pursuant to this section.

The boards of elections of the county or counties comprising the district shall cause to be published in a newspaper of general circulation in each such county, an advertisement of the proposed tax levy question, once each week for three weeks immediately preceding the election at which the question is to appear on the ballot.

After the approval of such levy by vote the board of trustees of a community college district may anticipate a fraction of the proceeds of such levy and from time to time issue anticipation notes having such maturity or maturities that the aggregate principal amount of all such notes maturing in any calendar year shall not exceed seventy-five per cent of the anticipated proceeds from such levy for such year, and that no note shall mature later than the thirty-first day of December of the tenth calendar year following the calendar year in which such note is issued. Each issue of notes shall be sold as provided in Chapter 133. of the Revised Code.

The amount of bonds or anticipatory notes authorized pursuant to Chapter 3354. of the Revised Code, may include sums to repay moneys previously borrowed, advanced, or granted and expended for the purposes of such bond or anticipatory note issues, whether such moneys were advanced from the available funds of the community college district or by other persons, and the community college district may restore and repay to such funds or persons from the proceeds of such issues the moneys so borrowed, advanced or granted.

All operating costs of such community college may be paid out of any gift or grant from the state, pursuant to division (K) of section 3354.09 of the Revised Code; out of student fees and tuition collected pursuant to division (G) of section 3354.09 of the Revised Code; or out of unencumbered funds from any other source of the community college income not prohibited by law.

(B) Prior to the application of section 319.301 of the Revised Code, the rate of a levy that is limited to, or to the extent that it is apportioned to, purposes other than current expenses shall be reduced in the same proportion in which the district's total valuation increases during the life of the levy because of additions to such valuation that have resulted from improvements added to the tax list and duplicate.

HISTORY: 1989 H 230, eff. 10-30-89
1983 S 213; 1981 H 1; 1980 H 1238, H 1062; 1976 H 920; 1974 H 662; 1973 S 44; 1969 S 133; 132 v S 40, S 466; 130 v H 318; 129 v 515

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

State may issue capital improvement bonds for colleges, O Const Art VIII §2f

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 82, Schools, Universities, and Colleges § 19

NOTES ON DECISIONS AND OPINIONS

OAG 78-052. Employees of state community college districts created pursuant to RC Ch 3358 are employees in the service of the state for the purposes of RC Ch 124, regardless of whether such employees were in the service of a general and technical college prior to the November 4, 1977, effective date of 1977 S 229.

OAG 76-032. The proceeds of a tax levy, adopted by a community college district pursuant to RC 3354.12 for the payment of operating costs, may be used to support a sabbatical leave program.

OAG 76-032. When a tax levy is submitted to the voters pursuant to RC 3354.12 the ballot shall state the statutory purpose of the proposal, but need not state the specific anticipated use of the proceeds of the levy.

OAG 66-136. A university branch district created pursuant to RC Ch 3355 has no statutory authority to anticipate the proceeds of a levy approved in accordance with RC 3355.09, and therefore may not issue notes in anticipation of such proceeds, nor use the proceeds from such levy to repay loans either upon notes or notes and mortgages on district property since such use of these proceeds is not one of the purposes for such levy as specified in RC 3355.09.

1964 OAG 1305. The office of county treasurer is incompatible with the office of treasurer of a community college district created by and operating under RC Ch 3354, and the two positions may not be held by the same person at the same time.

LIBRARIES

3375.03 Referendum on proposed territory transfer

Unless the transfer of certain library territory pursuant to division (G) of section 3375.01 of the Revised Code has been agreed to by the affected boards of library trustees, a referendum petition against the transfer of the territory to another library district, signed by qualified electors of the territory to be transferred and equal in number to at least ten per cent of such electors who voted in the last gubernatorial election may be filed with the library board of the territory's current library district within sixty days after certified copies of the boundary change order have been filed in final form with the secretary of state, and the order shall not become effective until after the outcome of the referendum procedure prescribed in this section.

Each part of a petition filed pursuant to this section shall contain a full and correct title of the petition, a brief summary of its purpose, and a statement by the person soliciting signatures for the petition, made under penalty of election falsification, certifying that, to the best of his knowledge and belief, each signature contained in the petition is that of the person whose name it purports to be, that each such person is an elector residing in the territory subject to transfer entitled to sign the petition, and that each such person signed the petition with knowledge of its contents. The petition may contain additional information that shall fairly and accurately present the question to prospective petition signers.

The form of a petition calling for a referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR REFERENDUM ON LIBRARY DISTRICT TRANSFER

A petition against the transfer of territory currently located in the _____ library district and proposed for transfer by the state library board to the _____ library district.

We, the undersigned, being electors residing in the area proposed to be transferred, equal in number to not less than ten per cent of the qualified electors in the area subject to transfer who voted at the last general election request the _____ library board to submit the question of the transfer of territory to the _____ library district to the electors residing within the territory proposed to be transferred for approval or rejection at the next primary or general election.

Signature	Street Address or R.F.D.	Precinct	Date of Signing

STATEMENT OF CIRCULATOR

_____ (Name of circulator) _____ declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing _____ (number) _____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be; and that such person signed the petition with knowledge of its contents.

_____
(Signature of circulator)

_____
(Address)

_____
(City or village and zip code)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH."

The person presenting a referendum petition under this section shall be given a receipt containing the time of day and the date on which the petition is filed with the library board and noting the purpose of and the number of signatures on the petition. The secretary of the library board shall cause the board of elections of the county or counties in which the territory to be transferred is located to check the sufficiency of signatures on such petition, and if these are found to be sufficient, he shall present the petition to the library board at a meeting of the board, which shall occur not later than thirty days following the filing of the petition with the board. The board shall promptly certify the question to the board of elections of the county or counties in which the territory to be transferred is located for the purpose of having the proposal placed on the ballot within such territory at the next general or primary election occurring not less than sixty days after the certification.

The form of the ballot to be used at the election on the question of the transfer shall be as follows:

"Shall the territory _____ (here insert its boundaries) which is currently within the _____ (here insert the name of the current library district) library district be transferred to the _____ (here insert the name of the library district to which the territory is proposed to be transferred) library district?

_____ For the transfer
_____ Against the transfer"

The persons qualified to vote on the question are the electors residing in the territory proposed to be transferred. The costs of an election held under this section shall be paid by the board of library trustees of the current library district of the territory to be transferred. The board of elections shall certify the result of the election to the state library board and to the library boards of the affected library district.

If a majority of electors voting on the question vote in favor of the transfer, the transfer shall take effect on the date of the certification of the election to the state library board. If a majority of the voters voting on the question do not vote for the transfer, the transfer shall not take place.

HISTORY: 1980 H 847, eff. 8-22-80

Note: Former 3375.03 repealed by 127 v 417, eff. 9-17-57; 1953 H 1; GC 154-52a.

CROSS REFERENCES

State library board, library boundaries, procedures, OAC 3375-4-05

HEALTH DISTRICTS

3709.29 Special levy for general health district

If the estimated amount of money necessary to meet the expenses of a general health district program will not be forthcoming to the board of health of such district out of the district health fund because the taxes within the ten-mill limitation will be insufficient, the board of health shall certify the fact of such insufficiency to the board of county commissioners of the county in which such district is located. Such board of county commissioners is hereby ordained to be a special taxing authority for the purposes of this section only, and, notwithstanding any other law to the contrary, the board of county commissioners of any county in which a general health district is located is the taxing authority for such special levy outside the ten-mill limitation. The board of county commissioners shall thereupon, in the year preceding that in which such health program will be effective, by vote of two-thirds of all the members of that body, declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such district within the county, and that it is necessary to levy a tax in excess of such limitation in order to provide the board of health with sufficient funds to carry out such health program. Such resolution shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of election.

Such resolution shall specify the amount of increase in rate which it is necessary to levy and the number of years during which such increase shall be in effect, which shall not be for a longer period than ten years.

The resolution shall conform to section 5705.191 of the Revised Code and be certified and submitted in the manner provided in section 5705.25 of the Revised Code, provided that the proposal shall be placed on the ballot at the next primary or general election occurring more than seventy-five days after the resolution is filed with the board of elections.

HISTORY: 1990 S 257, eff. 9-26-90
1980 H 1062; 1971 S 38; 132 v H 228; 128 v 67; 125 v 713, 75; 1953 H 1; GC 1261-40a

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 13.12, 15.15, 81.11
Gotherman & Babbit, Ohio Municipal Law, Text 19.55

CROSS REFERENCES

Agreement between hospital agencies, 140.03
Ten-mill limitation, 5705.02; O Const XII §2
Levies beyond ten-mill limitation, election, 5705.07, 5705.18 to 5705.26
Replacement levies, 5705.192
Powers of budget commission to reduce tax levies, limitation, 5705.31

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 53, Health and Sanitation § 9, 11, 14, 15, 18, 42
Am Jur 2d: 39, Health § 12 et seq.

NOTES ON DECISIONS AND OPINIONS

OAG 86-022. For purposes of calculating the compensation to be paid to a township trustee under RC 505.24 or to a township clerk under RC 507.09, proceeds derived from a special levy for a general health district adopted under RC 3709.29 are not included as part of the budget or total expenditures of the township.

OAG 74-032. The expense of moving the offices of a general health district from the courthouse to other quarters should be paid by the board of county commissioners out of the county general fund, and if there is no money available in that fund, the board of health of the general health district may, with the approval of the county budget commission under RC 3709.28, transfer funds from other items to meet the expense.

OAG 68-063. When a county budget commission has properly fixed the aggregate appropriation of a general health district pursuant to RC 3709.28 and a special health levy, authorized by RC 3709.29, has been approved by the voters, the county budget commission may not reduce the aggregate appropriation previously fixed by such commission.

1961 OAG 2545. Where the secretary of state has proclaimed the population of a municipal corporation, which had been classed as a village, to be five thousand or more, said municipal corporation is a part of the general health district of the county until the officers of the municipal corporation have been elected and qualified as city officers; where such a proclamation has been made but no election of city officers has been held, the electors of the municipal corporation should vote at the general election on the question of a levy for health purposes to meet expenses of the general health district, even though thirty days has elapsed since the issuance of the proclamation.

1958 OAG 2294. If the estimated expenses of a general health district are in excess of revenue available within the ten-mill limitation, a special levy may be made pursuant to the provisions of RC 3709.29, but such special levy would have no application to taxable real property situated in a city receiving public health service from the general health district by contract, and such special levy should be submitted to the electors of the general health district only, which district would not include cities furnished public health service on such contract basis.

1953 OAG 2569. The provision of this section for a special voted tax levy is for the purpose only of providing for a deficiency in the revenues of a general health district when the regular levy within the ten-mill tax limitation will not supply such district with sufficient funds for its operation, and such special levy is limited to an amount necessary to supply such insufficiency. The trustees of a general health district have no authority to surrender the funds available to it within the ten-mill limitation, and seek to obtain a special voted levy covering their entire operating budget for the ensuing fiscal year.

1952 OAG 1730. The offices of member of a board of health of a general health district and member of a county board of elections are not incompatible.

HORSE RACING PERMITS

3769.04 Application for permit

Any person, association, corporation, or trust desiring to hold or conduct a horse-racing meeting, wherein the parimutuel system of wagering is allowed, shall make application to the state racing commission for a permit to do so. Each such application, accompanied by a permit fee of ten dollars and a cash bond, certified check, or bank draft, shall be filed with the commission at least five days prior to the

first day of each horse-racing meeting which such person, association, corporation, or trust proposes to hold or conduct. Such application, if made by an individual, shall be signed and verified under oath by such individual, and if made by individuals or a partnership shall be signed and verified under oath by one of such individuals or a member of such partnership. If made by an association, trust, or corporation, such application shall be signed by the president or vice-president thereof and attested by the secretary or assistant secretary under the seal of such association, trust, or corporation, if it has a seal, and shall also be verified under oath by one of the officers signing the same. The commission shall prescribe forms to be used in making such application. Such application shall specify the name of the person, association, trust, or corporation making such application, the post-office address of the applicant (if a corporation, the name of the state of its incorporation), the dates on which the applicant intends to conduct or hold such horse-racing meeting, which dates shall be successive days, including Sundays unless otherwise requested by the applicant and authorized by the commission, the hours of each racing day during which the applicant intends to hold or conduct horse racing at such meeting which shall be during the hours specified pursuant to section 3769.07 of the Revised Code, and the location of the place, track, or enclosure where it is proposed to hold or conduct such horse-racing meeting and such further information as the commission prescribes.

If the application requests a permit for a horse-racing meet at a location at which such a meet has not previously been conducted by permission of the commission, then, in addition to the other requirements for said application, there shall accompany the application a petition signed by at least fifty-one per cent of the qualified electors voting for governor at the next preceding general election in the townships in which the racing meet is proposed to be conducted, together with a certificate of the board of elections of the counties in which such townships are situated that the signatures on the petition are valid and comply with this section. No petition or certificate shall be required for a transfer made under section 3769.13 of the Revised Code if the transfer is to a county in which racing has previously been conducted pursuant to a permit issued under section 3769.06 of the Revised Code.

Such petition shall be in the following form:

"We, the undersigned, electors of _____ township, _____ county, Ohio request the granting of the application of _____ for a horse-racing meet to be conducted in whole or in part in _____ township, _____ county, Ohio in the year 19___"

Name	Address	Voting Precinct	Township

Such petition shall be sworn to in the manner provided in section 3513.27 of the Revised Code. This section does not apply to small horse-racing meets or horse shows which are not required to secure permits under section 3769.01 of the Revised Code, nor shall this section, other than the first paragraph, apply to county fair horse-racing meets.

HISTORY: 1988 S 206, eff. 3-29-88
1986 H 837; 1975 H 287; 1973 H 520; 1953 H 1; GC 1079-4

Prohibition: 3769.11

CROSS REFERENCES

Harness racing, applicants for permit, OAC 3769-12-08

Electors, qualifications, 3503.01 to 3503.07; O Const Art V §1, 6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 1, Abandoned, Lost, and Escheated Property § 55; 3, Amusements and Exhibitions § 10, 15; 11, Businesses and Occupations § 71; 51, Gambling § 1, 7 to 11

Am Jur 2d: 4, Amusements and Exhibitions § 29 to 31

What constitutes "racing" or a "race track" within zoning regulation forbidding such activity. 83 ALR2d 877

Disciplinary proceedings against horse trainer or jockey. 52 ALR3d 206

NOTES ON DECISIONS AND OPINIONS

1959 OAG 902. Where a person, association, trust or corporation which has conducted a horse-racing meeting under permit issued by the state racing commission, applies for a permit to conduct a horse-racing meeting at another track and a horse-racing meeting has been conducted previously at such other track under permission of the commission, the applicant is not required to file the petition of the electors of the townships as provided in RC 3769.04.

1953 OAG 3363. The amount of the fee which may be charged incidental to the issuance of a permit under the Ohio horse racing act is fixed by the terms of RC 3769.04 and the Ohio state racing commission is without authority to alter such statutory provision by the adoption of an administrative ruling.

LIQUOR CONTROL LAW

4301.01 Definitions

(A) As used in the Revised Code:

(1) "Intoxicating liquor" and "liquor" include all liquids and compounds, other than beer as defined in division (B)(2) of this section, containing one-half of one per cent or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether the same are medicated, proprietary, or patented. Such phrase includes wine, as defined in division (B)(3) of this section even if it contains less than four per cent of alcohol by volume, mixed beverages, as defined in division (B)(4) of this section even if they contain less than four per cent of alcohol by volume, alcohol, and all solids and confections which contain any alcohol.

(2) Except as used in sections 4301.01 to 4301.20, 4301.22 to 4301.52, 4301.56, 4301.70, 4301.72, and 4303.01 to 4303.36 of the Revised Code, "sale" and "sell" include exchange, barter, gift, offer for sale, sale, distribution and delivery of any kind, and the transfer of title or possession of beer and intoxicating liquor either by constructive or actual delivery by any means or devices whatever, including the sale of beer or intoxicating liquor by means of a controlled access alcohol and beverage cabinet pursuant to section 4301.21 of the Revised Code. Such terms do not include the mere solicitation of orders for beer or intoxicating liquor from the holders of permits issued by the department of liquor control authorizing the sale of the same, but no solicitor shall solicit any such orders until he has been registered with the department pursuant to section 4303.25 of the Revised Code.

(3) "Vehicle" includes all means of transportation by land, by water, or by air, and everything made use of in any way for such transportation.

(B) As used in sections 4301.01 to 4301.74 of the Revised Code:

(1) "Alcohol" means ethyl alcohol, whether rectified or diluted with water or not, whatever its origin may be, and includes synthetic ethyl alcohol. Such term excludes denatured alcohol and wood alcohol.

(2) "Beer," "malt liquor," or "malt beverages" includes all brewed or fermented malt products containing one-half of one per cent or more of alcohol by volume but not more than six per cent of alcohol by weight.

(3) "Wine" includes all liquids fit to use for beverage purposes containing not less than one-half of one per cent of alcohol by volume and not more than twenty-one per cent of alcohol by volume, which is made from the fermented juices of grapes, fruits, or other agricultural products.

(4) "Mixed beverages" such as bottled and prepared cordials, cocktails, and highballs are products obtained by mixing any type of whiskey, neutral spirits, brandy, gin, or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product shall contain not less than one-half of one per cent of alcohol by volume and not more than twenty-one per cent of alcohol by volume.

(5) "Spirituous liquor" includes all intoxicating liquors containing more than twenty-one per cent of alcohol by volume.

(6) "Sealed container" means any container having a capacity of not more than one hundred twenty-eight fluid ounces, the opening of which is closed to prevent the entrance of air.

(7) "Person" includes firms and corporations.

(8) "Manufacture" includes all processes by which beer or intoxicating liquor is produced, whether by distillation, rectifying, fortifying, blending, fermentation, brewing, or in any other manner.

(9) "Manufacturer" means any person engaged in the business of manufacturing beer or intoxicating liquor.

(10) "Wholesale distributor" and "distributor" means a person engaged in the business of selling to retail dealers for purposes of resale.

(11) "Hotel" has the meaning set forth in section 3731.01 of the Revised Code, subject to the exceptions mentioned in section 3731.03 of the Revised Code.

(12) "Restaurant" means a place located in a permanent building provided with space and accommodations wherein, in consideration of the payment of money, hot meals are habitually prepared, sold, and served at noon and evening, as the principal business of the place. Such meaning excludes drugstores, confectionery stores, lunch stands, night clubs, and filling stations.

(13) "Club" means a corporation or association of individuals organized in good faith for social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purposes, which is the owner, lessor, or occupant of a permanent building or part thereof operated solely for such purposes, membership in which entails the prepayment of regular dues, and includes the place so operated.

(14) "Night club" means a place operated for profit, where food is served for consumption on the premises and one or more forms of amusement are provided or permitted for a consideration which may be in the form of a cover charge or may be included in the price of the food and beverages, or both, purchased by the patrons thereof.

(15) "At retail" means for use or consumption by the purchaser and not for resale.

(16) "Drugstore" means an establishment as defined in section 4729.27 of the Revised Code which is under the management or control of a legally registered pharmacist.

(17) "Enclosed shopping center" means a group of retail sales and service business establishments that face into an enclosed mall, share common ingress, egress, and parking facilities, and are situated on a tract of land that contains an area of not less than five hundred thousand square feet.

(18) "Controlled access alcohol and beverage cabinet" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, access to the interior of which is restricted by means of a device which requires the use of a key, magnetic card, or similar device and from which beer, intoxicating liquor, other beverages, or food may be sold.

(19) "Residence district" means two or more contiguous election precincts located within the same county and also located within the same municipal corporation or within the unincorporated area of the same township, as described by a petition authorized by section 4301.33, 4303.29, or 4305.14 of the Revised Code.

(20) "Convention center" means any convention, sports, or entertainment facility, or any combination of these, with a seating capacity of five thousand or more that is used by and accessible to the general public.

HISTORY: 1992 H 340, eff. 4-24-92
1990 H 405, S 131; 1989 H 481; 1988 H 562; 1987 H 419; 1986 H 39, H 428

Note: Former 4301.01 repealed by 1986 H 428, eff. 12-23-86; 1984 H 37, S 74; 1982 H 357; 1976 H 928; 1973 S 339; 1953 H 1; GC 6064-1, Source—GC 6064-53.

UNCODIFIED LAW

1991 H 200, § 7, eff. 7-8-91, reads: The amendments to division (B)(19) of section 4301.01 of the Revised Code that were made by Am. Sub. H.B. 405 of the 118th General Assembly shall apply to any local option petition that is filed with a county board of elections on or after April 11, 1991, and to any local option petition that was filed with a county board of elections prior to that date and that had not been certified by the board, by that date, as being valid.

1986 H 428, § 27, eff. 12-23-86, reads, in part:

(B) The reenactment of section 4301.01 of the Revised Code, in addition to affirming the current text of such section, also does both of the following:

(1) Updates references, in division (A)(1) of such section, to the minimum percentage of alcohol in wine and mixed beverages, in order to bring such references into conformity with the minimum percentages of alcohol as prescribed in the definitions of "wine" and "mixed beverages" in such section;

(2) Inserts references to the manufacturing of beer into the definitions of "manufacture" and "manufacturer" in divisions (B)(8) and (9) of such section, in order to bring such definitions into conformity with the sections of the Liquor Control Law that contemplate the manufacturing of beer.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1990 Laws of Ohio, S 131—LSC Analysis, p 5-623

Baldwin's Ohio Township Law, Text 89.03

CROSS REFERENCES

Application of packaging and labeling regulations, OAC 901:6-3-01

Division of parks and recreation, intoxicating beverages prohibited, OAC 1501:41-3-22
Distilled spirits, standards of identification, OAC 4301-5-01
Beer, wine, or mixed beverage tasting defined, OAC 4301:1-1-30
Re-usable containers for beer or malt beverage; definitions and deposit, OAC 4301:1-1-31
Minimum mark-up on beer and malt liquor, OAC 4301:1-1-72
Distribution and sales of wine-based mixed beverages, OAC 4301:1-1-75
Beer and malt beverage tax, definitions, OAC 5703-17-01

Commercial transactions, alcoholic beverages, definitions, 1333.82
Metal containers with removable opening tabs prohibited, 1502.06
Conveyance of intoxicating liquor onto grounds of detention, mental health or retardation facility prohibited, 2921.36
Possessing firearm in liquor permit premises; privileges, 2923.121
Liquor permits, residence district defined, 4303.29
Beer tax, beer defined, 4305.08
Local option election on sale of beer, residence district defined, 4305.14
Bottled beverages, beer and beverages defined, 4307.01
Action against seller of liquor for injury caused by intoxicated person to whom sale is prohibited, 4399.01
Use of intoxicating liquor in a public dance hall prohibited, exceptions, 4399.14
Searches of visitors to institutions, intoxicating liquor defined, 5120.421, 5139.251
Taxable property entered on general tax list and duplicate, exemption for spirituous liquor stored in warehouse, 5709.01
Corporate taxation, additional tax levied on manufacture or sale of litter stream products, 5733.065
Sales tax, levy, purpose, rate, exemptions, 5739.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 87; 11, Businesses and Occupations § 272; 50, Franchise and Distribution Contracts § 19; 55, Hotels, Motels, and Restaurants § 2; 61, Intoxicating Liquors § 1, 2, 7, 70, 129, 188, 368

Am Jur 2d: 45, Intoxicating Liquors § 4 to 21, 117, 147, 153, 279

NOTES ON DECISIONS AND OPINIONS

1. General policy
2. Powers of liquor control department
3. Sunday sales
4. Definitions
5. Appeals
6. Evidence; illegal sales
7. Liquor permit

1. General policy

18 WRU Law Rev 414 (January 1967). The Rights and Remedies of Financing Creditors in Liquor Licenses, Philip Shuchman.

148 OS 188, 74 NE(2d) 82 (1947), State ex rel Williams v Glander. Whether the Liquor Control Act, creating the department of liquor control enacted pursuant to a proclamation of the governor, prescribed a wise plan is not for courts to decide; so long as an act of the general assembly is constitutional, a question of policy is solely for the legislative branch of our state government to determine; such act does provide the general assembly's plan for lawful taxation, regulation and control of liquor traffic. (See also Frankenstein v Leonard, 134 OS 251, 16 NE(2d) 424 (1938).)

134 OS 251, 16 NE(2d) 424 (1938), Frankenstein v Leonard. A statute which prohibits or limits the importation of intoxicating liquors or which levies a license fee or tax in excess of that imposed upon liquors manufactured in Ohio does not violate the Equal Protection Clause of the federal constitution or O Const Art I §2.

132 OS 308, 7 NE(2d) 652 (1937), State ex rel Superior Distributing Co v Davis. The Ohio Liquor Control Act is intended to regulate and control the traffic in beer and other intoxicating beverages and, to effectuate that purpose, it excludes from engaging in such traffic all persons except those to whom licenses are issued by the department of liquor control under the authority conferred by the law.

132 OS 308, 7 NE(2d) 652 (1937), State ex rel Superior Distributing Co v Davis. The state may either entirely prohibit importations of intoxicating liquors, or it may discourage or limit such importation by laying a heavy impost.

129 OS 185, 194 NE 372 (1935), State ex rel Wetterstroem v Liquor Control Dept. The Liquor Control Act, GC 6064-1 (RC 4301.01) et seq., is a special, all-inclusive act controlling traffic in intoxicating liquors and was adopted at a period later than the pure food and drug law; insofar as they are incompatible the Liquor Control Act provisions govern.

3 App(2d) 339, 210 NE(2d) 726 (1964), City Club of Toledo, Inc v Liquor Control Bd. A profit derived from the operation of the business of a social club by its manager does not necessarily detract from or nullify the purposes for which such club was incorporated, so long as it continues to be an aggregation of individuals who engage in social activities.

OAG 77-005. No one may bring into Ohio for personal use, resale or gift any "malt beverage" or "malt liquor" as defined in RC 4301.01(B)(3) if such person does not possess a permit pursuant to RC Ch 4303 or have written consent of the department of liquor control pursuant to liquor control commission regulation OAC 4301:1-1-23.

2. Powers of liquor control department

142 OS 179, 50 NE(2d) 992 (1943), State ex rel Fisher v Ferguson. Broad powers are conferred upon department of liquor control by Liquor Control Act, GC 6064-1 (RC 4301.01) et seq., for expressed purpose of enabling such department to establish and maintain state monopoly of distribution and sale of spirituous liquor in packages or containers.

OAG 77-005. Any person may transport "malt beverage" or "malt liquor" as defined in RC 4301.01(B)(3) through Ohio to a final destination outside Ohio; however the state of Ohio may impose restrictions on such transportation.

1953 OAG 2422. The board of liquor control may determine the date, time and place of each adjudication hearing required under the provisions of either the Administrative Procedure Act or the Liquor Control Act.

1935 OAG 4045. The enforcement of the Liquor Control Act and the laws of this state relating to the manufacture and sale of intoxicating liquor is not limited to the persons deputized by the department of liquor control for such purpose. Any sheriff, marshal, police officer or peace officer has the power and authority to arrest persons for such violations.

3. Sunday sales

135 OS 65, 19 NE(2d) 279 (1939), Akron v Scalera. A municipal ordinance prohibiting sale of beer on Sunday is a valid local police regulation not in conflict with Liquor Control Act, GC 6064-1 (RC 4301.01) et seq.

92 App 169, 109 NE(2d) 531 (1951), Kaufman v Paulding. A municipal corporation does not have the power to adopt a regulation prohibiting the sale of beer on Sunday, where such a regulation conflicts with a regulation of the liquor control board, but it may prohibit the sale of intoxicating liquor on Sunday.

79 Abs 193, 155 NE(2d) 525 (CP, Franklin 1957), Klingbeil v Liquor Control Bd; affirmed by 79 Abs 194, 155 NE(2d) 527 (App, Franklin 1957). A permit holder is not allowed to serve intoxicating liquor on Sunday even if it is diluted to a point where it tests under 3.2 per cent alcohol by weight.

4. Definitions

62 OS(3d) 145 (1991), State ex rel Hinkle v Franklin County Bd of Elections. A bill addressing matters pertaining to the judicial system, i.e., creation and expansion of courts, violates the "one-subject rule" where the bill also includes the unrelated subject of "residence districts" for the purpose of local option liquor control elections, as the two subjects have no rational relationship or common purpose; therefore, the unrelated portion of the Am Sub HB 200, the local option election sections, shall be severed from the bill and be of no effect.

127 OS 513, 189 NE 447 (1934), State ex rel Joseph R. Peebles Sons Co v Pharmacy Board. A wholesale distributor is a person engaged in the business of selling intoxicating liquors to retail dealers for the purpose of resale.

64 App(3d) 17 (Montgomery 1989), Rotellini v West Carrollton Bd of Zoning Appeals. A city zoning inspector's and board of zoning appeals' denial of a zoning permit on the grounds that the proposed use of the property for a drive-through carry out store constitutes a drive-in restaurant which is a prohibited use in a B-1 zoning district pursuant to the city's zoning code is unreasonable, arbitrary and contrary to law since the applicant does not propose serving or selling food prepared on the premises, but instead intends to sell packaged food and beverages to be consumed off the premises.

101 App 57, 135 NE(2d) 775 (1955), Abdoney v Liquor Control Bd. In a charge against a liquor permit holder for a violation of 4301.22, the word "sales" is to be given its usual statutory and commonly accepted legal definition, and not that set forth in 4301.01(2).

84 App 266, 85 NE(2d) 408 (1948), Mocilnikar v Liquor Control Bd. Under the provisions of GC 6064-15 (RC 4303.02), which defines a D-5 permit, and this section, which defines a "night club," a night club must be regularly and habitually in operation at the time a D-5 permit is applied for and issued.

88 Abs 395, 182 NE(2d) 646 (Muni, Cincinnati 1962), Cincinnati v McBrayer. The definition of intoxicating liquor set forth in RC 4301.01 is intended to apply to all sections of the code.

74 Abs 274, 140 NE(2d) 55 (App, Miami 1955), State v Hale. The definition of "intoxicating liquor" as found in RC 4301.01 is restricted to the Liquor Control Act and has no reference to or application to any other section of the code, civil or penal.

1937 OAG 715. GC 6064-1, 6064-15, 6064-41, 6064-41a, and 6064-42 (RC 4301.01, 4303.02, 4301.43, 4301.42, and 4301.44), as contained in Am HB 501 of the 92nd general assembly are "laws providing for tax levies" within the meaning of the term as used in O Const Art II §1d, and became effective May 20, 1937, when such act was signed by the governor.

1937 OAG 127. An assistant to the director of the department of liquor control, having no duties prescribed by statute and holding office at the will of the director, is not a "civil officer" within the meaning of O Const Art II §19, but is merely an employee.

5. Appeals

109 App 94, 161 NE(2d) 513 (1959), Neale v Liquor Control Bd. Facts admitted in the record even though not mentioned by the board of liquor control in its finding that the defendant was not the operator of a night club may be considered by the court in determining whether or not the appellant was the owner and operator of a night club.

6. Evidence; illegal sales

101 App 57, 135 NE(2d) 775 (1955), Abdoney v Liquor Control Bd. Where it appears that a person, seated alone at a bar, has a drink of intoxicating liquor immediately in front of him, which he consumes, a prima-facie case is made that the liquor was sold to him.

82 Abs 517, 163 NE(2d) 82 (County Ct, Lucas 1959), State v Mikola. Persons whose driving ability has been affected through the imbibing of beverages whose alcoholic content is less than 3.2 per cent by weight, regardless of the extent of such effect, may not be considered to be under the influence of intoxicating liquors and thus are immune from convictions under RC 4511.19.

81 Abs 425, 156 NE(2d) 344 (CP, Franklin 1957), Kempe v Liquor Control Bd. In a prosecution for selling intoxicating liquor to a minor, the court may assume that two bottles of what purported to be beer sold to the minor did contain beer.

21 Abs 453 (App, Hardin 1936), Hare v State. Where there is proof of illegal sale of whiskey, it is not necessary to also prove that whiskey contained more than 3.2 per cent of alcohol by weight and that it was fit for use for beverage purposes.

OAG 77-005. Any officer of the law may seize illegal "malt beverage" or "malt liquor" as defined in RC 4301.01(B)(3), hold it as evidence for trial of an accused, and then upon a conviction destroy such evidence pursuant to RC 4301.52 and 4301.45.

7. Liquor permit

1 App(2d) 113, 193 NE(2d) 398 (1963), American Veterans of World War II v Liquor Control Bd. A charge in an order of the director of liquor control that a D-4 "club" permittee applying for renewal of its permit failed to carry on the "subject business solely in the interest of dues paying membership as required by section 4303.17 of the Revised Code" is too general, fails to inform such applicant specifically of the charge it is to meet in the hearing before the board of liquor control, and does not meet the constitutional provision of due process of law.

94 App 550, 116 NE(2d) 750 (1953), A.E.F. Veterans Assn, 37th Div v Liquor Control Bd. A false statement in an application for a liquor permit that the permit holder was a nonprofit corporation, whereas it was actually a corporation, is material and is a ground for revoking the permit.

68 App 290, 39 NE(2d) 531 (1941), Spisak v Solon. Municipal ordinance requiring all those engaging in the retail liquor business within the corporate limits to obtain a permit from the municipality and prescribing the terms and conditions upon which such permits will be issued, is in conflict with the general laws contained in GC 6064-1 (RC 4301.01) et seq., and is void.

74 Abs 94, 139 NE(2d) 106 (App, Franklin 1953), National Fraternal Order of Draftees v Liquor Control Bd. As used in GC 6064-1 (RC 4301.01), "club" is not synonymous with "night club," nor is it requisite that an applicant be a club to secure a permit to operate a night club.

74 Abs 94, 139 NE(2d) 106 (App, Franklin 1953), National Fraternal Order of Draftees v Liquor Control Bd. The department of liquor control was justified in refusing to renew a D-5 permit where the evidence showed that the alleged fraternal organization was not actually a going organization, but rather a one-man organization.

69 Abs 465, 119 NE(2d) 137 (CP, Franklin 1954), Chateau Cafe, Inc v Liquor Control Dept. Where the evidence shows that a restaurant was temporarily unable to serve hot meals due to a breakdown in the refrigeration system, the board of liquor control is not justified in rejecting an application for a liquor permit upon the ground that the applicant is not the operator of a restaurant.

1963 OAG 112. A club which is the holder of a D-4 permit may be issued an additional class C or D permit at the same location, provided that it meets all the requirements independently for each permit, or at a different location, provided that it meets all the requirements for each permit independently at each location.

1959 OAG 536. A local option election on the question of the sale of malt liquors or malt beverages as defined in RC 4301.01 and included in the definition of "intoxicating liquor" found in that section, must be conducted as provided in RC 4301.35, such question to be resolved by the "yes" or "no" vote on question (A) as stated in that section; and a majority vote of "yes" on questions (A), (B), and (C) of such section would authorize the issuance of unrestricted D-2 permits within the district concerned.

1937 OAG 1132. There is nothing in GC 6064-1 (RC 4301.01) et seq., or the regulations of the board of liquor control which prohibits the issuance of a second permit to the holder of an unexpired permit of the same class and for the same location.

1937 OAG 715. Permits issued under authority of the Ohio Liquor Control Act which have not expired before the effective date of GC 6064-1 (RC 4301.01) et seq., will remain in force until their expiration dates.

4301.32 Local option; distribution of instructions

The privilege of local option as to the sale of intoxicating liquors is hereby conferred upon the electors of an election precinct or residence district named by the petition authorized by section 4301.33 of the Revised Code.

Upon the request of an elector, a board of elections of a county that encompasses an election precinct or residence district shall furnish to the elector a copy of the instructions prepared by the secretary of state under division (P) of section 3501.05 of the Revised Code and, within fifteen days after the request, with a certificate indicating the number of valid signatures that will be required upon a petition to hold a special election in that precinct or residence district on a question specified in section 4301.35 or 4301.351 of the Revised Code.

HISTORY: 1988 H 562, eff. 6-29-88
1986 H 555; 1984 H 502; 1978 H 247; 1977 H 314; 1976 H 928; 1953 H 1; GC 6064-31

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 55.13, 89.01, 89.02
Carroll, Ohio Administrative Law, Text 15.02

CROSS REFERENCES

A-1-A permit, 4303.021
Issuance or transfer of permit within building in more than one election precinct, 4303.261
Safekeeping of liquor permit, cancellation and pick up of permit, renewal, 4303.272
Local option on sale of beer; procedure of board of elections, 4305.14
Signatures on local option petition; affidavit of circulator, 4305.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 45, 46, 55, 57, 70, 80
Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117
Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

34 OS(2d) 129, 296 NE(2d) 676 (1973), Stewart v Trumbull County Bd of Elections. The term "residence district" is not unconstitutionally vague and ambiguous where the statute defines and circumscribes the phrase in terms of location, size, and form as well as rights of the residence district.

23 App(3d) 101, 23 OBR 166, 491 NE(2d) 388 (Greene 1985), Rickard v Liquor Control Dept. RC 4301.32 is unconstitutional to the extent that it fails to provide reasonable notice to existing liquor permit holders of an impending local option election.

2. In general

34 OS(2d) 129, 296 NE(2d) 676 (1973), Stewart v Trumbull County Bd of Elections. The privilege of local option for beer under RC 4305.14, and for intoxicating liquors under RC 4301.32, extends to any two or more contiguous precincts within a municipal corporation.

16 OS(2d) 47, 242 NE(2d) 566 (1968), Canton v Imperial Bowling Lanes, Inc. Annexation of township territory to a municipal corporation does not change the local option status of that territory as wet or dry.

29 App(3d) 133, 29 OBR 149, 504 NE(2d) 724 (Franklin 1986), Rickard v Liquor Control Dept. The termination of an existing business as a result of a local option election does not violate the Due Process Clause or the Equal Protection Clause even though notice of the election to a potentially affected permitholder is not required.

29 App(3d) 133, 29 OBR 149, 504 NE(2d) 724 (Franklin 1986), Rickard v Liquor Control Dept. A local option election constitutes legislative action by the voters of a district and, as such, a permitholder has no constitutional right to specific notice of an upcoming local option election.

No. 10230 (2d Dist Ct App, Montgomery, 6-18-87), Arena Food Service Inc v Montgomery County Bd of Elections. Where a liquor permit holder has actual notice of a local option election scheduled in the precinct in which he is licensed, such permit holder lacks standing to challenge the constitutionality of local option election statutes on the basis that the statutes lack a provision for notice to current liquor permit holders.

41 Misc 151, 324 NE(2d) 798 (CP, Richland 1974), Keffalas, Inc v Liquor Control Comm. Where a valid election under RC 4301.351 is held in a residence district and pursuant to such election licenses are issued, such licenses remain valid until a future election is held involving that territory, or part of that territory, four or more years after the enabling election, and any election held prior to such time affects only that part of the residence district which did not vote in the prior election.

37 Misc 3, 305 NE(2d) 820 (CP, Hamilton 1973), Mann v Hamilton County Bd of Elections. Courts would not order board of elections to realign precincts merely because precincts using voting machines were permitted to include more than 400 electors.

86 Abs 302, 174 NE(2d) 558 (CP, Miami 1960), Marshall v Smith. Where premises were leased for the operation of a tavern only and thereafter the township voted dry, the parties are relieved from further liability under the terms of the lease.

OAG 71-064. Where local option election is held under RC 4301.351, respecting Sunday sales of intoxicating liquor in residence district of two or more election precincts, as defined in RC 4301.32, new residence district that includes one precinct of such earlier district may not be created for at least the four-year period, as provided in RC 4301.37, following election.

OAG 70-023. Local option election for township must include entire township, exclusive of any municipal corporation or part thereof located therein, and must be held at special election, ordered by appropriate board of elections, on same day as general election.

OAG 69-129. The phrase "residence district" as used in RC 4301.32 means any two or more contiguous election precincts within a municipal corporation.

1959 OAG 850. The term "residence district" as contained in RC 4301.32 should be reasonably interpreted to mean any district composed of two or more contiguous election precincts in which more than one-half of the area is devoted to residential use as opposed to industrial or commercial use.

1957 OAG 1153. Where a municipality is incorporated subsequent to November, 1933, the condition precedent to an election on the sole question of the sale of liquor by the glass in that municipality pursuant to RC 4303.29 is impossible of fulfillment.

1957 OAG 597. When a part of a "dry" township adjacent to a "wet" municipality is annexed to that municipality, the territory so annexed remains "dry."

1950 OAG 1882. Where township territory in which the sale of intoxicating liquor is not prohibited is annexed to a village which has voted to prohibit the sale of intoxicating liquor, that territory

will remain wet after the annexation, until further action has been taken by the electorate.

1937 OAG 603. A local option election in a township under the provisions of this section does not include municipal corporations within the township; the existence of municipal corporations within such a township is a factual matter to be determined as of the time of the election.

4301.321 Local option election as to premises of permit holder who has been found within one year to have violated liquor laws

The electors of an election precinct may exercise the privilege of local option over the sale of beer or intoxicating liquor by the holder of a class C or D permit at a particular premises situated within the precinct, except for a particular premises located at a convention center, if the holder of the permit has been found by the liquor control commission to have violated any provision of this chapter or Chapter 4303. or 4399. of the Revised Code and has been assessed a penalty for such violation within one year prior to the local option election. The privilege conferred by this section is in addition to and shall not be construed to conflict with the privilege conferred on the electors of the precincts or districts specified in section 4301.32 or 4305.14 of the Revised Code.

HISTORY: 1990 H 405, eff. 4-11-91
1989 H 481; 1978 H 79

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.07

NOTES ON DECISIONS AND OPINIONS

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. The period for appealing liquor control commission orders starts on the date the commission's order is mailed; the mailing date is the effective date when the commission both issues its decision and "finds" a violation; thus a local option election held within one year of the date that the commission mails its order finding a violation is valid.

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. The date by which a local option petition must be filed is one year from the date on which the liquor control commission finds that a violation has occurred, not the date that the commission issues its finding.

750 FSupp 856 (SD Ohio 1990), Brookpark Entertainment, Inc v Brown. A local option election about the sale of beer or intoxicating liquor at a permit holder's premises scheduled to be held more than one year after the violation upon which the election is based is untimely, even though timely election petitions were filed at least seventy-five days before the date of the general election.

4301.322 Election as to certain restaurants

The electors of an election precinct may exercise the privilege of local option on the sale of beer and any intoxicating liquor at a particular location within the precinct, except for a particular location at a convention center, if the proposed use of the location is a restaurant as defined in division (B)(12) of section 4301.01 of the Revised Code containing not less than ten thousand square feet of floor area, having a seating capacity to serve not less than two hundred persons full-course meals at tables at one time, and deriving at least fifty per cent of its gross revenue from the sale of food and nonalcoholic beverages; a hotel or motel as described in division (A) of section 4303.181 of the Revised Code; or an enclosed shopping center as defined in division (B)(17) of section 4301.01 of the Revised Code. The privilege conferred by this section is in addition to the privilege conferred on the electors of the districts specified in section 4301.32 or 4305.14 of the Revised Code.

HISTORY: 1989 H 481, eff. 7-1-89
1983 H 105

CROSS REFERENCES

Protest against local option election on sale of beer; procedure, 4305.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 70, 71

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.323 Local option election as to convention center; violation of liquor laws within one year

The electors of a county may exercise the privilege of local option over the sale of beer or intoxicating liquor by the holder of a class C or D permit at a convention center situated within the county if the holder of the permit has been found by the liquor control commission to have violated any provision of this chapter or Chapter 4303. or 4399. of the Revised Code within one year prior to the presenting of petitions for a local option election pursuant to section 4301.354 of the Revised Code. The privilege conferred by this section is exclusive and shall not be affected by the privilege conferred on the electors of precincts or residence districts specified in section 4301.32, 4301.321, 4301.322, 4303.29, or 4305.14 of the Revised Code.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 87 et seq.

4301.324 Local option election as to convention center; proposed use as convention center

The electors of a county may exercise the privilege of local option on the sale of beer and any intoxicating liquor at a particular location within the county if the use or proposed use of the location is as a convention center.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 87 et seq.

4301.325 Local option election as to convention center; previous election held

The electors of a county may exercise the privilege of local option on the sale of beer and any intoxicating liquor at a convention center within the county, whether or not a previous local option election held in a precinct or residence district has resulted in approval of the sale of beer or

intoxicating liquor in the election precinct in which the convention center is located.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 87 et seq.

4301.33 Notice of petition; petition for local option election; protest against petition

The board of elections shall provide to a petitioner circulating a petition for an election for the submission of one or more of the questions specified in divisions (A) to (C) of section 4301.35 or section 4301.351 of the Revised Code, at the time he takes out the petition, the names of the streets and, if appropriate, the address numbers of residences and business establishments within the precinct or residence district in which the election is sought, and a form prescribed by the secretary of state for notifying affected permit holders of the circulation of a petition for an election for the submission of one or more of the questions specified in divisions (A) to (C) of section 4301.35 or section 4301.351 of the Revised Code. The petitioner shall, not less than forty-five days before the petition-filing deadline for the election, as provided in this section, file with the department of liquor control the information regarding names of streets and, if appropriate, address numbers of residences and business establishments provided to him by the board of elections, and specify to the department the precinct or residence district that is concerned and the filing deadline. The department shall, within a reasonable period of time and not later than fifteen days before the filing deadline, supply the petitioner with a list of the names and addresses of permit holders who would be affected by the election. The list shall contain a heading with the following words: "Liquor permit holders who would be affected by the question(s) set forth on petition for a local option election."

Within five days after a petitioner has received from the department the list of liquor permit holders who would be affected by the question or questions set forth on a petition for local option election, he shall, using the form provided to him by the board of elections, notify by certified mail each permit holder whose name appears on that list. The form for notifying affected permit holders shall require the petitioner to state his name and street address and shall contain a statement that a petition is being circulated for an election for the submission of the question or questions specified in divisions (A) to (C) of section 4301.35 or section 4301.351 of the Revised Code. The form shall require the petitioner to state the question or questions to be submitted as they appear on the petition.

The petitioner shall attach a copy of the list provided to him by the department to each petition paper. A part petition paper circulated at any time without the list of affected permit holders attached to it is invalid.

At the time he files the petition with the board of elections, the petitioner shall provide to the board the list supplied to him by the department and an affidavit certifying that he notified all affected permit holders on the list in the manner and within the time required in this section and that, at the time each signer of the petition affixed his signature to the petition, the petition paper contained a copy of the list of affected permit holders.

Within five days after receiving a petition calling for an election for the submission of one or more of the questions specified in divisions (A) to (C) of section 4301.35 or section 4301.351 of the Revised Code, the board shall give notice by certified mail that it has received the petition to all liquor permit holders whose names appear on the list of affected permit holders filed by the petitioner as furnished to him by the department. Failure of the petitioner to supply the affidavit required by this section and a complete and accurate list of liquor permit holders as furnished to him by the department of liquor control invalidates the entire petition. The board of elections shall provide to a permit holder who would be affected by a proposed local option election, on the permit holder's request, the names of the streets, and, if appropriate, the address numbers of residences and business establishments within the precinct or residence district in which the election is sought. The board may charge a reasonable fee for this information when provided to the petitioner and the permit holder.

Upon the presentation of a petition, not later than four p.m. of the seventy-fifth day before the day of a general or primary election, to the board of elections of the county where the precinct or residence district is located, designating whether it is a petition for an election for the submission of one or more of the questions specified in section 4301.35 of the Revised Code, or a petition for the submission of one or more of the questions specified in section 4301.351 of the Revised Code, designating the particular question or questions specified in section 4301.35 or 4301.351 of the Revised Code that are to be submitted, and signed by the qualified electors of the precinct or residence district concerned, equal in number to thirty-five per cent of the total number of votes cast in the precinct concerned for the office of governor at the preceding general election for that office, in the case of an election within a single precinct, or equal in number to fifty-five per cent of the total number of votes cast in the residence district concerned for the office of governor at the preceding general election for that office, in the case of an election within a residence district, the board shall submit the question or questions specified in the petition to the electors of the precinct or residence district concerned, on the day of the next general or primary election, whichever occurs first and shall proceed as follows:

(A) Such board shall, not later than the sixty-sixth day before the day of the election for which the question or questions on the petition would qualify for submission to the electors of the precinct or residence district, examine and determine the sufficiency of the signatures and review, examine, and determine the validity of the petition and, in case of overlapping residence district petitions or overlapping precinct and residence district petitions presented within that period, determine which of the petitions shall govern the further proceedings of the board. In the case where the board determines that two or more overlapping petitions are valid, the earlier filed petition shall govern. The board shall certify the sufficiency and validity of any petition determined to be valid. The board shall determine the validity of the petition as of the time of certification as described in this division.

(B) If a petition is sufficient, and, in case of overlapping residence district petitions or overlapping precinct and residence district petitions, after the board has determined the governing petition, the board to which the petition has been presented shall order the holding of a special election in the

precinct or residence district for the submission of whichever of the questions specified in section 4301.35 or 4301.351 of the Revised Code are designated in the petition, on the day of the next general or primary election, whichever occurs first.

All petitions filed with a board of elections under this section shall be open to public inspection under rules adopted by the board.

Protest against local option petitions may be filed by any elector eligible to vote on the question or questions described in the petitions or by a permit holder in the precinct or residence district as described in the petitions, not later than four p.m. of the sixty-fourth day before the day of the general or primary election for which the petition qualified. The protest shall be in writing and shall be filed with the election officials with whom the petition was filed. Upon filing of the protest, the election officials with whom it is filed shall promptly fix the time for hearing it, and shall mail notice of the filing of the protest and the time and place for hearing it to the person who filed the petition and to the person who filed the protest. At the time and place fixed, the election officials shall hear the protest and determine the validity of the petition.

HISTORY: 1990 H 405, eff. 4-11-91
1988 H 562; 1986 H 359; 1984 H 502; 1980 H 1062; 1977 H 136; 1971 S 349; 1969 H 616; 125 v 713; 1953 H 1; GC 6064-32

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.01, 89.02

CROSS REFERENCES

Petition requirements, 3501.38

Board of elections to determine sufficiency of petitions on sale of beer, 4305.14

Petitions to consist of one or more separate papers, 4305.15

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 46 to 48

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

62 OS(3d) 145 (1991), State ex rel Hinkle v Franklin County Bd of Elections. A circulator of local option election petitions who is to receive remuneration upon the occurrence of a favorable outcome of the local option election has standing to challenge the noncertification of the petitions as he will be "benefitted" or "injured" as a result of the judgment.

62 OS(3d) 145 (1991), State ex rel Hinkle v Franklin County Bd of Elections. A bill addressing matters pertaining to the judicial system, i.e., creation and expansion of courts, violates the "one-subject rule" where the bill also includes the unrelated subject of "residence districts" for the purpose of local option liquor control elections, as the two subjects have no rational relationship or common purpose; therefore, the unrelated portion of the Am Sub HB 200, the local option election sections, shall be severed from the bill and be of no effect.

47 OS(3d) 117, 548 NE(2d) 230 (1989), State ex rel Hinkle v Franklin County Bd of Elections. A writ of mandamus ordering a board of elections to place local option questions on the November 7, 1989, election ballot that is sought by a complaint filed October 10, 1989, and arises from board invalidation of part petitions on or about September 12, 1989, is denied because of laches in light of the fact that absentee ballots had already been printed and mailed to electors who would be affected by the proposed questions.

37 OS(2d) 53, 307 NE(2d) 258 (1974), State ex rel Snyder v Wheatcraft. Where election board delayed decision on protest to local option petitions until a month after the election was held and then determined the petitions were invalid, mandamus will lie directing the board to count the ballots and declare the result of the election.

34 OS(2d) 259, 298 NE(2d) 134 (1973), State ex rel Waterloo Brown Derby Restaurant v Summit County Bd of Elections. The word "district," as used in RC 4301.37, must be held to include all precincts making up any residence district in which a local option election has been held pursuant to petitions filed in compliance with RC 4301.33 so as to prevent the holding of another such election more often than once in each four-year period in any part of that district.

175 OS 215, 193 NE(2d) 85 (1963), State ex rel Shipman v Young. Any elector signing a local option petition filed with a board of elections pursuant to RC 4301.33 is prohibited by RC 3513.291 from withdrawing his signature therefrom.

57 App(3d) 95 (Summit 1988), American Legion Post 209 v Summit County Bd of Elections. First class mail is sufficiently reliable to satisfy the notice required by RC 4301.33 so long as it is properly addressed and sent to the intended recipient's last known address.

46 App(3d) 126, 546 NE(2d) 418 (Cuyahoga 1988), State ex rel Red Carpet Kamms Inc v Cuyahoga County Bd of Elections. A writ of mandamus shall issue preventing the counting of ballots cast in a local-option election where the board of elections fails to inform the liquor permit holder within five days of the filing of a petition seeking a local-option election as required by RC 4301.33.

21 App(3d) 283, 21 OBR 401, 488 NE(2d) 240 (Franklin 1985), Brink v Franklin County Bd of Elections. Time is of the essence in the contesting of an election; therefore the claim of a party who files fifteen days following an election and over sixty days after a challenge to a petition for an election has been rejected is barred by the doctrine of laches.

No. 10230 (2d Dist Ct App, Montgomery, 6-18-87), Arena Food Service Inc v Montgomery County Bd of Elections. Where a liquor permit holder has actual notice of a local option election scheduled in the precinct in which he is licensed, such permit holder lacks standing to challenge the constitutionality of local option election statutes on the basis that the statutes lack a provision for notice to current liquor permit holders.

22 Misc 254, 255 NE(2d) 587 (CP, Franklin 1970), Whitt v Cook. Exercise of purported right to issue liquor permits allegedly resulting from election held in precincts not eligible to become liquor control districts under RC 4303.29 may be restrained by injunction, although no challenge by election contest was filed pursuant to RC 3515.08.

OAG 70-023. Local option election for township must include entire township, exclusive of any municipal corporation or part thereof located therein, and must be held at special election, ordered by appropriate board of elections, on same day as general election.

1959 OAG 850. The term "residence district" as contained in RC 4301.32 should be reasonably interpreted to mean any district composed of two or more contiguous election precincts in which more than one-half of the area is devoted to residential use as opposed to industrial or commercial use.

1958 OAG 2719. When a local option petition has been presented to a board of elections such board has the duty and exclusive jurisdiction to determine the sufficiency of such petition, except that under the conditions as specified in RC 3501.11 the question shall be submitted for determination to the secretary of state, whose decision shall be final.

1957 OAG 1196. One who has signed a petition for local option relative to the sale of intoxicating liquors in a district therein described may withdraw his signature from such petition at any time prior to the actions of the board of elections ordering an election on such petition.

4301.331 Procedures for election as to particular premises

The privilege of local option conferred by section 4301.321 of the Revised Code may be exercised if, not later than four p.m. of the seventy-fifth day before the day of a general or primary election, a petition together with a copy of a finding, order, or decision of the liquor control commission indicating that the permit holder has violated any provision of this chapter or Chapter 4303. or 4399. of the Revised Code and has been assessed a penalty for such violation is presented to the board of elections of the county in which the precinct in which the particular premises at which the permit holder operates pursuant to the liquor permit that is the subject of such finding, order, or decision is situated.

The petition provided for in this section may consist of one or more separate petition papers. In addition to the requirements of this section, the petitions shall be governed by the rules set forth in section 3501.38 of the Revised Code.

The petitioner shall attach a copy of the finding, order, or decision of the commission to each petition paper he circulates. At the time he files the petition with the board of elections, the petitioner shall provide to the board of elections an affidavit certifying that at the time each signer affixed his signature to the petition, the petition paper contained a copy of the finding, order, or decision of the commission. A part petition paper circulated at any time without the finding, order, or decision of the commission attached to it is invalid. Failure of the petitioner to supply the affidavit required by this section invalidates the entire petition. The petition is valid only if the violation of a provision of this chapter or Chapter 4303. or 4399. of the Revised Code occurred within one year prior to the date of the election for which the petition is presented to the board of elections. The petition shall be signed by the electors of the precinct equal in number to thirty-five per cent of the total number of votes cast in the precinct for the office of governor at the preceding general election for that office and shall contain both of the following:

(A) A notice that the petition is for the submission of the question set forth in section 4301.352 of the Revised Code;

(B) The name of a class C or D permit holder and the address of the permit holder's permit premises. If the business conducted by a class C or D permit holder at the permit premises has a name different from the permit holder's personal or corporate name, the name of the permit holder's business shall be stated along with the permit holder's personal or corporate name.

Not later than five days after a petition is filed under this section, the board shall give notice by certified mail that it has received the petition to the liquor permit holder whose permit would be affected by the results of the special election sought by the petition. Failure of the petitioner to supply a complete and accurate address of the liquor permit holder to the board of elections invalidates the petition. Not later than the sixty-sixth day before the day of the next general or primary election, whichever occurs first, the board shall examine and determine the sufficiency of the signatures on the petition and review, examine, and determine the validity of the petition. The board shall certify the sufficiency and validity of any petition determined to be valid. The board shall determine the validity of the petition as of the time of certification. If the board finds that the petition is valid, it shall order the holding of a special election in the precinct on the day of that general or primary election for the submission of the question set forth in section 4301.352 of the Revised Code.

A petition filed with the board of elections under this section shall be open to public inspection under rules adopted by the board.

An elector who is eligible to vote on the question set forth in section 4301.352 of the Revised Code or the permit holder named on the petition may, not later than four p.m. of the sixty-fourth day before the day of the special election at which the question will be submitted to the electors, file a protest against a local option petition. The protest shall be in writing and shall be filed with the election officials with whom the petition was filed. Upon the filing of the protest, the election officials with whom it is filed shall promptly fix a time and place for hearing the protest, and shall mail notice of the time and place for hearing it to the person who filed the petition and to the person who filed the protest. At the time and place fixed, the election officials shall hear the protest and determine the validity of the petition.

HISTORY: 1990 H 405, eff. 4-11-91
1988 H 562; 1984 H 158; 1980 H 1062; 1978 H 79

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.07

CROSS REFERENCES

Petition requirements, 3501.38
Board of elections to determine sufficiency of petitions, 4305.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 66, 67
Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.
Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. The period for appealing liquor control commission orders starts on the date the commission's order is mailed; the mailing date is the effective date when the commission both issues its decision and "finds" a violation; thus a local option election held within one year of the date that the commission mails its order finding a violation is valid.

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. The date by which a local option petition must be filed is one year from the date on which the liquor control commission finds that a violation has occurred, not the date that the commission issues its finding.

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. Canvassing and certifying election results, notifying appropriate authorities about these results, and physically picking up liquor permits do not involve hearings and do not require the liquor control department director or a local board of elections to settle controversies of any kind, therefore, a writ of prohibition is unavailable.

750 FSupp 856 (SD Ohio 1990), Brookpark Entertainment, Inc v Brown. A local option election about the sale of beer or intoxicating liquor at a permit holder's premises scheduled to be held more than one year after the violation upon which the election is based is untimely, even though timely election petitions were filed at least seventy-five days before the date of the general election.

4301.332 Procedures for election as to certain restaurants

The privilege of local option conferred by section 4301.322 of the Revised Code may be exercised if, not later than four p.m. of the seventy-fifth day before the day of a general or primary election, a petition is presented to the board of elections of the county in which the precinct is situated. The petition shall be signed by the electors of the precinct equal in number to at least thirty-five per cent of the total number of votes cast in the precinct for the office of governor at the preceding general election for that office and shall contain all of the following:

(A) A notice that the petition is for the submission of the question set forth in section 4301.353 of the Revised Code;

(B) The address and proposed use of the particular location within the election precinct to which the results of the question specified in section 4301.353 of the Revised Code shall apply. For the purposes of this division, "use" means use as a hotel or motel as described in division (A) of section 4303.181 of the Revised Code, enclosed shopping center as defined in division (B)(17) of section 4301.01 of the Revised Code, or restaurant as defined in division (B)(12) of section 4301.01 of the Revised Code containing not less than ten thousand square feet of floor area, having a seating capacity to serve not less than two hundred persons full-course meals at tables at one time, and deriving at least fifty per cent of its gross revenue from the sale of food and nonalcoholic beverages.

(C) An affidavit stating that the proposed use of the location will meet the qualifications of one of the following:

(1) A hotel or motel as described in division (A) of section 4303.181 of the Revised Code;

(2) An enclosed shopping center as defined in division (B)(17) of section 4301.01 of the Revised Code;

(3) A restaurant as defined in division (B)(12) of section 4301.01 of the Revised Code containing not less than ten thousand square feet of floor area, having a seating capacity to serve not less than two hundred persons full-course meals at tables at one time, and deriving at least fifty per cent of its gross revenue from the sale of food and nonalcoholic beverages.

Not later than the sixty-sixth day before the day of the next general or primary election, whichever occurs first, the board shall examine and determine the sufficiency of the signatures on the petition. In case of overlapping petitions presented within that period, the board shall determine which of the petitions shall govern the further proceedings of the board. In the case where the board determines that two or more overlapping petitions are valid, the earlier filed petition shall govern. If the board finds that the petition is valid, and, in case of overlapping petitions after the board has determined the governing petition, it shall order the holding of a special election in the precinct or residence district on the day of the next general or primary election, whichever occurs first, for the submission of the question set forth in section 4301.353 of the Revised Code.

A petition filed with the board of elections under this section shall be open to public inspection under rules adopted by the board.

An elector who is eligible to vote on the question set forth in section 4301.353 of the Revised Code may, not later than four p.m. of the sixty-fourth day before the day of the special election at which the question will be submitted to the electors, file a protest against a local option petition. The protest shall be in writing and shall be filed with the election officials with whom the petition was filed. Upon the filing of the protest, the election officials with whom it is filed shall promptly fix a time and place for hearing the protest, and shall mail notice of the time and place for hearing it to the person who filed the petition and to the person who filed the protest. At the time and place fixed, the election officials shall hear the protest and determine the validity of the petition.

HISTORY: 1988 H 562, eff. 6-29-88
1986 H 428; 1983 H 105

CROSS REFERENCES

Secretary of state to approve ballot language for local question, 3501.05
Petition requirements, 3501.38
Board of elections to determine sufficiency of petitions, 4305.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 71, 72
Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.
Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.333 Procedure for election as to convention center; violation of liquor laws within one year

The privilege of local option conferred by section 4301.323 of the Revised Code may be exercised if, not later than four p.m. of the seventy-fifth day before the day of a general or primary election, a petition together with a copy of a finding, order, or decision of the liquor control commission indicating that the permit holder named in the petition has violated any provision of this chapter or Chapter 4303. or 4399. of the Revised Code is presented to the board of elections of the county in which the convention center named in the petition is situated. Such a petition is valid only if the violation of a provision of this chapter or Chapter 4303. or 4399. of the Revised Code occurred within one year prior to the date on which the petition is presented to the board of elections. The petition shall be signed by electors of the county equal in number to thirty-five per cent of the total number of votes cast in the county for the office of governor at the preceding general election for that office and shall contain both of the following:

(A) A notice that the petition is for the submission of the question set forth in section 4301.354 of the Revised Code;

(B) The name of the class C or D permit holder and the address of the permit holder's permit premises. If the business conducted by the class C or D permit holder at the permit premises has a name different from the permit holder's personal or corporate name, the name of the permit holder's business shall be stated along with the permit holder's personal or corporate name.

Upon the request of a petitioner, a board of elections of a county shall furnish to him a copy of the instructions prepared by the secretary of state under division (P) of section 3501.05 of the Revised Code and, within fifteen days after the request, a certificate indicating the number of valid signatures that will be required on a petition to hold an election in that county on the question specified in section 4301.354 of the Revised Code.

The board shall, within five days after receiving the petition, give notice by certified mail that it has received the petition to the permit holder named in the petition.

Not later than the sixty-sixth day before the day of the next general or primary election, whichever occurs first, the board shall examine and determine the sufficiency of the signatures on the petition. If the board finds that the petition is valid, it shall order the holding of an election in the county on the day of that general or primary election for the submission of the question set forth in section 4301.354 of the Revised Code.

A petition filed with the board of elections under this section shall be open to public inspection under rules adopted by the board.

An elector who is eligible to vote on the question set forth in section 4301.354 of the Revised Code or the permit holder named in the petition may, not later than four p.m. of the sixty-fourth day before the day of the election at which the question will be submitted to the electors, file a written protest against the local option petition with the board of elections with which the petition was filed. Upon the filing of the protest, the board of elections shall promptly fix a time and place for hearing the protest, and shall mail notice of the time and place to the person who filed the petition and to the person who filed the protest. At the time and place fixed, the board of elections shall hear the protest and determine the validity of the petition.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 88 et seq.

4301.334 Procedure for election as to convention center; proposed use

The privilege of local option conferred by section 4301.324 of the Revised Code may be exercised if, not later than four p.m. of the seventy-fifth day before the day of a general or primary election, a petition is presented to the board of elections of the county in which the convention center or proposed location for a convention center named in the petition is situated. The petition shall be signed by electors of the county equal in number to at least thirty-five per cent of the total number of votes cast in the county for the office of governor at the preceding general election for that office and shall contain all of the following:

(A) A notice that the petition is for the submission of the question set forth in section 4301.355 of the Revised Code;

(B) The address and use or proposed use of the particular location within the county to which the results of the question specified in section 4301.355 of the Revised Code shall apply. For purposes of this division, "use" means use as a convention center.

(C) An affidavit stating that the use of the location does meet or the proposed use of the location will meet the qualifications of a convention center.

Upon the request of a petitioner, a board of elections of a county shall furnish to him a copy of the instructions prepared by the secretary of state under division (P) of section 3501.05 of the Revised Code and, within fifteen days after the request, a certificate indicating the number of valid signatures that will be required on a petition to hold an election in that county on the question specified in section 4301.355 of the Revised Code.

Not later than the sixty-sixth day before the day of the next general or primary election, whichever occurs first, the board shall examine and determine the sufficiency of the signatures on the petition. If the board finds that the petition is valid, it shall order the holding of an election in the county on the day of the next general or primary election, whichever occurs first, for the submission of the question set forth in section 4301.355 of the Revised Code.

A petition filed with the board of elections under this section shall be open to public inspection under rules adopted by the board.

An elector who is eligible to vote on the question set forth in section 4301.355 of the Revised Code may, not later than four p.m. of the sixty-fourth day before the day of the election at which the question will be submitted to the electors, file a written protest against the local option petition with the board of elections with which the petition was filed. Upon the filing of the protest, the board of elections shall promptly fix a time and place for hearing the protest, and shall mail notice of the time and place to the person who filed the petition and to the person who filed the protest. At the time and place fixed, the board of elections shall hear the protest and determine the validity of the petition.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 88 et seq.

4301.335 Procedure for election as to convention center; generally

(A) The privilege of local option conferred by section 4301.325 of the Revised Code may be exercised if, not later than four p.m. of the seventy-fifth day before the day of a general or primary election, a petition and other information required by division (B) of this section are presented to the board of elections of the county in which the convention center named in the petition is located. The petition shall be signed by electors of the county equal in number to at least thirty-five per cent of the total number of votes cast in the county for the office of governor at the preceding general election for that office and shall contain both of the following:

(1) A notice that the petition is for the submission of the question set forth in section 4301.355 of the Revised Code;

(2) The name and address of the convention center for which the local option election is sought.

(B) Upon the request of a petitioner, a board of elections of a county shall furnish to him a copy of the instructions prepared by the secretary of state under division (P) of section 3501.05 of the Revised Code and, within fifteen days after the request, a certificate indicating the number of valid signatures that will be required on a petition to hold an election in that county on the question specified in section 4301.355 of the Revised Code.

The petitioner shall, not less than thirty days before the petition-filing deadline for an election on the question specified in section 4301.355 of the Revised Code, specify to the department of liquor control the name and address of the convention center for which the election is sought, the county in which the election is sought, and the filing deadline. The department shall, within a reasonable period of time and not later than ten days before the filing deadline,

supply the petitioner with the name and address of the permit holder for the convention center.

The petitioner shall file the name and address of the permit holder who would be affected by the election at the time he files the petition with the board of elections. The board shall, within five days after receiving the petition, give notice by certified mail that it has received the petition to the permit holder for the convention center. Failure of the petitioner to supply the name and address of the permit holder for the convention center as furnished to him by the department of liquor control invalidates the petition.

(C) Not later than the sixty-sixth day before the day of the next general or primary election, whichever occurs first, the board shall examine and determine the sufficiency of the signatures on the petition. If the board finds that the petition is valid, it shall order the holding of an election in the county on the day of the next general or primary election, whichever occurs first, for the submission of the question set forth in section 4301.355 of the Revised Code.

(D) A petition filed with a board of elections under this section shall be open to public inspection under rules adopted by the board.

(E) An elector who is eligible to vote on the question set forth in section 4301.355 of the Revised Code or the permit holder for the convention center may, not later than four p.m. of the sixty-fourth day before the day of the election at which the question will be submitted to the electors, file a written protest against the local option petition with the board of elections with which the petition was filed. Upon the filing of the protest, the board shall promptly fix a time and place for hearing the protest, and shall mail notice of the time and place to the person who filed the petition and to the person who filed the protest. At the time and place fixed, the board shall hear the protest and determine the validity of the petition.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 88 et seq.

4301.34 Petition to contain signatures of electors of only one county

The petition provided for in section 4301.33, 4301.331, 4301.332, 4301.333, 4301.334, or 4301.335 of the Revised Code may consist of one or more separate petition papers. Petitions shall be governed by the rules set forth in section 3501.38 of the Revised Code.

HISTORY: 1989 H 481, eff. 7-1-89
1984 H 502; 1983 H 105; 1980 H 1062; 1978 H 79; 1953 H 1; GC 6064-32a

CROSS REFERENCES

Petition requirements, 3501.38
Unacceptable petitions, 3501.39

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 46, 71

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

52 OS(2d) 9, 368 NE(2d) 294 (1977), State ex rel Humble v Brown. Part-petitions which were valid on their face and notarized would not be invalidated on basis of testimony of notaries that none of the circulators was asked to swear to or affirm the affidavit.

52 OS(2d) 9, 368 NE(2d) 294 (1977), State ex rel Humble v Brown. Part-petitions prepared by the secretary of state which contained only a statement of the circulator rather than an affidavit were invalid.

4301.35 Choice of questions; expenses; form of ballots

If a petition is for submission of one or more of the questions specified under this section, a special election shall be held in the precinct or residence district at the time fixed as provided in section 4301.33 of the Revised Code. The expenses of holding the election shall be charged to the municipal corporation or township of which the precinct or residence district is a part.

At the election any one or more of the following questions, as designated in a valid petition, shall be submitted to the electors of the precinct:

(A) "Shall the sale of wine and mixed beverages by the package, under permits which authorize sale for off-premise consumption only, be permitted in _____?"

(B) "Shall the sale of wine and mixed beverages, under permits which authorize sale for on-premise consumption only, and under permits which authorize sale for both on-premise and off-premise consumption, be permitted in _____?"

(C) "Shall the sale of spirituous liquors by the glass be permitted in _____?"

(D) "Shall state liquor stores for the sale of spirituous liquor by the package, for consumption off the premises where sold, be permitted in _____?"

The board of elections to which a petition is presented shall furnish printed ballots at the election in accordance with section 3505.06 of the Revised Code, and separate ballots shall be used for the special election. All the questions designated in a valid petition shall be set forth on each ballot and the board shall insert in each question the name or an accurate description of the precinct or residence district in which the election is to be held. Votes shall be cast as provided in section 3505.06 of the Revised Code.

HISTORY: 1990 H 405, eff. 4-11-91
1988 H 562; 1984 H 502; 1982 H 357; 1977 H 136; 1971 H 546; 1969 H 616; 1953 H 1; GC 6064-33

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.02 to 89.04

CROSS REFERENCES

Liquor permits, restrictions on issuance, election on sale of spirituous liquor by the glass, distribution of instructions, 4303.29

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 48

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

16 OS(2d) 47, 242 NE(2d) 566 (1968), Canton v Imperial Bowling Lanes, Inc. One may have a D permit for a particular location and yet be prohibited from selling intoxicating liquor at that location by reason of a valid local option election against such a sale in the territory including that location.

No. 10230 (2d Dist Ct App, Montgomery, 6-18-87), Arena Food Service Inc v Montgomery County Bd of Elections. Where a liquor permit holder has actual notice of a local option election scheduled in the precinct in which he is licensed, such permit holder lacks standing to challenge the constitutionality of local option election statutes on the basis that the statutes lack a provision for notice to current liquor permit holders.

1959 OAG 536. A local option election on the question of the sale of malt liquors or malt beverages as defined in RC 4301.01 and included in the definition of "intoxicating liquor" found in that section, must be conducted as provided in RC 4301.35, such question to be resolved by the "yes" or "no" vote on question (A) as stated in that section; and a majority vote of "yes" on questions (A), (B), and (C) of such section would authorize the issuance of unrestricted D-2 permits within the district concerned.

1959 OAG 536. In any special election held pursuant to RC 4301.35, it is necessary to submit each and all of the questions set out in such section to the electors of the district involved.

1957 OAG 1153. Where a municipality is incorporated subsequent to November, 1933, the condition precedent to an election on the sole question of the sale of liquor by the glass in that municipality pursuant to RC 4303.29 is impossible of fulfillment.

1943 OAG 6457. Where privilege of local option is sought to be exercised by electors of township exclusive of any municipal corporation or part thereof therein located, in which majority of electors voting thereon at November, 1933 election, voted for repeal of O Const Art XV §9, it is necessary to submit to such electors all of questions set out in this section, and consequently board of elections of county wherein said district is located is without legal authority to submit to electors of such district at next general election sole question of whether sale of spirituous liquor by the glass shall be permitted therein, even though petition bearing required number of signatures is filed sixty days before such election.

4301.351 Sunday sale election; expenses; form of ballots

If a petition is for submission of the question of whether the sale of intoxicating liquor shall be permitted on Sunday, a special election shall be held in the precinct or residence district at the time fixed as provided in section 4301.33 of the Revised Code. The expenses of holding the election shall be charged to the municipal corporation or township of which the precinct or residence district is a part.

At the election one or more of the following questions, as designated in a valid petition, shall be submitted to the electors of the precinct or residence district:

(A) "Shall the sale of intoxicating liquor, of the same types as may be legally sold in this (precinct) (district) on other days of the week, be permitted in this _____ for consumption on the premises where sold, between the hours of one p.m. and midnight on Sunday?"

(B) "Shall the sale of intoxicating liquor, of the same types as may be legally sold in this (precinct) (district) on other days of the week, be permitted in this _____ for consumption on the premises where sold, between the hours of one p.m. and midnight on Sunday, at licensed premises where the sale of food and other goods and services exceeds fifty per cent of the total gross receipts of the permit holder at the premises?"

(C) "Shall the sale of wine and mixed beverages of the same types as may be legally sold in this (precinct) (district) on other days of the week, be permitted in this _____ for consumption off the premises where sold, between the hours of one p.m. and midnight on Sunday?"

No C or D permit holder who first applied for his permit after April 15, 1982, shall sell beer on Sunday unless the sale of intoxicating liquor is authorized in the precinct or residence district at an election on question (A), (B), or (C) of this section. No D-6 permit is required for the sale of beer on Sunday.

The board of elections to which the petition is presented shall furnish printed ballots at the election in accordance with section 3505.06 of the Revised Code, and separate ballots shall be used for the special election. One or more of the questions prescribed by this section, as designated in the petition, shall be set forth on each ballot and the board shall insert in each question the name or an accurate description of the precinct or residence district in which the election is to be held. Votes shall be cast as provided in section 3505.06 of the Revised Code.

HISTORY: 1990 H 405, eff. 4-11-91
1988 H 562; 1986 H 428; 1984 H 502; 1983 H 291; 1982 H 357; 1977 H 123, H 136; 1969 H 616

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.02

CROSS REFERENCES

Secretary of state to approve ballot language for local question, 3501.05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 49, 51, 87

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

34 OS(2d) 259, 298 NE(2d) 134 (1973), State ex rel Waterloo Brown Derby Restaurant v Summit County Bd of Elections. The word "district," as used in RC 4301.37, must be held to include all precincts making up any residence district in which a local option election has been held pursuant to petitions filed in compliance with RC 4301.33 so as to prevent the holding of another such election more often than once in each four-year period in any part of that district.

41 Misc 151, 324 NE(2d) 798 (CP, Richland 1974), Keffalas, Inc v Liquor Control Comm. Where a valid election under RC 4301.351 is held in a residence district and pursuant to such election licenses are issued, such licenses remain valid until a future election is held involving that territory, or part of that territory, four or more years after the enabling election, and any election held prior to such time affects only that part of the residence district which did not vote in the prior election.

OAG 87-006. Pursuant to the terms of 1986 H 39, § 3, eff. 2-21-87, the local option election questions specified in RC 4301.351 and 4305.14 may appear on the ballot at the primary election, to be held on May 5, 1987, in an election precinct to which the four-year prohibitions of RC 4301.37(A) and 4301.37(B) would otherwise apply.

OAG 71-064. Where local option election is held under RC 4301.351, respecting Sunday sales of intoxicating liquor in residence district of two or more election precincts, as defined in RC 4301.32, new residence district that includes one precinct of such earlier district may not be created for at least the four-year period, as provided in RC 4301.37, following election.

4301.352 Special election to be held

If a petition is filed under section 4301.331 of the Revised Code for the submission of the question set forth in this section, a special election shall be held in the precinct as ordered by the board of elections under that section. The expense of holding the special election shall be charged to the municipal corporation or township of which the precinct is a part. At the special election the following question shall be submitted to the electors of the precinct:

"Shall the sale of _____ (insert a brief categorical description of the appropriate beverage) _____ by _____ (insert the permit holder's personal or corporate name, and if it is different from the permit holder's personal or corporate name, the name of the permit holder's business) _____ at _____ (insert the address of the permit premises) _____ be permitted in this precinct?"

The board of elections shall furnish printed ballots at the special election as provided under section 3505.06 of the Revised Code, except that a separate ballot shall be used for the special election. The question set forth in this section shall be printed on each ballot and the board shall insert in the question appropriate words to complete the question. Votes shall be cast as provided under section 3505.06 of the Revised Code.

HISTORY: 1978 H 79, eff. 3-15-79

CROSS REFERENCES

Secretary of state to approve ballot language for local question, 3501.05

Safekeeping of permit, cancellation and pick up, renewal, 4303.272

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 66, 68

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.353 Conduct of election as to certain restaurants

If a petition is filed under section 4301.332 of the Revised Code for the submission of the question set forth in this section, a special election shall be held in the precinct as ordered by the board of elections under that section. The expense of holding the special election shall be charged to the municipal corporation or township of which the precinct is a part.

At the election the following question and information shall be submitted to the electors of the precinct:

"Shall the sale of beer and any intoxicating liquor be permitted for consumption on the premises where sold for (a) (an) (insert "hotel," "motel," "enclosed shopping center," or "restaurant," as set forth in the petition) at (insert address of the particular location within the precinct as set forth in the petition) in this precinct?"

If the sale of beer and intoxicating liquor has been approved at a particular location within the precinct at a previous election held under section 4301.353 of the Revised Code, the ballot shall also include the following statement:

"At a previous election held under section 4301.353 of the Revised Code, the electors approved the sale of beer and intoxicating liquor at (insert business name and address of the particular location or locations within the precinct where such sale has been approved at a previous election under section 4301.353 of the Revised Code)."

The board of elections shall furnish printed ballots at the special election as provided under section 3505.06 of the Revised Code, except that a separate ballot shall be used for the special election. The question and, if applicable, the statement set forth in this section shall be printed on each ballot and the board shall insert in the question and statement appropriate words to complete each. Votes shall be cast as provided under section 3505.06 of the Revised Code.

HISTORY: 1983 H 105, eff. 4-4-84

CROSS REFERENCES

Secretary of state to approve ballot language for local question, 3501.05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 71, 73

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.354 Form of ballot for election as to convention center; violation of liquor laws within one year

(A) If a petition is filed under section 4301.333 of the Revised Code for the submission of the question set forth in this section, an election shall be held in the county as ordered by the board of elections under that section.

At the election the following question shall be submitted to the electors of the county:

"Shall the sale of _____ (insert a brief categorical description of the appropriate beverage) by _____ (insert the permit holder's personal or corporate name and, if it is different from the permit holder's personal or corporate name, the name of the permit holder's business), at _____ (insert name of convention center), a convention center as defined by section 4301.01 of the Revised Code, and located at _____ (insert the address of the permit premises) _____ be permitted in this county?"

The board of elections shall furnish printed ballots at the election as provided under section 3505.06 of the Revised Code, except that a separate ballot shall be used for the election. The question set forth in this section shall be printed on each ballot and the board shall insert in the question appropriate words to complete the question, subject to approval by the secretary of state. Votes shall be cast as provided under section 3505.06 of the Revised Code.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 96 to 109

4301.355 Form of ballot for election as to convention center; generally

If a petition is filed under section 4301.334 or 4301.335 of the Revised Code for the submission of the question set forth in this section, an election shall be held in the county

as ordered by the board of elections under the applicable section.

At the election the following question shall be submitted to the electors of the county:

"Shall the sale of beer and intoxicating liquor be permitted for consumption on the premises where sold on days of the week other than Sunday and between the hours of one p.m. and midnight on Sunday, at _____ (insert name of convention center), a convention center as defined by section 4301.01 of the Revised Code, and located at _____ (insert the address of the convention center as set forth in the petition) in this county?"

The board of elections shall furnish printed ballots at the election as provided under section 3505.06 of the Revised Code, except that a separate ballot shall be used for the election. The question set forth in this section shall be printed on each ballot and the board shall insert in the question appropriate words to complete each, subject to the approval of the secretary of state. Votes shall be cast as provided under section 3505.06 of the Revised Code.

HISTORY: 1989 H 481, eff. 7-1-89

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 96 to 109

4301.36 Effect of election

If a majority of the electors voting in a precinct or residence district vote "yes" on question (A), (B), or (C) as set forth in section 4301.35 of the Revised Code, the sales specified in such one or more of the questions on which a majority of the electors voting in such precinct or residence district voted "yes" shall be subject in the precinct or residence district only to Chapters 4301. and 4303. of the Revised Code.

If a majority of the electors voting in such precinct or residence district vote "no" on question (A), (B), or (C) set forth in section 4301.35 of the Revised Code, no C or D permit holder shall sell intoxicating liquor of the kind or in the manner specified in such one or more of the questions on which a majority of the electors voting in the precinct or residence district voted "no," within the precinct or residence district concerned, during the period such election is in effect as defined in section 4301.37 of the Revised Code.

If a majority of the electors voting in such precinct or residence district vote "no" on question (D) as set forth in section 4301.35 of the Revised Code, all state liquor stores in the precinct or residence district shall be forthwith closed and, during the period the vote is in effect, as defined in section 4301.37 of the Revised Code, no state liquor store shall be opened in that precinct or residence district.

HISTORY: 1988 H 562, eff. 6-29-88
1984 H 502; 1977 H 136; 1971 H 546; 1953 H 1; GC 6064-34

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.04

CROSS REFERENCES

Safekeeping of permit cancelled as result of local option election, 4303.272

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 50

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

16 OS(2d) 47, 242 NE(2d) 566 (1968), Canton v Imperial Bowling Lanes, Inc. One may have a D permit for a particular location and yet be prohibited from selling intoxicating liquor at that location by reason of a valid local option election against such a sale in the territory including that location.

20 Misc 148, 252 NE(2d) 661 (CP, Stark 1966), Canton v Imperial Bowling Lanes, Inc; affirmed by 16 OS(2d) 47, 242 NE(2d) 566 (1968). When a part of a township which has voted dry under a local option election is annexed to a city in which the sale of intoxicating liquors is legal, such sale is not thereby made legal in the territory annexed, since RC 4301.37 prescribes the only method whereby the results of a local option election can be changed.

4301.361 Effect of Sunday sale election

If a majority of the electors voting on questions set forth in section 4301.351 of the Revised Code in a precinct or residence district vote "yes" on question (A), or, if both questions (A) and (B) are submitted, "yes" on both questions or "yes" on question (A) but "no" on question (B), sales of intoxicating liquor shall be allowed in the manner and under the conditions specified in question (A), under a D-6 permit, within the precinct or residence district concerned, during the period the election is in effect as defined in section 4301.37 of the Revised Code.

If only question (B) is submitted to the voters or if questions (B) and (C) are submitted and a majority of the electors voting in a precinct or residence district vote "yes" on question (B) as set forth in section 4301.351 of the Revised Code, sales of intoxicating liquor shall be allowed in the manner and under the conditions specified in question (B), under a D-6 permit, within the precinct or residence district concerned, during the period the election is in effect as defined in section 4301.37 of the Revised Code, even if question (A) was also submitted and a majority of the electors voting in the precinct or residence district voted "no."

If question (C) is submitted and a majority of electors voting on the question (C) set forth in section 4301.351 of the Revised Code in a precinct or residence district vote "yes," sales of wine and mixed beverages shall be allowed in the manner and under the conditions specified in question (C), under a D-6 permit, within the precinct or residence district concerned, during the period the election is in effect as defined in section 4301.37 of the Revised Code.

If questions (A), (B), and (C), as set forth in section 4301.351 of the Revised Code, are all submitted and a majority of the electors voting in such precinct or residence district vote "no" on all three questions, no sales of intoxicating liquor shall be made within the precinct or residence district concerned after two-thirty a.m. on Sunday, during the period the election is in effect as defined in section 4301.37 of the Revised Code.

HISTORY: 1988 H 562, eff. 6-29-88
1984 H 502; 1982 H 357; 1977 H 123, H 136; 1969 H 616

CROSS REFERENCES

Hours of sale of alcoholic beverages, OAC 4301:1-1-49

D-6 permit, sale of intoxicating liquor on public airport premises, 4303.182

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 51, 87

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.362 Effects of special election

If a majority of the electors voting on the question set forth in section 4301.352 of the Revised Code vote "yes," the sale of beer or intoxicating liquor by a class C or D permit holder at the specified premises shall only be subject to Chapters 4301. and 4303. of the Revised Code.

If a majority of the electors voting on the question set forth in section 4301.352 of the Revised Code vote "no," the board of elections shall notify the department of liquor control of the final result of the election by certified mail. When the department of liquor control receives notice of the final result of the election, it shall cancel and pick up the permit holder's permit within seven days.

The results of a local option election that is held in a precinct pursuant to section 4301.352 of the Revised Code shall not affect the results of a local option election that is held in the same precinct under section 4301.35, 4301.351, 4303.29, or 4305.14 of the Revised Code.

HISTORY: 1978 H 79, eff. 3-15-79

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.07

CROSS REFERENCES

Safekeeping of permit cancelled as result of local option election, 4303.272

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 68

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. Mandamus will not lie to compel the secretary of state and a local board of elections to impound uncertified local option election results and order the liquor control department director to disregard notice of the results as the election was timely.

60 OS(3d) 44, 573 NE(2d) 596 (1991), State ex rel Brookpark Entertainment, Inc v Cuyahoga County Bd of Elections. Canvassing and certifying election results, notifying appropriate authorities about these results, and physically picking up liquor permits do not involve hearings and do not require the liquor control department director or a local board of elections to settle controversies of any kind, therefore, a writ of prohibition is unavailable.

750 FSupp 856 (SD Ohio 1990), Brookpark Entertainment, Inc v Brown. A liquor permit holder has no property right in the permit, which is only a license; thus, the ending of a license as the result of a local option election cannot be a deprivation of property without due process of law; even if there were a property right conferred, the local option election is all the process that is due the holder.

750 FSupp 856 (SD Ohio 1990), Brookpark Entertainment, Inc v Brown. Ending a liquor permit holder's license by local option election is not a violation of equal protection of the law absent evidence that agents issued violations on which the election was based in a way singling out a particular permit holder while other offenders went unpunished; loss of the license is not a forbidden bill of attainder, either, where code sections did not single out the holder in an effort to punish him.

4301.363 Effect of election as to a certain restaurant

If a majority of the electors voting on the question set forth in section 4301.353 of the Revised Code vote "yes," the sale of beer and intoxicating liquor shall be allowed at the particular location and for the use specified in the question, subject only to Chapters 4301. and 4303. of the Revised Code. Failure to continue to satisfy the criteria specified in section 4301.322 of the Revised Code for the proposed use of the location as a hotel or motel, enclosed shopping center, or restaurant shall constitute good cause for rejection of the renewal of the liquor permit under division (A) of section 4303.271 of the Revised Code.

If a majority of the electors voting on the question set forth in section 4301.353 of the Revised Code vote "no," no sales of beer or intoxicating liquor shall be made at the particular location for the use specified in the question during the period the election is in effect as defined in section 4301.37 of the Revised Code.

HISTORY: 1983 H 105, eff. 4-4-84

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 74

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.364 Effect of election as to convention center; violation of liquor laws within one year

If a majority of the electors voting on the question set forth in section 4301.354 of the Revised Code vote "yes," the sale of beer and intoxicating liquor at the convention center shall be subject only to this chapter and Chapter 4303. of the Revised Code. If a majority of the electors voting on the question set forth in section 4301.354 of the Revised Code vote "no," the board of elections shall notify the department of liquor control of the final result of the election by certified mail. When the department of liquor control receives notice of the final result of the election, it shall cancel and pick up the permit holder's permit within seven days.

The results of a local option election that is held in a county pursuant to section 4301.354 of the Revised Code shall not affect or be affected by the results of any other local option election held in that county under any other section of the Revised Code, except as to the convention center that is the subject of the election.

HISTORY: 1989 H 481, eff. 7-1-89

4301.365 Effect of election as to convention center; generally

If a majority of the electors voting on the question specified in section 4301.355 of the Revised Code vote "yes," the sale of beer and intoxicating liquor shall be allowed at the convention center and for the use specified in the question, subject only to this chapter and Chapter 4303. of the Revised Code. Failure to continue to satisfy the criteria specified in section 4301.324 of the Revised Code for the proposed use of the location as a convention center shall constitute good cause for rejection of the renewal of the liquor permit under division (A) of section 4303.271 of the Revised Code.

If a majority of the electors voting on the question specified in section 4301.355 of the Revised Code vote "no," no sales of beer or intoxicating liquor shall be made at the convention center during the period the election is in effect as defined in section 4301.37 of the Revised Code.

HISTORY: 1989 H 481, eff. 7-1-89

4301.37 Local option election effective for four years; exception

(A) When a local option election, other than an election under section 4301.351, 4301.352, or 4301.353 of the Revised Code, is held in any precinct or residence district, the result of the election shall be effective in the precinct or residence district until another election is called and held pursuant to sections 4301.32 to 4301.36 of the Revised Code, but no such election shall be held in any precinct, residence district, or part of a residence district on the same question more than once in each four years.

(B) When a local option election under section 4301.351 of the Revised Code is held in any precinct or residence district, the result of the election shall be effective in the precinct or residence district until another election is called and held pursuant to sections 4301.32 to 4301.361 of the Revised Code, but no such election shall be held in any precinct, residence district, or part of a residence district on the same question more than once in each four years.

(C) When a local option election is held in a precinct under section 4301.352 of the Revised Code, and a majority of the electors voting on the question vote "yes," no subsequent local option election shall be held in the precinct upon the sale of beer or intoxicating liquor by the class C or D permit holder at the specified premises for a period of at least four calendar years from the date of the local option election, except that this division shall not be construed to prohibit the holding or affect the results of a local option election under section 4301.35, 4301.351, 4303.29, or 4305.14 of the Revised Code.

(D) When a local option election is held in a precinct under section 4301.353 of the Revised Code, the results of the election shall be effective at the particular location designated in the petition until another election is held, but no such election shall be held regarding that particular location for a period of at least four calendar years from the date of the election. The results of a local option election held in a precinct under section 4301.353 of the Revised Code shall not prohibit the holding of, or be affected by the results of, a local option election held under section 4301.35, 4303.29, or 4305.14 of the Revised Code.

(E) When a local option election is held in a county under section 4301.354 of the Revised Code, no subsequent local option election shall be held in the county on the sale of beer or intoxicating liquor by the class C or D permit holder at the specified convention center for a period of at least four calendar years from the date of the local option election, except that this division shall not prohibit the holding of or affect or be affected by the results of a local option election under section 4301.35, 4301.351, 4301.352, 4301.353, 4303.29, or 4305.14 of the Revised Code.

(F) When a local option election is held in a county under section 4301.355 of the Revised Code, the results of the election shall be effective at the convention center that was the subject of the election until another such election is held regarding that convention center, but no such election shall be held for a period of at least four calendar years from the date of the election. The results of a local option election held in a county under section 4301.355 of the Revised Code shall not prohibit the holding of or affect or be affected by the results of a local option election held under section 4301.35, 4301.351, 4301.352, 4301.353, 4303.29, or 4305.14 of the Revised Code.

(G) If a convention center is located in an election precinct or residence district in which a previous local option election in the precinct or residence district resulted in approval of the sale of beer or intoxicating liquor in the precinct or residence district, the convention center shall sell beer or intoxicating liquor only to the extent permitted by the previous local option election until an election is held pursuant to section 4301.354 or 4301.355 of the Revised Code.

(H) A convention center shall not be affected by a local option election held on or after July 23, 1989, unless the election is held under section 4301.354 or 4301.355 of the Revised Code.

(I) When a local option election has been held under section 4301.35 or 4301.351 of the Revised Code prior to April 4, 1985, in a precinct or district, as defined in section 4301.32 of the Revised Code prior to April 4, 1985, the results of the election shall be effective in the district until another election is called and held pursuant to sections 4301.32 to 4301.361 of the Revised Code, but no such election shall be held in any election precinct, residence district, or part of a residence district that is part of the precinct or district on a question contained in section 4301.35 or 4301.351 of the Revised Code until four years have passed since the date of the most recent election in that precinct or district on that question.

HISTORY: 1989 H 481, eff. 7-1-89
1988 H 562; 1984 H 502; 1983 H 105; 1978 H 79; 1977 H 136; 1969 H 616; 1953 H 1; GC 6064-35

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.04

CROSS REFERENCES

Frequency of local option elections on sale of beer, 4305.14

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 54, 69, 74

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

34 OS(2d) 259, 298 NE(2d) 134 (1973), State ex rel Waterloo Brown Derby Restaurant v Summit County Bd of Elections. The word "district," as used in RC 4301.37, must be held to include all precincts making up any residence district in which a local option election has been held pursuant to petitions filed in compliance with RC 4301.33 so as to prevent the holding of another such election more often than once in each four-year period in any part of that district.

16 OS(2d) 47, 242 NE(2d) 566 (1968), Canton v Imperial Bowling Lanes, Inc. Annexation of township territory to a municipal corporation does not change the local option status of that territory as wet or dry.

41 Misc 151, 324 NE(2d) 798 (CP, Richland 1974), Keffalas, Inc v Liquor Control Comm. Where a valid election under RC 4301.351 is held in a residence district and pursuant to such election licenses are issued, such licenses remain valid until a future election is held involving that territory, or part of that territory, four or more years after the enabling election, and any election held prior to such time affects only that part of the residence district which did not vote in the prior election.

20 Misc 148, 252 NE(2d) 661 (CP, Stark 1966), Canton v Imperial Bowling Lanes, Inc; affirmed by 16 OS(2d) 47, 242 NE(2d) 566 (1968). When a part of a township which has voted dry under a local option election is annexed to a city in which the sale of intoxicating liquors is legal, such sale is not thereby made legal in the territory annexed, since RC 4301.37 prescribes the only method whereby the results of a local option election can be changed.

12 Misc 38, 230 NE(2d) 457 (CP, Franklin 1965), Temple v Liquor Control Comm. The language of RC 4301.37 that "no such local option election shall be held in any district more than once in each four years" has reference to political or election years and not to a computation of 365 days multiplied by four plus one (leap year), beginning with the date of the last prior local option election.

OAG 87-006. Pursuant to the terms of 1986 H 39, § 3, eff. 2-21-87, the local option election questions specified in RC 4301.351 and 4305.14 may appear on the ballot at the primary election, to be held on May 5, 1987, in an election precinct to which the four-year prohibitions of RC 4301.37(A) and 4301.37(B) would otherwise apply.

OAG 71-064. Where local option election is held under RC 4301.351, respecting Sunday sales of intoxicating liquor in residence district of two or more election precincts, as defined in RC 4301.32, new residence district that includes one precinct of such earlier district may not be created for at least the four-year period, as provided in RC 4301.37, following election.

4301.39 Notification to department of liquor control when petition filed; reissuance of permit; permit in safekeeping

(A) When the board of elections of any county determines that a petition for a local option election, presented pursuant to section 4301.33, 4301.331, 4301.332, 4301.333, 4301.334, 4301.335, 4303.29, or 4305.14 of the Revised Code is sufficient, it shall forthwith, by mail, notify the department of liquor control of the fact that such a petition has been filed and approved by it. Upon the determination of the results of any such election, the board shall forthwith notify the department by mail of the result and, unless the election was held pursuant to section 4301.354 or 4301.355 of the Revised Code, shall forward with the notice a plat of the precinct or residence district in which the election was held.

(B) On the plat of a precinct or residence district, forwarded with the results of an election that was held under section 4301.35, 4301.351, or 4303.29 of the Revised Code, the board shall show and designate all of the streets and highways in the precinct or residence district.

(C) On the plat of a precinct or residence district, forwarded with the results of an election that was held under section 4301.352 of the Revised Code, the board shall show and designate all of the following:

(1) All of the streets and highways in the precinct or residence district;

(2) The permit premises designated in the petition that was filed under section 4301.331 of the Revised Code;

(3) A class C or D permit holder's personal or corporate name, and if it is different from his personal or corporate name, the name of the business conducted by the permit holder on the designated premises;

(4) The address of the designated premises.

(D) On the plat of a precinct or residence district, forwarded with the results of an election that was held under section 4301.353 of the Revised Code, the board shall show and designate both of the following:

(1) All of the streets and highways in the precinct or residence district;

(2) The particular location and proposed use designated in the petition that was filed under section 4301.332 of the Revised Code.

(E) With the results of an election that was held under section 4301.354 of the Revised Code, the board shall designate both of the following:

(1) The permit premises designated in the petition that was filed under section 4301.333 of the Revised Code;

(2) The class C or D permit holder's personal or corporate name and, if it is different from his personal or corporate name, the name of the business conducted by the permit holder on the designated premises.

(F) With the results of an election that was held under section 4301.355 of the Revised Code, the board shall designate the particular location and use or proposed use designated in the petition that was filed under section 4301.334 of the Revised Code or, if the petition seeking the election was filed under section 4301.335 of the Revised Code, the board shall designate both of the following:

(1) The permit premises designated in the petition;

(2) The class C or D permit holder's personal or corporate name and, if it is different from his personal or corporate name, the name of the business conducted by the permit holder on the designated premises.

(G) In the event an application for recount is filed with the board of elections pursuant to section 3515.02 of the Revised Code or if an election contest is commenced pursuant to section 3515.09 of the Revised Code, the board of elections shall send written notice of the recount or contest, by certified mail, to the director of liquor control within two days from the date of the filing of the application for recount or the commencement of an election contest. Upon the final determination of an election recount or contest, the board of elections shall send notice of the final determination, by certified mail, to the director of liquor control and the liquor control commission.

(H) If, as the result of a local option election, the use of a permit is made partially unlawful, the department shall, within thirty days after receipt of the final notice of the result of the election, pick up and amend the permit by inserting appropriate restrictions on the permit, and forthwith reissue the permit without charge or refund to the permit holder.

If, as the result of a local option election, except a local option election held pursuant to section 4301.352 or 4301.354 of the Revised Code, the use of a permit is made wholly unlawful, the permit holder may, within thirty days after the certification of such final result by the board of elections to the department, deliver his permit to the department for safekeeping as provided in section 4303.272 of the Revised Code.

(I) If a municipal corporation or township has been paid all the moneys due it from permit fees under section 4301.30 of the Revised Code, it shall refund to the department ninety per cent of the money attributed to the unexpired portion of all permits which are still in force at the time of a local option election that makes use of the permits unlawful, except that no refund shall be made for the unexpired portion of a license year that is less than thirty days. Failure of the municipal corporation or township to refund the amount due entitles the permit holders to operate under their permits until the refund has been made.

If a municipal corporation or township has been paid all the money due it from permit fees under section 4301.30 of the Revised Code, it shall refund to the department ninety per cent of the money attributable to the unexpired portion of a permit at the time a local option election under section 4301.352 of the Revised Code makes use of the permit unlawful, except that no refund shall be made for the unexpired portion of a license year that is less than thirty days. Failure of the municipal corporation or township to refund the amount due entitles the permit holder to operate under his permit until the refund has been made.

HISTORY: 1989 H 481, eff. 7-1-89
1988 H 562; 1984 H 502; 1983 H 105; 1978 H 79; 132 v H 815; 1953 H 1; GC 6064-37

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 46, 48, 52, 57 to 59, 61, 63, 65, 68, 74, 104

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

16 OS(2d) 47, 242 NE(2d) 566 (1968), Canton v Imperial Bowling Lanes, Inc. One may have a D permit for a particular location and yet be prohibited from selling intoxicating liquor at that location by reason of a valid local option election against such a sale in the territory including that location.

11 App(3d) 75, 11 OBR 126, 462 NE(2d) 1386 (Franklin 1983), Scioto Trails Co v Liquor Control Dept. Neither the Due Process Clause nor the Equal Protection Clause of the US and Ohio Constitutions is violated by RC 4301.39 and 4301.391, which provide for business to terminate under an existing liquor license due to a local-option election.

11 App(3d) 75, 11 OBR 126, 462 NE(2d) 1386 (Franklin 1983), Scioto Trails Co v Liquor Control Dept. Where a local-option election causes an area to become dry, liquor permittees in the affected area may not operate a liquor business at the permit location, but the permit itself may be transferred to another location or person pursuant to RC 4303.272, or it may be placed in safekeeping pursuant to RC 4301.39.

41 Misc 151, 324 NE(2d) 798 (CP, Richland 1974), Keffalas, Inc v Liquor Control Comm. Where a valid election under RC 4301.351 is held in a residence district and pursuant to such election licenses are issued, such licenses remain valid until a future election is held involving that territory, or part of that territory, four or more years after the enabling election, and any election held prior to such time affects only that part of the residence district which did not vote in the prior election.

OAG 71-064. Where local option election is held under RC 4301.351, respecting Sunday sales of intoxicating liquor in residence district of two or more election precincts, as defined in RC 4301.32, new residence district that includes one precinct of such earlier district may not be created for at least the four-year period, as provided in RC 4301.37, following election.

4301.391 Enforcement of local option election

No permit premises shall remain in operation inconsistent with the results of a local option election after the thirty day period set forth in section 4301.39 of the Revised Code and no court other than in a recount or election contest shall suspend or hold in abeyance any restriction or cancellation brought about by a local option election pursuant to sections 4301.32 to 4301.41, inclusive, and 4305.14 of the Revised Code.

HISTORY: 132 v H 815, eff. 6-4-68

Penalty: 4301.99(A)
Prohibition: 4301.70

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 53, 59, 65

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

11 App(3d) 75, 11 OBR 126, 462 NE(2d) 1386 (Franklin 1983), Scioto Trails Co v Liquor Control Dept. Neither the Due Process Clause nor the Equal Protection Clause of the US and Ohio Constitutions is violated by RC 4301.39 and 4301.391, which provide for business to terminate under an existing liquor license due to a local-option election.

41 Misc 151, 324 NE(2d) 798 (CP, Richland 1974), Keffalas, Inc v Liquor Control Comm. Where a valid election under RC 4301.351 is held in a residence district and pursuant to such election licenses are issued, such licenses remain valid until a future election is held involving that territory, or part of that territory, four or more years after the enabling election, and any election held prior to such time affects only that part of the residence district which did not vote in the prior election.

4301.40 Local option not to affect certain permits

No local option election held pursuant to sections 4301.32 to 4301.39 of the Revised Code shall affect or prohibit the following:

(A) The transportation, possession, or consumption of intoxicating liquors within the precinct or residence district in which such election is held, nor sales in such precinct or residence district under B-3, E, or G permits;

(B) The sale of intoxicating liquors, at a permit premises located at any publicly owned airport, as defined in section 4563.01 of the Revised Code, at which commercial airline companies operate regularly scheduled flights on which space is available to the public, provided the permit holder

operates pursuant to the authority of a liquor permit issued pursuant to Chapter 4303. of the Revised Code.

HISTORY: 1988 H 562, eff. 6-29-88
1979 H 324; 1953 H 1; GC 6064-38

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 56

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

NOTES ON DECISIONS AND OPINIONS

1950 OAG 1354. Local option election, under Liquor Control Act, determines the question only whether or not the "sale" of intoxicating liquors may be permitted in the district concerned, and under this section, such election shall not in any way affect the possession or consumption of intoxicating liquors within the district.

4301.401 Permits in annexed territories valid

(A) Notwithstanding sections 4301.32 to 4301.391 and 4305.14 of the Revised Code, and the provisions for local option elections and the election on the question of repeal of Section 9 of Article XV, Ohio Constitution, in section 4303.29 of the Revised Code, all C and D permits issued prior to December 4, 1968, by the department of liquor control with respect to premises located in territory annexed prior to December 4, 1968, to any township or municipal corporation in which the sale of beer or intoxicating liquor is allowed under C or D permits, and outstanding on said date or renewable as of said date under section 4303.271 of the Revised Code shall be considered as valid and lawfully issued, and to entitle the holder to the privileges thereof, unless such permit has been finally revoked under Chapter 4301. of the Revised Code, and shall be renewed by the department subject to section 4303.271 of the Revised Code, except that this section does not apply to a local option election held after November 17, 1969.

(B) Notwithstanding sections 4301.32 to 4301.391 and 4305.14 of the Revised Code, and the provisions for local option elections and the election on the question of repeal of Section 9 of Article XV, Ohio Constitution, in section 4303.29 of the Revised Code, the department of liquor control may issue any C or D permit to a qualified applicant for a permit premises located in an area which was formerly a part of the uninhabited, unincorporated area of a township in which the sale of beer or intoxicating liquor under that C or D liquor permit is prohibited but which is currently a part of a precinct or residence district in a municipal corporation in which the sale of beer or intoxicating liquor under that C or D permit is allowed.

HISTORY: 1988 H 562, eff. 6-29-88
1983 H 291; 1969 H 150

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 55

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq., 117

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.402 Sale at state-owned lodges

Sections 4301.32 to 4301.391, 4301.41, and 4305.14 of the Revised Code and the provisions for local option elections and the election on the question of the repeal of Section 9 of Article XV, Ohio Constitution, in section 4303.29 of the Revised Code, do not affect or prohibit the sale of beer or intoxicating liquor at a hotel, motel, or lodge required to be licensed under section 3731.03 of the Revised Code that contains at least fifty rooms for registered transient guests and is owned by the state or a political subdivision or conservancy district of the state, provided that the permit holder for the hotel, motel, or lodge operates pursuant to the authority of a liquor permit issued pursuant to Chapter 4303. of the Revised Code.

HISTORY: 1983 S 121, eff. 9-27-83

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 56

Am Jur 2d: 45, Intoxicating Liquors § 79 et seq., 87 et seq., 96 et seq., 106 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 ALR2d 863

4301.403 Permits for exhibition premises

(A) As used in this section, "exhibition premises" means a premises at the site where an exhibition sanctioned by the U.S. Christopher Columbus quincentenary jubilee commission is being or has been held, if the exhibition is or was sponsored by an organization that also is sponsoring or has sponsored an exhibition sanctioned by the international association of horticulture producers.

(B) Sections 4301.32 to 4301.391 and 4305.14 of the Revised Code and the provisions for local option elections and the election on the question of the repeal of Section 9 of Article XV, Ohio Constitution, in section 4303.29 of the Revised Code do not affect or prohibit the sale of beer or intoxicating liquor at an exhibition premises if the permit holder for the premises operates pursuant to the authority of a D liquor permit issued pursuant to Chapter 4303. of the Revised Code.

Permit D-6 shall be issued to the holder of any D permit that authorizes the sale of intoxicating liquor and that is issued for an exhibition premises to allow the sale of intoxicating liquor under the permit at the premises between the hours of one p.m. and midnight on Sunday, whether or not such sale has been authorized in an election held under section 4301.351 of the Revised Code. Notwithstanding section 4301.351 of the Revised Code, the holder of a D permit issued for an exhibition premises may sell beer on Sunday whether or not the sale of intoxicating liquor has been authorized in an election held under that section.

(C) Nothing in section 4303.29 of the Revised Code shall be construed to restrict the issuance of a D permit for an exhibition premises. An application for a D permit for an exhibition premises is exempt from the population quota restrictions contained in section 4303.29 of the Revised Code and from the population quota restrictions contained in any rule of the liquor control commission. The location of a D permit issued for an exhibition premises shall not be transferred. An applicant applying for a D-1,

D-2, D-3, D-4, or D-5 permit for an exhibition premises is not subject to section 4303.31 of the Revised Code.

HISTORY: 1989 H 481, eff. 7-1-89

4303.29 Restrictions on issuance of permits; election on sale of spirituous liquor by the glass; distribution of instructions

(A) No permit, other than an H permit, shall be issued to a firm or partnership unless all the members of said firm or partnership are citizens of the United States and a majority have resided in this state for one year prior to application for such permit. No permit, other than an H permit, shall be issued to an individual unless he is a citizen of the United States who has resided in this state for at least one year prior to application for such permit. No permit, other than an E or H permit, shall be issued to any corporation organized under the laws of any country, territory, or state other than Ohio until it has furnished the department of liquor control with evidence that it has complied with the laws of this state relating to the transaction of business in this state.

No person heretofore convicted of any felony shall receive or be permitted to retain any permit; nor shall such person have an interest, directly or indirectly, in any permit. No holder of a permit shall sell, assign, transfer, or pledge such permit, without the written consent of the department.

(B)(1) No more than one of each type of C or D permits shall be issued to any one person, firm, or corporation in any county having a population of less than twenty-five thousand, and no more than one of each type of C or D permits to any one person, firm, or corporation for any additional twenty-five thousand or major fraction thereof in any county having a greater population than twenty-five thousand, provided that in the case of D-3, D-3a, D-4, and D-5 permits no more than one permit shall be issued to any one person, firm, or corporation in any county having a population of less than fifty thousand, and no more than one such permit to any one person, firm, or corporation for any additional fifty thousand or major fraction thereof in any county having a greater population than fifty thousand.

(2) No D-3 permit shall be issued to any club unless such club has been continuously engaged in the activity specified in section 4303.15 of the Revised Code, as a qualification for such class of permit, for two years at the time such permit is issued.

(3) Upon application by properly qualified persons, one C-1 and C-2 permit shall be issued for each one thousand population or part thereof, and one D-1 and D-2 permit shall be issued for each two thousand population or part thereof, in each municipal corporation and in the unincorporated area of each township.

Not more than one D-3, D-4, or D-5 permit shall be issued for each two thousand population, or part thereof, in any municipal corporation and in the unincorporated area of any township, except that in any city of a population of fifty-five thousand or more one D-3 permit may be issued for each fifteen hundred population, or part thereof.

(4) Nothing in this section shall be construed to restrict the issuance of a permit to a municipal corporation for use at a municipally owned airport at which commercial airline companies operate regularly scheduled flights on which space is available to the public. A municipal corporation applying for a permit for such a municipally owned airport is exempt, in regard to that application, from the population restrictions contained in this section and from population quota restrictions contained in any rule of the liquor control commission. A municipal corporation applying for a D-1, D-2, D-3, D-4, or D-5 permit for such a municipally owned airport is subject to section 4303.31 of the Revised Code.

Nothing in this section shall be construed to prohibit the issuance of a D permit to the board of trustees of a soldiers' memorial for a premises located at a soldiers' memorial established pursuant to Chapter 345. of the Revised Code. An application for a D permit by such a board for such a premises is exempt from the population restrictions contained in this section and from the population quota restrictions contained in any rule of the liquor control commission. The location of a D permit issued to the board of trustees of a soldiers' memorial for a premises located at a soldiers' memorial shall not be transferred. A board of trustees of a soldiers' memorial applying for a D-1, D-2, D-3, D-4, or D-5 permit for such a soldiers' memorial is subject to section 4303.31 of the Revised Code.

Nothing in this section shall be construed to restrict the issuance of a permit for a premises located at a golf course owned by a municipal corporation, township, or county, owned by a park district created under Chapter 1545. of the Revised Code, or owned by the state. The location of such a permit issued on or after September 26, 1984, for a premises located at such a golf course shall not be transferred. Any application for such a permit is exempt from the population quota restrictions contained in this section and from the population quota restrictions contained in any rule of the liquor control commission. A municipal corporation, township, county, park district, or state agency applying for a D-1, D-2, D-3, D-4, or D-5 permit for such a golf course is subject to section 4303.31 of the Revised Code.

(C)(1) As used in this division, "residence district" has the same meaning as in section 4301.01 of the Revised Code.

(2) No D-3, D-4, D-5, or D-5a permit shall be issued in any election precinct or residence district in any municipal corporation or in any election precinct or residence district in the unincorporated area of any township, in which at the November, 1933, election a majority of the electors voting thereon in the municipal corporation or in the unincorporated area of the township voted against the repeal of Section 9 of Article XV, Ohio Constitution, unless the sale of spirituous liquor by the glass is authorized by a majority vote of the electors voting on the question in the precinct or residence district at an election held pursuant to this section or by a majority vote of the electors of the precinct or residence district voting on question (C) at a special local option election held in the precinct or residence district pursuant to section 4301.35 of the Revised Code. Upon the request of an elector, the board of elections of the county that encompasses the precinct or the residence district shall furnish the elector with a copy of the instructions prepared by the secretary of state under division (P) of section 3501.05 of the Revised Code and, within fifteen days after the request, a certificate of the number of signatures required for a valid petition under this section.

Upon the petition of thirty-five per cent of the total number of voters voting in any such precinct or residence district for the office of governor at the preceding general

election, filed with the board of elections of the county in which such precinct or the residence district is located not later than seventy-five days before a general election, such board shall prepare ballots and hold an election at such general election upon the question of allowing spirituous liquor to be sold by the glass in such precinct or residence district. Such ballots shall be approved in form by the secretary of state. The results of such election shall be certified by the board to the secretary of state, who shall certify the same to the department.

(3) No holder of a class D-3 permit issued for a boat or vessel shall sell spirituous liquor in any precinct, in which the election provided for in this section may be held, unless the sale of such liquor by the drink has been authorized by vote of the electors as provided in this section or in section 4301.35 of the Revised Code.

(D) Any holder of a C or D permit whose permit premises were purchased in 1986 or 1987 by the state of Ohio or any state agency for highway purposes shall be issued the same permit at another location notwithstanding any quota restrictions contained in this chapter or in any rule of the liquor control commission.

HISTORY: 1990 H 405, eff. 4-11-91
1988 H 306, H 562; 1986 H 39, H 555; 1984 H 502, H 454, H 458; 1983 H 134; 1980 H 1062; 1979 H 324; 1978 H 247; 1976 H 411; 1973 S 343; 1971 S 349; 1969 H 150; 1953 H 1; GC 6064-17

Penalty: 4303.99(C)
Prohibition: 4303.37

PRACTICE AND STUDY AIDS

Carroll, Ohio Administrative Law, Text 15.02

CROSS REFERENCES

Permits, procedure where quota is filled, OAC 4301:1-1-11
Population estimates of political subdivisions for determining quotas, OAC 4301:1-1-64

Secretary of state, duties and powers, 3501.05
Liquor control law, residence district defined, 4301.01
Effects of local option election, 4301.362
Local option election as to convention center, effect on, 4301.323, 4301.37
Notification to department of liquor control when petition filed, reissuance of permit, permit in safekeeping, 4301.39
C and D permits in annexed territories valid, 4301.401
Liquor control, sale at state-owned lodges, 4301.402
Liquor permit for exhibition premises, effect on, 4301.403

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 57, 58, 83, 107, 108, 116, 119, 136
Am Jur 2d: 45, Intoxicating Liquors § 117, 134 to 136, 147 et seq., 153, et seq., 191

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. Construction
3. Board action
4. Freeze regulations

1. Constitutional issues

69 Abs 556, 118 NE(2d) 713 (CP, Franklin 1954), Papatheodoro v Liquor Control Dept. The statutory provision that no person convicted of a felony may receive a liquor permit is constitutional.

2. Construction

16 OS(2d) 47, 242 NE(2d) 566 (1968), Canton v Imperial Bowling Lanes, Inc. One may have a D permit for a particular location and yet be prohibited from selling intoxicating liquor at that location by reason of a valid local option election against such sale in the territory including that location.

158 OS 213, 107 NE(2d) 321 (1952), Abraham v Fioramonte. Permits issued by the department of liquor control are personal licenses and are not property which can be mortgaged or seized under execution or court order for the satisfaction of debt.

133 OS 50, 11 NE(2d) 245 (1937), State ex rel Cozart v Carran. A provision in a municipal ordinance, limiting licenses for the sale of spirituous liquor under permits D-3, D-3a and D-5 to one for every thirty-five hundred of the population, is in conflict with this section, and is therefore void under O Const Art XVIII §3, permitting municipalities to adopt local police regulations not in conflict with general laws.

129 OS 140, 194 NE 11 (1934), State ex rel Olympia Athletic Club v Liquor Control Dept. Where a township, exclusive of the territory of a municipal corporation situated therein, voted against the repeal of O Const Art XV §9, at the November, 1933 election, and at the same time one of the two township voting precincts therein voted for repeal, a class D-4 permit cannot lawfully be issued in the precinct so voting. In such case the township, exclusive of such municipal territory, and not the voting precinct, is the liquor control district.

70 App(2d) 219, 436 NE(2d) 543 (1980), Painesville Raceway, Inc v Liquor Control Dept. Whether the provisions of RC Ch 4303 preclude the department of liquor control from issuing more than one liquor permit to separate applicants for the same location is a question of interpretation of state statutes and rules and regulations of the liquor control commission, and is within the perimeters of the appellate jurisdiction of the court of appeals pursuant to RC 119.12.

70 App(2d) 219, 436 NE(2d) 543 (1980), Painesville Raceway, Inc v Liquor Control Dept. Where the holder of a liquor permit issued by the department of liquor control for a specific location does not have the legal right to exclusive, year-round possession of the premises at such location, the provisions of RC Ch 4303 do not prohibit the department of liquor control from issuing a second liquor permit for that location to another applicant for periods during the year when such applicant is entitled to exclusive possession of the same premises.

22 Misc 254, 255 NE(2d) 587 (CP, Franklin 1970), Whitt v Cook. RC 4303.29 authorizes holding of an election on question of sale of spirituous liquor by glass in only one of following two types of liquor control districts: (1) a municipal corporation or (2) a township, exclusive of any municipal corporation or part thereof, so that a part of a municipal corporation may not be created as a liquor control district.

22 Misc 254, 255 NE(2d) 587 (CP, Franklin 1970), Whitt v Cook. Since, under Ohio liquor statutes, citizen and elector of a precinct in which it is sought to authorize sale of liquor is member of a class expressly recognized as having a special interest in such action, such person has standing as plaintiff in action to enjoin unlawful attempt to exercise electoral process to that end.

22 Misc 254, 255 NE(2d) 587 (CP, Franklin 1970), Whitt v Cook. Exercise of purported right to issue liquor permits allegedly resulting from election held in precincts not eligible to become a liquor control district under RC 4303.29 may be restrained by injunction, although no challenge by election contest was filed pursuant to RC 3515.08.

7 Misc 292, 220 NE(2d) 151 (Muni, Canton 1966), Canton v Imperial Bowling Lanes, Inc. Ohio has fully and completely covered the subject of the control and sale of all intoxicating beverages within the state, so a city ordinance prohibiting the sale of intoxicating liquor in a particular zoning district is invalid. (See also Canton v Imperial Bowling Lanes, Inc, 16 OS(2d) 47, 242 NE(2d) 566 (1968).)

91 Abs 596, 192 NE(2d) 801 (CP, Stark 1963), Allied Investment Credit Corp v Stardust Lounge, Inc. Liquor permits are not property such as can be validly covered by a mortgage.

69 Abs 556, 118 NE(2d) 713 (CP, Franklin 1954), Papatheodoro v Liquor Control Dept. A liquor license is not "property" within the meaning of O Const Art I §1.

60 Abs 345, 102 NE(2d) 266 (App, Franklin 1951), Mandalla v Liquor Control Bd. A regulation of the Ohio board of liquor control which attempts to fix the number of permits to be issued upon a variable basis without relation to the central purpose of the Liquor Control Act, that the number of permit holders be governed by considerations of public health, welfare and morality, is unreasonable and invalid.

OAG 70-095. "Population" for purposes of RC 4303.29 is to be determined by relevant and competent evidence, and preliminary or advanced census figures constitute such evidence.

OAG 70-095. Each application for a liquor permit stands on its own and availability of quota opening for such permit is to be determined by relevant and competent evidence; such quota opening must exist at time a permit is issued.

1963 OAG 112. A club which is the holder of a D-4 permit may be issued an additional class C or D permit at the same location, provided that it meets all the requirements independently for each permit, or at a different location, provided that it meets all the requirements for each permit independently at each location.

1957 OAG 1153. Where a municipality is incorporated subsequent to November, 1933, the condition precedent to an election on the sole question of the sale of liquor by the glass in that municipality pursuant to RC 4303.29 is impossible of fulfillment.

1957 OAG 658. Type D liquor permits issued for a ship sailing between Detroit and Cleveland are not permits issued "in any county or municipal corporation" nor "in any political subdivision within the meaning of the quota provisions of RC 4303.29 or regulation 64 of the department of liquor control, but type E or H permits for such a ship are deemed to have been issued in the municipal corporation or township in which the owner or operator of such vessel has his principal office or place of business in Ohio for purposes of distribution of fees under RC 4301.30.

1949 OAG 867. Provision prohibiting the issuance of any permit under the Liquor Control Act does not apply to a person convicted of a felony who has received a pardon from the president of the United States or the governor of any state having jurisdiction.

1943 OAG 6457. Where privilege of local option with respect to sale of spirituous liquor is sought to be exercised it is necessary to submit to electors each and all of questions set out in GC 6064-33 (RC 4301.35); board of elections of county wherein district is located cannot submit to electors of such district at next general election sole question of whether sale of spirituous liquor by glass shall be permitted therein, even though petition bearing number of signatures required by GC 6064-32 (RC 4301.33) is filed with it sixty days before such election.

1939 OAG 947. Under this section, population limits on issuance of permits discussed.

1935 OAG 4937. Prohibition on issuance by the department of liquor control of class D-3, class D-4, class D-5 permits in townships and municipalities wherein the electors at the November, 1933 election voted against the repeal of constitutional prohibition, does not prevent the department of liquor control from issuing the other classes of permits subject to the restrictions of this chapter.

3. Board action

98 App 500, 130 NE(2d) 380 (1954), Mastroianni v Liquor Control Bd. Where the enforcement of a rule of the board of liquor control would result in a gross injustice to an applicant for transfer of a liquor permit, the applicant may seek relief under RC 119.11.

74 Abs 225, 140 NE(2d) 77 (CP, Franklin 1954), Kleinman v Liquor Control Dept. The holder of two liquor permits cannot have a bona fide sale of his business and assets in connection with the transfer of one permit and still have business and assets to qualify his remaining permit.

72 Abs 334, 135 NE(2d) 82 (App, Franklin 1955), American Legion Clifton Post v Liquor Control Bd. Board of liquor control must be given wide discretion in determining facts and in resolving those facts for or against an applicant for a permit.

69 Abs 570, 121 NE(2d) 116 (CP, Franklin 1951), State v Sassler; affirmed by 67 Abs 353, 120 NE(2d) 332 (App, Franklin 1951). Evidence that a convicted felon showed patrons to their seats and saw that they were served, and was seen counting money from the cash register constitutes evidence that he was employed by a permit holder.

69 Abs 535, 119 NE(2d) 140 (CP, Franklin 1954), Morton v Liquor Control Bd. An individual convicted for violating the national Prohibition Act, and who subsequently served seven months in the army during World War II is not thereby pardoned so as to be entitled to a liquor permit.

69 Abs 431, 119 NE(2d) 147 (CP, Franklin 1954), Mastroianni v Liquor Control Bd; reversed by 98 App 500, 130 NE(2d) 380 (1954). The state is not estopped from refusing to transfer a liquor permit in violation of an existing regulation merely because the chief of the permit division erroneously advised the permit holder that he would be permitted to transfer such permit and such permit holder expended funds in reliance thereon.

68 Abs 361, 122 NE(2d) 420 (CP, Franklin 1954), American Legion Clifton Post No. 421 v Liquor Control Bd; reversed by 72 Abs 334, 135 NE(2d) 82 (App, Franklin 1955). The department of liquor control was not justified in refusing to issue a D-4 permit to an American legion post upon the ground that an investigator had purchased liquor there at a time when such post did not have any license.

68 Abs 326, 122 NE(2d) 425, 793 (CP, Franklin 1953), Kenwood Country Club v Liquor Control Bd. Board of liquor control acted unlawfully in rejecting application for D-4 permit where number outstanding in area was less than statutory census quota and less than regulation 64 quota.

67 Abs 375, 120 NE(2d) 329 (App, Franklin 1951), Liquor Control Bd v Jackson. The board of liquor control is justified in rejecting an application for a liquor permit where the evidence shows that the applicant's husband, a twice-convicted felon, was responsible for the management of the business and shared in the profits.

67 Abs 353, 120 NE(2d) 332 (App, Franklin 1951), Liquor Control Dept v Sassler. The board of liquor control is authorized in revoking a permit where the record establishes that a convicted felon was employed on the premises and that the permit holder prevented, hindered and obstructed agents in inspecting the premises.

62 Abs 346, 107 NE(2d) 412 (App, Franklin 1951), Smiley v Liquor Control Dept. Where in an application for a renewal of a liquor permit the applicant made false statements about his father's financial interest in the business and his previous conviction of a felony, and the father operated the business for long periods of time, the department was warranted in rejecting the application for renewal.

4. Freeze regulations

63 OS(2d) 201, 407 NE(2d) 507 (1980), C.K. & J.K., Inc v Fairview Shopping Center Corp. The general assembly did not intend to preclude private lease restrictions regarding the sale of alcohol when it enacted RC Ch 4303 which regulates the sale of alcohol by requiring permits to make such sales.

165 OS 96, 133 NE(2d) 325 (1956), Stouffer Corp v Liquor Control Bd. While the board of liquor control may reasonably regulate the number of permits of any class within any subdivisions and further limit certain classes where the general assembly has imposed a limitation, a seven-year freeze on permits adopted in 1949 was unreasonable in 1956.

99 App 139, 131 NE(2d) 844 (1955), Scharff v Liquor Control Bd. Where, subsequent to the filing of an application for a liquor permit, the department of liquor control adopts a regulation impos-

ing a freeze on the number of permits, the law at the time of the passing on the application by the proper authorities must govern.

98 App 419, 129 NE(2d) 841 (1954), Haynay v Liquor Control Bd. The provision of regulation no. 14 of the board of liquor control, by which liquor permits may be transferred "from one location to another" does not operate to take the transfer of such permits out from the general "freeze" provisions of regulation no. 64 of the board of liquor control.

74 Abs 225, 140 NE(2d) 77 (CP, Franklin 1954), Kleinman v Liquor Control Dept. The limitation as to the number of liquor permits in a particular territory is not affected by changes of political boundaries of subdivisions of the state by incorporation or annexation proceedings.

OAG 85-027. If the department of liquor control denies an application for a liquor permit on the basis that the issuance of the permit would cause the number of that type of permit issued to exceed the quota set by statute or by administrative rule, the Ohio liquor control commission may not order the permit to be issued, unless the commission, in considering an appeal from such denial pursuant to RC 4301.28(A), finds that the department's denial is incorrect as a matter of fact or law.

1954 OAG 3794. Regulation 64 of the Ohio board of liquor control was amended by implication by RC 4303.291 so that the freeze on D-4 permits does not apply to the fraternal organizations designated therein. In the application of such regulation as amended (eliminating any question of the effect of the statutory quota provided by RC 4303.29), the number of permits which may currently be issued thereunder to applicants other than such fraternal organizations should be determined by reference to the number of permits issued and outstanding on April 11, 1949, to permittees other than such fraternal organizations, and not to the total number of permits issued and outstanding on such date.

BEER

4305.08 "Beer" defined

As used in sections 4305.11 and 4305.14 of the Revised Code, "beer" has the same meaning as given in division (B)(2) of section 4301.01 of the Revised Code.

HISTORY: 1982 H 357, eff. 10-1-82
1953 H 1; GC 6212-63

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 45, Intoxicating Liquors § 11

NOTES ON DECISIONS AND OPINIONS

135 OS 369, 21 NE(2d) 108 (1939), Jolly v Deeds. In an election to determine whether the sale of beer should be permitted by holders of C and D permits in a village, four ballots, filed under the honest but mistaken belief that the precinct where a voter casts his ballot is unimportant so long as he does not vote elsewhere, are invalid, since they were cast in wrong precinct.

1957 OAG 7572. Sales of malt liquor are subject to the excise tax imposed as provided in RC 4305.01 et seq. and 4301.42 et seq., and are not subject to taxation under the provisions of RC 5739.02.

1951 OAG 2606. A-1 and B-1 permittees under the liquor control act may lawfully deliver beer and malt beverages as defined in this section for home use to individuals residing in a district which has been voted "dry" in a local option election.

4305.14 Local option on sale of beer; information provided to and by petitioner; procedure of board of elections; distribution of instructions

(A) As used in this section, "residence district" has the same meaning as in section 4301.01 of the Revised Code.

(B) The following questions regarding the sale of beer by holders of C or D permits may be presented to the qualified electors of an election precinct or residence district:

(1) "Shall the sale of beer as defined in section 4305.08 of the Revised Code under permits which authorize sale for off-premises consumption only be permitted within this (precinct) (district)?"

(2) "Shall the sale of beer as defined in section 4305.08 of the Revised Code under permits which authorize sale for on-premises consumption only, and under permits which authorize sale for both on-premises and off-premises consumption, be permitted in this (precinct) (district)?"

The exact wording of the question as submitted and form of ballot as printed shall be determined by the board of elections in the county wherein the election is held, subject to approval of the secretary of state.

Upon the request of an elector, a board of elections of a county that encompasses an election precinct or residence district shall furnish to the elector a copy of the instructions prepared by the secretary of state under division (P) of section 3501.05 of the Revised Code and, within fifteen days after the request, with a certificate indicating the number of valid signatures that will be required on a petition to hold a special election in that precinct or residence district on either or both of the questions specified in this section.

The board shall provide to a petitioner, at the time he takes out a petition, the names of the streets and, if appropriate, the address numbers of residences and business establishments within the precinct or residence district in which the election is sought, and a form prescribed by the secretary of state for notifying affected permit holders of the circulation of a petition for an election for the submission of one or more of the questions specified in division (B) of this section. The petitioner shall, not less than forty-five days before the petition-filing deadline for an election provided for in this section, file with the department of liquor control the information regarding names of streets and, if appropriate, address numbers of residences and business establishments provided to him by the board of elections, and specify to the department the precinct or residence district that is concerned and the filing deadline. The department shall, within a reasonable period of time and not later than fifteen days before the filing deadline, supply the petitioner with a list of the names and addresses of permit holders who would be affected by the election. The list shall contain a heading with the following words: "liquor permit holders who would be affected by the question(s) set forth on a petition for a local option election."

Within five days after a petitioner has received from the department the list of liquor permit holders who would be affected by the question or questions set forth on a petition for local option election, he shall, using the form provided to him by the board of elections, notify by certified mail each permit holder whose name appears on that list. The form for notifying affected permit holders shall require the petitioner to state his name and street address and shall contain a statement that a petition is being circulated for an election for the submission of the question or questions specified in division (B) of this section. The form shall

require the petitioner to state the question or questions to be submitted as they appear on the petition.

The petitioner shall attach a copy of the list provided to him by the department to each petition paper. A part petition paper circulated at any time without the list of affected permit holders attached to it is invalid.

At the time he files the petition with the board of elections, the petitioner shall provide to the board of elections the list supplied to him by the department and an affidavit certifying that he notified all affected permit holders on the list in the manner and within the time required in this section and that, at the time each signer of the petition affixed his signature to the petition, the petition paper contained a copy of the list of affected permit holders.

Within five days after receiving a petition calling for an election for the submission of the question or questions set forth in this section, the board of elections shall give notice by certified mail that it has received the petition to all liquor permit holders whose names appear on the list of affected permit holders filed by the petitioner as furnished to him by the department. Failure of the petitioner to supply the affidavit required by this section and a complete and accurate list of liquor permit holders as furnished to him by the department of liquor control invalidates the entire petition. The board of elections shall provide to a permit holder who would be affected by a proposed local option election, on the permit holder's request, the names of the streets, and, if appropriate, the address numbers of residences and business establishments within the precinct or residence district in which the election is sought. The board may charge a reasonable fee for this information when provided to the petitioner and the permit holder.

Upon presentation not later than four p.m. of the seventy-fifth day before the day of a general or primary election, of a petition to the board of elections of the county wherein such election is sought to be held, requesting the holding of such election on either or both of the questions specified in this section, signed by qualified electors of the precinct or residence district concerned equal in number to thirty-five per cent of the total number of votes cast in the precinct concerned for the office of governor at the preceding general election for that office, in the case of an election within a single precinct, or equal in number to fifty-five per cent of the total number of votes cast in the residence district concerned for the office of governor at the preceding general election for that office, in the case of an election within a residence district, such board shall submit the question or questions specified in the petition to the electors of the precinct or residence district concerned, on the day of the next general or primary election, whichever occurs first.

(C) The board shall proceed as follows:

(1) Such board shall, not later than the sixty-sixth day before the day of the election for which the question or questions on the petition would qualify for submission to the electors of the precinct or residence district, examine and determine the sufficiency of the signatures and review, examine, and determine the validity of such petition and, in case of overlapping precinct petitions or overlapping residence district petitions or overlapping precinct and residence district petitions presented within that period, determine which of the petitions shall govern the further proceedings of the board. In the case where the board determines that two or more overlapping petitions are valid, the earlier petition shall govern. The board shall certify the sufficiency and validity of any petition determined to be valid. The board shall determine the validity of the petition as of the time of certification as described in division (B)(1) of this section.

(2) If the petition is valid, and, in case of overlapping precinct petitions or overlapping residence district petitions or overlapping precinct and residence district petitions, after the board has determined the governing petition, the board shall order the holding of a special election in the precinct or residence district for the submission of the question or questions specified in the petition, on the day of the next general or primary election, whichever occurs first.

All petitions filed with a board of elections under this section shall be open to public inspection under regulations adopted by the board.

(D) Protest against a local option petition may be filed by any qualified elector eligible to vote on the question or questions specified in the petition or by a permit holder in the precinct or residence district as described in the petition, not later than four p.m. of the sixty-fourth day before the day of such general or primary election. Such protest must be in writing and shall be filed with the election officials with whom the petition was filed. Upon filing of such protest the election officials with whom it is filed shall promptly fix the time for hearing the same, and shall forthwith mail notice of the filing of the protest and the time for hearing it to the person who filed the petition which is protested and to the person who filed the protest. At the time fixed, the election officials shall hear the protest and determine the validity of the petition.

(E) If a majority of the electors voting on the question in the precinct or residence district vote "yes" on question (1) or (2) as set forth in division (B) of this section, the sale of beer as specified in that question shall be permitted in the precinct or residence district.

If a majority of the electors voting on the question in the precinct or residence district vote "no" on question (1) or (2) as set forth in division (B) of this section, no C or D permit holder shall sell beer as specified in that question within the precinct or residence district during the period the election is in effect.

(F) No election shall be held under this section on the same question more often than once in each four years. No election shall be held on question (1) or (2) as set forth in division (B) of this section if an election was held in the same precinct or residence district within four years before the date of the election on question (1) or (2) on the question specified in this section before May 13, 1987.

When a local option election has been held under this section prior to April 4, 1985, in a district, as described in this section prior to April 4, 1985, the results of the election shall be effective in the district until another election is held pursuant to this section, but no such election shall be held in any election precinct that is part of the district until four years have passed since the date of the most recent election held under this section in that district.

HISTORY: 1990 H 405, eff. 4-11-91
1988 H 562; 1987 H 206; 1986 H 359; 1984 H 502; 1982 H 357; 1980 H 1062; 1978 H 247; 1977 H 314, H 136; 1976 H 928; 125 v 713; 1953 H 1; GC 6212-62

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 89.02, 89.05, 89.06

CROSS REFERENCES

Secretary of state, duties and powers, 3501.05
Liquor control law, residence district defined, 4301.01
Local option, generally, 4301.32
Local option election following violation of liquor laws, 4301.321
Liquor control law, election as to certain restaurants, 4301.322
Effects of local option election, 4301.362
Local option election as to convention center, effect on, 4301.323, 4301.37
Notification to department of liquor control when petition filed, reissuance of permit, permit in safekeeping, 4301.39
Liquor control, enforcement of local option election, 4301.391
C or D permits in annexed territories valid, 4301.401
Liquor control, sale at state-owned lodges, 4301.402
Liquor permit for exhibition premises, effect on, 4301.403
D-1 permit not affected, 4303.13
D-5 permit not affected, 4303.18
Issuance or transfer of permit within building in more than one election precinct, 4303.261
Safekeeping of liquor permit, cancellation and pick up of permit, renewal, 4303.272

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 1, 60 to 64, 70
Am Jur 2d: 45, Intoxicating Liquors § 78, 279

NOTES ON DECISIONS AND OPINIONS

62 OS(3d) 145 (1991), State ex rel Hinkle v Franklin County Bd of Elections. A circulator of local option election petitions who is to receive remuneration upon the occurrence of a favorable outcome of the local option election has standing to challenge the noncertification of the petitions as he will be "benefitted" or "injured" as a result of the judgment.

62 OS(3d) 145 (1991), State ex rel Hinkle v Franklin County Bd of Elections. A bill addressing matters pertaining to the judicial system, i.e., creation and expansion of courts, violates the "one-subject rule" where the bill also includes the unrelated subject of "residence districts" for the purpose of local option liquor control elections, as the two subjects have no rational relationship or common purpose; therefore, the unrelated portion of the Am Sub HB 200, the local option election sections, shall be severed from the bill and be of no effect.

22 OS(3d) 23, 22 OBR 19, 488 NE(2d) 202 (1986), In re Contested Election on Local Option on Sale of Beer in Clay Twp. A local option election dealing with the sale of beer need not be conducted with the beer issue on a ballot separate from ballots concerning other issues.

37 OS(2d) 53, 307 NE(2d) 258 (1974), State ex rel Snyder v Wheatcraft. Where election board delayed decision on protest to local option petitions until a month after the election was held and then determined the petitions were invalid, mandamus will lie directing the board to count the ballots and declare the result of the election.

34 OS(2d) 129, 296 NE(2d) 676 (1973), Stewart v Trumbull County Bd of Elections. The privilege of local option for beer under RC 4305.14, and for intoxicating liquors under RC 4301.32, extends to any two or more contiguous precincts within a municipal corporation.

135 OS 369, 21 NE(2d) 108 (1939), Jolly v Deeds. In election to determine whether beer as defined by GC 6212-63 (RC 4305.08) should be sold by C and D permit holders in a village, four ballots cast in the honest belief that precinct of voting is unimportant as long as voter does not vote elsewhere, are invalid when cast in the wrong precinct.

No. 10230 (2d Dist Ct App, Montgomery, 6-18-87), Arena Food Service Inc v Montgomery County Bd of Elections. Where a liquor permit holder has actual notice of a local option election scheduled in the precinct in which he is licensed, such permit holder lacks standing to challenge the constitutionality of local option election statutes on the basis that the statutes lack a provision for notice to current liquor permit holders.

OAG 87-006. Pursuant to the terms of 1986 H 39, § 3, eff. 2-21-87, the local option election questions specified in RC 4301.351 and 4305.14 may appear on the ballot at the primary election, to be held on May 5, 1987, in an election precinct to which the four-year prohibitions of RC 4301.37(A) and 4301.37(B) would otherwise apply.

1959 OAG 536. The procedure for a local option election pertaining to the sale of "beer" under a D-1 permit is contained in RC 4305.14.

1959 OAG 536. A local option election on the question of the sale of malt liquors or malt beverages as defined in RC 4301.01 and included in the definition of "intoxicating liquor" found in that section, must be conducted as provided in RC 4301.35, such question to be resolved by the "yes" or "no" vote on question (A) as stated in that section; and a majority vote of "yes" on questions (A), (B), and (C) of such section would authorize the issuance of unrestricted D-2 permits within the district concerned.

1951 OAG 2606. A-1 and B-1 permittees under the Liquor Control Act may lawfully deliver beer and malt beverages for home use to individuals residing in a district which has been voted "dry" in a local option election.

1934 OAG 2381. In holding local option election as to sale of beer, question should be put on ballot "shall the sale of beer as defined in GC 6212-63 (RC 4305.08) be permitted within the district," etc.

1933 OAG 885. 3.2 beer may be manufactured and sold lawfully under permit by Ohio liquor control commission, regardless of local ordinances to the contrary.

1933 OAG 885. This method for prohibiting sale of 3.2 beer is exclusive; sale may be prohibited only by such election, local ordinances notwithstanding.

4305.15 Signatures on local option petition; affidavit of circulator

The petition provided for in section 4305.14 of the Revised Code may consist of one or more separate petition papers. Petitions shall be governed by the rules set forth in section 3501.38 of the Revised Code.

HISTORY: 1980 H 1062, eff. 3-23-81
1953 H 1; GC 6212-62a

CROSS REFERENCES

Secretary of state, duties and powers, 3501.05
Local option, generally, 4301.32

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 61, Intoxicating Liquors § 61
Am Jur 2d: 45, Intoxicating Liquors § 78

NOTES ON DECISIONS AND OPINIONS

52 OS(2d) 9, 368 NE(2d) 294 (1977), State ex rel Humble v Brown. Part-petitions prepared by the secretary of state which contained only a statement of the circulator rather than an affidavit were invalid.

52 OS(2d) 9, 368 NE(2d) 294 (1977), State ex rel Humble v Brown. Part-petitions which were valid on their face and notarized would not be invalidated on basis of testimony of notaries that none of the circulators was asked to swear to or affirm the affidavit.

MOTOR VEHICLES

4503.032 Solicitation of political contributions from deputy registrars; award or termination of contract not to be affected by political contributions

(A) As used in this section, "candidate," "contribution," and "campaign committee" have the same meanings as in section 3517.01 of the Revised Code.

(B) No person shall knowingly solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party, for the governor or his campaign committee, or for any candidate for public office or his campaign committee from a person known by the solicitor to be a deputy registrar under contract with the registrar of motor vehicles.

(C) Neither the registrar nor any person shall award a deputy registrar contract to a person, or promise to do so, because that person pays an assessment or subscription to, or makes a contribution to, any political party, the governor or his campaign committee, or any candidate for public office or his campaign committee. Neither the registrar nor any person shall withhold a deputy registrar contract from a person, or threaten to do so, because that person fails to pay an assessment or subscription to, or fails to make a contribution to, any political party, the governor or his campaign committee, or any candidate for public office or his campaign committee. Neither the registrar nor any person shall terminate a deputy registrar contract awarded to a person, or threaten to do so, because that person fails to pay an assessment or subscription to, or fails to make a contribution to, any political party, the governor or his campaign committee, or any candidate for public office or his campaign committee.

(D) Whoever violates this section shall be fined ten thousand dollars.

HISTORY: 1988 S 1, eff. 11-28-88

CROSS REFERENCES

Contract between the registrar and deputy registrar, OAC 4501:1-6-01

Selection and appointment of deputy registrars, OAC 4501:1-6-02

Public officers, ethics, disclosure of political contributions by deputy registrars, 102.021

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 63A, Public Officers and Employees § 330

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137

4504.02 Levy; purpose; use; county commissioners' resolution

For the purpose of paying the costs of enforcing and administering the tax provided for in this section; and for planning, constructing, improving, maintaining, and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the county's portion of the costs and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the county's portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads; paying any costs apportioned to the county under section 4907.47 of the Revised Code; paying debt service charges on notes or bonds of the county issued for such purposes; paying all or part of the costs and expenses of municipal corporations in planning, constructing, reconstructing, improving, maintaining, and repairing highways, roads, and streets designated as necessary or conducive to the orderly and efficient flow of traffic within and through the county pursuant to section 4504.03 of the Revised Code; purchasing, erecting, and maintaining street and traffic signs and markers; purchasing, erecting, and maintaining traffic lights and signals; and to supplement revenue already available for such purposes, any county by resolution adopted by its board of county commissioners may levy an annual license tax, in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads or highways. Such tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is located in the county levying the tax and shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections 4503.16, 4503.17, 4503.171, 4503.173, 4503.41, and 4503.43, and 4503.46 of the Revised Code.

Prior to the adoption of any resolution levying a county motor vehicle license tax, the board of county commissioners shall conduct two public hearings thereon, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of such hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing.

No resolution levying a county motor vehicle license tax shall become effective sooner than thirty days following its adoption, and such resolution is subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless such resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into immediate effect. Such emergency measure must receive an affirmative vote of all of the members of the board of commissioners, and shall state the reasons for such necessity. A resolution may direct the board of elections to submit the question of levying the tax to the electors of the county at the next primary or general election in the county occurring not less than seventy-five days after such resolution is certified to the board; no such resolution shall go into effect unless approved by a majority of those voting upon it.

HISTORY: 1988 H 385, eff. 6-27-88
1983 H 373; 1980 H 1062; 1978 H 998, § 1; 1977 H 3; 1973 H 90, H 200; 1971 H 136; 1969 H 531; 132 v H 919

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 43.05, 43.07

CROSS REFERENCES

Special license plates, application requirements for volunteer fireman force, OAC 4501:1-7-01

Procedure for submitting to referendum additional tax resolutions adopted by a board of county commissioners, 305.31

Disposition of motor vehicles moneys, 4501.03

Application for motor vehicle registration, transmission of license fees, 4503.10

Special reserved license plate numbers, 4503.42

Registration and licensing of collector's vehicles, 4503.45

Volunteer fireman, application for registration of one privately owned passenger car, 4503.47

Allocation to county undivided local government funds, 5747.51

County budget commission, deduction of expenditures, 5747.62

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15, 20; 86, Taxation § 544

Am Jur 2d: 7A, Automobiles and Highway Traffic § 53, 58 to 74

NOTES ON DECISIONS AND OPINIONS

OAG 90-006. If a county permissive motor vehicle license tax is adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 in April 1989 and the resolution levying the tax is certified to the motor vehicles registrar not later than July 1, 1989, the tax is subject to collection by the registrar and his deputies beginning on January 1, 1990. If such tax is repealed pursuant to RC 4504.021 in November 1989, there is no authority to collect that tax at any time.

OAG 90-006. As used in RC 4504.021, "the current year" means the registration (or calendar) year in which the repeal of a county permissive tax adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 is approved by the electors and the result of the election is certified to the county commissioners.

OAG 77-079. The board of county commissioners may compensate and equip a deputy detailed to enforce RC Ch 5577 from either the annual license tax fund established by RC 4503.02 or the county motor vehicle license tax established by RC 4504.02.

OAG 77-052. A municipal corporation is not precluded from levying a municipal motor vehicle license tax pursuant to RC 4504.06 if the county in which it is located has previously levied such a tax but has failed to certify the resolution levying such a tax with the registrar of motor vehicles.

OAG 76-074. A county may, pursuant to RC 4504.02 and 5535.08, use the proceeds of a county motor vehicle license tax to help pay the cost of repairing township roads.

OAG 72-106. Pleasure trailers, regardless of their weight, are "motor vehicles" under RC 4504.02 and subject to the county motor vehicle tax of $5.00.

OAG 70-065. Proceeds of permissive county motor vehicle license tax may be used to improve streets which are located wholly within municipality if such streets are determined by county engineer to be necessary or conducive to the orderly and efficient flow of traffic within and through the county.

OAG 69-105. A resolution levying a motor vehicle license tax pursuant to RC 4504.02 is subject to referendum as provided for by RC 305.31 only for the thirty-day period immediately following its adoption.

OAG 69-105. A resolution levying a motor vehicle license tax pursuant to RC 4504.02 does not have to be adopted each year prior to collecting such tax each year.

OAG 69-074. Funds derived from RC 4504.02 may be used by both the county and municipalities for the removal of ice and snow, but municipalities are limited in their expenditures to streets designated on the map submitted pursuant to RC 4504.03.

OAG 69-074. A county may expend its portion of funds derived from the county motor vehicle tax levied pursuant to RC 4504.02 for purchase of right-of-way, but municipalities may not expend funds allocated by RC 4504.05 for the purchase of right-of-way.

OAG 69-074. Both the county and municipalities may expend funds derived from RC 4504.02 for the construction and/or maintenance of culverts, bridges and railroad separations.

OAG 69-074. Money received from RC 4504.02 may not be used to pay the salaries of employees of the county engineer's office for inspection work.

OAG 68-127. Nonresident servicemen are exempt from the five dollar permissive tax imposed by RC 4504.02.

OAG 68-084. Expenses incurred by the registrar of motor vehicles in the administration of the county motor vehicle tax should be considered a normal item of the budget, and such expenses cannot properly be assessed against a county.

4504.021 Election to repeal emergency permissive tax

The question of repeal of a county permissive tax adopted as an emergency measure pursuant to section 4504.02, 4504.15, or 4504.16 of the Revised Code may be initiated by filing with the board of elections of the county not less than seventy-five days before the general election in any year a petition requesting that an election be held on such question. Such petition shall be signed by qualified electors residing in the county equal in number to ten per cent of those voting for governor at the most recent gubernatorial election.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the county at the next general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections for county offices in the county. Notice of the election shall be published in a newspaper of general circulation in the district once a week for four consecutive weeks prior to the election, stating the purpose, the time, and the place of the election. The form of the ballot cast at such election shall be prescribed by the secretary of state. The question covered by such petition shall be submitted as a separate proposition, but it may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers. If a majority of the qualified electors voting on the question of repeal approve the repeal, the result of the election shall be certified immediately after the canvass by the board of elections to the county commissioners, who shall thereupon, after the current year, cease to levy the tax.

HISTORY: 1987 H 419, eff. 7-1-87
1980 H 1062; 1973 S 44; 1969 H 531

CROSS REFERENCES

Allocation to county undivided local government funds, 5747.51

County budget commission, deduction of expenditures, 5747.62

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15, 20; 86, Taxation § 53

Am Jur 2d: 7A, Automobiles and Highway Traffic § 53, 58 to 68

NOTES ON DECISIONS AND OPINIONS

OAG 90-006. If a county permissive motor vehicle license tax is adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 in April 1989 and the resolution levying the tax is certified to the motor vehicles registrar not later than July 1, 1989, the tax is subject to collection by the registrar and his deputies beginning on January 1, 1990. If such tax is repealed pursuant to RC 4504.021 in November 1989, there is no authority to collect that tax at any time.

OAG 90-006. As used in RC 4504.021, "the current year" means the registration (or calendar) year in which the repeal of a county permissive tax adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 is approved by the electors and the result of the election is certified to the county commissioners.

4504.06 Municipal levy; when authorized; hearing and referendum requirements

For the purpose of paying the costs and expenses of enforcing and administering the tax provided for in this section; and for planning, constructing, improving, maintaining, and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the municipal corporation's portion of the costs and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the municipal corporation's portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads and streets; paying any costs apportioned to the municipal corporation under section 4907.47 of the Revised Code; paying debt service charges on notes or bonds of the municipal corporation issued for such purposes; purchasing, erecting, and maintaining street and traffic signs and markers; purchasing, erecting and maintaining traffic lights and signals; and to supplement revenue already available for such purposes, the legislative authority of any municipal corporation may by proper legislation levy an annual license tax, in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads or highways. Such tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is in the municipal corporation levying the tax and which are not subject to a county motor vehicle license tax levied by a resolution adopted pursuant to section 4504.02 of the Revised Code. Such tax shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections 4503.16, 4503.17, 4503.171, 4503.173, 4503.41, 4503.43, and 4503.46 of the Revised Code.

No municipal corporation shall enact any ordinance, resolution, or other measure levying a tax pursuant to this section on any motor vehicle registration which would be subject to a resolution previously adopted levying a county motor vehicle license tax where such resolution has not become effective solely because of the filing of a referendum petition pursuant to sections 305.31 to 305.41 of the Revised Code or because the thirty-day period following adoption of the resolution has not expired.

No ordinance, resolution, or other measure levying a municipal motor vehicle license tax shall be enacted as an emergency measure under section 731.30 of the Revised Code or pursuant to the charter of any municipal corporation and each such ordinance, resolution, or other measure is subject to a referendum as provided in sections 731.29 to 731.41 of the Revised Code or by the charter of the municipal corporation.

HISTORY: 1988 H 385, eff. 6-27-88
1983 H 373; 1978 H 998, § 1; 1977 H 3; 1975 H 1; 1973 H 200; 1971 H 136; 132 v H 919

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 19.21, 19.34

CROSS REFERENCES

Special license plates, application requirements for volunteer fireman force, OAC 4501:1-7-01

Distribution of revenue from municipal motor vehicle license taxes, 4501.042
Application for motor vehicle registration, transmission of license fees, 4503.10
Special reserved license plate numbers, 4503.42
Registration and licensing of collector's vehicles, 4503.45
Volunteer fireman, application for registration of one privately owned passenger car, 4503.47
Levy of county motor vehicle license tax, purpose, use, county commissioners' resolution, 4504.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 15, 20
Am Jur 2d: 7A, Automobiles and Highway Traffic § 53, 58 to 74

NOTES ON DECISIONS AND OPINIONS

OAG 77-052. A municipal corporation is not precluded from levying a municipal motor vehicle license tax pursuant to RC 4504.06 if the county in which it is located has previously levied such a tax but has failed to certify the resolution levying such a tax with the registrar of motor vehicles.

OAG 74-010. A municipal corporation has no authority to exempt motorcycles, two-wheel recreational vehicles, and house or camping trailers from a permissive motor vehicle license tax, levied pursuant to RC 4504.06.

OAG 74-010. Where exemptions included in an ordinance levying a tax pursuant to RC 4504.06 are invalid for lack of authority, that part of the ordinance levying the tax is still operative and should be enforced.

4504.15 Additional county motor vehicle license tax; hearings; effective date

For the purpose of paying the costs of enforcing and administering the tax provided for in this section; for the various purposes stated in section 4504.02 of the Revised Code; and to supplement revenue already available for those purposes, any county may, by resolution adopted by its board of county commissioners, levy an annual license tax, that shall be in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles upon the public roads and highways. The tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is located in the county levying the tax but is not located within any municipal corporation levying the tax authorized by section 4504.17 of the Revised Code, and shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections

4503.16, 4503.17, 4503.171, 4503.41, and 4503.43 of the Revised Code.

Prior to the adoption of any resolution levying a county motor vehicle license tax under this section, the board of county commissioners shall conduct two public hearings thereon, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of such hearings shall be given by publication in a newspaper of general circulation in the county once a week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing.

No resolution levying a county motor vehicle license tax under this section shall become effective sooner than thirty days following its adoption, and such resolution is subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into immediate effect. The emergency measure must receive an affirmative vote of all of the members of the board of county commissioners, and shall state the reasons for the necessity. A resolution may direct the board of elections to submit the question of levying the tax to the electors of the county at the next primary or general election occurring not less than seventy-five days after the resolution is certified to the board; no such resolution shall go into effect unless approved by a majority of those voting upon it. A county is not required to enact the tax authorized by section 4504.02 of the Revised Code in order to levy the tax authorized by this section, but no county may have in effect the tax authorized by this section if it repeals the tax authorized by section 4504.02 of the Revised Code after April 1, 1987.

HISTORY: 1987 H 419, eff. 7-1-87

CROSS REFERENCES

Motor vehicles, registration fees, disposition, 4501.03

Motor vehicles, distribution of revenues from county motor vehicle license taxes, 4501.041

Motor vehicles, distribution of revenue from municipal motor vehicle license taxes, 4501.042

NOTES ON DECISIONS AND OPINIONS

OAG 90-006. If a county permissive motor vehicle license tax is adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 in April 1989 and the resolution levying the tax is certified to the motor vehicles registrar not later than July 1, 1989, the tax is subject to collection by the registrar and his deputies beginning on January 1, 1990. If such tax is repealed pursuant to RC 4504.021 in November 1989, there is no authority to collect that tax at any time.

OAG 90-006. As used in RC 4504.021, "the current year" means the registration (or calendar) year in which the repeal of a county permissive tax adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 is approved by the electors and the result of the election is certified to the county commissioners.

4504.16 Additional motor vehicle license tax for counties currently levying tax authorized in R.C. 4504.15; hearings; effective date

For the purpose of paying the costs of enforcing and administering the tax provided for in this section; for the various purposes stated in section 4504.02 of the Revised Code; and to supplement revenue already available for those purposes, any county that currently levies the tax authorized by section 4504.15 of the Revised Code may, by resolution adopted by its board of county commissioners, levy an annual license tax, that shall be in addition to the tax levied by that section and by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles upon the public roads and highways. The tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is located in the county levying the tax but is not located within any municipal corporation levying the tax authorized by section 4504.171 of the Revised Code, and shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections 4503.16, 4503.17, 4503.171, 4503.41, and 4503.43 of the Revised Code.

Prior to the adoption of any resolution levying a county motor vehicle license tax under this section, the board of county commissioners shall conduct two public hearings thereon, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of such hearings shall be given by publication in a newspaper of general circulation in the county once a week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing.

No resolution levying a county motor vehicle license tax under this section shall become effective sooner than thirty days following its adoption, and such resolution is subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into immediate effect. The emergency measure must receive an affirmative vote of all of the members of the board of county commissioners, and shall state the reasons for the necessity. A resolution may direct the board of elections to submit the question of levying the tax to the electors of the county at the next primary or general election occurring not less than seventy-five days after the resolution is certified to the board; no such resolution shall go into effect unless approved by a majority of those voting upon it.

Nothing in this section or in section 4504.15 of the Revised Code shall be interpreted as preventing a county from levying the county motor vehicle license taxes authorized by such sections in a single resolution.

HISTORY: 1987 H 419, eff. 7-1-87

CROSS REFERENCES

Motor vehicles, registration fees, disposition, 4501.03

Motor vehicles, distribution of revenues from county motor vehicle license taxes, 4501.041

NOTES ON DECISIONS AND OPINIONS

OAG 90-006. If a county permissive motor vehicle license tax is adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 in April 1989 and the resolution levying the tax is certified to the motor vehicles registrar not later than July 1, 1989, the tax is subject to collection by the registrar and his deputies beginning on January 1, 1990. If such tax is repealed pursuant to RC 4504.021 in November 1989, there is no authority to collect that tax at any time.

OAG 90-006. As used in RC 4504.021, "the current year" means the registration (or calendar) year in which the repeal of a county permissive tax adopted as an emergency measure under RC 4504.02, 4504.15, or 4504.16 is approved by the electors and the result of the election is certified to the county commissioners.

4504.17 Additional municipal motor vehicle license tax levied after April 1, 1989; emergency measure prohibited

For the purpose of paying the costs and expenses of enforcing and administering the tax provided for in this section; to supplement revenue already available to municipal corporations under section 4504.04, 4504.06, 4504.171, or 4504.172 of the Revised Code, and to provide additional revenue for the purposes set forth in those sections, the legislative authority of any municipal corporation located in a county that is not levying the tax authorized by section 4504.15 of the Revised Code may, after the first day of April, 1989, and regardless of any tax being levied pursuant to section 4504.06 or received pursuant to section 4504.04 of the Revised Code, levy an annual license tax, that shall be in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads or highways. The tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is in the municipal corporation levying the tax, and shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections 4503.16, 4503.17, 4503.171, 4503.41, and 4503.43 of the Revised Code.

No municipal corporation shall enact any ordinance, resolution, or other measure levying a tax pursuant to this section on any motor vehicle registration that would be subject to a resolution previously adopted levying a county motor vehicle license tax under section 4504.15 of the Revised Code where such resolution has not become effective solely because of the filing of a referendum petition pursuant to sections 305.31 to 305.41 of the Revised Code or because the thirty-day period following adoption of the resolution has not expired.

No ordinance, resolution, or other measure levying a municipal motor vehicle license tax pursuant to this section shall be enacted as an emergency measure under section 731.30 of the Revised Code or pursuant to the charter of any municipal corporation and each such ordinance, resolution, or other measure is subject to a referendum as provided in sections 731.29 to 731.41 of the Revised Code or by the charter of the municipal corporation.

A municipal motor vehicle license tax levied under this section shall continue in effect until repealed.

HISTORY: 1987 H 419, eff. 7-1-87

CROSS REFERENCES

Motor vehicles, distribution of revenue from municipal motor vehicle license taxes, 4501.042

4504.171 Additional municipal motor vehicle license tax levied after April 1, 1991; emergency measure prohibited

For the purpose of paying the costs and expenses of enforcing and administering the tax provided for in this section; to supplement revenue already available to municipal corporations under section 4504.04, 4504.06, 4504.17, or 4504.172 of the Revised Code, and to provide additional revenue for the purposes set forth in those sections, the legislative authority of any municipal corporation located in a county that is not levying the tax authorized by section 4504.16 of the Revised Code may, after the first day of April, 1991, and regardless of any tax being levied pursuant to sections 4504.06 or 4504.17, or received pursuant to section 4504.04 of the Revised Code, levy an annual license tax, that shall be in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads or highways. The tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is in the municipal corporation levying the tax, and shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections 4503.16, 4503.17, 4503.171, 4503.41, and 4503.43 of the Revised Code.

No municipal corporation shall enact any ordinance, resolution, or other measure levying a tax pursuant to this section on any motor vehicle registration that would be subject to a resolution previously adopted levying a county motor vehicle license tax under section 4504.16 of the Revised Code where such resolution has not become effective solely because of the filing of a referendum petition pursuant to sections 305.31 to 305.41 of the Revised Code or because the thirty-day period following adoption of the resolution has not expired.

No ordinance, resolution, or other measure levying a municipal motor vehicle license tax pursuant to this section shall be enacted as an emergency measure under section 731.30 of the Revised Code or pursuant to the charter of any municipal corporation and each such ordinance, resolution, or other measure is subject to a referendum as provided in sections 731.29 to 731.41 of the Revised Code or by the charter of the municipal corporation.

A municipal motor vehicle license tax levied under this section shall continue in effect until repealed.

HISTORY: 1987 H 419, eff. 7-1-87

CROSS REFERENCES

Motor vehicles, distribution of revenue from municipal motor vehicle license taxes, 4501.042

4504.172 Additional municipal motor vehicle license tax; emergency measure prohibited

For the purpose of paying the costs and expenses of enforcing and administering the tax provided for in this section; to supplement revenue already available to municipal corporations under section 4504.04, 4504.06, 4504.17, or 4507.171 of the Revised Code, and to provide additional revenue for the purposes set forth in those sections, the legislative authority of any municipal corporation may levy

an annual license tax, without regard to any tax being levied pursuant to section 4504.06, 4504.17, or 4504.171, or received pursuant to section 4504.04 of the Revised Code, and in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads or highways. The tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is in the municipal corporation levying the tax, and shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections 4503.16, 4503.17, 4503.171, 4503.41, and 4503.43 of the Revised Code.

No ordinance, resolution, or other measure levying a municipal motor vehicle license tax pursuant to this section shall be enacted as an emergency measure under section 731.30 of the Revised Code or pursuant to the charter of any municipal corporation and each such ordinance, resolution, or other measure is subject to a referendum as provided in sections 731.29 to 731.41 of the Revised Code or by the charter of the municipal corporation.

A municipal motor vehicle license tax levied under this section shall continue in effect until repealed.

HISTORY: 1987 H 419, eff. 7-1-87

CROSS REFERENCES

Motor vehicles, distribution of revenue from municipal motor vehicle license taxes, 4501.042

4504.18 Township motor vehicle license tax for road construction and maintenance; hearings; effective date; referendum

For the purpose of paying the costs and expenses of enforcing and administering the tax provided for in this section; for the construction, reconstruction, improvement, maintenance, and repair of township roads, bridges, and culverts; for purchasing, erecting, and maintaining traffic signs, markers, lights, and signals; for purchasing road machinery and equipment, and planning, constructing, and maintaining suitable buildings to house such equipment; for paying any costs apportioned to the township under section 4907.47 of the Revised Code; and to supplement revenue already available for such purposes, the board of township trustees may levy an annual license tax, in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads and highways in the unincorporated territory of the township. The tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the owners of which reside in the unincorporated area of the township and shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject to reductions in the manner provided in section 4503.11 of the Revised Code and the exemptions provided in sections 4503.16, 4503.17, 4503.171, 4503.41, and 4503.43 of the Revised Code.

Prior to the adoption of any resolution levying a township motor vehicle license tax under this section, the board of township trustees shall conduct two public hearings thereon, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of such hearings shall be given by publication in a newspaper of general circulation in the township once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing.

No resolution levying a township motor vehicle license tax under this section shall become effective sooner than thirty days following its adoption, and such resolution is subject to a referendum in the same manner, except as to the form of the petition, as provided in division (H) of section 519.12 of the Revised Code for a proposed amendment to a township zoning resolution. In addition, a petition under this section shall be governed by the rules specified in section 3501.38 of the Revised Code. No resolution levying a tax under this section for which a referendum vote has been requested shall go into effect unless approved by a majority of those voting upon it.

A township license tax levied under this section shall continue in effect until repealed.

HISTORY: 1987 H 419, eff. 7-1-87

CROSS REFERENCES

Motor vehicles, registration fees, disposition, 4501.03

Motor vehicles, distribution of revenue from township motor vehicle license taxes, 4501.043

4507.06 Form and contents of application for license; provision for anatomical gift; registration of voters

(A) Every application for a driver's license or motorcycle operator's license or endorsement, or duplicate of any such license or endorsement shall be made upon the approved form furnished by the registrar of motor vehicles and shall be signed by the applicant.

Every application shall state the following:

(1) The name, date of birth, social security number if such has been assigned, sex, general description, including height, weight, color of hair, and eyes, residence and business address, including county of residence, duration of residence in this state, country of citizenship, and occupation of the applicant;

(2) Whether the applicant previously has been licensed as an operator, chauffeur, driver, commercial driver, or motorcycle operator, and if so, when, and by what state, and whether such license is suspended or revoked at the present time, and if so, the date of and reason for the suspension or revocation;

(3) Whether the applicant is now or ever has been afflicted with epilepsy, or whether the applicant now is suffering from any physical or mental disability or disease, and if so, the nature and extent of the disability or disease, giving the names and addresses of physicians then or previously in attendance upon the applicant;

(4) Whether an applicant for a duplicate driver's license, or duplicate license containing a motorcycle operator endorsement has pending a citation for violation of any motor vehicle law or ordinance, a description of any such citation pending, and the date of the citation;

(5) Whether the applicant wishes to certify willingness to make an anatomical gift under section 2108.04 of the Revised Code, which shall be given no consideration in the issuance of a license or endorsement.

Every applicant for a driver's license shall be photographed in color at the time the application for the license

is made. The application shall state any additional information that the registrar requires.

(B) The registrar or a deputy registrar, in accordance with section 3503.11 of the Revised Code, shall register as an elector any person who applies for a driver's license or motorcycle operator's license or endorsement under division (A) of this section, or for a renewal or duplicate of the license or endorsement, if the applicant is eligible and wishes to be registered as an elector.

(C) The registrar or a deputy registrar, in accordance with section 3503.11 of the Revised Code, shall offer the opportunity of completing a notice of change of residence to any applicant for a driver's license or endorsement under division (A) of this section, or for a renewal or duplicate of the license or endorsement, if the applicant is a registered elector who has changed his residence from one precinct to another within a county or from one county to another and has not filed such a notice.

HISTORY: 1990 H 21, eff. 3-27-91
1989 H 381; 1986 H 428

Note: Former 4507.06 repealed by 1986 H 428, eff. 12-23-86; 1984 H 183; 1977 S 125; 1975 H 650; 1974 S 313; 132 v H 1007, S 452, S 43, H 193, H 380, S 259; 126 v 253; 1953 H 1; GC 6296-9.

Prohibition: 4507.36

PRACTICE AND STUDY AIDS

Merrick-Rippner, Ohio Probate Law (4th Ed.), Text 63.04(B)

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 70, 89

Am Jur 2d: 7A, Automobiles and Highway Traffic § 99

NOTES ON DECISIONS AND OPINIONS

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. Sections 1, 2, 3, and 4 of 1977 S 125 took immediate effect because the law contained an appropriation item.

1944 OAG 7230. It is the duty of the registrar of motor vehicles to determine and ascertain whether or not an applicant for a motor vehicle license meets the necessary requirements of the driver's license law, and the necessary information may be obtained from the trial court or through the form of the license application.

MENTAL ILLNESS OR DISABILITY

5122.301 Rights of patients and former patients not affected

No person shall be deprived of any public or private employment solely because of having been admitted to a hospital or otherwise receiving services, voluntarily or involuntarily, for a mental illness or other mental disability.

Any person admitted to a hospital or otherwise taken into custody, voluntarily or involuntarily, under this chapter retains all civil rights not specifically denied in the Revised Code or removed by an adjudication of incompetence following a judicial proceeding other than a proceeding under sections 5122.11 to 5122.15 of the Revised Code.

As used in this section, "civil rights" includes, without limitation, the rights to contract, hold a professional, occupational, or motor vehicle driver's or commercial driver's license, marry or obtain a divorce, annulment, or dissolution of marriage, make a will, vote, and sue and be sued.

HISTORY: 1989 H 381, eff. 7-1-89
1988 S 156; 1977 H 725; 1976 H 244

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1988 Laws of Ohio, S 156—LSC Analysis, p 5-284

Hausser and Van Aken, Ohio Real Estate Law and Practice, Text 3.01(F)

Baldwin's Ohio Domestic Relations Law, Text 15.04(C)

Merrick-Rippner, Ohio Probate Law (4th Ed.), Text 211.06(C), 211.13(B), 211.16(B)

Eagle, Ohio Mental Health Law (2d Ed.), Text 1.07(C), 7.01, 7.02(C), 7.03(C), 7.11(A)(B), 11.01, 11.05(F), 11.09 to 11.11(A), 11.12, 11.13, 11.14(D)

CROSS REFERENCES

Board of psychology, consequence of activities listed in RC 4732.17; opportunity for appeal from any order of the board, OAC 4732-17-03

Psychiatric hospitals and psychiatric units, human rights, OAC 5122-14-24

Emergency medical services, certificate of accreditation, suspension or revocation, 3303.14

Voter qualifications, probate judge to notify board of elections monthly of persons adjudicated incompetent for purpose of voting, 3503.18

Civil rights commission, unlawful discriminatory practices, 4112.02

Suspension of driver's license of person mentally ill, restoration, 4507.161

Professional nursing certificate, denial, suspension, revocation on adjudication of incompetence, 4723.28

Certificate to practice medicine, suspension on adjudication of mental illness, incompetence, restoration, 4731.221

Psychologist license, denial, suspension, or revocation on adjudication of incompetence, restoration, 4732.17

License to practice chiropractic, suspension on adjudication of incompetency, restoration, 4734.11

Real estate broker's license, suspension or revocation on adjudication of incompetence, reinstatement, 4735.18

Steam engineer's license revocation on adjudication of incompetence, 4739.06

Veterinary certificates, revocation or suspension on adjudication of incompetence, 4741.22

Private investigator license, security guard license, denial if adjudged incompetent and not restored to legal capacity, 4749.03

Physical therapist license, assistant's license, suspension or revocation on adjudication of incompetence, 4755.47

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 78; 37, Elections § 63; 55, Incompetent Persons § 121

Am Jur 2d: 41, Incompetent Persons § 65 to 79

Capacity of one who is mentally incompetent but not so adjudicated to sue in his own name. 71 ALR2d 1247

Mental capacity to marry. 82 ALR2d 1040

TAX LEVY LAW

5705.01 Definitions

As used in this chapter:

(A) "Subdivision" means any county; municipal corporation; township; township police district; township fire district; joint fire district; joint ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention home district; a district organized under section 2151.65 of the Revised Code; a combined district organized under sections 2151.34 and 2151.65 of the Revised Code; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district created under section 6131.52 of the Revised Code; a union cemetery district; a county school financing district; or a city, exempted village, local, or joint vocational school district.

(B) "Municipal corporation" means all municipal corporations, including those that have adopted a charter under Article XVIII, Ohio Constitution.

(C) "Taxing authority" or "bond issuing authority" means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; in the case of a city, local, exempted village, or joint vocational school district, the board of education; in the case of a community college district, the board of trustees of the district; in the case of a technical college district, the board of trustees of the district; in the case of a detention home district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.34 and 2151.65 of the Revised Code, the joint board of county commissioners of the district; in the case of a township, the board of township trustees; in the case of a joint fire district, the board of fire district trustees; in the case of a joint recreation district, the joint recreation district board of trustees; in the case of a joint-county alcohol, drug addiction, and mental health service district, the district's board of alcohol, drug addiction, and mental health services; in the case of a joint ambulance district, the board of trustees of the district; in the case of a union cemetery district, the legislative authority of the municipal corporation and the board of township trustees, acting jointly as described in section 759.341 of the Revised Code; in the case of a drainage improvement district, the board of county commissioners of the county in which the drainage district is located; and in the case of a township police district, a township fire district, a township road district, or a township waste disposal district, the board of township trustees of the township in which the district is located. "Taxing authority" also means the county board of education that serves as the taxing authority of a county school financing district as provided in section 3311.50 of the Revised Code.

(D) "Fiscal officer" in the case of a county, means the county auditor; in the case of a municipal corporation, the city auditor or village clerk, or such officer as, by virtue of the charter, has the duties and functions of the city auditor or village clerk, except that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, the custody and control of the funds of the university, the chief accounting officer of the university shall perform, with respect to the funds, the duties vested in the fiscal officer of the subdivision by sections 5705.41 and 5705.44 of the Revised Code; in the case of a school district, the treasurer of the board of education; in the case of a county school financing district, the treasurer of the county board of education that serves as the taxing authority; in the case of a township, the township clerk; in the case of a joint fire district, the clerk of the board of fire district trustees; in the case of a joint ambulance district, the clerk of the board of trustees of the district; in the case of a joint recreation district, the person designated pursuant to section 755.15 of the Revised Code; in the case of a union cemetery district, the clerk of the municipal corporation designated in section 759.34 of the Revised Code; in the case of a children's home district, tuberculosis hospital district, county school district, general health district, joint-county alcohol, drug addiction, and mental health service district, county library district, detention home district, district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2151.34 and 2151.65 of the Revised Code, or a metropolitan park district for which no treasurer has been appointed pursuant to section 1545.07 of the Revised Code, the county auditor of the county designated by law to act as the auditor of the district; in the case of a metropolitan park district which has appointed a treasurer pursuant to section 1545.07 of the Revised Code, that treasurer; in the case of a drainage improvement district, the auditor of the county in which the drainage improvement district is located; and in all other cases, the officer responsible for keeping the appropriation accounts and drawing warrants for the expenditure of the moneys of the district or taxing unit.

(E) "Permanent improvement" or "improvement" means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.

(F) "Current operating expenses" and "current expenses" mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.

(G) "Debt charges" means interest, sinking fund, and retirement charges on bonds, notes, or certificates of indebtedness.

(H) "Taxing unit" means any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

(I) "District authority" means any board of directors, trustees, commissioners, or other officers controlling a district institution or activity that derives its income or funds from two or more subdivisions, such as the county school board, the trustees of district tuberculosis hospitals and district children's homes, the district board of health, a joint-county alcohol, drug addiction, and mental health service district's board of alcohol, drug addiction, and mental health services, detention home districts, a joint recreation district board of trustees, districts organized under section 2151.65 of the Revised Code, combined districts organized under sections 2151.34 and 2151.65 of the Revised Code, and other such boards.

(J) "Tax list" and "tax duplicate" mean the general tax lists and duplicates prescribed by sections 319.28 and 319.29 of the Revised Code.

(K) "Property" as applied to a tax levy means taxable property listed on general tax lists and duplicates.

(L) "School library district" means a school district in which a free public library has been established that is under the control and management of a board of library trustees as provided in section 3375.15 of the Revised Code.

HISTORY: 1989 H 317, eff. 10-10-89
1989 S 140; 1988 S 247, H 708; 1987 H 231, S 140; 1984 H 747; 1981 H 1; 1980 H 268, S 160; 1979 H 1; 1976 H 111; 1975 H 1; 1974 H 421, H 1173; 1972 S 391, H 258; 1971 S 396, H 584; 1969 H 454; 132 v S 407; 130 v H 744; 126 v 392; 1953 H 1; GC 5625-1

Note: An explanatory note from the Legislative Service Commission states: "While Am. Sub. H.B. 111 of the 118th G.A. purports to repeal the existing version of this section, it is nevertheless presented here as unaffected by H.B. 111. The repeal of 'existing sections' is intended only to be stated when conditional to their amendment and is a long-recognized means of complying with § 15(D) of Art. II, Ohio Constitution (which requires the existing version of sections amended to be repealed). See *Cox v. Dept. of Transportation* (1981), 67 OS(2d) 501, 508. This section is not, in fact, included for amendment in the body of H.B. 111. Nor does the title of the act indicate an intention to make an unconditional repeal of this section." See *Baldwin's Ohio Legislative Service*, 1989 Laws of Ohio, page 5-304, for original version of this Act.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140—LSC Analysis, p 5-481

Baldwin's Ohio Township Law, Text 11.02, 15.08, 29.03, 31.03, 49.04, 75.05

Baldwin's Ohio School Law, Text 30.14, 39.02, 43.15(A), 43.15(B), 43.28

Gotherman & Babbit, Ohio Municipal Law, Text 1.01, 27.11

CROSS REFERENCES

Appeals to the board of tax appeals, OAC Ch 5717-1

Appearance and practice before the board of tax appeals, OAC 5717-1-02

Composition of sinking fund, 129.05

Townships, manner of making assessment, 503.19

Joint hospital district, contributions, appropriations, tax levy, 513.09

Municipal band or orchestra, tax to maintain, submission of question to electors, 757.01

County school district, defined, 3311.05

Municipal educational institution, taxing district, 3349.25

Taxing authority's use of funds for support of educational broadcasting, 3353.05

Port authorities, tax levy, 4582.14

Allocation of tax funds among subdivisions, 5747.50

Allocation to county undivided local government funds, determining proportionate share, 5747.51

County budget commission, deduction of expenditures, 5747.62

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 46; 15, Civil Servants and Other Public Officers and Employees § 243, 253; 19, Counties, Townships, and Municipal Corporations § 6; 20, Counties, Townships, and Municipal Corporations § 85, 133, 292 to 294; 21, Counties, Townships, and Municipal Corporations § 771; 22, Courts and Judges § 165; 55, Hospitals and Related Facilities; Health Care Providers § 51; 76, Public Funds § 51, 56, 65, 66, 77, 79, 82, 89, 97 to 99; 86, Taxation § 144, 234, 511, 521; 87, Taxation § 883 to 888

Am Jur 2d: 72, State and Local Taxation § 704 et seq.

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Subdivision
3. Taxing authority
4. Fiscal officer
5. Permanent improvements
6. Current operating expenses
7. Taxing unit
8. Incompatibility of offices

1. In general

20 OS(2d) 135, 254 NE(2d) 357 (1969), Madden v Bower. The authority to make appropriations from the various funds of a county, within the limits prescribed by law, is lodged in the board of county commissioners, not in the county auditor, by virtue of RC 5705.01 et seq.

174 OS 163, 187 NE(2d) 42 (BTA 1962), Lancaster v Fairfield County Budget Comm. In allocating an undivided local government fund of a county the funds are to be distributed on the basis of need for a given period of time without reference to the special tax revenues and without deduction for balances acquired by the economical operation of these small governmental units, and to be apportioned on the actual cost of the operating needs during the period without consideration of present accumulated balances or funds arising from special tax levies.

147 OS 66, 68 NE(2d) 317 (1946), Kinsey v Bower. Uniform tax levy law, GC 5625-1 (RC 5705.01) et seq., does not supersede or repeal GC 5548-2 (RC 5713.11).

126 OS 163, 184 NE 530 (1933), Friedlander v Gorman. A tax on intangibles is invalid insofar as it provides that taxes collected in one county may be appropriated in another county to pay the purely local obligations of the second county's subdivisions.

62 App(3d) 498, 576 NE(2d) 814 (Montgomery 1990), State ex rel Emrick v Wasson. Although "tax" and "assessment" are similar concepts in that they are government-imposed financial burdens for a public or quasi-public purpose, Ohio maintains a functional distinction between the two; a tax is a burden levied on citizens for the general operation of the government, and by contrast, an assessment is a narrower burden levied on specific property owners to cover the cost of benefits bestowed on the property by public improvements.

44 App 14, 184 NE 248 (Hamilton 1932), Gorman v Friedlander; affirmed by 126 OS 163, 184 NE 530 (1933). Tax laws must operate uniformly and where a tax is arbitrary the arbitrariness must have uniformity in operation.

29 NP(NS) 467 (CP, Hamilton 1932), Gorman v Friedlander; modified by 44 App 14, 184 NE 248 (Hamilton 1932); 44 App 14 affirmed by 126 OS 163, 184 NE 530 (1933). Provisions in a statute for levy of a tax and provisions for distribution of money collected are distinct, and the levy may be valid while distribution provisions are unconstitutional.

29 NP(NS) 467 (CP, Hamilton 1932), Gorman v Friedlander; modified by 44 App 14, 184 NE 248 (Hamilton 1932); 44 App 14 affirmed by 126 OS 163, 184 NE 530 (1933). The intangibles tax law of Ohio, passed by the legislature in 1931 as SB 323, was a levy of taxes for local rather than for state purposes.

OAG 88-036. A township road district is a subdivision for purposes of RC Ch 5705, and the board of township trustees, as taxing authority for the district, may levy a tax, within the ten-mill limitation, upon the taxable property of the township road district; however, any tax imposed by a township road district is levied only upon property included in the district, and not upon property in a municipal corporation located in the township.

OAG 73-023. The term, "debt charges," as used in RC Ch 5705, is defined in RC 5705.01(G) as interest, sinking fund, and retirement charges on bonds, notes or certificates of indebtedness.

OAG 69-055; overruled in part by OAG 88-036. Tax levies made under authority of RC 509.01, 5705.06(F), 5573.13 and

5573.21 are to be made upon all the taxable property within the township, including the taxable property within any municipal corporations within such township, and are subject to the ten-mill limitation prescribed by RC 5705.02.

1959 OAG 722. If the county commissioners so determine, the entire cost of the installation of a garbage and refuse disposal plant may be paid by the county at large, and the cost thereof may be provided by a tax authorized by electors of the county, but the cost of operation could not be included in a single bond issue covering the cost of construction.

1958 OAG 2341. Township trustees have authority to sell a water line constructed for fire protection upon a resolution that such water line is not needed; but such sale must be by auction, and pursuant to publication of notice; in the absence of any bond issue for such improvement, the proceeds of such sale should be paid into a special fund of such fire district for the construction or acquisition of permanent improvements.

1956 OAG 7413. RC 727.31 is in direct conflict with RC Ch 5705 to the extent that it conflicts with the procedure therein provided for the levy of taxes, and in this respect must be deemed repealed by implication.

1932 OAG 4. The notes issued by a board of trustees of a public library are legal investments for federal reserve banks under the provisions of Title 2, § 355, US Code.

2. Subdivision

44 OS(2d) 8, 335 NE(2d) 701 (BTA 1975), Russell Twp Bd of Trustees v Geauga County Budget Comm. Appellant as taxing authority of a subdivision did not by including erroneous statutory ground therefor deprive the board of tax appeals of jurisdiction to hear the appeal.

9 OS(2d) 108, 224 NE(2d) 120 (BTA 1967), Lake County Budget Comm v Willoughby Hills. The supreme court may disregard any question as to authority of the budget commission of a county to prosecute an appeal on behalf of the county from a decision of the board of tax appeals, prejudicing the interests of the county in the apportionment of the county undivided local government fund, where no question as to such authority has been raised by any party to the appeal.

174 OS 163, 187 NE(2d) 42 (BTA 1962), Lancaster v Fairfield County Budget Comm. The fact that a political subdivision has a balance at the close of a fiscal year in the fund which may lawfully be used for current operating expenses, or in a special levy fund out of which disbursements are made and which disbursements are properly payable from the general fund does not affect the amount needed for current operating expenses.

174 OS 163, 187 NE(2d) 42 (BTA 1962), Lancaster v Fairfield County Budget Comm. A political subdivision which votes and collects a levy outside the ten-mill limitation to provide for governmental operations is entitled to credit therefor in the allocation of an undivided local government fund of a county and should not be penalized for assuming an added tax burden to provide for a governmental activity, which would normally be paid out of current operating funds.

11 App(2d) 77, 228 NE(2d) 874 (BTA 1967), Cambridge City School Dist v Guernsey County Budget Comm; affirmed by 13 OS(2d) 77, 234 NE(2d) 512 (1968). A subdivision or taxing unit as defined by RC 5705.01 means such as now exists regardless of any annexations or detachments of territorial boundaries. (See also Cambridge City School Dist v Guernsey County Budget Comm, 13 Misc 258 (BTA 1967).)

OAG 91-072. A metropolitan housing authority is not a "subdivision" for purposes of RC Ch 5705.

OAG 88-036. If a township road district is created pursuant to RC 5573.21, the district is a subdivision for purposes of RC 5705.01, and the township trustees as taxing authorities of the district may levy taxes only upon the taxable property of the township road district, and not upon property within the limits of a municipal corporation located within the township.

OAG 82-056. Funds received by a board of public library trustees as a result of taxes levied pursuant to RC 5705.23 or 5707.04 are not funds derived from a subdivision within the meaning of RC 5705.01(I).

OAG 78-046. A joint county community mental health and retardation board may contract for and acquire by purchase real property in its own name, provided that the acquisition serves a purpose authorized by statute.

OAG 78-037. A county is authorized, pursuant to RC 5705.19(J), to place a tax levy on the ballot for funds to be used by a sheriff for the salaries of permanent sheriff's personnel performing police duties and equipment used directly by the sheriff in the performance of his duties.

OAG 75-089. A joint county mental health and retardation service district is a subdivision within RC 5705.01(A), and the district's mental health and retardation board is a taxing authority within RC 5705.01(C); therefore, pursuant to RC 5705.19 a joint county community mental health and retardation board is capable of placing a tax levy before the public without the approval of the county commissioners.

1957 OAG 638. A county school district is not a subdivision within the meaning of RC 3501.17, and there is no authority under the provisions of that section for the county auditor to withhold, from any moneys payable to such district in an ensuing tax settlement, an amount designed to meet the expense of conducting an election in the odd-numbered years at which members of the county board of education are elected.

1954 OAG 4224. The regional organization for civil defense is not a "subdivision," but it does constitute a "public office" and its accounts and records are subject to examination and audit by the bureau of inspection and supervision of public offices.

1952 OAG 1101. A fire district is a subdivision within the scope of the uniform tax levy law and the township trustees may submit to the voters a levy in excess of the ten-mill limitation.

1928 OAG 1580. A "county home" is one of the activities of a "subdivision."

3. Taxing authority

37 OS(3d) 68, 523 NE(2d) 843 (BTA 1988), Warren County Park Dist v Warren County Budget Comm. A park district is not a taxing authority and, thus, lacks standing to appeal an allocation of the local government fund by the county budget commission.

OAG 77-057. Community boards of mental health and retardation established in RC Ch 340 do not have authority to purchase real property for a mental health or retardation facility; such power and authority lies with the board of county commissioners, who may appropriate private property for a mental health or retardation facility under RC 307.02.

OAG 75-089. A joint county mental health and retardation service district is a subdivision within RC 5705.01(A), and the district's mental health and retardation board is a taxing authority within RC 5705.01(C); therefore, pursuant to RC 5705.19 a joint county community mental health and retardation board is capable of placing a tax levy before the public without the approval of the county commissioners.

OAG 66-170; overruled in part by OAG 91-008. The soldiers relief commission on its own initiative has no authority to transfer funds from one item of the fund appropriated for operation and maintenance of the commission to another item in the same appropriation.

1956 OAG 6907. A board of trustees of a cemetery formed under RC 759.36 is not a taxing authority and a union cemetery created under RC 759.27 et seq. is not a taxing unit.

1956 OAG 6907. The legislative authorities of municipal corporations and boards of township trustees which have joined to provide a union cemetery have authority to levy taxes within their respective subdivisions for maintenance and operation of such cemetery, and the levy shall be made as provided in the tax levy law.

1943 OAG 6569. The city of Cleveland, having by amendment of its charter taken itself out from provisions of GC 5625-2 and 5625-24 (RC 5705.02 and 5705.32) in so far as they relate to limitation on its tax levies, is nevertheless subject to all remaining provi-

sions of uniform tax and budgetary law including the annual general appropriation to be made by council as provided by GC 5625-29 (RC 5705.38).

BTA 81-D-584 and 82-D-1002 (1983), Holmes Park Dist v Holmes County Budget Comm. RC 5705.37 authorizes the "taxing authority" of any subdivision which is dissatisfied with any action of the county budget commission to appeal to the board of tax appeals; a park district is not a "taxing authority" for purposes of RC Ch 5705 and may not appeal an action of the county budget commission to the board of tax appeals.

4. Fiscal officer

63 App(2d) 94, 409 NE(2d) 1022 (1977), Atwood v Judge. A city auditor has the responsibility of certifying additional city revenues to the county budget commission for the purpose of obtaining an amended official certificate of estimated revenue showing such additional revenues.

OAG 69-076. RC 5705.41 requires that before any contract involving the expenditure of money is entered into by a county, the county auditor must certify that the amount required to meet the same has been lawfully appropriated for that purpose and is in the treasury or is in the process of collection to the credit of the appropriate fund free from any previous encumbrances.

OAG 68-093. The fiscal officer of a county board of mental retardation is the auditor of the county within which the county board of mental retardation is located.

1940 OAG 1781. It is the duty of the council to prepare and submit to the budget commission, on or before July 15th in each year, a tax budget for the next succeeding fiscal year, containing the information prescribed by GC 5625-13 (RC 5705.14), and it is the duty of the budget commission so to adjust the budgets submitted to it by a municipality and other various taxing subdivisions, as to bring the tax levies required therefor within the limitations prescribed by law, subject, however, to the limitations contained in GC 5625-23 (RC 5705.31).

1928 OAG 1580. The "fiscal officer" of a county board of education is its clerk; of the trustees of a district tuberculosis hospital, or of a board of trustees of a district children's home, is the accounting officer for such board, whether he be called clerk, secretary or otherwise; the auditor of a county, which constitutes all or a major portion of a general health district, is the fiscal officer for the board of health of the general health district; the auditor of a city, which constitutes a city health district, is the fiscal officer of the board of health for the city health district. The superintendent of a county children's home is the fiscal officer for the board of trustees of such home.

BTA 81-D-584 and 82-D-1002 (1983), Holmes Park Dist v Holmes County Budget Comm. The "fiscal officer" of a park district is the officer responsible for keeping the appropriation accounts and drawing warrants for the expenditures of money; this officer is the county auditor, not the fiscal officer of the park district.

5. Permanent improvements

95 Abs 311, 201 NE(2d) 816 (CP, Madison 1964), Roddy v Andrix. Funds arising from a special levy, "for the purpose of the maintenance and operation of schools for retarded children" may not be used for acquisition of real estate and construction of a school building.

1958 OAG 1746. The required tax levy of at least ten mills for current school operation for the current calendar year does not include any levies for the retirement of bonds which the school district may have issued for school construction or other permanent improvements.

1957 OAG 772. Proceeds of a tax levy for operating expenses of joint township hospital district may not be expended to pay the cost of construction of permanent improvements thereto.

1956 OAG 7477. Where a board of education is the owner of land which is improved with substantial farm buildings for housing cattle, hogs and farm machinery and storage of crops, together with a tenant house, the sale of such land would be the sale of a "permanent improvement" within the provision of RC 5705.10 and where no bonds or other evidences of indebtedness have been issued for the acquisition of such permanent improvement, the proceeds of such sale must be paid into a special fund for the acquisition of permanent improvements.

1951 OAG 455. Funds collected from a special levy in excess of the ten-mill limitation pursuant to GC 5625-15 (RC 5705.19) may properly be expended for the repairing of electric wiring in fixtures of a county children's home, but not for any "permanent improvement" or "improvement," as those terms are defined.

6. Current operating expenses

52 App 252, 3 NE(2d) 698 (1935), State ex rel Ohio Public Service Co v Alliance. In an action for a writ of mandamus seeking to compel a municipality to pay unsatisfied judgment rendered against it and in favor of relator, admitted to be legally due and owing, it is not defense that there are insufficient general funds to pay such judgments; judgments of this character are not "debt charges" but are "current operating expenses."

OAG 66-154. It is a question of fact whether an expenditure for the support of a county tuberculosis hospital should be classified as one for operation and maintenance or for improvements, a determination of which fact shall be resolved by application of the definitions in RC 5705.01.

1964 OAG 1523. The revenue received from a special levy in excess of the ten-mill limitation for current operating expenses may not lawfully be used to enlarge or improve existing buildings.

7. Taxing unit

OAG 66-040. A school district to which another school district is to be transferred pursuant to RC 3311.231 may, subsequent to the election in the district to be transferred, approve said transfer, and prior to the effective date of said transfer, levy a tax outside the ten-mill limitation imposed by O Const Art XII §2, and subsequent to the effective date of the transfer, levy said tax against the whole of the new taxing district.

OAG 65-39. Funds raised by a township recreation levy pursuant to RC 5705.19(H) may not be used to operate a free public park under the control of park commissioners of a township park district.

1964 OAG 1584. There is no limitation on the power granted to a port authority created pursuant to RC 4582.02 to restrain it from planning, constructing, and developing port facilities within a municipal corporation within its boundaries which did not participate in creating the authority.

1964 OAG 1277; overruled by 1964 OAG 1584. When a county acts alone in the creation of a port authority the area of jurisdiction of the port authority for purposes of planning, improving and developing port facilities does not include the incorporated territory of those municipal corporations within the county which are empowered to act pursuant to RC 721.04 to 721.11.

1964 OAG 1255. When a township police district is created by a board of trustees and such district does not include all of the township territory, no portion of the expenses of the district in providing police protection may be paid out of general funds of the township, but those current expenses which the township trustees are authorized to incur by RC 505.49, 505.50 and 505.54 may be incurred on behalf of the township as distinguished from on behalf of the police district alone, and if so incurred they may properly be considered expenses of the township rather than expenses of the police district.

1962 OAG 2769. The term "taxing districts" as used in RC 6101.151 means a political subdivision or other governmental agency or district having authority to levy taxes on the property in such subdivision or district.

1959 OAG 888. A proposed township levy in excess of the ten-mill limitation must be submitted to the electors of the township residing both within and outside of a village located wholly within the boundaries of said township.

1956 OAG 7010. RC 505.27 does not authorize a board of township trustees to expend general township funds for the purpose of providing and maintaining waste disposal service in a waste disposal district, the board's expenditures for such purpose being limited to funds raised by levying a sufficient tax therefor upon the taxable property in such district or by charging rent as provided in RC 505.29.

1941 OAG 3712. Taxing units other than municipalities may only levy taxes when directly authorized by the general assembly in fields unrestricted by the Ohio constitution.

1931 OAG 3810. The amount which the Cleveland public library is entitled to receive from distribution of intangible taxes includes the money for sinking fund purposes, retirement of bonds, and payment of interest on its outstanding bonds.

1928 OAG 2195. A city planning commission created and operating under the provisions of GC 4366-1 (RC 713.01) et seq., is not a special appropriating authority.

1928 OAG 1580. A board of deputy state supervisors of elections is not a "special appropriating authority."

8. Incompatibility of offices

OAG 72-109. The positions of township clerk and county highway department employee are incompatible, whether the highway position is classified or unclassified.

OAG 66-060. The position of member of the board of education of a local school district and the position of township trustee of a township within that local school district are incompatible.

OAG 65-88. The offices of township trustee and member of the board of health of a general health district are incompatible.

1962 OAG 2746. A member of a board of education of a city school district may at the same time serve as clerk of a city council to which he is elected, provided the charter of the city does not contain a contrary provision in regard to such clerk, and provided it is physically possible for one person to perform the duties of such office.

1961 OAG 2480. The office of township clerk is not incompatible with the office of member of the board of education for the local school district in which the township is located.

1960 OAG 1650. A clerk of a township elected pursuant to RC 507.01 may not at the same time hold the position of deputy county auditor of the county in which such township is located.

1959 OAG 778. A person may at the same time serve as member of a school board and as mayor of a village encompassing the school district of such board.

1958 OAG 2202. The positions of township trustee and clerk of a local school board are incompatible.

1933 OAG 1354. Offices of member of a county board of education and village clerk are compatible if it is physically possible for one person to transact the duties of such offices simultaneously.

5705.02 Ten-mill limitation

The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.

HISTORY: 1953 H 1, eff. 10-1-53
GC 5625-2

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 31.04, 35.13, 49.03
Baldwin's Ohio School Law, Text 39.03, 41.04(B)
Gotherman & Babbit, Ohio Municipal Law, Text 17.04, 19.16; Forms 7.01

CROSS REFERENCES

Appeals to the board of tax appeals, OAC Ch 5717-1

Uniform bond law, tax limitation defined, 133.01
Disposition of fees and earnings of rapid transit commission, annual tax levy, 747.10
Municipal university, annual tax levy, 3349.13
Health districts; special levy, 3709.29
Charter prevails over ten-mill limitation, 5705.18
Resolution relative to tax levy in excess of ten-mill limitation in other than school districts, 5705.19
Approval of excess levy, 5705.191
Allocation to county undivided local government funds, determining proportionate share, 5747.51
County budget commission, deduction of expenditures, 5747.62
Sanitary districts; levy of preliminary tax, 6115.46
Regional water and sewer districts; levy for current expenses of district, 6119.18
Property taxes exceeding 1% of value must be approved by voters, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 46; 14, Cemeteries and Dead Bodies § 31; 20, Counties, Townships, and Municipal Corporations § 85, 292 to 294, 367; 21, Counties, Townships, and Municipal Corporations § 771; 22, Courts and Judges § 165; 54, Highways, Streets, and Bridges § 292; 87, Taxation § 891
Am Jur 2d: 56, Municipal Corporations, Counties, and Other Political Subdivisions § 592 et seq.; 71, State and Local Taxation § 141

NOTES ON DECISIONS AND OPINIONS

50 OS(2d) 356, 364 NE(2d) 289 (1977), Towne Properties, Inc v Fairfield. RC Ch 5705, creating the general tax levy, contains neither an expressed statutory interdiction nor a justification for the implication of a legislative intention of pre-emption; therefore, a municipality has retained its authority to impose a tax upon new residential units and mobile homes or trailer pads in the city to provide the funds for the acquisition, development, maintenance and operation of needed public recreation sites or facilities.

160 OS 155, 113 NE(2d) 633 (1953), State ex rel Lewis v Scioto-Sandusky Conservancy Dist. The "preliminary tax" authorized by GC 6828-43 (RC 6101.45) is a tax and not an assessment and is subject to the ten-mill limitation, and public property is exempt therefrom.

130 OS 396, 199 NE 844 (1936), State ex rel Ohio Natl Bank v Parma. Where bonds were issued before ten-mill limitation was adopted, mandamus lies to compel payment or tax levy within fifteen-mill limitation existing at time bonds were issued.

53 App(2d) 109, 372 NE(2d) 628 (1977), Cincinnati v Dawson. The adoption of limits on current operating expenses in a city charter is within the meaning and intent of RC 5705.18 and O Const Art XII §2, and such action allows a municipality to authorize unvoted general obligation bonds requiring millage which, when added to millage required to service existing debts, exceeds the ten-mill limitation imposed by the Ohio Constitution.

11 App(2d) 77, 228 NE(2d) 874 (BTA 1967), Cambridge City School Dist v Guernsey County Budget Comm. Under RC 5705.31 there can be no decrease of tax levies within the ten-mill limitation to any subdivision or taxing unit, until each mandated minimum tax levy is approved without modification. (See also Cambridge City School Dist v Guernsey County Budget Comm, 13 Misc 258 (BTA 1967) and Cambridge City School Dist v Guernsey County Budget Comm, 13 OS(2d) 77, 234 NE(2d) 512 (1968).)

112 App 423, 160 NE(2d) 15 (Warren 1959), Franklin v Harrison; affirmed by 171 OS 329, 170 NE(2d) 739 (1960). A municipal excise tax of fifty per cent on water and sewer bills is invalid.

429 US 274, 97 SCt 568, 50 LEd(2d) 471 (1977), Mt. Healthy City School Dist Bd of Ed v Doyle. A local school board is more like a county or city than it is like an arm of the state and therefore is not entitled to assert any Eleventh Amendment immunity from suit in the federal court.

110 SCt 1651, 109 LEd(2d) 31 (1990), Missouri v Jenkins. A federal district court abuses its discretion by imposing a property tax increase to pay for school desegregation remedies that it had ordered but may use a minimally intrusive method to remedy the constitutional violation by authorizing the school district to submit a levy to state tax collection authorities and should enjoin the operation of state tax laws hindering the district from funding the remedy; the state's argument that federal courts cannot set aside state-imposed limits on local taxing power because this requires local governments to do more than exercise their rightful power is rejected.

OAG 91-035. The tax levied pursuant to RC 513.01 is within the ten-mill limitation imposed by O Const Art XII, §2 and RC 5705.02.

OAG 88-036. If a township road district is created pursuant to RC 5573.21, the district is a subdivision for purposes of RC 5705.01, and the township trustees, as taxing authority of the district, may levy taxes only upon the taxable property of the township road district, and not upon property within the limits of a municipal corporation located in the township.

OAG 77-082. Pursuant to RC 505.24, a township trustee is permitted to receive an increase in per diem compensation as the township budget increases, provided that his existing term in office commenced after the effective date of the most recent amendment of that statute.

OAG 77-057. Community boards of mental health and retardation established in RC Ch 340 do not have authority to purchase real property for a mental health or retardation facility; such power and authority lies with the board of county commissioners, who may appropriate private property for a mental health or retardation facility under RC 307.02.

OAG 76-021. RC 3311.20 and 3311.21 allow the board of education of a joint vocational school district to levy a tax in excess of the ten-mill limitation and thus do not conflict with RC 5705.02.

OAG 69-101. Within the ten-mill limitation of RC 5705.02 township trustees may levy for cemetery purposes under RC 517.11 for cemeteries no longer in use but under the control of the township trustees.

OAG 69-101. Within the ten-mill limitation of RC 5705.02 township trustees may levy for cemetery purposes under RC 517.03 for a cemetery currently being used.

OAG 69-055; overruled in part by OAG 88-036. Tax levies made under authority of RC 509.01, 5705.06(F), 5573.13 and 5573.21 are to be made upon all the taxable property within the township, including the taxable property within any municipal corporations within such township, and are subject to the ten-mill limitation prescribed by RC 5705.02.

OAG 66-096. A local school district board of education may submit two separate levies in excess of the ten-mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, RC 5705.21.

1962 OAG 3009. Where a board of county commissioners and the legislative authority of a city enter into a contract prior to the first day of July in any year under which the county becomes the local relief authority for poor relief administration within the city, the county may levy taxes within the city for poor relief administration without submitting the levy to the electors so long as the levy is within the ten-mill limitation.

1956 OAG 7421. When by a combination of taxing districts the minimum levies prescribed by RC 5705.31 exceed the ten-mill limitation, it becomes the duty of the budget commission to reduce these levies proportionately to bring the aggregate of them within the constitutional limitation.

1938 OAG 2389. Tax levy provided for in GC 4605 (RC 741.09) is within ten-mill limitation.

1934 OAG 3266. Mandamus will not lie to compel a board of education to levy taxes outside the ten-mill limitation for the purpose of paying a final judgment against the board, unless the said levy had first been authorized by a vote of the electors of the district.

1934 OAG 2749. Levies for interest and sinking fund and retirement of bonds which were issued during the period in which former GC 5649-2 (Repealed) was in effect, and which levies were outside of the statutory ten-mill limitation and subject to the statutory limitation of fifteen mills, are now subject to the one per cent limitation of O Const Art XII §2.

1927 OAG 1113. The supreme court in the case of State ex rel Turner v Bremen, 117 OS 186, 158 NE 6 (1927), did not order a tax levy to be made outside the fifteen-mill limitation to pay the judgment against such village concerned in said case.

5705.05 Purpose and intent of general levy for current expenses

The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a political subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but excluding the construction, reconstruction, resurfacing, or repair of roads and bridges in counties and townships and the payment of debt charges. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include:

(A) The amounts certified to be necessary for the payment of final judgments;

(B) The amounts necessary for general, special, and primary elections;

(C) The amounts necessary for boards and commissioners of health, and other special or district appropriating authorities deriving their revenue in whole or part from the subdivision;

(D) In the case of municipal corporations, the amounts necessary for the maintenance, operation, and repair of public buildings, wharves, bridges, parks, and streets, for the prevention, control, and abatement of air pollution, and for a sanitary fund;

(E) In the case of counties, the amounts necessary for the maintenance, operation, and repair of public buildings, for providing or maintaining senior citizens services or facilities, for the relief and support of the poor, for the relief of needy blind, for the support of mental health, mental retardation, or developmental disability services, for the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines, for mothers' pension fund, support of soil and water conservation districts, watershed conservancy districts, and educational television, for the prevention, control, and abatement of air pollution, and for the county's share of the compensation paid judges;

(F) In the case of a school district, the amounts necessary for tuition, the state teachers retirement system, and the maintenance, operation, and repair of schools;

(G) In the case of a township, the amounts necessary for the relief of the poor and for the prevention, control, and abatement of air pollution. This section does not require the inclusion within the general levy of amounts for any purpose for which a special levy is authorized by section 5705.06 of the Revised Code.

HISTORY: 1990 H 569, eff. 11-11-90
1985 H 201; 1981 H 694; 1971 S 370; 1969 H 1; 132 v H 648, H 675; 1953 H 1; GC 5625-5

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 31.08, 31.081, 109.01
Baldwin's Ohio School Law, Text 39.01, 40.09(A), 43.17
Gotherman & Babbit, Ohio Municipal Law, Text 19.39

CROSS REFERENCES

Appeals to the board of tax appeals, OAC Ch 5717-1

Transfer of moneys to "judgment fund," 131.21
Township participation in federal programs; 505.70
Soil and water conservation districts, 1515.01 to 1515.17
Soil and water conservation districts; tax levy within ten-mill limitation; appropriation from general fund, 1515.10
Property taxation by uniform rule, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 78, Public Welfare § 18, 19, 36; 86, Taxation § 87, 124, 126 to 128, 130, 133, 136, 137, 139, 142 to 144, 146, 151, 153; 87, Taxation § 882; 92, Veterans § 27
Am Jur 2d: 71, State and Local Taxation § 137 to 139

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Boards of education
3. Poor relief
4. Use of general fund
5. General levy

1. In general

6 Cin L Rev 251 (May 1932). Personal Judgment May Not be Rendered in Ohio for Delinquent General Taxes and Special Assessments on Real Estate, Ansel B. Curtiss.

50 OS(2d) 356, 364 NE(2d) 289 (1977), Towne Properties, Inc v Fairfield. RC Ch 5705, creating the general tax levy, contains neither an expressed statutory interdiction nor a justification for the implication of a legislative intention of pre-emption; therefore, a municipality has retained its authority to impose a tax upon new residential units and mobile homes or trailer pads in the city to provide the funds for the acquisition, development, maintenance and operation of needed public recreation sites or facilities.

OAG 88-036. If a township road district is created pursuant to RC 5573.21, the district is a subdivision for purposes of RC 5705.01, and the township trustees, as taxing authority of the district, may levy taxes only upon the taxable property of the township road district, and not upon property within the limits of a municipal corporation located in the township.

OAG 69-055; overruled in part by OAG 88-036. Tax levies made under authority of RC 509.01, 5705.06(F), 5573.13 and 5573.21 are to be made upon all the taxable property within the township, including the taxable property within any municipal corporations within such township, and are subject to the ten-mill limitation prescribed by RC 5705.02.

1964 OAG 1611. The positions of county treasurer and that of member of the soldiers relief commission are not incompatible, unless it is physically impossible for one person to discharge the duties of both.

1962 OAG 2997. Revenue derived from a special tax levy pursuant to RC 5705.191 may not be paid into the general fund to reimburse such fund, but must be credited to a special fund for the purpose for which such levy was made; no transfer can be made from a special fund to the general fund except as authorized in RC 5705.14.

1957 OAG 1122. Proceeds of inheritance taxes payable to a township under RC 5731.53 may be used by the trustees to the extent they deem necessary, for road and bridge building and repair.

1950 OAG 1645. A part of the proceeds of the sale of notes issued by county commissioners may not be allocated to the soldiers relief commission of the county for the care of its applicants seeking relief.

1946 OAG 1211. GC 1261-40, 5625-5 and 5625-20 (RC 3709.28, RC 5705.05, and RC 5705.28) et seq., relating to annual budgets of health districts, are in pari materia and should be construed together in such manner as to give effect to each.

2. Boards of education

1934 OAG 3266. Real or personal property vested in a board of education for school purposes may not be levied upon or attached by judgment creditors nor may funds distributable to a board of education by way of tax settlements be so levied upon or attached. Mandamus will lie to compel a board of education to appropriate funds in its possession and available for the purpose, to the payment of final judgments rendered against the board, or to levy a tax within constitutional and statutory limitations to pay such judgments.

1930 OAG 1858. A board of education may construct a new school building with funds derived from a general levy of taxes made under this section even though the purpose of constructing such school building was not specifically mentioned among the purposes for which the levy was made, and this may be done although a special levy for school building construction purposes is not made.

1929 OAG 910. Surplus accumulated over a series of years in the general fund of a school district may lawfully be expended for the building of a school auditorium, even though such accumulated surplus may consist in part of the proceeds of special tax levies which inadvertently have been placed in the general fund and thus become impossible of identification.

3. Poor relief

OAG 91-035. RC 5705.05(G), which permits a township to use proceeds of the general levy for current expenses in "the amounts necessary for the relief of the poor," impliedly authorizes a township to enter into a contract with a private nonprofit hospital to provide hospital services to indigents.

OAG 91-035. A township is not required to enter into a contract with a private nonprofit hospital in order to pay the hospital for services it renders to indigents unless entering into such contract is the only reasonable manner of procuring necessary hospital services for indigents.

OAG 91-035. There must be a direct relationship between the amount of money paid by a township pursuant to RC 5705.05(G) to a hospital for services rendered to indigents and the services actually rendered to indigents by the hospital.

1934 OAG 2688. Trustees of a township have no authority to transfer any money from its general fund or gasoline tax fund to the county treasury to be used by the county commissioners for the purposes of poor relief.

1933 OAG 1599. Tax levies made by Marion township for the relief of the poor should be included in the township general levy for current expenses upon all taxable property lying within the township including that part of the city of Delphos which is within such township.

1931 OAG 3618. Funds derived from the general levy and funds derived for poor relief from a levy outside the fifteen-mill limitation, as authorized by a vote of the people, under GC 5625-15 (RC 5705.19) may legally be expended for the relief of the poor.

1928 OAG 1516. Outdoor relief, that is partial and temporary relief, for the poor in cities should be furnished by the proper municipal officers, and provision therefor should be made by the proper authorities in the making of tax levies and the adjustment of budgets. (See also 1928 OAG 1561.)

1927 OAG 1041. Requirements that tax levies for the relief of the poor within the several townships of the state shall be included in the general levy for current expenses of the township and levied on all the taxable property in the township including the property within the municipalities in the township, are valid and constitutional.

4. Use of general fund

54 OS(2d) 412, 377 NE(2d) 505 (1978), State ex rel Waterbury Development Co v Witten. Water tap-in charge and charge levied for park development could not be justified.

20 OS(2d) 135, 254 NE(2d) 357 (1969), Madden v Bower. The proportionate cost of premiums for a county employees group health insurance plan paid on behalf of employees of a county engineer who are engaged directly in work on county roads and are compensated pursuant to RC 315.10, 4501.04, 5735.27 and 5555.92 is a part of the cost of services rendered by such employees in furtherance of the purposes for which those statutes were enacted and is payable from the funds established by those statutes.

OAG 88-096. A board of county commissioners may fund the programs of the county mental retardation and developmental disabilities board by special levy pursuant to RC 5705.19(L) and/or by treating the costs of such programs as current expenses of the county payable from the general fund pursuant to RC 5705.05(E).

OAG 86-053. A board of county commissioners has no authority to contribute county funds to a private, nonprofit organization formed for the purpose of coordinating health care and other support services for persons who are terminally ill but who are no longer in need of hospitalization.

OAG 81-035. County general fund moneys may be used for the construction of bridges in the county provided that the use of the particular funds for such purpose is not proscribed by law, and provided that the particular moneys have not been commingled with general fund moneys which may not be used for the construction of bridges.

OAG 81-035. Revenues derived from county sales and use taxes pursuant to RC 5739.211 and 5741.031 and deposited in the general fund may be used for bridge construction, provided that such revenues have not been commingled with general fund moneys which may not be used for such purposes.

OAG 74-083. A board of township trustees has implied power under RC 517.03 to construct a permanent building upon cemetery grounds when necessary for the care, supervision and improvement of the cemetery, and unencumbered general funds and federal revenue sharing funds may be used for the construction of such a building.

OAG 69-015. The monies received for the support of a county board of mental retardation may be paid into the general fund of the county to the account of the board, unless the county funds are provided by a special levy, in which case a separate fund must be established pursuant to RC 5705.10, and such monies are payable pursuant to vouchers approved by the county board of mental retardation.

OAG 65-88. The offices of township trustee and member of the board of health of a general health district are incompatible.

1964 OAG 1523. The revenue received from a special levy in excess of the ten-mill limitation for current operating expenses may not lawfully be used to enlarge or improve existing buildings.

1937 OAG 710. When a lawful claim is presented to a county treasurer for payment, and there is no designation, legal or factual, as to what fund should be charged with its payment, the rule of reason requires that such payment should be made from the general county fund.

1933 OAG 92. Telephone toll bills of the office of the prosecuting attorney are payable from the appropriation "supplies and facilities" appropriated from the general fund of the county.

5. General levy

OAG 91-035. RC 5705.05(G), which permits a township to use proceeds of the general levy for current expenses in "the amounts necessary for the relief of the poor," impliedly authorizes a township to enter into a contract with a private nonprofit hospital to provide hospital services to indigents.

OAG 83-032; overruled in part by OAG 91-008. RC 5901.11 imposes upon the board of county commissioners the mandatory duty of levying a tax to raise the funds certified as necessary by the soldiers' relief commission, up to five-tenths of a mill per dollar on the assessed value of the property of the county; pursuant to RC 5705.03 and 5705.05, such funds are raised as part of the general levy for current expenses, which need not be submitted to the electors for approval.

OAG 78-034. RC 3354.09 authorizes a board of trustees of a community college district to purchase or otherwise acquire real property for the purpose of drilling for natural gas or other energy resources necessary to the operation of district programs and facilities where such an acquisition enables the board to obtain such resources more cheaply than through a direct purchase.

OAG 65-71. There is no provision of law permitting the soldiers relief commission to make direct payments on a land contract or mortgage, but it may appoint a person to draw, receipt for and properly expend the allowance provided for by law; such person may expend funds for the payment of land contract or mortgage obligations of the needy person or family if making such payments is consistent with the actual housing need.

OAG 65-50. The county soldiers relief commission has no statutory authority to make payment from tax revenue for tuition and expenses to public or private schools for retraining or additional training to benefit the future employment opportunities of veterans, nor to employ and pay a salary to an administrator to handle retraining of veterans along with placement of veterans in employment.

1933 OAG 2015. It is mandatory to levy annually sufficient taxes to pay the interest on the bonds of a political subdivision and to provide a fund for their final redemption at maturity, even though by reason thereof such subdivision may not be able, on account of constitutional or statutory limitations, to levy a sufficient amount for other purposes.

1930 OAG 2114. County commissioners are required to include in the general levy, the amount which the soldiers' relief commission has certified to it as necessary for soldiers' relief, providing such amount does not require a levy in excess of one-half mill.

5705.06 Special levies without vote of the people within ten-mill limitation

The following special levies are hereby authorized without vote of the people:

(A) A levy for any specific permanent improvement which the subdivision is authorized by law to acquire, construct, or improve, or any class of such improvements which could be included in a single bond issue;

(B) A levy for the library purposes of the subdivision, in accordance with the provisions of the Revised Code authorizing levies for such purposes, but only to the extent so authorized;

(C) In the case of a municipal corporation, a levy for a municipal university under section 3349.13 of the Revised Code, but only to the extent authorized;

(D) In the case of a county, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges;

(E) In the case of a county, a levy for paying the county's proportion of the cost of the construction, improvement, and maintenance of state highways;

(F) In the case of a township, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges, including the township's portion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges;

(G) The levies prescribed by division (B) of sections 742.33 and 742.34 of the Revised Code.

Each such special levy shall be within the ten-mill limitation and shall be subject to the control of the county budget commission, as provided by sections 5705.01 to 5705.47 of the Revised Code.

Except for the special levies authorized in this section any authority granted by the Revised Code to levy a special tax within the ten-mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses.

HISTORY: 1985 H 201, eff. 7-1-85
1953 H 1; GC 5625-6

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 31.04, 31.09
Baldwin's Ohio School Law, 34.16(A), 40.09(B)
Gotherman & Babbit, Ohio Municipal Law, Text 19.40

CROSS REFERENCES

Appeals to the board of tax appeals, OAC Ch 5717-1

Tax levy for maintenance of county free public library, 3375.07
Tax levy by board of township trustees for maintenance of library, 3375.09
Tax levy by board of education for library purposes, 3375.17
Tax levy by board of county commissioners for county library district, 3375.23
Tax levy by board of county commissioners for regional library district, 3375.31
Contract for library service; tax levy, 3375.42
Roads and highways; equipment installment purchases; notes financed by tax levy, 5549.02
County road improvement; payment of county's share; tax levy, 5555.48
County road improvement; annual tax levy by board of county commissioners; additional to other levies, 5555.91
Tax levy for road repairs, 5555.95
Township road improvement; all costs may be paid from proceeds of tax levy, 5573.09
Township road improvement; township's proportion of costs; payment; tax levy, 5573.13
Maintenance and repair fund; tax levy, 5575.10
Levy of taxes, O Const Art XII §5

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 46; 20, Counties, Townships, and Municipal Corporations § 85, 292 to 294; 21, Counties, Townships, and Municipal Corporations § 771; 22, Courts and Judges § 165; 54, Highways, Streets, and Bridges § 292; 86, Taxation § 122, 124, 127, 128, 132, 141, 151; 87, Taxation § 889, 891
Am Jur 2d: 71, State and Local Taxation § 141 to 143

NOTES ON DECISIONS AND OPINIONS

OAG 90-097. A county that agrees to contribute to the repair and maintenance of the roads of a township within the county pursuant to RC 5535.08 may use for such purpose revenues derived from a tax levied under RC 5705.06(D) for the repair of roads other than state roads or revenues derived from a tax levied under RC 5705.19(G) for the repair of roads in the county or townships.

OAG 88-036. If a township road district is created pursuant to RC 5573.21, the district is a subdivision for purposes of RC 5705.01, and the township trustees, as taxing authority of the district, may levy taxes only upon the taxable property of the township road district, and not upon property within the limits of a municipal corporation located in the township.

OAG 74-083. A board of township trustees has implied power under RC 517.03 to construct a permanent building upon cemetery grounds when necessary for the care, supervision and improvement of the cemetery, and unencumbered general funds and federal revenue sharing funds may be used for the construction of such a building.

OAG 73-013. Where a county tax levy has been passed to provide care for tuberculosis patients either in a hospital or in a clinic, the money may be used to obtain supplies and equipment for the clinic.

OAG 72-028. A board of county commissioners may use tax monies levied and collected under RC 5705.06(D) to purchase land and construct a highway garage thereon, pursuant to RC 5549.01.

OAG 69-055; overruled in part by OAG 88-036. Tax levies made under authority of RC 509.01, 5705.06(F), 5573.13, and 5573.21 are to be made upon all the taxable property within the township, including the taxable property within any municipal corporations within such township, and are subject to the ten-mill limitation prescribed by RC 5705.02.

1957 OAG 1149. Authority of board of township trustees operating stone quarry to purchase new machinery and equipment discussed.

1938 OAG 1972. Money that comes into the hands of county treasurer by special tax levy authorized under this section for municipal public library must be paid to village treasurer; village treasurer must establish a municipal public library fund and all disbursements against such fund must be directed by trustees of municipal public library and warrant drawn upon village treasurer.

1930 OAG 1580. Funds arising by reason of the levy provided for in paragraph (E) of this section may not be used to pay the county's portion of the cost of a grade separation made in pursuance of GC 6936-22 (Repealed), et seq.

1929 OAG 889. There is no authority for township trustees to levy a tax for road purposes except within limitation of this section.

5705.07 Levies in excess of ten-mill limitation

The taxing authority of any subdivision may make tax levies authorized in excess of the ten-mill limitation by a vote of the people under the law applicable thereto, irrespective of all limitations on the tax rate.

HISTORY: 1953 H 1, eff. 10-1-53
GC 5625-7

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 31.04
Gotherman & Babbit, Ohio Municipal Law, Text 19.18; Forms 7.13

CROSS REFERENCES

Appeals to the board of tax appeals, OAC Ch 5717-1

Joint vocational school district; tax levy in excess of ten-mill limitation, 3311.21
Education; resolution relative to tax levy in excess of ten-mill limitation; bond issue; submission to electors, 3318.06
General health district special levy exceeding ten-mill limitation, 3709.29
Resolution relative to tax levy in excess of ten-mill limitation, 5705.19
Approval of excess levy; issuing notes, 5705.191
Resolution for emergency school levy; election; anticipation notes, 5705.194

Special levy for tuberculosis hospitals and clinics, 5705.20
School district special levy, 5705.21
Additional levy for county hospitals, 5705.22
Additional levy for mental health services, 5705.221
Special levy for library purposes; submission to electors, 5705.23
Tax levy for children services, 5705.24
Submission of proposed levy; notice of election; form of ballot; certification, 5705.25
Vote necessary for levies, 5705.26
Sanitary districts, levy of preliminary tax, 6115.46
Regional water and sewer districts; levy for current expenses, 6119.18
Property taxes exceeding 1% of value must be approved by voters, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 46; 20, Counties, Townships, and Municipal Corporations § 85, 292 to 294; 21, Counties, Townships, and Municipal Corporations § 771; 22, Courts and Judges § 165; 87, Taxation § 902, 903
Am Jur 2d: 71, State and Local Taxation § 137, 138, 141 to 143

NOTES ON DECISIONS AND OPINIONS

36 App 492, 173 NE 622 (1930), Hoffman v Pounds. Board of education possessing power to issue bonds to rebuild school, and issuing bonds within statutory limit, could levy tax outside fifteen-mill limitation to pay interest and retire bonds at maturity. It would seem also tax levy for payment of bonds issued to rebuild school might be made within fifteen-mill limitation.

OAG 72-028. A board of county commissioners may use tax monies obtained by special levy for road purposes under RC 5705.07 to purchase land and construct a highway garage thereon, pursuant to RC 5549.01.

OAG 66-096. A local school district board of education may submit two separate levies in excess of the ten-mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, RC 5705.21.

1936 OAG 5077. The budget commission of a county may authorize a subdivision therein to levy in excess of the ten and inside the fifteen-mill limitation for debt service on bonds that have been issued subject only to the former fifteen-mill limitation where such subdivision's share of the ten-mill levy is not sufficient therefor and such levy may be in addition to the operating levy and debt levy of its overlapping subdivisions.

1936 OAG 5077. Where a subdivision has outstanding bonds which were issued subject only to the former fifteen-mill limitation, the property in that subdivision is subject to a levy of fifteen mills if necessary to meet such debt charges and such subdivision must be authorized to levy as much of the additional five mills in excess of the ten-mill limitation as is necessary for said purposes, provided that where there are two or more subdivisions which overlap each other, the debt charges of which exceed the amount such subdivisions are authorized to levy within the ten-mill limitation and the additional five mill levy is not sufficient therefor, then the budget commission must determine the fair proportionate share thereof to which each of said subdivisions is entitled.

1934 OAG 3266. No tax levy may be made by a board of education for any purpose outside the ten-mill limitation, except as the same may be authorized and approved by the electors of the district in accordance with law.

1934 OAG 2980. This section does not place outside of the ten-mill limitation any levies which were formerly within the fifteen-mill limitation as contained in O Const Art XII §2.

1933 OAG 2044. Where laws relating to taxation passed since January 1, 1931, have effected a reduction in the amount of taxable property available for levies by a school district for interest and sinking fund or retirement of bonds issued or authorized by it prior to such date within the statutory fifteen-mill limitation, such levies may be outside the fifteen-mill limitation now provided for in O Const Art XII §2, to the extent required to equalize such reduction.

1928 OAG 2638. When a taxing authority has been authorized to levy taxes outside of the fifteen-mill limitation imposed by GC 5625-2 (RC 5705.02), and it is desired to make additional levies for the same purpose, the resolution and the ballot should recite the entire number of mills to be levied in addition to the rate that may be levied without a vote of the people, which it is proposed by the submission of said question to levy and not merely the rate in addition to that already authorized.

EXCESS AND SPECIAL LEVIES; ANTICIPATION NOTES

5705.18 Charter prevails over ten-mill limitation; calculation of tax rate

Sections 5705.02 and 5705.32 of the Revised Code do not apply to the tax levies of any municipal corporation which, by its charter or amendment thereto, provides for a limitation of the total tax rate which may be levied without a vote of the people for all the purposes of the municipal corporation, or for the current operating expenses thereof. Said charter or charter amendment may also provide for the levying of taxes by said legislative authority in excess of said charter limitation upon approval by the majority of the electors of said municipal corporation voting thereon at a November election.

For the purpose of calculating the ten-mill limitation and the distribution of taxes under section 5705.32 of the Revised Code within such limitation to counties, boards of education, and townships, the tax rate in each such municipal corporation is deemed to be the same as the average rate allowed to such municipal corporation within such limitation, or the fifteen-mill limitation prescribed by law prior to January 1, 1934, for the three years next preceding the year in which a charter provision has originally taken effect, except that:

(A) For the purpose of computing such average rate the annual rate allowed in the year 1933 or in any year prior thereto for the purposes of the next succeeding year shall be taken to be two-thirds of the rate actually allowed in each such year for such purposes.

(B) If the rate actually levied by a municipal corporation for current operating expenses within the ten-mill limitation whether pursuant to the provisions of the Revised Code or pursuant to any provision of the charter of such municipal corporation or any ordinance enacted under authority of such a charter, whereby a part of the taxes levied by such corporation are apportioned to the ten-mill limitation is less than such average rate, then the rate actually levied within the ten-mill limitation shall be considered the rate of the municipal corporation for the purpose of calculating said limitation.

HISTORY: 128 v 924, eff. 11-4-59
1953 H 1; GC 5625-14

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.67, 17.04, 19.17, 19.19, 19.20; Forms 7.01, 7.02

CROSS REFERENCES

Appeals to board of tax appeals, OAC Ch 5717-1

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 900, 901, 906
Am Jur 2d: 21, State and Local Taxation § 87, 89

NOTES ON DECISIONS AND OPINIONS

53 App(2d) 109, 372 NE(2d) 628 (1977), Cincinnati v Dawson. The adoption of limits on current operating expenses in a city charter is within the meaning and intent of RC 5705.18 and O Const Art XII §2, and such action allows a municipality to authorize unvoted general obligation bonds requiring millage which, when added to millage required to service existing debts, exceeds the ten-mill limitation imposed by O Const Art XII §2.

106 App 354, 151 NE(2d) 367 (1958), Sinclair v Lakewood; appeal dismissed by 168 OS 372, 154 NE(2d) 822 (1958). A municipal corporation may present to the electors of the city a proposed amendment to its charter authorizing the council by ordinance, without a vote of the people, to levy a tax on the taxable property in the city in addition to all taxes authorized by the charter and the ten-mill limitation of the Constitution, the proceeds to be used to provide needed monies for the relief and pension funds for members of the police and fire departments of said city.

49 App 436, 197 NE 376 (1934), State ex rel Thomas v Heuck. By GC 5649-10 (Repealed), and its successor section, GC 5625-14 (RC 5705.18), a charter city is exempted from the general tax limitations if a limitation is provided for in the charter, applying to taxes for all purposes or for current operating expenses.

1957 OAG 854. Where a charter municipality has provided for the power to levy an additional tax outside the charter limitation for the benefit of a municipal university, a tax levied thereunder is not subject to the limitations of RC 5705.19.

1952 OAG 1838. Where a municipal charter provision authorizes, upon the approval of the electors, the levy of taxes for specific purposes beyond a stated charter limitation, the rate of any such levy is subject to diminution in the event of reassessment, but where the charter authorizes the legislative authority of such municipality to levy taxes within such stated limitation for all municipal purposes without a vote of the people, the levies within such limitation are not subject to diminution.

1943 OAG 6569. The city of Cleveland, having taken itself out from provisions of GC 5625-2 and 5625-24 (RC 5705.02 and 5705.32), in so far as they relate to limitation on its tax levies, is nevertheless subject to all remaining provisions of uniform tax and budgetary law GC 5625-1 to 5625-39 (RC 5705.01 to 5705.47), including the annual general appropriation to be made by council as provided by GC 5625-29 (RC 5705.38).

5705.19 Resolution relative to tax levy in excess of ten-mill limitation in other than school districts

This section does not apply to school districts or county school financing districts.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than seventy-five days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

(A) For current expenses of the subdivision, except that the total levy for current expenses of a detention home district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.34 and 2151.65 of the Revised Code shall not exceed four mills;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;

(H) For recreational purposes;

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of permanent, part-time, or volunteer fire fighters or fire-fighting companies to operate the same, including the payment of the firemen employer's contribution required under section 742.34 of the Revised Code, or to purchase ambulance equipment, or to provide ambulance or emergency medical services operated by a fire department or fire-fighting company;

(J) For the purpose of providing and maintaining motor vehicles, communications, and other equipment used directly in the operation of a police department, or the payment of salaries of permanent police personnel, including the payment of the policemen employer's contribution required under section 742.33 of the Revised Code, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or to provide ambulance or emergency medical services operated by a police department;

(K) For the maintenance and operation of a county home;

(L) For community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that the procedure for such levies shall be as provided in section 5705.222 of the Revised Code;

(M) For regional planning;

(N) For a county's share of the cost of maintaining and operating schools, district detention homes, forestry camps, or other facilities, or any combination thereof established under section 2151.34 or 2151.65 of the Revised Code or both of those sections;

(O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;

(P) For maintaining and operating sewage disposal plants and facilities;

(Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or to make any payment to a county

transit board pursuant to section 306.06 of the Revised Code;

(R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention homes, or other facilities, or any combination thereof under section 2151.34 or 2151.65 of the Revised Code or both of those sections;

(S) For the prevention, control, and abatement of air pollution;

(T) For maintaining and operating cemeteries;

(U) For providing ambulance service, emergency medical service, or both;

(V) For providing for the collection and disposal of garbage or refuse;

(W) For the payment of the policemen employer's contribution or the firemen employer's contribution required under sections 742.33 and 742.34 of the Revised Code;

(X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;

(Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694 or 307.85 of the Revised Code;

(Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;

(AA) For the maintenance and operation of a free public museum of art, science, or history;

(BB) For the establishment and operation of a 9-1-1 system, as defined in section 4931.40 of the Revised Code;

(CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

(EE) For the creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code;

(FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement.

(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has such an interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use;

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code.

The resolution shall be confined to the purpose or purposes described in one division of this section, for which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose thereof, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention home district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.34 and 2151.65 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention homes, forestry camps, or other facilities, or any combination thereof, established under section 2151.34 or 2151.65 of the Revised Code or under both of those sections.

(3) When the additional rate is for any of the following, the increased rate may be for a continuing period of time:

(a) For the purposes set forth in divisions (I), (J), and (U) of this section;

(b) For the maintenance and operation of a joint recreation district;

(c) A levy imposed by a township for the purposes set forth in division (G) of this section.

(4) When the increase is for the purpose set forth in division (D) or (CC) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

A levy for the purposes set forth in division (I), (J), or (U) of this section, and a levy imposed by a township for the purposes set forth in division (G) of this section, may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for the purposes set forth in division (I), (J), or (U) of this section, and a levy imposed by a township for the purposes set forth in division (G) of this section, may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention home district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.34 and 2151.65 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for

the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds thereof, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election.

When the electors of a subdivision have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

HISTORY: 1992 S 32, eff. 7-1-92
1990 H 247, H 717, S 75; 1989 H 173, S 140; 1988 H 661, S 155, S 318, H 180; 1986 S 289; 1985 H 491, H 203; 1984 H 572, H 56; 1983 H 372; 1982 S 550; 1981 H 694, H 1; 1980 H 1062, H.268, H 873, S 160, H 850, S 274; 1979 H 36; 1978 S 491, S 58; 1977 H 277, H 617; 1976 S 434, H 111, H 920; 1974 H 1173; 1973 S 44; 1972 H 258, H 1158; 1971 S 370; 1970 S 476, H 1135; 1969 H 1, H 769; 132 v S 169, S 350, H 1, H 478; 131 v S 251, H 943; 130 v Pt 2, H 5; 130 v H 424; 129 v 1209; 128 v 574; 127 v 519; 126 v 882, 1126; 125 v 104, 713; 1953 H 1; GC 5625-15

UNCODIFIED LAW

1992 H 700, § 4, eff. 4-1-92, reads, in part: Notwithstanding sections 3501.02, 5705.19, 5705.191, and any other section of the Revised Code, in 1992 any local question or issue submitted to the electors at a special election held on the first Tuesday after the first Monday in August 1992, shall be certified for placement upon the ballot to the board of elections not later than June 16, 1992.

1990 H 247, § 3, eff. 11-30-90, reads:

(A) The legislative authority of a municipal corporation, by the affirmative vote of two-thirds of all of its members, may adopt a resolution proposing to submit to the electors, at a special election held in accordance with division (C) of this section, the question of an additional tax levy, in excess of the ten-mill limitation, for the current expenses of the municipal corporation, if both of the following apply:

(1) A current expenses levy previously was approved by the voters at the November 1985, general election, was extended on the 1986, 1987, 1988, 1989, and 1990 tax lists, and, as a result of its expiration, cannot be extended on the 1991 tax lists.

(2) The municipal corporation failed to timely certify to the board of elections a resolution proposing to submit the question of a current expenses levy to the electors at the November 1990, general election.

(B) A resolution adopted pursuant to division (A) of this section shall state the rate at which the levy is proposed to be levied, which shall not exceed eight mills; state the date on which the election on the question of the levy will be held, which shall be in accordance with division (C) of this section; state the period of time for which the levy will be in effect; and shall otherwise comply with the applicable provisions of Chapter 5705. of the Revised Code. The resolution also shall specify that, if approved, the levy will first be extended for collection on the 1991 tax list and duplicate and will be treated like any other additional tax levy for purposes of collection. Upon its adoption, the resolution shall be certified to the board of elections.

(C) Upon receipt of a resolution that has been adopted and certified pursuant to this section, the board of elections shall take all actions necessary to submit the question of the levy to the electors of the municipal corporation at a special election to be held on the earliest possible date, as determined by the board of elections, but prior to January 1, 1991, notwithstanding division (D) of section 3501.01, section 5705.19, and division (A) of section 5705.25 of the Revised Code. Notice of the election shall be published in a newspaper of general circulation in the municipal corporation once a week for each week prior to the election, not to exceed four weeks, notwithstanding division (A) of section 5705.25 of the Revised Code, but only if the resolution has been certified prior to one week before the date on which the election will be held. The form of the ballot to be used at the special election shall be that set forth in section 5705.25 of the Revised Code. If a majority of the electors voting on the question of the proposed levy votes in favor of the levy, the county auditor shall first extend the levy for collection on the 1991 tax list as if it had been submitted to and approved by the electors at the November 1990, general election.

(D) A levy approved under this section shall be certified to the Tax Commissioner and extended on the tax lists, as required under division (D) of section 5705.25 of the Revised Code.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140—LSC Analysis, p 5-481

Baldwin's Ohio Township Law, Text 21.28, 25.05, 31.04, 31.10, 35.03, 35.10, 43.07, 67.01, 67.07, 75.05, 75.14, 99.01, 99.03, 103.07; Forms 1.21, 3.01, 3.02, 3.04, 7.04, 7.05 §8, 7.06

Baldwin's Ohio School Law, Text 29.04(C), 29.09(A), 30.14, 34.16(B)

Gotherman & Babbit, Ohio Municipal Law, Text 11.09, 19.03, 19.18, 19.521, 27.11; Forms 7.02, 19.32

CROSS REFERENCES

Appeals to board of tax appeals, OAC Ch 5717-1

Licensing of emergency medical services, 307.05, 505.37
County economic development programs, tax levies for, 307.64
Township waste disposal, tax levy, 505.29
Tax levies for township fire districts, elections, 505.37
Tax levy for fire protection, 505.39
Township contracts for police protection, 505.43
Township police district, voter approval of expansion of district imposing tax, 505.48
Police district tax levy authorized, 505.51
Joint ambulance district, 505.71
Township cemeteries, levy and taxes for expenses, 517.03
Disability and pension funds, policemen employer's contribution, 742.33
Disability and pension funds, firemen employer's contribution, 742.34
Recreation, payment of expenses, levy of tax, 755.18
Subdivisions joining a joint recreational district, 755.181
Union cemetery districts, procedure for levying tax in excess of ten-mill limitation, 759.341
Appraisal of district detention home's site and buildings, funding of expenses, 2151.3412
Juvenile court, capital and current expenses of district, 2151.77
Emergency medical services, defined, 3303.51
Municipal university; tax levy, 3349.25
Powers and duties of board of trustees of technical college, 3357.09
Tax levy for maintenance of county free public library, 3375.07
Tax levy by board of township trustees for maintenance of library, 3375.09
Tax levy by board of county commissioners for county library district, 3375.23

Tax levy by board of county commissioners for regional library district, 3375.31

Contract for library service; tax levy, 3375.42

Regional arts and cultural district, method of creation, administrative procedures, tax levy, 3381.03

High speed rail authority definitions, 4981.01

County road improvement; payment of county's share; tax levy, 5555.48

County road improvement; payment of township's share; tax levy, 5555.49

County road improvement; annual tax levy by board, 5555.91

Tax levy for road repairs, 5555.95

Municipal road improvement; tax levy, 5557.03

Township road improvement; all costs may be paid from proceeds of tax levy, 5573.09

Township road improvement; township's proportion of cost; tax levy, 5573.13

Roads and highways; maintenance and repair fund, 5575.10

Levy for current expenses of regional water and sewer districts, anticipation notes, 6119.18

Tax levy upon county duplicate, creation of drainage improvement district, 6131.52

Property taxation by uniform rule, ten-mill limitation, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 46; 14, Cemeteries and Dead Bodies § 31; 20, Counties, Townships, and Municipal Corporations § 85, 292 to 294, 367, 370, 392, 397; 22, Courts and Judges § 165; 46, Family Law § 385; 73, Pensions and Retirement Systems § 134; 82, Sanitary and Sewer Districts § 75; 82, Schools, Universities, and Colleges § 118, 129; 86, Taxation § 123, 124, 126 to 128, 132, 137, 138, 140, 141, 143, 144, 150, 244; 87, Taxation § 903, 904, 906, 908, 1407

Am Jur 2d: 71, State and Local Taxation § 141 to 143

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Current operating expenses
3. Municipal universities
4. Permanent improvements
5. Roads and bridges
6. Fire districts
7. Hospitals
8. School levies
9. Mental health and retardation programs
10. Emergency services
11. Public recreation facilities

1. In general

OAG 80-011. RC 5705.19, 5705.191 and 5705.25 do not allow for variable rate tax levies, and levies proposed by counties pursuant to these sections must be fixed rate levies. The only sections in RC Ch 5705 allowing for variable rate levies are RC 5705.194 et seq. which apply only to school districts meeting emergency requirements.

OAG 77-097. Where township voters pass a levy pursuant to RC 5705.19(J) for the stated purpose of "providing and maintaining motor vehicles, communications, and other equipment used directly in the operation" of the township police department, and there is located entirely within that township a chartered village which already has its own police force, the township trustees may not appropriate proceeds of that levy to the village for its police force, nor use such proceeds to fund its obligation under a contract for additional police protection for the township under RC 505.50 or 505.441.

OAG 76-027. RC 505.441 authorizes a township, where a police district has not been formed or has been dissolved, to enter into contracts for police protection; the expenses of such protection are properly met from township funds; RC 5705.19(J) does not authorize submission of a proposed tax levy where a police department is not in operation or in existence, and a township—where a police district is not in existence and operation—may not properly submit a levy under RC 5705.19(J) to meet the permanent expenses of providing police protection.

1964 OAG 1578. Where a taxing authority proceeds to declare that it is necessary to levy a tax in excess of the ten-mill limitation and that such tax shall be levied upon the duplicate for the current year, the tax shall, after approval by the electors, be levied on the current duplicate as directed by statute, and there is no requirement that the necessity for the additional taxation must have been included in the budget submitted to the county auditor by the taxing authority prior to the adoption of the resolution of necessity.

1963 OAG 718. A tax levy approved in accordance with RC 5705.21 at a special election held on December 10 or 12, 1963, may not be extended upon the tax list and duplicate for the current year.

1962 OAG 3472. A levy under RC 5705.21 passed in January 1963, may not be assessed and collected as 1962 taxes, but is included in the tax budget certified to the county budget commission in 1963 to be collected with other 1963 taxes.

1962 OAG 2962. A board of county commissioners may purchase a building deemed necessary to provide the public shelter given poor relief recipients under RC 5113.01, and where the county has available funds deriving from the general tax levy within the ten-mill limitation, such funds may be used for the purchase of such a building, but poor relief funds raised pursuant to a levy in excess of the ten-mill limitation may be used to purchase such a building only if the purpose of such purchase was specified in the resolution of necessity required by that section; however, any poor relief funds available may be used for the maintenance of such a building.

1959 OAG 888. A proposed township levy in excess of the ten-mill limitation must be submitted to the electors of the township residing both within and outside of a village located wholly within the boundaries of said township.

1953 OAG 3061. There is no statutory requirement that a resolution proposing a vote on the issue of an additional levy for specific purposes should contain a statement of the total dollar amount proposed to be raised by such levy, or that the ballot to be used at the election at which such issue is submitted should contain such statement of the total dollar amount proposed to be raised by the levy.

1939 OAG 1175. Resolution of necessity for additional tax levies adopted by a taxing authority containing an expression of the proposed estimated average increased rate in dollars and cents for each one hundred dollars of valuation as well as in mills for each dollar of valuation, is valid.

1937 OAG 692. In order to submit to the vote of the electors of a subdivision the question of a special levy for library purposes of a school district public library, it is mandatory that a resolution be adopted by the board of public library trustees requesting the board of education to submit the question of a special levy, and that the board of education, upon receipt of such resolution, take the necessary action for submitting to the vote of the electorsof the subdivision the question of the special levy. Where the board of public library trustees failed to pass a resolution requesting the board of education to submit the question of a special levy to the vote of the electors of the village school district and the council of the village passed a resolution requesting a one-mill levy for library purposes, and the levy was voted upon, such special levy for library purposes is illegal.

1936 OAG 5711. There is no authority for the submission to the electors of a subdivision at a primary or special election of the question of levying a tax outside the ten-mill limitation for any of the purposes mentioned in this section, for a longer period than two years. Where the taxing authority of a subdivision passed a resolution providing for the submission of such question to the electors thereof at the primary election for a period of three years, the election held upon the question of levying such tax is illegal.

1932 OAG 4579. The taxing authority of any subdivision may submit to the electors the question of a tax levy outside of the fifteen-mill limitation as provided in GC 5625-15 (RC 5705.19) et

seq., notwithstanding the fact that such authority may have illegally levied a tax in excess of such limitation.

1932 OAG 4044. The resolution declaring the necessity for the levy of a tax outside of the fifteen-mill limitation for the payment of debt charges on bonds issued and authorized to be issued prior to January 1, 1925, even though such bonds may have been issued at different times and mature in different years, is confined to a single purpose within the meaning of said section. In the case of bonds maturing serially, the rate set forth in such resolution should be the rate which will be required to pay the principal and interest obligations of such bonds for that year in which such obligations shall be the greatest. In setting forth the purpose of the levy in such resolution and upon the ballots, it is sufficient to follow the wording of the statute.

1927 OAG 1186. When the original resolution provided for in this section does not require that the additional tax levy therein authorized shall be placed upon the tax duplicate for the current year, said resolution may not be changed or amended after notice given as provided in GC 5625-17 (RC 5705.25) and within four weeks of the election, so as to provide that said additional tax levy shall be placed upon the tax duplicate for the current year.

1927 OAG 999. A $600,000 bond issue properly authorized by vote of the electors of a municipality at the August 1923, primary election, but never issued because of tax limitations, may now be issued, and the issuance thereof is a condition precedent to submitting the question of the exempting of a levy for the redemption of such bonds and for the interest from the fifteen-mill limitation at the November, 1927 election. The better procedure would be to submit the questions both of issuing the bonds and exempting the levy at the same election and on the same ballot.

BTA 81-D-33 (1981), McNamara v Kinney. In a situation where there exists and is pending a tax levy for an identical purpose, RC 5705.19 permits the taxing authorities to submit a proposal for a new and additional tax levy for the same purpose or to submit a proposal to renew the existing levy or renew such existing levy, with only a modification of the rate thereof.

2. Current operating expenses

126 OS 78, 184 NE 12 (1932), State ex rel Southard v Van Wert. If current expenses of a municipality cannot by provided for within the fifteen-mill limitation, and provision also be made for payment of bonds required to be issued in order to comply with the mandatory orders of the state department of health, then the current expenses must yield and the municipality take advantage of this section to secure funds for current expenses.

OAG 87-107. Money derived from a tax levied by a county pursuant to RC 5705.19(K) for "the maintenance and operation of a county home" may be used to pay for prescription medicines for residents of the county home.

OAG 85-002. Interest earned on moneys of a joint-county community mental health service district and held by a county treasurer as the designated custodian of the district's funds, including interest earned on the proceeds of a tax authorized by RC 5705.19(A), must be credited to the general fund of the county.

OAG 78-037. A county is authorized, pursuant to RC 5705.19(J), to place a tax levy on the ballot for funds to be used by a sheriff for the salaries of permanent sheriff's personnel performing police duties and equipment used directly by the sheriff in the performance of his duties.

OAG 78-029. Any fund or budget from which county employees are compensated for their services may be used under RC 305.171 to pay premiums on employees' group medical insurance.

OAG 76-027. A township police district may not obtain all police protection by contract with municipalities, other townships or county sheriffs, but may, pursuant to RC 505.50, obtain additional police protection under such a contract, after providing directly for basic police protection through the employment of a chief of police, necessary patrolmen and the acquisition of police equipment.

OAG 69-015. The monies received for the support of a county board of mental retardation may be paid into the general fund of the county to the account of the board; unless the county funds are provided by a special levy, in which case a separate fund must be established pursuant to RC 5705.10, and such monies are payable pursuant to vouchers approved by the county board of mental retardation.

OAG 68-140; overruled by OAG 78-029. The board of county commissioners has no authority to charge the cost of group medical insurance, procured and paid for under the authority of RC 305.171, against any fund other than the county general fund.

OAG 65-187. When a tax is proposed to be levied under RC 5705.19(A) the term "current expenses" must appear on the ballot, and additional words suggesting a limitation within the category of current expenses may not be added to the ballot.

1964 OAG 1417. RC 1711.15 does not authorize a special levy for current expenses of a county agricultural society when the expenditures required do not exceed $20,000.

1963 OAG 154. A levy under RC 5705.19 or 5705.191 to raise revenue for the general fund of a subdivision must be declared by resolution to be a levy "for current expenses" or "current operating expenses" of the subdivision.

1957 OAG 1123. County commissioners may submit the question of a tax levy, outside the ten-mill limitation, for current operating expenses, and if such levy is approved may use the proceeds thereof to meet the expenses of a county planning commission.

3. Municipal universities

1957 OAG 854. Where a charter municipality has provided for the power to levy an additional tax outside the charter limitation for the benefit of a municipal university, a tax levied thereunder is not subject to the limitations of RC 5705.19.

1954 OAG 4360. Agreements for the support of a municipal university, earmarking of funds thereunder, and vote required for bond issue for support thereof discussed.

1954 OAG 3574. A special levy for the support of a municipal university may be submitted to the voters of the special taxing district under the provisions of RC 5705.19 or 5705.191, but if submitted under the latter section it requires a fifty-five per cent majority and may not be for more than two years.

1939 OAG 1175. Rate of additional tax for a municipal university that may be submitted to the voters of a taxing subdivision for approval in pursuance of a resolution of necessity therefor adopted by the taxing authority of the subdivision may not exceed forty-five hundredths of a mill over and above the limitation of fifty-five hundredths of a mill as prescribed by GC 7908 (Repealed).

4. Permanent improvements

OAG 85-024. A board of township trustees may give financial aid to a community improvement corporation to help the corporation defray its administrative expenses, but may not contribute or loan township funds to a community improvement corporation for the purpose of acquiring a site for future industrial development or paying off a loan on an existing site owned by the corporation for future industrial development.

OAG 71-033. Funds from a voted tax levy under RC 5705.191 for "constructing and equipping a new children's home" may be expended to erect, on the same premises, a service building to house vehicles and maintenance equipment to be used in connection with such home.

OAG 67-056; overruled by OAG 85-024. A political subdivision may not appropriate monies derived from taxation to provide for the maintenance or operating expenses of a community improvement corporation.

OAG 66-173. Until a juvenile judge or juvenile judges advise and recommend the establishment of a county or a district detention home pursuant to RC 2151.34 there is no legal authority to levy a tax for that purpose nor for a tax levy in the alternative.

OAG 66-056. Where the board of trustees of the regional airport authority contracts with a board of county commissioners for the acquisition, construction, maintenance or operation of an airport or airport facility and provides that the costs thereof shall be an

expense of the regional airport authority, the portion of such expense to be paid by the county is limited to the funds which it may appropriate annually from the general fund of the county; if, by agreement with the regional airport authority, the airport or airport facility is to be owned or owned and operated by the county, the costs of acquisition of land and facilities for the operation of the airport may be submitted by resolution as a tax levy in conformance with RC 5705.19.

1963 OAG 166. Legislation adopted by township trustees for issuance of notes under RC 505.37 must also provide for a tax levy and collection sufficient to pay interest and principal of the notes; the amount to be levied, however, is to be determined by taxing officials at the time the levy is made, after consideration of other funds available to retire the notes.

1962 OAG 3145; overruled by 1963 OAG 166. A board of township trustees may issue notes to cover deferred payments for the cost of remodeling the township firehouse, but the legislation authorizing the issuance of such notes must provide for a tax levy sufficient to pay the interest on and principal of such notes, and the proceeds of a tax levy previously adopted pursuant to RC 5705.19 may not be used for this purpose.

1962 OAG 2997. In order to use the proceeds of a special levy under RC 5705.191 for the purpose of constructing a permanent improvement, such purpose must be specified in the resolution of necessity required by such section.

1960 OAG 1697. In order to use the proceeds of a levy in excess of the ten-mill limitation under RC 5705.19 for the purpose of constructing a permanent improvement, such purpose must be specified in the resolution of necessity required by such section.

1959 OAG 722. Where it has been determined by the county commissioners that the entire cost of a garbage and refuse disposal plant shall be borne by the county at large, all of the residents of the county are entitled to vote for a tax levy therefor and the taxes levied pursuant thereto must be levied on all the taxable property of the county.

1959 OAG 722. If the county commissioners so determine, the entire cost of the installation of a garbage and refuse disposal plant may be paid by the county at large, and the cost thereof may be provided by a tax authorized by electors of the county, but the cost of operation could not be included in a single bond issue covering the cost of construction.

1951 OAG 455. Funds collected from a special levy in excess of the ten-mill limitation under this section, may properly be expended for the repairing of electric wiring in fixtures of a county children's home, but may not be expended for any "permanent improvement" or "improvement", as those terms are defined in GC 5625-1(e) (RC 5705.01).

1944 OAG 6717. Village owning a cemetery not connected in any way with the township or other cemetery association may levy a tax on the property of such village for cemetery purposes, and a proposal to levy such tax must be submitted at general election held in November.

1937 OAG 994. A municipality may properly submit to the electors the question of a levy outside the ten-mill limitation for the construction or acquisition of a gas plant and its incidental appurtenances.

5. Roads and bridges

OAG 90-097. A county that agrees to contribute to the repair and maintenance of the roads of a township within the county pursuant to RC 5535.08 may use for such purpose revenues derived from a tax levied under RC 5705.06(D) for the repair of roads other than state roads or revenues derived from a tax levied under RC 5705.19(G) for the repair of roads in the county or townships.

OAG 79-045. County commissioners may use the proceeds of a county-wide levy for general construction, reconstruction, resurfacing and repair of roads and bridges in counties or townships to make contributions to township trustees, based upon road mileage in each township, for the purpose of repair and maintenance of township roads. Absent express statutory authorization, county commissioners may not make contributions to, or share proceeds of a road levy with, township trustees for the purpose of any construction, improvement, or repair, of county roads.

OAG 67-107. Bridge funds levied pursuant to RC 5705.19(G) may not lawfully be used for the purpose of a regional master plan for sanitary sewer, water and storm drainage.

OAG 67-107. County funds derived from motor vehicle fuel taxes and motor vehicle license taxes may be lawfully expended to finance, in part, the development of a master plan for sanitary sewers, water and storm drainage for Greene, Miami, and Montgomery counties, in cooperation with the Miami Valley regional planning commission, but only to the extent that such expenditures are pursuant to an agreement entered into under RC 306.152, which agreement must limit such expenditures to planning related directly to the construction, reconstruction, improvement and repair of roads and bridges.

1932 OAG 4141. The expenses of the county surveyor and his office, in connection with the costs of the construction of a road improvement, are to be paid from county general funds and such cost cannot be proportioned and paid from the proceeds of a special road tax levy.

1931 OAG 3331. The proceeds of a tax levied for road purposes, generally, may lawfully be used by the county commissioners to pay their proportionate cost of the construction of a grade elimination project.

1928 OAG 2404, 2406. Township trustees are not authorized to submit to the electors of the township the question of making a tax levy over and above fifteen mills for the general construction, reconstruction, resurfacing and repair of roads; township trustees may submit to the electors of the township the question of levying a tax in excess of the fifteen-mill limitation for the purpose of constructing a specific road improvement if the estimated life of such improvement is five years or more.

6. Fire districts

No. 83-01-003 (12th Dist Ct App, Butler, 12-19-83), State ex rel Linkous v Tilton. Where a township board fails to adopt a resolution creating multiple fire districts within the township, the board lacks authority to levy a tax for fire protection upon a portion of the taxable township property.

OAG 89-010. Moneys derived from a township fire levy pursuant to RC 5705.19(I) and paid to a private fire company as reasonable compensation for fire and rescue services may be expended by the private fire company for any proper purpose of the company, including litigation relating to the construction and operation of the contract under which the moneys were paid to the fire company, except to the extent that the terms of the contract restrict the purposes for which the fire company may expend the moneys.

OAG 83-069. A board of township trustees may use funds derived from a tax levy adopted under RC 5705.19(I) to pay a private volunteer fire company to operate fire apparatus and appliances which are owned by the private volunteer fire company; such board of township trustees may not use funds derived from a levy adopted under RC 5705.19(I) to simply donate a fire station, fire equipment or apparatus, or maintenance services to a private volunteer fire company, but the board may contract with a private volunteer fire company for the provision of fire equipment, real estate, or services to the township upon any terms and conditions which the board, in the reasonable exercise of its discretion, deems appropriate; such terms and conditions may make funds derived from a levy adopted under RC 5705.19(I) available for the purchase of property or maintenance services for the fire company.

OAG 82-037. Pursuant to 1978 S 491, § 3, eff. 7-13-78, if the voters of a township have approved a tax levy under RC 5705.19(I) prior to 7-13-78, and the board of township trustees has appropriated funds from such levy to a fire department or firefighting company to purchase ambulance equipment or to provide ambulance services, the board of township trustees may continue to use the funds for such purpose for the duration of the period of the levy.

OAG 73-023. A township may not pass a bond issue for fire protection in any amount exceeding $50,000, but it may pass a tax levy in an amount exceeding $50,000 under RC 5705.19(I) and 5705.191.

OAG 73-023. The passage of a bond issue for fire protection is restricted by RC 505.40, but the passage of a tax levy by the township for the same purpose under RC 5705.19(I) and 5705.191 is not.

OAG 69-123. A board of township trustees may utilize funds acquired under RC 505.39 and 5705.19(I) for the purpose of furnishing ambulance service to its citizens and such funds may be used when the service is furnished directly through the township fire department under RC 505.37 or indirectly by contract under RC 505.443.

OAG 66-144. A board of township trustees may not accumulate the proceeds of a voted levy for fire protection during the life of the levy, for expenditure at a later date.

1952 OAG 1101. A fire district is a subdivision within the scope of the uniform tax levy law and the township trustees may submit to the voters a levy in excess of the ten-mill limitation.

1949 OAG 808. Township trustees may, by resolution, submit to the voters of the township or a fire district the question of taxation beyond the ten-mill limitation to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of a volunteer fire fighting company, but in no event to exceed $20,000.

7. Hospitals

OAG 86-053. A board of county commissioners has no authority to contribute county funds to a private, nonprofit organization formed for the purpose of coordinating health care and other support services for persons who are terminally ill but who are no longer in need of hospitalization.

OAG 81-023. A board of township trustees which has contracted with an adjoining municipality for the provision of ambulance or emergency medical services may establish reasonable charges pursuant to RC 505.84 for those persons who use the contracted service.

OAG 77-053; overruled by OAG 81-023. A board of township trustees may not recover the expenses of furnishing ambulance services, obtained by contract with a city pursuant to RC 505.443, by charging persons who use such service.

1955 OAG 5585. A county may include current expenses of a county general hospital in a general levy in excess of the ten-mill limitation, which must be approved by sixty per cent of the voters, and the funds raised should be paid to the general fund.

1955 OAG 5585. Under RC 5705.191 a two year levy for supplementing the general fund for various purposes including the support of general hospitals may be authorized by fifty-five per cent of the voters.

1955 OAG 5585. Under RC 5705.22 a levy of not more than 65/100 of a mill for support of a county general hospital may be levied outside the ten-mill limitation if approved by a majority of the voters, and the funds raised should be paid to a special fund.

1949 OAG 365. A county is not permitted to vote a special tax levy for maintenance of a county hospital outside of the ten-mill limitation; an additional tax for such purpose may be submitted to the electors.

1945 OAG 394. An additional tax may not be levied under GC 5625-15a (RC 5705.20), for the purpose of paying for the care, treatment and maintenance of tuberculosis patients at hospitals with which county commissioners have contracted. An additional tax for such purpose may be submitted to the electors under GC 5625-15 (RC 5705.19), and related sections.

8. School levies

48 App 43, 192 NE 393 (1933), Myers v Dover Twp Rural School Dist Bd of Ed. Adoption of resolution by board of education and certification thereof to election board was not necessary for calling of election to authorize school district tax, outside fifteen-mill limitation, to enable district to participate in state educational equalization fund, but resolution was effective to establish existence of conditions precedent to holding of election.

OAG 84-083. Pursuant to RC 5705.21, 5705.19(A), 5705.19(D), and 5705.19(F), the board of education of a school district may submit to the electors of the school district a tax levy in excess of the ten-mill limitation for any one of the following purposes: (1) current expenses; (2) library purposes; or (3) permanent improvements.

OAG 84-083. Pursuant to RC 3313.53, the board of education of a school district may expend funds derived from a tax levy for current expenses which is levied under RC 5705.21 and 5705.19(A) for the expenses "of directing, supervising, and coaching the pupil-activity programs in music, language, arts, speech, government, athletics, and any others directly related to the curriculum."

OAG 84-083. Pursuant to RC 3315.062, the board of education of a school district may expend funds derived from a tax levy for current expenses which is levied under RC 5705.21 and 5705.19(A) for the operation of such student activity programs as are approved by the state board of education and included in the program of the school district as authorized by its board of education, provided that total expenditures by the board from its general revenue fund for the operation of such student activity programs may not exceed five-tenths of one per cent of the board's annual operating budget.

OAG 78-027. The authority to purchase or lease motor vehicles is so integrally related to the duty of the county board of mental retardation to provide transportation that it is a necessarily implied power under RC 5126.03(C); therefore, the authority to purchase, lease and hold title to motor vehicles to be used to meet transportation needs of a county board of mental retardation lies with that board and not with the board of county commissioners.

OAG 70-121; overruled by OAG 78-027. The power of the county board of mental retardation under RC 5126.03(D) to "provide" funds for its activities does not render the board a "taxing authority" within the meaning of RC 5705.19.

OAG 66-153. When an exempted school district proposes a five-mill tax levy outside the ten-mill limitation, pursuant to RC 5705.192, for current operating purposes, which is not necessary to meet the minimum requirements of RC Ch 3317, such levy may be for an indefinite period of time, so long as the total millage outside the ten-mill limitation levied for an indefinite period of time does not exceed ten mills; if any part of said proposed levy for an indefinite period of time causes the total millage levied for an indefinite period of time outside the ten-mill limitation to exceed ten mills, then RC 5705.192 limits the excess of the ten mills specified to a duration of no longer than ten years; a proposed levy outside the ten-mill limitation for current operating expenses of an exempted school district, which is not necessary to meet the minimum requirements of RC Ch 3317, and which is proposed under RC 5705.19, may be made for any number of years not exceeding five.

OAG 66-096. A local school district board of education may submit two separate levies in excess of the ten-mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, RC 5705.21.

1964 OAG 1523. There is no legal authority for a participating school district to allocate and pay over any part of its tax or school foundation funds to a joint vocational school district.

1964 OAG 1523. A board of education of a joint vocational school district may declare by resolution the necessity to levy a tax in excess of the ten-mill limitation and that there shall be a levy upon the duplicate of the current year; and the fact that such board of education did not come into legal existence until the fifteenth day of June does not prevent such levy upon the current duplicate.

1964 OAG 1523. The revenue received from a special levy in excess of the ten-mill limitation for current operating expenses may not lawfully be used to enlarge or improve existing buildings.

1961 OAG 2657. If a board of education of a school district resolves to submit the question of an additional tax levy for school district purposes to a vote of the electors and the resolution of the board specifies that such additional tax levy is to be placed upon

the tax duplicate for the current year, then the levy, if it receives a favorable vote, must be extended on the current tax duplicate for collection, and after the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

1961 OAG 2479. A board of education of a city, exempted village, or local school district may expend money to improve its athletic field; and such a subdivision may submit to the electors of the subdivision the question of issuing any bonds and levying of any tax for the purpose of providing the necessary funds therefor.

1957 OAG 1212. Where the taxing authority of a school district has initiated a proposal to levy a tax for current operating expenses and where the legal existence of such district is terminated by consolidation of such school district with another to form a new local school district prior to the date of the election at which such proposal is to be submitted to the electors, the submission of such proposal thereafter either to the electors of such constituent district, or of such consolidated district, is not authorized.

1956 OAG 6908. A levy pursuant to RC 5705.19 for current operating revenues for a school district may be voted for any number of years not exceeding ten when the levy or any part of such levy is necessary to qualify the school district under RC Ch 3317, even though such levy will increase the total tax levy for current school operation to an amount in excess of the minimum required in RC Ch 3317.

1949 OAG 1009. If a school district votes an additional tax levy in the November 1949 election, and the board of education resolves to place the tax on the books for the current year, pursuant to GC 5625-17a (RC 5705.25), the county auditor is required to certify and the county treasurer to collect said tax in December 1949, despite GC 2584 (RC 319.29).

9. Mental health and retardation programs

95 Abs 311, 201 NE(2d) 816 (CP, Madison 1964), Roddy v Andrix. Funds arising from a special levy, "for the purpose of the maintenance and operation of schools for retarded children" may not be used for acquisition of real estate and construction of a school building.

OAG 91-042. When a special election for a tax levy for community mental retardation and developmental disabilities programs and services pursuant to RC Ch 5126 is held under RC 5705.19(L) on the primary election date in an odd-numbered year, the county is the "subdivision submitting the special election" for purposes of RC 3501.17. Accordingly, the board of county commissioners must pay costs relating to the special election as provided in RC 3501.17.

OAG 88-096. A board of county commissioners may fund the programs of the county mental retardation and developmental disabilities board by special levy pursuant to RC 5705.19(L) and/or by treating the costs of such programs as current expenses of the county payable from the general fund pursuant to RC 5705.05(E).

OAG 86-103. All revenue derived from a special tax levied pursuant to RC 5705.19(L), for the support of the county board of mental retardation and developmental disabilities and its school, and for the construction and operation of a facility to house board programs, must, pursuant to RC 5705.10, be placed in a special fund established pursuant to RC 5705.09(D) for the purposes for which the tax was levied.

OAG 86-103. Where a tax is levied pursuant to RC 5705.19(L) for the purpose of supporting a county board of mental retardation and developmental disabilities and its school, and for the construction and operation of a facility to house the county board's programs, the proceeds of the levy may be used for the current operating expenses of the board. To the extent the proceeds are not budgeted for operating expenses, the county board of mental retardation and developmental disabilities may, with the approval of the county board of commissioners, use the proceeds to construct a facility.

OAG 85-002. Interest earned on moneys of a joint-county community mental health service district and held by a county treasurer as the designated custodian of the district's funds, including interest earned on the proceeds of a tax authorized by RC 5705.19(A), must be credited to the general fund of the county.

OAG 84-089. Interest earned on moneys which are derived from a special tax levied pursuant to RC 5705.19(L) and which have been transferred to a permanent improvement fund established pursuant to RC 5705.12 must be credited to the general fund of the county.

OAG 84-065. Pursuant to RC 5705.19, a board of county commissioners may, in its resolution to levy a tax in excess of the ten-mill limitation for programs and services for the mentally retarded and developmentally disabled, provide for the increased tax rate to be for a specific number of years, not exceeding five, or for the increased tax rate to be for a continuing or indefinite period of time. A board of county commissioners has no authority to provide that such an increase be for a definite number of years exceeding five years.

OAG 82-018. A county board of mental retardation and developmental disabilities lacks the authority to independently purchase real estate. Such purchases can be made by the board with the approval of the board of county commissioners pursuant to RC 5709.19(L) or by the board of county commissioners under RC 307.02.

OAG 82-013. A tax levy submitted for voter approval by a joint county mental health district pursuant to RC 5705.19(A) and 5705.25 may not be designated as a replacement levy.

OAG 75-089. A joint county mental health and retardation service district is a subdivision within RC 5705.01(A), and the district's mental health and retardation board is a taxing authority within RC 5705.01(C); therefore, pursuant to RC 5705.19 a joint county community mental health and retardation board is capable of placing a tax levy before the public without the approval of the county commissioners.

OAG 74-061. A board of county commissioners may certify to the board of elections a ten-year levy for a community mental health and retardation program, even though the amendment to RC 5705.221, permitting such ten-year levy, becomes effective after the date of certification but before the November election.

OAG 70-062. County board of mental retardation does not possess power or authority to purchase site for construction of permanent improvement for mentally retarded, nor to contract with an architect or engineer to assist in construction of such improvement.

OAG 69-113. A special tax levy in excess of the ten-mill limitation for a county board of mental retardation should be submitted under RC 5705.19(L), rather than RC 5704.24; although funds from the levy proposed under RC 5705.19(L) may be used for substantially the same purposes as the current levy passed under RC 5705.24, the proposed levy will not be a "renewal" of the current levy.

OAG 68-015. Monies received from a tax levied pursuant to RC 5705.19(L) for the maintenance and operation of schools, training centers or workshops for mentally retarded persons must be appropriated to the use of the county board of mental retardation.

OAG 67-109. A county board of mental retardation may enter into a contract with the county child welfare board having real and personal property used exclusively in the training of mentally deficient persons, to provide the training center, workshop facilities and services authorized in RC 5127.01 upon such terms as may be agreeable.

OAG 67-088. The proceeds of a tax levied pursuant to the authorization contained in RC 5705.24 cannot be legally appropriated to or expended by a county board of mental retardation created under RC 5126.01.

OAG 65-221. RC 5705.19(L) is not applicable to a tax levy passed prior to October 25, 1965.

1962 OAG 2780. The board of county commissioners may not place a tax levy upon the ballot for the combined purposes of child welfare services and the mentally retarded program.

1961 OAG 2511. A levy for the maintenance and operation of schools, training centers, or workshops for mentally retarded per-

sons provided for in RC 5705.19(L) does not come within the limitation of sixty-five one hundredths of a mill for the support of child welfare services provided for in RC 5705.24.

10. Emergency services

OAG 90-065. A township that has an emergency service levy under RC 5705.19 may also, pursuant to RC 505.84, to cover the costs of providing ambulance services within the township, charge nonresidents $125 per run for ambulance services and may charge residents a lesser fee, provided that the charges are reasonable and that the "authorized medicare reimbursement rate" established for the locality, as determined by the medicare carrier, is equal to or less than $125. The board of township trustees may at its discretion waive all or part of the charge for any resident.

OAG 79-072. Funds raised by a levy passed pursuant to RC 5705.19(I) may be used to purchase a rescue vehicle which provides ambulance or emergency medical services, whether or not such services are provided in connection with fire-related matters.

OAG 78-014. Levy funds raised pursuant to a fire levy under RC 5705.19(I) may not be used for the purpose of purchasing ambulance equipment or for providing ambulance or emergency medical service, and funds for such purposes must be raised under a separate levy pursuant to RC 5705.19(U).

11. Public recreation facilities

50 OS(2d) 356, 364 NE(2d) 289 (1977), Towne Properties, Inc v Fairfield. RC Ch 5705, creating the general tax levy, contains neither an expressed statutory interdiction nor a justification for the implication of a legislative intention of pre-emption; therefore, a municipality has retained its authority to impose a tax upon new residential units and mobile homes or trailer pads in the city to provide the funds for the acquisition, development, maintenance and operation of needed public recreation sites or facilities.

OAG 87-106. A township's purchase of a building to be used as a multipurpose senior center may be financed by a tax levy under RC 5705.19(F) or 5705.191, and in appropriate circumstances, the procedure set forth in RC 505.263 may be followed.

OAG 65-124. Township trustees of any township having within its limits a public park, public square, or grounds devoted to public uses for park purposes not under the control of a board of park commissioners do not have the authority to expend the proceeds of a tax levied pursuant to RC 511.33 for (1) establishing and maintaining recreational programs for youth in the township; (2) hiring supervisors and assistants or using township employees to establish and supervise recreational programs for youth in the township; or (3) purchasing supplies and/or equipment to establish and operate recreational programs for youth in the township, or to acquire, by rental agreement or lease, for the summer months, real estate having thereon recreational facilities to be used for park purposes.

OAG 65-39. Funds raised by a township recreation levy pursuant to RC 5705.19(H) may not be used to operate a free public park under the control of park commissioners of a township park district.

1963 OAG 157. A board of education cannot expend monies from recreational funds raised by a special tax levy pursuant to RC 5705.19 for the purchase of football equipment for students participating in extra-curricular football, whether it be interscholastic or intrascholastic practice and competition.

5705.191 Approval of excess levy; issuing notes; emergency medical services levy

The taxing authority of any subdivision, other than the board of education of a school district or the taxing authority of a county school financing district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the purposes in section 5705.19 of the Revised Code, or to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary, or special election to be held at a time therein specified. Such resolution shall not include a levy on the current tax list and duplicate unless such election is to be held at or prior to the first Tuesday after the first Monday in November of the current tax year. Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, except that a levy to supplement the general fund for the purposes of public assistance, human or social services, relief, welfare, hospitalization, health, or the support of general or tuberculosis hospitals may not be for a longer period than ten years. All other levies under this section may not be for a longer period than five years unless a longer period is permitted by section 5705.19 of the Revised Code, and the resolution shall specify the date of holding such election, which shall not be earlier than seventy-five days after the adoption and certification of such resolution. The resolution shall go into immediate effect upon its passage and no publication of the same is necessary other than that provided for in the notice of election. A copy of such resolution shall, immediately after its passage, be certified to the board of elections of the proper county or counties in the manner provided by section 5705.25 of the Revised Code, and such section shall govern the arrangements for the submission of such question and other matters with respect to such election, to which section 5705.25 of the Revised Code refers, excepting that such election shall be held on the date specified in the resolution, which shall be consistent with the requirements of section 3501.01 of the Revised Code, provided that only one special election for the submission of such question may be held in any one calendar year and provided that a special election may be held upon the same day a primary election is held. Publication of notice of such election shall be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks.

If a majority of the electors voting on the question in an election held on the first Tuesday after the first Monday in November or on the first Tuesday after the first Monday in May, or fifty-five per cent of those voting on the question at a special election held on any other day vote, in favor thereof, or, when the question is a levy proposed for purposes under division (L) of section 5705.19 of the Revised Code, if a majority of those voting on the question at a special election held on any other day vote in favor thereof, the taxing authority of the subdivision may make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission.

After the approval of such levy by vote and prior to the time when the first tax collection from such levy can be made, the taxing authority of the subdivision may anticipate a fraction of the proceeds of such levy and issue anticipation notes. In the case of a continuing levy, notes may be issued in an amount not more than fifty per cent of the total

estimated proceeds of the levy for the first ten years. In the case of a levy for a fixed period, notes may be issued in an amount not more than fifty per cent of the total estimated proceeds of the levy throughout its life. No anticipation notes that increase the net indebtedness of a county may be issued without the prior consent of the board of county commissioners of that county. The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not exceeding the life of the levy anticipated, and may have a principal payment in the year of their issuance.

"Taxing authority" and "subdivision" have the same meanings as in section 5705.01 of the Revised Code.

This section is supplemental to and not in derogation of sections 5705.20, 5705.21, and 5705.22 of the Revised Code.

HISTORY: 1991 H 207, eff. 9-17-91
1990 S 257; 1989 H 230, S 140; 1988 H 403, S 155; 1986 H 222; 1983 S 213, H 297; 1981 H 235; 1979 H 409; 1978 S 396; 1974 H 662; 1972 S 331; 1969 S 305, S 444; 130 v Pt 2, H 5; 130 v H 424; 129 v 582; 128 v 67, 533; 127 v 410; 126 v 771; 125 v 212

UNCODIFIED LAW

1992 H 700, § 4: See Uncodified Law under 5705.19.

1991 H 207, § 9, eff. 9-17-91, reads:

The amendments and enactments in Section 1 of this act apply to any proceedings commenced after their effective date, and, so far as their provisions support the actions taken, also apply to any proceedings that on their effective date are pending, in progress, or, in the case of elections or otherwise, completed, and to the securities authorized or issued pursuant to those proceedings, notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, ordinance, order, advertisement, notice, or other proceeding. Any proceedings pending or in progress on the effective date of those amendments and enactments, and securities sold, issued, and delivered, and validated, pursuant to those proceedings, shall be deemed to have been taken, and authorized, sold, issued, and delivered, and validated, in conformity with those amendments and enactments.

The authority provided in Section 1 of this act provides additional and supplemental provisions for the subject matter that may also be the subject of other laws, and is supplemental to and not in derogation of any similar authority provided by, derived from, or implied by, the Constitution, or any other law, including laws amended by this act, or any charter, order, resolution, or ordinance, and no inference shall be drawn to negate the authority thereunder by reason of express provisions contained in Section 1.

The provisions of the Revised Code amended or repealed by this act shall be deemed to remain applicable to securities issued pursuant to or in reliance on them prior to the effective date of those amendments or repeals.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140—LSC Analysis, p 5-481; H 230—LSC Analysis, p 5-925

Baldwin's Ohio Township Law, Text 31.10, 35.02, 35.10, 35.27, 35.29, 75.05, 81.11; Forms 3.01, 3.02, 3.04

Gotherman & Babbit, Ohio Municipal Law, Text 19.03, 19.18; Forms 7.02, 19.32, 19.33

CROSS REFERENCES

Appeals to board of tax appeals, OAC Ch 5717-1

Taxing authority may borrow money and issue notes in anticipation of the collection of current revenues, 133.10

Agreement between hospital agencies, 140.03

Resolution or ordinance to create regional transit authority, procedures, 306.32

Levy of property tax, purpose, 306.49

Emergency medical service, 307.05, 505.44, 3303.08 et seq.

Union cemetery districts, procedure for levying tax in excess of ten-mill limitation, 759.341

Powers and duties of board of trustees of technical college, 3357.09

Regional arts and cultural district, taxes outside ten-mill limitation, election, votes, 3381.16

Special levy for general health district, 3709.29

Joinder of municipal corporation, county, or township to port authority, 4582.024

Port authorities, joinder of additional subdivisions, 4582.26

Property taxation by uniform rule, ten-mill limitation, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Securities § 34; 86, Taxation § 123, 124, 127, 128, 132, 141 to 143; 87, Taxation § 903, 906

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Taxing authority
3. Enactment of levy
4. Nature of revenue
5. Issuance of anticipation notes

1. In general

OAG 91-035. There need not be a direct relationship between the amount of levy proceeds paid by a township to a hospital association pursuant to RC 513.01 or 5705.191 and the services rendered to indigents by the hospital.

OAG 91-035. The proceeds of a levy for the purpose of supplementing the general fund for the support of general hospitals pursuant to RC 5705.191 may be paid to a hospital association which meets the requirements of RC 513.01 and RC 513.02.

OAG 88-068. With the passage of a replacement levy pursuant to RC 5705.191, the levy that was replaced becomes ineffective and incapable of being renewed.

OAG 88-068. A replacement levy proposed pursuant to RC 5705.191 that does not win voter approval has no effect upon the levy that it seeks to replace; a resolution to renew the existing levy may be placed on the ballot pursuant to RC 5705.25 following the failure of a replacement levy to win voter approval.

OAG 87-106. A township's purchase of a building to be used as a multipurpose senior center may be financed by a tax levy under RC 5705.19(F) or 5705.191, and in appropriate circumstances, the procedure set forth in RC 505.263 may be followed.

OAG 80-011. RC 5705.19, 5705.191 and 5705.25 do not allow for variable rate tax levies, and levies proposed by counties pursuant to these sections must be fixed rate levies. The only sections in RC Ch 5705 allowing for variable rate levies are RC 5705.194 et seq. which apply only to school districts meeting emergency requirements.

OAG 73-023. The passage of a bond issue for fire protection is restricted by RC 505.40, but the passage of a tax levy by the township for the same purpose under RC 5705.19(I) and 5705.191 is not.

OAG 68-051. The renewal of a tax levy authorized by RC 5705.20 for the support of tuberculosis hospitals or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis or for the support of tuberculosis clinics may only by submitted to the electorate at the November election.

1961 OAG 2145. Where a tax levy is approved by the voters of a taxing district at a special election held in December pursuant to RC 5705.191 the county auditor is not required to extend such tax levy on the tax list and duplicate for the current year.

1937 OAG 1245. A board of county commissioners, in expending public funds for advertising an election upon a question of a tax

levy outside of constitutional limitations, is limited to the publication of a notice of such election provided by this section, and public funds may not be expended to pay the cost of other advertisements showing the necessity of such levy.

2. Taxing authority

OAG 75-070. There is no express or necessarily implied authority under either RC 307.051 or 5705.191, for a county to enter into contracts for the provision of emergency medical services.

OAG 73-023. A township may not pass a bond issue for fire protection in any amount exceeding $50,000, but it may pass a tax levy in an amount exceeding $50,000 under RC 5705.19(I) and 5705.191.

OAG 69-089; overruled by OAG 91-035. A taxing subdivision, be it a municipality or township, may not pass a levy under RC 5705.191 for the support of a general hospital run by a private not-for-profit corporation.

3. Enactment of levy

27 OS(2d) 47, 271 NE(2d) 795 (1971), State ex rel Cooper v Warren. Fifty-five per cent majority was necessary to enact levy to provide bonds for jail and court house.

403 US 1, 91 SCt 1889, 29 LEd(2d) 273 (1971), Gordon v Lance. West Virginia's constitutional and statutory requirement that political subdivisions may not incur bonded indebtedness or increase tax rates beyond those established by the state constitution without the approval of sixty per cent of the voters in referendum election does not discriminate against or authorize discrimination against any identifiable class and does not violate the Equal Protection Clause or any other provision of the US Constitution.

OAG 88-068. With the passage of a replacement levy pursuant to RC 5705.191, the levy that was replaced becomes ineffective and incapable of being renewed.

1964 OAG 1417. RC 1711.15 does not authorize a special levy for current expenses of a county agricultural society when the expenditures required do not exceed $20,000.

1963 OAG 154. A levy under RC 5705.19 or 5705.191 to raise revenue for the general fund of a subdivision must be declared by resolution to be a levy "for current expenses" or "current operating expenses" of the subdivision.

1929 OAG 1043. Where, in submitting to the electors of the subdivision the question of a tax levy, the resolution of necessity of such levy is not filed with the election board prior to September 15th, but all other provisions governing such submission are followed, and the question carries at the election, it is unlikely that the courts would hold invalid the tax levy so authorized by reason of such noncompliance with the statute.

4. Nature of revenue

OAG 73-086. While county commissioners may not, by grant or by separate contract for emergency services, make payments from a special levy under RC 5705.191 to the lessee of a county general hospital to cover the costs of hiring additional doctors to staff the emergency room of the hospital, they may, however, pursuant to a provision in the lease agreement, entered under RC 339.09, make such payments from the proceeds of the levy submitted to the voters under RC 5705.191.

OAG 71-033. Funds from a voted tax levy under RC 5705.191 for "constructing and equipping a new children's home" may be expended to erect, on the same premises, a service building to house vehicles and maintenance equipment to be used in connection with such home.

1963 OAG 154. A levy under RC 5705.191 for "the purpose of supplementing the general fund for current expenses ... for the purpose of making an appropriation for child welfare services" is a special levy and all revenue derived therefrom shall be credited to a special fund for the purpose for which the levy was made, and may not be used for the construction of permanent improvements.

1962 OAG 2997. Revenue derived from a special tax levy pursuant to RC 5705.191 may not be paid into the general fund to reimburse such fund, but must be credited to a special fund for the purpose for which such levy was made; no transfer can be made from a special fund to the general fund except as authorized in RC 5705.14.

1962 OAG 2997. In order to use the proceeds of a special levy under RC 5705.191 for the purpose of constructing a permanent improvement, such purpose must be specified in the resolution of necessity required by such section.

1956 OAG 7001. County contributions in support of mental health clinics are health expenditures, and if the funds for health purposes are insufficient a levy may be made, funds from which may not be earmarked for any special health purpose but are available for all health expenditures.

1955 OAG 5585. Under RC 5705.191 a two-year levy for supplementing the general fund for various purposes including the support of general hospitals may be authorized by fifty-five per cent of the voters.

1954 OAG 3574. A special levy for the support of a municipal university may be submitted to the voters of the special taxing district under the provisions of RC 5705.19 or 5705.191, but if submitted under the latter section it requires a fifty-five per cent majority and may not be for more than two years.

5. Issuance of anticipation notes

OAG 66-136. A university branch district created pursuant to RC Ch 3355 has no statutory authority to anticipate the proceeds of a levy approved in accordance with RC 3355.09, and therefore may not issue notes in anticipation of such proceeds, nor use the proceeds from such levy to repay loans either upon notes or notes and mortgages on district property since such use of these proceeds is not one of the purposes for such levy as specified in RC 3355.09.

5705.192 Replacement levies

A taxing authority may propose to replace all or a portion of an existing levy that is limited to any of the purposes specified in divisions (A) to (N) of this section. If the authority proposes to replace the levy, it shall be called a replacement levy and shall be so designated on the ballot. A replacement levy shall appear separately on the ballot from and not be conjoined with the renewal of any other existing levy. A resolution for a replacement levy shall specify the amount of the proposed rate, the first year in which the levy will be imposed, and whether the levy is to replace all, or a portion of, the existing levy.

A replacement levy may be proposed to replace all or a portion of a levy imposed for any of the following purposes:

(A) A levy under section 3311.21 of the Revised Code;

(B) A levy under section 5705.191 of the Revised Code limited to the purpose of providing emergency medical service;

(C) A general health district levy under section 3709.29 of the Revised Code;

(D) A levy for community mental retardation and developmental disabilities programs and services imposed under section 5705.19 or 5705.191 of the Revised Code;

(E) A levy under section 5705.221 of the Revised Code;

(F) A levy by the board of a joint-county alcohol, drug addiction, and mental health service district under section 5705.19 or 5705.191 of the Revised Code;

(G) A levy under section 5705.24 of the Revised Code;

(H) A levy under section 511.27 of the Revised Code;

(I) A levy under section 1545.21 of the Revised Code;

(J) A levy by a board of education under section 5705.21 of the Revised Code;

(K) A levy by a board of county commissioners for the provision and maintenance of zoological park services and

facilities under division (Z) of section 5705.19 of the Revised Code;

(L) A levy by a board of county commissioners under division (G) of section 5705.19 of the Revised Code for the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in the county;

(M) A levy by a board of township trustees under division (G) of section 5705.19 of the Revised Code for the general construction, reconstruction, resurfacing, and repair of streets and roads, but not bridges, in the township;

(N) A levy by a board of county commissioners under section 5705.191 of the Revised Code to supplement the general fund for the purpose of making appropriations for (1) health or (2) human or social services, or (3) both health and human or social services.

The taxing authority shall adopt the resolution for a replacement levy and file a certified copy of the resolution with the county board of elections in the manner prescribed by the section of the Revised Code that applies to the adoption and certification of the resolution.

Two existing levies, or any portion of those levies, may be combined into one replacement levy, so long as both of the existing levies are due to expire the same year and both are for the same purpose as specified in divisions (A) to (N) of this section. The question of combining all or portions of the two existing levies into the replacement levy shall appear as one ballot proposition before the electors. If the electors approve the ballot proposition, all or the stated portions of the two existing levies are replaced by one replacement levy.

HISTORY: 1991 H 93, eff. 6-11-91
1990 S 257

Note: Former 5705.192 repealed by 1977 H 1, eff. 8-26-77; 1976 H 920; 1973 S 44; 1969 S 305, S 444; 132 v S 350; 128 v 997, 574.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 31.24, 43.07, 97.24

CROSS REFERENCES

Determinations by tax commissioner, status of replacement levies, 319.301
Townships, duties of administrators, 505.032
Annual tax ordinance, 705.17
Municipal powers of local self-government, O Const Art XVIII §3

5705.193 Tax anticipation notes on county tax levy for permanent improvements

When the electors of a county have approved a tax levy under section 5705.191 of the Revised Code for the purpose of providing funds for the acquisition or construction of a specific permanent improvement or class of permanent improvements for the county, the taxing authority of such county may anticipate a fraction of the proceeds of such levy and from time to time, during the life of such levy, issue anticipation notes in a principal amount not to exceed seventy-five per cent of the estimated proceeds of such levy to be collected after the date of the issuance of such notes, less an amount equal to the proceeds of such levy previously obligated by the issuance of anticipation notes. No anticipation notes that increase the net indebtedness of a county may be issued without the prior consent of the board of county commissioners of that county.

Such notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each remaining year of the life of the levy after the year of their issuance, and may have a principal payment in the year of their issuance.

HISTORY: 1991 H 207, eff. 9-17-91
1989 H 230; 1988 S 155; 129 v 437

UNCODIFIED LAW

1991 H 207, § 9, eff. 9-17-91, reads:

The amendments and enactments in Section 1 of this act apply to any proceedings commenced after their effective date, and, so far as their provisions support the actions taken, also apply to any proceedings that on their effective date are pending, in progress, or, in the case of elections or otherwise, completed, and to the securities authorized or issued pursuant to those proceedings, notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, ordinance, order, advertisement, notice, or other proceeding. Any proceedings pending or in progress on the effective date of those amendments and enactments, and securities sold, issued, and delivered, and validated, pursuant to those proceedings, shall be deemed to have been taken, and authorized, sold, issued, and delivered, and validated, in conformity with those amendments and enactments.

The authority provided in Section 1 of this act provides additional and supplemental provisions for the subject matter that may also be the subject of other laws, and is supplemental to and not in derogation of any similar authority provided by, derived from, or implied by, the Constitution, or any other law, including laws amended by this act, or any charter, order, resolution, or ordinance, and no inference shall be drawn to negate the authority thereunder by reason of express provisions contained in Section 1.

The provisions of the Revised Code amended or repealed by this act shall be deemed to remain applicable to securities issued pursuant to or in reliance on them prior to the effective date of those amendments or repeals.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

Taxing authority may borrow money and issue notes in anticipation of the collection of current revenues, 133.10
Agreement between hospital agencies, 140.03
Levy of property tax, purpose, 306.49
Regional arts and cultural district, taxes outside ten-mill limitation, election, votes, 3381.16
Port authority tax levy, 4582.14
Port authority created by subdivisions tax levy, 4582.40

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Securities § 34

5705.194 Resolution for emergency school levy; election; anticipation notes

The board of education of any city, local, exempted village, or joint vocational school district may at any time declare by resolution that the revenue that will be raised by all tax levies which the district is authorized to impose, when combined with state and federal revenues, will be insufficient to provide for the emergency requirements of the school district or to avoid an operating deficit, and that it is therefore necessary to levy an additional tax in excess

of the ten-mill limitation. Such resolution shall be confined to a single purpose and shall specify the purpose thereof. If the levy is proposed to renew all or a portion of the proceeds derived from one or more existing levies imposed pursuant to this section, it shall be called a renewal levy and shall be so designated on the ballot. No two or more existing levies shall be included in a single renewal levy unless they expire in the same year. Notwithstanding the original purpose of any one or more existing levies that are to be in any single renewal levy, the purpose of such renewal levy may be either to avoid an operating deficit or to provide for the emergency requirements of the school district. The resolution shall further specify the amount of money it is necessary to raise for the specified purpose for each calendar year the millage is to be imposed; if a renewal levy, whether the levy is to renew all, or a portion of, the proceeds derived from one or more existing levies; and the number of years in which the millage is to be in effect, which may include a levy upon the current year's tax list. The number of years may be any number not exceeding five. The question shall be submitted at a special election on a date specified in the resolution. The date shall not be earlier than eighty days after the adoption and certification of such resolution to the county auditor and shall be consistent with the requirements of section 3501.01 of the Revised Code. A resolution for a renewal levy shall not be placed on the ballot unless the question is submitted on the date of the general or primary election held during the last year the levy or levies to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year.

The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of such resolution shall immediately after its passing be certified to the county auditor of the proper county. Section 5705.195 of the Revised Code shall govern the arrangements for the submission of such question and other matters concerning such election. Publication of notice of such election shall be made in one or more newspapers of general circulation in the county once a week for three consecutive weeks. If a majority of the electors voting on the question so submitted in an election vote in favor of such levy, the board of education of the school district may forthwith make the additional levy necessary to raise the amount specified in the resolution for the purpose stated in the resolution. Such tax levy shall be included in the next tax budget that is certified to the county budget commission.

After the approval of the levy and prior to the time when the first tax collection from such levy can be made, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding the total estimated proceeds of the levy to be collected during the first year of the levy.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have principal payment in the year of their issuance.

HISTORY: 1992 S 119, eff. 2-13-92
1991 H 207; 1990 S 218; 1989 H 230; 1988 S 247; 1987 H 171; 1986 H 555; 1985 H 95; 1984 H 747; 1983 H 372; 1981 H 235; 1979 H 44; 1977 S 358, H 438; 1973 S 44; 1971 S 407

Note: Former 5705.194 repealed by 1971 S 407, eff. 8-17-71; 1971 H 159.

UNCODIFIED LAW

1991 H 104, § 4 and 5, eff. 11-1-91, read:

Section 4. Notwithstanding section 5705.194 of the Revised Code to the contrary, a board of education that levies two or more existing emergency levies under that section on the effective date of this act may propose the renewal of all or a portion of the proceeds of two or more of those levies as a single renewal emergency levy, provided that all of the levies proposed to be renewed expire in the same year and not later than December 31, 1992. Notwithstanding the original purposes as stated in the resolutions providing for the several levies proposed to be renewed under this section, the purpose of the single renewal levy may be either to avoid an operating deficit or to provide for the emergency requirements of the school district.

Other than as specifically provided to the contrary in this section, a board of education proposing to renew two or more emergency levies under this section shall propose the renewal in the manner prescribed by section 5705.194 of the Revised Code, and the form of the ballot shall be prescribed by section 5705.197 of the Revised Code, except:

(A) The resolution proposing the renewal levy shall clearly state that it proposes the renewal of two or more emergency levies as a single levy, and shall state the total amount of proceeds needed to be raised by the renewal levy;

(B) If the form of the ballot is modified in any of the manners provided in divisions (A), (B), or (C), of section 5705.197 of the Revised Code, the ballot shall reflect the number of levies to be renewed, whether the amount of any of the levies will be increased or decreased, and, for each such levy, the amount of any increase or decrease; and

(C) A board of education proposing the renewal of two or more emergency levies under this section shall submit the question of the renewal at a special election on the date of the 1992 general election.

Section 5. Section 4 of this act expires on December 31, 1992.

1991 H 207, § 9, eff. 9-17-91, reads:

The amendments and enactments in Section 1 of this act apply to any proceedings commenced after their effective date, and, so far as their provisions support the actions taken, also apply to any proceedings that on their effective date are pending, in progress, or, in the case of elections or otherwise, completed, and to the securities authorized or issued pursuant to those proceedings, notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, ordinance, order, advertisement, notice, or other proceeding. Any proceedings pending or in progress on the effective date of those amendments and enactments, and securities sold, issued, and delivered, and validated, pursuant to those proceedings, shall be deemed to have been taken, and authorized, sold, issued, and delivered, and validated, in conformity with those amendments and enactments.

The authority provided in Section 1 of this act provides additional and supplemental provisions for the subject matter that may also be the subject of other laws, and is supplemental to and not in derogation of any similar authority provided by, derived from, or implied by, the Constitution, or any other law, including laws amended by this act, or any charter, order, resolution, or ordinance, and no inference shall be drawn to negate the authority thereunder by reason of express provisions contained in Section 1.

The provisions of the Revised Code amended or repealed by this act shall be deemed to remain applicable to securities issued

pursuant to or in reliance on them prior to the effective date of those amendments or repeals.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

Baldwin's Ohio School Law, Text 30.14, 40.10, 40.12, 40.14(D), 41.01, 41.22, 41.23(C); Forms 40.11 to 40.16, 41.21, 41.22, 41.26, 41.28

CROSS REFERENCES

School district may borrow in anticipation of collection of current revenues from all settlements, 133.301

Property taxes, exclusions, 319.301

Additional school tax levies, 3311.21

Application for funding upon change in provision of vocational education, 3317.17

General assembly to provide for support of thorough and efficient school system, O Const Art VI §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Notice and Notices § 27 to 30, 33, 34; 86, Taxation § 140; 87, Taxation § 904, 909

Am Jur 2d: 72, State and Local Taxation § 711

NOTES ON DECISIONS AND OPINIONS

52 OS(2d) 199, 371 NE(2d) 536 (1977), State ex rel Daoust v Smith. Mandamus will lie to compel the clerk-treasurer of the school board to sign tax anticipation notes following adoption of a tax levy once the time limit for challenging the election authorizing such levy has passed.

OAG 80-011. RC 5705.19, 5705.191 and 5705.25 do not allow for variable rate tax levies, and levies proposed by counties pursuant to these sections must be fixed rate levies. The only sections in RC Ch 5705 allowing for variable rate levies are RC 5705.194 et seq. which apply only to school districts meeting emergency requirements.

OAG 79-024. A levy to satisfy emergency needs or to prevent school closings, passed under RC 5705.194, is a special levy and the proceeds must be paid into a special fund pursuant to RC 5705.10. Such proceeds may be used to pay salary increases for teachers and nonteaching employees only if the board of education has reason to believe, with due regard to the circumstances and interests of the district, that such increases constitute an emergency need or are necessary to prevent school closings.

OAG 79-024. A levy for current operating expenses, passed under RC 5705.194, is a general levy for current expense and may be paid into the school district's general fund pursuant to RC 5705.10. The proceeds of such a levy may be used to pay salary increases for teachers and nonteaching employees.

5705.195 Calculation of millage and years levy shall run

Within five days after the resolution is certified to the county auditor as provided by section 5705.194 of the Revised Code, the auditor shall calculate and certify to the taxing authority the annual levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, throughout the life of the levy which will be required to produce the annual amount set forth in the resolution assuming that the amount of the tax list of such subdivision remains throughout the life of the levy the same as the amount of the tax list for the current year, and if this is not determined, the estimated amount submitted by the auditor to the county budget commission. Thereupon, if the taxing authority desires to proceed with the submission of the question it shall, not less than seventy-five days before the day of such election, certify its resolution, together with the amount of the average tax levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, estimated by the auditor, and the number of years the levy is to run to the board of elections of the county which shall prepare the ballots and make other necessary arrangements for the submission of the question to the voters of the subdivision.

HISTORY: 1986 H 555, eff. 5-7-86
1973 S 44; 1971 S 407

Note: Former 5705.195 repealed by 1971 S 407, eff. 8-17-71; 1971 H 159.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 40.10(B), 40.12; Forms 40.11 to 40.14, 41.22, 41.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 140; 87, Taxation § 904

NOTES ON DECISIONS AND OPINIONS

OAG 80-011. RC 5705.19, 5705.191 and 5705.25 do not allow for variable rate tax levies, and levies proposed by counties pursuant to these sections must be fixed rate levies. The only sections in RC Ch 5705 allowing for variable rate levies are RC 5705.194 et seq. which apply only to school districts meeting emergency requirements.

5705.196 Election

The election provided for in section 5705.194 of the Revised Code shall be held at the regular places for voting in the district, and shall be conducted, canvassed, and certified in the same manner as regular elections in the district for the election of county officers, provided that in any such election in which only part of the electors of a precinct are qualified to vote, the board of elections may assign voters in such part to an adjoining precinct. Such an assignment may be made to an adjoining precinct in another county with the consent and approval of the board of elections of such other county. Notice of the election shall be published in one or more newspapers of general circulation in the district once a week for three consecutive weeks prior to the election. Such notice shall state the annual proceeds of the proposed levy, the purpose for which such proceeds are to be used, the number of years during which the levy shall run, and the estimated average additional tax rate expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, as certified by the county auditor.

HISTORY: 1971 S 407, eff. 8-17-71

Note: Former 5705.196 repealed by 1971 S 407, eff. 8-17-71; 1971 H 159.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 40.10(B), 40.12; Forms 40.11, 40.13, 40.14, 40.16, 41.22, 41.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 140; 87, Taxation § 904, 909

NOTES ON DECISIONS AND OPINIONS

OAG 80-011. RC 5705.19, 5705.191 and 5705.25 do not allow for variable rate tax levies, and levies proposed by counties pursuant to these sections must be fixed rate levies. The only sections in RC Ch 5705 allowing for variable rate levies are RC 5705.194 et seq. which apply only to school districts meeting emergency requirements.

5705.197 Form of ballot; reference to renewal

The form of the ballot to be used at the election provided for in section 5705.195 of the Revised Code shall be as follows:

"Shall a levy be imposed by the _____(here insert name of school district) for the purpose of _____(here insert purpose of levy) in the sum of _____(here insert annual amount the levy is to produce) and a levy of taxes to be made outside of the ten-mill limitation estimated by the county auditor to average _____(here insert number of mills) mills for each one dollar of valuation, which amounts to _____(here insert rate expressed in dollars and cents) for each one hundred dollars of valuation, for a period of _____ (here insert the number of years the millage is to be imposed) years?

	For the Tax
	Against the Tax

"

The purpose for which the tax is to be levied shall be printed in the space indicated, in boldface type of at least twice the size of the type immediately surrounding it.

If the levy submitted is a proposal to renew all or a portion of an existing levy, the form of the ballot specified in this section may be changed by adding the following at the beginning of the form, after the words "shall a levy":

(A) "Renewing an existing levy" in the case of a proposal to renew an existing levy in the same amount;

(B) "Renewing ___dollars and providing an increase of ___dollars" in the case of an increase;

(C) "Renewing part of an existing levy, being a reduction of ___ dollars" in the case of a renewal of only part of an existing levy.

If the levy submitted is a proposal to renew all or a portion of more than one existing levy, the form of the ballot may be changed in any of the manners provided in division (A), (B), or (C) of this section, or any combination thereof, as appropriate, so long as the form of the ballot reflects the number of levies to be renewed, whether the amount of any of the levies will be increased or decreased, and, for each such levy, the amount of any such increase or decrease.

HISTORY: 1992 S 119, eff. 2-13-92
1983 H 372; 1971 S 407

Note: Former 5705.197 repealed by 1971 S 407, eff. 8-17-71; 1971 H 159.

UNCODIFIED LAW

1991 H 104, § 4 and 5: See Uncodified Law under 5705.194.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 40.10(B); Forms 40.11, 40.13 to 40.15, 41.22, 41.28

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 140; 87, Taxation § 904, 909

NOTES ON DECISIONS AND OPINIONS

OAG 80-011. RC 5705.19, 5705.191 and 5705.25 do not allow for variable rate tax levies, and levies proposed by counties pursuant to these sections must be fixed rate levies. The only sections in RC Ch 5705 allowing for variable rate levies are RC 5705.194 et seq. which apply only to school districts meeting emergency requirements.

5705.20 Special levies for tuberculosis hospitals and clinics

The board of county commissioners of any county, in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, or for the support of tuberculosis clinics established pursuant to section 339.36 or section 339.39 of the Revised Code, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to such section, or for the support of tuberculosis clinics established pursuant to such sections, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

Such resolution shall conform to section 5705.19 of the Revised Code and be certified to the board of elections not less than seventy-five days before the general election and submitted in the manner provided in section 5705.25 of the Revised Code.

If the majority of electors voting on a levy to supplement general fund appropriations for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, or for the support of tuberculosis clinics established pursuant to section 339.36 or 339.39 of the Revised Code, vote in favor thereof, the board of said county may levy a tax within such county at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of said years.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 128 v 602; 1953 H 1; GC 5625-15a

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 903

NOTES ON DECISIONS AND OPINIONS

OAG 88-101. When a tax is levied under RC 5705.20 for "the care, treatment and maintenance of residents of the County who are suffering from tuberculosis and related diseases (current expenses)," proceeds of the levy may not be expended for purposes that are not included within the stated purpose, such as providing

educational grants to professionals and students for research concerning tuberculosis and related diseases or providing information concerning tuberculosis and related diseases to schools, nursing homes, child care centers, high-risk groups, and the general public.

OAG 73-013. Where a county tax levy has been passed to provide care for tuberculosis patients either in a hospital or in a clinic, the money may be used to obtain supplies and equipment for the clinic.

OAG 69-089; overruled by OAG 91-035. A taxing subdivision, be it a municipality or township, may not pass a levy under RC 5705.191 for the support of a general hospital run by a private not-for-profit corporation.

OAG 68-051. The renewal of a tax levy authorized by RC 5705.20 for the support of tuberculosis hospitals or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis or for the support of tuberculosis clinics may only by submitted to the electorate at the November election.

1961 OAG 2312. Revenues derived from a levy for the support of a tuberculosis hospital are not prohibited from being used for the care, treatment and maintenance of patients admitted to such hospital with illnesses other than tuberculosis.

1959 OAG 899. Surplus funds arising from a tax levied in excess of the ten-mill limitation under RC 5705.20 as it existed prior to July 28, 1959, cannot be used for the support of tuberculosis clinics established pursuant to RC 339.36 or RC 339.39, as authorized by the amendment of RC 5705.20 by 1959 H 146, eff. 7-28-59.

1954 OAG 4104. A board of county commissioners may employ a physician to treat tuberculous residents, but only the general funds may be expended for such purpose. The board may supply a local board of health with funds for drugs and medicines for treatment of tuberculous patients upon the prescription of such physician.

1954 OAG 3623. The proceeds of a special tax levy under RC 5705.20 may not be expended for the care, treatment and maintenance of patients who are not hospitalized at a tuberculosis institution.

1953 OAG 2911. Funds for use in meeting a county's apportioned share of the expense of improvements, repairs and additions to a district tuberculosis hospital may be raised by a levy in excess of the ten-mill limitation.

1945 OAG 394. An additional tax may not be levied under GC 5625-15a (RC 5705.20), for the purpose of paying for the care, treatment and maintenance of tuberculosis patients at hospitals with which county commissioners have contracted. An additional tax for such purpose may be submitted to the electors under GC 5625-15 (RC 5705.19), and related sections.

5705.21 School district special levy; initial issuance of anticipation notes for all levies

(A) At any time the board of education of any city, local, exempted village, or joint vocational school district by a vote of two-thirds of all its members may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the school district, that it is necessary to levy a tax in excess of such limitation for one of the purposes specified in division (A), (D), (F), (H), or (DD) of section 5705.19 of the Revised Code or for the purpose of operating a cultural center, and that the question of such additional tax levy shall be submitted to the electors of the school district at a special election on a day to be specified in the resolution.

As used in this section, "cultural center" means a free-standing building, separate from a public school building, that is open to the public for educational, musical, artistic, and cultural purposes.

The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(B) Such resolution shall be confined to a single purpose and shall specify the amount of the increase in rate that it is necessary to levy, the purpose thereof, and the number of years during which the increase in rate shall be in effect. The number of years may be any number not exceeding five or, if the levy is for current expenses of the district, for a continuing period of time. The resolution shall specify the date of holding such election, which shall not be earlier than seventy-five days after the adoption and certification of such resolution and which shall be consistent with the requirements of section 3501.01 of the Revised Code. The resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of such resolution shall immediately after its passing be certified to the board of elections of the proper county in the manner provided by section 5705.25 of the Revised Code, and that section shall govern the arrangements for the submission of such question and other matters concerning such election, to which that section refers, except that such election shall be held on the date specified in the resolution. Publication of notice of such election shall be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks. If a majority of the electors voting on the question so submitted in an election vote in favor of such levy, the board of education may forthwith make the necessary levy within such school district at the additional rate, or at any lesser rate in excess of the ten-mill limitation on the tax list, for the purpose stated in the resolution. A levy for a continuing period of time may be reduced pursuant to section 5705.261 of the Revised Code. Such tax levy shall be included in the next tax budget that is certified to the county budget commission.

(C) After the approval of a levy on the current tax list and duplicate for current expenses, for recreational purposes, for community centers provided for in section 755.16 of the Revised Code, or for a public library of the district and prior to the time when the first tax collection from such levy can be made, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy.

After the approval of a levy for permanent improvements, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy remaining to be collected in each year over a period of five years after the issuance of such notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not

to exceed five years, and may have a principal payment in the year of their issuance.

HISTORY: 1992 H 471, eff. 7-21-92
1991 H 207; 1990 H 777, S 218, H 434; 1989 H 230, S 140; 1988 S 247, S 318, H 112; 1987 H 171; 1984 H 729; 1983 H 372, S 213; 1981 H 235; 1980 H 1062; 1979 H 44; 1977 S 358; 1976 H 920; 1974 H 662; 1973 S 44; 1970 H 1020, H 1023, H 1233; 1969 S 305, S 444; 132 v S 479, S 350, H 739; 129 v 1297; 128 v 67; 126 v 1126; 1953 H 1; GC 5625-15b

UNCODIFIED LAW

1991 H 207, § 5, eff. 9-17-91, reads: The amendment by this act of section 5705.21 of the Revised Code is intended to eliminate any substantive effect that may be claimed to have resulted from the amendment of that section by Substitute House Bill 230 of the 118th General Assembly, which amendment combined the third and fourth paragraphs following division (A)(2) of that section. Insofar as possible, section 5705.21 of the Revised Code shall be construed as though no substantive effects resulted from that portion of the amendments to the section by Sub. H.B. 230.

1991 H 207, § 9, eff. 9-17-91, reads:

The amendments and enactments in Section 1 of this act apply to any proceedings commenced after their effective date, and, so far as their provisions support the actions taken, also apply to any proceedings that on their effective date are pending, in progress, or, in the case of elections or otherwise, completed, and to the securities authorized or issued pursuant to those proceedings, notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, ordinance, order, advertisement, notice, or other proceeding. Any proceedings pending or in progress on the effective date of those amendments and enactments, and securities sold, issued, and delivered, and validated, pursuant to those proceedings, shall be deemed to have been taken, and authorized, sold, issued, and delivered, and validated, in conformity with those amendments and enactments.

The authority provided in Section 1 of this act provides additional and supplemental provisions for the subject matter that may also be the subject of other laws, and is supplemental to and not in derogation of any similar authority provided by, derived from, or implied by, the Constitution, or any other law, including laws amended by this act, or any charter, order, resolution, or ordinance, and no inference shall be drawn to negate the authority thereunder by reason of express provisions contained in Section 1.

The provisions of the Revised Code amended or repealed by this act shall be deemed to remain applicable to securities issued pursuant to or in reliance on them prior to the effective date of those amendments or repeals.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, S 140—LSC Analysis, p 5-481; H 230—LSC Analysis, p 5-925

Baldwin's Ohio Township Law, Forms 3.02

Baldwin's Ohio School Law, Text 6.02(A), 30.13, 37.07(B), 40.10, 40.12, 40.14(D), 41.01, 41.22(A), 41.23(C); Forms 40.01, 40.21, 41.41 to 41.43

CROSS REFERENCES

County school district, defined, 3311.05

Additional school tax levies, 3311.21

Board of education applying for loan, tax anticipation notes, 3313.483

Tax levy by board of education for library purposes, 3375.17

School district income tax, school district purposes defined, 5748.01

General assembly to provide for support of thorough and efficient school system, O Const Art VI §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Notice and Notices § 27 to 30, 33, 34; 82, Schools, Universities, and Colleges § 118, 416; 86, Taxation § 140; 87, Taxation § 904, 906, 909

Validity of basing public school financing system on local property taxes. 41 ALR3d 1220

NOTES ON DECISIONS AND OPINIONS

OAG 86-021. Where a tax levy for current operating expenses of a city school district was passed in November of 1984 pursuant to a resolution stating that the levy would be placed on the tax lists of the current tax year, the levy was properly placed on the tax lists for 1984 and reflected on the 1984 tax bills prepared in December of 1984.

OAG 84-083. Pursuant to RC 5705.21, 5705.19(A), 5705.19(D), and 5705.19(F), the board of education of a school district may submit to the electors of the school district a tax levy in excess of the ten-mill limitation for any one of the following purposes: (1) current expenses; (2) library purposes; or (3) permanent improvements.

OAG 84-083. Pursuant to RC 3313.53, the board of education of a school district may expend funds derived from a tax levy for current expenses which is levied under RC 5705.21 and 5705.19(A) for the expenses "of directing, supervising, and coaching the pupil-activity programs in music, language, arts, speech, government, athletics, and any others directly related to the curriculum."

OAG 84-083. Pursuant to RC 3315.062, the board of education of a school district may expend funds derived from a tax levy for current expenses which is levied under RC 5705.21 and 5705.19(A) for the operation of such student activity programs as are approved by the state board of education and included in the program of the school district as authorized by its board of education, provided that total expenditures by the board from its general revenue fund for the operation of such student activity programs may not exceed five-tenths of one per cent of the board's annual operating budget.

OAG 68-035. A board of education of a city school district may submit a tax levy for current operating expenses under RC 5705.21 at a special election, which levy would run for a continuing period of time.

OAG 66-096. A local school district board of education may submit two separate levies in excess of the ten-mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, RC 5705.21.

1964 OAG 1578. Where a taxing authority proceeds to declare that it is necessary to levy a tax in excess of the ten-mill limitation and that such tax shall be levied upon the duplicate for the current year, the tax shall, after approval by the electors, be levied on the current duplicate as directed by statute, and there is no requirement that the necessity for the additional taxation must have been included in the budget submitted to the county auditor by the taxing authority prior to the adoption of the resolution of necessity.

1964 OAG 1523. A board of education of a joint vocational school district may declare by resolution the necessity to levy a tax in excess of the ten-mill limitation and that there shall be a levy upon the duplicate of the current year; and the fact that such board of education did not come into legal existence until the fifteenth day of June does not prevent such levy upon the current duplicate.

1964 OAG 761. The provision in RC 133.30 limiting the maturity of notes to a period of six months does not apply to notes issued under RC 5705.21.

1964 OAG 761. Anticipatory notes issued under RC 5705.21 are to mature serially in substantially equal amounts during each year of the life of the levy, rather than at the end of the levy.

1963 OAG 718. A tax levy approved in accordance with RC 5705.21 at a special election held on December 10 or December 12, 1963, may not be extended upon the tax list and duplicate for the current year.

1962 OAG 3472. Where a tax levy is submitted to the voters pursuant to RC 5705.21 the election thereon is a special election,

only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education.

1962 OAG 3472. A levy under RC 5705.21 passed in January 1963, may not be assessed and collected as 1962 taxes, but is included in the tax budget certified to the county budget commission in 1963 to be collected with other 1963 taxes.

1962 OAG 3472. A board of education may, in 1962, pass a resolution to submit a levy at a special election to be held in January 1963, even though such a question was unsuccessfully submitted to the voters of the school district in 1962.

1962 OAG 3333. A joint vocational school district may issue notes for one-half of the anticipated revenue of a tax levy, voted for a specified period of years not exceeding ten, for the purpose of erecting or enlarging buildings and purchasing equipment.

1961 OAG 2657. If a board of education of a school district resolves to submit the question of an additional tax levy for school district purposes to a vote of the electors and the resolution of the board specifies that such additional tax levy is to be placed upon the tax duplicate for the current year, then the levy, if it receives a favorable vote, must be extended on the current tax duplicate for collection, and after the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

1960 OAG 1536. Submission to the voters by a board of education of a proposed additional tax levy for school purposes pursuant to RC 5705.21 is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education.

5705.212 Additional original and incremental school district tax levies

(A)(1) The board of education of any school district, at any time and by a vote of two-thirds of all of its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the present and future requirements of the school district, that it is necessary to levy not more than five taxes in excess of that limitation for current expenses, and that each of the proposed taxes first will be levied in a different year, over a specified period of time. The board shall identify the taxes proposed under this section as follows: the first tax to be levied shall be called the "original tax." Each tax subsequently levied shall be called an "incremental tax." The rate of each incremental tax shall be identical, but the rates of such incremental taxes need not be the same as the rate of the original tax. The resolution also shall state that the question of these additional taxes shall be submitted to the electors of the school district at a special election. The resolution shall specify separately for each tax proposed: the amount of the increase in rate that it is necessary to levy, expressed separately for the original tax and each incremental tax; that the purpose of the levy is for current expenses; the number of years during which the original tax shall be in effect; a specification that the last year in which the original tax is in effect shall also be the last year in which each incremental tax shall be in effect; and the year in which each tax first is proposed to be levied. The original tax may be levied for any number of years not exceeding ten, or for a continuing period of time. The resolution shall specify the date of holding the special election, which shall not be earlier than seventy-five days after the adoption and certification of the resolution and shall be consistent with the requirements of section 3501.01 of the Revised Code.

(2) The board of education, by a vote of two-thirds of all of its members, may adopt a resolution proposing to renew taxes levied other than for a continuing period of time under division (A)(1) of this section. Such a resolution shall provide for levying a tax and specify all of the following:

(a) That the tax shall be called and designated on the ballot as a renewal levy;

(b) The rate of the renewal tax, which shall be a single rate that combines the rate of the original tax and each incremental tax into a single rate. The rate of the renewal tax shall not exceed the aggregate rate of the original and incremental taxes.

(c) The number of years, not to exceed ten, that the renewal tax will be levied, or that it will be levied for a continuing period of time;

(d) That the purpose of the renewal levy is for current expenses;

(e) Subject to the certification and notification requirements of section 5705.251 of the Revised Code, that the question of the renewal levy shall be submitted to the electors of the school district at the general election held during the last year the original tax may be extended on the real and public utility property tax list and duplicate or at a special election held during the ensuing year.

(3) A resolution adopted under division (A)(1) or (2) of this section shall go into immediate effect upon its adoption and no publication of the resolution is necessary other than that provided for in the notice of election. Immediately after its adoption, a copy of the resolution shall be certified to the board of elections of the proper county in the manner provided by division (A) of section 5705.251 of the Revised Code, and that division shall govern the arrangements for the submission of the question and other matters concerning the election to which that section refers. The election shall be held on the date specified in the resolution. If a majority of the electors voting on the question so submitted in an election vote in favor of the taxes or a renewal tax, the board of education, if the original or a renewal tax is authorized to be levied for the current year, immediately may make the necessary levy within the school district at the authorized rate, or at any lesser rate in excess of the ten-mill limitation, for the purpose stated in the resolution. No tax shall be imposed prior to the year specified in the resolution as the year in which it is first proposed to be levied. The rate of the original tax and the rate of each incremental tax shall be cumulative, so that the aggregate rate levied in any year is the sum of the rates of both the original tax and all incremental taxes levied in or prior to that year under the same proposal. A tax levied for a continuing period of time under this section may be reduced pursuant to section 5705.261 of the Revised Code.

(4) The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(B) Notwithstanding sections 133.30 and 133.301 of the Revised Code, after the approval of a tax to be levied in the current or the succeeding year and prior to the time when the first tax collection from that levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in an amount not to exceed fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy.

The notes shall be sold as provided in Chapter 133. of the Revised Code. If anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year over a period not to exceed five years; and the amount necessary to pay the interest and principal as the anticipation notes mature shall be deemed appropriated for those purposes from the levy, and appropriations from the levy by the board of education shall be limited each fiscal year to the balance available in excess of that amount.

If the auditor of state has certified a deficit pursuant to section 3313.483 of the Revised Code, the notes authorized under this section may be sold in accordance with Chapter 133. of the Revised Code, except that the board may sell the notes after providing a reasonable opportunity for competitive bidding.

HISTORY: 1990 S 218, eff. 4-17-90

Note: An explanatory note from the Legislative Service Commission states: "Section 5705.211 of the Revised Code is amended and the section number changed to R.C. 5705.212 by this act [1990 H 777] and also by Am. Sub. H.B. 434 of the 118th General Assembly, with identical text. A new R.C. 5705.211 is also enacted by this act [1990 H 777] and by Am. Sub. H.B. 434, with identical text. Since Am. Sub. S.B. 218 of the 118th General Assembly has previously enacted, with subject matter different from that in the other acts, a section numbered R.C. 5705.212, as well as 5705.213 and 5705.214, new section numbers R.C. 5705.215 and 5705.216 have been designated on this act [1990 H 777] and shall be the official code numbers, respectively, of the section originally enacted as new R.C. 5705.211 and the section renumbered from R.C. 5705.211 to 5705.212, each by this act [1990 H 777] and also by Am. Sub. H.B. 434. This is done in accordance with the authority granted by R.C. 103.131." See *Baldwin's Ohio Legislative Service*, 1990 Laws of Ohio, pages 5-389, 5-438, and 5-451, for original versions of these Acts.

Note: Former 5705.212, as amended and recodified from prior 5705.211 by 1990 H 434, eff. 4-13-90, was subsequently recodified as 5705.216 by 1990 H 777, eff. 4-26-90.

CROSS REFERENCES

Additional school tax levies, 3311.21

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 78 et seq.

Validity of basing public school financing system on local property taxes. 41 ALR3d 1220

5705.213 Single additional school district tax levy

(A)(1) The board of education of any school district, at any time and by a vote of two-thirds of all of its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the present and future requirements of the school district and that it is necessary to levy a tax in excess of that limitation for current expenses. The resolution also shall state that the question of the additional tax shall be submitted to the electors of the school district at a special election. The resolution shall specify, for each year the levy is in effect, the amount of money that the levy is proposed to raise, which may, for years after the first year the levy is made, be expressed in terms of a dollar or percentage increase over the prior year's amount. The resolution also shall specify that the purpose of the levy is for current expenses, the number of years during which the tax shall be in effect which may be for any number of years not exceeding ten, and the year in which the tax first is proposed to be levied. The resolution shall specify the date of holding the special election, which shall not be earlier than eighty days after the adoption and certification of the resolution to the county auditor and not earlier than seventy-five days after certification to the board of elections. The date of the election shall be consistent with the requirements of section 3501.01 of the Revised Code.

(2) The board of education, by a vote of two-thirds of all of its members, may adopt a resolution proposing to renew a tax levied under division (A)(1) of this section. Such a resolution shall provide for levying a tax and specify all of the following:

(a) That the tax shall be called and designated on the ballot as a renewal levy;

(b) The amount of the renewal tax, which shall be no more than the amount of tax levied during the last year the tax being renewed is authorized to be in effect;

(c) The number of years, not to exceed ten, that the renewal tax will be levied, or that it will be levied for a continuing period of time;

(d) That the purpose of the renewal levy is for current expenses;

(e) Subject to the certification and notification requirements of section 5705.251 of the Revised Code, that the question of the renewal levy shall be submitted to the electors of the school district at the general election held during the last year the tax being renewed may be extended on the real and public utility property tax list and duplicate or at a special election held during the ensuing year.

(3) A resolution adopted under division (A)(1) or (2) of this section shall go into immediate effect upon its adoption and no publication of the resolution is necessary other than that provided for in the notice of election. Immediately after its adoption, a copy of the resolution shall be certified to the county auditor of the proper county, who shall, within five days, calculate and certify to the board of education the estimated levy, for the first year, and for each subsequent year for which the tax is proposed to be in effect. The estimates shall be made both in mills for each dollar of valuation, and in dollars and cents for each one hundred dollars of valuation. In making the estimates, the auditor shall assume that the amount of the tax list remains throughout the life of the levy, the same as the tax list for the current year. If the tax list for the current year is not determined, the auditor shall base his estimates on the estimated amount of the tax list for the current year as submitted to the county budget commission.

If the board desires to proceed with the submission of the question, it shall certify its resolution, with the estimated tax levy expressed in mills and dollars and cents per hundred dollars of valuation for each year that the tax is proposed to be in effect, to the board of elections of the proper county in the manner provided by division (A) of section 5705.251 of the Revised Code. Section 5705.251 of the Revised Code shall govern the arrangements for the submission of the question and other matters concerning the election to which that section refers. The election shall be held on the date specified in the resolution. If a majority of the electors voting on the question so submitted in an election vote in favor of the tax, and if the tax is authorized to be levied for the current year, the board of education immediately may make the additional levy necessary to raise the amount specified in the resolution or a lesser amount for the purpose stated in the resolution.

(4) The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(B) Notwithstanding sections 133.30 and 133.301 of the Revised Code, after the approval of a tax to be levied in the current or the succeeding year and prior to the time when the first tax collection from that levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in an amount not to exceed fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy. The notes shall be sold as provided in Chapter 133. of the Revised Code. If anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year over a period not to exceed five years; and the amount necessary to pay the interest and principal as the anticipation notes mature shall be deemed appropriated for those purposes from the levy, and appropriations from the levy by the board of education shall be limited each fiscal year to the balance available in excess of that amount.

If the auditor of state has certified a deficit pursuant to section 3313.483 of the Revised Code, the notes authorized under this section may be sold in accordance with Chapter 133. of the Revised Code, except that the board may sell the notes after providing a reasonable opportunity for competitive bidding.

HISTORY: 1990 S 218, eff. 4-17-90

CROSS REFERENCES

Property taxes, exclusions, 319.301
Additional school tax levies, 3311.21

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 78 et seq.
Validity of basing public school financing system on local property taxes. 41 ALR3d 1220

5705.214 Limitation on number of school district tax levy questions during calendar year

Not more than three elections during any calendar year shall include the questions by a school district of tax levies proposed under any one or any combination of the following sections: sections 5705.194, 5705.21, 5705.212, and 5705.213 of the Revised Code.

HISTORY: 1990 S 218, eff. 4-17-90

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 78 et seq.
Validity of basing public school financing system on local property taxes. 41 ALR3d 1220

5705.215 County school district levy

(A) The board of education of a county school district that is the taxing authority of a county school financing district, upon receipt of identical resolutions adopted within a sixty-day period by a majority of the members of the board of education of each school district that is within the territory of the county school financing district, may submit a tax levy to the electors of the territory in the same manner as a school board may submit a levy under division (B) of section 5705.21 of the Revised Code, except that:

(1) The levy may be for a period not to exceed ten years, or, if the levy is solely for the purpose or purposes described in division (A)(2)(a) or (c) of this section, for a continuing period of time.

(2) The purpose of the levy shall be one or more of the following:

(a) For current expenses for the provision of special education and related services within the territory of the district;

(b) For permanent improvements within the territory of the district for special education and related services;

(c) For current expenses for specified educational programs within the territory of the district;

(d) For permanent improvements within the territory of the district for specified educational programs;

(e) For permanent improvements within the territory of the district.

(B) If the levy provides for but is not limited to current expenses, the resolutions shall apportion the annual rate of the levy between current expenses and the other purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for current expenses and the other purposes shall be limited by that apportionment.

(C) Prior to the application of section 319.301 of the Revised Code, the rate of a levy that is limited to, or to the extent that it is apportioned to, purposes other than current expenses shall be reduced in the same proportion in which the district's total valuation increases during the life of the levy because of additions to such valuation that have resulted from improvements added to the tax list and duplicate.

(D) After the approval of a levy under this division, the taxing authority may anticipate a fraction of the proceeds of such levy and may from time to time during the life of such levy, but in any given year prior to the time when the tax collection from such levy can be made for that year, issue anticipation notes in an amount not exceeding fifty per cent of the estimated proceeds of the levy to be collected in each year up to a period of five years after the date of the issuance of such notes, less an amount equal to the proceeds of such levy obligated for each year by the issuance of anticipation notes, provided that the total amount maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of the levy for that year. Each issue of notes shall be sold as provided in Chapter 133. of the Revised Code, and shall, except for such limitation that the total amount of such notes maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of such levy for that year, mature serially in substantially equal installments during each year over a period not to exceed five years after their issuance.

HISTORY: 1990 H 777, eff. 4-26-90
1990 H 434

Note: An explanatory note from the Legislative Service Commission states: "Section 5705.211 of the Revised Code is amended and the section number changed to R.C. 5705.212 by this act [1990 H 777] and also by Am. Sub. H.B. 434 of the 118th General Assembly, with identical text. A new R.C. 5705.211 is also enacted by this act [1990 H 777] and by Am. Sub. H.B. 434, with identical text. Since Am. Sub. S.B. 218 of the 118th General Assembly has previously enacted, with subject matter different from that in the other

acts, a section numbered R.C. 5705.212, as well as 5705.213 and 5705.214, new section numbers R.C. 5705.215 and 5705.216 have been designated on this act [1990 H 777] and shall be the official code numbers, respectively, of the section originally enacted as new R.C. 5705.211 and the section renumbered from R.C. 5705.211 to 5705.212, each by this act [1990 H 777] and also by Am. Sub. H.B. 434. This is done in accordance with the authority granted by R.C. 103.131." See *Baldwin's Ohio Legislative Service*, 1990 Laws of Ohio, pages 5-389, 5-438, and 5-451, for original versions of these Acts.

Note: 5705.215 is former 5705.211 as enacted by 1990 H 434, eff. 4-13-90, and subsequently recodified by 1990 H 777, eff. 4-26-90.

CROSS REFERENCES

Uniform Depository Act, county school district board of education considered "governing board," 135.01

Special education tax, city, local, or exempted village school district joining or withdrawing from county school district, 3311.50

Special education tax, expenditures, 3311.51

County school district levying special education tax, election of treasurer, 3313.22

5705.22 Additional levy for county hospitals

The board of county commissioners of any county, at any time and in any year, after providing the normal and customary percentages of the total general fund appropriations for the support of county hospitals, by vote of two-thirds of all members of said board, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of county hospitals, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, and shall be certified to the board of elections not less than seventy-five days before the general election and submitted in the manner provided in section 5705.25 of the Revised Code.

If the majority of electors voting on a levy to supplement the general fund appropriations for the support of county hospitals vote in favor of the levy, the board of said county may levy a tax within such county at the additional rate in excess of the ten-mill limitation during the period for the purpose stated in the resolution or at any less rate or for any of the said years.

HISTORY: 1980 H 1062, eff. 3-23-81
1973 S 44; 1953 H 1; GC 5625-15c

CROSS REFERENCES

Operation of hospital by trustees; employee fringe benefits; annual budget, 339.06

Property taxation by uniform rule, ten-mill limitation, O Const Art XII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 903

NOTES ON DECISIONS AND OPINIONS

OAG 78-003. A county may budget funds for its community mental health and retardation board, which are raised pursuant to an approved levy under RC 5705.22, in the ensuing fiscal year even though a portion of those funds will be accumulated in the ensuing fiscal year and spent subsequently, provided that such funds are accumulated for specific programs involving matching funds for that board.

1958 OAG 1504. Funds derived from a tax levied pursuant to RC 5705.22 for the support of county hospitals, may not, by reason of O Const Art XII §5, be used for any purpose other than the support of such county hospitals, and any accumulated surplus of such tax revenue may not be transferred by a board of county hospital trustees to a board of county commissioners to be placed in the general fund of the county and used for current expenses of the county.

1955 OAG 5585. Under RC 5705.22 a levy of not more than 65/100 of a mill for support of a county general hospital may be levied outside the ten-mill limitation if approved by a majority of the voters, and the funds raised should be paid to a special fund.

1955 OAG 5585. A county may include current expenses of a county general hospital in a general levy in excess of the ten-mill limitation, which must be approved by sixty per cent of the voters, and the funds raised should be paid to the general fund.

1955 OAG 5585. Under RC 5705.191 a two-year levy for supplementing the general fund for various purposes including the support of general hospitals may be authorized by fifty-five per cent of the voters.

1953 OAG 3216. The county commissioners have no duty as to appropriation of funds to the support of a county hospital, except to appropriate from the general fund a sufficient amount to supplement the other income of the hospital, so as to provide for its proper maintenance and operation.

5705.221 Additional levy for alcohol, drug addiction, and mental health services

(A) At any time, the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county's alcohol, drug addiction, and mental health service district established pursuant to Chapter 340. of the Revised Code, or the county's contribution to a joint-county district of which the county is a part, and that it is necessary to levy a tax in excess of such limitation for the operation of alcohol and drug addiction programs and mental health programs and the acquisition, construction, renovation, financing, maintenance, and operation of alcohol and drug addiction facilities and mental health facilities.

Such resolution shall conform to section 5705.19 of the Revised Code, except that the increased rate may be in effect for any number of years not exceeding ten.

The resolution shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any election, and shall be certified to the board of elections not less than seventy-five days before the election at which it will be voted upon.

If the majority of the electors voting on a levy to supplement general fund appropriations for the support of the comprehensive alcohol and drug addiction and mental health program vote in favor of the levy, the board may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution.

(B) When electors have approved a tax levy under this section, the board of county commissioners may anticipate a fraction of the proceeds of the levy and, from time to

time, issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

(C) The county auditor who is the fiscal officer of the alcohol, drug addiction, and mental health service district, upon receipt of a resolution from the board of alcohol, drug addiction, and mental health services, shall establish for the district a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency fund for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the board, funds not needed to pay for current expenses may be appropriated to the capital improvements account, in amounts such that the account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the board for programs and services. Other funds which are available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those funds that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a board, such funds shall be appropriated to the reserve balance account. Payments from the capital improvements account and the reserve balance account shall be made by the county treasurer who is the custodian of funds for the district upon warrants issued by the county auditor who is the fiscal officer of the district pursuant to orders of the board.

HISTORY: 1989 H 317, eff. 10-10-89
1988 S 155; 1986 H 555; 1980 S 160; 1974 H 1112, H 421; 132 v H 648

Note: An explanatory note from the Legislative Service Commission states: "While Am. Sub. H.B. 111 of the 118th G.A. purports to repeal the existing version of this section, it is nevertheless presented here as unaffected by H.B. 111. The repeal of 'existing sections' is intended only to be stated when conditional to their amendment and is a long-recognized means of complying with § 15(D) of Art. II, Ohio Constitution (which requires the existing version of sections amended to be repealed). See *Cox v. Dept. of Transportation* (1981), 67 OS(2d) 501, 508. This section is not, in fact, included for amendment in the body of H.B. 111. Nor does the title of the act indicate an intention to make an unconditional repeal of this section." See *Baldwin's Ohio Legislative Service*, 1989 Laws of Ohio, page 5-304, for original version of this Act.

CROSS REFERENCES

Alcohol, drug addiction, and mental health service district; joint county district, 340.01

Fiscal officer; payment of state funds to county treasurer, monthly statement, 340.10

Department of mental health; administering agency for federal aid, 5119.60

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 46; 20, Counties, Townships, and Municipal Corporations § 85, 292 to 294; 21, Counties, Townships, and Municipal Corporations § 771; 22, Courts and Judges § 165; 55, Incompetent Persons § 19; 87, Taxation § 903

NOTES ON DECISIONS AND OPINIONS

OAG 81-044. The constitution of Ohio does not prohibit one county of a joint-county mental health district from levying a tax pursuant to RC 5705.221 at a rate which is different from that imposed by the other counties of the same district.

OAG 77-057. Community boards of mental health and retardation established in RC Ch 340 do not have authority to purchase real property for a mental health or retardation facility; such power and authority lie with the board of county commissioners, who may appropriate private property for a mental health or retardation facility under RC 307.02.

OAG 75-089. A joint county mental health and retardation service district is a subdivision within RC 5705.01(A), and the district's mental health and retardation board is a taxing authority within RC 5705.01(C); therefore, pursuant to RC 5705.19 a joint county community mental health and retardation board is capable of placing a tax levy before the public without the approval of the county commissioners.

OAG 75-034. A community board of mental health and mental retardation or a joint county board of mental health and mental retardation may pay for membership in the Ohio community mental health and mental retardation association from funds made available to them from appropriations by the county commissioners, or from a voted levy pursuant to RC 5705.221.

OAG 75-016. Where it is desired to renew a .03 mill levy for mental health and retardation purposes, which has been reduced by the county budget commission to .01 mill under RC 5705.32, the form of the ballot under RC 5705.25 should show that the levy will consist of a renewal of the .03 mill levy rather than an increase of the .01 mill levy.

OAG 74-061. A board of county commissioners may certify to the board of elections a ten-year levy for a community mental health and retardation program, even though the amendment to RC 5705.221, permitting such ten-year levy, becomes effective after the date of certification but before the November election.

OAG 69-015. The monies received for the support of community mental health and retardation programs as authorized by RC Ch 340 would be paid into the designated county treasury to the credit of the community mental health and retardation fund pursuant to vouchers approved by the community board of mental health and retardation.

5705.222 Additional levy for mental retardation and developmental disabilities services

(A) At any time the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county board of mental retardation and developmental disabilities established pursuant to Chapter 5126. of the Revised Code, and that it is necessary to levy a tax in excess of such limitation for the operation of programs and services by county boards of mental retardation and developmental disabilities and for the acquisition, construction, renovation, financing, maintenance, and operation of mental retardation and developmental disabilities facilities.

Such resolution shall conform to section 5705.19 of the Revised Code, except that the increased rate may be in effect for any number of years not exceeding ten or for a continuing period of time.

The resolution shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any election, and shall be certified to the board of elections not less than seventy-five days before the election at which it will be voted upon.

If the majority of the electors voting on a levy for the support of the programs and services of the county board of mental retardation and developmental disabilities vote in favor of the levy, the board of county commissioners may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution. The county board of mental retardation and developmental disabilities, within its budget and with the approval of the board of county commissioners through annual appropriations, shall use the proceeds of a levy approved under this section solely for the purposes authorized by this section.

(B) When electors have approved a tax levy under this section, the county commissioners may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

(C) The county auditor, upon receipt of a resolution from the county board of mental retardation and developmental disabilities, shall establish a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency account for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the board of mental retardation and developmental disabilities, moneys not needed to pay for current expenses may be appropriated to this account, in amounts such that this account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the board of mental retardation and developmental disabilities for mental retardation and developmental disabilities programs and services. Other moneys available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those moneys that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a county board of mental retardation and developmental disabilities, the board of county commissioners may appropriate moneys to the reserve balance account.

HISTORY: 1992 S 156, eff. 1-10-92
1988 S 155

CROSS REFERENCES

County board of mental retardation and developmental disabilities; members; terms; expenses, 5126.02

NOTES ON DECISIONS AND OPINIONS

1991 SERB 4-19 (CP, Stark, 4-1-91), Stark County Educator's Assn for the Training of Retarded Persons v SERB. The board of county commissioners is the "legislative body" responsible for reviewing and deciding whether to approve a union contract with a county board of mental retardation and developmental disabilities, since the budget of the retardation board is subject to the commissioners' approval pursuant to RC 5705.222; consequently, the retardation board does not commit an unfair labor practice by putting a signature line for the commissioners on the contract even if the commissioners were not the pertinent "legislative body," since nothing in the law prevents allowing outsiders to sign a collective bargaining agreement or construes a provision for such a signature as a failure to bargain.

5705.23 Special levy for library purposes; submission to electors

The board of library trustees of any county, municipal corporation, school district, or township public library by a vote of two-thirds of all its members may at any time declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the public library, that it is necessary to levy a tax in excess of such limitation for current expenses of the public library or for the construction of any specific permanent improvement or class of improvements which the board of library trustees is authorized to make or acquire and which could be included in a single issue of bonds, and that the question of such additional tax levy shall be submitted by the taxing authority of the political subdivision to whose jurisdiction the board is subject, to the electors of the subdivision or, if the resolution so states, to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code, on the first Tuesday after the first Monday in May or at an election on another day to be specified in the resolution. No more than two elections shall be held under authority of this section in any one calendar year. Such resolution shall conform to section 5705.19 of the Revised Code, except that the tax levy may be in effect for any specified number of years or for a continuing period of time, as set forth in the resolution, and the resolution shall specify the date of holding the election, which shall not be earlier than seventy-five days after the adoption and certification of the resolution to the taxing authority of the political subdivision to whose jurisdiction the board is subject, and which shall be consistent with the requirements of section 3501.01 of the Revised Code. The resolution shall not include a levy on the current tax list and duplicate unless the election is to be held at or prior to the first Tuesday after the first Monday in November of the current tax year. Upon receipt of the resolution, the taxing authority of the political subdivision to whose jurisdiction the board is subject shall adopt a resolution providing for the submission of such additional tax levy to the electors of the subdivision or, if the resolution so states, to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code, on the date specified in the resolution of the board of library trustees. The resolution adopted by the taxing authority shall otherwise conform to the resolution certified to it by the board. The resolution of the taxing authority shall be certified to the board of elections of the proper county not less than seventy-five days before the date of such election. Such resolution shall go into immediate effect upon its passage and no publication of the resolution shall be necessary other than that provided in the notice of election. Section 5705.25 of the Revised Code shall govern the arrangements for the submission of such question and other matters concerning the election, to which that section refers, except that if the resolution so states, the question shall be submitted to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code and except that such election shall be held on the date specified in the resolution. If a majority of the electors voting on the question so submitted in an election vote in favor of such levy, the taxing authority may forthwith make the necessary

levy within the subdivision or within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code at the additional rate in excess of the ten-mill limitation on the tax list, for the purpose stated in such resolutions. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission. The proceeds of any library levy in excess of the ten-mill limitation shall be used for purposes of the board in accordance with the law applicable to the board.

After the approval of a levy on the current tax list and duplicate to provide an increase in current expenses, and prior to the time when the first tax collection from such levy can be made, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy.

After the approval of a levy to provide revenues for the construction or acquisition of any specific permanent improvement or class of improvements, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each year over a period of five years after the issuance of such notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

When a board of public library trustees of a county library district, appointed under section 3375.22 of the Revised Code, requests the submission of such special levy, the taxing authority shall submit the levy to the voters of the county library district only. For the purposes of this section, and of such board of library trustees only, the words "electors of the subdivision," as used in this section and in section 5705.25 of the Revised Code, mean "electors of the county library district." Any levy approved by the electors of the county library district shall be made within the county library district only.

HISTORY: 1991 H 207, eff. 9-17-91
1989 H 230; 1984 H 572; 1983 S 213; 1981 H 235; 1980 H 1062, H 847; 1975 S 257; 129 v 1054; 1953 H 1; GC 5625-16

UNCODIFIED LAW

1991 H 207, § 9, eff. 9-17-91, reads:

The amendments and enactments in Section 1 of this act apply to any proceedings commenced after their effective date, and, so far as their provisions support the actions taken, also apply to any proceedings that on their effective date are pending, in progress, or, in the case of elections or otherwise, completed, and to the securities authorized or issued pursuant to those proceedings, notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, ordinance, order, advertisement, notice, or other proceeding. Any proceedings pending or in progress on the effective date of those amendments and enactments, and securities sold, issued, and delivered, and validated, pursuant to those proceedings, shall be deemed to have been taken, and authorized, sold, issued, and delivered, and validated, in conformity with those amendments and enactments.

The authority provided in Section 1 of this act provides additional and supplemental provisions for the subject matter that may also be the subject of other laws, and is supplemental to and not in derogation of any similar authority provided by, derived from, or implied by, the Constitution, or any other law, including laws amended by this act, or any charter, order, resolution, or ordinance, and no inference shall be drawn to negate the authority thereunder by reason of express provisions contained in Section 1.

The provisions of the Revised Code amended or repealed by this act shall be deemed to remain applicable to securities issued pursuant to or in reliance on them prior to the effective date of those amendments or repeals.

1990 S 257, § 8 to 10, eff. 9-26-90, read, in part:

Section 8. In any school library district in which the board of library trustees has submitted a resolution under section 3375.43 or 5705.23 of the Revised Code not later than sixty days prior to the last day by which the board of education is required to certify its resolution to the board of elections under section 3375.43 or 5705.23 of the Revised Code, and the board of education has not responded favorably to the board of library trustees' request within thirty days after submission of the board of library trustees' resolution, the electors of the library district may proceed under division (A) or (B) of this section, as applicable.

* * *

Electors residing within the boundaries of the school library district, as those boundaries are defined by the state library board pursuant to section 3375.01 of the Revised Code, may initiate the placement on the ballot of the question of a tax levy, as proposed in the resolution adopted by the board of library trustees of the library district under section 5705.23 of the Revised Code, by a petition signed by qualified electors of the library district equal in number to ten per cent of those voting for governor at the most recent gubernatorial election held in the library district. An initiative petition under this section is in lieu of the submission of the question of such a tax levy by the board of education to whose jurisdiction the board of library trustees is subject.

The petition shall be filed with the board of elections of the proper county not less than seventy-five days prior to the date of the election at which the petition requests that the question be submitted. After determination by it that the petition is valid, the board of elections shall submit the question to the electors of the library district on the first Tuesday after the first Monday in May or at an election on another day as specified in the resolution. The resolution of the board of library trustees shall conform in all respects to the requirements for resolutions specified in section 5705.23 of the Revised Code, except that it need not be certified to and adopted by the board of education to whose jurisdiction the board of library trustees is subject. Section 5705.25 of the Revised Code governs the arrangements for submission of the question and other matters concerning the election to which this section and section 5705.23 of the Revised Code refer, except that the question shall be submitted to the electors residing within the boundaries of the school library district as defined by the state library board and that the election shall be held on the date specified in the resolution.

If a majority of electors voting on the question vote in favor of the tax levy, the board of education to whose jurisdiction the board of library trustees is subject shall make the necessary levy within the boundaries of the school library district pursuant to section 5705.23 of the Revised Code, and shall issue anticipation notes in accordance with that section at the request of the board of library trustees, whether the levy is for current expenses or providing revenues for construction or acquisition of permanent improvements, subject to the limitations expressed in that section.

The levy shall be included in the next annual tax budget that is certified to the county budget commission. The proceeds of any levy approved under this section in excess of the ten-mill limitation shall be used for the purposes of the board of library trustees in accordance with the law applicable to the board.

Section 9. Notwithstanding Section 8 of this act, a petition to place the question of a tax levy or bond issue on the ballot at the

November 6, 1990, general election under that section shall be filed with the board of elections not later than September 28, 1990.

Section 10. Section 8 and 9 of this act shall expire on December 31, 1992.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

Baldwin's Ohio Township Law, Text 87.02

Baldwin's Ohio School Law, Forms 34.01 to 34.03

CROSS REFERENCES

Plan for exchange of bonds for refunding bonds; waiver of overdue interest, 3.14

Tax levy for maintenance of county free public library, 3375.07

Tax levy by board of township trustees for maintenance of library, 3375.09

Tax levy by board of education for library purposes, 3375.17

Tax levy by board of county commissioners for county library district, 3375.23

Tax levy by board of county commissioners for regional library district, 3375.31

Contract for library service; tax levy, 3375.42

Issuance and sale of bonds by political subdivision for library purposes, 3375.43

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 885, 903, 909

NOTES ON DECISIONS AND OPINIONS

OAG 88-013. When a library board of trustees complies with RC 3375.43 and 5705.23 and submits a resolution requesting the submission of the question of issuing bonds to the taxing authority of the political subdivision to whose jurisdiction the library board is subject, the taxing authority has a duty to submit the question to the electorate.

OAG 85-017. Pursuant to RC 5705.23, the board of library trustees of a city school district library whose boundaries have been defined by the state library board in accordance with RC 3375.01 to include territory lying in more than one school district may by resolution provide for its taxing authority to submit the question of an additional tax levy in excess of the ten-mill limitation to all electors residing within the boundaries of the library district; the board of library trustees has no authority to cause its taxing authority to submit such question only to the electors residing within the boundaries of the city school district.

OAG 85-017. For purposes of RC 5705.23, the taxing authority of a city school district library is the board of education of the school district by which the library has been established and is controlled.

OAG 85-017. RC 5705.23 requires the board of library trustees of a city school district to certify its resolution providing for the submission of the question of an additional tax levy in excess of the ten-mill limitation to the board of education of the school district by which the library has been established and is controlled. The board of library trustees is not required to certify such resolution to the board of education of every school district which has territory lying within the library district.

OAG 82-056. Funds received by a board of public library trustees as a result of taxes levied pursuant to RC 5705.23 or 5707.04 are not funds derived from a subdivision within the meaning of RC 5705.01(I).

5705.24 Tax levy for children services; anticipation notes

The board of county commissioners of any county, at any time and in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of children services and the care and placement of children, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of such children services, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose. Taxes collected from a levy imposed under this section may be expended for any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children.

Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, except that the levy may be for any number of years not exceeding ten. The resolution shall be certified to the board of elections not less than seventy-five days before the general, primary, or special election upon which it will be voted, and be submitted in the manner provided in section 5705.25 of the Revised Code, except that it may be placed on the ballot in any such election.

If the majority of the electors voting on a levy to supplement general fund appropriations for the support of children services and the care and placement of children vote in favor thereof, the board may levy a tax within such county at the additional rate outside the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of the said years.

After the approval of such levy and prior to the time when the first tax collection from such levy can be made, the board of county commissioners may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not to exceed fifty per cent of the total estimated proceeds of the levy throughout its life.

Such notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not exceeding the life of the levy, and may have a principal payment in the year of their issuance.

HISTORY: 1991 H 207, eff. 9-17-91
1989 H 230; 1984 H 661; 1980 H 1062; 1974 S 337; 1973 H 646, S 44; 1971 S 229; 1969 S 49; 130 v H 447; 1953 H 1; GC 5625-15d

UNCODIFIED LAW

1991 H 207, § 9, eff. 9-17-91, reads:

The amendments and enactments in Section 1 of this act apply to any proceedings commenced after their effective date, and, so far as their provisions support the actions taken, also apply to any proceedings that on their effective date are pending, in progress, or, in the case of elections or otherwise, completed, and to the securities authorized or issued pursuant to those proceedings, notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, ordinance, order, advertisement, notice, or other proceeding. Any proceedings pending or in progress on the effective date of those amendments and enactments, and securities sold, issued, and delivered, and validated, pursuant to those proceedings, shall be deemed to have been taken, and authorized, sold, issued, and delivered, and validated, in conformity with those amendments and enactments.

The authority provided in Section 1 of this act provides additional and supplemental provisions for the subject matter that may also be the subject of other laws, and is supplemental to and not in derogation of any similar authority provided by, derived from, or implied by, the Constitution, or any other law, including laws amended by this act, or any charter, order, resolution, or ordinance, and no inference shall be drawn to negate the authority thereunder by reason of express provisions contained in Section 1.

The provisions of the Revised Code amended or repealed by this act shall be deemed to remain applicable to securities issued pursuant to or in reliance on them prior to the effective date of those amendments or repeals.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Legislative Service, 1989 Laws of Ohio, H 230—LSC Analysis, p 5-925

CROSS REFERENCES

Taxing authority may borrow money and issue notes in anticipation of the collection of current revenues, 133.30

County children services; tax levies and appropriations, 5153.35

County children services; annual assessments of taxes to support children's home, 5153.37

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 903

NOTES ON DECISIONS AND OPINIONS

42 App 345, 182 NE 134 (1932), State ex rel Harshman v Lutz. Additional levy for poor relief held properly submitted to electors with proposal for additional levy for current expenses.

OAG 90-069. A county children services board may use moneys derived from a levy under RC 5705.24 to support a child assault prosecution unit within the county prosecutor's office if the board determines that such support is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language. It is not necessary for such particular use to appear on the ballot, although the presence of such language does not appear to be prohibited.

OAG 87-096. The funds generated by a children services levy, the purpose of which was to provide sufficient funds for the support of children and the care and placement of abused and neglected children may, pursuant to RC 5705.24 and 5153.35, be used by a subsequently established county children services board even though children services had been provided by the county human services department at the time the levy was passed.

OAG 69-113. A special tax levy in excess of the ten-mill limitation for a county board of mental retardation should be submitted under RC 5705.19(L), rather than RC 5705.24; although funds from the levy proposed under RC 5705.19(L) may be used for substantially the same purposes as the current levy passed under RC 5705.24, the proposed levy will not be a "renewal" of the current levy.

OAG 67-088. The proceeds of a tax levied pursuant to the authorization contained in RC 5705.24 cannot legally be appropriated to or expended by a county board of mental retardation created under RC 5126.01.

1962 OAG 2780. The board of county commissioners may not place a tax levy upon the ballot in excess of sixty-five one hundredths of a mill for child welfare services.

1961 OAG 2511. A levy for the maintenance and operation of schools, training centers, or workshops for mentally retarded persons provided for in RC 5705.19(L) does not come within the limitation of sixty-five one hundredths of a mill for the support of child welfare services provided for in RC 5705.24.

TAX LEVY ELECTIONS

5705.25 Submission of proposed levy; notice of election; form of ballot; certification

(A) A copy of any resolution adopted as provided in section 5705.19 of the Revised Code shall be certified by the taxing authority to the board of elections of the proper county not less than seventy-five days before the general election in any year, and the board shall submit the proposal to the electors of the subdivision at the succeeding November election. Except as otherwise provided in this division, a resolution to renew or replace an existing levy, regardless of the section of the Revised Code under which the tax was imposed, shall not be placed on the ballot unless the question is submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year. The limitation of the foregoing sentence does not apply to a resolution to renew and increase or to renew part of an existing levy that was imposed under section 5705.191 of the Revised Code to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: for public assistance, human or social services, relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals. The board shall make the necessary arrangements for the submission of such questions to the electors of such subdivision, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for the election of county officers. Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for four consecutive weeks prior to the election, stating the purpose, the proposed increase in rate, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, the number of years during which such increase will be in effect, and the time and place of the election.

(B) The form of the ballots cast at an election held pursuant to division (A) of this section shall be as follows:

"An additional tax for the benefit of (name of subdivision or public library) _____ for the purpose of (purpose stated in the resolution) _____ at a rate not exceeding ___ mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) _____ for each one hundred dollars of valuation, for ___ (life of indebtedness or number of years the levy is to run)

	For the tax levy
	Against the tax levy

"

(C) If the levy is to be in effect for a continuing period of time, the notice of election and the form of ballot shall so state instead of setting forth a specified number of years for the levy.

If the levy submitted is a proposal to renew, replace, increase, or decrease an existing levy, the form of the ballot specified in division (B) of this section may be changed by substituting for the words "An additional" at the beginning of the form; the words "A renewal of a" in case of a propo-

sal to renew an existing levy in the same amount; the words "A replacement of a" in the case of a proposal to replace an existing levy in the same amount; the words "A renewal of _____ mills and an increase of _____ mills to constitute a" or "A replacement of _____ mills and an increase of _____ mills to constitute a" in the case of an increase; the words "A renewal of part of an existing levy, being a reduction of _____ mills, to constitute a" in the case of a decrease in the proposed levy; or the words "A replacement of part of an existing levy, being a reduction of _____ mills, to constitute a" in the case of a replacement of only a part of an existing levy.

The question covered by such resolution shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election.

(D) A levy voted in excess of the ten-mill limitation under this section shall be certified to the tax commissioner. In the first year of such levy, it shall be extended on the tax lists after the February settlement next succeeding such election. If such additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

HISTORY: 1987 S 137, eff. 7-20-87
1986 H 555; 1985 H 95; 1984 H 572; 1983 H 260; 1980 H 1062, H 810; 1979 H 44; 1976 H 920; 1973 S 44; 132 v S 350; 128 v 574; 126 v 882; 125 v 713; 1953 H 1; GC 5625-17, 5625-17a

UNCODIFIED LAW

1991 H 431, § 4, eff. 10-11-91, reads:

(A) Notwithstanding division (A) of section 5705.25 of the Revised Code to the contrary, the legislative authority of a municipal corporation, by the affirmative vote of two-thirds of all of its members, may adopt a resolution proposing to submit to the electors, at a special election held on November 5, 1991, the question of the renewal of an existing tax levy, in excess of the ten-mill limitation, for the current expenses of the municipal corporation, if both of the following apply:

(1) A current expenses levy previously was approved by the voters at the November 1986, general election, was extended on the 1987, 1988, 1989, 1990, and 1991 tax lists, and, as a result of its expiration, cannot be extended on the 1992 tax lists.

(2) The municipal corporation failed to timely certify to the board of elections a resolution proposing to submit the question of renewing the current expenses levy to the electors at the November 1991, general election as required by division (A) of section 5705.25 of the Revised Code.

(B) A resolution adopted pursuant to division (A) of this section shall state the rate at which the levy is proposed to be levied, which shall not exceed three mills; state the date on which the election on the question of the levy will be held, which shall be November 5, 1991; state the number of years for which the levy will be in effect; and shall otherwise comply with the applicable provisions of Chapter 5705. of the Revised Code. The resolution also shall specify that, if approved, the levy will first be extended for collection on the 1992 tax list and duplicate and will be treated like any other additional tax levy for purposes of collection. Upon its adoption, the resolution shall be certified immediately to the board of elections.

(C) Upon receipt of a resolution that has been adopted and certified pursuant to this section, the board of elections shall take all actions necessary to submit the question of the levy to the electors of the municipal corporation at a special election to be held on November 5, 1991. Notice of the election shall be published in a newspaper of general circulation in the municipal corporation once a week for each week prior to the election, not to exceed four weeks, notwithstanding division (A) of section 5705.25 of the Revised Code, but only if the resolution has been certified prior to one week before the date on which the election will be held. The form of the ballot to be used at the special election shall be that set forth in section 5705.25 of the Revised Code for the renewal of an existing levy. If a majority of the electors voting on the question of the proposed levy votes in favor of the levy, the county auditor shall first extend the levy for collection on the 1992 tax list.

(D) A levy approved under this section shall be certified to the Tax Commissioner and extended on the tax lists, as required under division (D) of section 5705.25 of the Revised Code.

1990 H 247, § 3: See Uncodified Law under 5705.19.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 21.28, 99.01, 99.03; Forms 3.01 to 3.04

Baldwin's Ohio School Law, Text 40.10(A), 40.12; Forms 34.04 to 34.06, 40.02 to 40.04, 40.22 to 40.24, 40.34

Gotherman & Babbit, Ohio Municipal Law, Text 19.18, 19.521; Forms 19.32 to 19.34

CROSS REFERENCES

Tax levies for township fire districts, elections, 505.37

Township contracts for police protection, 505.43

Township police district, voter approval of expansion of district imposing tax, 505.48

Music, museums, certificate of resolution to board of elections, conduct of election, 757.02

Conversion of township park districts, tax levies, 1545.041

Tax levy, replacement levies for joint vocational school districts, 3311.21

Special levy for general health district, 3709.29

Board of elections, submission to electors of question of increasing county sales tax to provide additional revenue for county's general fund, 5739.026

Levy for current expenses of regional water and sewer districts, anticipation notes, 6119.18

Regional water and sewer districts, approval of tax levy by electors, 6119.32

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 3, Agriculture and Crops § 46; 20, Counties, Townships, and Municipal Corporations § 85, 292 to 294; 21, Counties, Townships, and Municipal Corporations § 771; 22, Courts and Judges § 165; 55, Hospitals and Related Facilities; Health Care Providers § 51; 72, Notice and Notices § 27 to 30, 33, 34; 87, Taxation § 889, 906, 908

Am Jur 2d: 71, State and Local Taxation § 136

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Contents of ballot
3. Persons entitled to vote
4. Procedure after levy is passed

1. In general

70 OS(2d) 63, 434 NE(2d) 1098 (BTA 1982), McNamara v Kinney. When applying RC 319.301 for tax reduction factor purposes, the intent of the electorate in approving a tax levy should be effectuated upon determining whether the levy consists entirely of millage levied for the first time or consists of a renewal of a levy in combination with an additional levy.

41 OS(2d) 103, 322 NE(2d) 885 (1975), Cuyahoga County Bd of Mental Retardation v Cuyahoga County Bd of Commrs. Where the

electors of a county have approved a levy increase in excess of the ten-mill limitation, to be placed upon the tax list of the current year, the procedure called for in RC 5705.01 to 5705.47 for placing an additional tax upon the tax list of the current year is sufficient to satisfy the mandate of RC 5705.341 that no tax may be levied "unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision properly and lawfully advertised, adopted, and filed . . .."

36 OS(2d) 114, 304 NE(2d) 390 (BTA 1973), Wise v Summit County Budget Comm. The provision of RC 5705.341 that "nothing in this section or any section of the Revised Code shall permit or require the levying of any rate of taxation . . . unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision . . .," prohibits a county budget commission from certifying a tax levy which would produce revenue in excess of the revenue set out in the budget submitted by the municipality pursuant to RC 5705.30.

OAG 88-068. A replacement levy proposed pursuant to RC 5705.191 that does not win voter approval has no effect upon the levy that it seeks to replace; a resolution to renew the existing levy may be placed on the ballot pursuant to RC 5705.25 following the failure of a replacement levy to win voter approval.

OAG 82-013. A tax levy submitted for voter approval by a joint county mental health district pursuant to RC 5705.19(A) and 5705.25 may not be designated as a replacement levy.

OAG 80-011. RC 5705.19, 5705.191 and 5705.25 do not allow for variable rate tax levies, and levies proposed by counties pursuant to these sections must be fixed rate levies. The only sections in RC Ch 5705 allowing for variable rate levies are RC 5705.194 et seq. which apply only to school districts meeting emergency requirements.

OAG 76-027. RC 505.441 authorizes a township, where a police district has not been formed or has been dissolved, to enter into contracts for police protection; the expenses of such protection are properly met from township funds; RC 5705.19(J) does not authorize submission of a proposed tax levy where a police department is not in operation or in existence, and a township—where a police district is not in existence and operation—may not properly submit a levy under RC 5705.19(J) to meet the permanent expenses of providing police protection.

OAG 74-061. A board of county commissioners may certify to the board of elections a ten-year levy for a community mental health and retardation program, even though the amendment to RC 5705.221, permitting such ten-year levy, becomes effective after the date of certification but before the November election.

OAG 68-051. The renewal of a tax levy authorized by RC 5705.20 for the support of tuberculosis hospitals or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis or for the support of tuberculosis clinics may only be submitted to the electorate at the November election.

OAG 67-020. Since New Boston city school district has a current tax levy for school operation for the year 1966 of at least ten mills, such district qualifies for foundation program payments as of July 1, 1966.

OAG 66-173. Until the juvenile judge or juvenile judges advise and recommend the establishment of a county or a district detention home pursuant to RC 2151.34, there is no legal authority to levy a tax for that purpose nor for a tax levy in the alternative.

OAG 66-096. A local school district board of education may submit two separate levies in excess of the ten-mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, RC 5705.21.

1963 OAG 718. A tax levy approved in accordance with RC 5705.21 at a special election held on December 10 or December 12, 1963, may not be extended upon the tax list and duplicate for the current year.

1962 OAG 3472. A levy under RC 5705.21 passed in January 1963, may not be assessed and collected as 1962 taxes, but is included in the tax budget certified to the county budget commission in 1963 to be collected with other 1963 taxes.

1958 OAG 2332. In the absence of an authorizing provision in a charter duly adopted by a municipality, the council of such municipality is without authority to present to the board of elections for submission to the electors a proposed ordinance which is to become effective only upon their approval; and the board of elections is without authority to receive or submit such proposal to the electors of the municipality.

1939 OAG 862. Board of elections of a county is without authority to change percentages of number of electors necessary to carry a special tax levy as fixed by legislature and determine that a levy, to supplement general fund appropriation for support of a county hospital, may be approved by a mere majority vote in municipalities of a county.

1939 OAG 862. To carry a levy to supplement general fund appropriation for the support of a county tuberculosis hospital, not to exceed aggregate of one mill, fifty-five per centum of electors voting on question so submitted, that is, electors of the county, must vote in favor thereof.

2. Contents of ballot

OAG 75-016. Where it is desired to renew a .03 mill levy for mental health and retardation purposes, which has been reduced by the county budget commission to .01 mill under RC 5705.32, the form of the ballot under RC 5705.25 should show that the levy will consist of a renewal of the .03 mill levy rather than an increase of the .01 mill levy.

OAG 70-020. Each proposal printed upon the ballot, as prescribed by RC 5705.25, must conform to and be expressed in the wording specifically prescribed by said section.

OAG 70-020. If levy submitted is proposal to renew an existing levy either at same or with increase or decrease in rate thereof, RC 5705.25 permits certain changes in phraseology in form of proposal printed upon ballot.

OAG 70-020. RC 5705.25 does not authorize combining of two or more levies as a single proposal to be submitted as a separate proposition upon ballot.

OAG 65-176. When a one-mill levy has been reduced by the county auditor to .9 mill by reason of RC 5713.11 and it is proposed to "renew" the levy for another term at the original rate, the form of the ballot should show that the levy will consist of a renewal of .9 mill and an increase of .1 mill, to constitute a tax not exceeding one mill.

1960 OAG 1664. When the county auditor has reduced the rate of an additional levy pursuant to RC 5713.11, he has in effect reduced the "levy" as that term is used in RC 5705.25, and where the rate of such a levy has been reduced from 3 mills to 2.6 mills and it is proposed to "renew" the levy for another term at the original rate, the form of the ballots should show that the levy will consist of a renewal of 2.6 mills and an increase of .4 mills, to constitute a tax not exceeding 3 mills.

1953 OAG 3061. There is no statutory requirement that a resolution proposing a vote on the issue of an additional levy for specific purposes should contain a statement of the total dollar amount proposed to be raised by such levy, or that the ballot to be used at the election at which such issue is submitted should contain such statement of the total dollar amount proposed to be raised by the levy.

3. Persons entitled to vote

1959 OAG 888. A proposed township levy in excess of the ten-mill limitation must be submitted to the electors of the township residing both within and outside of a village located wholly within the boundaries of said township.

1958 OAG 2294. If the estimated expenses of a general health district are in excess of revenue available within the ten-mill limitation, a special levy may be made pursuant to the provisions of RC 3709.29, but such special levy would have no application to taxable real property situated in a city receiving public health service from

the general health district by contract, and such special levy should be submitted to the electors of the general health district only, which district would not include cities furnished public health service on such contract basis.

4. Procedure after levy is passed

11 Misc 36, 225 NE(2d) 795 (CP, Jefferson 1967), State ex rel Steubenville City School Dist Bd of Ed v Hamrock. Where the board of education of a city school district adopted a tax budget for the following fiscal year, and thereafter adopted a resolution to levy a tax of eleven mills in excess of the ten-mill limitation for current expenses, to be levied during the current year if approved by the electorate, and the budget commission allowed only a ten-mill levy subject to the election, and the voters approved the eleven-mill levy, and the school board delivered a revised budget including the eleven-mill levy, but the budget commission refused to reconsider, mandamus will lie to compel the tax budget commission to revise such school board budget and the auditor to extend such levy.

1964 OAG 1578. Where a taxing authority proceeds to declare that it is necessary to levy a tax in excess of the ten-mill limitation and that such tax shall be levied upon the duplicate for the current year, the tax shall, after approval by the electors, be levied on the current duplicate as directed by statute, and there is no requirement that the necessity for the additional taxation must have been included in the budget submitted to the county auditor by the taxing authority prior to the adoption of the resolution of necessity.

1961 OAG 2657. If a board of education of a school district resolves to submit the question of an additional tax levy for school district purposes to a vote of the electors and the resolution of the board specifies that such additional tax levy is to be placed upon the tax duplicate for the current year, then the levy, if it receives a favorable vote, must be extended on the current tax duplicate for collection, and after the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

1961 OAG 2145. Where a tax levy is approved by the voters at the November general election pursuant to RC 5705.25 and the taxing authority resolves to place the additional tax on the tax list for the current year pursuant to that section, the county auditor is required to extend such tax on the tax list and duplicate for the current year, provided, however, that in such case the board of county commissioners and the department of taxation may extend the time of payment beyond the December collection date.

1949 OAG 1009. If a school district votes an additional tax levy in the November 1949 election, pursuant to GC 5625-15 (RC 5705.19), and the board of education resolves to place the tax on the books for the current year, pursuant to this section, the county auditor is required to certify and the county treasurer to collect said tax in December, 1949, despite GC 2584 (RC 319.29).

5705.251 Additional school district levies

(A) A copy of a resolution adopted under section 5705.212 or 5705.213 of the Revised Code shall be certified by the board of education to the board of elections of the proper county not less than seventy-five days before the date of the election specified in the resolution, and the board of elections shall submit the proposal to the electors of the school district at a special election to be held on that date. The board of elections shall make the necessary arrangements for the submission of the question or questions to the electors of the school district, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in the school district for the election of county officers. Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for four consecutive weeks prior to the election.

(1) In the case of a resolution adopted under section 5705.212 of the Revised Code, the notice shall state separately, for each tax being proposed, the purpose; the proposed increase in rate, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation; the number of years during which the increase will be in effect; and the year in which the tax is first authorized to be levied. For an election on the question of a renewal levy, the notice shall state the purpose; the proposed rate, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation; and the number of years the tax will be in effect.

(2) In the case of a resolution adopted under section 5705.213 of the Revised Code, the notice shall state the purpose; the amount proposed to be raised by the tax in the first year it is levied; the estimated average additional tax rate for the first year it is proposed to be levied, expressed in mills for each one dollar of valuation and in dollars and cents for each one hundred dollars of valuation; the number of years during which the increase will be in effect; and the year in which the tax is first authorized to be levied. The notice also shall state the amount by which the amount to be raised by the tax may be increased in each year after the first year. The amount of the allowable increase may be expressed in terms of a dollar increase over, or a percentage of, the amount raised by the tax in the immediately preceding year. For an election on the question of a renewal levy, the notice shall state the purpose; the amount proposed to be raised by the tax; the estimated tax rate, expressed in mills for each one dollar of valuation and in dollars and cents for each one hundred dollars of valuation; and the number of years the tax will be in effect.

In any case, the notice also shall state the time and place of the election.

(B) The form of the ballot in an election on taxes proposed under section 5705.212 of the Revised Code shall be as follows:

"Shall the _____ school district be authorized to levy taxes for current expenses, the aggregate rate of which may increase in _____ (number) increment(s) of not more than _____ mill(s) for each dollar of valuation, from an original rate of _____ mill(s) for each dollar of valuation, which amounts to _____ (rate expressed in dollars and cents) for each one hundred dollars of valuation, to a maximum rate of _____ mill(s) for each dollar of valuation, which amounts to _____ (rate expressed in dollars and cents) for each one hundred dollars of valuation? The original tax is first proposed to be levied in _____ (the first year of the tax), and the incremental tax in _____ (the first year of the increment) (if more than one incremental tax is proposed in the resolution, the first year that each incremental tax is proposed to be levied shall be stated in the preceding format, and the increments shall be referred to as the first, second, third, or fourth increment, depending on their number). The aggregate rate of tax so authorized will _____ (insert either, "expire with the original rate of tax which shall be in effect for _____ years" or "be in effect for a continuing period of time").

		FOR THE TAX LEVIES
		AGAINST THE TAX LEVIES

"

The form of the ballot in an election on the question of a renewal levy under section 5705.212 of the Revised Code shall be as follows:

"Shall the _____ school district be authorized to renew a tax for current expenses at a rate not exceeding _____ mills for each dollar of valuation, which amounts to _____ (rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (number of years the levy shall be in effect, or a continuing period of time)?

		FOR THE TAX LEVY
		AGAINST THE TAX LEVY

"

(C) The form of the ballot in an election on a tax proposed under section 5705.213 of the Revised Code shall be as follows:

"Shall the _____ school district be authorized to levy the following tax for current expenses? The tax will first be levied in _____ (year) to raise _____ (dollars). In the _____ (number of years) following years, the tax will increase by not more than _____ (per cent or dollar amount of increase) each year, so that, during _____ (last year of the tax), the tax will raise approximately _____ (dollars). The county auditor estimates that the rate of the tax per dollar of valuation will be _____ mill(s), which amounts to $ _____ per $100 of valuation, both during _____ (first year of the tax) and _____ mill(s), which amounts to $ _____ per $100 of valuation, during _____ (last year of the tax). The tax will not be levied after _____ (year).

		FOR THE TAX LEVY
		AGAINST THE TAX LEVY

"

The form of the ballot in an election on the question of a renewal levy under section 5705.213 of the Revised Code shall be as follows:

"Shall the _____ school district be authorized to renew a tax for current expenses which will raise _____ (dollars), estimated by the county auditor to be _____ mills for each dollar of valuation, which amounts to _____ (rate expressed in dollars and cents) for each one hundred dollars of valuation? The tax shall be in effect for _____ (the number of years the levy shall be in effect, or a continuing period of time).

		FOR THE TAX LEVY
		AGAINST THE TAX LEVY

"

(D) The question covered by a resolution adopted under section 5705.212 or 5705.213 of the Revised Code shall be submitted as a separate question, but may be printed on the same ballot with any other question submitted at the same election, other than the election of officers. More than one question may be submitted at the same election.

(E) Taxes voted in excess of the ten-mill limitation under division (B) or (C) of this section shall be certified to the tax commissioner. If an additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the board of education. The board of education immediately shall make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. After the first year, the levy shall be included in the annual tax budget that is certified to the county budget commission.

HISTORY: 1990 S 218, eff. 4-17-90

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 81

Validity of basing public school financing system on local property taxes. 41 ALR3d 1220

5705.26 Vote necessary for levies

Except as otherwise provided in section 5705.191 of the Revised Code, if the majority of the electors voting on a levy authorized by sections 5705.19 to 5705.25, inclusive, of the Revised Code vote in favor of such levy at such election, the taxing authority of the subdivision may levy a tax within such subdivision at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution. If such levy is for the payment of charges on debts incurred prior to January 1, 1935, in excess of the ten-mill limitation but within the fifteen-mill limitation, the taxing authority of said subdivision shall levy in excess of the ten-mill limitation such tax if a majority of the electors voting on the levy vote in favor thereof.

HISTORY: 132 v S 350, eff. 12-1-67
128 v 67; 1953 H 1; GC 5625-18

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Forms 3.01, 3.04

Gotherman & Babbit, Ohio Municipal Law, Text 19.18; Forms 19.34, 31.11, 31.14

CROSS REFERENCES

Municipal educational institution, taxation, 3349.25

Voters; qualifications; age and residence, 3503.01

Regional water and sewer districts, approval of tax levy by electors, 6119.32

Property taxation by uniform rule, ten-mill limitation, O Const Art XII §2

NOTES ON DECISIONS AND OPINIONS

46 OS(2d) 543, 350 NE(2d) 411 (BTA 1976), Waite Hill v Lake County Budget Comm. A county budget commission has a specific duty, under RC 5705.341, to refuse to certify a tax levy which is outside the ten-mill limitation, where such levy is not clearly required by the budget of a political subdivision, and where the outside millage has not been approved by the electors in the current year.

42 App 345, 182 NE 134 (1932), State ex rel Harshman v Lutz. Amendment increasing percentage of electors necessary to authorize additional levy of taxes, held inapplicable in respect to proceedings instituted prior to effective date.

42 App 345, 182 NE 134 (1932), State ex rel Harshman v Lutz. City attorney held entitled to mandamus to compel county auditor

to place additional levy voted for poor relief on tax duplicates of county.

OAG 82-036. A board of county commissioners may not rescind a voter approved levy.

OAG 66-144. A board of township trustees may not accumulate the proceeds of a voted levy for fire protection during the life of the levy, for expenditure at a later date.

1955 OAG 5585. Under RC 5705.22 a levy of not more than 65/100 of a mill for support of a county general hospital may be levied outside the ten-mill limitation if approved by a majority of the voters, and the funds raised should be paid to a special fund.

1955 OAG 5585. A county may include current expenses of a county general hospital in a general levy in excess of the ten-mill limitation, which must be approved by sixty per cent of the voters, and the funds raised should be paid to the general fund.

1955 OAG 5585. Under RC 5705.191 a two-year levy for supplementing the general fund for various purposes including the support of general hospitals may be authorized by fifty-five per cent of the voters.

1954 OAG 4360. Agreements for the support of a municipal university, earmarking of funds thereunder, and vote required for bond issue for support thereof discussed.

1935 OAG 4583. This section relates only to levies for the payment of charges on debts which were incurred under GC 5649-2 (Repealed), prior to its repeal.

1934 OAG 3505. Where the question of a levy for the current expenses of a village outside the ten-mill limitation is submitted to a vote of the electors, and the number of electors voting on said question was 522, a favorable vote thereon of 339 is not sufficient to authorize such additional levy.

1931 OAG 3761. Where there was submitted to the electors of a taxing subdivision at the November 1931 election, the question of whether or not taxes should be levied and the vote on the said proposition was favorable thereto, the said levy may be made as voted for and may forthwith be extended on the tax duplicate for collection at the December 1931 collection of taxes, prior to its amendment.

1931 OAG 3761. When an election was ordered to be held at the regular election in November 1931, on the question of additional levies in a taxing subdivision, and the election was so held, and the majority of the voters voting thereon voted in favor thereof, the taxing authority of the subdivision may levy the proposed tax.

1927 OAG 1186. Unless the resolution authorized by this section provides that the additional tax levy authorized under GC 5625-15 (RC 5705.19), shall be placed on the tax duplicate for the current year said additional tax shall be included in the annual tax budget that is certified to the county budget commission in the succeeding year or years.

5705.261 Levy decrease by a subdivision

The question of decrease of an increased rate of levy approved for a continuing period of time by the voters of a subdivision may be initiated by the filing of a petition with the board of elections of the proper county not less than seventy-five days before the general election in any year requesting that an election be held on such question. Such petition shall state the amount of the proposed decrease in the rate of levy and shall be signed by at least ten per cent of the qualified electors residing in the subdivision and voting at the last general election. Only one such petition may be filed during each five-year period following the election at which the voters approved the increased rate for a continuing period of time.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the district at the next succeeding general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for county offices. Notice of the election shall be published in a newspaper of general circulation in the district once a week for four consecutive weeks prior to the election, stating the purpose, the amount of the proposed decrease in rate and the time and place of the election. The form of the ballot cast at such election shall be prescribed by the secretary of state. The question covered by such petition shall be submitted as a separate proposition but it may be printed on the same ballot with any other propositions submitted at the same election other than the election of officers. If a majority of the qualified electors voting on the question of a decrease at such election approve the proposed decrease in rate, the result of the election shall be certified immediately after the canvass by the board of elections to the subdivision's taxing authority, which shall thereupon, after the current year, cease to levy such increased rate or levy such tax at such reduced rate upon the duplicate of the subdivision. If notes have been issued in anticipation of the collection of such levy, the taxing authority shall continue to levy and collect under authority of the election authorizing the original levy such amounts as will be sufficient to pay the principal of and interest on such anticipation notes as the same fall due.

HISTORY: 1980 H 1062, eff. 3-23-81
1976 S 434; 1973 S 44; 1969 S 133; 132 v S 350; 128 v 574

CROSS REFERENCES

Levy to pay community college capital and operating expenses, source of funds, 3354.12

Voters; qualifications; age and residence, 3503.01

Voters; registration required for voting and other acts, 3503.06

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Notice and Notices § 27 to 30, 33, 34; 86, Taxation § 140

Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax. 68 ALR2d 1041

Validity of basing public school financing system on local property taxes. 41 ALR3d 1220

NOTES ON DECISIONS AND OPINIONS

OAG 86-021. Where the question of the decrease of a levy was approved by voters under RC 5705.261 in November of 1985, the decrease was effective beginning with the tax year following the tax year during which the voters' approval was obtained; thus, such decrease will first appear on the 1986 tax bills prepared in December of 1986.

OAG 68-035. A board of education of a city school district may submit a tax levy for current operating expenses under RC 5705.21 at a special election, which levy would run for a continuing period of time.

5705.71 Support of senior citizens services or facilities

(A) The electors of a county may initiate the question of a tax levy for support of senior citizens services or facilities by the filing of a petition with the board of elections of that county not less than seventy-five days before the date of any primary or general election requesting that an election be held on such question. The petition shall be signed by at least ten per cent of the qualified electors residing in the county and voting for the office of governor at the last general election.

(B) The petition shall state the purpose for which the senior citizens tax levy is being proposed, shall specify the amount of the proposed increase in rate, the period of time during which the increase is to be in effect, and whether the levy is to be imposed in the current year. The number of years may be any number not exceeding five, except that when the additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness.

(C) After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the county at the next succeeding primary or general election.

(D) The election shall be conducted, canvassed, and certified in the same manner as regular elections in such county for county offices. Notice of the election shall be published in a newspaper of general circulation in the county once a week for four consecutive weeks prior to the election, stating the purpose, the amount of the proposed increase in rate, and the time and place of the election.

(E) The form of the ballot cast at such election shall be prescribed by the secretary of state. The question covered by such petition shall be submitted as a separate proposition but it may be printed on the same ballot with any other propositions submitted at the same election other than the election of officers.

(F) If a majority of electors voting on the question vote in favor of the levy, the board of county commissioners shall levy a tax, for the period and the purpose stated within the petition. If the tax is to be placed upon the tax list of the current year, as specified in the petition, the result of the election shall be certified immediately after the canvass by the board of elections to the board of county commissioners, which shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

HISTORY: 1981 H 694, eff. 11-15-81

CROSS REFERENCES

Senior citizens services, 307.694
Purpose and intent of general levy for current expenses, 5705.05
Resolution relative to tax levy in excess of ten-mill limitation, 5705.19

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 72, Notice and Notices § 27 to 30, 33, 34; 86, Taxation § 50

COUNTY SALES TAX

5739.021 County levy of tax; purpose; rate; hearing and referendum requirement; effects of rejection or repeal by electors; reduction of rate

(A) For the purpose of providing additional general revenues for the county and paying the expenses of administering such levy, any county may levy a tax at the rate of not more than one per cent at any multiple of one-fourth of one per cent upon every retail sale made in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, and may increase the rate of an existing tax to not more than one per cent at any multiple of one-fourth of one per cent. The tax shall be levied and the rate increased pursuant to a resolution of the county commissioners. The resolution shall state the number of years for which the tax is to be levied or that it is for a continuing period of time. A certified copy of the resolution shall be delivered to the tax commissioner either personally or by certified mail not later than the sixtieth day prior to the date on which the tax is to become effective. Prior to the adoption of any resolution under this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing. If a petition for a referendum is filed with the county auditor pursuant to sections 305.31 to 305.41 of the Revised Code, the auditor shall, within five days, notify the board of county commissioners and the tax commissioner of the filing of the petition by certified mail. If the auditor declares the petition invalid, he shall, within five days, notify the board and the tax commissioner of his findings by certified mail. Where the auditor has declared the petition to be invalid the effective date of the tax or increased rate of tax levied by this section shall be the first day of the month following the expiration of thirty days from the date the petition was declared invalid.

(B)(1) A resolution levying or increasing the rate of a sales tax pursuant to this section shall become effective on the first day of the month specified in the resolution but not earlier than the first day of the month following the expiration of sixty days from the date of its adoption, subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into effect on the first day of the month following the expiration of thirty days from the date of notice by the board of county commissioners to the tax commissioner of its adoption. The emergency shall receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for such necessity.

(2)(a) A resolution that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of tax to the electors of the county at the next primary or general election in the county occurring not less than seventy-five days after a certified copy of such resolution is transmitted to the board of elections. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under division (B)(2)(a) of this section shall go into effect unless approved by a majority of those voting upon it and not until the first day of the month following the expiration of thirty days from the date of notice to the tax commissioner by the board of elections of the affirmative vote.

(b) A resolution that is adopted as an emergency measure shall go into effect as provided in division (B)(1) of this section but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the

tax to the electors of the county at the next general election in the county occurring not less than seventy-five days after a certified copy of the resolution is transmitted to the board of elections. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in section 5739.022 of the Revised Code. The board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. If a majority of the qualified electors voting on the question of repealing the tax or increase in the rate of the tax vote for repeal of the tax or repeal of the increase, the board of county commissioners, on the first day of the month following the expiration of thirty days after the date it received notice of the result of the election, shall, in the case of a repeal of the tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of the tax, cease to levy the increased rate and levy the tax at the rate at which it was imposed immediately prior to the increase in rate.

(C) If a resolution is rejected at a referendum or if a resolution adopted after January 1, 1982, as an emergency measure is repealed by the electors pursuant to division (B)(2)(b) of this section or section 5739.022 of the Revised Code, then for one year after the date of the election at which the resolution was rejected or repealed the board of county commissioners may not adopt any resolution authorized by this section as an emergency measure.

(D) The board of county commissioners, at any time while a tax levied under this section is in effect, may by resolution reduce the rate at which the tax is levied to a lower rate authorized by this section. Any reduction in the rate at which the tax is levied shall be made effective on the first day of the month specified in the resolution but not sooner than the first day of the month next following the thirtieth day after the certification of the resolution to the tax commissioner.

(E) The tax on every retail sale subject to a tax levied pursuant to this section shall be in addition to the tax levied by section 5739.02 of the Revised Code and any tax levied pursuant to section 5739.023 or 5739.026 of the Revised Code.

A county that levies a tax pursuant to this section shall levy a tax at the same rate pursuant to section 5741.021 of the Revised Code.

The additional tax levied by the county shall be collected pursuant to section 5739.025 of the Revised Code.

Any tax levied pursuant to this section is subject to the exemptions provided in section 5739.02 of the Revised Code and in addition shall not be applicable to sales not within the taxing power of a county under the constitution of the United States or the constitution of this state.

(F) For purposes of this section, a copy of a resolution is "certified" when it contains a written statement attesting that the copy is a true and exact reproduction of the original resolution.

HISTORY: 1991 H 192, eff. 10-10-91
1990 H 841, H 365; 1987 H 274; 1986 H 3; 1981 H 373; 1980 H 1062; 1970 H 855; 1969 H 531; 132 v H 919

Penalty: 5739.99(E)
Prohibition: 5739.26

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 13

CROSS REFERENCES

Procedure for submitting additional tax resolutions adopted by a board of county commissioners to referendum, 305.31
Powers and duties of department of liquor control, 4301.10
Application for certificate of motor vehicle title, certification of mileage, fees, 4505.06
Reduction of rate of county property tax, 5705.313
County may levy use and storage tax, procedure, rate, 5741.021
Allocation to county undivided local government funds, determining proportionate share, 5747.51
County budget commission, deduction of expenditures, 5747.62

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 7, Automobiles and Other Vehicles § 51; 72, Notice and Notices § 27 to 36; 86, Taxation § 51, 341
Am Jur 2d: 68, Sales and Use Taxes § 8, 40, 43, 128 to 138

NOTES ON DECISIONS AND OPINIONS

1. Constitutional issues
2. In general

1. Constitutional issues

54 OS(2d) 273, 376 NE(2d) 575 (BTA 1978), American Modulars Corp v Lindley; cert denied 439 US 911, 99 SCt 281, 58 LEd(2d) 257 (1978). Insofar as the application of RC 5741.021 imposes a higher tax rate on property purchased out of state and used in a taxing county than on similarly used property purchased in the state, that statute discriminates against interstate commerce and violates the Commerce Clause of the US Constitution.

2. In general

50 OS(3d) 81, 552 NE(2d) 640 (BTA 1990), Rotek, Inc v Limbach. The location of delivery of purchases under construction contracts determines the applicability of the county permissive tax.

36 OS(3d) 220, 522 NE(2d) 1074 (BTA 1988), Arga Co, Ohio Aviation Co Div v Limbach. Situs of a sale for purposes of county permissive sales taxes rests in the county where the sale occurred, and where a contract for the sale of goods specifies where the goods are to be delivered, the county in which the goods are delivered is considered the county in which the sale occurred and thus the situs of the sale.

27 OS(2d) 22, 272 NE(2d) 95 (BTA 1971), Cuyahoga County v Cuyahoga County Budget Comm. Where, upon appeal to the board of tax appeals, the record of the proceedings of a county budget commission allocating the local government fund is incomplete, a subdivision which does not adduce further proof of its relative actual needs to the board of tax appeals by direct testimony before the board, or by stipulation, deposition, or otherwise, is not in a position to complain that the allocation by the board, based upon that record, is unreasonable.

59 App(3d) 57, 572 NE(2d) 116 (Butler 1988), Armco, Inc v Limbach. Only retail sales whose situs is in a county can be subject to the county's permissive sales tax, and where a taxpayer telephones his acceptance of a price bid to a vendor the sale's situs is the taxpayer's county and not the vendor's.

OAG 88-018. A county has no authority to deposit revenues derived from county sales and use taxes pursuant to RC 5739.021, 5739.026, 5739.211, 5741.023, and 5741.031 into a revenue sharing fund from which moneys are to be distributed to townships and municipalities within the county according to a stated formula of entitlement and for such purposes as the recipients determine.

OAG 85-023. A resolution adopted pursuant to RC 5739.021 as an emergency measure may be submitted to a vote of the electors only pursuant to an initiative petition as provided for in RC 5739.022.

OAG 77-045. Where a board of county commissioners has by resolution enacted a county sales tax pursuant to RC 5739.021 and

a county use tax pursuant to RC 5741.021, a referendum petition with respect to such resolutions must meet the requirements of RC 305.31 to 305.99 for a referendum petition as to both of the resolutions in question.

OAG 73-031. A board of county commissioners may repeal by resolution a tax which was enacted pursuant to RC 5739.021, and the failure to hold public hearings prior to the repeal of the tax does not invalidate that repeal.

OAG 70-092. County tax levied pursuant to RC 5741.021 shall not be applicable to any storage, use, or consumption in any county other than county in which original storage, use, or consumption of motor vehicle was made in this state, provided such tax has been paid or would have been paid had county in which original storage, use or consumption of the property was made in this state levied a tax pursuant to RC 5739.021 and 5741.021 on the property.

OAG 70-092. The nexus for county sales and use taxation pursuant to RC 5739.021 and 5741.021 is predicated and determined upon a "per transaction" basis and determination of whether one or more transactions are involved is to be made with reference to surrounding facts.

OAG 70-092. Term "acquired" within the phrase, "motor vehicles acquired," as used in RC 5741.021 refers to acquisition of title or possession, or both, of a motor vehicle resulting from and pursuant to retail sale transaction subject to the tax imposed by RC 5739.021, which would include acquisition of motor vehicle by transfer of possession via lease or rental agreements.

OAG 70-092. Term "sale" within the phrase, "sales of motor vehicles," as used in RC 5739.021, is defined by RC 5739.01(B), inter alia, to include all transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted, for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental.

OAG 70-014. The general assembly has not authorized an initiative petition procedure for the purpose of effecting a repeal of a county-wide permissive sales and use tax adopted by a board of county commissioners pursuant to RC 5739.021 and 5741.021. (See also OAG 85-023.)

OAG 69-106. The county sales and use taxes authorized to be levied by RC 5739.021 and 5741.021, respectively, are in addition to the state sales and use taxes levied by RC 5739.02 and 5741.02, respectively.

BTA 88-D-799 (10-5-90), LDI Financial Services Corp v Limbach. A county's permissive tax shall be levied in the county where title and possession of tangible personal property is transferred.

BTA 87-E-44 (5-12-89), R.W. Davis Construction, Inc v Limbach. In order for a county permissive tax to apply to a retail sale, the seller must tender to the buyer the title to, and/or possession of, the tangible personal property within that county; thus, where purchases are made in West Virginia by an Ohio corporation, and the items are retained, stored, and used in West Virginia, no Ohio sales tax is applicable.

BTA 83-A-292 (6-23-86), Owens-Illinois, Inc v Limbach. RC 5739.021 provides that a direct pay permit granted by the commissioner continues to be valid until canceled for cause by the tax commissioner. If a taxpayer's organization changes business activities or accounting changes, it is required to give notice thereof to the tax commissioner when the taxpayer holds a direct pay permit under RC 5739.031.

BTA 82-B-1099 (9-12-85), Arcade City, Inc v Lindley. For purposes of county permissive taxes, sales take place in the county where tangible personal property is delivered, the consumer selects the property, and signs a contract to purchase it.

BTA 80-C-449 (3-15-84), Production Homes, Inc v Lindley. For purposes of assessment of the county permissive sales tax and county permissive regional transit authority tax, sales are made in the county in which the purchaser takes delivery of the purchased items.

5739.022 Election to repeal emergency permissive tax

(A) The question of repeal of either a county permissive tax or an increase in the rate of a county permissive tax that was adopted as an emergency measure pursuant to section 5739.021 or 5739.026 of the Revised Code may be initiated by filing with the board of elections of the county not less than seventy-five days before the general election in any year a petition requesting that an election be held on the question. The question of repealing an increase in the rate of the county permissive tax shall be submitted to the electors as a separate question from the repeal of the tax in effect prior to the increase in the rate. Any petition filed under this section shall be signed by qualified electors residing in the county equal in number to ten per cent of those voting for governor at the most recent gubernatorial election.

After determination by it that the petition is valid, the board of elections shall submit the question to the electors of the county at the next general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections for county offices in the county. The board of elections shall notify the tax commissioner, in writing, of the election upon determining that the petition is valid. Notice of the election shall also be published in a newspaper of general circulation in the district once a week for four consecutive weeks prior to the election, stating the purpose, the time, and the place of the election. The form of the ballot cast at the election shall be prescribed by the secretary of state; however, the ballot question shall read, "shall the tax (or, increase in the rate of the tax) be retained?

	YES
	NO

"

The question covered by the petition shall be submitted as a separate proposition, but it may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers.

(B) If a majority of the qualified electors voting on the question of repeal of either a county permissive tax or an increase in the rate of a county permissive tax approve the repeal, the board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. The county commissioners shall, on the first day of the month following the expiration of thirty days after the date it receives the notice, in the case of a repeal of a county permissive tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of a county permissive tax, levy the tax at the rate at which it was imposed immediately prior to the increase in rate and cease to levy the increased rate.

HISTORY: 1990 H 841, eff. 4-5-91
1987 H 274; 1981 H 373; 1980 H 1062; 1973 S 44; 1969 H 531

Penalty: 5739.99(D)

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 13

CROSS REFERENCES

Referendum petitions, 305.32 to 305.42
Allocation to county undivided local government funds, determining proportionate share, 5747.51
County budget commission, deduction of expenditures, 5747.62

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 51, 53, 341

NOTES ON DECISIONS AND OPINIONS

19 OS(3d) 154, 19 OBR 437, 484 NE(2d) 153 (1985), State ex rel Burech v Belmont County Bd of Elections. A referendum petition for an election to repeal an emergency permissive tax pursuant to RC 5739.022 must, according to RC 305.32, contain the text of the resolution to be repealed, not the text of a resolution calling for repeal.

OAG 85-023. A resolution adopted pursuant to RC 5739.021 as an emergency measure may be submitted to a vote of the electors only pursuant to an initiative petition as provided for in RC 5739.022.

5739.023 Transit authority levy of tax; rates optional; limits

(A)(1) For the purpose of providing additional general revenues for a transit authority and paying the expenses of administering such levy, any transit authority as defined in division (U) of section 5739.01 of the Revised Code may levy a tax upon every retail sale made in the territory of the transit authority, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, at a rate of not more than one and one-half per cent at any multiple of one-fourth of one per cent and may increase the existing rate of tax to not more than one and one-half per cent at any multiple of one-fourth of one per cent. The tax shall be levied and the rate increased pursuant to a resolution of the legislative authority of the transit authority and a certified copy of the resolution shall be delivered by the fiscal officer to the board of elections as provided in section 3505.071 of the Revised Code. The resolution shall specify the number of years for which the tax is to be in effect or that the tax is for a continuing period of time, and the date of the election on the question of the tax pursuant to section 306.70 of the Revised Code.

(2) The tax levied by the resolution shall become effective on the first day of the month specified in the resolution but not earlier than the first day of the month next following the sixtieth day following the certification of the results of the election on the question of the tax by the board of elections.

(B) The legislative authority may, at any time while the tax is in effect, by resolution fix the rate of the tax at any rate authorized by this section and not in excess of that approved by the voters pursuant to section 306.70 of the Revised Code. Any change in the rate of the tax shall be made effective on the first day of the month specified in the resolution but not sooner than the first day of the month next following the sixtieth day following the certification of the resolution to the tax commissioner; provided, that in any case where bonds, or notes in anticipation of bonds, of a regional transit authority have been issued under section 306.40 of the Revised Code without a vote of the electors while the tax proposed to be reduced was in effect, the board of trustees of the regional transit authority shall continue to levy and collect under authority of the original election authorizing the tax a rate of tax which the board of trustees reasonably estimates will produce an amount in that year equal to the amount of principal of and interest on those bonds as is payable in that year.

(C) The tax on every retail sale subject to a tax levied pursuant to this section is in addition to the tax levied by section 5739.02 of the Revised Code and any tax levied pursuant to section 5739.021 or 5739.026 of the Revised Code.

(D) The additional tax levied by the transit authority shall be collected pursuant to section 5739.025 of the Revised Code.

(E) Any tax levied pursuant to this section is subject to the exemptions provided in section 5739.02 of the Revised Code and in addition shall not be applicable to sales not within the taxing power of a transit authority under the constitution of the United States or the constitution of this state.

HISTORY: 1990 H 365, eff. 4-1-90
1987 H 274; 1986 H 428, H 583; 1984 H 37; 1981 H 373; 1974 S 544.

Penalty: 5739.99(E)
Prohibition: 5739.26

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 13

CROSS REFERENCES

Total net indebtedness of county, certain securities not considered, 133.07
Submission of question of adoption of sales and use tax, 306.70, 306.71
Transit authority levy of use and storage tax, limits, 5741.022

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 341, 345, 347
Am Jur 2d: 68, Sales and Use Taxes § 8

NOTES ON DECISIONS AND OPINIONS

50 OS(3d) 81, 552 NE(2d) 640 (BTA 1990), Rotek, Inc v Limbach. The location of delivery of purchases under construction contracts determines the applicability of the county permissive tax.

OAG 89-048. When voters have approved a sales tax levy for a regional transit authority pursuant to RC 306.70 and 5739.023 and no bonds or anticipation notes have been issued under RC 306.40 without a vote of the electors while the tax has been in effect, the board of trustees of the authority may, at any time while the tax is in effect, by resolution fix the rate of the tax at any rate authorized by RC 5739.023 and not in excess of the rate approved by the voters; the tax rate may, by resolution, be changed to any permissible rate pursuant to the procedure set forth in RC 5739.023.

OAG 89-048. RC 306.71 authorizes voters to initiate an election with respect to a continuing sales tax under RC 5739.023 to decrease the rate approved by the voters.

OAG 89-048. The sales tax rate fixed pursuant to RC 5739.023 may not exceed the rate approved by the voters, whether pursuant to the initial authorization of a levy under RC 5739.023 or pursuant to a decrease adopted in accordance with RC 306.71.

BTA 80-C-449 (3-15-84), Production Homes, Inc v Lindley. For purposes of assessment of the county permissive sales tax and county permissive regional transit authority tax, sales are made in the county in which the purchaser takes delivery of the purchased items.

5739.026 County sales tax levy for convention facilities authority, transit authority, county general fund, permanent improvements, or emergency telephone system

(A) A board of county commissioners may levy a tax of one-fourth or one-half of one per cent on every retail sale in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, and may increase an existing rate of one-fourth of one per cent to one-half of one per cent, to pay the expenses of administering the tax and, except as provided in division (A)(6) of this section, for any one or more of the following purposes:

(1) To provide additional revenues for the payment of bonds or notes issued in anticipation of bonds issued by a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code and to provide additional operating revenues for the convention facilities authority;

(2) To provide additional revenues for a transit authority operating in the county;

(3) To provide additional revenue for the county's general fund;

(4) To provide additional revenue for permanent improvements within the county to be distributed by the community improvements board in accordance with section 307.283 and to pay principal, interest, and premium on bonds issued under section 133.312 of the Revised Code;

(5) To provide additional revenue to a county with a population of one hundred seventy-five thousand or less as measured by the most recent census taken by the United States census bureau, for the acquisition, construction, equipping, or repair of any specific permanent improvement or any class or group of permanent improvements, which improvement or class or group of improvements shall be enumerated in the resolution required by division (D) of this section and to pay principal, interest, premium, and other costs associated with the issuance of bonds or notes in anticipation of bonds issued pursuant to Chapter 133. of the Revised Code for the acquisition, construction, equipping, or repair of the specific permanent improvement or class or group of permanent improvements;

(6) To provide revenue for the implementation and operation of a 9-1-1 system in the county. If the tax is levied or the rate increased exclusively for such purpose, the tax shall not be levied or the rate increased for more than five years. At the end of the last year the tax is levied or the rate increased, any balance remaining in the special fund established for such purpose shall remain in that fund and be used exclusively for such purpose until the fund is completely expended, and, notwithstanding section 5705.16 of the Revised Code, the board of county commissioners shall not petition for the transfer of money from such special fund, and the tax commissioner shall not approve such a petition.

If the tax is levied or the rate increased for such purpose for more than five years, the board of county commissioners also shall levy the tax or increase the rate of the tax for one or more of the purposes described in divisions (A)(1) to (5) of this section and shall prescribe the method for allocating the revenues from the tax each year in the manner required by division (C) of this section.

The tax shall be levied and the rate increased pursuant to a resolution adopted by a majority of the members of the board.

Prior to the adoption of any resolution to levy the tax or to increase the rate of tax exclusively for the purpose set forth in division (A)(3) of this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be no fewer than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being no fewer than ten nor more than thirty days prior to the first hearing. The resolution shall become effective on the first day of the month specified in the resolution but not earlier than the first day of the month following the expiration of sixty days from the date of its adoption, subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into effect on the first day of the month following the expiration of thirty days from the date of notice by the board of county commissioners to the tax commissioner of its adoption. The emergency measure shall receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for the necessity.

If the tax is for more than one of the purposes set forth in division (A) of this section or is exclusively for one of the purposes set forth in division (A)(1), (2), (4), (5), or (6) of this section, the resolution shall not go into effect unless it is approved by a majority of the electors voting on the question of the tax.

(B) The board of county commissioners shall adopt a resolution under section 351.02 of the Revised Code creating the convention facilities authority, or under section 307.283 of the Revised Code creating the community improvements board before adopting a resolution levying a tax for the purpose of a convention facilities authority under division (A)(1) of this section or for the purpose of a community improvements board under division (A)(4) of this section.

(C)(1) If the tax is to be used for more than one of the purposes set forth in divisions (A)(1) to (6) of this section, the board of county commissioners shall establish the method that will be used to determine the amount or proportion of the tax revenue received by the county during each year that will be distributed for each of those purposes, including, if applicable, provisions governing the reallocation of a convention facilities authority's allocation if the authority is dissolved while the tax is in effect. The allocation method may provide that different proportions or amounts of the tax shall be distributed among the purposes in different years, but it shall clearly describe the method that will be used for each year. Except as otherwise provided in division (C)(2) of this section, the allocation method established by the board is not subject to amendment during the life of the tax.

(2) Subsequent to holding a public hearing on the proposed amendment, the board of county commissioners may amend the allocation method established under division (C)(1) of this section for any year if the amendment is approved by the governing board of each entity whose allocation for the year would be reduced by the proposed

amendment. In the case of a tax that is levied for a continuing period of time, the board may not so amend the allocation method for any year before the sixth year that the tax is in effect.

(a) If the additional revenues provided to the convention facilities authority are pledged by the authority for the payment of convention facilities authority revenue bonds for as long as such bonds are outstanding, no reduction of the authority's allocation of the tax shall be made for any year except to the extent that the reduced authority allocation, when combined with the authority's other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(b) If the additional revenues provided to the county are pledged by the county for the payment of bonds or notes issued under Chapter 133. of the Revised Code, for as long as such bonds or notes are outstanding, no reduction of the county's or the community improvements board's allocation of the tax shall be made for any year except to the extent that the reduced county or community improvements board allocation is sufficient to meet the debt service requirements for that year on such bonds or notes.

(c) If the additional revenues provided to the transit authority are pledged by the authority for the payment of revenue bonds issued under section 306.37 of the Revised Code, for as long as such bonds are outstanding, no reduction of the authority's allocation of tax shall be made for any year except to the extent that the authority's reduced allocation, when combined with the authority's other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(D)(1) The resolution levying the tax or increasing the rate of tax shall state the rate of the tax or the rate of the increase; the purpose or purposes for which it is to be levied; the number of years for which it is to be levied or that it is for a continuing period of time; the allocation method required by division (C) of this section; and if required to be submitted to the electors of the county under division (A) of this section, the date of the election at which the proposal shall be submitted to the electors of the county, which shall be not less than seventy-five days after the certification of a copy of the resolution to the board of elections. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. If approved by a majority of the electors, the tax shall become effective on the first day of the month specified in the resolution but not earlier than the first day of the month next following the thirtieth day following the certification of the results of the election to the board of county commissioners and the tax commissioner by the board of elections.

(2)(a) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of the tax to the electors of the county at the next primary or general election in the county occurring not less than seventy-five days after the resolution is certified to the board of elections. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under division (D)(2)(a) of this section shall go into effect unless approved by a majority of those voting upon it and not until the first day of the month specified in the resolution but not earlier than the first day of the month following the expiration of thirty days from the date of the notice to the tax commissioner by the board of elections of the affirmative vote.

(b) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is adopted as an emergency measure shall become effective as provided in division (A) of this section but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the tax to the electors of the county at the next general election in the county occurring not less than seventy-five days after the resolution is certified to the board of elections. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in section 5739.022 of the Revised Code. The board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. If a majority of the qualified electors voting on the question of repealing the tax or increase in the rate of the tax vote for repeal of the tax or repeal of the increase, the board of county commissioners, on the first day of the month following the expiration of thirty days after the date it received notice of the result of the election, shall, in the case of a repeal of the tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of the tax, cease to levy the increased rate and levy the tax at the rate at which it was imposed immediately prior to the increase in rate.

(E) The tax levied pursuant to this section shall be in addition to the tax levied by section 5739.02 of the Revised Code and any tax levied pursuant to section 5739.021 or 5739.023 of the Revised Code.

A county that levies a tax pursuant to this section shall levy a tax at the same rate pursuant to section 5741.023 of the Revised Code.

The additional tax levied by the county shall be collected pursuant to section 5739.025 of the Revised Code.

Any tax levied pursuant to this section is subject to the exemptions provided in section 5739.02 of the Revised Code and in addition shall not be applicable to sales not within the taxing power of a county under the constitution of the United States or the constitution of this state.

HISTORY: 1992 S 131, eff. 5-15-92
1990 H 841, H 365; 1987 H 274; 1986 H 583

Penalty: 5739.99(E)
Prohibition: 5739.26

PRACTICE AND STUDY AIDS

Baldwin's Ohio Tax Law and Rules, Ohio Taxes at a Glance 13

CROSS REFERENCES

Total net indebtedness of county, certain securities not considered, 133.07

County's procedure for submitting additional tax resolutions to referendum, 305.31

Regional transit authorities, revenue bonds, 306.37

Community improvements board, creation, 307.282

Grant for permanent improvement project, 307.283

Bonds for grant award payments, issuance by county commissioners, 307.284

Convention facilities authority, 351.01 et seq.

Use and storage taxes, county levy for convention facilities authority, transit authority, county general fund, or permanent improvements, 5741.023

Use and storage taxes, county levy, disposition and expenditure, 5741.031

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 341, 343, 347
Am Jur 2d: 68, Sales and Use Taxes § 8, 139 et seq.

NOTES ON DECISIONS AND OPINIONS

OAG 88-018. A county has no authority to deposit revenues derived from county sales and use taxes pursuant to RC 5739.021, 5739.026, 5739.211, 5741.023, and 5741.031 into a revenue sharing fund from which moneys are to be distributed to townships and municipalities within the county according to a stated formula of entitlement and for such purposes as the recipients determine.

5743.024 Additional sales tax for sports facility or permanent improvements

For the purposes of section 307.696 of the Revised Code, to pay the expenses of administering the tax, and to pay any or all of the charge the board of elections makes against the county to hold the election on the question of levying the tax, or for such purposes and to provide revenues to the county for permanent improvements, the board of county commissioners may levy a tax on sales of cigarettes sold for resale at retail in the county. The tax shall not exceed two and twenty-five hundredths of a mill per cigarette, and shall be computed on each cigarette sold. The tax may be levied for any number of years not exceeding twenty. Only one sale of the same article shall be used in computing the amount of tax due.

The tax shall be levied pursuant to a resolution of the county commissioners approved by a majority of the electors in the county voting on the question of levying the tax. The resolution shall specify the rate of the tax, the number of years the tax will be levied, and the purposes for which the tax is levied. Such election may be held on the date of a general or special election held not sooner than seventy-five days after the date the board certifies its resolution to the board of elections. If approved by the electors, the tax shall take effect on the first day of the month specified in the resolution but not sooner than the first day of the month that is at least sixty days after the certification of the election results by the board of elections. A copy of the resolution levying the tax shall be certified to the tax commissioner at least sixty days prior to the date on which the tax is to become effective.

A resolution under this section may be joined on the ballot as a single question with a resolution adopted under section 307.697 or 4301.421 of the Revised Code to levy a tax for the same purposes and for the purpose of paying the expenses of administering the tax. The form of the ballot in an election held pursuant to this section shall be as prescribed in section 307.697 of the Revised Code.

The treasurer of state shall credit all moneys arising from each county's taxes levied under this section and section 5743.323 of the Revised Code as follows:

(A) To the tax refund fund created by section 5703.052 of the Revised Code, amounts equal to the refunds from each tax levied under this section certified by the tax commissioner pursuant to section 5743.05 of the Revised Code;

(B) Following the crediting of amounts pursuant to division (A) of this section:

(1) To the permissive tax distribution fund created by division (B)(1) of section 4301.423 of the Revised Code, an amount equal to ninety-eight per cent of the remainder collected;

(2) To the local excise tax administrative fund, which is hereby created in the state treasury, an amount equal to two per cent of such remainder, for use by the tax commissioner in defraying costs he incurs in administering the tax.

On or before the second working day of each month, the treasurer of state shall certify to the tax commissioner the amount of each county's taxes levied under sections 5743.024 and 5743.323 and paid to the treasurer of state during the preceding month.

On or before the tenth day of each month, the tax commissioner shall distribute the amount credited to the permissive tax distribution fund during the preceding month by providing for payment of the appropriate amount to the county treasurer of each county levying the tax.

HISTORY: 1991 H 298, eff. 7-26-91
1990 S 188; 1986 H 583

UNCODIFIED LAW

1991 H 298, § 178, eff. 7-26-91, reads:

Permissive Tax Distribution

Notwithstanding sections 4301.423 and 5743.024 of the Revised Code as amended by this act, the proceeds of taxes levied under sections 4301.421, 5743.024, and 5743.323 of the Revised Code deposited into the state treasury during the month of July 1991, shall be distributed as follows:

(A) On or before August 2, 1991, the Treasurer of State shall certify to the Tax Commissioner and to the Director of Budget and Management the amount of each county's taxes levied under sections 4301.421, 5743.024, and 5743.323 of the Revised Code and paid into the state treasury during July 1991, and remaining in the General Revenue Fund subsequent to any transfers required by sections 4301.423 and 5743.024 of the Revised Code.

(B) On or before August 5, 1991, the Director of Budget and Management shall transfer the amounts certified by the Treasurer of State pursuant to division (A) of this section from the General Revenue Fund to the Permissive Tax Distribution Fund created in section 4301.423 of the Revised Code.

(C) On or before August 10, 1991, the Tax Commissioner shall distribute the amounts certified by the Treasurer of State pursuant to division (A) of this section from the Permissive Tax Distribution Fund to the county treasurer of each county levying the taxes specified in division (A) of this section.

CROSS REFERENCES

Use of imprinting meter devices or stamp applying machines, OAC 5703-15-03

Sales of packages of cigarettes for which tax indicia are not available, OAC 5703-15-08

County sports facility, corporation to operate, revenue bonds, 307.696

Sports facility, tax on spirituous liquor, ballot form, 307.697

Tax on alcoholic beverages for construction of sports facility joined on ballot as single question, 4301.421

Tax for construction of sports facility, transfers, 4301.423

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 87, Taxation § 1198

SCHOOL DISTRICT INCOME TAX

5748.02 Resolution proposing levy of school district income tax; election

(A) The board of education of any school district, except a county or joint vocational school district, may declare, by resolution, the necessity of raising annually a specified amount of money for school district purposes. A copy of the resolution shall be certified to the tax commissioner no later than eighty-five days prior to the date of the election at which the board intends to propose a levy under this section. Upon receipt of the copy of the resolution, the tax commissioner shall estimate both of the following:

(1) The property tax rate that would have to be imposed in the current year by the district to produce an equivalent amount of money;

(2) The income tax rate that would have had to have been in effect for the current year to produce an equivalent amount of money from a school district income tax.

Within ten days of receiving the copy of the board's resolution, the commissioner shall prepare these estimates and certify them to the board. Upon receipt of the certification, the board may adopt a resolution proposing an income tax under division (B) of this section at the estimated rate contained in the certification rounded to the nearest one-fourth of one per cent. The commissioner's certification applies only to the board's proposal to levy an income tax at the election for which the board requested the certification. If the board intends to submit a proposal to levy an income tax at any other election, it shall request another certification for that election in the manner prescribed in this division.

(B) Upon the receipt of a certification from the tax commissioner under division (A) of this section, a majority of the members of a board of education may adopt a resolution proposing the levy of an annual tax for school district purposes on the school district income of individuals and of estates. The proposed levy may be for a continuing period of time or for a specified number of years. The resolution shall set forth the purpose for which the tax is to be imposed, the rate of the tax, which shall be the rate set forth in the commissioner's certification rounded to the nearest one-fourth of one per cent, the number of years the tax will be levied or that it will be levied for a continuing period of time, the date on which the tax shall take effect, which shall be the first day of January of any year following the year in which the question is submitted, and the date of the election at which the proposal shall be submitted to the electors of the district, which shall be on the date of a primary, general, or special election the date of which is consistent with section 3501.01 of the Revised Code.

(C) A resolution adopted under division (B) of this section shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. Immediately after its adoption and at least seventy-five days prior to the election at which the question will appear on the ballot, a copy of the resolution shall be certified to the board of elections of the proper county, which shall submit the proposal to the electors on the date specified in the resolution. The form of the ballot shall be as provided in section 5748.03 of the Revised Code. Publication of notice of the election shall be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks. The notice shall contain the time and place of the election and the question to be submitted to the electors. The question covered by the resolution shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers.

(D) No board of education shall submit the question of a tax on school district income to the electors of the district more than twice in any calendar year. If a board submits the question twice in any calendar year, one of the elections on the question shall be held on the date of the general election.

HISTORY: 1990 H 103, eff. 3-27-91
1989 S 28

Note: Former 5748.02 repealed by 1983 H 291, eff. 8-3-83; 1982 S 550; 1981 H 694.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 39.12

CROSS REFERENCES

State retirement systems, 145.56, 3307.71, 3309.66, 5505.22

LEGAL ENCYCLOPEDIAS AND ALR

Am Jur 2d: 68, Schools § 78 to 82

5748.03 Form of ballot; certification of results; effective date

The form of the ballot on a question submitted to the electors under section 5748.02 of the Revised Code shall be as follows:

"Shall an annual income tax of _____ (state the proposed rate of tax) on the school district income of individuals and of estates be imposed by _____ (state the name of the school district), for _____ (state the number of years the tax would be levied, or that it would be levied for a continuing period of time), beginning _____ (state the date the tax would first take effect), for the purpose of _____ (state the purpose of the tax)?

	FOR THE TAX
	AGAINST THE TAX

"

The board of elections shall certify the results of the election to the board of education and to the tax commissioner. If a majority of the electors voting on the question vote in favor of it, the tax and the applicable provisions of Chapter 5747. of the Revised Code shall take effect on the date specified in the resolution.

HISTORY: 1990 H 103, eff. 3-27-91
1989 S 28

Note: Former 5748.03 repealed by 1983 H 291, eff. 8-3-83; 1981 H 694.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 39.12

5748.04 Repeal may be initiated by petition

The question of the repeal of a school district income tax levied for more than five years may be initiated not more than once in any five-year period by filing with the board of elections of the appropriate counties not later than seventy-five days before the general election in any year after the year in which it is approved by the electors a petition requesting that an election be held on the question. The petition shall be signed by qualified electors residing in the school district levying the income tax equal in number to ten per cent of those voting for governor at the most recent gubernatorial election.

The board of elections shall determine whether the petition is valid, and if it so determines, it shall submit the question to the electors of the district at the next general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections for county offices in the county. Notice of the election shall be published in a newspaper of general circulation in the district once a week for four consecutive weeks prior to the election, stating the purpose, the time, and the place of the election. The form of the ballot cast at the election shall be prescribed by the secretary of state. The question covered by the petition shall be submitted as a separate proposition, but it may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers. If a majority of the qualified electors voting on the question vote in favor of it, the result shall be certified immediately after the canvass by the board of elections to the board of education of the school district and the tax commissioner, who shall thereupon, after the current year, cease to levy the tax except that if notes have been issued pursuant to section 5748.05 of the Revised Code the tax commissioner shall continue to levy and collect under authority of the election authorizing the levy an annual amount, rounded upward to the nearest one-fourth of one per cent, as will be sufficient to pay the debt charges on the notes as they fall due.

This section does not apply to school district income tax levies that are levied for five or fewer years.

HISTORY: 1990 S 332, eff. 1-10-91
1990 H 103; 1989 S 28; 1983 H 291; 1981 H 694

Note: A special endorsement by the Legislative Service Commission states, "Comparison of these amendments [1990 S 332, eff. 1-10-91 and 1990 H 103, eff. 3-27-91] in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment." In accordance with this endorsement, changes made by 1990 S 332, eff. 1-10-91 and 1990 H 103, eff. 3-27-91 have been incorporated in the above amendment. See *Baldwin's Ohio Legislative Service*, 1990 Laws of Ohio, pages 5-1262 and 5-986, for original versions of these Acts.

PRACTICE AND STUDY AIDS

Baldwin's Ohio School Law, Text 39.12

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 86, Taxation § 322

OHIO CONSTITUTION

(Selected Provisions)

Edited by Thomas R. Swisher, Esq.,
of the Publisher's Editorial Staff

Publisher's Note: References to OJur, Am Jur, and ALR were compiled from the *Ohio Code Research Guide* (Lawyers Co-operative Publishing Company).

Article II

LEGISLATIVE

O Const II § 1a	Initiative and referendum to amend constitution
O Const II § 1b	Initiative and referendum to enact laws
O Const II § 1c	Referendum to challenge laws enacted by General Assembly
O Const II § 1d	Laws taking immediate effect not subject to referendum
O Const II § 1e	Non-uniform tax laws cannot be adopted by initiative and referendum
O Const II § 1f	Initiative and referendum in municipalities
O Const II § 1g	Requirements for initiative and referendum petitions
O Const II § 2	Election of state legislators
O Const II § 3	Residence requirements for state legislators
O Const II § 4	Dual office and conflict of interest prohibited
O Const II § 5	Persons barred from seat in General Assembly; embezzlement or failure to account for public funds
O Const II § 11	Filling vacancy in house or senate seat

COMMENTARY

Editor's Comment

1990: The 1802 Ohio Constitution was notable for the lop-sided power conferred on the General Assembly. In this respect Ohio was bowing to anti-Federalist sentiments and following the lead of the other states, most of whose early constitutions aggrandized the legislative power at the expense of executive and judicial powers. See Edward S. Corwin, *The President: Office and Powers* 5-7 (New York University Press 1957). Primacy of Congress was also built into the Articles of Confederation, Article IX, and the disastrous results led to adoption of the US Constitution, which redistributed legislative, executive, and judicial powers and functions among three separate branches in a pattern synthesized from the views of Locke, Montesquieu, and Blackstone on a balanced constitution. *Id.*, at 7-16.

The almost plenary power of the General Assembly, and the near absence of controls on the exercise of the power, under the 1802 Constitution, permitted abuses which by 1849 had become gross enough that the press and public opinion were able to badger the General Assembly into placing the question of calling a constitutional convention on the ballot. The measure was approved by a large margin, and the convention was convened in May 1850. The major goals of the convention were defined by the agitation which had led to calling it: to curb the power of the General Assembly and reform the judiciary. The resulting 1851 Constitution accordingly took away the legislature's appointing authority, limited its power to enact private or special laws, and imposed severe restrictions on taxation and deficit spending, and restructured the judicial branch. See Isaac Franklin Patterson, *The Constitutions of Ohio* 17-19 (The Arthur H. Clark Co 1912); Carrington T. Marshall, I *A History of the Courts and Lawyers of Ohio* 103-07 (The American Historical Society, Inc 1934).

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.64, 43.29

CROSS REFERENCES

General assembly; organization and operation; lobbying, Ch 101

Legislative service commission; powers and duties, 103.03, 103.05 to 103.23

State board of uniform state laws, 105.21 to 105.27

Initiative, referendum, Ch 3519

O Const II § 1a Initiative and referendum to amend constitution

The first aforestated power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring

subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

HISTORY: 1912 constitutional convention, adopted eff. 10-1-12

COMMENTARY

Editor's Comment

1990: For comments on the initiative and referendum generally, see Commentary to §1, Article II. This section governs the use of the initiative and referendum to amend the Constitution. Constitutional amendments may also be proposed for submission to the voters by joint resolution of both houses of the General Assembly, and by constitutional convention. §1, 2 and 3, Article XVI.

CROSS REFERENCES

Initiative and referendum in municipalities, 705.91, 705.92, 731.28 to 731.41

Ballots, 3505.01 to 3505.17

Constitutional amendments, how submitted; time of submitting, 3501.02, 3505.06

Preparation and review of initiative and referendum petitions and ballots, Ch 3519

Attorney general's approval of petition required, 3519.01

Legislative power; people reserve power of initiative and referendum, O Const Art II §1

Initiative petition to propose law, O Const Art II §1b

Submitting laws passed by general assembly to referendum of people, O Const Art II §1c

Emergency laws, tax levies, and appropriations not subject to referendum, O Const Art II §1d

Initiative and referendum cannot be used for non-uniform taxation of property, O Const Art II §1e

Initiative and referendum applies to municipal law, O Const Art II §1f

Initiative and referendum petitions and ballots, O Const Art II §1g

General assembly may propose constitutional amendment, O Const Art XVI §1

General assembly may call constitutional convention, O Const Art XVI §2

Question of calling constitutional convention to be placed on ballot every 20 years, O Const Art XVI §3

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 23, Courts and Judges § 424; 56, Initiative and Referendum § 2, 4, 19, 22, 29, 30, 32, 38

Am Jur 2d: 16, Constitutional Law § 27 to 30, 32, 35, 39, 42, 43 to 50; 42, Initiative and Referendum § 1 to 10, 21 et seq.

Construction and application of constitutional or statutory provisions expressly excepting certain laws from referendum. 100 ALR2d 314

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Duties of secretary of state
3. Initiative petition
4. Ninety-day period

1. In general

39 Ohio St L J 158 (1978). A Threat to Ohio's Referendum: State ex rel Riffe v Brown, Comment.

53 Cin L Rev 541 (1984). The Current Use of the Initiative and Referendum in Ohio and Other States, Comment.

136 Pa L Rev 1567 (June 1988). The Vices of Virtue: A Political Party Perspective On Civic Virtue Reforms Of The Legislative Process, Michael A. Fitts.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. The proposed amendment of O Const Art XII §8, appearing on the ballot at the November 7, 1972, general election, if approved by the electorate, will become effective, under the provisions of O Const Art II §1b, on December 8, 1972.

152 OS 308, 89 NE(2d) 641 (1949), State ex rel Duffy v Sweeney. Where proposed amendment to Ohio Constitution received favorable majority of votes cast on the issue of adoption, but not a majority of votes cast in the election, it was legally adopted and became effective 30 days after the election despite fact that the schedule to the proposed amendment specified that it would become effective immediately upon certification by the secretary of state that a majority of electors cast a favorable ballot and that the schedule twice stated that a majority of electors voting at the election was necessary for passage.

99 OS 168, 124 NE 134, 172 (1919), State ex rel Greenlund v Fulton. The filing of a petition signed by ten per cent of the electors proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, as required by O Const Art II §1a, is jurisdictional and is a necessary prerequisite to the submission of the proposed amendment for the approval or rejection of the electors; when such a petition, signed and prepared in accordance with the constitutional requirement, has been filed with the secretary of state, he is required to submit to the electors the exact proposal set forth in the petition, and there is no authority for the submission of any other or different one.

99 OS 168, 124 NE 134, 172 (1919), State ex rel Greenlund v Fulton. The provisions of O Const Art II §1a et seq. for the filing of petitions for proposed amendments to the constitution, for copies, arguments, and explanations thereof, and for preparation of ballots so as to permit an affirmative or negative vote upon each law, section of law or proposed law, or proposed amendment to the constitution are mandatory; a submission of a proposed amendment to the constitution without substantial compliance with the provisions of the sections of the constitution referred to is invalid.

2. Duties of secretary of state

63 OS(2d) 326, 410 NE(2d) 1249 (1980), State ex rel Carter v Celebrezze. If no initiative petition bearing the requisite number of electors' signatures is presented, the secretary of state has no duty to forward the petition to the county boards of election.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By virtue of the provisions of O Const Art II §1a and 1g, the terms of a proposed constitutional amendment are determined by reference to the text of such proposal as contained on the initiative petition and part-petitions signed by the requisite number of electors; and any discrepancy between such text and the text of the preliminary petition submitted to the attorney general and filed with the secretary of state, under RC 3519.01, does not affect the duty of the secretary of state, prescribed in O Const Art II §1a, to submit such a proposal to the vote of the electorate if such proposal has been signed by ten per cent of the electorate.

105 OS 570, 138 NE 881 (1922), State ex rel Marcolin v Smith. The secretary of state may not refuse to submit to the electors a proposed amendment to the state constitution on the ground that it would contravene some provision of the federal constitution or law of congress; and mandamus lies to compel him to submit the proposed amendment.

99 OS 10, 121 NE 816 (1918), Weinland v Fulton. In an action to enjoin the secretary of state from submitting for the approval or rejection of the voters a constitutional amendment proposed by petition pursuant to O Const Art II §1 and §1a, a court cannot consider or determine whether the proposed amendment violates the US Constitution.

OAG 72-082. As a matter of practice, the secretary of state may find, and give notice of insufficient signatures on an original petition, proposing a constitutional amendment under O Const Art II §1a and 1g, at any time reports from the counties are received by him and he is able to determine the insufficiency, but in no event may he make a general finding of insufficiency later than the fortieth day prior to the election, at which the issue is to appear on the ballot.

1949 OAG 753. Under Art II §1a, when a petition is filed with the secretary of state, proposing an amendment to the Ohio constitution, in less than ninety days before the next succeeding regular or general election the secretary of state may not submit such amendment to the electors in the year following that in which such petition is filed.

1939 OAG 1203. When a petition is filed with the secretary of state within ninety days after any law has been filed by the governor, it is the duty of the secretary of state to ascertain whether or not such petition contains the required number of signatures valid on the form thereof.

3. Initiative petition

47 OS(2d) 265, 354 NE(2d) 690 (1976), State ex rel O'Grady v Brown. A single initiative petition may contain more than one proposed constitutional amendment.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By virtue of the provisions of O Const Art II §1a and 1g, the terms of a proposed constitutional amendment are determined by reference to the text of such proposal as contained on the initiative petition and part-petitions signed by the requisite number of electors; and any discrepancy between such text and the text of the preliminary petition submitted to the attorney general and filed with the secretary of state, under RC 3519.01, does not affect the duty of the secretary of state, prescribed in O Const Art II §1a, to submit such a proposal to the vote of the electorate if such proposal has been signed by ten per cent of the electorate.

124 OS 24, 176 NE 664 (1931), State ex rel Hubbell v Bettman. A single initiative petition may contain more than one proposed constitutional amendment.

93 OS 264, 112 NE 1029 (1915), State ex rel Nolan v ClenDening. It is not misconduct in office for a public officer to circulate petitions, or to engage others to circulate petitions or to pay out of his own pocket the necessary expense of the same, in order to give the people of the state of Ohio the right to a referendum vote upon an act passed by the general assembly.

15 OO 322 (CP, Hamilton 1939), In re Initiative Petitions. The purpose of the statute requiring the residence, ward, and precinct of a signer to be set forth in a petition is to facilitate the functions of the board of elections; where the residence of the signer is clearly set forth on the petition and is the same as that appearing on the registration list and the board of elections has a permanent registration card to verify the signature, the board is not justified in holding invalid those signatures where through error the wrong ward number or wrong precinct number have been inserted in the petition.

4. Ninety-day period

106 OS 1, 138 NE 532 (1922), Thrailkill v Smith. When computing the ninety-day timeframe under O Const Art II §1a, where the act is to be done a fixed number of days after a specified day, the first is to be included and the last excluded.

1949 OAG 753. Art II §1a provides that when a petition is filed with the secretary of state proposing an amendment to the constitution of the state of Ohio the same shall be submitted at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. In calculating such ninety day period the day of filing shall be included and election day excluded.

O Const II § 1b Initiative and referendum to enact laws

When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in 1a and 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

HISTORY: 1912 constitutional convention, adopted eff. 10-1-12

COMMENTARY

Editor's Comment

1990: For comments on the initiative and referendum generally, see Commentary to §1, Article II. This section governs the use of the initiative and referendum to propose and enact a law—normally the sole province of the General Assembly. The section cannot be used to adopt any law which the legislature itself is forbidden to enact, or to adopt any law providing for non-uniform taxation. §1 and 1e, Article II. Note that this section secures to the General Assembly the right to review and modify a proposed law in an initiative petition, before the proposal is submitted to a referen-

dum. At the same time, it prevents the General Assembly from thwarting the proposal, by providing for supplemental petitions to force a referendum on the original proposal if it is amended, rejected, or ignored by the legislature.

CROSS REFERENCES

Initiative and referendum in municipalities, 705.91, 705.92, 731.28 to 731.41

Preparation and review of initiative and referendum petitions and ballots, Ch 3519

Legislative power; people reserve power of initiative and referendum, O Const Art II §1

Initiative petition to propose constitutional amendment, O Const Art II §1a

Submitting laws passed by general assembly to referendum of people, O Const Art II §1c

Emergency laws, tax levies, and appropriations not subject to referendum, O Const Art II §1d

Initiative and referendum cannot be used for non-uniform taxation of property, O Const Art II §1e

Initiative and referendum applies to municipal law, O Const Art II §1f

Initiative and referendum petitions and ballots, O Const Art II §1g

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 3, 4, 17, 19, 22, 29, 30, 33, 37, 38, 43, 44, 46, 51, 52, 54

Am Jur 2d: 16, Constitutional Law § 28, 30, 44 to 50; 42, Initiative and Referendum § 11, 12, 21 to 46

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Petitions
3. Action of General Assembly

1. In general

58 OS(2d) 395, 390 NE(2d) 829 (1979), Cappelletti v Celebrezze. Secretary of state, upon receipt of initiative petitions containing signatures of more than three percent of voters, properly submitted part-petitions to county board of elections for verification of signatures.

99 OS 168, 124 NE 134, 172 (1919), State ex rel Greenlund v Fulton. Where two amendments to O Const Art XII §2 on the same subject were proposed and approved by an electoral majority, one of which originated with an initiative petition and the other with a resolution of the general assembly, 107 v 144, am. eff. 1-1-19, and where the general assembly's proposal received 140,000 more votes than the initiative proposal, the amendment proposed by the general assembly is the one that amends the constitution, inasmuch as O Const Art II §1b provides that the conflicting proposal receiving the most votes prevails.

91 OS 113, 110 NE 185 (1914), State ex rel Kautzman v Graves. O Const Art II §1b will not be construed to allow a writ of mandamus which would compel the secretary of state to recount the ballots of an election where fraud is alleged; to so hold would serve to usurp the powers and functions of the legislature.

29 App(2d) 133, 279 NE(2d) 624 (1971), Durell v Brown. If there are sufficient presumptively valid signatures in an initiative petition meeting the requirements of O Const Art II §1b, there is an absolute duty on the secretary of state to certify the petition to the general assembly irrespective of whether it can be proved that in some way some or all of the signatures contained in the initiative petition are invalid.

19 App 107, 3 Abs 603 (1925), Spahr v Brown. Where an initiated bill is indefinitely postponed by the house of representatives, and no further action by the house is had thereon, such action, under the rules of the house, amounts to a rejection of the bill, within the meaning of the constitution, and the ninety-day period for the filing of the supplemental petition begins to run from such date.

2. Petitions

63 App(2d) 125, 409 NE(2d) 1044 (Franklin 1979), State ex rel Durell v Celebrezze. Where the attorney general of Ohio determines that the summary of a second initiative petition qualifies for certification to the secretary of state under RC 3519.01 and submits such with a copy of the signatures obtained on the first petition, procedural error by the attorney general in so doing does not affect the validity of part-petitions which are thereafter circulated and filed with the secretary of state in reliance upon the attorney general's certification.

19 App 107, 3 Abs 603 (1925), Spahr v Brown. The 90-day limitation provided by the constitution for filing the supplementary petition upon an initiated bill is mandatory, the decision of the secretary of state thereon is not conclusive, and resort may be had to the courts for final decision.

1950 OAG 1419. A petition seeking to initiate a proposed law is required to have valid signatures totaling three per cent of the total vote for governor at the last preceding general election and in addition must include names from forty-four counties from each of which there must be valid signatures equal to or exceeding one and one-half per cent of the total vote for governor in each county at the last preceding general election; where such a petition contains a requisite total number of valid signatures for the state as a whole but contains the required totals in only forty-three counties of the state, and the number of signatures from the forty-fourth county is below the legal minimum, such petition is insufficient and the secretary of state is required by law to give notice of such insufficiency and the extent thereof to the committee charged with the circulation of the petition.

1927 OAG 235. Where a law is proposed by the initiative under O Const Art II §1b, and a synopsis of such proposed law is duly certified by the attorney general under the provision of GC 5175-29e (Repealed) and said proposed law is defeated by the general assembly of Ohio, and supplementary petitions circulated demanding the submission of said proposed law to the electors for their approval or rejection at the next or general election, said synopsis as certified by the attorney general on the filing of the original petitions with the secretary of state, is sufficient for the supplementary petitions as well.

1927 OAG 207. Under the provisions of O Const Art II §1b, where an initiated bill is defeated in the house of representatives on March 15, in order to hold a valid election thereon, it is necessary that the supplemental petitions must be filed within ninety days thereafter.

3. Action of General Assembly

88 OS 473, 104 NE 529 (1913), Pfeifer v Graves. Under O Const Art II §1b an initiated bill introduced in the house and then referred to committee and amended where such was agreed to by the house, but not further acted upon by it, may be submitted as amended to the electors of the state.

88 OS 473, 104 NE 529 (1913), Pfeifer v Graves. An initiated law introduced into the legislature under Art II §1b, of the constitution of 1912, where amendments were agreed to but no further action taken, may be submitted as thus amended to the electors after petition to the secretary of state for such election. Amendments thus agreed to are thereby incorporated.

19 App 107, 3 Abs 603 (1925), Spahr v Brown. Where an initiated bill is indefinitely postponed by the house of representatives, the time for filing a supplementary petition is not extended by a subsequent motion for reconsideration which is ruled out of order by the speaker, or by a motion to suspend the rules which is voted down by the house.

1933 OAG 903. When a bill is introduced into the legislature by initiative petition, the general assembly is not limited by O Const Art II §1b to a consideration of such bill during a four-month period after its introduction, but such legislative body has the jurisdiction after such four-month period to consider and adopt or reject such bill in the same manner and with like effect as it could consider a bill introduced in such body in any other manner.

1925 OAG 2280. Where a bill is certified to the legislature by the secretary of state in pursuance to an initiative petition, and the house takes such proceedings as to indefinitely postpone the bill, such proceedings constitute a rejection of such bill, in view of O Const Art II §1b, and the ninety-day period begins to run from the date of such action.

O Const II § 1c Referendum to challenge laws enacted by General Assembly

The second aforestated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

HISTORY: 1912 constitutional convention, adopted eff. 10-1-12

COMMENTARY

Editor's Comment

1990: For comments on the initiative and referendum generally, see Commentary to §1, Article II. This section spells out the right of the electorate to submit a law or part of a law passed by the General Assembly to the voters for approval or rejection.

With certain exceptions, all or any section of a law, and any item in an appropriations law, may be submitted to a referendum. The exceptions are laws providing for tax levies or appropriations for current expenses of the state, and emergency laws, which under §1d, Article II go into immediate effect and are not subject to the referendum. All other laws have a delayed effective date of 90 days (or longer, if the enactment so specifies), which is the time allowed to obtain and file referendum petitions with the necessary percentage of signatures, which then stays the effective date pending the referendum on it. State ex rel Herbert v Mitchell, 136 OS 1, 22 NE(2d) 907 (1939).

The fact that this section and §1d, Article II cannot be used to prevent a tax levy, appropriation for current expenses, or emergency law from going into effect, does not appear to prevent using the initiative and referendum under §1b, Article II to propose a new law which overturns the law passed by the General Assembly. See State ex rel Sharpe v Hitt, 155 OS 529, 99 NE(2d) 659 (1951) (involving a municipal ordinance).

CROSS REFERENCES

How time computed, 1.14

Initiative and referendum in municipalities, 705.91, 705.92, 731.28 to 731.41

Preparation and review of initiative and referendum petitions and ballots, Ch 3519

Legislative power; people reserve power of initiative and referendum, O Const Art II §1

Initiative petition to propose constitutional amendment, O Const Art II §1a

Initiative petition to propose law, O Const Art II §1b

Emergency laws, tax levies, and appropriations not subject to referendum, O Const Art II §1d

Initiative and referendum cannot be used for non-uniform taxation of property, O Const Art II §1e

Initiative and referendum applies to municipal law, O Const Art II §1f

Initiative and referendum petitions and ballots, O Const Art II §1g

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 3, 20, 22, 29, 30, 38, 46, 51; 85, Statutes § 75, 352

Am Jur 2d: 16, Constitutional Law § 28, 42 to 50; 42, Initiative and Referendum § 9 to 20, 21 et seq., 55 et seq.

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Laws subject or not subject to referendum
3. Effective date; time for filing petitions
4. Petitions

1. In general

103 OS 286, 133 NE 556 (1921), Cincinnati v Hillenbrand. A court has no authority to pronounce a judgment or decree upon the question whether a proposed law or ordinance will be valid and constitutional if enacted by a legislative body or adopted by the electors. (See also Pfeifer v Graves, 88 OS 473, 104 NE 529 (1913).)

19 App 107, 3 Abs 603 (1925), Spahr v Brown. A taxpayer's action lies to enjoin expenditures arising out of the submission of a referendum where the referendum proceedings are vitally defective.

2. Laws subject or not subject to referendum

94 OS 382, 114 NE 1037 (1916), State ex rel Davies Mfg Co v Donahey. A state contract for auto license tags relates to current expenses of the government and therefore by O Const Art II §1c, is not subject to a referendum.

93 OS 79, 112 NE 209 (1915), State v Lathrop. Construing O Const Art II §1c with O Const Art II §16, insofar as both sections relate to the time from which an act of the general assembly shall operate, laws providing for tax levies, appropriations for current expenses of the state government and state institutions, and emergency laws, as defined in O Const Art II §1d, go into immediate effect when approved by the governor; all other acts go into effect ninety days after the same have been filed with the secretary of state, regardless of the date of approval by the governor.

90 OS 345, 107 NE 760 (1914), State ex rel Donahey v Roose. O Const Art II §1c expressly provides for a referendum not only upon any law but any section of a law; all sections of a law not subject to the referendum provisions of this section go into immediate effect when approved and signed by the governor.

90 OS 345, 107 NE 760 (1914), State ex rel Donahey v Roose. It is a valid and constitutional exercise of the authority of the general assembly to levy taxes for state purposes and it is not within the power of county budget commissioners to increase, diminish, or in any manner change the sum or sums levied by law for such purposes; O Const Art II §1d expressly exempts laws providing for tax levies from the referendum provisions of O Const Art II §1c.

26 App 265, 160 NE 241 (Cuyahoga 1927) State ex rel Hile v Cleveland. Where an ordinance was passed as an emergency mea-

sure in the manner provided for under the Ohio Constitution and no challenge was made to institute a referendum within the time allotted, such ordinance is effective immediately upon its passage and the question of its emergency character cannot be inquired into.

1927 OAG 605. Under the provisions of O Const Art II §1c, GC 5625-1 (RC 5705.01) not being an act which is self-executing in providing for a tax levy is subject to the referendum and does not become effective until ninety days after it was filed in the office of the secretary of state.

3. Effective date; time for filing petitions

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. Sections 1, 2, 3, and 4 of 1977 S 125 took immediate effect because the law contained an appropriation item.

35 OS(2d) 23, 298 NE(2d) 590 (BTA 1973), Grabler Mfg Co v Kosydar. A statute which repeals an exception to a tax levy law is included within the meaning of "laws providing for tax levies" and becomes effective upon the date it is approved and signed by the governor pursuant to O Const Art II §1d.

172 OS 217, 174 NE(2d) 541 (1961), State ex rel Pincombe v State Teachers Retirement System Bd. Emergency laws as defined in O Const Art II §1d, go into immediate effect when signed by the governor.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. Filing referendum petition on a particular act postpones the effective date of such act.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. An appointment under an act on which a referendum petition is filed, thereby postponing the effective date of such act, is void.

127 OS 247, 187 NE 869 (1933), Heuck v State ex rel Mack. The prescribed ninety day period during which a referendum petition may be filed embraces ninety full days, and such time should be computed by excluding the date upon which the law was filed in the office of the secretary of state.

90 OS 345, 107 NE 760 (1914), State ex rel Donahey v Roose. O Const Art II §1c expressly provides for a referendum not only upon any law but any section of a law; all sections of a law not subject to the referendum provisions of this section go into immediate effect when approved and signed by the governor.

36 App(3d) 111, 521 NE(2d) 517 (Hamilton 1987), Roberts Development Corp v Harris. 1985 H 492, eff. 5-21-85, did not violate the one-subject rule of O Const Art II §15(D), nor did it violate the ninety-day waiting period requirement of O Const Art II §1c.

14 Abs 237, 38 LR 33 (App, Hamilton 1933), State ex rel Mack v Heuck; affirmed by 127 OS 247, 187 NE 869 (1933). An act passed by the general assembly becomes effective within the terms of O Const Art II §1c, after the expiration of ninety days from the date of passage, i.e., on the ninety-first day.

14 Abs 237, 38 LR 33 (App, Hamilton 1933), State ex rel Mack v Heuck; affirmed by 127 OS 247, 187 NE 869 (1933). Although the constitution is not modified by statute, a constitutional provision is to be construed according to the custom existing at the time of its adoption and embodied in the statute; hence, O Const Art II §1c, giving petitioners ninety days in which to file a petition for a referendum, is construed in the light of the custom expressed in GC 10216 (RC 1.14), by which the last day of such period should be excluded if it be Sunday.

1961 OAG 2615. Except for the two items expressly disapproved by the governor in his message of August 14, 1961, to the house of representatives, H 1121 of the 104th general assembly became a law on August 15, 1961, and will go into effect on November 14, 1961; and the two items of H 1121 so disapproved by the governor are void unless repassed.

1956 OAG 6306. The appropriation of $250,000 for the Guernsey-Salt Fork Watershed Development, 126 v 1156, became law following its repassage over the governor's veto at the end of the 90 day referendum period provided in O Const Art II §1c.

1939 OAG 451. This section, as amended, is a law providing for tax levy and therefore under the provisions of O Const Art II §1d, became effective upon approval by the governor, on March 25, 1939.

1927 OAG 605. Under the provisions of O Const Art II §1c, GC 5625-1 (RC 5705.01) not being an act which is self-executing in providing for a tax levy is subject to the referendum and does not become effective until ninety days after it was filed in the office of the secretary of state.

4. Petitions

51 OS(2d) 169, 365 NE(2d) 887 (1977), State ex rel Barren v Brown. Mandamus would lie to compel attorney general to certify that summary of legislation in referendum petition was a fair and truthful statement of the measures to be referred; whether the matters in the petition are subject to referendum is irrelevant to the attorney general's certification of the summary.

127 OS 169, 187 NE 241 (1933), State ex rel Patton v Myers. Under O Const Art II §1c, a single referendum petition may not be filed attacking two or more separate and distinct laws passed by the general assembly.

127 OS 95, 186 NE 872 (1933), State ex rel Patton v Myers. Under O Const Art II §1c, a single referendum petition may not be filed attacking two or more separate and distinct laws passed by the general assembly. (See also State ex rel Hubbell v Bettman, 124 OS 24, 176 NE 664 (1931).)

90 OS 311, 107 NE 1018 (1914), State ex rel Gongwer v Graves. The secretary of state, when acting as state supervisor of elections, has the authority to hear and determine the efficiency and validity of all petitions filed under him pursuant to O Const Art II §1c and his decision thereon is final, unless such decision has been fraudulently or corruptly made or procured, or unless he has been guilty of an abuse of discretion; where any circulators of parts of a petition have been guilty of fraud in procuring names, the secretary of state may reject all parts of the petition procured by such circulators.

16 Misc 127, 241 NE(2d) 177 (CP, Erie 1968), Sartor v Huron. The Ohio Constitution does not limit the number of times that initiative petitions can be filed calling for the repeal of the same legislative act.

O Const II § 1d Laws taking immediate effect not subject to referendum

Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

HISTORY: 1912 constitutional convention, adopted eff. 10-1-12

COMMENTARY

Editor's Comment

1990: For comments on the initiative and referendum generally, see Commentary to §1, Article II. This section limits the right of referendum by providing that laws providing for tax levies, appropriations for current state expenses, and emergency laws, go into immediate effect and are not subject to a referendum under §1c, Article II. Note, however, that while this section and §1c cannot be used to prevent a tax levy, appropriation for current expenses, or emergency law from taking effect, the initiative and referendum under §1b, Article II appears to be available to propose a new law which overturns the law passed by the General Assembly. See State

ex rel Sharpe v Hitt, 155 OS 529, 99 NE(2d) 659 (1951) (involving a municipal ordinance).

CROSS REFERENCES

Initiative and referendum in municipalities, 705.91, 705.92, 731.28 to 731.41

Preparation and review of initiative and referendum petitions and ballots, Ch 3519

Legislative power; people reserve power of initiative and referendum, O Const Art II §1

Initiative petition to propose constitutional amendment, O Const Art II §1a

Initiative petition to propose law, O Const Art II §1b

Submitting laws passed by general assembly to referendum of people, O Const Art II §1c

Initiative and referendum cannot be used for non-uniform taxation of property, O Const Art II §1e

Initiative and referendum applies to municipal law, O Const Art II §1f

Initiative and referendum petitions and ballots, O Const Art II §1g

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 21, Counties, Townships, and Municipal Corporations § 751, 753; 56, Initiative and Referendum § 3, 7, 8, 10, 11; 85, Statutes § 54, 352, 354 to 356; 86, Taxation § 51, 164

Am Jur 2d: 42, Initiative and Referendum § 13 to 20; 73, Statutes § 360 to 370

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Laws providing for tax levies
3. Appropriations for current expenses
4. Emergency laws

1. In general

18 OS(2d) 59, 247 NE(2d) 310 (1969), State ex rel Brunthaver v Bauman. RC 731.30 is constitutional.

93 OS 79, 112 NE 209 (1915), State v Lathrop. Construing O Const Art II §1c with O Const Art II §16, insofar as both sections relate to the time from which an act of the general assembly shall operate, laws providing for tax levies, appropriations for current expenses of the state government and state institutions, and emergency laws, as defined in O Const Art II §1d, go into immediate effect when approved by the governor; all other acts go into effect ninety days after the same have been filed with the secretary of state, regardless of the date of approval by the governor.

36 App(2d) 87, 302 NE(2d) 895 (1973), Okey v Walton. RC 322.01 and 322.02, with the exception of the words "at least twelve months" in RC 322.01(A), are constitutionally valid.

113 App 50, 177 NE(2d) 289 (1960), State v Corn. The issue whether a statute prohibiting certain acts and prescribing a penalty for violation thereof was properly adopted as an emergency measure cannot be raised in a criminal prosecution for the violation of such statute.

78 App 194, 69 NE(2d) 634 (1946), State ex rel Snyder v Lucas County Bd of Elections; appeal dismissed by 146 OS 556, 67 NE(2d) 322 (1946). O Const Art II §1d applies only to acts of general assembly and places no limitation on referendum powers reserved to people of municipality; provisions of a city charter, which provide for a referendum on all ordinances, including one levying a tax passed as an emergency measure, do not violate O Const Art II §1d.

2. Laws providing for tax levies

35 OS(2d) 23, 298 NE(2d) 590 (BTA 1973), Grabler Mfg Co v Kosydar. A statute which repeals an exception to a tax levy law is included within the meaning of "laws providing for tax levies" and becomes effective upon the date it is approved and signed by the governor pursuant to O Const Art II §1d.

32 OS(2d) 1, 288 NE(2d) 819 (1972), State ex rel Schwartz v Brown. Although an initiative petition involves a constitutional amendment pertaining to taxable income, it does not thereby become a referendum of a special tax levy.

24 OS(2d) 147, 265 NE(2d) 273 (1970), State ex rel Bramblette v Yordy. Pursuant to O Const Art II §1d, a provision of a municipal charter that revenue raising ordinances are not subject to referendum is constitutional as applied to an ordinance levying a municipal income tax; and where such a charter provision exists, there is no duty on the part of municipal officers to certify such income tax ordinance to a board of elections for referendum vote.

108 OS 463, 141 NE 16 (1923), State ex rel Keller v Forney. The express language, "laws providing for tax levies," used in this section, is limited to an actual self-executing levy of taxes, and is not synonymous with laws "relating" to tax levies, or "pertaining" to tax levies, or "concerning" tax levies, or any agency or method provided for a tax levy by any local subdivision or authority.

90 OS 345, 107 NE 760 (1914), State ex rel Donahey v Roose. It is a valid and constitutional exercise of the authority of the general assembly to levy taxes for state purposes and it is not within the power of county budget commissioners to increase, diminish, or in any manner change the sum or sums levied by law for such purposes; O Const Art II §1d expressly exempts laws providing for tax levies from the referendum provisions of O Const Art II §1c.

90 OS 345, 107 NE 760 (1914), State ex rel Donahey v Roose. GC 6859-1 (Repealed), for a state highway levy, is a law providing for a tax levy, and by O Const Art II §1d, is exempt from the referendum provision of the constitution, and hence, went into effect at once. O Const Art II §1c, authorizing a referendum upon any part of a law appropriating money, leaves such parts as are not subject to referendum to go into effect at once.

80 Abs 439, 154 NE(2d) 30 (Prob, Hamilton 1958), In re Estate of Neff. The 1957 amendment to RC 5731.09 exempting successions to religious organizations came into effect ninety days after being filed with the secretary of state rather than immediately upon passage.

OAG 72-067. 1971 H 475, pertaining to an increase in the cigarette tax, became effective at 1:30 p.m. on December 20, 1971.

1961 OAG 2385. 129 v H 330 dealing with certain exemptions from the excise tax levied by RC 5739.02 is not a law providing for a tax levy within the purview of O Const Art II §1d; and said law goes into effect ninety days after the date on which it was filed by the governor in the office of the secretary of state.

1943 OAG 6207. GC 1345-4 (RC 4141.23 to 4141.26), as enacted in S 202, is a law levying a tax and, therefore, such section became effective immediately upon being signed by the governor; it is within the exception specified in O Const Art II §1d; remaining sections of the statute amended and enacted in such senate bill are not statutes levying tax and, therefore, do not become effective immediately since such act contained no emergency clause.

1933 OAG 1933. Legislation providing for tax levies on the manufacture and sale of intoxicating liquors, which legislation repeals the Crabbe and Miller Acts in order to effectuate the imposition of such levies and which legislation provides the machinery for the administration of such a revenue law, may be so drawn as to go into immediate effect as a law providing for tax levies under O Const Art II §1d notwithstanding the fact that such law may not be passed as an emergency measure.

3. Appropriations for current expenses

51 OS(2d) 149, 365 NE(2d) 876 (1977), State ex rel Riffe v Brown. Sections 1, 2, 3, and 4 of 1977 S 125 took immediate effect because the law contained an appropriation item.

112 OS 590, 148 NE 95 (1925), State ex rel Janes v Brown. The phrase "current expenses" as used in O Const Art §1d, in addition to including the expenses incident to the officering and maintaining of the state government, includes the expense of keeping in repair and maintaining the property of the state government and, as applied to roads, includes the maintaining and repairing thereof as distinguished from new construction.

1959 OAG 631. 128 v 1241 including the subsidy item therein to pay criminal cost bills to the counties entitled thereto by reason of being an appropriation for the current expenses of the state became effective as law on May 19, 1959, upon approval by the governor on that date.

4. Emergency laws

1 Ohio St Student Bar Assn L J 40 (January 1935). "And to Declare an Emergency," Comment.

172 OS 217, 174 NE(2d) 541 (1961), State ex rel Pincombe v State Teachers Retirement System Bd. Emergency laws as defined in O Const Art II §1d, go into immediate effect when signed by the governor.

169 OS 439, 160 NE(2d) 10 (1959), State ex rel McElroy v Baron. Where the emergency section of a law failed to receive a separate roll call in the senate, but no petition for a referendum was filed thereon, the law is not subject to attack by reason of the failure of the emergency section, and where, within the 90-day period during which no referendum petition was filed, a city and a county take action pursuant to the provisions of RC Ch 4582 such action is not invalid by reason of the fact that the emergency section of the law failed of passage, it appearing that such action was subsequently ratified.

132 OS 510, 9 NE(2d) 278 (1937), State ex rel Schorr v Kennedy. The provisions of O Const Art II §1d, confer upon the legislative branch of the government the duty and responsibility of determining the emergency character of a proposed law. If such emergency law, upon a yea and nay vote, receives the vote of two-thirds of all the members elected to each branch of the general assembly and the reasons for the immediate necessity therefor are set forth in one section of the law, and it is also passed upon a yea and nay vote upon a separate roll call, such law shall not be subject to referendum, but shall go into immediate effect.

102 OS 591, 133 NE 457 (1921), State ex rel Durbin v Smith. A court cannot go outside of the provisions of the act and the facts which it judicially knows for the purpose of ascertaining whether the legislature had valid reasons for declaring an emergency law; such is a legislative and not judicial policy.

92 OS 215, 110 NE 726 (1915), Miami County v Dayton. The judgment of the general assembly as to the emergency character of an act under the constitutional amendment of 1912 is not conclusive, and its judgment on that issue may be challenged in a proper proceeding at any time within the ninety-day period, either as to the constitutional vote or the emergency character of the act.

92 OS 215, 110 NE 726 (1915), Miami County v Dayton. An act of the general assembly, which purports to be an emergency act but which fails to receive the two-thirds majority in one branch of the general assembly, as required by the Ohio Constitution for an emergency act, becomes at the end of the ninety-day referendum period a valid act of the general assembly if otherwise constitutional.

105 App 285, 148 NE(2d) 83 (1957), In re Application of Braden. RC 4507.40 was not validly enacted as an emergency measure, since in the enactment of emergency laws the general assembly is subject to the mandatory requirement of O Const Art II §1d, that "the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only . . . upon a separate roll call thereon."

26 App 265, 160 NE 241 (Cuyahoga 1927) State ex rel Hile v Cleveland. Where an ordinance was passed as an emergency measure in the manner provided for under the Ohio Constitution and no challenge was made to institute a referendum within the time allotted, such ordinance is effective immediately upon its passage and the question of its emergency character cannot be inquired into.

7 App 390, 29 CD 219 (Licking 1916), Newark v Richter. When an emergency ordinance fails to receive the requisite two-thirds council vote, it does not become effective as a general ordinance after having been filed for thirty days with the mayor, but remains without force.

24 Abs 696 (App, Mahoning 1937), Goodman v Youngstown. O Const Art II §1d specifies that the reason for emergency laws necessary for the immediate preservation of peace, health, or safety must be set forth in one section of the law; a municipal ordinance pertaining to junk dealers that does not set forth the reasons for its emergency character is invalid.

13 OO 186 (CP, Hamilton 1938), Schultz v Cincinnati. The Ohio Constitution, Ohio statutes, and the charter of Cincinnati require the city council to set forth the reasons for the necessity of declaring that an ordinance is an emergency measure; once done, a court has no right to inquire as to the sufficiency of these reasons.

22 NP(NS) 255, 29 D 594 (CP, Hamilton 1919), Kearney v Cincinnati. The emergency feature of an ordinance cannot be attacked after the referendum period has lapsed.

19 NP(NS) 305, 27 D 435 (CP, Cuyahoga 1916), Heald v Cleveland. A resolution by a city council, declaring the necessity of issuing bonds in excess of a permissible amount for the construction of a public auditorium, is not an emergency resolution pursuant to the Ohio Constitution.

1934 OAG 2309. When the legislature has added an emergency clause to a law and adopted it in the manner prescribed by the constitution, the question of whether or not there was a necessity for making such law an emergency is not subject to judicial review.

O Const II § 1e Non-uniform tax laws cannot be adopted by initiative and referendum

The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

HISTORY: 1912 constitutional convention, adopted eff. 10-1-12

COMMENTARY

Editor's Comment

1990: This section prohibits using the initiative and referendum to adopt laws providing for non-uniform taxation, either by means of property classifications for levying taxes at different rates, or by taxing land, improvements on land, and personal property at different rates. Note that the section applies to laws and not constitutional provisions; it does not prohibit using the initiative and referendum under §1a, Article II to propose constitutional amendments which provide for non-uniform taxation. Thrailkill v Smith, 106 OS 1, 138 NE 532 (1922). See §2 and 2a, Article XII, which provide for a homestead exemption for the elderly and for disabled persons, and for classification of property for taxation.

CROSS REFERENCES

Initiative and referendum in municipalities, 705.91, 705.92, 731.28 to 731.41

Preparation and review of initiative and referendum petitions and ballots, Ch 3519

Levying taxes, submission of proposal, 5705.25

Legislative power; people reserve power of initiative and referendum, O Const Art II §1

Initiative petition to propose constitutional amendment, O Const Art II §1a

Initiative petition to propose law, O Const Art II §1b

Submitting laws passed by general assembly to referendum of people, O Const Art II §1c

Tax levies, appropriations, and emergency laws not subject to initiative and referendum, O Const Art II §1d

Initiative and referendum applies to municipal law, O Const Art II §1f

Initiative and referendum petitions and ballots, O Const Art II §1g

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 56, Initiative and Referendum § 3, 7, 9
Am Jur 2d: 42, Initiative and Referendum § 13 to 20

NOTES ON DECISIONS AND OPINIONS

106 OS 1, 138 NE 532 (1922), Thrailkill v Smith. O Const Art II §1e was intended for purposes of emphasis, thus placing an additional injunction upon the people in that behalf and not resting merely upon the provisions written into the constitution.

106 OS 1, 138 NE 532 (1922), Thrailkill v Smith. This section does not forbid the employment of the initiative in proposing an amendment to the constitution which authorizes legislation providing for classification of property for the purpose of levying different rates of taxation thereon.

63 App(2d) 125, 409 NE(2d) 1044 (Franklin 1979), State ex rel Durell v Celebrezze. Where a petition is only before the general assembly and is somehow defective pursuant to O Const Art II §1e it is premature for any court to act thereon where the alleged infirmity can be corrected prior to any submission of the proposal to the electorate for passage.

63 App(2d) 125, 409 NE(2d) 1044 (Franklin 1979), State ex rel Durell v Celebrezze. Where the attorney general of Ohio determines that the summary of a second initiative petition qualifies for certification to the secretary of state under RC 3519.01 and submits such with a copy of the signatures obtained on the first petition, procedural error by the attorney general in so doing does not affect the validity of part-petitions which are thereafter circulated and filed with the secretary of state in reliance upon the attorney general's certification.

O Const II § 1f Initiative and referendum in municipalities

The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

HISTORY: 1912 constitutional convention, adopted eff. 10-1-12

COMMENTARY

Editor's Comment

1990: For comments on the initiative and referendum generally, see Commentary to §1, Article II. This section extends the right of initiative and referendum to the electorates of municipalities, as to all municipal questions. For other provisions on municipal referenda, see §2, 5, 8, and 9, Article XVIII.

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.67, 11.57, 11.61, 11.62, 11.66, 11.67, 43.29

CROSS REFERENCES

Initiative and referendum in municipalities, 705.91, 705.92, 731.28 to 731.41

Preparation and review of initiative and referendum petitions and ballots, Ch 3519

Legislative power; people reserve power of initiative and referendum, O Const Art II §1

Initiative petition to propose constitutional amendment, O Const Art II §1a

Initiative petition to propose law, O Const Art II §1b

Submitting laws passed by general assembly to referendum of people, O Const Art II §1c

Tax levies, appropriations, and emergency laws not subject to initiative and referendum, O Const Art II §1d

Initiative and referendum cannot be used for non-uniform taxation of property, O Const Art II §1e

Initiative and referendum petitions and ballots, O Const Art II §1g

Municipal corporations, O Const Art XVIII

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 494; 21, Counties, Townships, and Municipal Corporations § 723, 750 to 752, 755, 756, 764; 56, Initiative and Referendum § 12

Am Jur 2d: 42, Initiative and Referendum § 7

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum. 33 ALR2d 1118

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Initiative
3. Referendum
4. Legislative action
5. Implementing legislation
6. Procedures

1. In general

28 Case WR L Rev 42 (Fall 1977). Eastlake and Arlington Heights: New Hurdles in Regulating Urban Land Use, L. Lynn Hogue.

140 OS 368, 44 NE(2d) 459 (1942), State ex rel Middletown v Middletown City Comm. Provisions of Ohio Constitution authorizing and providing manner of submission of municipal ordinances to referendum vote should be so construed as to permit rather than preclude exercise of right conferred; object clearly sought to be attained by such provisions should be promoted rather than prevented or obstructed.

138 OS 203, 34 NE(2d) 219 (1941), State ex rel Strain v Houston. Under state constitution all legislative power of the people is granted to the legislature, subject to initiative and referendum, unless such legislative power is expressly or by clear implication granted to municipalities or other governmental subdivisions as arms of the state government.

116 OS 469, 157 NE 318 (1927), State ex rel Smith v Fremont; overruled by 155 OS 529, 99 NE(2d) 659 (1951), State ex rel Sharpe v Hitt. An ordinance of a municipality passed as an emergency measure by a two-thirds vote of the council is not subject to a referendum, nor may it be nullified by an ordinance proposed by an initiative petition before the adoption of the emergency ordinance by council and the subsequent adoption by popular vote of the initiated ordinance.

62 App(3d) 498, 576 NE(2d) 814 (Montgomery 1990), State ex rel Emrick v Wasson. A provision of a municipal ordinance that "this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the inhabitants of the City of Germantown, and for the reason that immediate action is required . . . and shall take effect immediately upon its passage . . ." is ineffective to constitute an emergency measure when the city council in passing the ordinance has not followed the provisions of its city charter and announced in clear and specific terms the nature of the emergency and the necessity of the action taken.

14 App 398 (Lawrence 1921), Ohio Valley Electric Railway Co v Hagerty. The power of a minority of the electors to force proposed legislation to a referendum includes the power to suspend the legislation until the next regular election once all referendum provisions have been met; the provision requiring that each part of a municipal referendum contains an affidavit as to the signer's knowledge of the contents therein is mandatory.

7 App 390, 29 CD 219 (Licking 1916), Newark v Richter. When an emergency ordinance fails to receive the requisite two-thirds

council vote, it does not become effective as a general ordinance after having been filed for thirty days with the mayor, but remains without force.

389 NE(2d) 1141 (App, Summit 1979), State ex rel Brannan v Summit County Bd of Elections. A board of elections has no duty to place on the ballot a proposed zoning amendment adopted pursuant to an invalid ordinance.

2. Initiative

53 Cin L Rev 541 (1984). The Current Use of the Initiative and Referendum in Ohio and Other States, Comment.

166 OS 301, 143 NE(2d) 127 (1957), State ex rel Blackwell v Bachrach. The provisions of RC 731.28 and 731.32 relative to the filing of an initiative petition with the city auditor or village clerk and to the certification of the ordinance or measure by such auditor or clerk to the board of elections do not apply to an initiative petition to amend a city charter, filed pursuant to O Const Art XVIII §9.

155 OS 529, 99 NE(2d) 659 (1951), State ex rel Sharpe v Hitt. Where an ordinance relating to parking spaces and the installation and use of parking meters in connection therewith is passed by a municipal council, even though enacted as an emergency measure effective immediately and thereby not subject to the referendum, the electors of the municipality may initiate an ordinance for the repeal of such legislation, and where the initiative petition prepared and formulated for such purpose is in conformity with the provisions GC 4227-1 (RC 731.28) and is duly filed with the city auditor, that official is under the mandatory duty to certify such petition to the board of elections.

103 OS 286, 133 NE 556 (1921), Cincinnati v Hillenbrand. O Const Art II §1f especially reserves to the people of each municipality the initiative and referendum power on all questions which municipalities are authorized to control by legislative action and provides "such powers shall be exercised in the manner now or hereafter provided by law"; GC 4227-1 to 4227-12A (RC 731.28 to 731.41) prescribe the manner in which such powers shall be exercised.

90 OS 311, 107 NE 1018 (1914), State ex rel Gongwer v Graves. An affidavit intentionally and knowingly false, attached to any part of a petition, is not in compliance with the provisions of O Const Art II §1g, and that part which is false must be rejected entirely as well as the part it is attached to, regardless of whether it contains genuine names or not.

120 App 338, 195 NE(2d) 371 (1963), State ex rel Beckstedt v Eyrich. A so-called "initiative petition" which does not propose any text of any ordinance or other measure and proposes no enactment, but merely seeks to have a municipal council embark on a course of conduct and contains no detail or direction as to how the proposed conduct should be undertaken or form which could be construed as legislation, is ineffective and does not constitute any "question" proposed by such "petition."

25 Misc 13, 265 NE(2d) 803 (CP, Butler 1968), State ex rel Samuelson v Conrad; affirmed by Court of Appeals; appeal dismissed by Ohio Supreme Court. Two separate amendments to municipal charter may be submitted by single initiative proceeding.

60 Abs 555, 102 NE(2d) 481 (App, Cuyahoga 1951), Geiger v Kobie; appeal dismissed by 156 OS 189, 101 NE(2d) 501 (1951). The question of a municipal corporation determining to dispose of its light plant being a legislative matter, the right to initiate an ordinance authorizing the city to enter into a contract for such purpose is provided for by O Const Art II §1f and GC 4227-1 (RC 731.28).

1963 OAG 107. The village council of Sebring cannot, by passage of resolution, place the issue of fluoridation of drinking water on the ballot.

3. Referendum

53 Cin L Rev 541 (1984). The Current Use of the Initiative and Referendum in Ohio and Other States, Comment.

24 Clev St L Rev 635 (1975). Forest City Enterprises, Inc. v City of Eastlake: Zoning Referenda and Exclusionary Zoning, Note.

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976); overruled by 48 OS(2d) 47, 356 NE(2d) 499 (1976). A municipal charter provision which requires that any ordinance changing land use be ratified by the voters in a city-wide election constitutes an unlawful delegation of legislative power in violation of US Const Am 14 Due Process Clause.

24 OS(2d) 147, 265 NE(2d) 273 (1970), State ex rel Bramblette v Yordy. Provision of charter of municipal corporation that ordinances providing "for raising revenue ... shall not be subject to referendum" is constitutional as applied to ordinance levying municipal income tax, and where such charter provision exists, there is no duty on part of municipal officers to certify such income tax ordinance to board of elections for referendum vote.

170 OS 1, 161 NE(2d) 488 (1959), State ex rel Mika v Lemon. Where a city does not have charter provisions fixing its own methods of initiative and referendum, a referendum petition may be filed as to an ordinance of measure, passed by the council of such city, within 30 days from the presentation of such ordinance to the mayor of the city.

164 OS 247, 129 NE(2d) 809 (1955), Dubyak v Kovach. RC 731.29 provides the sole method by which a referendum petition may be filed in a municipality without its own initiative and referendum provisions, and requires that a referendum petition be filed upon any ordinance or any measure passed by a city council within 30 days from the presentation of such ordinance or other measure to the mayor of the city and makes no provision for a later filing, even though the measure is vetoed by the mayor and passed over his veto.

103 OS 286, 133 NE 556 (1921), Cincinnati v Hillenbrand. O Const Art II §1f especially reserves to the people of each municipality the initiative and referendum power on all questions which municipalities are authorized to control by legislative action and provides "such powers shall be exercised in the manner now or hereafter provided by law"; GC 4227-1 to 4227-12A (RC 731.28 to 731.41) prescribe the manner in which such powers shall be exercised.

92 OS 375, 110 NE 937 (1915), Shryock v Zanesville. O Const Art II §1f grants to municipal legislative bodies the same power (but subject to the same limitations) of exempting certain classes of laws from the operation of the referendum; the referendum powers reserved to the people of municipalities is that power as defined and limited by the Ohio Constitution.

13 App(3d) 405, 13 OBR 491, 469 NE(2d) 533 (Cuyahoga 1983), State ex rel Kleem v Kafer. Where several ordinances are required to make and pay for a public improvement, RC 731.30 provides that the referendum procedure may be used only to challenge the first ordinance dealing with the improvement and not subsequent ones.

13 App(3d) 405, 13 OBR 491, 469 NE(2d) 533 (Cuyahoga 1983), State ex rel Kleem v Kafer. O Const Art II §1f and case law provide that only those activities of municipal governments which cities are authorized to control by legislative action are subject to referendum.

59 App(2d) 175, 392 NE(2d) 1302 (Summit 1978), State ex rel Watkins v Quirk. The fact that a referendum part petition has been circulated by a nonresident of the municipality does not invalidate that part petition.

13 App(2d) 46, 233 NE(2d) 600 (1967), Korn v Dunahue. No referendum is necessary to the validity of an ordinance for the sale of a municipally owned utility; any referendum that is held thereon is governed by the general provisions of O Const Art II §1f, and by RC 731.29; it is not subject to the provisions of O Const Art XVIII §4, 5 and 8, which pertain to the purchase of a utility.

110 App 535, 164 NE(2d) 180 (Cuyahoga 1960), Hilltop Realty, Inc v South Euclid; appeal dismissed by 170 OS 585, 166 NE(2d) 924 (1960). An amended ordinance to reclassify land from a single-family use to a multi-family use is subject to a referendum; an ordinance amending a comprehensive ordinance is as clearly subject to a referendum as is the original ordinance.

110 App 535, 164 NE(2d) 180 (Cuyahoga 1960), Hilltop Realty, Inc v South Euclid; appeal dismissed by 170 OS 585, 166 NE(2d) 924 (1960). A zoning ordinance passed by the council of a municipal corporation that amends a comprehensive zoning ordinance is subject to referendum.

26 App 265, 160 NE 241 (Cuyahoga 1927) State ex rel Hile v Cleveland. Where an ordinance was passed as an emergency measure in the manner provided for under the Ohio Constitution and no challenge was made to institute a referendum within the time allotted, such ordinance is effective immediately upon its passage and the question of its emergency character cannot be inquired into.

14 App 398 (Lawrence 1921), Ohio Valley Electric Railway Co v Hagerty. The power of a minority of the electors to force proposed legislation to a referendum includes the power to suspend the legislation until the next regular election once all referendum provisions have been met; the provision requiring that each part of a municipal referendum contains an affidavit as to the signer's knowledge of the contents therein is mandatory.

30 Misc 49, 284 NE(2d) 210 (CP, Medina 1972), Tamele v Brinkman. It is contrary to the provisions of 709.10 and O Const Art II §1f, for municipality to preclude referendum vote on ordinance accepting annexation of territory to municipal corporation for the reason that said ordinance has been declared an emergency ordinance necessary for the immediate preservation of public peace, health or safety.

12 OO(3d) 194 (App, Allen 1979), State ex rel Lima v Hauenstein. There is no clear legal duty on a board of elections to submit a city referendum to the electors of that city unless the language of the ballot title is clear and concise.

426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976), Eastlake v Forest City Enterprises. City charter provision requiring voter approval in referendum for any changes in land use agreed to by city council is valid.

782 F(2d) 565 (6th Cir Ohio 1986), Arthur v Toledo. Where a city agrees by contract with a housing authority to provide sewers for subsidized single-family homes, and where the city council passes an ordinance to build the sewers only after HUD threatens to withhold tax money, a popular referendum by which the voters repeal the ordinance is not a breach of the city's agreement; a city cannot bind itself by contract to pass future legislation.

782 F(2d) 565 (6th Cir Ohio 1986), Arthur v Toledo. A claim that municipal voters discriminated illegally by overwhelmingly repealing a council ordinance assisting construction of taxpayer-subsidized single-family homes cannot be based on evidence that discrimination was the voters' motivation, unless the referendum discriminates on its face or had discrimination as its "only possible" goal; where other reasons such as expense and drainage problems may explain the voters' action, their "intent to discriminate" is unproven.

782 F(2d) 565 (6th Cir Ohio 1986), Arthur v Toledo. Unless highly unusual circumstances are shown, discriminatory effects of a popular referendum cannot establish a violation by the electorate of the Fair Housing Act, 42 USC 3601 et seq.

1963 OAG 408. There is no provision under which a referendum vote may be compelled on the subject of a fire regulation adopted by a board of township trustees under authority of RC 505.37.

4. Legislative action

41 OS(2d) 187, 324 NE(2d) 740 (1975), Forest City Enterprises, Inc v Eastlake; reversed by 426 US 668, 96 SCt 2358, 49 LEd(2d) 132 (1976); overruled by 48 OS(2d) 47, 356 NE(2d) 499 (1976). Under O Const Art II §1f, municipal referendum powers are limited to questions which municipalities are "authorized by law to control by legislative action."

27 OS(2d) 11, 271 NE(2d) 864 (1971), Myers v Schiering. Under O Const Art II §1f, municipal referendum powers are limited to questions which municipalities are "authorized by law to control by legislative action," so that the passage by a city council of a resolution granting a permit for the operation of a sanitary landfill, pursuant to an existing zoning regulation, is not subject to referendum proceedings because it constitutes administrative action.

12 OS(2d) 4, 230 NE(2d) 347 (1967), State ex rel Rhodes v Bd of Elections. A board of elections cannot be compelled to place on the ballot an initiative petition which does not contain any question which a municipality is authorized by law to control by legislative action.

155 OS 529, 99 NE(2d) 659 (1951), State ex rel Sharpe v Hitt. An ordinance passed by the council of an Ohio non charter municipality designating parking spaces for vehicles with the installation and use of mechanical parking meters in connection with such spaces is a legislative measure subject to the initiative and referendum within the contemplation of O Const Art II §1f.

110 App 535, 164 NE(2d) 180 (Cuyahoga 1960), Hilltop Realty, Inc v South Euclid; appeal dismissed by 170 OS 585, 166 NE(2d) 924 (1960). Amendment by a municipal council of a comprehensive zoning ordinance, changing a use-classification from single-family to multi-family, is a legislative act and is subject to referendum.

21 App 465, 153 NE 217 (1926), Goodman v Hamilton. Municipal ordinance initiated by petition authorizing and directing city officer to enter into contract with company to supply gas to city is a legislative act, and hence valid under O Const Art II §1f, reserving to municipalities right of initiative on questions that council may control by legislative action, and GC 4206 et seq. (RC 731.01), GC 4227-1 (RC 731.28), notwithstanding O Const Art XVIII §5, which is a mere limitation upon city council.

31 Misc 203, 281 NE(2d) 209 (CP, Cuyahoga 1971), State ex rel Barberis v Bay Village. In a chartered municipality, an administrative act of city council is not subject to referendum unless its city charter specifically reserves this right for the electorate.

5. Implementing legislation

117 OS 258, 158 NE 606 (1927), Dillon v Cleveland. O Const Art II §1f, has particular and exclusive reference to a municipal referendum, and is not self-executing, but imposes on the legislature the duty of providing its modus operandi, which duty has been performed by the enactment of GC 4227-1 to 4227-13 (RC 731.28 et seq.).

81 App 294, 79 NE(2d) 183 (1946), State ex rel Toledo v Lucas County Bd of Elections. Under O Const Art XVIII §3 and 7, and Art II §1f, a municipality may, by charter, provide when a referendum election shall be held upon an ordinance on which a vote has been duly demanded.

31 Misc 203, 281 NE(2d) 209 (CP, Cuyahoga 1971), State ex rel Barberis v Bay Village. In a chartered municipality, an administrative act of city council is not subject to referendum unless its city charter specifically reserves this right for the electorate.

25 Misc 13, 265 NE(2d) 803 (CP, Butler 1968), State ex rel Samuelson v Conrad; affirmed by Court of Appeals; appeal dismissed by Ohio Supreme Court. Claimed unconstitutionality of charter amendment proposed by initiative petition is not proper ground for village council to refuse to submit issue to electors, where invalidity of proposal is not unquestionable on its face.

6. Procedures

48 OS(2d) 29, 356 NE(2d) 716 (1976), State ex rel Evergreen Co v Franklin County Bd of Elections. Referendum petitions were invalid where the statement of the notary public thereon recited only that the petition was acknowledged, even though the circulator's affidavit asserted he was duly sworn.

170 OS 1, 161 NE(2d) 488 (1959), State ex rel Mika v Lemon. Where a city does not have charter provisions fixing its own methods of initiative and referendum, a referendum petition may be filed as to an ordinance of measure, passed by the council of such city, within 30 days from the presentation of such ordinance to the mayor of the city.

165 OS 564, 138 NE(2d) 302 (1956), State ex rel Conn v Noble. Where the charter of a municipality provides for a time beginning the period within which referendum petitions upon an ordinance must be filed, a court may not, by construction, substitute a different time merely to facilitate the filing of such a petition.

165 OS 495, 137 NE(2d) 749 (1956), State ex rel Lautz v Diefenbach. Where a city charter provides that the city council shall fix the compensation of all city employees, an ordinance fixing the working hours and compensation of the division of police is not properly submissible under initiative and referendum provisions.

66 App(3d) 286 (Erie 1990), State ex rel Citizens for a Responsive Government Committee v Widman. A writ of mandamus will not be issued to compel a city commission or its members to place an initiative petition which seeks a change in the form of municipal government on the next election ballot since as the petition alters only one out of eighty-five sections of the charter, it seeks to "amend" the charter and not to "abolish" it; therefore, RC 731.28 does not control and it has to be submitted to legislative authority for a determination of its validity pursuant to the provisions of O Const Art XVIII §9; the submission of a petition is not rendered unnecessary regardless of the number of voter's signatures on it, nor are amendments to charters seeking a change in the form of government guaranteed placement on the ballot by O Const Art I §2 and Art II §1f.

54 App(2d) 107, 375 NE(2d) 811 (1977), Walsh v Cincinnati City Council. A city council has no authority to declare an ordinance to be an emergency measure for reasons which are obviously illusory or tautological, and where an ordinance is passed as an emergency measure and, considering all the facts and circumstances, it is not to be effective within a reasonable time, it is invalid.

13 App(2d) 46, 233 NE(2d) 600 (1967), Korn v Dunahue. Where a referendum election has not been challenged directly by an election contest, its validity may not be collaterally attacked.

O Const II § 1g Requirements for initiative and referendum petitions

Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or the post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The petition and signatures upon such petitions shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution. The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

HISTORY: 1977 HJR 12, am. eff. 6-6-78
1971 SJR 2, am. eff. 1-1-72; 1912 constitutional convention, adopted eff. 10-1-12

COMMENTARY

Editor's Comment

1990: For comments on the initiative and referendum generally, see Commentary to §1, Article II. This section specifies in considerable detail the requirements for petitions to invoke the initiative and referendum under §1a to 1c, Article II, plus requirements for ballot language, preparing arguments pro and con, and related matters. Additional provisions on the exercise of the initiative and

referendum generally are contained in RC Ch 3519 and, as to municipal questions, in RC 731.28 to 731.42.

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 11.75

CROSS REFERENCES

Initiative and referendum in municipalities, 705.91, 705.92, 731.28 to 731.41

Ballots, 3505.01 to 3505.17

Duties of ballot board, 3505.062

Preparation and review of initiative and referendum petitions and ballots, Ch 3519

Legislative power; people reserve power of initiative and referendum, O Const Art II §1

Initiative petition to propose constitutional amendment, O Const Art II §1a

Initiative petition to propose law, O Const Art II §1b

Submitting laws passed by general assembly to referendum of people, O Const Art II §1c

Tax levies, appropriations, and emergency laws not subject to initiative and referendum, O Const Art II §1d

Initiative and referendum cannot be used for non-uniform taxation of property, O Const Art II §1e

Initiative and referendum applies to municipal law, O Const Art II §1f

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 244; 42, Evidence and Witnesses § 63; 56, Initiative and Referendum § 3 to 5, 17 to 19, 21 to 26, 32 to 34, 37, 39, 40, 44, 48, 53; 72, Notice and Notices § 27 to 30, 33, 34

Am Jur 2d: 42, Initiative and Referendum § 9 et seq., 21 to 46, 55 et seq.

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Administrative procedures
3. Judicial remedies
4. Contents of petitions
5. Initiated law
6. Initiated constitutional amendment
7. Referendum

1. In general

49 OS(3d) 102, 551 NE(2d) 150 (1990), In re Protest Filed with the Franklin County Elections Bd by Citizens for the Merit Selection of Judges, Inc on Behalf of Issue III, Merit Selection of Judges. The requirement of RC 3519.10 that a signer of an initiative petition place the address of the signer's voting residence on the petition is not in conflict with O Const Art II §1g.

63 OS(2d) 326, 410 NE(2d) 1249 (1980), State ex rel Carter v Celebrezze. Where two sets of part-petitions, proposing the same constitutional amendment, arise from the fact that one set omits part of the unaffected language of the provision, the two sets cannot be considered as one in order to meet the signature requirements.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. O Const Art II §1g expressly provides that all petitions and parts of petitions verified by proper affidavit shall be presumed to be sufficient unless proven to be otherwise.

106 OS 1, 138 NE 532 (1922), Thrailkill v Smith. A petition will not fail under O Const Art II §1g, which in part requires signatures in ink, if in fact the signatures are in indelible pencil; O Const Art II §1g also states that no law or amendment shall be found unconstitutional on account of the insufficiency of the petition.

99 OS 168, 124 NE 172 (1919), State ex rel Greenlund v Fulton. The constitutional provision provided in O Const Art II §1g cannot be lightly set aside in the performance of administrative duties, however innocently done.

97 OS 325, 120 NE 140 (1917), State ex rel Vail v Fulton. A mandamus petition challenging a petition under O Const Art II §1g is dismissed where the petition is not filed until the day before the last day allotted (the thirty-ninth day) and the issue is not joined and the course is not submitted to the court until the forty-day period expires.

120 App 338, 195 NE(2d) 371 (1963), State ex rel Beckstedt v Eyrich. A so-called "initiative petition" which does not propose any text of any ordinance or other measure and proposes no enactment, but merely seeks to have a municipal council embark on a course of conduct and contains no detail or direction as to how the proposed conduct should be undertaken or form which could be construed as legislation, is ineffective and does not constitute any "question" proposed by such "petition."

25 Misc 13, 265 NE(2d) 803 (CP, Butler 1968), State ex rel Samuelson v Conrad; affirmed by Court of Appeals; appeal dismissed by Ohio Supreme Court. Mandamus is available to require legislative authority of municipal corporation to enact an ordinance necessary for submission to electors of proposed charter amendment, where initiative petition is in conformity to statutory requirements and there is no sufficient showing of unconstitutionality to warrant injunction against such legislative action.

25 Misc 13, 265 NE(2d) 803 (CP, Butler 1968), State ex rel Samuelson v Conrad; affirmed by Court of Appeals; appeal dismissed by Ohio Supreme Court. Two separate amendments to municipal charter may be submitted by single initiative proceeding.

19 Misc 67, 250 NE(2d) 106 (CP, Trumbull 1968), Markus v Trumbull County Bd of Elections; affirmed by 22 OS(2d) 197, 259 NE(2d) 501 (1970). A board of elections will be permanently enjoined from placing on the ballot a referendum to a township zoning amendment where the petitions contained neither a copy nor summary of the proposed change, the circulator of the petitions did not state in his affidavit that each signer had knowledge of the proposed amendment, and the ballot contained no statement that only a portion of the landowners property was to be rezoned or that a buffer strip would be constructed between the adjacent zones.

18 NP(NS) 140, 26 D 11 (CP, Cuyahoga 1915), In re Referendum Petition. It is an absolute requirement that the signature of a referendum petition signer be his own, but the date and residence may be filled in by another; the date of signing and residence must be present and if they are not definitely ascertained, the petition is objectionable.

18 NP(NS) 140, 26 D 11 (CP, Cuyahoga 1915), In re Referendum Petition. The constitutional provision that the names of all signers of referendum petitions shall be in ink also includes the use of an indelible pencil.

1939 OAG 1203. When a petition is filed with the secretary of state within ninety days after any law has been filed by the governor, it is the duty of the secretary of state to ascertain whether or not such petition contains the required number of signatures valid on the form thereof.

2. Administrative procedures

58 OS(2d) 395, 390 NE(2d) 829 (1979), Cappelletti v Celebrezze. Secretary of state, upon receipt of initiative petitions containing signatures of more than three percent of voters, properly submitted part-petitions to county board of elections for verification of signatures.

40 OS(2d) 42, 319 NE(2d) 361 (1974), State ex rel Home Federal Savings & Loan Assn v Moser; vacated by 40 OS(2d) 94, 320 NE(2d) 672 (1974). Protest with respect to referendum petition submitted to board of elections thirty-two days before election was too late.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By the terms of O Const Art II §1g, any claim as to a legal deficiency in the initiative petition, including any claim that the "summary" contained therein is in conflict with the text, must be made more than forty days before the election at which such proposal is to be voted on by the electorate.

31 OS(2d) 188, 287 NE(2d) 630 (1972), State ex rel Tulley v Brown. There is no duty on the part of the secretary of state to transmit improperly verified part-petitions to boards of elections, and prohibition will not lie to prevent the boards from determining the validity of signatures of part-petitions.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. Secretary of state has authority to reject part of petition not verified as required by O Const Art II §1g.

127 OS 171, 187 NE 301 (1933), State ex rel Ilg v Myers. The preceding election referred to is the election immediately preceding the filing of the petition. The fact that another gubernatorial election intervenes at which time additional signatures were still being procured for filing in accordance with an order of the secretary of state does not require a recalculation by the secretary of state based on the vote cast in such election held subsequent to the filing of the petition.

127 OS 95, 186 NE 872 (1933), State ex rel Patton v Myers. Under O Const Art II §1g, a signer of any initiative, supplementary or referendum petition must personally sign his own name to such petition in ink, but some other person, under the authority and direction of the signer, may write on the petition, after the signer's name, the date of signing and the signer's place of residence, as required by that section.

108 OS 454, 141 NE 69 (1923), State ex rel McCrehen v Brown. After the decision of State ex rel Gongwer v Graves, 90 OS 311, 107 NE 1018 in 1914, the legislature, in 1915, repealed GC 5175-29j, GC 5175-29l and amended GC 5175-29i (Repealed), since which time the secretary of state has been without power to determine the sufficiency of a referendum petition or of any of its parts at the time such petition is filed with him, and a writ of prohibition accordingly lies to restrain him from exercising such jurisdiction.

99 OS 168, 124 NE 172 (1919), State ex rel Greenlund v Fulton. When a petition is signed and prepared in accordance with the constitutional requirements and has been filed with the secretary of state, he is required to submit to the electors the exact proposal as set forth in the petition and there is no authority for the submission of any different one.

93 OS 1, 112 NE 138 (1915), State ex rel Hunt v Hildebrant; affirmed sub nom Ohio ex rel Davis v Hildebrant, 241 US 565, 36 SCt 708, 60 LEd 1172 (1916). O Const Art II §1g, ordering the secretary of state to print and disseminate an argument against any proposed amendment, and that this section "shall be self-executing," binds all courts and officers, and the secretary of state has no right to declare it not self-executing. He must obey it, though no law specifies how to select persons to prepare such agreement. GC 5018-1 (Repealed) for the distribution of publicity pamphlets does not facilitate the carrying out of the above constitutional requirement.

29 App(2d) 133, 279 NE(2d) 624 (1971), Durell v Brown. If there are sufficient presumptively valid signatures in an initiative petition meeting the requirements of O Const Art II §1, there is an absolute duty on the secretary of state to certify the petition to the general assembly irrespective of whether it can be proved that in some way some or all of the signatures contained in the initiative petition are invalid.

OAG 72-082. The filing of additional signatures, after an initial finding and notification of insufficient signatures by the secretary of state, does not cause the postponement of the issue to a later election.

OAG 72-082. As a matter of practice, the secretary of state may find, and give notice of insufficient signatures on an original petition, proposing a constitutional amendment under O Const Art II §1a and 1g, at any time reports from the counties are received by him and he is able to determine the insufficiency, but in no event may he make a general finding of insufficiency later than the fortieth day prior to the election, at which the issue is to appear on the ballot.

1927 OAG 1073. It is the mandatory duty of the secretary of state to obey this constitutional command regardless of the fact that neither the constitution nor the laws of the state specifically provide in detail the manner and method of so doing.

3. Judicial remedies

52 OS(2d) 13, 368 NE(2d) 838 (1977), State ex rel Williams v Brown. Neither mandamus nor prohibition will lie to prevent the secretary of state from placing an initiative measure on the ballot on the basis of alleged errors in the ballot where such errors do not lead to misleading, deceiving, or defrauding the voters.

52 OS(2d) 7, 368 NE(2d) 837 (1977), State ex rel Glass v Brown. Prohibition will not lie to prohibit the secretary of state from placing a proposed constitutional amendment on the ballot.

48 OS(2d) 17, 356 NE(2d) 296 (1976), State ex rel O'Grady v Brown. The placing of issues on ballots and tabulating the votes cast thereon do not constitute the exercise of quasi-judicial power by the secretary of state, and therefore prohibition will not lie to prevent such action.

31 OS(2d) 188, 287 NE(2d) 630 (1972), State ex rel Tulley v Brown. There is no duty on the part of the secretary of state to transmit improperly verified part-petitions to boards of elections, and prohibition will not lie to prevent the boards from determining the validity of signatures of part-petitions.

29 OS(2d) 235, 281 NE(2d) 187 (1972), State ex rel Tulley v Brown. Where attorney general has advised proponents of constitutional amendment that he finds the summary of proposed amendment to be sufficient, mandamus will lie to compel attorney general so to certify it.

138 OS 574, 37 NE(2d) 584 (1941), Bigelow v Brumley. Whether persons officially appointed by governor or general assembly, under O Const Art II §1g, and GC 4785-180a (RC 3519.03) and GC 4785-180b (RC 3519.19), to prepare official argument to be distributed by secretary of state to electors of state, in opposition to proposed "Bigelow Amendments" to Ohio Constitution, be absolutely privileged against liability for defamation for statement made in argument, and pertinent to occasion of privilege, that sponsor of proposed amendments was "paid lobbyist for Single Tax Movement," such absolute privilege does not extend to person who enjoys no such official capacity, but is only alleged to have conspired with official appointees to defame plaintiff by combining with official appointees in preparation of argument published over names of appointees.

108 OS 454, 141 NE 69 (1923), State ex rel McCrehen v Brown. After the decision of State ex rel Gongwer v Graves, 90 OS 311, 107 NE 1018 in 1914, the legislature, in 1915, repealed GC 5175-29j, GC 5175-29l and amended GC 5175-29i (Repealed), since which time the secretary of state has been without power to determine the sufficiency of a referendum petition or of any of its parts at the time such petition is filed with him, and a writ of prohibition accordingly lies to restrain him from exercising such jurisdiction.

97 OS 325, 120 NE 140 (1917), State ex rel Vail v Fulton. A mandamus petition challenging a petition under O Const Art II §1g is dismissed where the petition is not filed until the day before the last day allotted (the thirty-ninth day) and the issue is not joined and the course is not submitted to the court until the forty-day period expires.

4. Contents of petitions

63 OS(2d) 326, 410 NE(2d) 1249 (1980), State ex rel Carter v Celebrezze. Where two sets of part-petitions, proposing the same constitutional amendment, arise from the fact that one set omits part of the unaffected language of the provision, the two sets cannot be considered as one in order to meet the signature requirements.

63 OS(2d) 326, 410 NE(2d) 1249 (1980), State ex rel Carter v Celebrezze. If no initiative petition bearing the requisite number of electors' signatures is presented, the secretary of state has no duty to forward the petition to the county boards of election.

63 OS(2d) 326, 410 NE(2d) 1249 (1980), State ex rel Carter v Celebrezze. Initiative petitions for constitutional amendment rejected where one sentence of existing language was inadvertently omitted from the text of the proposed amendment which accompanied some of the petitions.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By virtue of the provisions of O Const Art II §1a and 1g, the

terms of a proposed constitutional amendment are determined by reference to the text of such proposal as contained on the initiative petition and part-petitions signed by the requisite number of electors; and any discrepancy between such text and the text of the preliminary petition submitted to the attorney general and filed with the secretary of state, under RC 3519.01, does not affect the duty of the secretary of state, prescribed in O Const Art II §1a, to submit such a proposal to the vote of the electorate if such proposal has been signed by ten per cent of the electorate.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By the terms of O Const Art II §1g, any claim as to a legal deficiency in the initiative petition, including any claim that the "summary" contained therein is in conflict with the text, must be made more than forty days before the election at which such proposal is to be voted on by the electorate.

6 OS(2d) 61, 215 NE(2d) 717 (1966), State ex rel White v Brown. A person other than the signer of a petition may, under the authorization and direction of the signer, write on the petition, after the signer's name, the date of signing, and the mere fact standing alone, that the date of signing was written by someone other than the signer will not support a reasonable inference that such date of signing was not written under the authorization and direction of the signer.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. O Const Art II §1g expressly provides that all petitions and parts of petitions verified by proper affidavit shall be presumed to be sufficient unless proven to be otherwise.

136 OS 1, 22 NE(2d) 907 (1939), State ex rel Herbert v Mitchell. Secretary of state has authority to reject part of petition not verified as required by O Const Art II §1g.

106 OS 1, 138 NE 532 (1922), Thrailkill v Smith. A petition will not fail under O Const Art II §1g, which in part requires signatures in ink, if in fact the signatures are in indelible pencil; O Const Art II §1g also states that no law or amendment shall be found unconstitutional on account of the insufficiency of the petition.

106 OS 1, 138 NE 532 (1922), Thrailkill v Smith. The matters printed on the ballot shall not mislead, deceive, or defraud the voters.

106 OS 1, 138 NE 532 (1922), Thrailkill v Smith. The requirement of this section that the names of signers to initiative, supplementary or referendum petitions shall be in ink is complied with by a signature in indelible pencil.

99 OS 168, 124 NE 172 (1919), State ex rel Greenlund v Fulton. When a petition is signed and prepared in accordance with the constitutional requirements and has been filed with the secretary of state, he is required to submit to the electors the exact proposal as set forth in the petition and there is no authority for the submission of any different one.

29 App(2d) 133, 279 NE(2d) 624 (1971), Durell v Brown. If there are sufficient presumptively valid signatures in an initiative petition meeting the requirements of O Const Art II §1, there is an absolute duty on the secretary of state to certify the petition to the general assembly irrespective of whether it can be proved that in some way some or all of the signatures contained in the initiative petition are invalid.

4 App(2d) 183, 211 NE(2d) 854 (1965), State ex rel Donofrio v Henderson. Statements of candidacy on six of fifty-three petitions, which are identical in all other respects, are not invalidated by reason of the fact that they were notarized by a different notary public.

4 App(2d) 183, 211 NE(2d) 854 (1965), State ex rel Donofrio v Henderson. RC 3501.38(C) has been complied with when the signer of a nominating petition has personally signed his own name in the presence of the circulator, and the circulator or some other person under the authority and direction of the signer has written in all other information therein required, or when a signer of a nominating petition, or some other person under his authority and direction, uses ditto marks to indicate either the date of signing or the location of his voting address.

14 App 398 (Lawrence 1921), Ohio Valley Electric Railway Co v Hagerty. The power of a minority of the electors to force proposed legislation to a referendum includes the power to suspend the legislation until the next regular election once all referendum provisions have been met; the provision requiring that each part of a municipal referendum contains an affidavit as to the signer's knowledge of the contents therein is mandatory.

1933 OAG 763. The date on which a signer of an initiative petition seeking a constitutional amendment signs such petition and the residence of such signer must be written thereon, but this information may be filled in by another.

5. Initiated law

64 OS(2d) 1, 411 NE(2d) 193 (1980), State ex rel Cappelletti v Celebrezze. The sixty-four-day time limitation in O Const Art XVI §1 is a "term and condition" incorporated into O Const Art II §1g, and, therefore, applicable to initiative petitions.

1932 OAG 4351. O Const Art II §1g and GC 4785-179 (RC 3519.16) apply only to state-wide legislation.

6. Initiated constitutional amendment

67 OS(2d) 516, 426 NE(2d) 493 (1981), State ex rel Bailey v Celebrezze. Proposed ballot language describing proposed amendment to O Const Art II §35, is invalid.

32 OS(2d) 4, 288 NE(2d) 821 (1972), State ex rel Schwartz v Brown. By virtue of the provisions of O Const Art II §1a and 1g, the terms of a proposed constitutional amendment are determined by reference to the text of such proposal as contained on the initiative petition and part-petitions signed by the requisite number of electors; and any discrepancy between such text and the text of the preliminary petition submitted to the attorney general and filed with the secretary of state, under RC 3519.01, does not affect the duty of the secretary of state, prescribed in O Const Art II §1a, to submit such a proposal to the vote of the electorate if such proposal has been signed by ten per cent of the electorate.

29 OS(2d) 235, 281 NE(2d) 187 (1972), State ex rel Tulley v Brown. Where attorney general has advised proponents of constitutional amendment that he finds the summary of proposed amendment to be sufficient, mandamus will lie to compel attorney general so to certify it.

138 OS 574, 37 NE(2d) 584 (1941), Bigelow v Brumley. Whether persons officially appointed by governor or general assembly, under O Const Art II §1g, and GC 4785-180a (RC 3519.03) and GC 4785-180b (RC 3519.19), to prepare official argument to be distributed by secretary of state to electors of state, in opposition to proposed "Bigelow Amendments" to Ohio Constitution, be absolutely privileged against liability for defamation for statement made in argument, and pertinent to occasion of privilege, that sponsor of proposed amendments was "paid lobbyist for Single Tax Movement," such absolute privilege does not extend to person who enjoys no such official capacity, but is only alleged to have conspired with official appointees to defame plaintiff by combining with official appointees in preparation of argument published over names of appointees.

486 US 414, 108 SCt 1886, 100 LEd(2d) 425 (1988), Meyer v Grant. A state law making the payment of money to people circulating petitions needed to put a proposed constitutional amendment on the general election ballot abridges the right to engage in political speech secured by the First and Fourteenth Amendments to the federal constitution. (Ed. note: Colorado statute construed in light of federal constitution.)

OAG 72-082. As a matter of practice, the secretary of state may find, and give notice of insufficient signatures on an original petition, proposing a constitutional amendment under O Const Art II §1a and 1g, at any time reports from the counties are received by him and he is able to determine the insufficiency, but in no event may he make a general finding of insufficiency later than the fortieth day prior to the election, at which the issue is to appear on the ballot.

1933 OAG 763. The date on which a signer of an initiative petition seeking a constitutional amendment signs such petition and the residence of such signer must be written thereon, but this information may be filled in by another.

7. Referendum

40 OS(2d) 94, 320 NE(2d) 672 (1974), State ex rel Home Federal Savings & Loan Assn v Moser. The requirements of O Const Art II §1g apply only to state-wide referenda, and do not apply to a referendum under RC 303.12.

40 OS(2d) 42, 319 NE(2d) 361 (1974), State ex rel Home Federal Savings & Loan Assn v Moser; vacated by 40 OS(2d) 94, 320 NE(2d) 672 (1974). Protest with respect to referendum petition submitted to board of elections thirty-two days before election was too late.

22 OS(2d) 197, 259 NE(2d) 501 (1970), Markus v Trumbull County Bd of Elections. Requirements of O Const Art II §1g do not apply to referendum zoning petition filed under RC 519.12.

19 OS(2d) 1, 249 NE(2d) 525 (1969), State ex rel Corrigan v Perk; appeal dismissed by 396 US 113, 90 SCt 397, 24 LEd(2d) 307 (1969). Signatures on petitions for a referendum on a county sales and use tax resolution must carry the ward and precinct of the signers.

117 OS 258, 158 NE 606 (1927), Dillon v Cleveland. O Const Art II §1g, applies only to a state-wide referendum upon an enactment of the general assembly.

18 NP(NS) 140, 26 D 11 (CP, Cuyahoga 1915), In re Referendum Petition. It is an absolute requirement that the signature of a referendum petition signer be his own, but the date and residence may be filled in by another; the date of signing and residence must be present and if they are not definitely ascertained, the petition is objectionable.

O Const II § 2 Election of state legislators

Representatives shall be elected biennially by the electors of the respective house of representatives districts; their term of office shall commence on the first day of January next thereafter and continue two years.

Senators shall be elected by the electors of the respective senate districts; their terms of office shall commence on the first day of January next after their election. All terms of senators which commence on the first day of January, 1969 shall be four years, and all terms which commence on the first day of January, 1971 shall be four years. Thereafter, except for the filling of vacancies for unexpired terms, senators shall be elected to and hold office for terms of four years.

HISTORY: 132 v SJR 24, adopted eff. 11-7-67

Note: Former Art II, § 2 repealed by 132 v SJR 24, eff. 11-7-67; 126 v 1177, am. eff. 11-6-56; 82 v 446, am. eff. 10-13-1885; 1851 constitutional convention, adopted eff. 9-1-1851.

COMMENTARY

Editor's Comment

1990: This section provides that all Representatives are elected for two-year terms and all Senators for four-year terms, with one-half of the Senators standing for election every two years. The section has undergone several metamorphoses, the latest change being a return to the federal model in which staggered Senate terms which are longer than House terms provide a measure of continuity from one Congress to another. Under the 1802 Ohio Constitution, Article I, §3 and 5, Representatives were elected for one year and Senators for two years, so that sessions were annual. As originally adopted, §2, Article II of the 1851 Constitution provided that both Senators and Representatives were to be elected for two-year terms. Longer terms for Senators were reintroduced in 1956, and the section in its present form dates from 1967.

CROSS REFERENCES

Organization of general assembly, first and second regular sessions, 101.01, 101.02

Senators and representatives must reside in respective districts, O Const Art II §3

Limitations on senators and representatives holding other public offices, O Const Art II §4

Responsibility for public funds and eligibility for seat in general assembly, O Const Art II §5

Power of each house to judge elections, returns, and qualifications of members, O Const Art II §6

Biennial sessions of general assembly, O Const Art II §8

Filling vacancies in house and senate seats, O Const Art II §11

House and senate districts; apportionment, O Const Art XI

Persons elected or appointed to office must be qualified electors, O Const Art XV §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 13, 140; 78, Public Works and Contracts § 19

NOTES ON DECISIONS AND OPINIONS

173 OS 361, 182 NE(2d) 564 (1962), State ex rel Lehman v DiSalle. There is no clear legal duty upon the governor, the auditor, and the secretary of state in making a new apportionment of the general assembly to determine that an incumbent senator in a district which has been annexed to another district to form a combined senatorial district shall represent all the electors of the combined district in the first legislative session of the decennial period instead of determining that a senator shall be elected by the electors of the combined district to represent them in the first session of the decennial period.

173 OS 361, 182 NE(2d) 564 (1962), State ex rel Lehman v DiSalle. When the district of an elected member of the Ohio senate is annexed to another district for the purpose of forming a combined district, the senator's election and term of office are not affected, and he shall continue to serve as a member of the senate until his term expires.

15 OS 573 (1863), Lehman v McBride. A statute providing for the vote of displaced electors in the military service, absent from their places of residence, is not in conflict with any provision of the Ohio Constitution and is therefore valid; the Ohio Constitution contains no express limitations on the places where elections shall be held.

1961 OAG 2024. The Ohio senate is not a continuous body.

1954 OAG 4584. A certificate of election is prima facie evidence of election as state representative, and the house of representatives is the judge of such election.

O Const II § 3 Residence requirements for state legislators

Senators and representatives shall have resided in their respective districts one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this State.

HISTORY: 132 v SJR 24, am. eff. 11-7-67
1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: This section is as adopted in 1851, except that the words "counties or" which formerly preceded "districts" were deleted in a 1967 amendment. The 1802 Ohio Constitution, Article I, §4 and 7,

provided residency requirements of one year for Representatives and two years for Senators, plus age and citizenship requirements.

CROSS REFERENCES

Travel allowance to and from residence, 101.27
Publication of decennial apportionment, 107.09
Limitations on senators and representatives holding other offices, O Const Art II §4
Responsibility for public funds and eligibility for seat in general assembly, O Const Art II §5
Power of each house to judge election, returns, and qualifications of members, O Const Art II §6
Senate and house districts; apportionment, O Const Art XI
Persons elected or appointed to office must be qualified electors, O Const Art XV §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 19, Counties, Townships, and Municipal Corporations § 30; 37, Elections § 75
Am Jur 2d: 63A, Public Officers and Employees § 47, 48, 60 et seq.
Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048

NOTES ON DECISIONS AND OPINIONS

OAG 91-045. A candidate for election to the Ohio house of representatives must establish residency in a district one year prior to election as a representative for that district, except where a plan of reapportionment or a provision of the Ohio Constitution is invalidated after the adoption of such plan, thereby giving candidates an additional thirty days to move, regardless of the date of the next election. O Const Art II §3; O Const Art XI §13.

O Const II § 4 Dual office and conflict of interest prohibited

No member of the general assembly shall, during the term for which he was elected, unless during such term he resigns therefrom, hold any public office under the United States, or this state, or a political subdivision thereof; but this provision does not extend to officers of a political party, notaries public, or officers of the militia or of the United States armed forces.

No member of the general assembly shall, during the term for which he was elected, or for one year thereafter, be appointed to any public office under this state, which office was created or the compensation of which was increased, during the term for which he was elected.

HISTORY: 1973 HJR 5, am. eff. 5-8-73
1851 constitutional convention, adopted eff. 9-1-1851

Note: Art II, § 4 contains provisions analogous to former Art II, § 19, repealed by 1973 HJR 5, eff. 5-8-73.

COMMENTARY

Editor's Comment

1990: This section prohibits dualism in office and a species of conflict of interest for members of the General Assembly, and in its present form is the result of a 1973 amendment. The first paragraph is substantially similar to the entire section as adopted in 1851, and the second paragraph (added in 1973) is substantially similar to former §19, Article II. The statutes expand on this section, particularly the conflict of interest portion. RC 101.26 lists a variety of positions closed to members of the General Assembly. See, also, RC Ch 102, which deals generally with governmental ethics, including conflicts of interest. The predecessors of the section were §20 and 26, Article I, 1802 Ohio Constitution, and the comparable federal provision is the second paragraph of §6, Article I, US Constitution.

Prior to the 1973 amendment, the phrase "civil office" was used instead of the present "public office." Cases construing this section yield confusing results in the interpretation of what constitutes a public office or civil office for purposes of the prohibition against dualism. For example, it has been opined that a deputy director of a state department is not an officer for purposes of this section. OAG 83-004; but, compare OAG 83-004 with 1964 OAG 879. Also, compare 1955 OAG 6102 with 1955 OAG 6060. Positions on special commissions have been construed not to be civil offices for purposes of the conflict of interest provision. State ex rel Herbert v Ferguson, 142 OS 496, 52 NE(2d) 980 (1944); 1939 OAG 134. See RC 101.26, which prohibits a member of the General Assembly from serving on any such body for compensation other than actual and necessary expenses. A member of the General Assembly which created the position of division chief within a state department is disabled from appointment to the office for one year after his term. 1950 OAG 1787.

CROSS REFERENCES

Incompatible offices, 3.11
Limitations on eligibility for other offices or appointments, 101.26
Persons elected or appointed to office must be qualified electors, O Const Art XV §4

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 1, Acknowledgments, Affidavits, Oaths, and Notaries § 71; 15, Civil Servants and Other Public Officers and Employees § 57; 21, Counties, Townships, and Municipal Corporations § 623; 68, Military § 4, 74; 84, State of Ohio § 21
Am Jur 2d: 63A, Public Officers and Employees § 63, 64 et seq., 69 to 71
Incompatibility, under common-law doctrine, of office of state legislator and position or post in local political subdivision. 89 ALR2d 632
Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557

NOTES ON DECISIONS AND OPINIONS

1. In general
2. What constitutes public office
3. Compatible and incompatible offices
4. Office created or compensation increased during term

1. In general

66 OS(2d) 379, 423 NE(2d) 60 (1981), State ex rel Meshel v Keip. Due to the limitations set forth in RC 127.17, the general assembly's delegation of authority to the controlling board to transfer funds from one fiscal year to another, pursuant to RC 127.14(B), is constitutional.

32 OS(2d) 23, 289 NE(2d) 349 (1972), State ex rel Fisher v Brown. O Const Art II §4, does not specify that the disqualifications enumerated therein for holding the office of member of the general assembly also prevent a person from being a candidate for such office.

34 App(3d) 260, 518 NE(2d) 25 (Lorain 1986), Bennett v Celebrezze. Legislative bodies may impose certain basic qualifications upon those seeking public office, so long as the legislative classification is clear, rests on reasonable grounds, and affects all persons in the class equally.

111 SCt 2395, 115 LEd(2d) 410 (1991), Gregory v Ashcroft. It is obviously essential to the independence of the states that their power to prescribe the qualifications of their own officers should be exclusive and free from external interference, except so far as plainly provided by the constitution; congressional interference with the decision of the people of a state defining their constitutional officers would upset the constitutional balance of federal and state powers and the federal courts must be certain of congress' intent before finding a federal law overrides this balance.

1960 OAG 1861. Where a person who is a member of the state board of education is elected to the office of representative in congress, and accepts and qualifies for that office, he vacates the position of member of the board upon such election, acceptance and qualification.

2. What constitutes public office

61 OS 62, 55 NE 167 (1899), State ex rel Allen v Mason. A clerk in the US pension agency, serving by appointment for a period not exceeding three months and compensated with money of the US appropriated for that purpose by congress, having no duties defined by law nor discretion to act independently of the direction of the pension agent, is not "holding an office under the authority of the U.S." within the meaning of O Const Art II §4, which renders persons so holding office ineligible to membership in the general assembly.

OAG 83-004. A deputy director of a state department, appointed pursuant to RC 3.06 and 121.05, is not an officer for purposes of O Const Art II §4.

1939 OAG 134. Person chosen by a commission created by the general assembly to carry into execution the policies and plans of such commission is an employee and not a public officer.

3. Compatible and incompatible offices

112 OS 534, 148 NE 86 (1925), State ex rel Gettles v Gillen. The mayor of a municipality does not forfeit his office as mayor by reason of his election to, and service as a member of, the general assembly.

OAG 69-039. One who is a state senator in Ohio may also hold the office of village solicitor whether the village be in his senate district or outside of the district.

1964 OAG 879. A department head of a municipality whose office requires him to make administrative decisions is ineligible to serve as a member of the general assembly.

1964 OAG 879. A member of the general assembly is ineligible to serve as deputy for a county officer.

1964 OAG 879. A member of the general assembly is ineligible to serve as an assistant county prosecutor.

1964 OAG 879. An appointive officer of a charter city is ineligible to serve as a member of the general assembly during such appointment.

1964 OAG 879. A clerk or one who performs clerical duties within a department of a municipality who is in the unclassified service may also serve as an elected member of the general assembly; no opinion is rendered as to such clerk who is in the classified service of a municipality.

1955 OAG 6102. Acceptance by a member of the general assembly of employment by a local school district as a school bus driver vacates such individual's legislative office.

1955 OAG 6060. The offices of member of the general assembly and member of a city board of education are not incompatible.

1927 OAG 850. Under the holding of the authorities that an employment is not an "office," a member of the present general assembly may be appointed as special institutional examiner in the office of the auditor of state, providing said member upon, or prior to, the acceptance of the appointment resigns as member of the general assembly. In case such an appointment be made and the member of the general assembly does not resign, such officer's seat in the general assembly shall be vacant.

1917 OAG vol 2 p 1087. Pursuant to O Const Art II §4, if a member of the general assembly were to accept an office either in the civil or military service of the United States, he would thereby forfeit his office as a member of the general assembly; however, if he accepts a mere employment in either the civil or military service, he would not forfeit his office as a member of the general assembly.

1915 OAG p 327. Pursuant to O Const Art II §4, a member of the Ohio general assembly cannot serve as a clerk of the village board of education of which he is a member and receive a salary for such position.

4. Office created or compensation increased during term

142 OS 496, 52 NE(2d) 980 (1944), State ex rel Herbert v Ferguson. Where members of the post-war program commission in the performance of their duties do not exercise sovereign powers, creating such commission and placing thereon a specific number of members of the general assembly, does not have an unconstitutional operation under O Const Art II §19, which prohibits the appointment of members of the general assembly to any civil office created during their terms of office.

OAG 83-004. A member of the general assembly, who served a term during which the pay ranges in schedule C of RC 124.15(A) were increased, may constitutionally be appointed as the director of a state department pursuant to RC 121.03 within one year of that term, provided that individual does not, as director, receive compensation in excess of the maximum amount of compensation which was authorized for a schedule C position immediately prior to the term of the legislator during which 1981 H 694, eff. 11-15-81, which amended RC 124.15(A), was enacted.

1950 OAG 1787. A member of the legislature which created the offices of chief of divisions of water, geological survey, forestry or wildlife cannot be appointed to such office by reason of O Const Art II §19.

1939 OAG 134. Member of the 92nd general assembly, which body enacted law, providing for the creation of the New York world's fair commission and for the choosing of a director therefor may, within one year after the expiration of his term as a member of the 92nd general assembly, be chosen as director of said New York world's fair commission and the salary and expenses of such director so chosen may be legally paid by auditor of state.

O Const II § 5 Persons barred from seat in General Assembly; embezzlement or failure to account for public funds

No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this State; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the General Assembly, until he shall have accounted for, and paid such money into the treasury.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: This section is somewhat loosely based on §28, Article I, and §4, Article IV, 1802 Ohio Constitution. Its basic thrust is to insure the integrity of public officials vis 'a vis the public money.

The meaning of "office in this state" has been narrowly construed. See, e.g., 1942 OAG 5487. But, even though the constitutional disqualification-for-embezzlement provision may have limited application, a statutory provision has much broader scope. See RC 2921.41, which defines the offense of theft in office, and provides that any person convicted of the offense is permanently disqualified from any public office, employment, or position of trust.

Standards and requirements for accounting for public money and property and auditing public accounts are contained in RC Ch 115 and 117, uniform systems of accounting and financial reporting by public offices (other than municipal offices) are prescribed under RC 117.05, 117.051, and 117.06, and various requirements for municipal offices are contained in RC Ch 733. These provisions may or may not control in determining if a person holding public money has properly accounted for it before taking a seat in the General Assembly, since under §6, Article II, each House is the sole judge of its members' qualifications.

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 15.11

CROSS REFERENCES

Accounting for public funds, 117.38, 117.40, 117.43
Theft in office, 2921.41

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 52; 26, Criminal Law § 422; 37, Elections § 70, 75

Am Jur 2d: 63A, Public Officers and Employees § 48 et seq., 58

Conviction of offense under federal law or law of another state or country as vacating accused's holding of state or local office or as ground of removal. 20 ALR2d 732

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office. 71 ALR2d 593

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303

NOTES ON DECISIONS AND OPINIONS

99 OS 429, 124 NE 241 (1919), Patterson Foundry & Machine Co v Ohio River Power Co. Under O Const Art II §16 (now O Const Art II §15), the Public Utilities Act was passed on June 14, 1911, and any contract for service entered into by a public utility and its patron subsequent to that date is subject to the supervision of the public utilities commission and is not binding and enforceable insofar as it conflicts with the rates established by the commission. (Annotation from former O Const Art II §16.)

69 Abs 556, 118 NE(2d) 713 (CP, Franklin 1954), Papatheodoro v Liquor Control Dept. The statutory provision that no person convicted of a felony may receive a liquor permit is constitutional.

111 SCt 2395, 115 LEd(2d) 410 (1991), Gregory v Ashcroft. It is obviously essential to the independence of the states that their power to prescribe the qualifications of their own officers should be exclusive and free from external interference, except so far as plainly provided by the constitution; congressional interference with the decision of the people of a state defining their constitutional officers would upset the constitutional balance of federal and state powers and the federal courts must be certain of congress' intent before finding a federal law overrides this balance.

1942 OAG 5487. Position of deputy sheriff is not an office in this state, within scope of term "office" as used in O Const Art II §5.

O Const II § 11 Filling vacancy in house or senate seat

A vacancy in the Senate or in the House of Representatives for any cause, including the failure of a member-elect to qualify for office, shall be filled by election by the members of the Senate or the members of the House of Representatives, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant. A vacancy occurring before or during the first twenty months of a Senatorial term shall be filled temporarily by election as provided in this section, for only that portion of the term which will expire on the thirty-first day of December following the next general election occurring in an even-numbered year after the vacancy occurs, at which election the seat shall be filled by the electors as provided by law for the remaining, unexpired portion of the term, the member-elect so chosen to take office on the first day in January next following such election. No person shall be elected to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in this Constitution and the laws of this state for the seat in which the vacancy occurs. An election to fill a vacancy shall be accomplished, notwithstanding the provisions of section 27, Article II of this Constitution, by the adoption of a resolution, while the Senate or the House of Representatives, as the case may be, is in session, with the taking of the yeas and nays of the members of the Senate or the House of Representatives, as the case may be, affiliated with the same political party as the person last elected to the seat in which the vacancy occurs. The adoption of such resolution shall require the affirmative vote of a majority of the members elected to the Senate or the House of Representatives, as the case may be, entitled to vote thereon. Such vote shall be spread upon the journal of the Senate or the House of Representatives, as the case may be, and certified to the Secretary of State by the clerk thereof. The Secretary of State shall, upon receipt of such certification, issue a certificate of election to the person so elected and upon presentation of such certificate to the Senate or the House of Representatives, as the case may be, the person so elected shall take the oath of office and become a member of the Senate or the House of Representatives, as the case may be, for the term for which he was so elected.

HISTORY: 1973 HJR 5, am. eff. 5-8-73
132 v HJR 3, am. eff. 5-7-68; 129 v 1830, am. eff. 11-7-61; 1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: Other than providing for filling vacancies in the House or Senate, this section bears little resemblance to the original 1851 section or to its predecessor, §12, Article I, 1802 Ohio Constitution. The 1802 version directed the Governor to "issue writs of election" to fill vacancies in the General Assembly. As adopted in 1851 the section required simply that vacancies be filled for the unexpired term "by election, as directed by law." In its present form, the section is designed to preserve the political status quo in the House or Senate by giving the Representatives or Senators who are members of the former incumbent's political party the power to appoint his successor. An appointment to fill a vacancy in the House is for the unexpired term. An appointment to fill a vacancy in the Senate is for the unexpired term if the vacancy occurred more than twenty months into the original term. If the vacancy in a Senate term occurs within the first twenty months of the term, the appointed successor serves only until a successor is elected for the unexpired term at the next general election in an even-numbered year.

CROSS REFERENCES

Filling unexpired term at general election, 3513.31
Vacancy in office of congressman or member of general assembly, 3521.03

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 141; 84, State of Ohio § 24

Am Jur 2d: 63A, Public Officers and Employees § 127 to 138; 72, States, Territories, and Dependencies § 38, 44

NOTES ON DECISIONS AND OPINIONS

1954 OAG 4584. A certificate of election is prima facie evidence of election as state representative, and the house of representatives is the judge of such election.

Article IV

JUDICIAL

O Const IV § 13 Filling vacancy in judicial office

In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and has qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy shall have occurred; provided, however, that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term.

HISTORY: 119 v 863, am. eff. 11-3-42
1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: The first clause of this section is almost identical to the section as adopted in 1851, and requires the Governor to fill a vacancy in a judicial seat by appointing a successor pending election of a new judge for the unexpired term. The second clause, added by a 1942 amendment, provides that the Governor's appointment is to be for the unexpired term if the term ends within one year after the election at which the successor would normally be elected to complete the term. The principle that, depending on how much of the term remains when a vacancy occurs, the vacancy is filled either for the unexpired term or else temporarily pending election of a successor, is repeated in other sections of the Constitution. See §11, Article II; §17 and 18, Article III. The first Constitution conferred the power to appoint judges on the General Assembly but did not specifically provide for filling vacancies. §8, Article III, 1802 Ohio Constitution.

CROSS REFERENCES

Removal of judge for misconduct, 3.07, 3.08
Governor to fill vacancy in judgeship; election of judge for unexpired term, 107.08
Vacancy in office of municipal judge, 1901.10
Vacancy in office of county court judge, 1907.11
Vacancy in office of common pleas court judge, 2301.02
Vacancies on supreme court, 2503.02
Vacancies in judgeships; creation of, 2701.04
Retirement or suspension of judge for disability; removal or suspension for misconduct, 2701.11, 2701.12; Gov Jud R III
Impeachment, O Const Art II §23, 24
General assembly may pass laws providing for removal from office for misconduct, O Const Art II §38
Judges may be removed from office by concurrent resolution of general assembly on ⅔ vote, O Const Art IV §17
Vacancy in office of judge may be filled only as provided in Art IV of Constitution, O Const Art XVII §2

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 22, Courts and Judges § 157, 158
Am Jur 2d: 46, Judges § 237 to 240
Power to appoint public officer for term commencing at or after expiration of term of appointing officer or body. 75 ALR2d 1277

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Vacancy
3. Election or appointment
4. Term

1. In general

42 Cin L Rev 255 (1973). Judicial Selection and Tenure—the Merit Plan in Ohio, Note.

170 OS 273, 164 NE(2d) 407 (1960), State ex rel Gusweiler v Hamilton County Bd of Elections. RC 2301.02, which gives the general assembly power to pass laws increasing or decreasing the number of common pleas judges in any county, is in direct conflict with O Const Art IV §13 and is therefore unconstitutional.

170 OS 273, 164 NE(2d) 407 (1960), State ex rel Gusweiler v Hamilton County Bd of Elections. The last paragraph of RC 2301.02 is in direct conflict with O Const Art IV §13, and is therefore unconstitutional.

161 OS 346, 119 NE(2d) 277 (1954), State ex rel Davis v Brown. O Const Art IV §13 was not repealed by implication by the amendment in 1947 of O Const Art XVII §2.

80 OS 244, 88 NE 738 (1909), State ex rel Hoyt v Metcalfe. O Const Art XVII, adopted November 7, 1905, does not expressly repeal or abrogate O Const Art IV §13 nor are the two provisions in conflict.

15 App(3d) 101, 15 OBR 191, 472 NE(2d) 1134 (Summit 1984), State ex rel Morgan v Arshinkoff. RC 2301.02 stands in direct conflict with O Const Art IV §13 and is unconstitutional insofar as it purports to abolish judicial offices held for unexpired terms and to create new offices to replace them.

15 App(3d) 101, 15 OBR 191, 472 NE(2d) 1134 (Summit 1984), State ex rel Morgan v Arshinkoff. Neither the 1968 nor the 1973 amendments to O Const Art IV §6, repealed O Const Art IV §13, by implication.

76 App 228, 62 NE(2d) 589 (Montgomery 1945), Blanton v Littrell. GC 1579-85 is not in derogation of O Const Art IV §10 and 13.

1939 OAG 138. A law which provides that a vacancy for a period of less than one year in the office of a judge be filled by the governor for the remainder of the unexpired term is in conflict with O Const Art XVII §2, and 13 and therefore is unconstitutional.

2. Vacancy

OAG 73-074. A vacancy was created on the Hamilton county court of common pleas, division of domestic relations, by the indefinite suspension from the practice of law and resultant disqualification of an incumbent judge of that court, which the governor may fill by appointment pursuant to O Const Art IV §13.

1958 OAG 1540. Where a person elected to the office of county judge fails and refuses to take the oath of office as required by RC 1907.09 the office is, under the provision of RC 3.30, to be considered as vacant, and such vacancy shall be filled by the governor as provided in O Const Art IV §13.

3. Election or appointment

161 OS 346, 119 NE(2d) 277 (1954), State ex rel Davis v Brown. Where an unexpired term of the office of judge ends within one year following the date of a general election, the appointment to fill the vacancy is for the unexpired term.

160 OS 184, 115 NE(2d) 1 (1953), State ex rel Easton v Brown. Neither the statutory nor the charter provisions relating to the election of judges of the municipal court of Cleveland establish a

method for the formal nomination of candidates by petition for an unexpired term when the vacancy occurs after the final date fixed for filing nominating petitions, so that mandamus will not issue to compel the acceptance of a relator's nominating petition and the placing of his name on the ballot.

113 App 55, 177 NE(2d) 300 (1960), State ex rel Lynch v Chesney. RC 3513.31 provides the only method for selection of a candidate for the unexpired term of an incumbent judge of the court of appeals who dies after the primary election but more than forty days before the day of the next general election.

7 NP 435, 5 D 210 (CP, Lucas 1900), Brown v Toledo. Pursuant to O Const Art IV §13, an acting police judge appointed by the mayor to act during the absence of the police judge is, at least, a de facto judge.

OAG 66-176. A candidate for the office of county judge cannot qualify himself after August 8, 1966, and have his name placed on the ballot at the election to be held in November 1966.

1964 OAG 1017. An additional judge may be designated for a municipal court when the volume of pending cases in the municipal court necessitates an additional judge.

1961 OAG 2035. A person who has been elected to serve an unexpired term in the court of common pleas must present a legal certificate of his election, and receive a governor's commission to fill such office, and take the required oath of office before he is entitled to serve in such capacity and receive the salary provided therefor.

1959 OAG 691. If an incumbent judge holding an unexpired term dies after forty days prior to an election, at which his successor could have been chosen had he died earlier, O Const Art IV §13 applies and the governor fills the vacancy by appointment until a successor can be elected at the first general election for such position held more than forty days after such vacancy shall have occurred, provided that if the unexpired term ends within one year immediately following the date of such general election, no election shall be held and the appointment shall be for the entire unexpired term.

1959 OAG 691. If an incumbent judge holding an unexpired term dies subsequent to the one hundredth day prior to the primary election and prior to the fortieth day before the election at which successor could be elected, election must be held to fill such vacancy and the appropriate committee of each political party may select such party's candidate in the next general election.

1958 OAG 2276. Procedure for nominating and electing probate judge where incumbent resigns subsequent to the one hundredth day before the primary election and prior to the fortieth day before the general election discussed.

4. Term

OAG 66-176. The person appointed by the governor to a vacancy in the office of county judge shall hold office until his successor is elected and has qualified.

1945 OAG 246. Where a vacancy in the office of municipal judge is filled by appointment, the appointee shall, if the unexpired term for such office ends within one year immediately following the date of the first general election after the vacancy occurs, hold office for the full unexpired term.

Article V

ELECTIVE FRANCHISE

O Const V § 1	Who may vote
O Const V § 2	By ballot
O Const V § 2a	Office type ballot; laws to provide for reasonable equal position of names on ballot
O Const V § 4	Exclusion from franchise
O Const V § 6	Idiots or insane persons
O Const V § 7	Direct primary elections

O Const V § 1 Who may vote

Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.

HISTORY: Initiative petition, am. eff. 12-8-77
1976 SJR 16, am. eff. 6-8-76; 1970 HJR 8, am. eff. 1-1-71; 127 v 1114, am. eff. 11-5-57; 110 v 628, am. eff. 11-6-23; 1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: The US Constitution, Article I, §1 and the Seventeenth Amendment provide that US Representatives and Senators are to be chosen by the people of each state, whose electors are to have the same qualifications as those "requisite for Electors of the most numerous Branch of the State Legislature." Ohio's first Constitution conferred the franchise only on white males age twenty-one or older, who had resided in the state one year (citizenship per se was not mentioned), and who had either paid (or been charged with) a state or county tax or performed labor on the roads. §1 and 4, Article IV, 1802 Ohio Constitution. These sections on suffrage reflected the times. Limiting the franchise to white males twenty-one or older was typical, and many states imposed property, income, or taxpayer qualifications—the phrase "free, white and twenty-one" was a byword because of these requirements.

A provision giving the right of suffrage to black male citizens very nearly became a part of the first Ohio Constitution. The measure was actually adopted by the Convention—an astonishing step in 1802—but was later stricken on reconsideration when the President of the Convention cast the deciding vote to break a tie. See Journal of the 1802 Ohio Constitutional Convention, November 22 and 26, 1802.

The Constitution of 1851 as adopted continued to limit the franchise to white males age twenty-one or older, but added a requirement for United States citizenship and deleted the taxpayer-road worker qualification. Non-whites were enfranchised by the Fifteenth Amendment to the US Constitution (1870), but the word "white" was not dropped from §1, Article V of the Ohio Constitution until many years later. Proposals to give women the vote in

Ohio failed in 1912 and 1914, but just a few years later women were given the right of suffrage by the Nineteenth Amendment to the US Constitution (1920). The words "white male" were finally stricken from this section in 1923. The age of majority for voting purposes was lowered to eighteen by the Twenty-Sixth Amendment to the US Constitution (1971).

Article V, §1 in its present form reflects the requirements of the federal Constitution. Voter qualifications, including age and residence requirements, registration, and related matters are covered in RC Ch 3503.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 13.03, 27.06

CROSS REFERENCES

Age of majority, 3109.01

Board of elections can investigate and determine electors residence qualifications, 3501.11

Age and residence of voters; 30-day registration, 3503.01

Person who will be 18 at general election may vote in primary, 3503.011

Rules for determining residence, 3503.02

Residence of inmates in veterans' homes or public or private institutions, 3503.03, 3503.04

Voter registration, 3503.06 to 3503.33

Cancelling registration for failure to vote, 3503.21

Challenging voters, 3505.19 to 3505.21

Qualified elector as grand jury foreman, Crim R 6

Voting rights; enforcement, 42 USC 1971, 1972

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 45; 16, Constitutional Law § 1; 36, Domicil § 6; 37, Elections § 3, 35, 37, 40, 41

Am Jur 2d: 25, Elections § 52 to 115

State voting rights of residents of federal military establishment. 34 ALR2d 1193

Residence or domicile of student or teacher for purpose of voting. 98 ALR2d 488

Elections: effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303

Residence of students for voting purposes. 44 ALR3d 797

Voting rights of persons mentally incapacitated. 80 ALR3d 1116

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Right to vote
3. Elector qualifications
   a. In general
   b. Residence; citizenship
   c. Age
4. Voter registration

1. In general

28 Clev St L Rev 449 (1979). Ohio Residency Law for Student Voters—Its Implications and a Proposal for More Effective Implementation of Residency Status, Jonathan D. Reiff.

43 Pitt L Rev 527 (Spring 1982). Reapportionment: A Survey of the Practicality of Voting Equality, John F. Dodge, Jr. and Patrick B. McCauley.

77 OS 554, 84 NE 85 (1908), State ex rel Webber v Felton. A primary election held merely to name the candidates of a political party is not an election within the meaning of O Const Art V §1; instead, this section refers to an election of officers and not to the nomination of candidates.

37 Misc 45 (CP, Cuyahoga 1973), Gilbert v Cleveland. Where candidate placing second in Cleveland mayoralty primary withdrew after said primary but before the general election, members of his committee may name a replacement candidate, and if they fail to do so, ballot should be submitted with only name of leading candidate on it.

489 US 688, 109 SCt 1433, 103 LEd(2d) 717 (1989), New York City Bd of Estimate v Morris. A municipal board that helps make a city's budget and controls its powers to regulate land use, enter contracts, and grant franchises cannot be made up of the mayor, two members elected by the whole municipal electorate, and the elected presidents of five boroughs that have widely disparate populations where this method of selection results in a deviation of seventy-eight per cent from the ideal of one vote for each individual. (Ed. note: New York City charter construed in light of federal constitution.)

2. Right to vote

107 OS 117, 141 NE 27 (1923), Reutener v Cleveland. O Const Art V §1, stating that each elector is entitled to vote in all elections, is not violated where an elector, under the Hare System of Proportional Representation outlined in a Cleveland home rule charter amendment, votes a first choice for only one officer when there are from five to nine to be elected in the district.

71 OS 151, 72 NE 900 (1904), Gentsch v State ex rel McGorray. RS 2926(O) does not violate either O Const Art II §26 or O Const Art V §1 where it facilitates rather than impedes the exercise of the right of suffrage, is reasonable, uniform, and impartial, and applies uniformly throughout the state.

17 OS 665 (1867), Monroe v Collins. The legislature has no power to deny or abridge the constitutional right of citizens to vote or unnecessarily to impede its exercise, and laws passed professedly to regulate its exercise or prevent its abuse must be reasonable, uniform, and impartial.

15 OS 573 (1863), Lehman v McBride. Electors in the military who are absent from their places of residence may vote.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. RC 3503.05 cannot disfranchise a student or wife of a student who satisfies the qualifications of O Const Art V §1, 4 and 6, and RC 3503.01; otherwise it would be unconstitutional in its application to such cases.

20 Misc 222, 250 NE(2d) 104 (CP, Fulton 1969), In re Special Election for Seven-Mill Operating Levy for Gorham-Fayette Local School Dist. An election, at which there were an insufficient number of ballots available for all electors who sought to vote, violates the rights of those denied their franchise assured by O Const Art V §1, and will be declared void upon a petition filed by certain of such electors.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. A federal parolee is entitled to vote in an Ohio election.

3. Elector qualifications

a. In general

1962 OAG 3383. Every person who has the qualifications of an elector under the provisions of O Const Art V §1, and RC 3503.01, is a qualified elector within the purview of O Const Art X §4, and such person is eligible to sign a county charter commission petition under said §4, and RC 3503.06, requiring that in registration precincts only registered electors may sign certain petitions, does not apply to the signers of such a petition.

b. Residence; citizenship

36 OS(2d) 17, 303 NE(2d) 77 (1973), Kyser v Cuyahoga County Bd of Elections; appeal dismissed by 415 US 970, 94 SCt 1547, 39 LEd(2d) 863 (1974). A post office box number cannot be used to fulfill the requirement of "residence" in RC 3503.01 by a person attempting to register to vote.

22 CC(NS) 314, 28 CD 481 (Cuyahoga 1908), State ex rel Weber v Hathaway. The residence which RS 1536-613 requires is the same required to qualify a person as an elector; thus, residence is that place in which a person's habitation is fixed, without any present intent of removing therefrom and to which, whenever absent, the person has an intention of returning.

12 CC(NS) 433, 20 CD 765 (Delaware 1902), Wickham v Coyner. The word residence as used in the Ohio Constitution has substantially the same meaning of habitation, domicile, or place of abode, and for anyone, including a student, to acquire a new residence, when under no disability to choose, two things must occur: (1) the fact of removal and (2) an intention to remain.

6 CC(NS) 33, 17 CD 529 (Cuyahoga 1905), State ex rel Keeler v Collister. Where at the time of parties' election to office or at the time they assume to enter on the duties of their offices, neither is a United States citizen, as required by O Const Art XV §4 and Art V §1, both must be ousted from their elected offices.

332 FSupp 1195 (SD Ohio 1971), Anderson v Brown. The statutes applying residence as a test to most voters and residence plus the establishment of a home for permanent residence for students violate the equal protection clause and are unconstitutional.

319 FSupp 862, 30 Misc 19 (ND Ohio 1970), Howe v Brown. The one-year residency requirement for voting in Ohio is valid.

1960 OAG 1187. A member of the military service who is stationed at a military base within this state but who lives off the premises of such base is not prohibited by O Const Art V §5 from being considered a resident of this state for voting purposes if he otherwise meets the requirements of RC 3503.01. (Annotation from former O Const Art V §5.)

c. Age

1941 OAG 4013. In considering O Const Art XV §4 and Art V §1, a person otherwise qualified who will attain the age of twenty-one years on or before the date of the next general election may be a candidate in the party primary for that election.

1916 OAG 1988. If a person is otherwise qualified to vote, then voting is permissible at an election held the day before the person reaches majority.

4. Voter registration

43 OS 548, 3 NE 538 (1885), Daggett v Hudson. A voter registration regulation which requires a voter to register during a specific seven-day period or lose his right to vote, which does not allow persons absent from a ward during the time allotted to register either before or after the allotted time, is an abridgement and impairment of the right to vote under the guise of regulation, violates O Const Art V §1, and is void.

114 App 497, 177 NE(2d) 616 (1961), State ex rel Krupansky v Green. Where a woman arranges by antenuptial written contract to retain her maiden name and so notifies the board of elections which notes on her registration card that she "is married" and "will retain her single name," and where, after her marriage, she uses only her single name in all her activities, is known only by such name, and votes thereunder in three elections, a declaration of candidacy and nominating petition filed by such woman under and using her single name is not for such reason invalid.

72 Abs 465, 135 NE(2d) 789 (App, Franklin 1956), State v Roche. An elector whose name is removed from the registration rolls for failure to vote is not thereby ineligible to serve as a juror, and service by such a juror does not constitute prejudicial error. (See also State v Roche, 72 Abs 462, 135 NE(2d) 789 (App, Franklin 1955).)

1958 OAG 2399. In providing a place of registration a board of elections may not locate such registration facility on the grounds of an organization or agency which charges a fee for admission to such grounds.

O Const V § 2 By ballot

All elections shall be by ballot.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: This section is identical to §2, Article IV, 1802 Ohio Constitution. The federal Constitution mentions voting by ballot only in connection with the Electoral College. §1, Article II and the Twelfth Amendment, US Constitution. When the original Ohio section was adopted in 1802, "ballot" had come to mean a paper ballot (rather than white or black balls, from which the word is derived). When voting machines were introduced their use was challenged, but the requirement for voting by ballot was construed as mandating any method which would protect secrecy in voting, as contrasted with a voice vote or show of hands. State ex rel Automatic Registering Co v Green, 121 OS 301, 168 NE 131 (1929).

CROSS REFERENCES

Presidential ballots, Ch 3504
General and special election ballots, 3505.01 to 3505.17
Voting and tabulating equipment, Ch 3506
Voting machines, Ch 3507
Absentee ballots, Ch 3509
Armed services absentee ballots, Ch 3511

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 12, Business Relationships § 790; 36, Domicil § 14; 37, Elections § 9, 110, 137
Am Jur 2d: 26, Elections § 202

NOTES ON DECISIONS AND OPINIONS

121 OS 301, 168 NE 131 (1929), State ex rel Automatic Registering Machine Co v Green. This constitutional requirement does not invalidate use of voting machines. The term "ballot" designates a method of conducting elections which will insure secrecy as distinguished from open or viva voce voting.

87 OS 12, 99 NE 1078 (1912), State ex rel Weinberger v Miller. The constitutional requirement (O Const Art V §2) that all elections shall be by ballot (using the singular number) is not violated by the act requiring judges to be elected by separate ballot, thus requiring plural ballots.

55 OS 224, 45 NE 195 (1896), State ex rel Batemen v Bode. The general assembly has the power to legislate that the name of a candidate for office shall appear only once on a ticket or ballot prepared by the board of elections since no form of ballot is prescribed by the Ohio Constitution and where the form of the ballot or ticket adopted is clearly a ballot under O Const Art V §2.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. As applied to legal voters, that provision of RC 3515.12 which provides that any witness who voted at an election may be required to answer touching his qualifications as a voter and for whom he voted is unconstitutional.

77 Abs 570, 143 NE(2d) 879 (CP, Montgomery 1957), Dayton v Horstman. Where a city charter expressly prohibits write-in votes on a ballot for city commissioners, the court will not order a municipal primary to be held solely for the purpose of permitting write-in votes.

O Const V § 2a Office type ballot; laws to provide for reasonable equal position of names on ballot

The names of all candidates for an office at any election shall be arranged in a group under the title of that office. The general assembly shall provide by law the means by which ballots shall give each candidate's name reasonably equal position by rotation or other comparable methods to the extent practical and appropriate to the voting procedure used. At any election in which a candidate's party designation appears on the ballot, the name or designation of each candidate's party, if any, shall be printed under or after

each candidate's name in less prominent type face than that in which the candidate's name is printed. An elector may vote for candidates (other than candidates for electors of President and Vice President of the United States, and other than candidates for governor and lieutenant governor) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.

HISTORY: 1976 SJR 4, am. eff. 6-8-76
1975 HJR 12, am. eff. 11-4-75; 123 v 964, adopted eff. 11-8-49

COMMENTARY

Editor's Comment

1990: This section mandates use of the "office type" ballot, so-called because it requires that the office for which candidates are running be emphasized, and that all candidates for the office be grouped under it. It also requires de- emphasizing party designations, and compels a fair rotation of names on the ballot. The exception as to ballots for voting for presidential electors is designed to avoid the problem of the "bedsheet" ballot, i.e., the large, unwieldy ballot which would result if all individual candidates for presidential elector are listed.

The office-type ballot is designed to promote intelligent choices by the voters, and to prevent certain practices whereby an election can be unduly influenced by imaginative structuring of the ballot, such as "voting the straight ticket" with a single "X" or placing a certain candidate's name first on every ballot.

The requirements for ballots, including voting machines and similar equipment and absentee ballots, are governed by RC Ch 3504 to 3511. Ballot forms generally are covered in RC 3505.01 to 3505.17. Specifications for office type ballots are given in RC 3505.03.

CROSS REFERENCES

Office type ballot; rotation of names, 3505.03
Rotation of names on voting machines, 3507.06

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 9, 110, 120, 121, 124, 225
Am Jur 2d: 26, Elections § 202 to 224

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Name placement and rotation
3. Voting machines

1. In general

39 OS(2d) 130, 314 NE(2d) 172 (1974), State ex rel Roof v Hardin County Bd of Commrs. The provision of O Const Art V §2a, with respect to the rotation of names of candidates is self-executing.

170 OS 30, 162 NE(2d) 118 (1959), State ex rel Wesselman v Hamilton County Elections Bd; overruled by 7 OS(2d) 85, 218 NE(2d) 428 (1966), State ex rel Sibarco Corp v Berea. The provisions of the first sentence of O Const Art V, § 2a are self-executing.

156 OS 147, 101 NE(2d) 289 (1951), State ex rel Russell v Bliss. The provision of O Const Art V §2a, that "the names of all candidates for an office at any general election shall be arranged in a group under the title of that office, and shall be so alternated that each name shall appear (in so far as may be reasonably possible) substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs", is self-executing.

155 OS 607, 99 NE(2d) 779 (1951), State ex rel Sherrill v Brown. The provisions of the Cincinnati charter relative to the election of municipal officers are neither inconsistent with nor in conflict with O Const Art V §2a.

152 OS 308, 89 NE(2d) 641 (1949), State ex rel Duffy v Sweeney. Initiated proposal to adopt O Const Art V §2a became effective thirty days after approval by majority of electors voting thereon.

2. Name placement and rotation

39 OS(2d) 130, 314 NE(2d) 172 (1974), State ex rel Roof v Hardin County Bd of Commrs. When voting machines are used in a general election and there is no rotation of the names of candidates for an office on the voting machines within each precinct for each succeeding voter, but only rotation of the names of candidates on the voting machines precinct by precinct, such precinct-by-precinct rotation does not comply with the requirement of Ohio Constitution, and such rotational procedure is therefore, unconstitutional (satisfactory rotational procedure suggested in opinion).

170 OS 30, 162 NE(2d) 118 (1959), State ex rel Wesselman v Hamilton County Elections Bd; overruled by 7 OS(2d) 85, 218 NE(2d) 428 (1966), State ex rel Sibarco Corp v Berea. The amendment to RC 3507.07 effective October 15, 1959, with respect to rotating names on ballots is unconstitutional.

87 Abs 137, 174 NE(2d) 637 (CP, Montgomery 1960), Schell v Studebaker; appeal dismissed by 171 OS 565, 173 NE(2d) 107 (1961). That plaintiff's name appeared in the first position in 88 precincts while the names of the other candidates appeared in that position in 133 precincts did not justify setting aside the results of the election.

66 Abs 130, 116 NE(2d) 317 (CP, Mahoning 1953), Bees v Gilronan; appeal dismissed by 159 OS 186, 111 NE(2d) 395 (1953). Irregularity in failing to print ballot forms for voting machines to secure an alternation in regular sequence so that each candidate's name would appear a substantially equal number of times in each position due to lack of official supervision of the printer's work is not a matter of substance requiring setting aside an election.

66 Abs 130, 116 NE(2d) 317 (CP, Mahoning 1953), Bees v Gilronan; appeal dismissed by 159 OS 186, 111 NE(2d) 395 (1953). The term "under" as used in O Const Art V §2a means "inferior" or subordinate, rather than "below in position."

3. Voting machines

39 OS(2d) 130, 314 NE(2d) 172 (1974), State ex rel Roof v Hardin County Bd of Commrs. O Const Art V §2a, does not absolutely prohibit the use of voting machines.

39 OS(2d) 130, 314 NE(2d) 172 (1974), State ex rel Roof v Hardin County Bd of Commrs. When voting machines are used in a general election and there is no rotation of the names of candidates for an office on the voting machines within each precinct for each succeeding voter, but only rotation of the names of candidates on the voting machines precinct by precinct, such precinct-by-precinct rotation does not comply with the requirement of Ohio Constitution, and such rotational procedure is therefore, unconstitutional (satisfactory rotational procedure suggested in opinion).

66 Abs 130, 116 NE(2d) 317 (CP, Mahoning 1953), Bees v Gilronan; appeal dismissed by 159 OS 186, 111 NE(2d) 395 (1953). Irregularity in failing to print ballot forms for voting machines to secure an alternation in regular sequence so that each candidate's name would appear a substantially equal number of times in each position due to lack of official supervision of the printer's work is not a matter of substance requiring setting aside an election.

1957 OAG 984. Under the Sandusky city charter the general laws of the state relative to the use of voting machines in municipal elections are applicable, and may be used in the election of a city commissioner.

O Const V § 4 Exclusion from franchise

The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.

HISTORY: 1976 SJR 16, am. eff. 6-8-76
1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: Forfeiture of various rights upon conviction of felony is almost universal among the states, and §4, Article V is a typical measure. "Felony" is defined in RC 2901.02(C), (D), and (E). Under RC 2961.01, a person convicted of a felony under Ohio law or the law of another state or the United States "is incompetent to be an elector or juror, or to hold an office of honor, trust, or profit." Probation, parole, or a conditional pardon stays these disqualifications until final discharge removes them, and a full pardon restores all rights. RC 3503.18 requires the Clerk of Courts to file monthly reports with the Board of Elections listing persons disenfranchised by conviction, and requires the Board to cancel the voter registration of such persons.

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 15.11

CROSS REFERENCES

Disenfranchisement of convicted felons; restoration of franchise, 2961.01
Challenging voters, 3505.19 to 3505.21
Second offender under election laws disenfranchised, 3599.39
Person detained for drug abuse treatment retains right to vote, 3720.05

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 25, Criminal Law § 6; 26, Criminal Law § 422; 37, Elections § 50, 70, 286
Am Jur 2d: 25, Elections § 93, 94
What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime. 36 ALR2d 1238
Elections: effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Disenfranchisement of convicts
3. Non-Ohio convictions

1. In general

69 Abs 556, 118 NE(2d) 713 (CP, Franklin 1954), Papatheodoro v Liquor Control Dept. The statutory provision that no person convicted of a felony may receive a liquor permit is constitutional.

2. Disenfranchisement of convicts

83 OS 408, 94 NE 743 (1911), Grooms v State. GC 13314 (Repealed), providing for the exclusion from the right of suffrage of one who sells his vote is within the express authority conferred upon the general assembly by O Const Art V §4, to exclude "any person convicted of bribery, perjury or other infamous crime."

58 OS 30, 50 NE 6 (1898), Mason v State ex rel McCoy. Legislation directing the commencement of an action by the prosecuting attorney at the instance of the attorney general to inquire into the title to an office of a successful candidate charged with unlawful acts and authorizing a court to render judgment declaring the person's election void and excluding the person from office on finding that any of the charges against him are true is valid.

62 App(3d) 417, 575 NE(2d) 1186 (Franklin 1989), Hughes v Brown. There is no requirement for a hearing pursuant to RC 3.07 prior to forfeiture of a public office where the officeholder has been convicted of a felony; the appeal of a felony conviction does not operate to negate the conviction.

3 App(3d) 40, 3 OBR 43, 443 NE(2d) 1034 (Cuyahoga 1982), State ex rel Corrigan v Barnes. RC 2961.01, which prevents a person convicted of a felony, in this or any other state or the United States unless conviction is reversed or annulled, from being an elector or juror, or from holding an office of honor, trust, or profit, does and may not apply to persons who committed felonies under federal law prior to the effective date of the statute's 1974 amendment.

471 US 222, 105 SCt 1916, 85 LEd(2d) 222 (1985), Hunter v Underwood. A state constitutional provision disenfranchising individuals convicted of misdemeanors involving moral turpitude which are committed by more blacks than whites violates US Const Am 14 only where it is proved that racial reasons were a substantial factor behind its enactment and where the state does not show that the provision would have been enacted if not for this consideration.

418 US 24, 94 SCt 2655, 41 LEd(2d) 551 (1974), Richardson v Ramirez. The Equal Protection Clause of US Const Am 14 does not prevent the exclusion from franchise of convicted felons who have completed their sentences and paroles.

3. Non-Ohio convictions

3 App(3d) 40, 3 OBR 43, 443 NE(2d) 1034 (Cuyahoga 1982), State ex rel Corrigan v Barnes. RC 2961.01, which prevents a person convicted of a felony, in this or any other state or the United States unless conviction is reversed or annulled, from being an elector or juror, or from holding an office of honor, trust, or profit, does and may not apply to persons who committed felonies under federal law prior to the effective date of the statute's 1974 amendment.

90 Abs 257, 185 NE(2d) 809 (CP, Putnam 1962), In re Sugar Creek Local School Dist. A federal parolee is entitled to vote in an Ohio election.

1950 OAG 1499. A person convicted of a federal crime in a federal court does not lose his right to vote in Ohio, and the qualifications of a voter are determined in accordance with GC 4785-31 (now RC 3503.02).

1927 OAG 242. Since there is no federal statute depriving a person convicted of a felony denounced by the federal penal code of his United States citizenship, with a consequential forfeiture of citizenship in Ohio, and since there is no Ohio statute making provision for the forfeiture of citizenship of a person so convicted, a person who has served a term of imprisonment in the federal prison at Atlanta for the commission of a felony under the laws of the United States is still a citizen of the United States and of the state of Ohio.

O Const V § 6 Idiots or insane persons

No idiot, or insane person, shall be entitled to the privileges of an elector.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

COMMENTARY

Editor's Comment

1990: This section directly denies the right to vote to mentally incompetent persons. RC 5122.301 requires an adjudication of incompetence in order to disqualify a mentally ill person from voting. RC 3503.18 directs the Probate Court to file monthly reports with the Board of Elections listing persons disenfranchised

by reason of mental illness, and requires the Board to cancel the voter registration of such persons.

CROSS REFERENCES

Mentally ill, mentally retarded, and developmentally disabled persons; residence for voting purposes, 3503.04
Mentally ill and retarded persons; registration; cancellation, 3503.18
Challenging voters, 3505.19 to 3505.21
Absentee ballots for handicapped persons, 3509.02

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 49; 64, Jury § 92; 90, Trial § 613
Am Jur 2d: 25, Elections § 88
Voting rights of persons mentally incapacitated. 80 ALR3d 1116

NOTES ON DECISIONS AND OPINIONS

19 OS 306 (1869), Sinks v Reese. Where a man is not shown by the evidence to be either a lunatic or an idiot, but instead one whose mind is greatly enfeebled by age, he is not legally disqualified from voting.

16 App(2d) 140, 242 NE(2d) 672 (1968), State ex rel May v Jones. RC 3503.05 cannot disfranchise a student or wife of a student who satisfies the qualifications of O Const Art V §1, 4 and 6, and RC 3503.01, otherwise it would be unconstitutional in its application to such cases.

15 Misc 215, 237 NE(2d) 629 (CP, Marion 1968), Baker v Keller. As used in O Const Art V §6, "idiot" means a person who has been without understanding since birth and "insane person" means one who has suffered such a deprivation of reason that he is no longer capable of understanding and acting with discretion and judgment in the ordinary affairs of life.

O Const V § 7 Direct primary elections

All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors in a manner provided by law. Each candidate for such delegate shall state his first and second choices for the presidency, but the name of no candidate for the presidency shall be so used without his written authority.

HISTORY: 1975 SJR 10, am. eff. 1-1-76
1912 constitutional convention, adopted eff. 1-1-13

COMMENTARY

Editor's Comment

1990: Direct primary elections, required by this section, were among the reform measures advocated by the Progressive Movement of the late nineteenth and early twentieth centuries. For a discussion of the movement, see Commentary to §33, Article II. Formerly, candidates were usually nominated in party conventions, and the de facto choices often were made through bargains struck by a few party leaders in "smoke-filled rooms."

CROSS REFERENCES

Primaries; nominations, Ch 3513
Direct primary for township, or municipality under 2000 population, only by majority petition, 3513.01
Primary election for selection of national political convention delegates, 3513.12
Township officers nominated by petition, 3513.253
Board of education candidates nominated by petition, 3513.254

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 37, Elections § 77, 257
Am Jur 2d: 25, Elections § 145 to 163

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Primary election
3. Nomination by petition
4. Vacancy

1. In general

5 Cin L Rev 408 (November 1931). Selection, Tenure, Retirement and Compensation of Judges in Ohio, Francis R. Aumann.

OAG 68-013. A political party formed pursuant to RC 3517.01 must have a state convention to nominate its presidential electors pursuant to RC 3513.11, and a national convention to nominate its presidential candidate pursuant to RC 3513.12, in order for its candidate to have a place on the presidential ballot.

2. Primary election

1940 OAG 1696. Candidates for offices in newly incorporated village having a population of two thousand or more may be chosen either in a primary election or by nominating petitions.

1939 OAG 745. Under provisions of GC 4785-90 (RC 3513.25), nominations of candidates for all elective offices in any township and for all elective offices in a municipality which has according to next preceding federal census a population of less than two thousand, shall be made by petition unless electors of township or of such municipality petition board of elections for a direct primary, in manner set forth in said section.

3. Nomination by petition

106 OS 516, 140 NE 878 (1922), State ex rel Conner v Noctor. GC 4996 provides for nomination by petition for state, district, and county officers, but clearly has no application to municipal or ward officers.

118 App 161, 193 NE(2d) 540 (1963), State ex rel Rose v Ryan. The provisions of the charter of the city of Columbus establishing deadlines or cut-off dates for the filing of petitions for election to municipal offices are not an unreasonable limitation and are constitutional.

1964 OAG 1512. Members of a commission selected to frame a municipal charter as provided by O Const Art XVIII §8, are not municipal officers, and candidates for election to such commission are not candidates for nomination for an elective municipal office within the meaning of O Const Art V §7 and there is no requirement in law that such candidates file petitions in accordance with RC 3513.251 and 3513.252.

1940 OAG 1696. Candidates for offices in newly incorporated village having a population of two thousand or more may be chosen either in a primary election or by nominating petitions.

1939 OAG 745. Under provisions of GC 4785-90 (RC 3513.25), nominations of candidates for all elective offices in any township and for all elective offices in a municipality which has according to next preceding federal census a population of less than two thousand, shall be made by petition unless electors of township or of such municipality petition board of elections for a direct primary, in manner set forth in said section.

4. Vacancy

175 OS 238, 193 NE(2d) 270 (1963), State ex rel Gottlieb v Sulligan. A person selected as a party candidate for an office in a primary election who withdraws his candidacy for that office is eligible for selection as a party candidate by the party committee to

fill a vacancy in the nomination for another office created by the withdrawal of the candidate originally nominated.

113 App 55, 177 NE(2d) 300 (1960), State ex rel Lynch v Chesney. RC 3513.31 provides the only method for selection of a candidate for the unexpired term of an incumbent judge of the court of appeals who dies after the primary election but more than forty days before the day of the next general election.

1960 OAG 1787. A person who seeks a party nomination for an office or position at a primary election by declaration of candidacy is not eligible to be certified as the candidate of a political party at the following general election to fill the unexpired term of a person who holds an elective office and who dies subsequently to the one-hundredth day before the day of a primary election and prior to the fortieth day before the day of the next general election.

Article X

COUNTY AND TOWNSHIP ORGANIZATIONS

O Const X § 4 County charter commission; selection; duties

The Legislative authority (which includes the Board of County Commissioners) of any county may by a two-thirds vote of its members, or upon petition of eight per cent of the electors of the county as certified by the election authorities of the county shall forthwith, by resolution submit to the electors of the county the question, "Shall a county charter commission be chosen?" The question shall be voted upon at the next general election, occurring not sooner than ninety-five days after certification of the resolution to the election authorities. The ballot containing the question shall bear no party designation. Provision shall be made thereon for the election to such commission from the county at large of fifteen electors if a majority of the electors voting on the question have voted in the affirmative.

Candidates for such commission shall be nominated by petition of one per cent of the electors of the county. The petition shall be filed with the election authorities not less than seventy-five days prior to such election. Candidates shall be declared elected in the order of the number of votes received, beginning with the candidate receiving the largest number; but not more than seven candidates residing in the same city or village may be elected. The holding of a public office does not preclude any person from seeking or holding membership on a county charter commission nor does membership on a county charter commission preclude any such member from seeking or holding other public office, but not more than four officeholders may be elected to a county charter commission at the same time. The legislative authority shall appropriate sufficient sums to enable the charter commission to perform its duties and to pay all reasonable expenses thereof.

The commission shall frame a charter for the county or amendments to the existing charter, and shall, by vote of a majority of the authorized number of members of the commission, submit the same to the electors of the county, to be voted upon at the next general election next following the election of the commission. The commission shall certify the proposed charter or amendments to the election authorities not later than seventy-five days prior to such election. Amendments to a county charter or the question of the repeal thereof may also be submitted to the electors of the county in the manner provided in this section for the submission of the question whether a charter commission shall be chosen, to be voted upon at the first general election occurring not sooner than sixty days after their submission. The legislative authority or charter commission submitting any charter or amendment shall, not later than thirty days prior to the election on such charter or amendment, mail or otherwise distribute a copy thereof to each of the electors of the county as far as may be reasonably possible, except that, as provided by law, notice of proposed amendments may be given by newspaper advertising. Except as provided in Section 3 of this Article, every charter or amendment shall become effective if it has been approved by the majority of the electors voting thereon. It shall take effect on the thirtieth day after such approval unless another date be fixed therein. When more than one amendment, which shall relate to only one subject but may affect or include more than one section or part of a charter, is submitted at the same time, they shall be so submitted as to enable the electors to vote on each separately. In case more than one charter is submitted at the same time or in case of conflict between the provisions of two or more amendments submitted at the same time, that charter or provision shall prevail which received the highest affirmative vote, not less than a majority. If a charter or amendment submitted by a charter commission is not approved by the electors of the county, the charter commission may resubmit the same one time, in its original form or as revised by the charter commission, to the electors of the county at the next succeeding general election or at any other election held throughout the county prior thereto, in the manner provided for the original submission thereof.

The legislative authority of any county, upon petition of ten per cent of the electors of the county, shall forthwith, by resolution, submit to the electors of the county, in the manner provided in this section for the submission of the question whether a charter commission shall be chosen, the question of the adoption of a charter in the form attached to such petition.

Laws may be passed to provide for the organization and procedures of county charter commissions, including the filling of any vacancy which may occur, and otherwise to facilitate the operation of this section. The basis upon which the required number of petitioners in any case provided for in this section shall be determined, shall be the total number of votes cast in the county for the office of Governor at the last preceding general election therefor.

The foregoing provisions of this section shall be self-executing except as herein otherwise provided.

HISTORY: 1978 SJR 11, am. eff. 11-7-78
115 v Pt 2, 443, adopted eff. 11-7-33

Note: Former Art X, § 4 repealed by 115 v Pt 2, 443, eff. 11-7-33; 82 v 449, am. eff. 10-13-1885; 1851 constitutional convention, adopted eff. 9-1-1851.

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.04
Gotherman & Babbit, Ohio Municipal Law, Text 51.05

CROSS REFERENCES

Proposition to adopt alternative form of county government stayed pending proposition to choose charter commission or adopt charter, 302.03
County charter commission; payment of expenses, 307.70
County and joint garbage and refuse disposal districts, board of county commissioners defined, 343.01
Joint economic development districts, 715.70
Solid and hazardous wastes, board of county commissioners defined, 3734.01

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Civil Servants and Other Public Officers and Employees § 30; 16, Constitutional Law § 281, 282; 19, Counties, Townships, and Municipal Corporations § 30, 31; 20, Counties, Townships, and Municipal Corporations § 53, 488; 37, Elections § 35
Am Jur 2d: 56, Municipal Corporations, Counties and Other Political Subdivisions § 30 et seq., 126 et seq.

NOTES ON DECISIONS AND OPINIONS

16 OS(2d) 65, 242 NE(2d) 655 (1968), Blacker v Wiethe. O Const Art X §3 and 4 do not constitute a limitation on the power of the general assembly under §1 of that article by general laws to provide "for the . . . government of counties" and for "alternative forms of county government" for submission to the electors of a county and approval by a majority of those voting thereon.

129 OS 290, 195 NE 63 (1935), State ex rel Bricker v Gessner. Membership on a county charter commission, created under O Const Art X §4, constitutes the holding of a public office of trust.

1962 OAG 3383. The fact that signatures affixed to a county charter commission petition under O Const Art X §4, have been written with a lead pencil does not render such signatures invalid.

1962 OAG 3383. Every person who has the qualifications of an elector under the provisions of O Const Art V §1, and RC 3503.01, is a qualified elector within the purview of O Const Art X §4, and such person is eligible to sign a county charter commission petition under said §4, and RC 3503.06, requiring that in registration precincts only registered electors may sign certain petitions, does not apply to the signers of such a petition.

1959 OAG 767. Distribution of copies of a proposed county charter or an amendment thereto to each elector of a registration precinct who registered for the last general election and to each elector of a nonregistration precinct who signed the poll book in the last general election is in compliance with O Const Art X §4, but mailing a copy to the occupant of each of a list of house members obtained from a direct mail organization or publication in a newspaper is not.

Article XV

MISCELLANEOUS

O Const XV § 4 Officers to be qualified electors

No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector.

HISTORY: 125 v 1094, am. eff. 11-3-53
103 v 992, am. eff. 1-1-14; 1851 constitutional convention, adopted eff. 9-1-1851

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.03, 13.03
Gotherman & Babbit, Ohio Municipal Law, Text 15.11

CROSS REFERENCES

Officers to hold office until successors are qualified, 3.01
Term of appointee to elective office, 3.02
Age and residence of voters; 30-day registration, 3503.01
Person who will be 18 at general election may vote in primary, 3503.011
Rules for determining residence, 3503.02
Residence of inmates in veterans' homes or public or private institutions, 3503.03, 3503.04
Voter registration, 3503.06 to 3503.33
Qualifications of elector, O Const Art V §1
Convicted felons may be excluded from franchise, O Const Art V §4
Idiots and insane persons not entitled to voting privileges, O Const Art V §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 14, Civil Servants and Other Public Officers and Employees § 33; 15, Civil Servants and Other Public Officers and Employees § 45; 20, Counties, Townships, and Municipal Corporations § 51, 136, 172, 192, 336, 352, 584; 22, Courts and Judges § 39, 191; 37, Elections § 69; 84, State of Ohio § 81
Am Jur 2d: 63A, Public Officers and Employees § 36 to 60

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Office defined
3. Qualifications of elector
4. Residence

1. In general

171 OS 295, 170 NE(2d) 428 (1960), State ex rel Jeffers v Bowers. Vacancy on the ballot caused by death of a duly nominated candidate for the office of county engineer may be filled by the selection of a person who is a registered professional engineer and a registered surveyor licensed to practice in this state, and who is a resident and elector of this state, but it is not necessary for him to be a resident and elector of the county in which he is selected.

94 OS 403, 115 NE 29 (1916), State ex rel McNamara v Campbell. Under O Const Art XVI §1, that an amendment if adopted shall become part of the constitution, means as soon as adopted, and a clause in a proposed amendment, postponing its operation until a later date is unauthorized unless the postponement as well as the amendment was submitted to the electors. Hence the amendment to O Const Art XV §4, making women eligible to certain offices was in force when adopted and when relator was appointed.

23 App 21, 155 NE 147 (1926), State ex rel Durczynski v Meyer. Petition for mandamus to compel township trustees to approve official bond of justice of the peace is held demurrable for failure to allege that relator was a duly qualified elector of the township for which he was elected.

491 US 95, 109 SCt 2324, 105 LEd(2d) 74 (1989), Quinn v Millsap. A provision of a state constitution requiring real property ownership by a person serving on a board of freeholders that considers proposals for reorganizing city and county governments violates the Equal Protection Clause of the Fourteenth Amendment on its face; membership on the board of freeholders is a form of public service, even if the board only recommends a proposal to the electorate and does not enact laws directly, and the Equal Protection Clause protects a non-property owner's right to be considered for appointment without the burden of invidiously discriminatory disqualifications. (Ed. note: Missouri Constitution construed in light of federal constitution.)

111 SCt 2395, 115 LEd(2d) 410 (1991), Gregory v Ashcroft. It is obviously essential to the independence of the states that their power to prescribe the qualifications of their own officers should be exclusive and free from external interference, except so far as plainly provided by the constitution; congressional interference with the decision of the people of a state defining their constitutional officers would upset the constitutional balance of federal and state powers and the federal courts must be certain of congress' intent before finding a federal law overrides this balance.

1944 OAG 6635. A declaration of candidacy for office of county engineer and an accompanying petition presented by or on behalf of person in army of United States may not legally be rejected for filing merely because an order of secretary of war prohibits a person in army of United States from becoming candidate for public office.

2. Office defined

57 OS 415, 49 NE 404 (1898), State ex rel Attorney General v Jennings. Firemen are not public officers but are employed by a city as laborers.

29 OS 102 (1876), State ex rel Attorney General v Covington. A statute which imposes disqualifications on an individual attempting to join a police force is not in conflict with O Const Art XV §4, which prescribes qualifications for public office.

55 Abs 490, 89 NE(2d) 706 (CP, Mahoning 1948), La Polla ex rel Youngstown v Davis; appeal dismissed by 151 OS 550, 86 NE(2d) 615 (1949). A city charter which provides that a mayor may appoint a chief of police, a position which is under the unclassified civil service, does not make the chief of police an occupant of public office under O Const XV §4 and a person appointed to that position is eligible to appointment despite his residence out of state until the date before his appointment.

13 NP(NS) 73, 23 D 77 (CP, Franklin 1912), Parkinson v Crawford. An officer is one who exercises in an independent capacity a public function in the interest of the people by virtue of law on whom the performance of independent statutory duties is devolved, which to a certain extent involve the exercise of part of state sovereignty, and an elector is one who meets the qualifications of O Const Art V §1.

8 NP 148, 10 D 577 (CP, Cuyahoga 1900), State ex rel Vail v Craig. Deputy state supervisors of elections are not officers within the legal definition of that term.

3. Qualifications of elector

94 OS 403, 115 NE 29 (1916), State ex rel McNamara v Campbell. Under O Const Art XVI §1, that an amendment if adopted shall become part of the constitution, means as soon as adopted, and a clause in a proposed amendment, postponing its operation until a later date is unauthorized unless the postponement as well as the amendment was submitted to the electors. Hence the amendment to O Const Art XV §4, making women eligible to certain offices was in force when adopted and when relator was appointed.

6 CC(NS) 33, 17 CD 529 (Cuyahoga 1905), State ex rel Keeler v Collister. Where parties are not at the time of their election to office or at the time they assumed to enter the duties of their offices citizens of the US under O Const Art V §1 as required by O Const Art XV §4, both must be ousted from their elected offices.

1954 OAG 3999. A minor may serve as a deputy of the clerk of common pleas or probate court and administer oaths in all instances in which a deputy clerk is authorized to do so.

1941 OAG 4013. In considering O Const Art XV §4 and Art V §1, a person otherwise qualified who will attain the age of twenty-one years on or before the date of the next general election may be a candidate in the party primary for that election.

4. Residence

OAG 92-008. Pursuant to O Const Art XV §4, a person must be a resident of the state of Ohio in order to be elected or appointed to a public office.

OAG 92-008. If the governor appoints a nonresident of the state to an office, as that term is used in O Const Art XV §4, as a board or commission member, the appointment is a nullity.

OAG 75-067. A candidate seeking the office of municipal court judge must, pursuant to O Const Art XV §4, and RC 3503.01, be a resident of this state, of the involved county and of the involved precinct for thirty days immediately preceding the election.

1942 OAG 4775. Board of education of rural school district may elect as its clerk, a person who is not an elector of such school district or township in which such school district is situated.

Article XVI

AMENDMENTS

O Const XVI § 1 Constitutional amendment proposed by joint resolution of General Assembly; procedure

Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be filed with the secretary of state at least ninety days before the date of the election at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the general assemby may prescribe.

The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board, consisting of the secretary of state and four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party. The ballot language shall properly identify

the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal. The board shall also prepare an explanation of the proposal, which may include its purpose and effects, and shall certify the ballot language and the explanation to the secretary of state not later than seventy-five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.

The supreme court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case challenging the ballot language, the explanation, or the actions or procedures of the general assembly in adopting and submitting a constitutional amendment shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

Unless the general assembly otherwise provides by law for the preparation of arguments for and, if any, against a proposed amendment, the board may prepare such arguments.

Such proposed amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The general assembly shall provide by law for other dissemination of information in order to inform the electors concerning proposed amendments. An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor invalidated because the explanation, arguments, or other information is faulty in any way. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

HISTORY: 1974 HJR 61, am. eff. 5-7-74
1912 constitutional convention, am. eff. 1-1-13; 1851 constitutional convention, adopted eff. 9-1-1851

CROSS REFERENCES

Publishing proposed constitutional amendments, ballot language, and arguments pro and con, 7.101

Newspaper of general circulation, 7.12

Time for holding election on constitutional amendments, 3501.02

Ohio ballot board, creation, organization, 3505.061

Preparation of ballot containing proposal to amend constitution, 3505.062

Preparing and disseminating arguments for and against proposed constitutional amendment, 3505.063

Ratification of amendment to US Constitution by state convention, Ch 3523

Initiative and referendum to amend constitution, O Const Art II §1, 1a

Petition, ballot, language by Ohio ballot board, O Const Art II §1g

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 16, Constitutional Law § 1, 22 to 24, 26, 27

Am Jur 2d: 16, Constitutional Law § 29 to 57

Injunctive relief against submission of constitutional amendment, statute, municipal charter, or municipal ordinance, on ground that proposed action would be unconstitutional. 19 ALR2d 519

NOTES ON DECISIONS AND OPINIONS

1. Scope and construction
2. Separate amendments
3. Failure to comply with procedures
4. Effective date of amendments
5. Publication of amendments

1. Scope and construction

67 OS(2d) 516, 426 NE(2d) 493 (1981), State ex rel Bailey v Celebrezze. Proposed ballot language describing proposed amendment to O Const Art II §35, is invalid.

10 OS(2d) 139, 226 NE(2d) 116 (1967), State ex rel Foreman v Brown. O Const Art I §1, empowers the general assembly to provide for submission of a constitutional amendment, proposed by the general assembly pursuant to that section, at a special election on a certain day; and the general assembly may authorize such election by a joint resolution without enacting a statute.

167 OS 71, 146 NE(2d) 287 (1957), State ex rel Sinking Fund Commrs v Brown. Reference, in text of capital improvements bond issue amendment on ballot, to cigarette tax as source of revenue for payment did not invalidate amendment merely because other funds might also be used as source of revenue.

99 OS 168, 124 NE 134, 172 (1919), State ex rel Greenlund v Fulton. Where two amendments to O Const Art XII §2 on the same subject were proposed and approved by an electoral majority, one of which originated with an initiative petition and the other with a resolution of the general assembly, 107 v 144, am. eff. 1-1-19, and where the general assembly's proposal received 140,000 more votes than the initiative proposal, the amendment proposed by the general assembly is the one that amends the constitution, inasmuch as O Const Art II §1b provides that the conflicting proposal receiving the most votes prevails.

218 FSupp 953 (SD Ohio 1963), Nolan v Rhodes; reversed by 378 US 556, 84 SCt 1906, 12 LEd(2d) 1034 (1964). Apportionment of the Ohio house of representatives is constitutional. (See also Nolan v Rhodes, 251 FSupp 584, 7 Misc 1 (SD Ohio 1965); affirmed by 383 US 104, 86 SCt 716, 15 LEd(2d) 616 (1966).)

1961 OAG 2008. The 1959 amendments to O Const Art XVIII §6 are valid.

1936 OAG 5091. A joint resolution authorizing submitting a constitutional amendment to the electors in accordance with O Const Art XVI §1 is not business within the meaning of the term as used in O Const Art III §8 and the general assembly in a special session has no authority to pass a joint resolution submitting a constitutional amendment in accordance with O Const Art XVI §1 unless such action is authorized by the proclamation of the governor calling the general assembly in special session or in a subsequent public proclamation or message issued by the governor to the general assembly during such special session, as provided by O Const Art III §8.

2. Separate amendments

10 OS(2d) 139, 226 NE(2d) 116 (1967), State ex rel Foreman v Brown. The single general object of the proposed Ohio bond commission amendment is the creation of a bond commission to raise funds by issuing bonds; and the fact that the proposal limits the authority of the commission by specifying the purposes for which money may be raised and used does not turn the proposal into a proposal for more than one amendment.

7 OS(2d) 34, 218 NE(2d) 446 (1966), State ex rel Burton v Greater Portsmouth Growth Corp. The fact that a proposed amendment may affect other provisions of the constitution does not necessarily constitute such amendment more than one amendment within the meaning of O Const Art XVI §1.

69 OS 1, 68 NE 574 (1903), State ex rel Sheets v Laylin. The whole scope of O Const Art XVI §1 is that a majority of people can amend the constitution, and, of all the people voting at an election when an amendment to the constitution is submitted, only those should be counted for the amendment who expressly so vote; thus, an act which enables an elector to vote with or against his party, on each or all of any amendments, or to vote separately on each and

every proposed amendment, or to not vote at all if he so desires, does not conflict with the Ohio Constitution.

34 App(2d) 27, 295 NE(2d) 434 (1973), State ex rel Slemmer v Brown. O Const Art XVI §1, requiring that electors be enabled to vote separately on each of several proposed amendments to such constitution, places no limitation upon the general assembly with respect to proposing more than one amendment in a single joint resolution.

44 App 501, 185 NE 212 (1932), State ex rel Lampson v Cook. Constitutional provision that separate amendments to constitution should be submitted separately held mandatory.

20 Misc 257, 251 NE(2d) 5 (CP, Hamilton 1969), State v Foster; superseded by 25 App(2d) 21, 266 NE(2d) 259 (1970). Under O Const Art XVI §1, a proposal consists of only one amendment to the constitution so long as each of its subjects bears some reasonable relationship to a single general purpose or object.

20 Misc 257, 251 NE(2d) 5 (CP, Hamilton 1969), State v Foster; superseded by 25 App(2d) 21, 266 NE(2d) 259 (1970). All of the subjects of the "modern courts amendment" to O Const Art IV, effective May 7, 1968, had a reasonable relationship to the general object of improving the administration of courts.

3. Failure to comply with procedures

7 OS(3d) 5, 7 OBR 317, 454 NE(2d) 1321 (1983), State ex rel Cramer v Brown. The sixty-four day requirement in O Const Art XVI §1, applies to initiatives proposed by the electorate.

64 OS(2d) 1, 411 NE(2d) 193 (1980), State ex rel Cappelletti v Celebrezze. The sixty-four-day time limitation in O Const Art XVI §1 is a "term and condition" incorporated into O Const Art II §1g and, therefore, applicable to initiative petitions.

30 OS(2d) 82, 282 NE(2d) 584 (1972), State ex rel Roahrig v Brown. Where method of submission of proposed constitutional amendment did not meet requirements of O Const Art XVI §1, the proposal should be stricken from ballot.

30 OS(2d) 75, 283 NE(2d) 131 (1972), State ex rel Minus v Brown. Where, in a mandamus action instituted in the supreme court, substantial constitutional question involving state-wide special election on a proposed constitutional amendment is presented, and where relator has acted timely and in good faith, and where court finds because of delay by general assembly in adopting resolution proposing constitutional amendment it is impossible for secretary of state to substantially comply with provisions of RC 3505.01, and where court finds further that because of such delay it is impossible for county boards of elections to substantially comply with RC 3509.01; then, upon such findings by court, it becomes the clear legal duty of secretary of state to strike such proposed constitutional amendment from the ballot, and the court will exercise its jurisdiction.

170 OS 25, 161 NE(2d) 899 (1959), Wichterman v Brown. Where the text of a proposed constitutional amendment was not entered in the house and senate journals until after adjournment, its proposal by the legislature is ineffective and it will be stricken from the ballot.

167 OS 1, 145 NE(2d) 525 (1957), Leach v Brown. Where the senate adopts a resolution submitting a constitutional amendment to the voters, but the resolution as spread on the senate journal does not include amendments approved by a senate committee, and the resolution as passed by the house does include the amendments proposed by the senate committee, an injunction will issue to prohibit placing the amendment on the ballot.

109 App 508, 163 NE(2d) 770 (1959), Wichterman v Brown; affirmed by 170 OS 25, 161 NE(2d) 899 (1959). Where the complete text of a proposed constitutional amendment is not entered on the journals of the general assembly prior to its adjournment, there is no compliance with the provisions of O Const Art XVI §1 that proposed constitutional amendments "shall be entered on the journals;" and such proposed constitutional amendment may not be submitted to the voters.

4. Effective date of amendments

15 OS(2d) 65, 238 NE(2d) 790 (1968), Euclid v Heaton. A majority of the electors voting on the proposed amendment to the Ohio Constitution submitted at the election held May 7, 1968, having voted in favor of its adoption and the secretary of state having certified to that fact, the amendment is effective as of the date of said election by virtue of O Const Art XVI §1, the proposition contained in said resolutions to postpone the effective date of part of said amendment until January 10, 1970, not having been included in the condensed text of the proposed amendment which appeared on the ballot.

15 OS(2d) 65, 238 NE(2d) 790 (1968), Euclid v Heaton. A provision in a joint resolution of the general assembly submitting to the electors a proposed amendment to the constitution that the same shall not go into effect until a time later than that fixed by O Const Art XVI §1, is inoperative and void unless the proposition to postpone the taking effect of such proposed amendment beyond the time named in the constitution is also submitted to the electors of the state and adopted by a majority of those voting on the proposition.

OAG 68-110. A judge who is currently holding office and who otherwise would be eligible for re-election is not disqualified from running for re-election in November, 1968, for the reason that he would have attained the age of seventy years by the time he would assume the office for the term to which he was re-elected.

1961 OAG 2716. While the amendment to O Const Art III, relating to senate confirmation of appointments by the governor, became a part of the constitution as of the date of its approval by the voters, November 7, 1961, the governor was not required to report appointments made between November 7, 1961 to November 21, 1961, to the November session of the senate as the canvassing of the abstracts of vote and the declaration of the secretary of state that the amendment had been approved was not made until December 1, 1961; however, to comply with the spirit of Art II §21, such appointments should be reported to the next session of the senate.

1961 OAG 2716. Since Art III §21 became a part of the constitution on November 7, 1961, appointments requiring senate approval made from November 21, 1961 to December 1, 1961, should be reported to the next session of the senate; and all appointments made after December 1, 1961 should be made in accord with that constitutional provision.

5. Publication of amendments

OAG 91-059. For purposes of O Const Art XVI §1, a newspaper is published in a county when it is issued or circulated to the public therein, regardless of where the newspaper is actually printed.

OAG 91-059. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to O Const Art XVI §1, the provision of RC 7.12 governing instances where there are "less than two newspapers published in" a county applies when only one newspaper is actually printed in a county.

OAG 91-059. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to O Const Art XVI §1, when only one newspaper is actually printed in a county RC 7.12 authorizes selection of a newspaper printed out of the county if, in addition to being a newspaper of "general circulation," it is also "a newspaper regularly issued at stated intervals from a known office of publication located within" the county.

1931 OAG 3625. The cost of publishing in the various counties amendments to the constitution proposed by the general assembly, as provided in O Const Art XVI §1, heretofore borne by the state, must, in view of the repeal of the law providing for such payment by the state and the enactment of the new election code, be paid by the counties in which such amendments are published.

1925 OAG 2548. The purpose of printing notices required in O Const Art XVI §1 is to inform the public so that fact must be kept in mind when selecting a publication in which to place a notice of a proposed constitutional amendment. However, it is a question of fact as to what exactly constitutes a newspaper and as to what

circulation is sufficient to designate a publication as a newspaper. These factual issues must be determined in each particular case with reference to the location in which publication is required.

Article XVII

ELECTIONS

COMMENTARY

Editor's Comment

1990: Despite its title, this article contains only minimal election provisions. Section 1 governs election days—the first Tuesday after the first Monday in November was originally established as general election day under an 1885 amendment to former §2, Article II, and §1, Article III. Previously, election day was the first Tuesday in October. The section also provides for terms, and staggers election years so that elections for state and county officers are in even-numbered years and elections for municipal officers are held in odd-numbered years. Section 2 of Article XVII provides for filling vacancies in elective offices where not otherwise provided for in the Constitution.

See Article V for various provisions affecting the subject of voting and elections, including the right of suffrage, voting by ballot, requirements for ballots, disenfranchisement of convicts and mentally incompetent persons, and the requirement for direct primaries. Detailed statutes regulating elections are found in RC Title 35. For other provisions on filling vacancies in office, see §11 and 27, Article II, §15, 17, and 18, Article III, and §13, Article IV.

CROSS REFERENCES

Definitions of Uniform Depository Act, 135.01
Election procedure and officials, Ch 3501

O Const XVII § 1 Times for holding elections; terms of office

Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years.

The term of office of all elective county, township, municipal, and school officers shall be such even number of years not exceeding four as may be prescribed by law or such even number of years as may be provided in municipal or county charters.

The term of office of all judges shall be as provided in Article IV of this constitution or, if not so provided, an even number of years not exceeding six as provided by law.

The general assembly may extend existing terms of office as to effect the purpose of this section.

HISTORY: 1976 SJR 19, am. eff. 6-8-76
125 v 1084, am. eff. 7-1-57; 97 v 640, adopted eff. 11-7-05

PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 11.04, 27.01

CROSS REFERENCES

Afternoon of first Tuesday following first Monday each November is a legal holiday, 5.20

Four-year terms for county commissioners, prosecutor, sheriff, coroner, engineer, recorder, auditor, and treasurer, 305.01, 309.01, 311.01, 313.01, 315.01, 317.01, 319.01, 321.01

Four-year terms for township trustees and clerk, 505.01, 507.01

Nomination, election, and terms of municipal court judges, 1901.051, 1901.06 to 1901.08

Nomination, election, and terms of county court judges, 1907.13

Election and terms of probate judges, 2101.02, 2101.021

Nomination, election, and terms of Cuyahoga County juvenile court judges, 2153.03

Election and terms of common pleas court judges; general and domestic relations divisions; Hamilton County juvenile division, 2301.01 to 2301.03

Election and terms of court of appeals judges, 2501.011 to 2501.02

Election of chief justice and justices of supreme court, 2503.02, 2503.03

State board of education; election of members, 3301.011

State board of education members to be elected to six-year terms, 3301.021

Four-year terms for district board of education members, 3313.09

Election years, 3501.02

Terms of supreme court justices, court of appeals and common pleas judges to be not less than 6 years, O Const Art IV §6

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 119; 16, Constitutional Law § 1, 43; 20, Counties, Townships, and Municipal Corporations § 62, 64, 173, 193, 340; 22, Courts and Judges § 33, 35, 157; 37, Elections § 1, 12, 139, 140

Am Jur 2d: 25, Elections § 1 to 3; 26, Elections § 226, 227

NOTES ON DECISIONS AND OPINIONS

1. In general
2. State and county elections
3. Elections in charter municipalities
4. Vacancies in office

1. In general

2 OS(2d) 235, 208 NE(2d) 129 (1965), State ex rel Ferguson v Brown. The phrase "first general election," in relation to state offices, means the general election which occurs in the even-numbered years.

164 OS 231, 129 NE(2d) 814 (1955), State ex rel Gamble v Duffy. O Const Art XVII §1, does not deal with nominations.

142 OS 216, 51 NE(2d) 636 (1943), State ex rel Columbus Blank Book Mfg Co v Ayres. Under mandatory provisions of O Const Art X §2 and Art XVII §1, and statutes passed pursuant thereto, all matters pertaining to conduct of elections are state functions.

137 OS 311, 29 NE(2d) 214 (1940), State ex rel Higley v Shale. Under O Const Art XVII §1 elections for only state and county officers shall be held in even-numbered years, and since a municipal judge is neither a state nor a county officer, the board of elections will not be required by a writ of mandamus to place the name of the judge on the ballot.

2. State and county elections

2 OS(2d) 235, 208 NE(2d) 129 (1965), State ex rel Ferguson v Brown. The phrase "first general election," in relation to state offices, means the general election which occurs in the even-numbered years.

137 OS 311, 29 NE(2d) 214 (1940), State ex rel Higley v Shale. Under O Const Art XVII §1 elections for only state and county officers shall be held in even-numbered years, and since a municipal judge is neither a state nor a county officer, the board of elections will not be required by a writ of mandamus to place the name of the judge on the ballot.

107 OS 1, 140 NE 737 (1923), State ex rel Eavey v Smith. GC 2395 (RC 305.01) providing for election of county commissioners is not inconsistent with this section and is constitutional.

83 OS 412, 94 NE 831 (1911), State ex rel Cleveland, Cincinnati, Chicago & St. Louis Railway Co v Creamer. The express provisions of the constitution of the state establish such relation between the election of state officers and the convening of the general assembly that since the seventeenth article, adopted in 1905, has expressly changed the date of the election from November of the odd-numbered years to the same month of the even-numbered years, the provision for the convening of the regular session of the general assembly then elected must be regarded as changed by implication from the first Monday of January in the even-numbered years to the first Monday of the same month in the odd-numbered years.

OAG 65-9. There can be no election in 1965 for the unexpired term of Roger W. Tracy, deceased, the elected auditor of state.

1956 OAG 6361. Elections for justice of the peace may be held only in November in the odd-numbered years.

1956 OAG 6256. Elections for justice of the peace cannot be set under RC 1907.02 prior to the November 1957, election.

3. Elections in charter municipalities

164 OS 231, 129 NE(2d) 814 (1955), State ex rel Gamble v Duffy. Section 10 of the Cleveland city charter providing that if a candidate at a primary election shall receive the majority of votes cast he shall be the candidate for office at the regular municipal election is valid.

124 OS 544, 179 NE 741 (1932), Jones v Cleveland. A municipality may determine in its charter the manner of filling a vacancy occurring in any municipal office; such a provision in the charter is not in conflict with O Const Art XVII §1.

102 App 297, 114 NE(2d) 922 (1953), State ex rel Pecyk v Greene. Section 10 of the charter of the city of Cleveland, as amended October 3, 1953, which provides that "if any candidate at a primary election shall have received a majority of all of the votes cast for such office at the primary election he shall be the candidate for such office at the regular municipal election," is not in conflict with O Const Art XVII §1, which provides the time for holding elections.

29 NP(NS) 118 (CP, Cuyahoga 1931), Jones v Board of Elections; affirmed sub nom Jones v Cleveland, 124 OS 544, 179 NE 741 (1932). The provision of the charter law of the city of Cleveland, fixing the time for holding a special election to fill a vacancy in the office of mayor being on a date different from that named in the state constitution, does not render such an election invalid, and a court holding such an election regular is not open to the charge of permitting a chartered city to do an unconstitutional act.

OAG 72-001. Those portions of village charter which provide for regular election of members of council in odd-numbered years, but which provide for transition from old form of government to new charter form by a special election of members of council in an even-numbered year, are not inconsistent with O Const Art XVII §1, and are valid.

OAG 72-001. Those portions of village charter which provide for election of village mayor in even-numbered years are inconsistent with O Const Art XVII §1, and are invalid.

4. Vacancies in office

168 OS 461, 156 NE(2d) 131 (1959), State ex rel Devine v Hoermle. The portion of RC 731.43 authorizing the mayor of a municipal corporation to fill by appointment a vacancy in the office of a member of the legislative authority of such municipal corporation, conflicts with the Section 5 of the Columbus city charter providing that "vacancies in council shall be filled by the council for the remainder of the unexpired term." (See also State ex rel Allison v Jones, 170 OS 323, 164 NE(2d) 417 (1960).)

149 OS 173, 78 NE(2d) 38 (1948), State ex rel Grace v Franklin County Bd of Elections. Where, by reason of death of an incumbent, a vacancy occurs in office of county sheriff and is filled by an appointee of board of county commissioners, such appointee shall hold office until a successor is elected at first election held on first Tuesday after first Monday in November in an even-numbered year and occurring more than thirty days after occurrence of such vacancy.

124 OS 544, 179 NE 741 (1932), Jones v Cleveland. The requirement of O Const Art XVII §1 as to the time of election in odd-numbered years can have no reference whatever to any election for the purpose of filling a vacancy, for it is specifically provided that vacancies shall be filled in the manner provided by law under O Const Art XVII §2; thus, O Const Art XVII §2 prescribes the method of filling vacancies in state elective offices.

124 OS 544, 179 NE 741 (1932), Jones v Cleveland. A municipality may determine in its charter the manner of filling a vacancy occurring in any municipal office; such a provision in the charter is not in conflict with O Const Art XVII §1.

29 NP(NS) 118 (CP, Cuyahoga 1931), Jones v Board of Elections; affirmed sub nom Jones v Cleveland, 124 OS 544, 179 NE 741 (1932). The provision of the charter law of the city of Cleveland, fixing the time for holding a special election to fill a vacancy in the office of mayor being on a date different from that named in the state constitution, does not render such an election invalid, and a court holding such an election regular is not open to the charge of permitting a chartered city to do an unconstitutional act.

OAG 65-9. There can be no election in 1965 for the unexpired term of Roger W. Tracy, deceased, the elected auditor of state.

1957 OAG 200. Where an incumbent of the office of county engineer has been elected at the general election in November of 1956 for a four-year term, commencing on the first Monday in January, 1957, and where such incumbent resigns effective January 31, 1957, the individual thereafter appointed by the board of county commissioners to fill such vacancy will hold such office until the election and qualification of his successor; and such successor should be elected for the unexpired term at the general election in November, 1958.

O Const XVII § 2 Filling vacancies in certain elective offices

Any vacancy which may occur in any elective state office created by Article II or III or created by or pursuant to Article IV of this constitution shall be filled only if and as provided in such articles. Any vacancy which may occur in any elective state office not so created, shall be filled by appointment by the Governor until the disability is removed, or a successor elected and qualified. Such successor shall be elected for the unexpired term of the vacant office at the first general election in an even numbered year that occurs more than forty days after the vacancy has occurred; provided, that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. All vacancies in other elective offices shall

be filled for the unexpired term in such manner as may be prescribed by this constitution or by law.

HISTORY: 1976 SJR 19, am. eff. 6-8-76
1969 HJR 26, am. eff. 1-1-70; 125 v 1084, am. eff. 7-1-57; 122 v 775, am. eff. 11-4-47; 97 v 640, adopted eff. 11-7-05

CROSS REFERENCES

Officers to hold office until successors qualified, 3.01
Governor may fill vacancy in appointive state office, 3.03
Vacancies in state board of education, 3301.06
Filling vacancy in house or senate seat, O Const Art II §11
General assembly to adopt laws for filling vacancies when not otherwise provided in constitution, O Const Art II §27
Filling vacancy in office of governor or lieutenant governor; line of succession, O Const Art III §15, 17
Governor to fill vacancy in office of state auditor, state treasurer, secretary of state or attorney general until successor elected, O Const Art III §18
Governor to fill vacancy in judgeship until successor elected, O Const Art IV §13

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 124, 166; 16, Constitutional Law § 28, 29; 20, Counties, Townships, and Municipal Corporations § 61, 343; 22, Courts and Judges § 157, 158, 189; 37, Elections § 140; 84, State of Ohio § 81, 113
Am Jur 2d: 63A, Public Officers and Employees § 127 to 156

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Manner of filling vacancy
3. Term of office

1. In general

2 OS(2d) 235, 208 NE(2d) 129 (1965), State ex rel Ferguson v Brown. The phrase, "first general election," in relation to state offices, means the general election which occurs in the even-numbered years.

107 OS 1, 140 NE 737 (1923), State ex rel Eavey v Smith. GC 2395 (RC 305.01) providing for election of county commissioners is not inconsistent with this section and is constitutional.

2. Manner of filling vacancy

124 OS 544, 179 NE 741 (1932), Jones v Cleveland. The requirement of O Const Art XVII §1 as to the time of election in odd-numbered years can have no reference whatever to any election for the purpose of filling a vacancy, for it is specifically provided that vacancies shall be filled in the manner provided by law under O Const Art XVII §2; thus, O Const Art XVII §2 prescribes the method of filling vacancies in state elective offices.

124 OS 544, 179 NE 741 (1932), Jones v Cleveland. A municipality may determine in its charter the manner of filling a vacancy occurring in any municipal office; such a provision in the charter is not in conflict with O Const Art XVII §1.

OAG 69-052. When a reelected county treasurer dies more than fifteen days before the end of his term of office, the vacancy shall be filled pursuant to RC 305.02(A) for the reason that there is no provision made in the law to permit an appointment to be made for the purpose of filling vacancies in the office of county treasurer spanning more than part of one term, the county central committee shall appoint someone to fill such second vacancy if it occurs because of death before the term began, pursuant to RC 305.02(A) and 305.02(B).

OAG 65-9. There can be no election in 1965 for the unexpired term of Roger W. Tracy, deceased, the elected auditor of state.

1939 OAG 138. A law which provides that a vacancy for a period of less than one year in the office of a judge be filled by the governor for the remainder of the unexpired term is in conflict with O Const Art XVII §2, and 13, and therefore is unconstitutional.

3. Term of office

161 OS 346, 119 NE(2d) 277 (1954), State ex rel Davis v Brown. Where an unexpired term of the office of judge ends within one year following the date of a general election, the appointment to fill the vacancy is for the unexpired term.

128 OS 273, 191 NE 115 (1934), Franklin County Bd of Elections v State ex rel Schneider. GC 2750-1 (Repealed) extending the present existing terms of county recorders to the first Monday of January, 1937, is unconstitutional in that it destroys the elective character of the office of county recorder and violates O Const Art XVII.

47 App 526, 192 NE 178 (1934), State ex rel Tharp v Scott. Justice of peace could not hold over beyond term and at expiration thereof vacancy existed which could be filled by township trustees.

1956 OAG 6361. The terms of justices of the peace beginning on and after January 1, 1956, are for two years.

1933 OAG 909. The general assembly is without constitutional power to extend the term of office of incumbents of elective county offices from two to four years.

Article XVIII

MUNICIPAL CORPORATIONS

O Const XVIII § 7 Municipal charter
O Const XVIII § 8 Referenda on whether to frame charter and on adoption of proposed charter
O Const XVIII § 9 Amendment of charter; referendum
O Const XVIII § 14 Municipal elections

O Const XVIII § 7 Municipal charter

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

HISTORY: 1912 constitutional convention, adopted eff. 11-15-12

COMMENTARY

Editor's Comment

1990: This is another key section in the Home Rule Amendment, and empowers cities and villages to prescribe the form and

organization of their respective municipal governments by means of a charter.

Adoption of a charter is not a prerequisite to the exercise by a municipality of powers of local self-government. These are granted by §3, Article XVIII regardless of whether a charter has been adopted. Perrysburg v Ridgway, 108 OS 245, 140 NE 595 (1923). But, absent adoption of a charter, the form and organization of municipal government is controlled by general law. RC Ch 705 provides a choice of three plans of government: the commission plan (RC 705.41 to 705.48); the city manager plan (RC 705.51 to 705.60); and the federal plan (RC 705.71 to 705.86). The commission plan provides for elected commissioners who function both as legislators and heads of administrative departments. The city manager plan provides for an elected council, with an appointed city manager who functions as the administrative head of the municipal government. The federal plan calls for an elected mayor and council.

For provisions governing the framing, adoption, and amendment of a municipal charter, see §8 and 9, Article XVIII. The question of whether to frame a charter, adoption of the proposed charter, and subsequent amendment of the charter must all be submitted to referendum under these sections.

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 1.08, 1.18, 1.26, 5.05, 5.08, 5.11, 5.23, 7.01, 7.03, 7.61, 7.62, 7.64, 7.68, 7.75, 9.15, 13.51, 15.121, 19.27, 33.57, 37.16, 43.24; Forms 19.15

CROSS REFERENCES

Initiative and referendum; procedure, 731.28 to 731.41

Income tax, administrator, rules, appeals, 733.85

Industrial and economic development, municipal corporation defined, 761.01

Agricultural districts, authorization for special assessment costs, 929.03

Division of geological survey, action not in conflict, 1505.08

Department of natural resources, action not in conflict, 1507.11

Division of watercraft, action not in conflict, 1547.77

Political subdivisions may enact local air pollution control ordinances and regulations consistent with state enactments, 3704.11

Any municipal registration of vital statistics must not conflict with state system, 3705.02

Municipal ordinance shall not conflict with state law of parties' rights and obligations under manufactured home rental agreement, 3733.20

State building standards laws not a limit on municipal powers, 3781.16

Governmental powers of municipal corporations, O Const Art XVIII §3

Referendum on adopting or amending charter, O Const Art XVIII §8, 9

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 10, Building, Zoning, and Land Controls § 145, 225; 15, Civil Servants and Other Public Officers and Employees § 204, 346; 16, Constitutional Law § 67, 71, 281, 283; 20, Counties, Townships, and Municipal Corporations § 409, 463, 477, 479, 481, 483, 484, 487, 496, 507, 508, 554, 558, 585; 21, Counties, Townships, and Municipal Corporations § 647, 706, 764, 799; 37, Elections § 8, 139; 51, Garages, Liveries, Service Stations, and Parking Facilities § 10; 86, Taxation § 122, 321, 324

Am Jur 2d: 56, Municipal Corporations, Counties and Other Political Subdivisions § 30 et seq., 125 to 138

Injunctive relief against submission of constitutional amendment, statute, municipal charter, or municipal ordinance, on ground that proposed action would be unconstitutional. 19 ALR2d 519

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Powers of local self-government
3. Conflict with general law
4. Powers of charter and non-charter municipalities
   a. In general
   b. Classification for purposes of general law
   c. Charter municipalities
   d. Non-charter municipalities
5. Framing, adopting, and amending charter
6. Exercising powers of local self-government through charter
   a. In general
   b. Municipal officers
   c. Elections; referenda
   d. Legislative procedures
   e. Taxation and finance
   f. Administration and operation
   g. Personnel—qualifications; appointment; duties
   h. Personnel—compensation; fringe benefits
   i. Personnel—civil service
   j. Personnel—labor relations
   k. Municipal property; contracts
   l. Municipal services—in general
   m. Municipal services—utilities
   n. Streets and highways; parks and recreation
   o. Property use regulation; zoning
   p. Building and housing regulations
   q. Nuisances
   r. Health, safety, morals, and general welfare
   s. Miscellaneous

1. In general

33 Ohio St L J 257 (1972). Of Concern to Painesville—or Only the State: Home Rule in the Context of Utilities Regulation, George Vaubel.

11 Capital L Rev 695 (Summer 1982). State Police Power v Municipal Utility Power: A Challenge in Ohio for Reconciliation, George D. Vaubel.

16 Tol L Rev 553 (Winter 1985). Municipal Home Rule in Ohio: A Mechanism for Local Regulation of Hazardous Waste Facilities, Comment.

2 Gotherman's Ohio Muni Serv 25 (March/April 1990). Municipal Home Rule, John E. Gotherman.

138 OS 220, 34 NE(2d) 226 (1941), Cincinnati v Gamble; overruled by 168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. The dual capacity of the municipality continues notwithstanding constitutional home rule provisions; therefore, where a city acts for itself it exercises the powers of local self-government within imposed limitations and where it acts for the state it has no right or authority to put into its charter or to enact by ordinance any local regulation—police, sanitary, or other—which conflicts with the general laws of the state.

89 App 1, 100 NE(2d) 689 (1950), State ex rel Gulf Refining Co v DeFrance. A charter adopted by the people of a municipality pursuant to the constitution and subject to such limitations as may be provided therein governs, controls, and limits council very much the same as the constitution governs, controls, and limits the general assembly.

273 F 202 (6th Cir Ohio 1921), Silvey v Montgomery County Commrs. The home rule provisions of the Ohio Constitution authorize governmental and not contractual action, and the powers conferred upon chartered cities by the provisions of O Const Art XVIII §3 and 7 are not only purely local and municipal but purely governmental, and the home rule doctrine does not apply to the creation of a conservancy district, since the state cannot bargain with or deprive itself of the right to exercise its police power for the immediate preservation of public health and safety.

1954 OAG 4244. The power given the general assembly in O Const Art XVIII §2 to enact laws for the government of municipalities is transferred by O Const Art XVIII §7 to the electors of a municipality, to be exercised by them after they adopt a charter.

1928 OAG 2195. The home rule provisions of O Const Art XVIII, do not confer any extraterritorial authority.

2. Powers of local self-government

165 OS 441, 136 NE(2d) 43 (1956), State ex rel Bindas v Andrish. Although the Ohio Constitution limits the authority of municipalities to adopt and enforce "police, sanitary and other similar regulations" to such regulations "as are not in conflict with general laws," there is no such limitation with respect to the "authority to exercise all [other] powers of local self-government."

49 App(3d) 125, 550 NE(2d) 982 (Summit 1989), Harrison v Judge. A municipal charter enacted under the power of local self-government prevails over state statutes, and only regulations enacted under a city's police power are subject to the general laws of the state.

49 App(3d) 125, 550 NE(2d) 982 (Summit 1989), Harrison v Judge. Under home rule powers granted by O Const Art XVIII §7 and as anticipated by RC 3709.05, a city may create a health district board differing in structure from that set forth in RC 3709.05, provided the board is established and maintained under authority of the city's charter; the charter provision as to the board concerns a matter with no extraterritorial effect and is not an exercise of police power but is instead enacted under the power of local self-government.

89 App 1, 100 NE(2d) 689 (1950), State ex rel Gulf Refining Co v DeFrance. In the absence of a specifically enumerated power in its charter a municipality may exercise an unenumerated or reserve power directly under O Const Art XVIII §3, subject however, with respect to the adoption and enforcement within its limits of local police, sanitary, and other similar regulations, to the limitation that the same shall not be in conflict with general laws.

89 App 1, 100 NE(2d) 689 (1950), State ex rel Gulf Refining Co v DeFrance. The powers of a municipality must be exercised in the manner prescribed by the Constitution, by its charter or by applicable general laws, and in the absence thereof may be exercised in the manner prescribed by ordinance.

1984-86 SERB 420 (CP, Franklin, 3-8-85), Columbus v SERB. An area of governance traditionally within the preserve of local authorities may become a subject for state police regulation that is exempt from local control by virtue of the "magnitude of the statewide concern." (See also In re Columbus, SERB 85-004 (2-6-85).)

1927 OAG p 678. The powers of local self-government granted by O Const Art XVIII §7 are not without limitation; instead, this provision is to be construed together with O Const Art XVIII §3, 6, and 13.

3. Conflict with general law

43 OS(3d) 1, 1989 SERB 4-41, 539 NE(2d) 103 (1989), Rocky River v SERB. Municipalities are held to have no authority to exercise any "powers of local self-government" any time that exercise conflicts with general state laws; in other words, the grants to municipalities under O Const Art XVIII §3 and 7 of "authority to exercise all powers of local self-government" and of home rule are held to be inferior to the state legislature's power to enact general laws, in the same way that municipal police, sanitary, and similar regulations are subject to be overridden by conflicting general state laws.

168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. The words, "as are not in conflict with general laws" found in O Const Art XVIII §3 modify only the words "local police, sanitary and other similar regulations" and not the words "powers of local self- government" found in that section and O Const Art XVIII §7, and the mere fact that the exercise of a power of local self-government may happen to relate to the police department does not make it a police regulation within the meaning of the words in O Const Art XVIII §3. (See also Choura v Cleveland, 44 Misc 39, 336 NE(2d) 467 (CP, Cuyahoga 1975).)

168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. The mere concern of the state which may justify the state in providing a state police department will not justify the state's interference with the operation of a municipal police department.

168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. The appointment of officers in the police force of a city represents the exercise of a power of local self-government within the meaning of those words as used in O Const Art XVIII §3 and 7.

167 OS 369, 148 NE(2d) 921 (1958), Beachwood v Cuyahoga County Bd of Elections. The detachment of territory from a municipality does not fall within the sphere of local self-government but is a subject which requires the establishment of a uniform procedure throughout the state and is exclusively within the control of the general assembly.

165 OS 441, 136 NE(2d) 43 (1956), State ex rel Bindas v Andrish. Although the Ohio Constitution limits the authority of municipalities to adopt and enforce "police, sanitary and other similar regulations" to such regulations "as are not in conflict with general laws," there is no such limitation with respect to the "authority to exercise all [other] powers of local self-government."

138 OS 220, 34 NE(2d) 226 (1941), Cincinnati v Gamble; overruled by 168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. In general, matters relating to police and fire protection are of statewide concern and under the control of state sovereignty.

138 OS 220, 34 NE(2d) 226 (1941), Cincinnati v Gamble; overruled by 168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. In matters of statewide concern the state is supreme over its municipalities and may in the exercise of its sovereignty impose duties and responsibilities upon them as arms or agencies of the state.

138 OS 220, 34 NE(2d) 226 (1941), Cincinnati v Gamble; overruled by 168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. The dual capacity of the municipality continues notwithstanding constitutional home rule provisions; therefore, where a city acts for itself it exercises the powers of local self-government within imposed limitations and where it acts for the state it has no right or authority to put into its charter or to enact by ordinance any local regulation—police, sanitary, or other—which conflicts with the general laws of the state.

119 OS 596, 165 NE 298 (1929), State ex rel Ramey v Davis. The sovereignty of Ohio, as to its courts extends over all the state, including charter municipalities as well as those governed by general laws.

62 App(3d) 301, 575 NE(2d) 499 (Clark 1990), Springfield Command Officers Assn v Springfield City Comm. A conflict between a home-rule charter provision and a civil service statute is distinguishable from a conflict between a home-rule charter provision and the Public Employees' Collective Bargaining Act; home-rule charter provisions supersede civil service statutory provisions.

49 App(3d) 125, 550 NE(2d) 982 (Summit 1989), Harrison v Judge. A municipal charter enacted under the power of local self-government prevails over state statutes, and only regulations enacted under a city's police power are subject to the general laws of the state.

107 App 71, 152 NE(2d) 311 (1958), State ex rel Hauck v Bachrach; affirmed by 168 OS 268, 153 NE(2d) 671 (1958). The provisions of RC 755.01 et seq. relating to municipal boards of park commissioners, are operative in noncharter municipalities and in such charter cities as have made them operative therein, and where valid enactments of a charter municipality are in conflict therewith such statutes, and not the municipal enactments, must yield.

89 App 1, 100 NE(2d) 689 (1950), State ex rel Gulf Refining Co v DeFrance. In the absence of a specifically enumerated power in its charter a municipality may exercise an unenumerated or reserve power directly under O Const Art XVIII §3, subject however, with respect to the adoption and enforcement within its limits of local police, sanitary, and other similar regulations, to the limitation that the same shall not be in conflict with general laws.

1984-86 SERB 420 (CP, Franklin, 3-8-85), Columbus v SERB. An area of governance traditionally within the preserve of local authorities may become a subject for state police regulation that is exempt from local control by virtue of the "magnitude of the statewide concern." (See also In re Columbus, SERB 85-004 (2-6-85).)

1984-86 SERB 420 (CP, Franklin, 3-8-85), Columbus v SERB. Prevention of police strikes and maintenance of order in the state of Ohio are matters of "statewide concern" in light of the fact that

police enforce state laws as well as municipal ordinances; as a consequence, the binding arbitration provisions of RC Ch 4117 do not violate the home rule provisions of O Const Art XVIII §3 and 7. (See also In re Columbus, SERB 85-004 (2-6-85).)

1984-86 SERB 418 (CP, Montgomery, 12-21-84), Kettering v SERB; affirmed by 26 OS(3d) 50, 26 OBR 42, 496 NE(2d) 983 (1986). The "labor unrest" addressed by RC Ch 4117 is not restricted to one municipality but affects the entire state and is a "matter of statewide concern," so that the statute is a general law prevailing over local ordinances such as one classifying police sergeants, lieutenants, and captains as "supervisors" who cannot be included in a collective bargaining unit.

1984-86 SERB 399 (2d Dist Ct App, Montgomery, 7-8-85), Kettering v SERB. A general law exercising the state's police power prevails over all local powers of self-government, not just over local regulations under the police power.

487 FSupp 135 (SD Ohio 1978), United States v Blue Ash; affirmed by 621 F(2d) 227 (6th Cir Ohio 1980). A city ordinance is invalid under the federal preemption doctrine where it is passed for the express purpose of air traffic noise control and it dictates aircraft flight in a given course in a defined navigable airspace.

4. Powers of charter and non-charter municipalities

a. In general

142 OS 574, 53 NE(2d) 501 (1944), State ex rel Arey v Sherrill; overruled by 168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. A city or village which adopts a charter for its government pursuant to permissive authority granted by constitution or general code does not thereby become an independent sovereignty and such municipality has no greater power to exercise local self-government than a noncharter municipality.

138 OS 220, 34 NE(2d) 226 (1941), Cincinnati v Gamble; overruled by 168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. By virtue of O Const Art XVIII §3 and 7, a municipality, irrespective of whether it has adopted a charter, has powers of local self-government and may adopt and enforce within its limits such local police, sanitary and other similar regulations as are not in conflict with general law.

108 OS 245, 140 NE 595 (1923), Perrysburg v Ridgway. The exercise of "all powers of local self-government," as provided in O Const Art XVIII §3, is not in any way dependent upon or conditioned by O Const Art XVIII §7, which provides that "a municipality may adopt a charter," etc.

23 Abs 334, 5 OSupp 402 (CP, Hamilton 1937), Mayer v Ames; affirmed by 58 App 295, 16 NE(2d) 498 (Hamilton 1937); affirmed by 133 OS 458, 14 NE(2d) 617 (1938). O Const Art XVIII §7 allows charter cities to pass such special legislation as their needs require without compelling them to be subject to the old law that municipalities can only operate under laws which have a uniform operation throughout the state.

b. Classification for purposes of general law

157 OS 515, 106 NE(2d) 286 (1952), Sanzere v Cincinnati. The general assembly may recognize and apply the classification between charter and noncharter municipalities.

117 OS 258, 158 NE 606 (1927), Dillon v Cleveland. O Const Art XVIII §7, authorizes a classification of municipalities into charter and noncharter municipalities.

179 NE(2d) 182 (CP, Montgomery 1961), State ex rel Jackson v Horstman. The classification of municipalities into charter cities and cities without charters by RC 1901.07 is not beyond the power of the general assembly in light of O Const Art XVIII, since that article itself creates the distinction.

c. Charter municipalities

92 OS 478, 111 NE 155 (1915), Billings v Cleveland Railway Co. It was contemplated by the framers of the amendment of the Ohio Constitution which adopted O Const Art XVIII that the provisions in a charter adopted by a city would differ from the general laws of the state, within the limits defined by the constitution, and it was the object of the amendment to permit such differences and to make them effective.

53 App(3d) 68, 558 NE(2d) 79 (Montgomery 1988), Horton v Dayton. The power granted charter municipalities under O Const Art XVIII §7 does not include power to amend legislation adopted by the general assembly by redefining its terms.

107 App 71, 152 NE(2d) 311 (1958), State ex rel Hauck v Bachrach; affirmed by 168 OS 268, 153 NE(2d) 671 (1958). The provisions of RC 755.01 et seq. relating to municipal boards of park commissioners, are operative in noncharter municipalities and in such charter cities as have made them operative therein, and where valid enactments of a charter municipality are in conflict therewith such statutes, and not the municipal enactments, must yield.

89 App 1, 100 NE(2d) 689 (1950), State ex rel Gulf Refining Co v DeFrance. In the absence of a specifically enumerated power in its charter a municipality may exercise an unenumerated or reserve power directly under O Const Art XVIII §3, subject however, with respect to the adoption and enforcement within its limits of local police, sanitary, and other similar regulations, to the limitation that the same shall not be in conflict with general laws.

No. L-83-258 (6th Dist Ct App, Lucas, 4-13-84), Phillips v Perkins. A charter or ordinance regulating local self-government renders a statute ineffective only if there is a direct conflict between the two. A statutory sixty-day time limit is effective and does not conflict with a "reasonable time" limit of a municipal charter.

221 F(2d) 412, 73 Abs 334 (ND Ohio 1955), Valley View Village, Inc v Proffett. Home rule amendment of Ohio Constitution is self-executing, and does not require a municipality to adopt charter as prerequisite to exercise of home rule powers.

d. Non-charter municipalities

61 OS(2d) 375, 402 NE(2d) 519 (1980), Northern Ohio Patrolmen's Benevolent Assn v Parma. An Ohio municipality which has not adopted a charter for its government, as authorized by O Const Art XVIII §7, must, in the passage of legislation, follow the procedure prescribed by statutes enacted pursuant to the mandate of O Const Art XVIII §2.

35 OS(2d) 148, 299 NE(2d) 269 (1973), Wintersville v Argo Sales Co. An Ohio municipality which has not adopted a charter for its government, as authorized by O Const Art XVIII §7, must, in the passage of legislation, follow the procedure prescribed by statutes enacted pursuant to the mandate of O Const Art XVIII §2.

107 App 71, 152 NE(2d) 311 (1958), State ex rel Hauck v Bachrach; affirmed by 168 OS 268, 153 NE(2d) 671 (1958). The provisions of RC 755.01 et seq. relating to municipal boards of park commissioners, are operative in noncharter municipalities and in such charter cities as have made them operative therein, and where valid enactments of a charter municipality are in conflict therewith such statutes, and not the municipal enactments, must yield.

OAG 67-078. A noncharter city operating under a general plan of municipal government may not create a department, other than those departments already authorized by the Revised Code, to handle matters such as income tax and ambulance service.

1962 OAG 3103. In the absence of the establishment by charter of a framework through which a municipality may exercise the powers of local self-government, the general laws of the state governing the framework through which such powers may be exercised must prevail.

1962 OAG 3103. A municipality which has adopted one of the plans of government set forth in RC Ch 705 may, in accordance with the provisions of said chapter applicable to the plan of government which such municipality has established, combine the police and fire departments.

1961 OAG 2171. A village operating without a charter may as part of the compensation to its employees pursuant to proper action of its legislative body provide hospitalization for its employees and pay the premium for such coverage from village funds.

1952 OAG p 832. A municipality, which has not adopted a special charter under O Const Art XVIII §7, must exercise its powers of local self-government by and through officers provided in the general laws authorized by O Const Art XVIII §2.

1950 OAG 1604. If a city has not adopted one of the optional plans of government and framed a charter or exercised its powers of local self-government pursuant to the provisions of O Const Art XVIII §7, the provisions of GC 4323 (RC 735.01) to 4334 (RC 735.09), inclusive, as they pertain to the powers and duties of the director of public service in the operation and maintenance of all municipally-owned utilities, must be followed.

5. Framing, adopting, and amending charter

39 OS(3d) 19, 528 NE(2d) 1254 (1988), Fox v Lakewood. Adoption of an amendment to a city charter by the electors of the city cures the city council's failure to open to the public its deliberations regarding the amendment, as required by the city's charter.

150 OS 203, 80 NE(2d) 769 (1948), State ex rel Hackley v Edmonds. Wisdom or desirability of provisions of a municipal charter, adopted pursuant to O Const Art XVIII §7, so far as such provisions are of a strictly local nature and are not in conflict with general laws of state, is not a subject for judicial inquiry.

107 OS 144, 141 NE 35 (1923), Hile v Cleveland; appeal dismissed by 266 US 582, 45 SCt 97, 69 LEd 452 (1924). The enactment of charter amendments by a home-rule city is not a suspension of law, and neither does it constitute an exercise of the legislative power of the state nor, since it applies to the city only, does it constitute an enactment of law of a general nature; consequently, such amendments do not violate any constitutional provisions regarding passage of laws by the general assembly.

100 OS 339, 126 NE 309 (1919), State ex rel Frankenstein v Hillenbrand. City officers elected at an election at which a city charter is adopted are not elected under the charter, since it is not yet in force, nor under state law, since it is superseded by the charter; but where the proposed city charter designates the person who shall fill a purely municipal office, the adoption of the charter is effective to designate such person as that officer, even though the election is ineffective for all but that purpose. (See also State ex rel Schmidter v Hillenbrand, 100 OS 534, 127 NE 926 (1919); State ex rel Calvert v Hillenbrand, 100 OS 536, 127 NE 926 (1919).)

21 App(3d) 165, 21 OBR 176, 486 NE(2d) 1160 (Summit 1984), Hayslip v Akron. General principles of statutory construction are to be applied in interpreting a city charter, with the guidance of reason and common sense; the goal of interpretation is to give effect to the intention behind each provision.

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. Call of a special election was valid although funds for mailing the copy of a proposed charter were not appropriated prior to such mailing, although only fifty-five days intervened between the submission of the charter to the voters and the special election, and although the proofs of the ballots were not posted nor sureties furnished on the printing contract.

1956 OAG 6809. The provisions of RC 705.03 regarding mailing copies of a proposed plan of government to the electors do not apply to the issue of adopting a charter.

6. Exercising powers of local self-government through charter

a. In general

103 OS 306, 133 NE 552 (1921), Switzer v State ex rel Silvey. GC 3515-1, which purports to provide optional forms of municipal government expressly under O Const Art XVIII §2, and providing for the adoption of any one of them by referendum vote, has no application to municipalities that have adopted a charter form of government under O Const Art XVIII §7.

88 OS 338, 103 NE 512 (1913), Fitzgerald v Cleveland. O Const Art XVIII §7, as adopted in 1912, authorizing a city or village to adopt a charter, is not confined to providing a form of government without prescribing its functions, but they may determine what officers they will have, which shall be appointed and which elected, provide for nomination by petition in a prescribed way, the elections, however, being conducted under the general laws.

49 App(3d) 125, 550 NE(2d) 982 (Summit 1989), Harrison v Judge. A municipal charter enacted under the power of local self-government prevails over state statutes, and only regulations enacted under a city's police power are subject to the general laws of the state.

21 App(3d) 165, 21 OBR 176, 486 NE(2d) 1160 (Summit 1984), Hayslip v Akron. A municipal charter provision is self-executing where it includes the rules which carry it into effect such that no further legislation is needed to apply it.

89 App 1, 100 NE(2d) 689 (1950), State ex rel Gulf Refining Co v DeFrance. A charter adopted by the people of a municipality pursuant to the constitution and subject to such limitations as may be provided therein governs, controls, and limits council very much the same as the constitution governs, controls, and limits the general assembly.

1954 OAG 4244. The power given the general assembly in O Const Art XVIII §2 to enact laws for the government of municipalities is transferred by O Const Art XVIII §7 to the electors of a municipality, to be exercised by them after they adopt a charter.

b. Municipal officers

58 OS(3d) 1, 567 NE(2d) 987 (1991), Cuyahoga Falls v Robart. When a city charter provides for representation of the city by its law director in all lawsuits, the city has no authority to provide for the hiring of outside counsel in place of the law director to act on behalf of the city in particular litigation, unless the law director is ill, absent, or otherwise disqualified from acting.

54 OS(3d) 91, 561 NE(2d) 909 (1990), State ex rel Vana v Maple Heights City Council. A provision in a city charter that prohibits an elected official from simultaneously holding other public office or other public employment does not violate the Equal Protection Clauses of the Ohio and United States Constitutions.

45 OS(2d) 292, 345 NE(2d) 71 (1976), State ex rel Lockhart v Boberek. The provisions of RC 705.92, permitting recall of the elective officers of a municipal corporation, go into effect only to the extent that they have been adopted by the voters as part of a home rule charter.

168 OS 461, 156 NE(2d) 131 (1959), State ex rel Devine v Hoermle. The portion of RC 731.43 authorizing the mayor of a municipal corporation to fill by appointment a vacancy in the office of a member of the legislative authority of such municipal corporation conflicts with Section 5 of the Columbus city charter providing that "vacancies in council shall be filled by the council for the remainder of the unexpired term." (See also State ex rel Allison v Jones, 170 OS 323, 164 NE(2d) 417 (1960).)

165 OS 441, 136 NE(2d) 43 (1956), State ex rel Bindas v Andrish. A charter municipality can determine upon qualifications for its councilmen which may be different from those provided by statute, and where the charter specifies certain qualifications for a councilman, the requirements of RC 731.02 will not apply in the absence of their adoption by other provisions of the charter.

150 OS 203, 80 NE(2d) 769 (1948), State ex rel Hackley v Edmonds. O Const Art XVIII §7, vests in municipality adopting a charter pursuant thereto the power to prescribe manner of selecting members of its council, to fix terms of such members, and to so restrict tenure of office of such members as to make such tenure dependent upon will of electors.

127 OS 204, 187 NE 733 (1933), State ex rel Stanley v Bernon. Municipalities have authority to provide by charter for the nomination of their elective officers.

100 OS 339, 126 NE 309 (1919), State ex rel Frankenstein v Hillenbrand. In a city adopting a charter the manner of selecting purely municipal officers is a subject of "local self-government," and the provisions of the charter must therefore supplant GC 4249; under O Const Art XVIII §7, municipalities are authorized to determine what officers shall administer their government, which shall be appointed, and which shall be elected.

100 OS 339, 126 NE 309 (1919), State ex rel Frankenstein v Hillenbrand. City officers elected at an election at which a city charter is adopted are not elected under the charter, since it is not yet in force, nor under state law, since it is superseded by the

charter; but where the proposed city charter designates the person who shall fill a purely municipal office, the adoption of the charter is effective to designate such person as that officer, even though the election is ineffective for all but that purpose. (See also State ex rel Schmidter v Hillenbrand, 100 OS 534, 127 NE 926 (1919); State ex rel Calvert v Hillenbrand, 100 OS 536, 127 NE 926 (1919).)

96 OS 172, 117 NE 173 (1917), State ex rel Taylor v French. The charter of a city, by which a part of the sovereign governmental power may be exercised under the sanction of the constitution itself, which confers the right to vote for municipal elective officers and to be elected to and hold municipal offices, not created by the constitution but by the charter itself, is valid.

88 OS 338, 103 NE 512 (1913), Fitzgerald v Cleveland. O Const Art XVIII §7, as adopted in 1912, authorizing a city or village to adopt a charter, is not confined to providing a form of government without prescribing its functions, but they may determine what officers they will have, which shall be appointed and which elected, provide for nomination by petition in a prescribed way, the elections, however, being conducted under the general laws.

3 App(3d) 40, 3 OBR 43, 443 NE(2d) 1034 (1982), State ex rel Corrigan v Barnes. RC 2961.01 does not conflict with the home rule provisions of the Ohio Constitution because such statute does not solely establish the qualifications for the office of city councilman and involves a statewide concern, i.e. the punishment of felony offenders.

120 App 415, 193 NE(2d) 710 (1963), Loux v Lakewood; appeal dismissed by 176 OS 154, 198 NE(2d) 447 (1964). A municipal ordinance increasing the salaries of members of city council during their existing terms of office is valid.

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. The number of councilmen may be set by the charter of a municipality.

27 NP(NS) 185 (CP, Cuyahoga 1928), Hinslea v Lakewood City Council. The provisions of a city charter adopted under the so-called home rule section of the O Const Art XVIII §7, providing for the recall and removal of its city officials, are ineffective, unless they provide for such recall and removal upon complaint and hearing as required by the constitution.

c. Elections; referenda

4 OS(3d) 174, 4 OBR 453, 447 NE(2d) 1299 (1983), Hitt v Tressler. O Const Art II §21, empowers the general assembly to determine before what authority and in what manner election contests shall be had.

45 OS(2d) 292, 345 NE(2d) 71 (1976), State ex rel Lockhart v Boberek. The provisions of RC 705.92, permitting recall of the elective officers of a municipal corporation, go into effect only to the extent that they have been adopted by the voters as part of a home rule charter.

12 OS(2d) 116, 233 NE(2d) 129 (1967), State ex rel Hunter v Erickson; reversed by 393 US 385, 89 SCt 557, 21 LEd(2d) 616 (1969). The charter of a municipal corporation may lawfully be amended to provide that any ordinance which regulates the use, sale, advertisement, transfer, listing, assignment, lease, sublease or financing of real property on the basis of race, color, religion, national origin or ancestry, must first be approved by the electors of such municipality, and that any such ordinance in effect at the time of adoption of such a charter amendment shall cease to be effective until approved by such electors even though such voter approval is not required with respect to other kinds of ordinances.

160 OS 189, 115 NE(2d) 154 (1953), State ex rel Haffner v Green. Where a city charter fixes a final day by which nominating petitions must be filed with the board of elections but sets no hour deadline on that day, a candidate is entitled to file his nominating petition at any time until midnight of the final day for filing.

127 OS 204, 187 NE 733 (1933), State ex rel Stanley v Bernon. Municipalities have authority to provide by charter for the nomination of their elective officers.

100 OS 339, 126 NE 309 (1919), State ex rel Frankenstein v Hillenbrand. City officers elected at an election at which a city charter is adopted are not elected under the charter, since it is not yet in force, nor under state law, since it is superseded by the charter; but where the proposed city charter designates the person who shall fill a purely municipal office, the adoption of the charter is effective to designate such person as that officer, even though the election is ineffective for all but that purpose. (See also State ex rel Schmidter v Hillenbrand, 100 OS 534, 127 NE 926 (1919); State ex rel Calvert v Hillenbrand, 100 OS 536, 127 NE 926 (1919).)

96 OS 172, 117 NE 173 (1917), State ex rel Taylor v French. The charter of a city, by which a part of the sovereign governmental power may be exercised under the sanction of the constitution itself, which confers the right to vote for municipal elective officers and to be elected to and hold municipal offices, not created by the constitution but by the charter itself, is valid.

88 OS 338, 103 NE 512 (1913), Fitzgerald v Cleveland. O Const Art XVIII §7, as adopted in 1912, authorizing a city or village to adopt a charter, is not confined to providing a form of government without prescribing its functions, but they may determine what officers they will have, which shall be appointed and which elected, provide for nomination by petition in a prescribed way, the elections, however, being conducted under the general laws.

88 OS 338, 103 NE 512 (1913), Fitzgerald v Cleveland. The system or plan to be followed in the nomination and election of the officials of any city is only of interest and concern to the people within the limits of the city, and when governmental powers have been conferred upon a city by its charter adopted under O Const Art XVIII §7, it acts within its authority when it adopts its own plan provided it violates no constitutional requirement; therefore, the general law providing for the conduct of elections cannot supersede the provisions adopted by the city of Cleveland in its charter in compliance with the fundamental law. (See also State ex rel Taylor v French, 96 OS 172, 117 NE 173 (1917).)

65 App(2d) 23, 413 NE(2d) 854 (1979), State ex rel Froelich v Montgomery County Bd of Elections. Charter cities have the power to regulate municipal elections.

40 App(2d) 299, 318 NE(2d) 889 (1974), State ex rel Cleveland City Council v Cuyahoga County Bd of Elections. Cleveland city council has authority to enact legislation but it does not have authority to pass an ordinance to be submitted to the voters for approval or disapproval.

102 App 425, 128 NE(2d) 865 (Cuyahoga 1955), State ex rel Horvath v Haber. Cleveland has power to provide for a nonpartisan primary election for the nomination of elective officers.

102 App 425, 128 NE(2d) 865 (Cuyahoga 1955), State ex rel Horvath v Haber. For purposes of closing registration of nonpartisan municipal primary election is a primary election and not a special election.

102 App 297, 114 NE(2d) 922 (1953), State ex rel Pecyk v Greene. Cleveland charter amendment providing that candidate receiving a majority vote in the primary election shall be the only candidate to appear on the ballot in the general election is valid and in effect for the primary election at which it was enacted.

97 App 91, 114 NE(2d) 513 (1953), State ex rel Haffner v Green; affirmed by 160 OS 189, 115 NE(2d) 154 (1953). Where under a city charter the time within which candidates for councilman must file nominating petitions is fixed as the fortieth day prior to the primary election, without fixing an hour or time of day of the fortieth day within which such petitions must be filed, a candidate has until midnight of the fortieth day within which to file his nominating petitions.

81 App 294, 79 NE(2d) 183 (1946), State ex rel Toledo v Lucas County Bd of Elections. Under O Const Art XVIII §3 and 7, and Art II §1f, a municipality may, by charter, provide when a referendum election shall be held upon an ordinance on which a vote has been duly demanded.

77 Abs 570, 143 NE(2d) 879 (CP, Montgomery 1957), Dayton v Horstman. Where a city charter expressly prohibits write-in votes on a ballot for city commissioners, the court will not order a municipal primary to be held solely for the purpose of permitting write-in votes.

27 NP(NS) 185 (CP, Cuyahoga 1928), Hinslea v Lakewood City Council. The provisions of a city charter adopted under the so-called home rule section of the O Const Art XVIII §7, providing for the recall and removal of its city officials, are ineffective, unless they provide for such recall and removal upon complaint and hearing as required by the constitution.

1958 OAG 2332. In the absence of an authorizing provision in a charter duly adopted by a municipality, the council of such municipality is without authority to present to the board of elections for submission to the electors a proposed ordinance which is to become effective only upon their approval; and the board of elections is without authority to receive or submit such proposal to the electors of the municipality.

d. Legislative procedures

40 OS(3d) 149, 532 NE(2d) 719 (1988), State ex rel Craft v Schisler. A city charter provision requiring all council and committee meetings to be public effectively prohibits any meeting, regardless of its purpose, from being private and supersedes RC 121.22(G) which allows members of a public body to hold private executive sessions to discuss matters relating to personnel, official appointment, purchasing property, litigation, and labor negotiations.

39 OS(3d) 19, 528 NE(2d) 1254 (1988), Fox v Lakewood. Adoption of an amendment to a city charter by the electors of the city cures the city council's failure to open to the public its deliberations regarding the amendment, as required by the city's charter.

38 OS(3d) 165, 527 NE(2d) 807 (1988), State ex rel Plain Dealer Publishing Co v Barnes. Where a city charter provision requires that "all meetings of council or committees thereof shall be public," the word "meetings" encompasses any assemblage of the city council or its committees where a majority of the members constituting the body are in attendance and the gathering is arranged for the purpose of discussing public business.

3 OS(2d) 191, 209 NE(2d) 399 (1965), Beacon Journal Publishing Co v Akron. At any session of a municipal board or commission subject to RC 121.22 or to a similar municipal code provision, where any action is taken which is required by law, rule or regulation to be recorded in the minutes, the journal or any other official record of the board or commission, such session is a meeting which must be open to the public. (Also discussed is the question of which boards are subject to state statutes, which to municipal ordinances, and which to neither).

145 OS 144, 60 NE(2d) 919 (1945), Cleveland v Piskura. By virtue of provisions of O Const Art XVIII §3 and 7, the municipalities of this state are granted limited legislative power. However, the legislative bodies of such municipalities may not abdicate or transfer to others the essential legislative functions with which they are invested.

135 OS 580, 22 NE(2d) 84 (1939), State ex rel Bateman v Zachritz. In adopting a charter a municipality may make any one or more of its boards the repository of legislative power.

135 OS 580, 22 NE(2d) 84 (1939), State ex rel Bateman v Zachritz. Cincinnati city charter, Art VII §5, which gives to the city planning commission power to approve all plans of the city and makes it possible to overrule the commission only by a two-thirds vote of city council, is not unconstitutional on the ground that it delegates legislative power to the planning commission.

40 App(2d) 299, 318 NE(2d) 889 (1974), State ex rel Cleveland City Council v Cuyahoga County Bd of Elections. Cleveland city council has authority to enact legislation but it does not have authority to pass an ordinance to be submitted to the voters for approval or disapproval.

115 App 541, 186 NE(2d) 94 (1962), Avon Lake v Burke. The doctrine of separation of powers does not apply to charter cities; and a municipal charter may invest more than one municipal body with both legislative and executive powers and duties.

No. 52354 (8th Dist Ct App, Cuyahoga, 6-11-87), Fox v Lakewood. The home rule provisions of the Ohio Constitution exempt a municipal corporation from the mandates of the "sunshine law," RC 121.22, where such law is not adopted in the municipal corporation's charter; thus, an amendment authorized by an ordinance passed by council at an open meeting after discussing it at a closed meeting and approved by the voters is not voidable.

67 Abs 170, 117 NE(2d) 227 (CP, Montgomery 1953), Hammond v Young. A city commission, as the legislative authority of the city, has exclusive power to establish and change the number and boundaries of wards within the city even though all members of its legislative body are elected at large under the city charter.

22 NP(NS) 533, 31 D 335 (CP, Summit 1920), Akron v Zeisloft; affirmed by Court of Appeals. This section confers upon the council of a charter city legislative power as to matters of local self-government to the same extent as the legislature possesses such power for the state at large; and the validity of a contract for a local improvement, undertaken by a charter city, is not dependent upon statutory law relating to municipalities, but upon the provisions of its charter and the acts of the council thereunder.

1954 OAG 4244. A charter municipality may prescribe the procedure for passage and publication of its ordinances and resolutions, which provisions will prevail over the statutes relative thereto, or it may authorize the municipal council to prescribe such procedure with like effect.

1951 OAG 654. Charter provisions adopted pursuant to O Const Art XVIII §7, relating to matters of local self-government, including the manner of publication of ordinances, will prevail over conflicting and different provisions of the general laws of the state.

e. Taxation and finance

2 OS(2d) 292, 208 NE(2d) 747 (1965), Thompson v Cincinnati. A resident of one municipal corporation who receives wages as a result of work and labor performed within another municipal corporation may be lawfully taxed on such wages by both municipal corporations.

172 OS 95, 173 NE(2d) 760 (1961), McConnell v Columbus. Columbus may levy an income tax on compensation earned by a nonresident of the city for services paid for by Ohio state university and performed for it within that portion of the property of Ohio state university located within the boundaries of Columbus.

104 OS 607, 136 NE 824 (1922), Berry v Columbus. O Const Art XVIII §7, was not repealed by the adoption of Art XVIII §13, or any other home rule provisions therein, and city charter provisions as to street assessments must yield to the state laws. (See also State ex rel Osborne v Williams, 111 OS 400, 145 NE 542 (1924).)

97 OS 86, 119 NE 253 (1917), State ex rel Toledo v Cooper. O Const Art XIII §6 authorizes the general assembly to restrict the power of cities to levy taxes and incure debts for local purposes, and therefore a city cannot confer upon itself in its charter the power to levy taxes in excess of the limitation imposed by statute. (See also State ex rel Doerfler v Otis, 98 OS 83, 120 NE 313 (1918); and State ex rel Dayton v Bish, 104 OS 206, 135 NE 816 (1922).)

OAG 76-016. RC 718.01 does not prohibit a municipality from levying an income tax at specified but varying rates for definite terms under the municipality's power to levy income taxes as conferred by O Const Art XVIII §3 and 7.

1917 OAG vol 1 p 973. A municipality, operating under a charter, may lawfully provide in its charter that surplus revenues arising from the operation of a municipally owned waterworks plant may be used for general municipal purposes.

f. Administration and operation

6 OS(3d) 344, 6 OBR 399, 453 NE(2d) 644 (1983), State ex rel Lemaitre v Clyde. An ordinance granting power to city manager to adjust water and sewage rates could not be passed as an emergency measure.

64 OS(2d) 43, 413 NE(2d) 784 (1980), Novak v Perk. City charter could place exclusive control of allocation of fire companies in the executive branch of city government and preclude the city council from enacting an ordinance regarding fire company allocation.

33 OS(2d) 75, 294 NE(2d) 891 (1973), Williams v Columbus. The defense of sovereign immunity is a valid defense in an action against a municipal corporation to recover damages for alleged negligence proximately causing injuries to a workhouse inmate in

connection with the operation of the city workhouse, because the operation of a workhouse by a municipality is a governmental function.

49 App(3d) 125, 550 NE(2d) 982 (Summit 1989), Harrison v Judge. Under home rule powers granted by O Const Art XVIII §7 and as anticipated by RC 3709.05, a city may create a health district board differing in structure from that set forth in RC 3709.05, provided the board is established and maintained under authority of the city's charter; the charter provision as to the board concerns a matter with no extraterritorial effect and is not an exercise of police power but is instead enacted under the power of local self-government.

33 App(3d) 187, 515 NE(2d) 8 (Butler 1986), Singleton v Hamilton. A municipal charter provision stating "the city shall, through such officers as may be provided by ordinance, enforce all laws and ordinances relating to health, and such officer or officers shall perform all duties and may exercise all powers relative to the public health provided by general law to be performed and exercised in municipalities by health officers," is not self-executing since it requires some additional expression, legislative or otherwise, to make it enforceable, and thus a duty to regulate hazardous waste does not arise from such general city charter provision.

33 App(3d) 187, 515 NE(2d) 8 (Butler 1986), Singleton v Hamilton. A municipal corporation's determination concerning whether or not it will exercise its decisionmaking function, and in turn its sovereign authority, to pursue an alleged nuisance falls within the grant of sovereign immunity for executive and legislative decisions involving the application of a high degree of official judgment or discretion.

115 App 541, 186 NE(2d) 94 (1962), Avon Lake v Burke. The doctrine of separation of powers does not apply to charter cities; and a municipal charter may invest more than one municipal body with both legislative and executive powers and duties.

115 App 541, 186 NE(2d) 94 (1962), Avon Lake v Burke. A municipal corporation is empowered to adopt a charter and to provide therein for the creation of a board empowered to manage and control public utilities owned by the municipality, and to adopt bylaws and regulations for the protection of such public utilities that have "the same validity as municipal ordinances," including provision for the criminal prosecution of one who violates a regulation adopted for the protection of the public utility property.

1962 OAG 3103. Where a city has adopted a charter which does not provide for a combined fire and police department, and which does not grant authority to some officer or agency of the city government established pursuant to said charter to determine whether the police and fire departments should be combined, the police and fire departments of such city may not be combined.

g. Personnel—qualifications; appointment; duties

40 OS(3d) 222, 533 NE(2d) 282 (1988), State ex rel East Cleveland Firefighters Assn Local 500 v East Cleveland. The requirements for filling vacancies in a city fire department set forth in RC 124.46 do not apply to a chartered municipality which has enacted its own ordinances governing vacancies in the fire department.

168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. The mere concern of the state which may justify the state in providing a state police department will not justify the state's interference with the operation of a municipal police department.

168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. The appointment of officers in the police force of a city represents the exercise of a power of local self-government within the meaning of those words as used in O Const Art XVIII §3 and 7.

164 OS 437, 132 NE(2d) 118 (1956), State ex rel Lynch v Cleveland. A municipality is authorized to choose its own method of selecting its own chief of police other than from a civil service eligible list.

160 OS 36, 113 NE(2d) 86 (1953), Harsney v Allen. The chief of police of a home rule city (Youngstown) has exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, and where, without impairing the status and emoluments of a police radio operator who is a member of the police force, such chief assigns to such operator the duties and functions of a patrolman, injunction will not lie to restrain such chief in so exercising such control.

100 OS 339, 126 NE 309 (1919), State ex rel Frankenstein v Hillenbrand. In a city adopting a charter the manner of selecting purely municipal officers is a subject of "local self-government," and the provisions of the charter must therefore supplant GC 4249; under O Const Art XVIII §7, municipalities are authorized to determine what officers shall administer their government, which shall be appointed, and which shall be elected.

58 App(3d) 88, 568 NE(2d) 745 (Butler 1989), Taylor v Middletown. The appointment and promotion of city employees are exercises of self-government; therefore, a chartered city has power over civil service and public employee matters and is unrestricted by state law.

59 App(2d) 305, 394 NE(2d) 1018 (1978), Chylik v Cleveland. Under the charter of the city of Cleveland, the power to enact a broad city employee residency requirement is reserved to the people; Cleveland city ordinances RC 171.47 and 171.48 are unconstitutional because the city council does not have the power to require city residence as a condition of employment.

57 App(2d) 24, 384 NE(2d) 712 (1978), Beyer v Donaldson. Where the charter of a city obligates the city manager to make all appointments and removals in the administrative and executive service of the city, provided they are in consonance with state laws respecting civil service, such supersedes the provision of a statute relating to the suspension of police officers by a chief of police.

No. L-83-258 (6th Dist Ct App, Lucas, 4-13-84), Phillips v Perkins. Appointment of police officers is within the local self-government powers of a charter municipality, but civil service statutes that do not directly conflict with ordinances or the charter are effective.

90 Abs 505, 187 NE(2d) 653 (CP, Scioto 1962), Hickman v Portsmouth. RC 731.08 has no operative effect upon a charter municipality.

OAG 65-177. A plainclothes officer, subject to call at all times, may only carry a concealed weapon as provided in RC 2923.01 when on duty; the determination of when a plainclothes officer is on duty is to be made by the legislative authority of a political subdivision or a public officer having the power to make such a determination.

1964 OAG 879. An appointive officer of a charter city is ineligible to serve as a member of the general assembly during such appointment.

1963 OAG 162. Municipalities operating under a charter form of government have the right to proceed under the terms of their charter and the municipal legislation enacted pursuant thereto with respect to augmentation of police departments by the appointment of special police officers on a temporary basis.

1958 OAG p 430. The provisions of a city charter, which limit the political activities of appointive officers and employees of city government, have no application to the office of bailiff of a municipal court having county-wide jurisdiction under RC 1901.32.

h. Personnel—compensation; fringe benefits

64 OS(2d) 158, 413 NE(2d) 837 (1980), United Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 377 v Youngstown. A municipality which incorporates the provisions of the Revised Code relating to municipal civil service in its charter does not, in view of RC 124.14(B), divest city council of its authority to determine wages of city employees, nor does it empower the municipal civil service commission to order standardization of wages of the employees of the municipality.

20 App(3d) 282, 20 OBR 374, 485 NE(2d) 775 (Summit 1984), Civil Service Personnel Assn, Inc v Akron. Because the granting of sick leave credits is a matter of local self-government, a municipality which has adopted a charter pursuant to O Const Art XVIII §7 need not comply with the requirements for transfer of sick leave credits contained in RC 124.38.

30 App(2d) 237, 285 NE(2d) 80 (1972), Fuldauer v Cleveland; affirmed by 32 OS(2d) 114, 290 NE(2d) 546 (1972). Charter amendment in Cleveland providing policemen and firemen should be paid three percent more than the highest amount paid in any Ohio city over 50,000 in population is valid.

106 App 354, 151 NE(2d) 367 (1958), Sinclair v Lakewood; appeal dismissed by 168 OS 372, 154 NE(2d) 822 (1958). While the state law requires a municipal corporation to organize, finance and administer firemen's and police relief and pension funds, the collection of the funds necessary to meet the obligations thereof is a local matter.

OAG 90-104. In a charter municipality not subject to a collective bargaining agreement under RC Ch 4117, if the charter does not specifically provide for a deferral of the anniversary date of prior service or for the crediting of prior service in excess of the minimums required by RC 9.44, deferral or additional benefits may be established by ordinance or regulation, if such ordinance or regulation is within the scope of authority granted by applicable general language in the charter and is enacted in the manner required by the charter.

OAG 90-104. If neither the charter, nor the ordinances or regulations authorized thereunder, of a charter municipality not subject to a collective bargaining agreement under RC Ch 4117 specifically provide for the deferral of the anniversary date of prior service or for the crediting of prior service in excess of the minimums required by RC 9.44, such municipality is governed by the provisions of RC 9.44.

1964 OAG 780. A municipal corporation may enact legislation to operate retroactively to increase the compensation of employees of the municipal corporation.

1963 OAG 737. Payment of "longevity compensation" and a "uniform allowance" to policemen and firemen by a charter municipal corporation is a valid exercise of the powers of local self-government conferred by O Const Art XVIII §3 and 7.

1963 OAG 500. RC 143.29 establishes the sick leave benefits for all fulltime employees of all municipal corporations which have not provided otherwise by or pursuant to a charter adopted under authority of O Const Art XVIII §7.

1954 OAG 4322. Statutory provisions fixing the salaries of municipal officers and employees or prescribing limits within which salary changes may be made are controlling in noncharter municipal corporations.

1931 OAG 3383. A municipal corporation, having adopted a charter in which it expressed a purpose to assume all powers of local self-government granted to municipalities by the constitution of Ohio, may, in the absence of charter provisions prohibiting or limiting such action, through its legislative authority, enter into an agreement with an insurance company whereby the insurance company agrees to pay pensions to employees of the municipality after such employees have reached a certain age, or have become incapacitated, in such amounts and upon such terms as may be determined by the said legislative authority.

1931 OAG 3383. A municipal corporation, which, by force of its charter adopted by authority of O Const Art XVIII §7, possesses all powers of local self-government granted to it by the constitution of Ohio, may provide group life or indemnity insurance for its officers or employees and pay the premium for such insurance, either in whole or in part, from the public funds of the municipality, unless it is prohibited from so doing by the provisions of its charter.

1927 OAG p 48. Unless forbidden by its charter, a municipal corporation may, as part of compensation to its employees, authorize group insurance on behalf of any or all municipal employees.

i. Personnel—civil service

37 OS(3d) 106, 524 NE(2d) 447 (1988), State ex rel Bardo v Lyndhurst. Where a municipal charter does not contain a clear and express exercise of home rule powers specifically authorizing the civil service commission to adopt rules with regard to certification of names from promotion lists, neither the commission's rules nor the charter supersede the requirements of RC 124.44 as to certification of candidates from eligibility lists, and where a vacancy in a position arises, the highest-ranked employee on the current eligibility list is entitled to a writ of mandamus compelling the city to appoint him to the vacancy.

28 OS(3d) 214, 28 OBR 298, 503 NE(2d) 518 (1986), State Personnel Bd of Review v Bay Village Civil Service Comm. The state personnel board of review does not have investigative or removal authority over charter municipalities' civil service commissions when the municipalities' charters establish their own removal procedures.

170 OS 144, 163 NE(2d) 384 (1959), Cupps v Toledo. The jurisdiction of the court of common pleas to hear an appeal from an order of a municipal civil service commission suspending, demoting or removing a member of the police or fire department of a city cannot be impaired or restricted by a provision of a municipal charter or ordinance.

168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. Provisions of a city charter, for appointment to a position in the competitive classified service of the city from among the three candidates highest on the eligible list, authorize appointment as a deputy inspector of police of the candidate second highest on such list, notwithstanding that RC 143.34 requires, with respect to a vacancy in a position above the rank of patrolman in a police department, that the candidate highest on the eligible list be appointed.

164 OS 437, 132 NE(2d) 118 (1956), State ex rel Lynch v Cleveland. A municipality is authorized to choose its own method of selecting its own chief of police other than from a civil service eligible list.

147 OS 313, 71 NE(2d) 246 (1947), Hagerman v Dayton. Municipal ordinance which provides for or authorizes check-off of wages or salary of civil service appointees is police regulation and is in conflict with GC 6346-13 (RC 1321-32).

92 OS 344, 110 NE 951 (1915), State ex rel Bailey v George. It was the legislature's purpose to confer upon a mayor of a city the right and duty to appoint the municipal civil service commission in keeping with the home rule provided for in O Const Art XVIII, and the sixty-day provision for such appointment is not a limitation upon the power of the mayor, but rather a limitation upon the time in which he should exercise the power; it is directory only, and the failure of the state civil service commission to act upon such appointments leaves the power still in the hands of the mayor after the sixty-day period.

70 App(3d) 163 (Cuyahoga 1990), Jacomin v Cleveland. A municipal civil service commission has jurisdiction to review the dismissal of any classified employee where the municipal charter grants the commission jurisdiction to review dismissals of "any person in the classified service of the City."

44 App(3d) 15, 541 NE(2d) 741 (Cuyahoga 1988), Hudak v Cleveland Civil Service Comm. Where a city charter provision prohibits civil service employees from participating in political campaigns, a civil service employee's candidacy in a nonpartisan city council election is prohibited and is grounds for discharge.

20 App(3d) 282, 20 OBR 374, 485 NE(2d) 775 (Summit 1984), Civil Service Personnel Assn, Inc v Akron. Because the granting of sick leave credits is a matter of local self-government, a municipality which has adopted a charter pursuant to O Const Art XVIII §7 need not comply with the requirements for transfer of sick leave credits contained in RC 124.38.

20 App(3d) 178, 20 OBR 222, 485 NE(2d) 722 (Montgomery 1984), State ex rel Willcox v Kettering. A rule pertaining to police appointment which is promulgated by a municipal civil service commission under authority conferred by the municipal charter supercedes a conflicting statute.

16 App(3d) 464, 16 OBR 546, 476 NE(2d) 689 (Cuyahoga 1984), Northern Ohio Patrolmen's Benevolent Assn v North Olmsted. A municipal charter which provides that its civil service commission shall "act in accordance with the provisions of the general law" incorporates state civil service laws into the charter, and renders invalid rules of the municipal civil service commission which conflict with state law.

14 App(3d) 174, 14 OBR 193, 470 NE(2d) 445 (Lake 1984), Lynch v Tiffenbach. A charter city is authorized by the home-rule provisions of the Ohio Constitution to vary its civil service regulations from state law, as long as they are otherwise constitutional.

57 App(2d) 24, 384 NE(2d) 712 (1978), Beyer v Donaldson. Where the charter of a city obligates the city manager to make all appointments and removals in the administrative and executive service of the city, provided they are in consonance with state laws respecting civil service, such supersedes the provision of a statute relating to the suspension of police officers by a chief of police.

47 App(2d) 125, 352 NE(2d) 606 (1975), Gannon v Perk; modified by 46 OS(2d) 301, 348 NE(2d) 342 (1976). A declaratory judgment action brought under RC Ch 2721, seeking a declaration regarding the legality of layoffs by the city of Cleveland of policemen and firemen, is a legal action and may be maintained even though the parties bringing the action have the alternative, but not exclusive, remedy of appeal to the civil service commission and to the courts under RC Ch 2506.

44 App(2d) 236, 337 NE(2d) 646 (Montgomery 1975), Spencer v Dayton. Provisions of a city charter regarding civil service employees which require consideration of records of efficiency and conduct as well as seniority for promotion and which have not been modified or repealed are binding on the city; there is no power to take any action inconsistent with such laws, rules, or regulations, and the action of a civil service board eliminating credit for seniority and efficiency without a rule change and without approval by the city commission is a nullity because it violates the city charter.

44 App(2d) 236, 337 NE(2d) 646 (Montgomery 1975), Spencer v Dayton. The provisions of a city charter and the rules of a municipal civil service commission requiring merit, efficiency and service as conditions for promotion may not be ignored.

12 App(2d) 59, 231 NE(2d) 85 (1967), State ex rel Prentice v Middleburg Heights. Where a municipality, following its transition from the status of a village to that of a city, adopts a charter for its government and such charter provides that the chief of police is placed in the unclassified service, the charter is controlling, so that a chief of police, appointed as such by the mayor of such village, continues to serve in such capacity after the adoption of the new charter and acquires no civil service status and has no appeal from the civil service commission to the court of common pleas.

102 App 269, 131 NE(2d) 611 (1956), Sullivan v Civil Service Comm of Euclid. The mayor of a city does not have power to try a police officer upon charges and to take disciplinary action against him.

No. 54818 (8th Dist Ct App, Cuyahoga, 12-22-88), Burk v Cleveland. Pursuant to the constitutional home rule powers of municipalities in Ohio, municipal charters prevail over statutory civil service provisions, and an action based on the termination of a public employee is governed by the four-year limitations period in RC 2305.09, not the six-year limitations period for actions based on statute in RC 2305.07.

No. L-83-258 (6th Dist Ct App, Lucas, 4-13-84), Phillips v Perkins. Appointment of police officers is within the local self-government powers of a charter municipality, but civil service statutes that do not directly conflict with ordinances or the charter are effective.

j. Personnel—labor relations

61 OS(3d) 658, 1991 SERB 4-87 (1991), Cincinnati v Ohio Council 8, AFSCME. The provisions of a collective bargaining agreement entered into pursuant to RC Ch 4117 prevail over conflicting laws, including municipal home-rule charters enacted pursuant to O Const Art XVIII §7, except for those laws specifically exempted by RC 4117.10(A).

53 OS(3d) 13, 557 NE(2d) 1206 (1990), State ex rel Canfield v Frost. A charter municipality's civil service commission rule that an employee may appeal to it within ten days of demotion, suspension, or removal is a valid exercise of home rule and a court errs in applying RC 124.27 to an employee covered by the rule.

53 OS(3d) 13, 557 NE(2d) 1206 (1990), State ex rel Canfield v Frost. Under RC 4117.10, provisions of a collective bargaining agreement prevail over conflicting provisions in RC 124.27 or charter municipality civil service commission rules.

43 OS(3d) 1, 1989 SERB 4-41, 539 NE(2d) 103 (1989), Rocky River v SERB. The Ohio Public Employees' Collective Bargaining Act, RC Ch 4117, and specifically RC 4117.14(I), are constitutional as they fall within the general assembly's authority to enact employee welfare legislation pursuant to O Const Art II §34; O Const Art XVIII §3 may not be interposed to impair, limit, or negate the Act.

43 OS(3d) 1, 1989 SERB 4-41, 539 NE(2d) 103 (1989), Rocky River v SERB. RC Ch 4117 is a general law and as such prevails over conflicting municipal enactments.

39 OS(3d) 196, 1988 SERB 4-87, 530 NE(2d) 1 (1988), Rocky River v SERB; vacated by 43 OS(3d) 1, 1989 SERB 4-41, 539 NE(2d) 103 (1989). RC 4117.14(I) is unconstitutional to the extent it violates a municipality's right to exercise its powers of local self-government under O Const Art XVIII §3 and O Const Art XVIII §7, because it interferes with a municipality's power to determine municipal safety employee compensation. (See Rocky River v SERB, 41 OS(3d) 602, 535 NE(2d) 657 (1989).)

26 OS(3d) 50, 26 OBR 42, 1984-86 SERB 382, 496 NE(2d) 983 (1986), Kettering v SERB. The general assembly was exercising its police power to promote the general safety and welfare when it enacted the Public Employees Collective Bargaining Act, RC Ch 4117, and the subject of this Act is a matter of sufficient "statewide concern" to prevail over a city's contrary ordinance defining police command officers as "supervisors" who cannot engage in collective bargaining.

24 App(3d) 16, 24 OBR 38, 1984-86 SERB 393, 492 NE(2d) 861 (Cuyahoga 1985), Cleveland Police Patrolmen's Assn v Cleveland. An ordinance providing for binding arbitration of disputes over compensation between a city and its employees is not an unlawful delegation of legislative authority where the ordinance establishes standards to which the arbitration panel must conform, and the arbitration award is reviewable under RC 2711.13.

27 App(2d) 35, 272 NE(2d) 169 (1970), Foltz v Dayton. Agreement made between municipality and union whereby city is obligated, upon complaint of union, to discharge its employees if they fail to pay union dues or to pay service charge to union in amount of such dues is a police regulation in conflict with provisions of RC 9.41 and Ch 143.

No. 85 CA 131 (7th Dist Ct App, Mahoning, 1-27-87), State ex rel Darvanan v Youngstown. A home rule charter adopting all Revised Code provisions concerning municipal civil service thereby adopts RC Ch 4117 and empowers the municipality to bargain with respect to promotions, since these are a "term or condition" of employment subject to bargaining under RC Ch 4117.

44 Misc 39, 336 NE(2d) 467 (CP, Cuyahoga 1975), Choura v Cleveland. An ordinance that regulates the tenure of the members of the police and fire departments in the civil classified service of a charter city, is an exercise of the power of local self-government authorized by O Const Art XVIII §3 and 7.

10 Misc 254, 227 NE(2d) 424 (CP, Cuyahoga 1967), State ex rel Brownlee v Broadview Heights. Even though a charter, municipal ordinance, or rule of a civil service commission may conflict with the provisions of the state statutes pertaining to the eligibility of persons entitled to take promotional examinations given by a municipal civil service commission, the charter, ordinance or rule will prevail over the state statute.

1984-86 SERB 437 (CP, Summit, 1-17-86), Twinsburg v SERB. Because RC Ch 4117 was enacted pursuant to the state's police power and relates to a matter of "statewide concern," it prevails over conflicting ordinances of a charter city, notwithstanding the home rule guarantees of O Const Art XVIII §7 and 3.

1984-86 SERB 420 (CP, Franklin, 3-8-85), Columbus v SERB. Prevention of police strikes and maintenance of order in the state of Ohio are matters of "statewide concern" in light of the fact that police enforce state laws as well as municipal ordinances; as a consequence, the binding arbitration provisions of RC Ch 4117 do

not violate the home rule provisions of O Const Art XVIII §3 and 7. (See also In re Columbus, SERB 85-004 (2-6-85).)

1984-86 SERB 418 (CP, Montgomery, 12-21-84), Kettering v SERB; affirmed by 26 OS(3d) 50, 26 OBR 42, 496 NE(2d) 983 (1986). The "labor unrest" addressed by RC Ch 4117 is not restricted to one municipality but affects the entire state and is a "matter of statewide concern," so that the statute is a general law prevailing over local ordinances such as one classifying police sergeants, lieutenants, and captains as "supervisors" who cannot be included in a collective bargaining unit.

1984-86 SERB 407 (9th Dist Ct App, Summit, 10-1-86), Twinsburg v SERB. Because RC Ch 4117 was enacted pursuant to the state's police power and relates to a matter of "statewide concern," it prevails over conflicting provisions of a city charter.

1988 SERB 4-64 (CP, Montgomery, 4-7-88), Crenshaw v Dayton. A conflict between a city charter and a collective bargaining agreement as to commencement of the probationary period for police will be resolved in favor of the bargaining agreement provision.

82 Abs 305, 165 NE(2d) 246 (CP, Cuyahoga 1959), Klucar v Hull. A provision in a municipal charter that decisions of the municipal civil service commission on suspension of police officers shall be final is invalid.

SERB 89-007 (3-15-89), In re St. Bernard. Notwithstanding RC 4117.10(A), stating that laws "pertaining to ... residency requirements ... prevail over conflicting provisions of agreements," the state employment relations board holds a city commits an unfair labor practice when its council enacts a residency requirement after city negotiators refused to bargain about imposing a residency rule; adoption of the ordinance without bargaining is held a continuation of the unfair practice of refusal to bargain.

k. Municipal property; contracts

62 OS(2d) 322, 405 NE(2d) 1026 (1980), Dies Electric Co v Akron. A charter municipality, in the exercise of its powers of local self-government under O Const Art XVIII §3, may, pursuant to its charter, enact retainage provisions for a contract for improvements to municipal property which differ from the retainage provisions prescribed in RC 153.13.

31 Misc 75, 286 NE(2d) 483 (CP, Montgomery 1971), Dalton v Kunde. An ordinance requiring that an affirmative action assurance plan be submitted with bids for municipal contracts and requiring that such plan be given consideration in selecting the lowest and best bid is valid.

22 NP(NS) 533, 31 D 335 (CP, Summit 1920), Akron v Zeisloft; affirmed by Court of Appeals. This section confers upon the council of a charter city legislative power as to matters of local self-government to the same extent as the legislature possesses such power for the state at large; and the validity of a contract for a local improvement, undertaken by a charter city, is not dependent upon statutory law relating to municipalities, but upon the provisions of its charter and the acts of the council thereunder.

l. Municipal services—in general

64 OS(2d) 43, 413 NE(2d) 784 (1980), Novak v Perk. City charter could place exclusive control of allocation of fire companies in the executive branch of city government and preclude the city council from enacting an ordinance regarding fire company allocation.

44 OS(2d) 151, 339 NE(2d) 663 (1975), State ex rel Grandview Heights City School Dist Bd of Ed v Morton. City solicitor of charter municipality was obligated to provide legal services to city school district.

138 OS 220, 34 NE(2d) 226 (1941), Cincinnati v Gamble; overruled by 168 OS 191, 151 NE(2d) 722 (1958), State ex rel Canada v Phillips. In general, matters relating to police and fire protection are of statewide concern and under the control of state sovereignty.

129 OS 604, 196 NE 416 (1935), State ex rel Brickell v Frank. Where a municipal home rule charter provides for a free public library and creates a board of trustees, but contains nothing to prevent the extension of library services to all inhabitants of the county except those of subdivisions maintaining a public library participating in the proceeds of classified property taxes, the trustees may make such an extension of services and participate in the proceeds of classified property taxes.

654 F(2d) 1187 (6th Cir Ohio 1981), Hybud Equipment Corp v Akron; vacated by 455 US 931, 102 SCt 1416, 71 LEd(2d) 640 (1982); cert denied 471 US 1004, 105 SCt 1866, 85 LEd(2d) 160 (1985). Akron could validly adopt ordinance providing for garbage collecting monopoly, thus eliminating any competition in the market for recyclable wastes.

m. Municipal services—utilities

37 OS(3d) 50, 524 NE(2d) 441 (1988), Cleveland Electric Illuminating Co v Cleveland. A municipality may not support a municipally-owned public utility with monies derived from tax-generated revenue where the city charter provides that such utilities are to be "non-tax supported."

37 OS(3d) 50, 524 NE(2d) 441 (1988), Cleveland Electric Illuminating Co v Cleveland. Where a city charter declares that municipally-owned public utilities are to be "non-tax supported," that prohibition extends to advancements from a tax-generated fund to such public utilities where there is no expectation of prompt and complete repayment.

25 OS(3d) 117, 25 OBR 164, 495 NE(2d) 374 (1986), Vernon v Warner Amex Cable Communications, Inc. A municipality with a home rule charter may permit a community television antenna company to use the public right-of-way in streets for its electrical equipment, and may classify the company as a public utility for such purpose, even though the company is not a public utility as that term is used in RC Ch 5727 and Ch 4905.

6 OS(3d) 344, 6 OBR 399, 453 NE(2d) 644 (1983), State ex rel Lemaitre v Clyde. An ordinance granting power to city manager to adjust water and sewage rates could not be passed as an emergency measure.

92 OS 478, 111 NE 155 (1915), Billings v Cleveland Railway Co. The special provision of O Const Art XVIII §4 demonstrates that the framers of that amendment regarded the matter of acquiring, constructing, and operating public utilities as a municipal affair of the particular locality, and therefore the granting of permission and the making of a contract to construct and operate a street railway in the streets of a city or village may be provided for in a charter adopted by the municipality under that section.

64 App(2d) 228, 414 NE(2d) 430 (1979), Shipman v Lorain County Bd of Health. A municipal ordinance requiring annexation prior to use of municipal utilities is not per se unreasonable and arbitrary.

115 App 541, 186 NE(2d) 94 (1962), Avon Lake v Burke. A municipal corporation is empowered to adopt a charter and to provide therein for the creation of a board empowered to manage and control public utilities owned by the municipality, and to adopt bylaws and regulations for the protection of such public utilities that have "the same validity as municipal ordinances," including provision for the criminal prosecution of one who violates a regulation adopted for the protection of the public utility property.

7 Misc 159, 215 NE(2d) 631 (Prob, Hamilton 1964), Cincinnati & Suburban Bell Telephone Co v Cincinnati. A municipal corporation may not require a telephone company to construct its lines underground. (See also Cincinnati & Suburban Bell Telephone Co v Cincinnati, 215 NE(2d) 629 (Prob, Hamilton 1965).)

n. Streets and highways; parks and recreation

53 OS(2d) 253, 374 NE(2d) 154 (1978), Columbus v Teater. RC 1501.17 is not facially violative of O Const Art XVIII §3, 4, 5, 6, or 7.

13 OS(2d) 63, 233 NE(2d) 864 (1968), Bazell v Cincinnati; appeal dismissed sub nom Fosdick v Hamilton County, 391 US 601, 88 SCt 1865, 20 LEd(2d) 845 (1968). A charter municipality may construct a stadium that is designed to accommodate large crowds at athletic and other exhibitions and may rent that stadium to private persons who will provide such exhibitions, and such municipality may do so even though such private persons will derive profits from providing those exhibitions; and, in connection with the construction and operation of such a stadium, such munic-

ipality may acquire land and devote it to automobile parking and derive a profit from doing so; and, as an incident to the construction and operation of such stadium, such municipality may construct and maintain a scoreboard and derive revenue from the sale of advertising space thereon.

99 OS 376, 124 NE 212 (1919), Froelich v Cleveland. When a city has adopted a charter under which it is authorized to exercise "all powers of local self-government" under O Const Art XVIII §3 and 7, it derives this authority by express authority from the people of the state, and the power to locate, establish, and protect the streets within its limits resides in the municipality, and it may adopt and enforce such reasonable regulations for their proper and economic use, such as regulations on the weight of loads and the width of tires of vehicles passing over its streets.

107 App 71, 152 NE(2d) 311 (1958), State ex rel Hauck v Bachrach; affirmed by 168 OS 268, 153 NE(2d) 671 (1958). The provisions of RC 755.01 et seq. relating to municipal boards of park commissioners, are operative in noncharter municipalities and in such charter cities as have made them operative therein, and where valid enactments of a charter municipality are in conflict therewith such statutes, and not the municipal enactments, must yield.

100 App 334, 124 NE(2d) 846 (1955), Cleveland v Antonio. A municipal ordinance which in effect prohibits a trucking company from driving its trucks to its garage between 10:00 p.m. and 6:00 a.m. by restricting truck traffic on all access streets is invalid.

o. Property use regulation; zoning

1991 Code News 49 (May/June 1991). Zoning Ordinances: Constitutionality and Effect on Contractors, Robert J. Andrews.

32 OS(3d) 316, 513 NE(2d) 324 (1987), Northern Ohio Sign Contractors Assn v Lakewood. Pursuant to the municipal police power granted by O Const Art XVIII §3 and O Const Art XVIII §7, an ordinance may constitutionally be applied to regulate preexisting, nonconforming commerical signs which have been declared a public nuisance by a municipal government.

69 OS(2d) 492, 433 NE(2d) 165 (1982), Negin v Mentor Bd of Building & Zoning Appeals. The requirement of a municipal ordinance that a landowner purchase additional property before he is permitted to improve a substandard lot which was platted and held in single and separate ownership prior to the enactment of the ordinance renders that lot useless for any practical purpose and is invalid.

12 OS(2d) 116, 233 NE(2d) 129 (1967), State ex rel Hunter v Erickson; reversed by 393 US 385, 89 SCt 557, 21 LEd(2d) 616 (1969). The charter of a municipal corporation may lawfully be amended to provide that any ordinance which regulates the use, sale, advertisement, transfer, listing, assignment, lease, sublease or financing of real property on the basis of race, color, religion, national origin or ancestry, must first be approved by the electors of such municipality, and that any such ordinance in effect at the time of adoption of such a charter amendment shall cease to be effective until approved by such electors even though such voter approval is not required with respect to other kinds of ordinances.

175 OS 337, 194 NE(2d) 859 (1963), State ex rel Davis Investment Co v Columbus. The legislative body of a charter municipality may enact an emergency ordinance which will operate effectively to prevent the municipal board of zoning adjustment from granting a variance which would permit the construction of a shopping center in municipal territory zoned as a suburban residential district.

162 OS 447, 123 NE(2d) 419 (1954), Morris v Roseman. A noncharter municipality cannot adopt an emergency zoning ordinance effective immediately.

49 App(2d) 253, 360 NE(2d) 728 (1975), Ellet Hills Mall, Inc v Ballard. A city council is without authority to approve an application for a zoning change granted as an administrative act, without mayoral concurrence, where a provision of the city charter requires that every ordinance or resolution "shall, before it goes into effect, be presented to the mayor for approval."

89 App 1, 100 NE(2d) 689 (1950), State ex rel Gulf Refining Co v DeFrance. In the absence of an enumerated power in its charter to enact zoning regulation such regulations may be adopted by the council of a charter city pursuant to general law.

22 NP(NS) 549, 31 D 197 (CP, Cuyahoga 1920), State ex rel Morris v Osborn. This section authorizes the council of a charter municipality to adopt a zoning ordinance, restricting certain localities against the erection of apartment houses, so long as the classifications of property into different zones are not arbitrary, unreasonable, or discriminatory.

221 F(2d) 412, 73 Abs 334 (ND Ohio 1955), Valley View Village, Inc v Proffett. An incorporated noncharter village has power to establish entire area of village into single residential use district.

p. Building and housing regulations

1991 Code News 45 (May/June 1991). City of Springdale: No Home-Rule for Certified Building Departments.

58 App(2d) 17, 387 NE(2d) 1380 (1977), State ex rel Waterbury Development Co v Witten; affirmed by 54 OS(2d) 412, 377 NE(2d) 505 (1978). Where a village requires the payment of a fee before a building permit can be issued, and the purpose behind the requirement is to acquire money for a park development fund, such act is invalid.

58 App(2d) 17, 387 NE(2d) 1380 (1977), State ex rel Waterbury Development Co v Witten; affirmed by 54 OS(2d) 412, 377 NE(2d) 505 (1978). Where a village requires the payment of a water tap-in charge before a building permit can be issued and such charge bears no relationship to the present or future cost of providing water, such act is invalid.

q. Nuisances

32 OS(3d) 316, 513 NE(2d) 324 (1987), Northern Ohio Sign Contractors Assn v Lakewood. When a municipal government exercises its police power by adopting an ordinance to abate a nuisance, an amortization clause in the ordinance becomes an element to consider in evaluating whether the ordinance is unreasonable or arbitrary.

32 OS(3d) 316, 513 NE(2d) 324 (1987), Northern Ohio Sign Contractors Assn v Lakewood. RC 713.15 does not prevent a city from exercising its police power to abate a preexisting use which has become a nuisance.

7 OS(2d) 16, 218 NE(2d) 463 (1966), Solly v Toledo. A charter city may enact legislation, not in conflict with general laws, authorizing the summary abatement of public nuisances and the destruction of property used in maintaining such nuisances when reasonably necessary to effectuate their abatement.

33 App(3d) 187, 515 NE(2d) 8 (Butler 1986), Singleton v Hamilton. A municipal corporation's determination concerning whether or not it will exercise its decisionmaking function, and in turn its sovereign authority, to pursue an alleged nuisance falls within the grant of sovereign immunity for executive and legislative decisions involving the application of a high degree of official judgment or discretion.

r. Health, safety, morals, and general welfare

173 OS 81, 180 NE(2d) 158 (1962), Columbus v DeLong. Section 2343.18 of the ordinances of the city of Columbus making it an offense, punishable by imprisonment, for a prostitute merely to wander about the streets is too indefinite, restrictive and liberty depriving to represent a proper and authorized exercise of the police power and is invalid in such respect.

33 App(3d) 187, 515 NE(2d) 8 (Butler 1986), Singleton v Hamilton. A municipal charter provision stating "the city shall, through such officers as may be provided by ordinance, enforce all laws and ordinances relating to health, and such officer or officers shall perform all duties and may exercise all powers relative to the public health provided by general law to be performed and exercised in municipalities by health officers," is not self-executing since it requires some additional expression, legislative or otherwise, to make it enforceable, and thus a duty to regulate hazardous waste does not arise from such general city charter provision.

40 App(2d) 389, 320 NE(2d) 727 (1974), Fifth Urban, Inc v Cleveland Bd of Building Standards. The authority of a municipal corporation to enact ordinances requiring repair and rehabilitation or demolition of buildings classified as "unsafe structures" or "nuisances" is within its police powers under O Const Art XVIII §3 and 7.

42 Misc(2d) 1, 536 NE(2d) 67 (Muni, Wadsworth 1987), Wadsworth v Owens. A municipal ordinance which, without exception, prohibits minors from being abroad on the city's streets, sidewalks, or other public places after a certain hour unless accompanied by specified adults, is unconstitutionally overbroad.

487 FSupp 135 (SD Ohio 1978), United States v Blue Ash; affirmed by 621 F(2d) 227 (6th Cir Ohio 1980). A city ordinance is invalid under the federal preemption doctrine where it is passed for the express purpose of air traffic noise control and it dictates aircraft flight in a given course in a defined navigable airspace.

s. Miscellaneous

95 OS 224, 116 NE 450 (1917), Ide v State. A charter adopted under this section may provide for continuing in force the general laws of the state conferring judicial functions upon mayors of cities and villages, to be exercised by the president of a city commission, who is elected a member of the commission by popular vote.

26 Misc 115, 267 NE(2d) 328 (Muni, Dayton 1971), Dayton v Stearns. Sections 655 to 662 of general ordinances of city of Dayton regulating licensing of second-hand automobile dealers and salesmen are police regulations in conflict with general law of state on same subject and are unconstitutional and invalid.

OAG 74-048. A municipality, whether charter or statutory, may use public funds to pay a reward for information leading to the apprehension and conviction of suspected felons if its legislative authority determines that such payments serve a public municipal purpose.

OAG 65-205. A village may expend funds to retain counsel to represent public officers if the litigation is the result of a good faith attempt by the officer to discharge his official duties thereby giving the village an official interest in the adjudication of the charges; the decision to retain counsel being in the discretion of the legislative authority of a village; and the time of filing the suit has no bearing on the authority to retain legal counsel.

1963 OAG 268. No municipality, including a charter city, has authority to employ a private corporation to conduct a survey or engage in a program of industrial and economic development for which public funds are to be expended.

1958 OAG p 430. The provisions of a city charter, which limit the political activities of appointive officers and employees of city government, have no application to the office of bailiff of a municipal court having county-wide jurisdiction under RC 1901.32.

1954 OAG 3644. The city solicitor of a city partly or wholly within the boundaries of a city school district is legal adviser to the board of education in noncharter cities, but not in charter cities unless such duty is directly or indirectly imposed by the charter.

1938 OAG p 691. A charter city, unless prevented by its charter, has plenary power to appropriate and spend a reasonable sum of money to participate in the one hundred and fiftieth anniversary of the adoption of the Ordinance of 1787 and settlement of the Northwest Territory, since such expenditure is for a general, public, and educational purpose.

1927 OAG p 678. Under O Const Art XVIII §7, the council of a charter city may appropriate money for the purpose of paying the cost of a municipal exhibit in an industrial exhibition to be held for the purpose of promoting the welfare and prosperity of the city.

O Const XVIII § 8 Referenda on whether to frame charter and on adoption of proposed charter

The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

HISTORY: 1912 constitutional convention, adopted eff. 11-15-12

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 1.26, 7.65, 7.69, 7.70, 7.72, 7.74, 43.13; Forms 7.11, 7.12

CROSS REFERENCES

Initiative and referendum; procedure, 731.28 to 731.41
Power to adopt or amend charter, O Const Art XVIII §7, 9

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 15, Civil Servants and Other Public Officers and Employees § 204, 346; 20, Counties, Townships, and Municipal Corporations § 409, 463, 487, 488, 493, 496; 21, Counties, Townships, and Municipal Corporations § 603, 715, 756, 799; 40, Energy § 116; 50, Food, Drugs, Poisons, and Hazardous Substances § 19; 51, Garages, Liveries, Service Stations, and Parking Facilities § 10

Am Jur 2d: 56, Municipal Corporations, Counties and Other Political Subdivisions § 30 et seq., 126 et seq.

NOTES ON DECISIONS AND OPINIONS

1. Submission of question to frame charter
   a. Vote of council
   b. Petition of voters
   c. Election
2. Charter commission
3. Submission of proposed charter to voters
   a. Mailing copies to voters
   b. Election
4. Amendment of charter
5. Referendum on ordinance
   a. In general
   b. Petitions
   c. Election

1. Submission of question to frame charter

a. Vote of council

103 OS 345, 132 NE 729 (1921), State ex rel McCormick v Fouts. Since it is provided in GC 4224 that the requirement for adopting an ordinance upon a yea and nay vote properly recorded

does not apply to the ordering of an election, in passing an ordinance for the submission of the question of a charter, it is only necessary that it clearly appears by the minutes of the council that the ordinance received a two-thirds vote of all the members.

103 OS 345, 132 NE 729 (1921), State ex rel McCormick v Fouts. In order that an ordinance for the submission of the question of a charter to the electors may become effective in time to hold the election, it is only necessary that it should be passed not less than sixty days before the election.

1964 OAG 1512. The ordinance adopted by the legislative authority of a municipal corporation under the authority of O Const Art XVIII §8, may prescribe the method of selection of candidates to be elected to the commission to frame a charter.

1951 OAG 409. Under the provisions of O Const Art XVIII §8, the legislative authority of either a city or village may submit to the electors the question of choosing a commission to frame a charter for said municipality.

b. Petition of voters

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. An ordinance for submitting a charter upon petition of ten percent of the electors need not be read three times.

1953 OAG 2407. Where a petition of ten per cent of the electors of a city has been filed, requesting the council thereof to provide by ordinance for the submission to the electors of the question of choosing a commission to frame a charter, it is the duty of the council to so provide and there is no requirement that such ordinance be passed by two-thirds vote of the members of council.

1951 OAG 409. Under the provisions of O Const Art XVIII §8, the legislative authority of either a city or village may submit to the electors the question of choosing a commission to frame a charter for said municipality.

c. Election

73 Abs 204, 135 NE(2d) 92 (CP, Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). A mandamus action requesting a special election should not be dismissed solely because the relator has asked that the election be called and held on a specific date.

18 Abs 356 (App, Auglaize 1934), State ex rel Frame v Council of Wapakoneta. If time for election fixed by ordinance of submission is within competent constitutional period, discretion of legislative authority in selecting such date was not abused, hence mandamus does not lie.

15 Abs 314 (App, Summit 1933), Baldwin v Akron. Requirements of this section that an election be held not less than sixty days to frame a charter, after its passage, and § 136 of the Akron charter requiring that an amendment to said charter be passed upon at an election to be held not less than sixty days after its passage are mandatory and not directory.

1964 OAG 1512. Members of a commission selected to frame a municipal charter as provided by O Const Art XVIII §8, are not municipal officers, and candidates for election to such commission are not candidates for nomination for an elective municipal office within the meaning of O Const Art V §7, and there is no requirement in law that such candidates file petitions in accordance with RC 3513.251 and 3513.252.

1960 OAG 1170. The term "year," as used in O Const Art XVIII §8 must be construed to mean 365 days and, during a year which includes a leap year February, 366 days.

1929 OAG 1021. Candidates for commissioners to frame a charter under O Const Art XVIII §8, should be nominated as provided by general law, for the nomination of other municipal officers.

1927 OAG 380. The words "regular municipal election," as used in O Const Art XVIII §8, refer to and mean the next general election, held on the first Tuesday after the first Monday in November in the odd-numbered years.

2. Charter commission

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. The charter commission of a city is the sole authority for fixing the date for the submission of the question of a proposed charter to the voters, and this they may do even at the additional cost of a special election.

OAG 71-017. Member of city council governed by RC 731.02 may not serve as member of municipal charter commission created under O Const Art XVIII §8.

OAG 71-017. In the absence of any specific constitutional or statutory prohibition, municipal officer of the types listed in RC 733.01 may serve as member of a municipal charter commission created under O Const Art XVIII §8.

1964 OAG 1512. The ordinance adopted by the legislative authority of a municipal corporation under the authority of O Const Art XVIII §8, may prescribe the method of selection of candidates to be elected to the commission to frame a charter.

1964 OAG 1512. Members of a commission selected to frame a municipal charter as provided by O Const Art XVIII §8, are not municipal officers, and candidates for election to such commission are not candidates for nomination for an elective municipal office within the meaning of O Const Art V §7, and there is no requirement in law that such candidates file petitions in accordance with RC 3513.251 and 3513.252.

1929 OAG 1021. Candidates for commissioners to frame a charter under O Const Art XVIII §8, should be nominated as provided by general law, for the nomination of other municipal officers.

3. Submission of proposed charter to voters

a. Mailing copies to voters

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. Call of a special election was valid although funds for mailing the copy of a proposed charter were not appropriated prior to such mailing, although only fifty-five days intervened between the submission of the charter to the voters and the special election, and although the proofs of the ballot were not posted nor sureties furnished on the printing contract.

1956 OAG 6809. The provisions of RC 705.03 regarding mailing copies of a proposed plan of government to the electors do not apply to the issue of adopting a charter.

b. Election

171 OS 221, 168 NE(2d) 544 (1960), State ex rel Graham v Pestrak. Mandamus will not issue to compel a mayor and city council to submit a proposed city charter to the electorate where a year has elapsed since the election of the members of the charter commission.

73 Abs 204, 135 NE(2d) 92 (CP, Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). A mandamus action requesting a special election should not be dismissed solely because the relator has asked that the election be called and held on a specific date.

69 Abs 421, 117 NE(2d) 629 (CP, Jefferson 1953), Merryman v Gorman. The charter commission of a city is the sole authority for fixing the date for the submission of the question of a proposed charter to the voters, and this they may do even at the additional cost of a special election.

1960 OAG 1170. The term "year," as used in O Const Art XVIII §8 must be construed to mean 365 days and, during a year which includes a leap year February, 366 days.

1952 OAG 1286. A charter commission has the sole right to fix the time for an election for approval or disapproval of a proposed municipal charter, and where proceedings are instituted for adoption or amendment of a charter, it is the duty of the legislative body to appropriate the necessary funds for the election.

1951 OAG 409. When the electors of a municipality have voted to choose a commission to frame a charter pursuant to the provision of O Const Art XVIII §8, and prior to the time the charter so

framed is submitted to the electors the classification of the municipality is changed from a village to a city as the result of a federal census, the charter shall be submitted to the electors at the time provided by said § 8, and the fixing of such time will not be altered by such change in classification.

1927 OAG 380. The words "regular municipal election," as used in O Const Art XVIII §8, refer to and mean the next general election, held on the first Tuesday after the first Monday in November in the odd-numbered years.

4. Amendment of charter

61 OS(3d) 49, 572 NE(2d) 649 (1991), State ex rel Citizens for a Better Portsmouth v Sydnor. A city council may not refuse to place a charter amendment, offered by initiative petition, on the ballot due to content dispute where the petition's form is proper.

25 OS(2d) 140, 267 NE(2d) 410 (1971), Billington v Cotner. The requirement of O Const Art XVIII §8 that an ordinance proposing a charter amendment not submitted to the electors at a regular municipal election shall be submitted at a special election called is mandatory, and the failure of the legislative authority of a city to establish a specific date for the election prohibits the effective submission of the proposed amendment to the electors.

25 OS(2d) 140, 267 NE(2d) 410 (1971), Billington v Cotner. The mayor of a charter municipality has no authority to veto an ordinance submitting a proposed amendment of the charter to the electors.

25 OS(2d) 140, 267 NE(2d) 410 (1971), Billington v Cotner. Pursuant to O Const Art XVIII §8 and 9, in order to submit proposed amendment of charter of municipality to electors at special election, legislative authority of municipality must establish date for the election.

153 OS 325, 91 NE(2d) 473 (1950), State ex rel Werner v Koontz. A writ of mandamus will not issue to compel a city council to certify a proposed ordinance to the board of elections for submission to the electors where the proposal's provisions are contrary to provisions of the city charter regarding proposed ordinances, as the proposal is really a proposed amendment to the charter, and the steps taken under the initiative and referendum sections of the charter are not appropriate for the submission of a charter amendment to the electors.

1 App(3d) 44, 1 OBR 25, 439 NE(2d) 440 (Hamilton 1981), Oppenheimer v Madeira. O Const Art XVIII §8 is incorporated into the amendment provisions of the charter of a municipal corporation by a provision that "copies of . . . amendments [to the charter] shall be mailed to the electors as required in the case of this original charter," and the charter and constitution require that the copies of the proposed amendment to the charter be addressed by name, by the clerk of the municipality, to the electors appearing on the poll or registration books of the last regular or general election held in the municipality, and not to "resident."

15 Abs 314 (App, Summit 1933), Baldwin v Akron. Requirements of this section that an election be held not less than sixty days to frame a charter, after its passage, and § 136 of the Akron charter requiring that an amendment to said charter be passed upon at an election to be held not less than sixty days after its passage are mandatory and not directory.

OAG 82-057. Municipal elections on charter amendments must be held in accordance with the requirements of O Const Art XVIII §8 and 9. If there is no constitutional provision which is applicable to a particular election matter, charter requirements prevail over conflicting statutes.

OAG 65-112. Where a municipality has fully complied with the provisions of O Const Art XVIII §9, with regard to a proposal for amending its charter, and provided that the limiting time provisions of §8 are applicable, it is mandatory for a board of elections to conduct a special election.

5. Referendum on ordinance

a. In general

48 OS(2d) 49, 356 NE(2d) 720 (1976), State ex rel Sheldon Gas Co v Hancock County Bd of Elections. Where referendum petitioners, city council, and board of elections had failed to comply with the provisions of O Const Art XVIII §5 and 8, in respect to a referendum on an ordinance fixing gas rates, prohibition would lie to prohibit submitting the issue to the voters.

16 OS(2d) 63, 242 NE(2d) 576 (1968), State ex rel Janik v Lorain County Bd of Elections. A referendum on an ordinance fixing natural gas prices for a city is controlled exclusively by the provisions of O Const Art XVIII §5 and 8, which are self-executing.

153 OS 325, 91 NE(2d) 473 (1950), State ex rel Werner v Koontz. A writ of mandamus will not issue to compel a city council to certify a proposed ordinance to the board of elections for submission to the electors where the proposal's provisions are contrary to provisions of the city charter regarding proposed ordinances, as the proposal is really a proposed amendment to the charter, and the steps taken under the initiative and referendum sections of the charter are not appropriate for the submission of a charter amendment to the electors.

134 OS 113, 16 NE(2d) 214 (1938), State ex rel Portmann v Massillon City Council. While submission of referendum on a municipal contract authorizing the purchase of public utility products or service is had under the provisions of O Const Art XVIII §8, the circulation and filing of referendum petitions are governed by the provisions of O Const Art XVIII §5.

127 OS 195, 187 NE 715 (1933), Youngstown v Craver. A charter city is not required to adopt initiative and referendum provision for its own ordinances and other legislative measures. It may adopt the Code provisions for such purpose, and when it does so it is governed by GC 4227-1 (RC 731.28) to 4227-13.

119 OS 210, 162 NE 807 (1928), State ex rel Diehl v Abele; overruled by 131 OS 356, 2 NE(2d) 862 (1936), State ex rel Didelius v City Comm of Sandusky. Under O Const Art XVIII §4, 5, 8, when a municipality proceeds to construct a public utility, not only the initial ordinance authorizing such construction, but every other ordinance in furtherance of such construction, is subject to referendum under O Const Art XVIII §8.

13 App(2d) 46, 233 NE(2d) 600 (1967), Korn v Dunahue. No referendum is necessary to the validity of an ordinance for the sale of a municipally-owned utility; any referendum that is held thereon is governed by the general provisions of O Const Art II §1f, and by RC 731.29; it is not subject to the provisions of O Const Art XVIII §4, 5, and 8, which pertain to the purchase of a utility.

b. Petitions

61 OS(3d) 55, 572 NE(2d) 653 (1991), State ex rel Van de Kerkhoff v Dowling. Where circulator affidavits are required by law for signatures on an initiative petition, the use of forms suggested by the board of elections not containing circulator affidavits, but only statements, invalidates the petitions, and estoppel may not be asserted against the board of elections.

39 OS(2d) 150, 314 NE(2d) 167 (1974), State ex rel Stanley v Avon City Council. With respect to a referendum petition there is no language in either the Avon charter or the Ohio constitution which justifies a disqualification of signatures of registered voters simply because they had not voted in the last municipal election.

138 OS 93, 32 NE(2d) 839 (1941), State ex rel Wehr v Bellevue City Council. Council, not having before it referendum petitions bearing signatures of ten per cent of the electors, was not authorized to submit franchise ordinances to a referendum.

103 OS 345, 132 NE 729 (1921), State ex rel McCormick v Fouts. Although petitions filed by citizens with the city council asking for the passage of an ordinance to submit the question of a charter to the people are not sufficient, where the council passes such an ordinance voluntarily and without reference to the petitions by more than a two-thirds vote, the court may not inquire into the motive which induced the adoption of the ordinance which was thereafter properly authenticated and filed with the board of elections.

73 Abs 204, 135 NE(2d) 92 (CP, Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). No signature to an initiative petition can be rejected without a finding of its invalidity, and a finding means that there must be some final determination, after examination, that the signature is infected with some plausible legal defect.

73 Abs 204, 135 NE(2d) 92 (CP, Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). A failure to comply with the requirements of 731.32 that a copy of a petition be filed with the city auditor (or finance director) before the petition is circulated for signatures does not invalidate the petition.

27 NP(NS) 221 (CP, Hamilton 1927), Kuertz v Union Gas & Electric Co. The duty of determining the sufficiency and validity of a referendum petition filed under O Const Art XVIII §4, 5, 8 is upon the city council and its failure to submit the referendum petition to the electors within the time prescribed by O Const Art XVIII §8 and ordering the company's acceptance of the rate ordinance filed is a determination by council that the referendum petition is insufficient and invalid.

1933 OAG 420. Where a referendum petition to an ordinance granting a public utility company a franchise for furnishing its product and service to a municipality and its inhabitants, was filed with a village clerk who certified the same to the board of elections, and an election was had thereon one hundred and ninety days after the passage of the ordinance, the council never having taken any action thereon, the failure to file such referendum petition with the legislative authority of the village, and the failure of the council thereof to submit the ordinance to the electors within the time required by O Const Art XVIII §8 rendered such election invalid.

c. Election

15 Abs 314 (App, Summit 1933), Baldwin v Akron. The provisions of O Const Art XVIII §8 requiring an election to be held not less than sixty days after the passage of the ordinance by council are mandatory rather than directory.

O Const XVIII § 9 Amendment of charter; referendum

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or, pursuant to laws passed by the General Assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

HISTORY: 1970 SJR 31, am. eff. 1-1-71
1912 constitutional convention, adopted eff. 11-15-12

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 1.26, 7.65, 7.70, 7.74, 11.80; Forms 7.13

CROSS REFERENCES

Initiative and referendum; procedure, 731.28 to 731.41
Income tax, administrator, rules, appeals, 733.85
Adoption of charter, O Const Art XVIII §7, 8

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 409, 463, 487, 493, 496; 21, Counties, Townships, and Municipal Corporations § 764, 799; 37, Elections § 181

Am Jur 2d: 56, Municipal Corporations, Counties and Other Political Subdivisions § 30 et seq., 126 et seq.

Doctrine of de facto existence or powers of municipal corporation as applicable to amendment or revision of charter. 7 ALR2d 1407

NOTES ON DECISIONS AND OPINIONS

1. In general
2. Submission of amendment
   a. Vote of council
   b. Petition of voters
3. Notice of proposed amendment
4. Election; ballot
5. Approval; effective date; certification
6. Particular amendments

1. In general

107 OS 117, 141 NE 27 (1923), Reutener v Cleveland. The power given by this section to amend a municipal charter includes the power to repeal or to strike out provisions.

103 OS 306, 133 NE 552 (1921), Switzer v State ex rel Silvey. O Const Art XVIII §9 provides that the only mode of changing a city's charter legally adopted is by amendment, and these provisions are not only mandatory, but also exclusive and controlling as against any statutory enactment; the abandonment change of plan can only be exercised every five years, in this form of government, and therefore a charter city may not proceed under the statutory abandonment of plan provisions under GC 3515-69.

32 App 189, 166 NE 907 (1928), Payne v State ex rel Guitteau. City charter cannot enlarge O Const Art XVIII §9, with reference to amendment of such charter.

1937 OAG 86. O Const Art XVIII §9 is the only provision by means of which a charter city can amend its charter.

2. Submission of amendment

a. Vote of council

62 OS(3d) 17 (1991), State ex rel Bedford v Cuyahoga County Bd of Elections. A municipality may submit proposed charter amendments to the voters in an advisory election where the advisory election is not a substitute for a vote on the actual charter change but merely seeks to gauge approval for such a change.

25 OS(2d) 140, 267 NE(2d) 410 (1971), Billington v Cotner. The mayor of a charter municipality has no authority to veto an ordinance submitting a proposed amendment of the charter to the electors.

25 OS(2d) 140, 267 NE(2d) 410 (1971), Billington v Cotner. Pursuant to O Const Art XVIII §8 and 9, in order to submit proposed amendment of charter of municipality to electors at special election, legislative authority of municipality must establish date for the election.

138 OS 497, 37 NE(2d) 41 (1941), State ex rel Kittel v Bigelow. Even though the preamble of an ordinance submitting a proposed charter amendment to the electorate recites that the legislative authority is acting in response to a petition signed by ten per cent of the electors, where the legislative authority in fact passes an ordinance of submission by a vote of two-thirds or more of its members, any defects in the filing or signing become immaterial, since the council has the unquestioned power to enact the legislation by a two-thirds vote without any petitions.

32 App 189, 166 NE 907 (1928), Payne v State ex rel Guitteau. Mayor cannot veto ordinance submitting amendment and his approval thereof is not necessary.

1940 OAG 2275. Under provisions of O Const Art XVIII §9, and section 129 of charter of Lima a proposed amendment to said charter may be submitted to the electors of said city by a two-thirds vote of the members of the city council and shall be submitted to said electors by the city council upon filing of a petition signed by ten per cent of the electors of the city setting forth the proposed amendment.

b. Petition of voters

61 OS(3d) 49, 572 NE(2d) 649 (1991), State ex rel Citizens for a Better Portsmouth v Sydnor. A city council may not refuse to place a charter amendment, offered by initiative petition, on the ballot due to content dispute where the petition's form is proper.

33 OS(2d) 7, 292 NE(2d) 883 (1973), State ex rel Polcyn v Burkhart. The question of determining what substantive errors in an initiative petition are grave enough to warrant the withdrawal of the entire issue from the electorate, regardless of whether they appear on the face of the petitions, is judicial and may not be determined by a city council.

175 OS 257, 193 NE(2d) 517 (1963), State ex rel Abrams v Bachrach. Omission from the affidavit of the circulator of an initiative petition of the statement that the signers signed with knowledge of the contents thereof invalidates the petition.

166 OS 301, 143 NE(2d) 127 (1957), State ex rel Blackwell v Bachrach. Once a petition for a charter amendment containing sufficient valid signatures is filed with the city council, the only body or person thereafter charged with any duty of submitting the question to the electors is the city council, and the provisions of RC 731.28 and 731.32, which call for an initiative petition to be filed with the city auditor or village clerk, do not apply to an initiative petition to amend a city charter under O Const Art XVIII §9.

166 OS 301, 143 NE(2d) 127 (1957), State ex rel Blackwell v Bachrach. The provisions of RC 731.28 and 731.32 relative to the filing of an initiative petition with the city auditor or village clerk and to the certification of the ordinance or measure by such auditor or clerk to the board of elections do not apply to an initiative petition to amend a city charter, filed pursuant to O Const Art XVIII §9.

138 OS 497, 37 NE(2d) 41 (1941), State ex rel Kittel v Bigelow. Even though the preamble of an ordinance submitting a proposed charter amendment to the electorate recites that the legislative authority is acting in response to a petition signed by ten per cent of the electors, where the legislative authority in fact passes an ordinance of submission by a vote of two-thirds or more of its members, any defects in the filing or signing become immaterial, since the council has the unquestioned power to enact the legislation by a two-thirds vote without any petitions.

116 OS 390, 156 NE 455 (1927), State ex rel Hinchliffe v Gibbons. Section 182 of the Cleveland charter is inoperative to the extent that it is in conflict with O Const Art XVIII §9, and initiative petitions to submit proposed amendments to the charter must be filed with the city council, which alone has authority to determine their sufficiency.

66 App(3d) 286 (Erie 1990), State ex rel Citizens for a Responsive Government Committee v Widman. A writ of mandamus will not be issued to compel a city commission or its members to place an initiative petition which seeks a change in the form of municipal government on the next election ballot since as the petition alters only one out of eighty-five sections of the charter, it seeks to "amend" the charter and not to "abolish" it; therefore, RC 731.28 does not control and it has to be submitted to legislative authority for a determination of its validity pursuant to the provisions of O Const Art XVIII §9; the submission of a petition is not rendered unnecessary regardless of the number of voter's signatures on it, nor are amendments to charters seeking a change in the form of government guaranteed placement on the ballot by O Const Art I §2 and Art II §1f.

59 App(2d) 175, 392 NE(2d) 1302 (Summit 1978), State ex rel Watkins v Quirk. The power of a municipal clerk of council to ascertain the sufficiency of a referendum petition is not co-extensive with that of a board of elections under RC 3501.11(K), and he possesses no judicial or quasi-judicial power in this regard, but is limited to an examination of the face of the petition.

15 App(2d) 222, 240 NE(2d) 871 (1968), Cloud v Clark County Bd of Elections. Where a petition has been filed with the legislative authority of a municipality requesting the passage of an ordinance submitting a proposed charter amendment to the electorate, and the legislative authority in fact passes an ordinance of submission by unanimous vote of its members, no inquiry may thereafter be made into the form, substance or sufficiency of such petition.

73 Abs 204, 135 NE(2d) 92 (CP, Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). No signature to an initiative petition can be rejected without a finding of its invalidity, and a finding means that there must be some final determination, after examination, that the signature is infected with some plausible legal defect.

1940 OAG 2275. Under provisions of O Const Art XVIII §9, and section 129 of charter of Lima a proposed amendment to said charter may be submitted to the electors of said city by a two-thirds vote of the members of the city council and shall be submitted to said electors by the city council upon filing of a petition signed by ten per cent of the electors of the city setting forth the proposed amendment.

3. Notice of proposed amendment

22 App 282, 153 NE 897 (1926), State ex rel Vrooman v Kauffman. Where, under O Const Art XVIII §8 and 9 and charter of a city, clerk was required to mail electors copy of proposed charter amendment not less than eighty days prior to election, petition for mandamus filed October 7, to compel mailing of copies for vote on November 2, will not be granted.

4. Election; ballot

25 OS(2d) 140, 267 NE(2d) 410 (1971), Billington v Cotner. Pursuant to O Const Art XVIII §8 and 9, in order to submit proposed amendment of charter of municipality to electors at special election, legislative authority of municipality must establish date for the election.

107 OS 117, 141 NE 27 (1923), Reutener v Cleveland. The Ohio constitution does not require that the full text of amendments to a city charter to be submitted to the electors shall be printed on the ballot; and the printing on the ballot of a digest of the amendment which digest substantially expresses the purpose and terms of the amendment is sufficient.

107 OS 117, 141 NE 27 (1923), Reutener v Cleveland. This section does not require each amendment to a municipal charter to be submitted separately to the electors, and an amendment may be submitted which establishes the city manager plan of government and the system of voting by proportional representation, although it repeals or modifies numerous sections of the existing charter.

73 Abs 204, 135 NE(2d) 92 (CP, Hamilton 1956), State ex rel Blackwell v Bachrach; affirmed by 166 OS 301, 143 NE(2d) 127 (1957). A mandamus action requesting a special election should not be dismissed solely because the relator has asked that the election be called and held on a specific date.

OAG 82-057. Municipal elections on charter amendments must be held in accordance with the requirements of O Const Art XVIII §8 and 9. If there is no constitutional provision which is applicable to a particular election matter, charter requirements prevail over conflicting statutes.

OAG 65-112. Where a municipality has fully complied with the provisions of O Const Art XVIII §9, with regard to a proposal for amending its charter, and provided that the limiting time provisions of §8 are applicable, it is mandatory for a board of elections to conduct a special election.

1952 OAG 1286. A charter commission has the sole right to fix the time for an election for approval or disapproval of a proposed municipal charter, and where proceedings are instituted for adoption or amendment of a charter, it is the duty of the legislative body to appropriate the necessary funds for the election.

1931 OAG 3626. In the event there are to be submitted to the electors of a municipality which has adopted a charter plan of

government under O Const Art XVIII §7, 8, two conflicting amendments to that charter both of which are approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the amendment to the charter in the absence of a charter provision to the contrary. A voter may vote in the affirmative for each such conflicting amendment and his vote should be counted in each case.

5. Approval; effective date; certification

44 App 461, 185 NE 59 (Allen 1933), State ex rel Keville v Faurot; appeal dismissed by 126 OS 437, 185 NE 881 (1933); affirmed by 126 OS 646, 186 NE 718 (1933). City commission was not required to certify copy of results of election on charter to secretary of state, such duty being on board of elections.

27 Abs 164, 31 NE(2d) 256 (App, Summit 1938), State ex rel Rodocker v Schroy; appeal dismissed by 134 OS 96, 15 NE(2d) 780 (1938). An amendment to a city charter becomes effective on the day of the election at which it is adopted by the electors unless the proposition to postpone the amendment's effect is submitted to and adopted by the voters.

1931 OAG 3626. In the event there are to be submitted to the electors of a municipality which has adopted a charter plan of government under O Const Art XVIII §7, 8, two conflicting amendments to that charter both of which are approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the amendment to the charter in the absence of a charter provision to the contrary. A voter may vote in the affirmative for each such conflicting amendment and his vote should be counted in each case.

6. Particular amendments

107 OS 144, 141 NE 35 (1923), Hile v Cleveland; appeal dismissed by 266 US 582, 45 SCt 97, 69 LEd 452 (1924). The amendment to the home rule charter of the city of Cleveland, adopted in 1921, and establishing the manager plan of government and the system of voting by proportional representation is valid.

106 App 354, 151 NE(2d) 367 (1958), Sinclair v Lakewood; appeal dismissed by 168 OS 372, 154 NE(2d) 822 (1958). A municipal corporation may present to the electors of the city a proposed amendment to its charter authorizing the council by ordinance, without a vote of the people, to levy a tax on the taxable property in the city in addition to all taxes authorized by the charter and the ten-mill limitation of the constitution, the proceeds to be used to provide needed monies for the relief and pension funds for members of the police and fire departments of said city.

102 App 297, 114 NE(2d) 922 (1953), State ex rel Pecyk v Greene. Cleveland charter amendment providing that candidate receiving a majority vote in the primary election shall be the only candidate to appear on the ballot in the general election is valid and in effect for the primary election at which it was enacted.

O Const XVIII § 14 Municipal elections

All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

HISTORY: 1912 constitutional convention, adopted eff. 11-15-12

PRACTICE AND STUDY AIDS

Gotherman & Babbit, Ohio Municipal Law, Text 7.69; Forms 7.11

CROSS REFERENCES

Elections generally; conduct; supervision, Title 35

LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 20, Counties, Townships, and Municipal Corporations § 463, 488, 496; 21, Counties, Townships, and Municipal Corporations § 799; 51, Garages, Liveries, Service Stations, and Parking Facilities § 10

Am Jur 2d: 25, Elections § 4 et seq.; 26, Elections § 183 et seq.

NOTES ON DECISIONS AND OPINIONS

66 Abs 417, 116 NE(2d) 779 (CP Cuyahoga 1953), Kraus v Cleveland; affirmed by 76 Abs 214, 121 NE(2d) 311 (App, Cuyahoga 1954); affirmed by 163 OS 559, 127 NE(2d) 609 (1955); appeal dismissed by 351 US 935, 76 SCt 833, 100 LEd 1463 (1956). Fluoridation of the Cleveland water supply is not unconstitutional.

INDEX

INDEX

Complete to August 1, 1992

This index contains references to the Ohio Revised Code and the Ohio Constitution.

Cross references to another main heading are in CAPITAL LETTERS.

ABSENTEE VOTING, Ch 3509
Address change, recent; absentee voting at board of elections, 3503.11, 3509.04
Affidavit of voter, 3509.04
  Armed forces members, spouses, and dependents, 3511.05
Aged, by, 3509.02
Application, 3509.03
  Armed forces, members and spouses, by, 3511.02
  Militia members on active duty, by, 3509.031
Armed forces members, spouses and dependents, Ch 3511
  See also MILITARY SERVICE.
Ballots, Ch 3509
  Armed forces members, spouses, and dependents, 3511.02 to 3511.08
  Counting, 3509.06
    Armed services, members' and spouses' ballots, 3511.11, 3511.12
  Delivery, 3509.04
  Envelope—See Identification envelope, this heading.
  Outside United States on election day, 3509.04
    Armed service member, 3511.05
  Recount, 3515.01
  Rejection, 3509.07
    Armed forces, members' and spouses' ballots, 3511.12
  Requests, 3509.03
Challenge, 3509.06, 3509.07, 3511.12
Counting ballots, 3509.06
  Armed services, members' and spouses' ballots, 3511.11, 3511.12
Disabled persons, by, 3509.02, 3509.08
Election officials and employees, by, 3509.02
Eligibility, 3509.02
  Armed forces members, spouses, and dependents, 3511.01
  Challenge, 3509.06, 3509.07, 3511.12
Emergency, 3509.08
Former residents, presidential elections, 3504.04
Handicapped persons, by, 3509.02, 3509.08
Hospital patients, 3509.02, 3509.08
Identification envelope, 3509.04, 3509.05
  Armed services members and spouses, for, 3511.05 to 3511.07
  Presidential ballot, 3509.021
    Armed services, members and spouses, for, 3511.051
Impersonation to obtain ballot, 3599.21
Medical emergency, 3509.08
Military service—See MILITARY SERVICE.
Militia member on active duty, by, 3509.02, 3509.031
Not counted, returned, 3509.05, 3509.06, 3509.07, 3511.12
Outside United States on election day, 3509.04, 3509.05
  Armed service member, 3511.05, 3511.09, 3511.11
  Late deadline, 3509.05
  One application for several elections, 3509.03, 3511.02
Overseas, civilian, 3511.02
Presidential elections, former residents, 3504.04

ABSENTEE VOTING—*continued*
Prisoners, by, 3509.02, 3509.08
Recount, 3515.01
Religious belief, due to, 3509.02
Servicemen, spouses, and dependents; by, Ch 3511
  See also MILITARY SERVICE.
Students, transients, 3509.02, 3509.04
  See also VOTERS AND VOTING, at Eligibility.
Violations and penalties, 3509.04, 3599.11, 3599.21
  Armed forces, members and spouses; by, 3511.05
Voting procedure, 3509.05
  Armed services, members and spouses, 3511.09
  Militia members on active duty, 3509.031
Who may vote—See Eligibility, this heading.

ABSTRACT OF VOTE, 3505.33 to 3505.37
Amendment due to recount, 3515.05

ACCOUNTS AND ACCOUNTING
Municipal courts, 1901.31
Political contributions, 3517.10

ACTIONS
Public records, mandamus action to compel inspection, 149.43

ADMINISTRATIVE AGENCIES
Definitions, 102.01, 121.22
Directors, financial disclosure statement, 102.02
Meetings, 121.22
Orders and decisions, when invalid, 121.22
Representation before, conflict of interest, 102.03
Sunshine law, 121.22

ADVERTISING, LEGAL—See LEGAL ADVERTISING.

ADVERTISING, POLITICAL—See POLITICAL ADVERTISING.

AFFIDAVITS—See particular subject concerned.

AFFILIATION, PARTY—See POLITICAL PARTIES, at Membership.
Petition circulators—See CIRCULATORS OF PETITIONS.

AFFIRMATIONS—See OATHS AND AFFIRMATIONS.

AGE REQUIREMENTS
Primaries, eligibility to vote, 3503.011
U.S. constitutional convention delegates, 3523.04
Voting, eligibility, 3503.01, 3503.011; O Const V §1

AGED PERSONS
Absentee voting by, 3509.02
Services or facilities, county tax levy to finance, 5705.05(E)
Election question, by petition, 5705.71(C)
In excess of ten-mill limitation, 5705.19(Y)

AGRICULTURAL SOCIETIES
Appropriations, 1711.15, 1711.17, 1711.18
Levies, 1711.15, 1711.17, 1711.18

AGRICULTURAL TAX, 1711.15, 1711.17, 1711.18

AIDING AND ABETTING—See also VIOLATIONS AND PENALTIES, generally.
Election law violations, 3599.11, 3599.25
Voter registration fraud, penalty, 3599.11

AIR POLLUTION CONTROL
Tax levies to support local programs, 5705.05, 5705.19(S)

AIRPORTS
Local option election, effect, 4301.40
See also LOCAL OPTION ELECTIONS, generally.
Population restrictions, exemptions, 4303.29
Township
Tax levies to support in excess of ten-mill limitation, 5705.19(FF)

ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICE DISTRICTS
Bond issuing authority, defined, 5705.01(C)
Capital improvements account, 5705.221
Fiscal officer, defined, 5705.01(D)
Fund raising, 5705.01
Reserve balance account, 5705.221
Tax anticipation notes, 5705.221
Tax levies to support, 5705.01, 5705.05(E), 5705.221
Mental retardation and developmental disabilities services, additional levy for, 5705.222
Replacement levies, 5705.221
Taxing authority, defined, 5705.01(C)

AMBULANCE SERVICES
Tax levies in excess of ten-mill limitation, 5705.19(U)

AMENDMENTS—See particular subject concerned.

ANATOMICAL GIFTS
Driver's license certifying, 4507.06

ANNEXATION
Agreements between school districts governing
Interdistrict payments, 3311.06
Election, 709.17
Election question, 709.29 to 709.31
Initiative and referendum, 709.29 to 709.31
Liquor permits, effect, 4301.401
Municipality, 709.011
School districts, 3311.06
Petitions
Suspension of filing rights while merger considered, 709.48
School purposes, for, 3311.06
Township merging with municipal corporation, 709.46
Tax rate, effect, 709.17
Waiver of election, 709.30

ANNUAL CANCELLATION, 3503.21
See also CANCELLATION OF VOTER REGISTRATION.

ANONYMOUS CONTRIBUTIONS—See also POLITICAL CONTRIBUTIONS, generally.
Concealing or misrepresenting, 3517.13, 3517.99
Reporting procedure, 3517.10

APPEALS
Election contests, 3515.15
Elections commission, from—See ELECTIONS COMMISSION, STATE.
Jurisdiction, 2501.02
Political parties, by; findings of un-American activity, 3517.07

APPOINTMENTS—See VACANCIES IN OFFICE.

APPORTIONMENT
Congressional districts, 3521.01

APPORTIONMENT OF ELECTION EXPENSES, 3501.17

APPROPRIATIONS
Community colleges, 3354.12
Effective date, O Const II §1d
Election costs, to cover, 3501.17
Referendum petitions
Exemptions, O Const II §1d
Tax levies, purpose, 5705.05

ARBITRATION AND AWARD
Arbitrators
Bribery, 2921.02

ARCHITECTURAL BARRIERS
Polling places, elimination in, 3501.29
Voter registration, elimination in places of, 3503.12

ARMED FORCES—See MILITARY SERVICE.

ARRESTS
Election violations, 3501.33, 3501.34
Probationer, 2951.09

ART GALLERIES AND MUSEUMS
Tax levy in excess of ten-mill limitation, 5705.19(AA)

ASSESSMENTS, SPECIAL
Municipal ordinances, effective date, 731.30

ASSISTING VOTERS, 3501.29, 3505.24, 3509.08
Blind, 3505.24
Disabled, 3505.24, 3509.08
Handicapped, 3505.24, 3509.08
Illiterate, 3505.24
Interpreters, 3501.221

ATTORNEY GENERAL
Campaign contributions for, by medicaid providers, 3599.45
Election of
Ballot, 3505.03
Declaration of results and certification, 3505.33 to 3505.35
Time and frequency, 3501.02
Unexpired term, for, O Const XVII §2
Initiative and referendum petitions, certification by, 3519.01
Term of office, O Const XVII §2

ATTORNEYS
Corporate attorney
Political contributions, illegal; penalty, 3599.03(B)
Election contest, right to counsel, 3515.10

AUDITOR, STATE—See also PUBLIC OFFICERS AND EMPLOYEES, for general provisions.
Election
Ballot, 3505.03
Declaration of results and certification, 3505.33 to 3505.35
Time and frequency, 3501.02
Unexpired term, for, O Const XVII §2
Political party fund, audit of statements filed by parties, 3517.17
Term of office, O Const XVII §2

AUDITORS, CITY—See also MUNICIPAL CORPORATIONS, at Officers, for general provisions.
Acting, 733.31
Initiative and referendum petitions, filing requirements, 731.28, 731.29, 731.32
Oath of office, 733.68
Powers and duties, 733.10
Residency requirement for office, 733.10
Vacancies in office, 733.31

AUDITORS, COUNTY—See also COUNTY OFFICERS, for general provisions.
Acting, appointment of, 305.02
Automatic data processing board, membership, 307.84
Conflict of interest, 3.11
Election of, 319.01
Ballot, 3505.03
Canvassing returns, 3505.33
Eligibility for office, 319.07
Incompatible offices, 319.07
Political contributions, soliciting from employees, 2921.431
Referendum petitions, duties, 305.33
Sales tax, powers and duties, 5739.021
Terms of offices, 319.01
Vacancy in office, 305.02, 305.03
Withdrawal of municipal corporation from township fire district, disposition of funds, 505.37

BAIL
Recognizance
Municipal courts
Clerks' powers and duties, 1901.31

BALLOT BOARD, OHIO, 3505.061 to 3505.063; O Const II §1g, O Const XVI §1

BALLOT BOXES, 3505.08, 3505.16
Board to provide, 3501.11, 3501.30
Numbering, 3505.08
Primaries, 3513.18
Separate, 3505.07
Stuffing, penalty, 3599.26

BALLOTS, 3505.01 to 3505.17; O Const V §2
See also RETURNS.
Absentee voter's, Ch 3509
See also ABSENTEE VOTING.
Servicemen, spouses, and dependents, Ch 3511
See also MILITARY SERVICE, at Absentee voting.
Automatic marking and processing cards, 3506.08, 3506.09
Ballot board, 3505.061 to 3505.063; O Const II §1g, O Const XVI §1
Boards of election, duties, 3501.11
Boxes—See BALLOT BOXES.
Cards for use in automatic marking and processing, 3506.08, 3506.09
Electronic data processing equipment, for use with, 3506.09
Casting—See VOTERS AND VOTING.
Confidentiality, violations, 3599.20

BALLOTS—*continued*
Constitutional amendments, state, 3505.06
See also CONSTITUTIONAL AMENDMENTS, STATE, generally.
Certification, 3505.01, 3505.062
General assembly, proposed by, O Const XVI §1
Initiative petition, proposed by, O Const II §1g
Language, preparation and certification, 3505.062
Constitutional amendments, U.S., 3523.05
Contested elections—See CONTESTED ELECTIONS.
Counting, 3501.24 to 3501.26, 3505.26 to 3505.31, 3506.16
Absentee voter's ballots, 3509.06, 3511.11, 3511.12
Primary elections, 3513.21, 3513.22
See also PRIMARIES, generally.
Recounts, 3515.01 to 3515.071
See also RECOUNTS.
Witnesses, 3505.16, 3505.21
Defaced or soiled, 3505.26
Detachment of territory from municipality, 709.39
Form, 3505.01 to 3505.17, 3505.08
Amendment of U.S. constitution, 3523.05
Certification, 3505.01
Nonpartisan, 3505.04
Office type, 3505.03
Presidential, 3505.10
Primary, 3513.14
Questions and issues, 3505.06
Secretary of state, duties, 3501.05
Tax levies, 5705.25
Township park district, conversion of, 1545.041
U.S. constitutional convention delegates, 3523.05
Fraudulent, 3505.28, 3599.19 to 3599.35
See also FRAUD, generally.
Improperly marked, 3505.23, 3505.28
Initiative and referendum, 3519.21; O Const II §1b, O Const II §1g
Agricultural tax, 1711.15
Detachment of village territory, 709.39
Instructions, 3505.12
Labels on voting machines, 3507.06
Local option election, 4301.35, 4303.29
Hotel, restaurant or shopping mall service, 4301.353
Lost, 3505.17
Marking, 3505.18, 3505.23; O Const V §2a
Assistance—See ASSISTING VOTERS.
Medical emergency, 3509.08
Merger of municipal corporations or townships with municipal corporations, 709.45
Names of candidates, O Const V §2a
Certification, 3505.01
Primaries, 3513.05
Change, 3505.02
Death of candidate, 3505.01
Identical, differentiation, 3505.021, 3513.131
Primaries, 3513.05
Printing specifications, 3505.08
Rotation—See Rotation of names on, this heading.
National convention delegates, 3513.151
Nonpartisan, 3505.04, 3505.08
Not counted, 3505.28, 3509.07
Office type, 3505.03, 3505.08; O Const V §2a
Ohio ballot board, 3505.061 to 3505.063; O Const II §1g, O Const XVI §1
Order of offices, 3505.03, 3505.04
Overseas, 3511.02
Presidential, 3505.08, 3505.10
Absentee voters', 3509.021, 3511.051
Certification, 3505.01, 3505.10
Former residents', 3504.04
Penalty for false statements, 3504.06
Primaries, 3513.13 to 3513.17
See also PRIMARIES, generally.
Certification, 3513.05
Counting, 3513.21, 3513.22

BALLOTS—*continued*
Printing, 3505.13 to 3505.15
See also PRINTING OF BALLOTS.
Questions and issues, 3505.06, 3505.08, 3519.21
See also ISSUES, generally.
Recall of elected officials, 705.92
Recounts—See RECOUNTS.
Refused, 3513.20
Regional transit authority, multi-county issue, 3505.071
Required number, 3505.11
Retention requirements, 3505.31
Returns—See RETURNS.
Rotation of names on, 3505.03, 3505.04; O Const V §2a
Absentee voters' ballots, 3509.01
Marking devices, 3506.09
National convention delegates, 3513.151
Primary ballots, 3513.15
Voting machines, 3507.06
Sample, 3505.08
School district income tax, 5748.03
School issue, multi-county, 3505.071
Secret, violations, 3599.20
Secretary of state, duties, 3501.05
Separate, 3505.07, 3505.09
Supply by board, 3501.30, 3501.31
Tablets, 3505.11
Tampering, 3599.26
Tax levies, proposed, 5705.25(B)
Agricultural societies, 1711.15, 1711.17
Decrease, 5705.261
Emergency school levies, 5705.197
Library, for, 5705.25(B)
Municipal income tax, 718.01
Renewal school levies, 5705.197
Senior citizens' services or facilities, 5705.71(E)
Township park district, conversion of, 1545.041
Title, 3519.21
Township park district, conversion of, 1545.041
Unlawful possession, 3505.25
Unused, procedure, 3505.26
U.S. constitutional convention delegates, 3523.05
Violations and penalties, 3599.16, 3599.19 to 3599.35
Withdrawal of name from, 3513.30
Write-ins—See WRITE-IN CANDIDATES.

BANKS AND BANKING
Political parties selling mailing, membership, or contributor lists to, 3517.19

BEER AND MALT BEVERAGES—See also LIQUOR CONTROL, generally.
Definitions, 4301.01, 4305.08
Local option elections, 4305.14, 4305.15
See also LOCAL OPTION ELECTIONS, generally.
Sunday sales, 4301.351
Permits
D-6 permit, 4301.403

BIDDING, COMPETITIVE
Ballots, printing, 3505.13
County contracts, 307.86 to 307.92
Election supplies, 3501.301
Exemptions, 307.88
County contracts, 307.86
Polling places, removable, 3501.29
Prohibited activity, 3517.13
Tabulating equipment, 3506.02, 3506.03

BLIND PERSONS—See also HANDICAPPED PERSONS, generally.
Aid to, county tax levies, 5705.05(E)
Architectural barriers, removal
Polling places, 3501.29

BLIND PERSONS—*continued*
Architectural barriers, removal—*continued*
Registration places, 3503.12
Voting, assistance, 3505.24

BOARD, BALLOT—See BALLOT BOARD, OHIO.

BOARDS OF EDUCATION—See EDUCATION, LOCAL BOARDS; EDUCATION, STATE BOARD.

BOARDS OF ELECTIONS—See ELECTIONS BOARDS.

BOARDS OF VILLAGE PUBLIC AFFAIRS
Creation, duties, 735.28

BOATS AND WATERCRAFT
Alcoholic beverages permits, 4303.29

BONDS AND NOTES
Disability assistance, to finance, 131.23
Elections on—See ISSUES, generally.
Fire protection, financing; township issuing, 505.37
General assistance, to finance, 131.23
Hospital services, for, 749.03
Issuing authority, defined, 5705.01(C)
Soil and water conservation district improvement, 1515.24, 1515.28
Unsecured indebtedness, financing, 131.23
Voting and tabulating equipment, financing, 3506.02, 3507.01, 3507.02, 3507.16

BONDS, SURETY
Bid guaranty
County contracts, 307.88, 307.90
Exemptions, 307.88
Regional transit authority contracts, 305.32
Contractors performance
Ballot printing, 3505.13
County contracts, 307.89
Election supplies, 3501.301
Elections, contest, 3515.09
Municipal court personnel
Deputy clerks, 1901.31
Municipal officers and employees
Failure to give, 731.49

BOOTHWORKERS—See PRECINCT OFFICIALS.

BOUNDARIES
Municipal
Conformity with township boundaries, 503.07, 503.08, 703.22
Townships, identical with, 503.07, 503.08, 703.22
Precinct boundaries, change—See CHANGE OF PRECINCT BOUNDARIES.
School district changes, notification to board of elections, 3313.261

BRANCH OFFICES (of Boards of Elections), 3501.10, 3503.12

BRIBERY, 2921.02
See also VIOLATIONS AND PENALTIES, generally.
Charter petitions, to obtain signatures, 307.99
Definitions, 2921.01
Disqualification from public office due to conviction for, 2921.02(F)
Elections, 3599.01(A)
Penalties, 3599.01(B)
Signing petitions, 3599.14
Voter, by, 3599.02
Public officers and employees, 102.03

BRIBERY—*continued*
Public officials or employees, 2921.02
Referendum petition, to obtain signatures, 305.37, 305.39, 305.99, 731.36, 731.38
Soliciting, 2921.02
Witnesses, 2921.02

BRIDGES
Motor vehicle license tax to finance, 4504.02
Tax levies to finance
County, special, 5705.06(D)
In excess of ten-mill limitation, 5705.19(G)
Replacement levies, 5705.192
Municipal, 5705.05(D)
Township, 5705.06(F)

BUDGETS
Election boards, 3501.11, 3501.17
Special tax levies, inclusion, 5705.25
In excess of ten-mill limitation, inclusion, 5705.191

BUILDINGS AND GROUNDS
Tax levies for operation and maintenance, 5705.05

CAMPAIGN FINANCE REPORTING, 3517.08 to 3517.15
See also POLITICAL CONTRIBUTIONS, generally.
Anonymous contributions
Concealing or misrepresenting contributions, 3517.13, 3517.99
Reporting procedure, 3517.10
Appointment of treasurer required, 3517.10
Cash in excess of $100.00, limitation, 3517.13, 3517.99
Certificate of election withheld until filing, 3517.11
Corporate contributions, 3599.03
Definitions, 3517.01
Delegates exempt from filing, 3517.01
Designation of treasurer, 3517.081
Door-to-door solicitations, 3517.091
Duties of treasurer, 3517.10
Examination of reports, 3517.11
Exemption, 3517.10
Failure to file, 3517.11, 3517.13, 3517.99
Filing dates, 3517.10
Filing requirement, 3517.01, 3517.10
Issues, 3517.12
No expenses and no receipts, 3517.10
Notice of reporting requirements, 3517.11
One committee, 3517.081
Penalties, 3517.99

CAMPAIGN LITERATURE DISCLAIMER, 3599.09
Exemption, 3599.09(A)

CAMPAIGNS—See also CANDIDATES; POLITICAL PARTIES, generally.
Cease and desist orders, 3599.091(E), 3599.092(E)
Committees, 3517.081
See also POLITICAL PARTIES, at Committees.
Solicitations from, 3517.09
Complaints—See ELECTIONS COMMISSION, STATE, at Complaints filed with.
Deputy treasurers, 3517.081
Expenditures
Defined, 3517.08
Reimbursement restrictions, 3517.13, 3517.99
Reporting, 3517.10 to 3517.15, 3517.99
See also CAMPAIGN FINANCE REPORTING.
Rules, 3517.08, 3517.15
False statements, 3599.091(B), 3599.092(B)
Frivolous complaints, 3599.091(F), 3599.092(F)
Investigations of, 3599.091(C), 3599.092(C)
Political advertising—See POLITICAL ADVERTISING.

CAMPAIGNS—*continued*
Questions and issues
Reporting contributions and expenditures, 3517.12
Unfair practices, 3599.092
Sabotage activities, 3599.091(A), 3599.092(A)
Subversive activities, 3599.091(A), 3599.092(A)
Treasurer, 3517.081, 3517.10
Unfair practices, 3599.091, 3599.092
Violations, 3517.13, 3517.15, 3517.99, 3599.091, 3599.092
Fines, 3599.091(D), 3599.092(D)

CANCELLATION OF VOTER REGISTRATION, 3503.18, 3503.22
Authorization, 3503.33
Correction of precinct list, 3503.24
Failure to vote, 3503.21
Other counties, 3503.33

CANDIDATES, 3501.38, 3513.04 to 3513.10
See also CAMPAIGNS; POLITICAL PARTIES, generally.
Advertising by—See POLITICAL ADVERTISING.
Assessments paid to party, 3517.09
Bribery, 2921.02, 3599.01
Campaigns—See CAMPAIGNS.
Certificates of election—See CERTIFICATES OF ELECTION.
Certificates of nomination, 3513.22
Cancellation, 3515.14
In lieu of primary election, 3513.02
Change of name, 3505.02, 3513.06, 3513.271
Conflict of interest, 3501.27, 3517.14; O Const II §4
Election official as candidate, 3501.15
Congressional, vacancies, 3513.301, 3513.312
Contributions to—See POLITICAL CONTRIBUTIONS.
Death, 3513.17, 3513.30 to 3513.312
Ballot change, 3505.01
Governor or lieutenant governor candidates, 3513.311
Notice to ethics commission, 102.09(A)
Declaration of candidacy—See DECLARATION OF CANDIDACY.
Defined, 3501.01, 3517.01
Disclaimer on political advertisements—See POLITICAL ADVERTISING, at Disclaimers or identification required.
Disfranchisement, O Const V §4
Disqualification, notice to ethics commission, 102.09(A)
Eligibility, 3513.191; O Const XV §4
See also particular office sought.
Exclusions, O Const II §5, O Const V §4
Exemptions, newly formed parties, 3517.013 to 3517.016
See also POLITICAL PARTIES, at Newly formed.
General assembly members, O Const II §2 to O Const II §4
Employees, contributions by, 3517.10
False statements concerning, 3599.091(B)
Fees
Declaration of candidacy, 3513.04, 3513.05, 3513.10, 3513.261
State officers upon successful election, 3505.34
Filing deadline, primary, 3513.05
Filing deadlines—See DEADLINES.
Financial disclosure, 3517.08 to 3517.15, 3517.99
See also CAMPAIGN FINANCE REPORTING.
Incumbent, contributions by employees, 3517.10
Independent—See INDEPENDENT CANDIDATES.
Joint candidacy, 3513.04 to 3513.05, 3513.10
Judges—See JUDGES, at Election of; particular court concerned.
Names—See NAMES.
National convention delegates, 3513.12, 3513.121, 3513.122
Ballots, 3513.151
Rotation of names, 3513.15
Certificates of election, 3513.151
Newly formed parties, eligibility, 3517.013 to 3517.016
See also POLITICAL PARTIES, at Newly formed.

CANDIDATES—*continued*
Nominating petitions—See NOMINATING PETITIONS.
Nominations—See NOMINATIONS.
Party change, 3513.191
Party convention delegates, 3513.11 to 3513.121; O Const V §7
Petitions—See NOMINATING PETITIONS.
Pledges
General assembly candidates, prohibition, 3599.10
Support for presidential candidates, 3513.12
U.S. constitutional convention delegates, 3523.04
Political debts, 3517.09
Pollwatchers, appointment by, 3505.21
Protests against candidacy, 3513.05, 3513.262, 3513.263
Qualifications—See Eligibility, this heading; particular office concerned.
Residence requirements—See particular office concerned; RESIDENCY REQUIREMENTS.
Running mate, requirements, 3513.04 to 3513.05
Solicitation from, restrictions, 3517.09
Solicitation of deputy motor vehicle registrars by, prohibited, 4503.032
Statement of expenditures and contributions, 3517.10 to 3517.15, 3517.99
See also CAMPAIGN FINANCE REPORTING, generally.
Tie votes, 3505.33, 3515.14
Candidates for state office, 3505.34
District candidates, 3505.36
Multicounty districts, 3505.37
Unexpired term, for, 3513.31
Independent candidates, 3513.28, 3513.31
Nomination petitions, 3513.31
State offices, O Const XVII §2
Succession, 3513.08
Time for filing, 3513.31
Unfair political campaign activities law, copy furnished to, 3513.33
U.S. constitutional convention delegates, 3523.04 to 3523.07
Violations and penalties, 3513.07, Ch 3599
See also VIOLATIONS AND PENALTIES, generally.
Independent candidates, 3513.261
Notice of penalty, 3501.38
Voter registration lists, distribution to, 3503.23
Withdrawal, 3513.30 to 3513.312
Notice to ethics commission, 102.09(A)
Write-in—See WRITE-IN CANDIDATES.

CANVASS, 3501.32 to 3501.37, 3505.32 to 3505.37, 3513.22
See also RETURNS, generally.
Judicial elections, 3505.33
Presidential elections, 3505.33
Primary election, 3513.21, 3513.22, 3513.24

CAPITAL IMPROVEMENTS—See PUBLIC WORKS.

CEASE AND DESIST ORDERS
Unfair political campaign practices, 3599.091(E), 3599.092(E)

CEMETERIES
Tax levies in excess of ten-mill limitation, 5705.19(T)
Township
Establishment, voter approval, 517.04, 517.05
Tax levies to finance, 517.05
Union cemetery, definition of taxing authority, 5705.01(C)

CERTIFICATES
Appointment to fill vacancy in office, 3.02
Challengers, appointment, 3505.21
Election, of—See CERTIFICATES OF ELECTION.
Intent to vote, presidential elections, 3504.02 to 3504.05
Nomination, of—See CERTIFICATES OF NOMINATION.
Precinct officials, appointment, 3501.24, 3501.27

CERTIFICATES OF ELECTION, 3505.38, 3513.22
Board of elections, duties, 3501.11
Cancellation, 3515.14
Denial, political contributions violation, 3517.11
National convention delegates, 3513.151
Party committee members, 3513.24
Secretary of state, duties, 3501.05
State officers, 3505.34, 3505.35

CERTIFICATES OF NOMINATION, 3513.22
Cancellation, 3515.14
In lieu of primary election, 3513.02

CERTIFICATION OF OFFICIAL RESULTS, 3505.32 to 3505.37

CHALLENGES AND CHALLENGERS TO ELECTORS, 3501.31, 3503.22 to 3503.24, 3505.19 to 3505.21, 3506.17
Absentee voter, 3509.06, 3509.07, 3511.12
Appointment, 3505.21
Canvassing of returns, 3505.32
Ejection from polling places, 3501.33
Precincts with marking devices, tabulating equipment, 3506.17
Primary elections, 3513.19, 3513.20
Protection, 3501.33

CHANGE OF ADDRESS, 3503.11, 3503.111, 3503.16, 3503.22

CHANGE OF NAME
Candidates for public office, 3513.06, 3513.271
Registered voters, notification requirement, 3503.11, 3503.19

CHANGE OF POLLING PLACE LOCATION
Emergency, 3501.18
Notice, 3501.21
Time period, 3501.18

CHANGE OF PRECINCT BOUNDARIES
Notice, 3501.21
Registration, 3503.17
Time period, 3501.18

CHANGE OF RESIDENCE
Voters, 3503.11, 3503.111, 3503.16, 3503.22

CHARGEBACKS, 3501.17

CHARITABLE INSTITUTIONS
County operated, improvements levies in excess of ten-mill limitation, 5705.191
Legal advertising by, rates, 7.10
Voting residence of patients, 3503.04

CHARTERS
County, 307.94; O Const X §4
Municipal, O Const XVIII §8, O Const XVIII §9
School districts, 3301.16

CHIEF ELECTION OFFICER
Duties, 3501.05
Secretary of state, 3501.04

CHILD ABUSE
Jurisdiction
Appeals, 2501.02

CHILDREN'S SERVICES
Tax levies to support, 5705.24
Replacement levy, 5705.192

CIGARETTE TAX
County levy to finance sports facility, 5743.024

CIRCULATORS OF PETITIONS, 3517.12; O Const II §1g
See also PETITIONS, generally.
Local option petitions, 4301.33, 4305.14
Penalties, 3599.13
Procedures, 3501.38
Qualifications—See particular type of petition concerned.

CITIES—See MUNICIPAL CORPORATIONS.

CITIZENSHIP, 3503.07
Liquor permit holder, requirements, 4303.29

CIVIL RIGHTS
Convicted felon, 2961.01
Mentally ill persons, 5122.301
Restoration of rights, 2951.09

CIVIL SERVICE—See also PUBLIC OFFICERS AND EMPLOYEES.
Political activities, restrictions, 124.57, 124.60; Appx to 124.57

CLERKS OF COURTS—See COURTS OF COMMON PLEAS.

CLEVELAND MUNICIPAL COURT
Housing division
Judge, 1901.051

CLOSE OF POLLS, 3501.26, 3501.32, 3505.26

CLOSE OF REGISTRATION, 3503.11

COERCION—See also INTIMIDATION.
Charter petitions, to obtain signatures, 307.99
Elections, to obtain votes, 3599.01(A)
Penalties, 3599.01(B)
Referendum petition, to obtain signatures, 305.41, 305.99

COMMISSION BY GOVERNOR, 107.05 to 107.07, 3505.34, 3505.38

COMMISSION, ELECTIONS—See ELECTIONS COMMISSION, STATE.

COMMITTEES—See also POLITICAL PARTIES, at Committees.
County, state central, 3517.02, 3517.03, 3517.06
County, state executive, 3517.04, 3517.05, 3517.06
Political action—See POLITICAL ACTION COMMITTEES.

COMMON PLEAS COURTS—See COURTS OF COMMON PLEAS.

COMMUNITY CENTERS
Tax anticipation notes, 5705.21
Tax levy to support in excess of ten-mill limitation, 5705.19(DD)

COMMUNITY COLLEGES
Bond issuing authority, defined, 5705.01(C)
Tax levies, 3354.12
Taxing authority, defined, 5705.01(C)

COMPENSATION
Defined, 102.01
Election boards
Members, 3501.12
Officers and employees, 3501.14

COMPENSATION—*continued*
Election officials, 3501.28
Elections commission member, 3517.14
Forfeiture, 3.07
Honorarium for personal appearances, 102.03
Improper, soliciting or receiving, 102.03, 2921.43
Legal counsel
Prosecuting attorneys, to, 309.09
Subdivisions, 309.09
Municipal court clerks and deputy clerks, 1901.31
Municipal court judges—See MUNICIPAL JUDGES.
Municipal legislative authority members
Illegal compensation, 733.72
Precinct officials, 3501.28
State board of education members, 3301.03
Unauthorized, 102.04

COMPLAINTS
Elections commission, to—See ELECTIONS COMMISSION, STATE.

COMPUTERS—See DATA PROCESSING.

CONFLICT OF INTEREST
Candidates—See CANDIDATES.
Common pleas court clerk serving as county engineer, 315.02
Contract awards, 102.04, 2921.42
County engineers, incompatible offices, 315.02
County judges, O Const II §4
County officers, 309.02
Service on charter commissions, 307.70
County recorders
County engineer, incompatible office, 315.02
County treasurer serving as county engineer, 315.02
Election officials as candidates, 3501.15, 3501.27
Elections commission, 3517.14
General assembly members, 2921.42
Investment of public funds, 2921.42
Judges, 2921.42
Law enforcement officers, 2921.42
Municipal legislative authority members, 731.02, 733.72
Municipal officers, 733.72
Pollwatchers, 3505.21
Prosecutors, county, 309.02
Public officials and employees, 3.11, 2921.42
Contracts with governmental agencies, 102.04
Representation of clients, 102.03
Sheriffs
County engineer, incompatible office, 315.02
State board of education members, 3301.03
Village legislators, 731.12

CONFLICT OF LAWS, O Const II §1b

CONGRESS, UNITED STATES
Election districts, 3521.01
Election of members, Ch 3521
Ballot, 3505.03
Canvassing of votes, 3505.33
Certificate of election, 3505.38
Financial disclosure, 102.02
Senators, O Const V §7
Preferential vote, O Const V §7
Time and frequency, 3501.02
Financial disclosure, members and candidates, 102.02
Vacancies, 3513.301, 3513.312, 3521.02, 3521.03

CONSTITUTIONAL AMENDMENTS, STATE
Arguments for and against, preparation, 3505.063; O Const II §1g, O Const XVI §1
Ballots—See BALLOTS.
Conflicting, O Const II §1b

CONSTITUTIONAL AMENDMENTS, STATE—*continued*
Dissemination of information, 3505.062, 3505.063; O Const XVI §1
Effective date, O Const II §1b
General assembly proposing, O Const XVI §1
Initiative and referendum, Ch 3519
See also INITIATIVE AND REFERENDUM, generally.
Submission to voters, time and frequency, 3501.02
Legal advertising, rates, 7.10, 7.101
Objections to proposals, O Const XVI §1
Ohio ballot board, duties, 3505.062, 3505.063; O Const XVI §1
Secretary of state, 3501.17
Submission to voters, time and frequency, 3501.02; O Const II §1a

CONSTITUTIONAL AMENDMENTS, UNITED STATES, Ch 3523
Ballots, 3523.05
Conventions, 3523.04 to 3523.12
Ratification, 3523.10

CONSULTANTS
Bribery, 2921.02

CONTESTED ELECTIONS, 3515.08 to 3515.16
See also RECOUNTS.
Appeal of judgment, 3515.15
Costs, 3515.09, 3515.13
Hearings, 3515.10 to 3515.12, 3515.16
Judgment of court, 3515.14
Jurisdiction, 3515.08
Petition, 3515.09
Recount, involving, 3515.13

CONTRACTS, PUBLIC
Ballots, printing, 3501.11, 3505.13
See also PRINTING OF BALLOTS, generally.
Bids—See BIDDING, COMPETITIVE.
Conflict of interest in awarding, 102.04, 2921.42
County—See COUNTIES.
Election forms and supplies, 3501.301
Ballots, printing, 3501.11, 3505.13
Fire protection
Township, 505.37
Political contributors, award to, 3517.13
Public official's unlawful interest in, 2921.42
Unlawful interest in, 2921.42

CONTRIBUTORS, CONTRIBUTIONS, 3517.08, 3517.10, 3517.11
See also POLITICAL CONTRIBUTIONS, generally.

CONVENTION CENTERS
County sales tax to finance, 5739.026
Defined, 4301.01
Sale of beer or liquor at
Local option election, when, 4301.323 to 4301.325
Ballots, form, 4301.354, 4301.355
Petition for, 4301.333 to 4301.335
Results of election, effect, 4301.364, 4301.365
Violations
Local option election, 4301.323, 4301.333

CONVENTIONS
Constitutional, United States, Ch 3523
U.S. Christopher Columbus Quincentenary Jubilee Commission sponsoring exhibition
Liquor sales at, exemption from local option and population restriction requirements, 4301.403

CONVERSION
Jurisdiction of appeals, 2501.02

CONVICTIONS
Civil rights, restoration, 2961.01
First offender, 2951.09
Voting rights, 2961.01, 3503.18

CORONERS—See also COUNTY OFFICERS, for general provisions.
Absence from office, 313.04
Acting, appointment, 305.02, 313.04
Defined, 313.01
Election, 313.01
Ballot, 3505.03
Canvassing returns, 3505.33
Eligibility for office, 313.02
Political contributions, soliciting from employees, 2921.431
Qualifications for office, 313.02
Term of office, 313.01
Vacancy in office, 305.02, 305.03

CORPORATIONS
Political action committees, soliciting for, 3517.082
Political contributions
Ballot issues, 3599.03(C)
Reporting requirements, 3599.03(C)
Violations and penalties, 3599.03(A)
Recordkeeping requirements
Political contribution, 3599.03(C)

CORRUPTION—See also VIOLATIONS AND PENALTIES, generally.
Bribery—See BRIBERY.
Candidates, intimidating and controlling by newspapers, 3599.08
Elections, involving, 3599.04
Employer interfering with employee's rights, 3599.05
General assembly candidate, vote pledge, 3599.10
Newspapers influencing candidates and voters, 3599.08
General assembly candidate, vote pledge, 3599.10
Misconduct in office—See MISCONDUCT IN OFFICE.
Political contributions, illegal practices, 3599.04
Voters, coercion by employer, 3599.05

COSTS—See FEES AND COSTS.

COUNT, OFFICIAL, 3505.32, 3505.33

COUNTIES
Appropriations for charter commissions, 307.70
Bidding, 307.86 to 307.92, 307.90
See also Contracts, this heading.
Bonds and notes—See BONDS AND NOTES, generally.
Building codes, penalties for violations, 307.99
Buildings and grounds, tax levies for operation and maintenance, 5705.05(E)
Charters, 307.94; O Const X §4
Commissions, 307.70
Submission to voters, 307.94
Commissioners—See COUNTY COMMISSIONERS.
Contracts—See also CONTRACTS, PUBLIC, generally.
Awards, 307.90
Competitive bidding, 307.86 to 307.92
Definitions, 307.92
Preference for Ohio and American products and contractors, 307.90
Rejection of bids, 307.91
Crime victim assistance program
Tax levies in excess of ten-mill limitation, 5705.19(II)
Data processing, powers and duties, 307.84
Debt limitations
Bond issue to finance matching funds for federal aid, 139.02
Exempt bonds, 131.23

COUNTIES—*continued*
Economic development programs
Tax levies to support in excess of ten-mill limitation, 5705.19(EE)
Emergency telephone system
Sales tax levy, 5739.026
Employees—See also PUBLIC OFFICERS AND EMPLOYEES, generally.
Child day-care services, for
Competitive bidding, exempt from, 307.86
Conflict of interest, 102.04
Ethics, Ch 102
Political contributions by, 2921.431
Engineers—See ENGINEERS, COUNTY.
Fees and costs
Legal counsel, compensation, 309.09
Fiscal officer, defined, 5705.01(D)
General fund, supplemental tax levy, 5705.191
Homes—See COUNTY HOMES.
Improvements
Bidding, 307.87
Sales tax levy, 5739.026
Initiative and referendum—See INITIATIVE AND REFERENDUM, at County issues.
Insurance
Competitive bidding, exempt from, 307.86
Judges—See COUNTY JUDGES.
Judgments against, tax levies to pay, 5705.05(A)
Mother's pension fund, levies, 5705.05(E)
Officers—See COUNTY OFFICERS.
Public body, defined, 121.22
Public works
Bidding, 307.87
Sales tax levy, 5739.026
Records and reports
Automatic data processing, 307.84
Records and reports, disclosure, 149.43
Sales tax—See SALES TAX, COUNTY.
Soil and water conservation districts, 1515.24
Sports facilities
Tax on spirituous liquor to pay for, 307.697
Taxes and levies
Agricultural tax, 1711.15
Current expenses, 5705.05(E)
Elections to approve levies, 5705.25 to 5705.261, 5705.71(D)
Liquor tax to finance sports facility, 307.697
Motor vehicle license tax, 4504.02, 4504.021, 4504.15, 4504.16
Permanent improvements, to finance, 5705.193
Sales tax—See SALES TAX, COUNTY.
Senior citizens' services or facilities, to finance, 5705.05(E)
Election question, by petition, 5705.71(C)
In excess of ten-mill limitation, 5705.19(Y)
Special, 5705.19, 5705.191, 5705.20
Alcohol, drug addiction, mental health service districts, for, 5705.221
Hospitals, for, 5705.22
Sports facility, financing, 307.696, 307.697
Cigarette tax levy, 5743.024
Taxing authority, defined, 5705.01(C)
Telephone system, emergency
Sales tax levy, 5739.026
Zoning—See ZONING, at Rural.

COUNTY AGRICULTURAL SOCIETY, 1711.15, 1711.17, 1711.18

COUNTY COMMISSIONERS, 305.01 to 305.03
See also COUNTIES, generally.
Attorneys employed by, 309.09
Automatic data processing board, membership, 307.84
Charters, submission to voters, 307.94
Competitive bidding, powers and duties, 307.86 to 307.92

COUNTY COMMISSIONERS—*continued*
Counsel to, county prosecutor as, 309.09
Election, 305.01
Ballot, 3505.03
Canvassing returns, 3505.33
Ethics, Ch 102
Fairs, powers and duties, 1711.15
Hearings
Motor vehicle license tax, additional levies, 4504.15, 4504.16
Political contributions, soliciting from employees, 2921.431
Real property transfer tax, hearings, 322.02
Resolutions
Liquor tax to finance sports facility, 307.697
Motor vehicle license tax, levying, 4504.02
Regional transit authorities, creation and participation, 306.32
Sales tax, 5739.021
Sports facility, liquor tax to finance, 307.697
Tax levies in excess of ten-mill limitation, 5705.19, 5705.191
Children services, 5705.24
Community mental health and retardation districts, 5705.221
County hospitals, 5705.22
Tuberculosis hospitals, 5705.20
Transfer tax on real property, 322.02
Utilities service tax levy, 324.02
Voters, submission to, 305.31 to 305.99
Rulemaking powers, 305.31 to 305.99
Sales tax, hearings, 5739.021
Terms of office, 305.01
Vacancies, 305.02, 305.03

COUNTY COURTS
Number of judges, 1907.11

COUNTY HOMES
Levy in excess of ten-mill limitation, 5705.19(K)

COUNTY JUDGES, 1907.11
Bribery, 2921.02
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07
Compensation
County levies to finance, 5705.05(E)
Forfeiture, 3.07
Election of, 1907.11
Ballot, 3505.04
Declaration of candidacy, 3513.08
Independent candidates, 3513.28
Time and frequency, O Const XVII §1
Unexpired term, for, 107.08
Ethics, Ch 102
Forfeiture of office, 3.07
Misconduct, 3.07
Nomination by petition, 1907.13
Number of, 1907.11
Oath of office, 3.23
Oaths, administration, 3.24
Qualifications, 1907.13
Removal or suspension, 3.08
Residency requirements, 3.15
Terms of office, 1907.13; O Const XVII §1
Vacancies in office, 3.07, 107.08, 1907.11; O Const IV §13, O Const XVII §2

COUNTY OFFICERS—See also PUBLIC OFFICERS AND EMPLOYEES, generally.
Absence from office, 305.03
Appointed to unexpired term, 305.02
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07

COUNTY OFFICERS—*continued*
Compensation forfeiture, 3.07
Conflict of interest, 102.04
Charter commissions, service on, 307.70
Counsel to, 309.09
Election of
Ballot, 3505.03
Canvassing of votes, 3505.33
Certificates of election, 3505.38
Time and frequency, 3501.02
Ethics, Ch 102
Failure to perform duties, 305.03
Forfeiture of office, 3.07
Military service, effect on office, 305.03
Political contributions, soliciting from employees, 2921.431
Residency requirements, 3.15
Terms of office, O Const XVII §1
Vacancies, 3.07, 305.02

COURTS—See also particular court by name.
Legal advertising rates, 7.10

COURTS OF APPEALS, 2501.01
Clerks, time and frequency of election, 3501.02
Election of judges
Ballot, 3505.04
Canvassing of votes, 3505.33
Declaration of candidacy, 3513.08
Independent candidates, 3513.28
Time and frequency, 3501.02; O Const XVII §1
Time for, 2501.012, 2501.013
Unexpired term, for, 107.08; O Const IV §13, O Const XVII §2
Judges
Additional, 2501.011
Bribery, 2921.02
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07
Compensation
County levies to finance, 5705.05(E)
Forfeiture, 3.07
Election—See Election of judges, this heading.
Election and term, 2501.011
Ethics, Ch 102
Forfeiture of office, 3.07
Misconduct, 3.07
Oath of office, 3.23
Oaths, administration, 3.24
Qualifications, 2501.02, 2701.04
Removal or suspension, 3.08
Residency requirements, 3.15, 2701.04
Terms of office, 2501.012, 2501.013, 2501.02; O Const XVII §1, O Const XVII §2
Vacancies in office, 3.07, 107.08; O Const IV §13, O Const XVII §2
Change of residence, due to, 2701.04
Jurisdiction, 2501.02
Jurisdiction, election contest, 3515.08
Removal of public officials, 3.08
Supersedeas writs, issuance, 2501.02
Writs
Powers to issue, 2501.02

COURTS OF COMMON PLEAS
Appeals to
Soil and water conservation district projects, from non-allowed objection to assessment, 1515.24
Clerks
Acting, appointment of, 305.02
Automatic data processing board, membership, 307.84
Commissioning of public officials, 107.07
Conflict of interest, 3.11

COURTS OF COMMON PLEAS—*continued*
Clerks—*continued*
Election of, 2303.01, 3501.02
Ballot, 3505.03
Canvassing returns, 3505.32, 3505.33
Incompatible office, with county engineer, 315.02
Political contributions, soliciting from employees, 2921.431
Terms of office, 2303.01
Vacancy in office, 305.02, 305.03
Election contest, jurisdiction, 3515.08
Election of judges
Ballots, 3505.04
Primary, 3513.16
Canvassing of votes, 3505.33
Declaration of candidacy, 3513.08
Independent candidates, 3513.28
Time and frequency, 3501.02; O Const XVII §1
Time for, 2301.02, 2301.03
Unexpired term, 107.08; O Const IV §13, O Const XVII §2
Employees
Ethics, Ch 102
Political contributions to clerks, 2921.431
Judges, 2301.01
Bribery, 2921.02
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07
Compensation
County levies to finance, 5705.05(E)
Forfeiture, 3.07
Domestic relations division, 2301.03
Election—See Election of judges, this heading.
Ethics, Ch 102
Forfeiture of office, 3.07
Misconduct, 3.07
Oath of office, 3.23
Oaths, administration, 3.24
Qualifications, 2301.01
Removal, 3.08
Residency requirements, 3.15, 2301.01, 2701.04
Suspension, 3.08
Terms of office, 2301.01, 2301.02, 2301.03; O Const IV §13, O Const XVII §1, O Const XVII §2
Vacancies in office, 3.07, 107.08; O Const IV §13, O Const XVII §2
Change of residence, due to, 2701.04
Jurisdiction
Election contest, 3515.08
Political campaign violations, 3599.091(D), 3599.092(D) to 3599.092(F)
Removal of public officials, powers and duties, 3.08

CREDIT UNIONS
Political parties selling mailing, membership, or contributor lists to, 3517.19

CRIME VICTIMS ASSISTANCE PROGRAMS, COUNTY
Tax levies in excess of ten-mill limitation, 5705.19(II)

CRIMES AND OFFENSES—See also VIOLATIONS AND PENALTIES.
Bribery—See BRIBERY.
Disfranchisement for, O Const V §4
Notification by court of common pleas, 3503.18
Election falsification, 3599.36
Election law violations, Ch 3599
Fraud—See FRAUD.
Stuffing ballot boxes, 3599.26
Vote buying and selling, 3513.19, 3599.01(A)
Penalties, 3599.01(B)
Voter, by, 3599.02

CULTURAL CENTERS
Tax anticipation notes, 5705.21

DATA PROCESSING
Counties, 307.84
Lease renewals by counties, 307.861
Voter registration records, 3503.13

DAY CARE
County employees, for
Competitive bidding, exempt from, 307.86

DEADLINES
Absentee voting
Application, 3509.03
Late deadline, 3509.05
Filing
Campaign reports, 3517.10
Local option petitions, 4301.33, 4305.14
Petitions, 3513.05, 3513.08, 3513.251, 3513.257, 3513.262
Registration, 3503.11

DEATH
Voters, disposition of voter registration forms, 3503.22

DEATH OF CANDIDATE—See CANDIDATES, at Death.

DEBTS
Public debts—See BONDS AND NOTES; particular subdivision concerned.
Public officials and employees, disclosure, 102.02

DECLARATION OF CANDIDACY, 3501.38, 3513.04 to 3513.10
County commissioners, 3513.08
Death after filing, effect, 3513.301
Delegates to party convention, 3513.12, 3513.121
Fee, 3513.04, 3513.05, 3513.10
Filing requirements, 3513.05
Unexpired term, for, 3513.31
Form, 3513.07, 3513.08, 3513.261
Independent candidates, 3513.257, 3513.261
Unexpired term, for, 3513.31
Judges, 3513.08
Name change, 3513.06
Newly formed parties, 3517.015
Signature of candidate, 3513.09
Unexpired term, for, 3513.08, 3513.31
Withdrawal after filing, effect, 3513.301
Write-in, 3513.041

DEFINITIONS
Bribery, relating to offense, 2921.01
Candidate, 3501.01, 3517.01
Cities, 703.01
Contribution, 3517.01
Coroners, 313.01
Detention, 2921.01(E)
Elections, 3501.01, 3517.01
Ethics, 102.01
Liquor control, 4301.01
Municipal corporations, 703.01
Political action committees, 3517.01
Political contribution, 3517.01, 3517.08
Political party, 3501.01, 3517.01
Primary, 3501.01
Public bodies, 121.22
Public employee or official, 102.01
Public official, 2921.01(A)
Public records, 149.43
Tax levies, 5705.01
Villages, 703.01
Voting and tabulating equipment, 3506.01

DELEGATES, CONVENTION
Amendment of U.S. constitution, Ch 3523

DELEGATES, CONVENTION—*continued*
Expense reports, not required, 3517.01
Impersonation, 3599.35
Political party, 3513.11 to 3513.121
See also POLITICAL PARTIES, at Delegates.

DERELICTION OF DUTY—See also MISCONDUCT IN OFFICE, generally.
Removal procedure, 3.07, 3.08

DETENTION HOMES
Bond issuing authority, defined, 5705.01(C)
Fiscal officer, defined, 5705.01(D)
Tax levies to support, 5705.19(N), 5705.19(R)
Taxing authority, defined, 5705.01(C)

DEVELOPMENTALLY DISABLED PERSONS—See MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED PERSONS.

DIRECTORS, DEPUTY DIRECTORS—See ELECTIONS BOARDS.

DISABILITY ASSISTANCE
Bonds and notes issued to finance, 131.23

DISABLED VOTERS—See HANDICAPPED PERSONS.

DISAFFILIATION
Political party, from, 3513.19, 3513.191

DISCLAIMERS, 3599.09

DISFRANCHISEMENT
Public office, eligibility, O Const V §4
Voting privilege, 3503.18, 3599.39; O Const V §4, O Const V §7

DISPOSITION OF BALLOTS, POLLBOOKS, POLL LISTS, AND TALLY SHEETS, 3505.31

DISSOLUTION
Townships, 703.22

DISTRICTS
Congressional, 3521.01
School districts—See SCHOOLS AND SCHOOL DISTRICTS.

DITCHES AND DRAINAGE
Levies in excess of ten-mill limitation, 5705.19(X)

DOCKETS
Municipal court, 1901.31

DOOR-TO-DOOR POLITICAL SOLICITATIONS, 3517.091

DRIVERS' LICENSES, 4507.06
Jury selection from motor vehicle registrar's list of licensed drivers, 2313.06
Voter registration at time of renewal, 3503.11(D)

EDUCATION, LOCAL BOARDS
Annexation for school purposes, powers and duties
Assent to, 709.30
Election of members, 3311.052; O Const XVII §1
Ballots, 3505.03, 3505.04
Canvassing returns, 3505.33
City districts, 3501.02
County districts, 3501.02
Nominating petition, 3513.254, 3513.255, 3513.261

EDUCATION, LOCAL BOARDS—*continued*
Joint county school district boards of education, 3311.053
Membership, 3313.01, 3313.02
Residency requirements, 3.15
Vacancies
Probate court filling, 3313.85
Probate courts, powers and duties, 3313.85
Resolutions, 3318.06
Emergency school levy, 5705.194
School district income tax, 5748.02
Special levies, 5705.21
Tax levies
In excess of ten-mill limitation, 5705.212, 5705.251
Terms of office, O Const XVII §1
Vacancies, 3313.11
Voter registration in schools, 3503.10

EDUCATION, STATE BOARD
Annexation of school district territory by municipal corporation, negotiations; rulemaking powers, 3311.06
Compensation, 3301.03
Conflict of interest, 3301.03
Election of members, 3301.02
Canvassing returns, 3505.33
Nominating petition, 3513.259
Membership
Residency requirements, 3.15
Oath of office, 3301.03
Qualifications, 3301.03
Rulemaking powers
Annexation of school district territory by municipal corporation, negotiations, 3311.06
Salary, 3301.03
Terms of office, 3301.02
Vacancies on board, 3301.06

EDUCATIONAL TELEVISION
Tax levies to support, 5705.05(E)

ELDERLY—See AGED PERSONS.

ELECTION DAY, 3501.02

ELECTION OFFICIALS
Absentee voting by, 3509.02
Appointment, 3501.11
Boards of elections—See ELECTIONS BOARDS.
Candidates, as, 3501.15
Defined, 3501.01
Employer's refusal to let employee serve as, 3599.06
Precinct, 3501.22 to 3501.28
See also PRECINCT OFFICIALS.
Violations by, 3599.16 to 3599.20, 3599.32, 3599.38
Investigation by board, 3501.11

ELECTIONEERING—See also CAMPAIGNS, generally.
Congregating near polling place, 3501.35, 3599.24, 3599.30, 3599.31
Flags to mark one-hundred foot distance, 3501.30

ELECTIONS, Ch 3501 to Ch 3599
See also particular issue or office concerned; VOTERS AND VOTING.
Absentee voting, Ch 3509
See also ABSENTEE VOTING.
Servicemen, Ch 3511
See also MILITARY SERVICE.
Administration
Board of elections, duties, 3501.11
Secretary of state, duties, 3501.05
Advertising—See POLITICAL ADVERTISING.
Automatic tabulating equipment, Ch 3506
See also VOTING AND TABULATING EQUIPMENT.

ELECTIONS—*continued*
Ballot board, Ohio—See BALLOT BOARD, OHIO.
Ballots, 3505.01 to 3505.17
See also BALLOTS.
Boards of—See ELECTIONS BOARDS.
Booths—See POLLING PLACES, generally.
Bribery, 3599.01, 3599.02, 3599.14
See also BRIBERY.
Campaigns—See CAMPAIGNS.
Candidates, 3513.04 to 3513.10
See also CANDIDATES.
Canvasses—See RETURNS.
Certificates—See CERTIFICATES OF ELECTION.
Challenges—See CANDIDATES, at Protests against candidacy; CHALLENGES AND CHALLENGERS TO ELECTORS.
Commission—See ELECTIONS COMMISSION, STATE.
Congressional districts, 3521.01
Contested, 3515.08 to 3515.16
See also CONTESTED ELECTIONS; RECOUNTS.
Contributions—See POLITICAL CONTRIBUTIONS.
Corruption—See CORRUPTION.
Counting officials, 3501.24 to 3501.26
See also PRECINCT OFFICIALS, generally.
Counting stations, 3506.16
County judges—See COUNTY JUDGES.
Crimes—See CRIMES AND OFFENSES; VIOLATIONS AND PENALTIES.
Day of, 3501.02
Declaration of results, 3505.33 to 3505.37
Amendment due to recount, 3515.05
Primaries, 3513.22
Definitions, 3501.01, 3517.01
Voting and tabulating equipment, 3506.01
Electoral college—See ELECTORAL COLLEGE.
Equipment—See FORMS AND SUPPLIES; VOTING AND TABULATING EQUIPMENT.
Expenses, 3501.17
See also FEES AND COSTS.
Financing—See also CAMPAIGN FINANCE REPORTING.
Recounts, 3515.071
Tax levies, by, 5705.05(B)
Forms and supplies—See FORMS AND SUPPLIES.
Fraud—See FRAUD.
Health district special levy, 3709.29
Initiative measures, Ch 3519
See also INITIATIVE AND REFERENDUM.
Issues—See ISSUES.
Joint township hospital districts, tax levy, 513.13
Laws, distribution to voters and board, 3501.05
Libraries, tax levies, 5705.23
Liquor, sale of—See LOCAL OPTION ELECTIONS.
Marking devices, 3506.01 to 3506.06
See also VOTING AND TABULATING EQUIPMENT.
Minors, for; simulated, 3501.051
Motor vehicle license tax, county
Additional levies, 4504.15, 4504.16
Repeal, 4504.021
Motor vehicle license tax, county levy, 4504.02
Motor vehicle license tax, municipal
Additional levies, 4504.17 to 4504.172
Motor vehicle license tax, township
Additional levy, 4504.18
Municipal court clerks, 1901.31
Municipal court judges, 1901.06 to 1901.10
Nominations—See NOMINATIONS.
Notice—See NOTICE.
Officials—See ELECTION OFFICIALS.
Park districts
Conversion of township districts, 1545.041
Petitions—See PETITIONS.
Police, duties, 3501.33 to 3501.35
Violations and penalties, 3599.18, 3599.31, 3599.38
Political parties—See POLITICAL PARTIES.

ELECTIONS—*continued*
Precincts, 3501.18 to 3501.37
See also PRECINCTS.
Presidential—See PRESIDENT, UNITED STATES.
Primaries, Ch 3513
See also PRIMARIES.
Procedure, 3505.18 to 3505.31
Absentee voting, 3509.031, 3509.05
See also ABSENTEE VOTING.
Servicemen, 3511.09
Interference, 3599.24(A)
Penalties, 3599.24(B)
Primary elections, 3513.18
Proclamations—See PROCLAMATIONS.
Questions—See ISSUES.
Recall—See PUBLIC OFFICERS AND EMPLOYEES, at Recall petitions.
Receiving officials, 3501.24, 3501.26
Records and reports—See RECORDS AND REPORTS.
Recounts, 3515.01 to 3515.071
See also CONTESTED ELECTIONS: RECOUNTS.
Referendum measures, Ch 3519
See also INITIATIVE AND REFERENDUM.
Registration, 3503.06 to 3503.33
See also REGISTRATION.
Returns—See RETURNS.
Rules and instructions, preparation, 3501.05, 3501.11
Schools—See SCHOOLS AND SCHOOL DISTRICTS.
Sheriffs, of, 311.01
Simulated, for minors, 3501.051
Special—See SPECIAL ELECTIONS.
Tabulating equipment, Ch 3506
See also VOTING AND TABULATING EQUIPMENT.
Tally sheets, 3505.27
Disposition, 3505.31
Fraudulent entries, 3599.19, 3599.33
Tie votes—See TIE VOTES.
Time and frequency, 3501.02; O Const XVII §1
U.S. constitutional convention delegates, 3523.01 to 3523.03
Vacancies in public offices, to fill, 3.02
Notice to elections board, 709.011
Violations and penalties—See VIOLATIONS AND PENALTIES.
Voters—See VOTERS AND VOTING.
Voting and tabulating equipment—See VOTING AND TABULATING EQUIPMENT.

ELECTIONS BOARDS, 3501.06 to 3501.12
Annual report, 3501.11
Appointment, 3501.05, 3501.06, 3501.16
Appropriations for, 3501.17
Automatic data processing board, membership, 307.84
Boundary changes, notification, 709.011
Branch offices, 3501.10
Budget, 3501.11, 3501.17
Candidates not to serve on, 3501.15
Canvassing of returns by, 3505.32 to 3505.37
See also RETURNS.
Chairman, 3501.09
Replacement, 3501.091
Vacancy in office, 3501.161
Chargebacks, 3501.17
Communications by, violations and penalties, 3599.43
Contracts for printing ballots, 3501.11
Counsel to, county prosecutor as, 309.09
Deputy directors, 3501.09, 3501.11, 3501.14
Voter registration, providing for, 3503.11
Detachment of village territory, petition for election, 709.39
Directors
Appointment, 3501.09, 3501.11
Compensation, 3501.14
Deputies—See Deputy directors, this heading.
Duties, 3501.13
Removal, 3501.14, 3501.16

ELECTIONS BOARDS—*continued*
Directors—*continued*
Replacement, 3501.091
Vacancies in office, 3501.161
Voter registration, providing for, 3503.11
Duties, 3501.11
Recount, 3515.05
Registration, 3503.08 to 3503.33
Employees, 3501.14 to 3501.17
Appointment, 3501.11
Misconduct, 3599.16, 3599.161
Training, 3501.27
Expenses, 3501.17
Detachment of village territory, advance payment, 709.39
Financial disclosure statements, forms, 102.09
Hours of offices, 3501.10
Insurance, liability, 3501.29
Investigations by, 3501.11, 3519.18
Local option elections, powers and duties, 4301.32, 4301.33
Members
Appointment, 3501.05, 3501.06
Candidates as, conflict of interest, 3501.15
Compensation, 3501.12
Medical insurance, 3501.141
Misconduct, 3599.16, 3599.161
Oath of office, 3501.08
Removal, 3501.16
Salaries, 3501.12
Training, 3501.27
Misconduct, 3599.16, 3599.161
Notice to ethics commission regarding candidacies, 102.09(A)
Oath, 3501.08
Officers, 3501.13 to 3501.17
See also Directors, this heading.
Appointment, removal, 3501.09, 3501.12, 3501.16
Candidates as, conflict of interest, 3501.15
Compensation, 3501.14
Medical insurance, 3501.141
Misconduct, 3599.16, 3599.161
Removal, 3501.14, 3501.16
Reselection, 3501.091, 3501.161
Training, 3501.27
Offices, 3501.10
Voting in, 3511.10
Organization, 3501.09
Political party fund, statements filed by parties, 3517.17
Primaries, duties, 3513.03
Records and reports, 3501.05, 3501.11, 3501.13
Campaign finance reporting, candidates notified, 3517.11
Public access, denial prohibited, 3599.161
Removal of members, 3501.16
Salaries of members, 3501.12
Tie votes, 3501.11, 3501.14
Vacancies in public office, notification, 709.011
Vacancies on board, 3501.06
Voter registration program in schools, powers and duties, 3503.10
Voting at by absent voters ballot, person recently changing address, 3503.11, 3509.04

ELECTIONS COMMISSION, STATE, 3517.14
Advisory opinions, 3517.15
Affidavits and reports—See Complaints filed with, this heading.
Appeal from, 3517.11, 3517.15, 3599.09(C), 3599.091(D), 3599.091(E), 3599.092(D), 3599.092(E)
Complaints filed with, 3599.091(C), 3599.092(C)
Frivolous, 3599.091(F), 3599.092(F)
Frivolous complaints, 3599.091(F), 3599.092(F)
Funding, 3517.14
Hearings
Notice, 3599.091(F), 3599.092(C)
Investigations by, 3517.11, 3517.15, 3599.091(C), 3599.092(C)
Legislation, recommendations, 3517.15

ELECTIONS COMMISSION, STATE—*continued*
Notice
Meetings and proceedings, 3599.091(F), 3599.092(C)
Political party fund, advisory opinion on uses of money from, 3517.18
Subpoenas, issuing, 3599.091(C), 3599.092(C)

ELECTORAL COLLEGE
Nomination of presidential electors, 3513.11
Write-in presidential candidates, by, 3513.041
Voting by, 3505.39
Party nominees, requirement to vote for, 3505.40

ELECTRIC COMPANIES—See also PUBLIC UTILITIES, TAXATION.
Change of address by consumer, notification of elections board, 3503.22

EMBEZZLEMENT
Public office, effect on eligibility, O Const II §5

EMERGENCY ABSENTEE VOTING, 3509.08

EMERGENCY MEDICAL SERVICES
Replacement tax levies, 5705.192
Tax levies in excess of ten-mill limitation, 5705.19(U)

EMERGENCY TELEPHONE SYSTEM
County sales tax levy, 5739.026

EMPLOYER AND EMPLOYEE
Election rights and duties, interference, 3599.05, 3599.06
Payroll deductions for political contributions, 3599.031
Political influence, coercion, 3599.05
Public employees—See PUBLIC OFFICERS AND EMPLOYEES.

ENGINEERS, COUNTY—See also COUNTY OFFICERS, for general provisions.
Acting, appointment, 305.02
Election, 315.01, 3501.02
Ballot, 3505.03
Canvassing returns, 3505.33
Eligibility for office, 315.02
Incompatible offices, 315.02
Political contributions, soliciting from employees, 2921.431
Qualifications, 315.02
Terms of office, 315.01
Vacancy in office, 305.03
Appointment to fill, 305.02

ENTERTAINMENT PLACES
U.S. Christopher Columbus Quincentenary Jubilee Commission sponsoring exhibition
Liquor sales at, exemption from local option and population restriction requirements, 4301.403

ETHICS, Ch 102
See also MISCONDUCT IN OFFICE.
Commission—See ETHICS COMMISSION.

ETHICS COMMISSION
Deputy motor vehicle registrar to file statement with, 102.021, 102.99
Educational materials, distribution, 102.09(E)
Financial disclosure by members, 102.02
Notice to, candidacy for public office, 102.09
Powers and duties
Defined, 102.01
Records and reports
Disclosure, 102.99

EVIDENCE
Election contests, 3515.12, 3515.13

EX-FELONS
Civil rights, 2961.01
Restoration, 2951.09
Holding office, 2961.01, 2967.16
Voter rights, 2961.01, 3503.18, 3599.39; O Const V §4, O Const V §6

EXECUTORS AND ADMINISTRATORS
Legal advertising by
Rates, 7.10

EXPENSE REPORTING—See CAMPAIGN FINANCE REPORTING.

FAIRS
Levies, 1711.15

FALSE STATEMENTS, 3515.13, 3599.42
Ballots, 3505.28, 3599.19 to 3599.35
Alteration, fraudulent, 3599.33
Initiative and referendum, 731.33, 731.36 to 731.40, 3519.05
Political campaigns, 3599.091(B), 3599.092(B)
Pollbooks, 3599.29, 3599.33
Primaries, 3513.19
Sheriffs, concerning qualifications, 311.01
Voter registration, 3503.14, 3599.11

FEES AND COSTS—See also particular subject concerned.
Apportionment of costs, 3501.17
Appropriations to cover costs, 3501.17
Candidates, filing fees, 3513.04, 3513.05, 3513.10
Commissioning of public officials, 107.06, 107.07, 3505.34, 3505.38
Contest of elections, 3515.09, 3515.13
Detachment of village territory, 709.39
Intermediate and minor parties, election of convention delegates, 3513.122
Legal advertising rates, 7.10
Precinct officials, mileage reimbursement, 3501.36
Public records, reproduction, 149.43
Recounts, 3515.03, 3515.07
Contested elections, 3515.13
Zoning resolution, application for amendment or supplement, 519.12

FELONS, FELONIES
Civil rights of felon, 2961.01
Restoration, 2951.09
Final release, 2967.16
Liquor permit applications, effect, 4303.29
Voting right, forfeiture, O Const V §4

FILING DEADLINES—See DEADLINES.

FILING FEES, 3513.05
See also FEES AND COSTS.

FINANCIAL INSTITUTIONS
Political parties selling mailing, membership, or contributor lists to, 3517.19

FINANCING DISCLOSURE—See CAMPAIGN FINANCE REPORTING.

FINES AND FORFEITURES—See particular subject concerned; VIOLATIONS AND PENALTIES.

FIRE ALARMS
Township communication system, 505.37

FIRE FIGHTERS AND FIRE DEPARTMENTS
Bond issuing authority, defined, 5705.01(C)
Bonds and notes to finance, 505.37
Contracts for protection, 505.37
Districts, creation, 505.37
Equipment and supplies, 505.37
Fiscal officer, defined, 5705.01(D)
Insurance, liability, 505.37
Joint action by subdivisions, 505.37
Tax levies, 505.37
In excess of ten-mill limitation, 5705.19(I)
Taxing authority, defined, 5705.01(C)
Withdrawal of municipal corporation from, 505.37

FIRE SAFETY
Water supply
Contracts by municipalities for, 743.24
Water supply, tax levies in excess of ten-mill limitation, 5705.19(I)

FLAGS
Polling places, display at, 3501.30

FLOODS AND FLOOD CONTROL
Tax levies in excess of ten-mill limitation, 5705.19(O)

FLOWER FUNDS, 3517.13

FOOD SERVICE OPERATIONS
Definitions, 4301.01
Local option elections, 4301.322, 4301.332, 4301.353, 4301.363

FORESTRY CAMPS
Tax levies in excess of ten-mill limitation, 5705.19(N), 5705.19(R)

FORFEITURE OF OFFICE, 3.07

FORGERY
Election documents, 3599.14, 3599.29
Referendum petition signatures, 305.37, 305.38, 305.99, 731.33, 731.36

FORMS AND SUPPLIES
Absentee voter's affidavit, 3509.04
Ballots, 3505.01 to 3505.17
See also BALLOTS.
Board of elections, duties, 3501.11
Canvasses, official, 3505.33
Competitive bidding, 3501.301
Declaration of candidacy, 3513.07, 3513.08, 3513.261
See also DECLARATION OF CANDIDACY, generally.
Financial disclosure forms, 102.09
Initiative and referendum petition, 3519.05
See also INITIATIVE AND REFERENDUM, generally.
Lost, 3505.17
Nominating petition, 3513.07, 3513.261
See also NOMINATING PETITIONS, generally.
Polling places, for, 3501.30 to 3501.31
Return of unused after election, 3501.37
Secretary of state, duties, 3501.05
Violations and penalties, 3599.23
Voter registration, 3503.08, 3503.11, 3503.13, 3503.14
Change of name or voting status, 3503.19

FRANKLIN COUNTY MUNICIPAL COURT
Environmental division
Judge, 1901.051

FRAUD, 3515.13, 3599.42
Ballots, 3505.28, 3599.19 to 3599.35
Initiative and referendum, 731.33, 731.36 to 731.40, 3519.05
Pollbooks, 3599.29, 3599.33
Primaries, 3513.19
Voter registration, 3503.14, 3599.11

FUNDS, PUBLIC
Accounting by general assembly members, O Const II §5
Initiative proposal concerning expenditure, estimate, 3519.04
Investments
Conflict of interest, 2921.42
Political party fund, 3517.16 to 3517.18
Advisory opinions on uses of money from, 3517.18
Allowable uses of money from, 3517.18
Audits of required statements, 3517.17
Creation, 3517.16
Deposits of money into, 3517.16
Eligibility of parties, 3517.17
Filing of required statements, 3517.17
Payments to qualifying political parties, 3517.16, 3517.17
Prohibited uses of money from, 3517.18
Rules, 3517.15
Violations, penalty, 3517.99

GAS COMPANIES—See also PUBLIC UTILITIES, TAXATION.
Change of address by consumers, notification of elections board, 3503.22
Village public affairs board of trustees, powers and duties, 735.28

GENERAL ASSEMBLY
Appointment for unexpired term, O Const II §11
Conflict of interest, O Const II §4
Constitutional amendments, proposals by, 3505.063; O Const XVI §1
See also CONSTITUTIONAL AMENDMENTS, STATE, generally.
Disfranchisement by, O Const V §4
Election duties, canvass of votes for state offices, 3505.34
Election of members, O Const II §2 to O Const II §5
Ballot, 3505.03
Canvassing returns, 3505.33
Pledge of vote by candidates, 3599.10
Time and frequency, 3501.02
Ethics committee
Powers and duties, 102.01
Records and reports, disclosure, 102.99
Financial disclosure, forms, 102.09(D)
Initiative petitions, action on, O Const II §1b
Members
Bribery, 2921.02
Conflict of interest, 2921.42
Misconduct of members, 3.07
Public funds, accounting for, O Const II §5
Residency requirement, 3.15; O Const II §3
Terms, O Const II §2
Vacancies, O Const II §11
Voter registration, providing for, 3503.11

GENERAL ASSISTANCE
Bonds and notes issued to finance, 131.23

GIFTS AND GRANTS
Political parties, gifts for office facilities, 3517.101, 3517.99
Public employees and officials, to; disclosure, 102.02

GOVERNOR
Appointment powers, O Const XVII §2
See also particular office concerned.
Judges, when vacancy in office, 2701.04

GOVERNOR—*continued*
Election duties; U.S. constitutional convention delegates, appointment by, 3523.06
Election of
Ballot, 3505.03
Death of candidate, 3513.311
Declaration of results, 3505.33 to 3505.35
Independent candidate, 3513.257
Joint candidacy with lieutenant governor, 3513.04 to 3513.05
Tie votes, 3505.34
Time and frequency, 3501.02
Withdrawal of candidacy, 3513.311
Write-in candidate, filing fee, 3513.10
Write-in candidates, 3513.041
Independent candidates, 3513.257
Removal powers, public officials, 3.07, 3.08
Senator, U.S.; appointment to fill vacancy, 3521.02
Veto power, restrictions, O Const II §1b

GRAFT, 2921.43

GRANTS
Public employees and officials, to: disclosure, 102.02

HABEAS CORPUS
Appeals courts, power to issue, 2501.02

HANDICAPPED PERSONS
Absentee voting by, 3509.02, 3509.08
See also ABSENTEE VOTING, generally.
Building standards, elimination of barriers
Polling places, 3501.29
Voter registration places, 3503.12
Voting
Absentee voting, 3509.02, 3509.08
Assistance, 3505.24
Barriers, elimination, 3501.29, 3503.12

HEALTH AND HOSPITALIZATION INSURANCE
Board of elections members and personnel, 3501.141
Counties contracting for, exemption from competitive bidding requirements, 307.86

HEALTH DISTRICTS
General districts, special tax levy, 3709.29
Tax levies to support, 5705.05(C)
Replacement levy, 5705.192

HEARINGS
Campaign violations, 3599.091(F), 3599.092(C)
Contested elections, 3515.10 to 3515.12, 3515.16
County motor vehicle license tax levy, proposed, 4504.02
Elections commission—See ELECTIONS COMMISSION, STATE.
Local option election petitions, protests against, 4301.33, 4301.331
Convention center sales, 4301.333 to 4301.335
Motor vehicle license tax levy, proposed, 4504.02
Soil and water conservation district projects
Objections to assessments, 1515.24

HIGHWAYS AND ROADS
Motor vehicle license tax to finance, 4504.02
Tax levies to finance
In excess of ten-mill limitation, 5705.19(G)
Replacement levies, 5705.192
Special, 5705.06(D)

HISTORICAL MUSEUMS
Tax levy in excess of ten-mill limitation, 5705.19(AA)

HOME RULE, O Const XVIII §7

HORSE RACING, 3769.04

HOSPITAL SERVICE ASSOCIATIONS
Municipal corporations, agreements with, 749.02, 749.03
Public hospitals, joint operation with municipalities, 749.03

HOSPITALS
Bonds and notes to finance
Municipal agreement with hospital for services, 749.03
Joint operation
Municipal hospital
Hospital service association, with, 749.02, 749.03
Joint township districts
Tax levies, 513.14
Municipal
Hospital service associations, joint operation, 749.02, 749.03
Joint operation with hospital service associations, 749.02, 749.03
Patients
Absentee voting, 3509.02, 3509.08
See also ABSENTEE VOTING, generally.
Voting residence, 3503.04
Services
Municipalities, agreements with, 749.02
Tax levies to support
Joint township district, 513.13, 513.14
Special, 5705.22
Township, 513.13

HOTELS
Local option elections, 4301.322, 4301.332, 4301.353, 4301.363
State-owned lodges, effect on, 4301.402

HOURS
Board, 3501.10
Registration, 3501.10
Voting, 3501.32

HOUSE OF REPRESENTATIVES, STATE—See GENERAL ASSEMBLY.

HOUSE OF REPRESENTATIVES, UNITED STATES—See CONGRESS, UNITED STATES.

ILLITERATE VOTERS
Assistance to, 3505.24

IMPERSONATION
Absentee voter, 3599.21
Party convention delegates or committeemen, 3599.35
Voter, 3505.22, 3599.12

INCOME TAX, MUNICIPAL, 718.01

INCOME TAX, SCHOOL DISTRICT
Repeal, 5748.04
Resolution proposing levy, 5748.02

INCOME TAX, STATE
Checkoff for political party fund, 3517.16
Political party fund, checkoff for, 3517.16

INDEPENDENT CANDIDATES, 3513.257
See also CANDIDATES, generally.
Certification, 3513.262
Declaration of candidacy, 3513.257, 3513.261
Unexpired term, for, 3513.31
Defined, 3501.01
Judicial, 3513.28
Nomination petitions, 3513.257
Municipal, 3513.251

INDEPENDENT CANDIDATES—*continued*
Nomination petitions—*continued*
Unexpired term, for, 3513.31
Unexpired term, for, 3513.28, 3513.31
Withdrawal of candidacy, 3513.31

INFORMANTS
Confidentiality of identity, 149.43

INITIATIVE AND REFERENDUM. Ch 3519
Annexation
Results, certification, 709.31
Waiver of election, 709.30
Appropriations, approval or rejection by, O Const II §1c, O Const II §1d
Arguments for and against proposal, preparation, 3519.03; O Const II §1g
Attorney general, certification by, 3519.01
Ballots, 3519.21; O Const II §1b, O Const II §1g
Agricultural tax, 1711.15
Detachment of village territory, 709.39
Campaigns
Contributions and expenditures, 3517.12
See also CAMPAIGN FINANCE REPORTING, generally.
Political advertising, 3517.13
See also POLITICAL ADVERTISING, generally.
Certification by secretary of state, 3501.05
Committee, duties, 3519.02, 3519.03
County issues, 305.31 to 305.42, 305.99
Charters, 307.94
Circulators, duties, 307.99
Circulator of petition, itemized statement, 305.36, 305.37
Effective date, 305.32
Motor vehicle license tax
Additional levies, 4504.15, 4504.16
Referendum petitions, procedure, 305.31 to 305.99
Sales tax, 5739.021, 5739.022
Separate petition papers, 305.32
Validity of petition, 305.32
Violations, 305.37 to 305.42
Penalties, 305.99, 307.99
Warning on petition, 305.34
County motor vehicle license tax
Repeal, 4504.021
Detachment of village territory, 709.39
Explanation of proposal, preparation, 3519.03; O Const II §1g
Filing date, O Const II §1a
Fraud, 3519.05
Incorporation as village or city, 707.04
Legal advertising, 7.101
Limitations, O Const II §1d, O Const II §1e
Merger of municipal corporations or townships with municipal corporations, 709.45
Motor vehicle license tax, county
Additional levies, 4504.15, 4504.16
Repeal, 4504.021
Motor vehicle license tax, municipal
Additional levies, 4504.17 to 4504.172
Municipal, 731.28 to 731.41; O Const II §1f, O Const XVIII §14
Applicability of statutes, 731.41
Charter adoption, O Const XVIII §8
Fraud, 731.36
Warning statement, 731.33
Motor vehicle license tax
Additional levies, 4504.17 to 4504.172
Officials' duties, 731.28, 731.29
Petitions, 731.31 to 731.40
Notice, 7.101; O Const II §1g
Park commissioners, establishment of municipal board of, 755.01
Park districts, dissolution, 1545.36

INITIATIVE AND REFERENDUM—*continued*
Petitions, Ch 3519
See also PETITIONS, generally.
Public expenditures proposed, estimate, 3519.04
Referendum
Exempt laws, O Const II §1d
Sales tax levy, county, 5739.021
Repeal of emergency tax, 5739.022(A)
School districts
Transfer, against, 3301.161
Secretary of state, duties, 3501.05, 3519.01
Soil and water conservation district assessment, 1515.26
Statewide ballot issues, Ch 3519
Submission to voters, time, 3501.02
Constitutional amendment, O Const II §1a to O Const II §1c
Supplementary petitions, O Const II §1g
Additional signatures, 3519.10
Demand for submission to voters, O Const II §1b
Tax levies
Decrease, 5705.261
Proposed, estimate of annual yield, 3519.04
Real property transfer tax, 322.02, 322.021
Utilities service tax, 324.02, 324.021
Transit systems, participation in regional authority, 306.32
Violations, 731.36 to 731.40
Warning on petitions, 731.33
Voting and tabulating equipment, adoption, 3506.02, 3507.01
Zoning resolutions
County, 303.12
Repeal in townships, 303.25
Township
Amendments, 519.12
Repeal, 303.25, 519.25

INJUNCTIVE RELIEF
Sunshine law violations, 121.22

INSPECTIONS
Ballot printing, 3505.14, 3505.15
Election records, 3599.161

INSURANCE
Board of elections members and personnel, medical insurance, 3501.141
Counties contracting for, exemption from competitive bidding requirements, 307.86

INTERPRETERS
Foreign language voters, for, 3501.221

INTIMIDATION
Definitions pertaining to, 2921.01
Election officials, 3599.24(A)
Penalties, 3599.24(B)
Initiative or referendum petition, to obtain signatures, 731.40

INVESTMENTS
Conflict of interest, 2921.42
Public funds
Conflict of interest, 2921.42
Public officials and employees, by; financial disclosure, 102.02

ISLAND POLLING PLACES
Closing, early, 3501.32

ISSUES—See also LEVIES.
Annexation, 709.17
Ballot, 3505.06, 3505.08, 3519.21
Campaigns
Reporting contributions and expenditures, 3517.12
See also CAMPAIGN FINANCE REPORTING, generally.
Unfair practices, 3599.092

ISSUES—*continued*
Canvassing returns, 3505.33
Cemeteries
Township establishing, 517.04, 517.05
Certification, 3501.02
Children's services levy, 5705.24
City councils
Length of terms, 731.03
President, election to change length of term, 733.09
Community college bond issue, 3354.12
Community mental health and retardation services levy, 5705.221
Contest of election, 3515.08 to 3515.16
See also CONTESTED ELECTIONS, generally.
County hospital, special levy, 5705.22
Defined, 3501.01
Emergency school levy, 5705.194 to 5705.197
Health districts, special levy, 3709.29
Hospital operation, joint municipal-hospital association venture, 749.03
Incorporation of township territory, 707.04
Joint vocational school districts, tax levy, 3311.21
Liquor sales, 4301.32 to 4301.402
See also LOCAL OPTION ELECTIONS, generally.
Motor vehicle license tax, county, 4504.02, 4504.021
Motor vehicle license tax, county levy
Additional levies, 4504.15, 4504.16
Motor vehicle license tax, municipal
Additional levies, 4504.17 to 4504.172
Motor vehicle license tax, township
Additional levy, 4504.18
Municipal charter, amendment, 731.211
Municipal income tax, 718.01
Municipal legislative authorities
Length of terms, 731.03
President, election to change length of term, 733.09
Park district, levy to finance, 511.27
Real property transfer tax, 322.02, 322.021
Recounts, 3515.01 to 3515.071
See also RECOUNTS, generally.
Regional transit systems
Participation, 306.32
Tax levy and bonds, 306.40, 306.49
Regional transit systems, sales tax levy, 306.70, 306.71
Reimbursements, 3501.17
Senior citizens' services or facilities, levy to finance, 5705.71(C)
Soil and water conservation district projects
Tax levies, 1515.28
Tax levies, proposed, 5705.25 to 5705.261, 5705.71(C)
Cigarette tax to finance sports facilities, 5743.024
Decrease, 5705.261
In excess of ten-mill limitation, 5705.19, 5705.191
Memorials, financing, 345.05
Sports facility, financing, 307.697, 5743.024
Township park, financing, 511.28
Township fire districts
Addition of territory, 505.37
Tax levies, 505.37
Township park district, conversion of, 1545.041
Township police district
Expansion of district imposing tax, 505.48
Tuberculosis hospitals, special levies, 5705.20
Utilities service tax levy, 324.02, 324.021
Voting and tabulating equipment, financing, 3506.02, 3507.01
Water supply by private corporations, 743.24
Zoning plans
County rural, 303.11, 303.12, 303.25
Township, 519.11

JOINT RECREATION DISTRICTS
Tax anticipation notes, 5705.198
Tax levies in excess of ten-mill limitation, 5705.198

JUDGES—See also particular court concerned.
Bribery, 2921.02
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07
Fees, 107.06
Compensation
County levies to finance, 5705.05(E)
Forfeiture, 3.07
Election duties, misconduct, 3599.19
Election of
Appellate judges, 2501.011
Ballot, 3505.04
Common pleas judges, 2301.01
County courts, 1907.11
Declaration of candidacy, 3513.08
Environmental division of Franklin county municipal court, 1901.051
Housing division of municipal court, 1901.051
Independent candidates, 3513.28
Municipal court, 1901.06 to 1901.10
Supreme court justices, 2503.02, 2503.03
Time and frequency, O Const XVII §1
Unexpired term, for, 107.08
Ethics, Ch 102
Forfeiture of office, 3.07
Misconduct, 3.07
Election duties, 3599.19
Oath of office, 3.23
Oaths, administration, 3.24
Removal or suspension, 3.08
Residency requirements, 3.15, 2701.04
Supreme court, state, 2503.01 to 2503.03
Terms of office, O Const XVII §1
Vacancies in office, 3.07, 107.08; O Const IV §13, O Const XVII §2
Change of residence, due to, 2701.04

JUDGMENTS
Election contests, 3515.14
Tax levy funds, to pay, 5705.05(A)

JUDICIAL VACANCIES, O Const IV §13, O Const XVII §2
Filled by governor, 107.08
Misconduct, 3.07

JURISDICTION—See also particular subject concerned.
Abused children
Appeals, 2501.02
Child abuse
Appeals, 2501.02
Election contests, 3515.08
Municipal court, 1901.02
Political campaign violations, 3599.091(D), 3599.092(D) to 3599.092(F)
Questions of law, appeals, 2501.02

JURY DUTY
Disqualification of felon, 2961.01
List of jurors, 2313.06

JURY LISTS, 2313.06

JURY TRIALS
Bribery of jurors, 2921.02

JUVENILE COURT JUDGES, 2301.03
Bribery, 2921.02
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07
Fees, 107.06
Compensation
County levies to finance, 5705.05(E)
Forfeiture, 3.07

JUVENILE COURT JUDGES—*continued*
Election of
Ballot, 3505.04
Declaration of candidacy, 3513.08
Independent candidates, 3513.28
Time and frequency, O Const XVII §1
Time for, 2301.03
Unexpired term, for, 107.08
Ethics, Ch 102
Forfeiture of office, 3.07
Misconduct, 3.07
Oath of office, 3.23
Oaths, administration, 3.24
Removal or suspension, 3.08
Residency requirements, 3.15, 2701.04
Terms of office, O Const XVII §1
Vacancies in office, 3.07, 107.08; O Const IV §13, O Const XVII §2

JUVENILE DELINQUENCY
Jurisdiction
Appeals, 2501.02

JUVENILE REHABILITATION
Tax levies to fund facilities, 5705.19(N), 5705.19(R)

KICKBACKS, 2921.43

LANDS, PUBLIC
Illegal disclosure of information, 121.22
Meetings considering purchase or sale, 121.22

LATE REGISTRATION, 3503.11

LAW DIRECTORS, CITY, 733.49
Acting, 733.31
Election, 733.49
Qualifications, 733.50
Residency requirement for office, 733.49
Terms of office, 733.49
Vacancies in office, 733.31

LAW ENFORCEMENT OFFICERS
Bribery, 2921.02
Conflict of interest, 2921.42
Duties, 3501.33, 3501.34, 3599.31
Training programs
Sheriffs, 311.01

LEASES
Voting and tabulating equipment, 3506.03, 3507.02

LEGAL ADVERTISING—See also NOTICE.
Constitutional amendment, 7.101
Election notice
Special tax levy proposal, 5705.25
Fairs, tax levy for, 1711.15
Joint vocational school, 3311.21
Public utilities tax, 324.021
Registration places, 3503.12
Reimbursements, 3501.17
School bond issue and levy, 3318.06
Secretary of state, when paid by, 3501.17

LEVIES, Ch 5705
See also particular subject concerned.
Agricultural societies, 1711.15, 1711.17
Alcohol, drug addiction, and mental health service districts, 5705.221
Replacement levy, 5705.192
Bridges, financing
County, special, 5705.06(D)

LEVIES—*continued*
Bridges, financing—*continued*
In excess of ten-mill limitation, 5705.19(G)
Replacement levies, 5705.192
Municipal, 5705.05(D)
Township, 5705.06(F)
Charter limitations, 5705.18
Children's services, for, 5705.24
Replacement levies, 5705.192
Cigarette tax to finance sports facilities, 5743.024
Community alcohol, drug addiction, and mental health service districts, 5705.221
Community colleges, 3354.12
Community mental health service districts, 5705.05(E)
Mental retardation and developmental disabilities services, additional levy for, 5705.222
County, 5739.021
County hospitals, 5705.22
Decrease, election, 5705.25 to 5705.261
Definitions, 5705.01
Effective date, O Const II §1d
Election on, 5705.25 to 5705.261, 5705.71(D)
See also ISSUES, generally.
Emergency medical services, replacement levy, 5705.192
Emergency school levy, 5705.194
Fairgrounds, county, 1711.15
Fire protection, financing
Township levies, 505.37
In excess of ten-mill limitation, 5705.19(I)
General, purpose, 5705.05
Health and human services, 5705.191
Replacement levies, 5705.192
Health districts, 3709.29, 5705.05(C)
Replacement levies, 5705.192
Hospitals, financing
County hospitals, 5705.22
Joint township hospital district levies, 513.13, 513.14
Tuberculosis hospitals, special levies, 5705.191, 5705.20
Increase, election, 5705.25, 5705.26
Joint recreation districts, 5705.198
Joint township hospital district levies, 513.13, 513.14
Joint vocation school district, replacement levy, 5705.192
Joint vocational schools, 3311.21, 3318.06
Judgments, to pay, 5705.05(A)
Memorials, financing, 345.05
Mental health service districts, 5705.01, 5705.05(E)
Mental retardation and developmental disabilities programs
Replacement levies, 5705.192
Mental retardation and developmental disabilities services, for, 5705.05(E)
Motor vehicle license tax—See MOTOR VEHICLE LICENSE TAX.
Municipal universities, 5705.06(C)
Notice—See NOTICE, at Tax levies, proposed.
Park districts
Conversion of township districts, 1545.041
Replacement levies, 5705.192
Parks, financing, 5705.05(D)
Township facilities, 511.27
Permanent improvements, 5705.06(A)
Police, financing in excess of ten-mill limitation, 5705.19(J)
Rail property or service development, 5705.19(CC)
Referendum, exemption from, O Const II §1d
Regional transit authorities, powers, 306.40, 306.49
Renewal, election, 5705.25, 5705.26
Joint vocational school districts, 3311.21
School levies, 5705.194, 5705.197
Replacement levies, 5705.192
Sanitary fund, to finance, 5705.05(D)
School levies—See SCHOOLS AND SCHOOL DISTRICTS, at Taxes and levies.
Senior citizens' services or facilities, to finance, 5705.05(E)
Election question, by petition, 5705.71(C)
In excess of ten-mill limitation, 5705.19(Y)

LEVIES—*continued*
Social services, 5705.192
Replacement levies, 5705.191
Soil and water conservation districts, for, 1515.28, 5705.05(E)
Special, 5705.06
Authorized purposes, 5705.18 to 5705.24
County hospitals, 5705.22
School levies, 5705.21
Replacement levies, 5705.21
Ten-mill limitation, exceeding, 5705.07
Voter approval requirement, 5705.07
Sports facility, financing, 307.696, 307.697
Cigarette tax levy, 5743.024
Taxing authority, defined, 5705.01(C)
Teachers retirement system, to fund, 5705.05(F)
Telephone emergency service, to establish, 5705.19(BB)
Ten-mill limitation
Charter provisions, effect, 5705.18
Levies in excess of, 5705.07, 5705.18 to 5705.24
See also particular subject of levy.
Election, 5705.25, 5705.26
General health districts, 3709.29
Memorials, financing, 345.05
Resolution to levy, 5705.19, 5705.191
Levies within, 5705.05, 5705.06
Township park, financing, 511.28
Township parks
Replacement levies, 5705.192
Transit systems, regional, 306.40, 306.49
Tuberculosis hospitals, special levies to finance, 5705.191, 5705.20
Zoological parks, in excess of ten-mill limitation, 5705.19(Z)
Replacement levies, 5705.192

LIABILITY INSURANCE
Elections boards, private buildings, 3501.29

LIBRARIES AND LIBRARY DISTRICTS
Buildings and grounds, special levies, 5705.23
Counsel to
County prosecutors, 309.09
County free public libraries
Fiscal officer, defined, 5705.01(D)
Tax levies, special, 5705.23
Referendum on library district transfer, 3375.03
School library districts, definition, 5705.01(L)
Tax levies to support, 5705.19(D), 5705.23
Ballot form, 5705.25(B)
Special, 5705.06(B), 5705.23

LICENSES AND PERMITS
Conflict of interest, restrictions, 102.03
Drivers' licenses—See DRIVERS' LICENSES.

LIEUTENANT GOVERNOR
Running mate, as, 3513.04 to 3513.05
Vacancy in office, O Const XVII §2

LIGHTING
Village facilities, 735.28

LIQUOR CONTROL
Definitions, 4301.01
Local option elections—See LOCAL OPTION ELECTIONS.
Notice to liquor control department of local option election petition and result, 4301.39
Permits
Citizenship requirements, 4303.29
Closure of premises due to local option election, 4301.36
D permits
D-6 permit, 4301.403
Exhibition sponsored by U.S. Christopher Columbus Quincentenary Jubilee Commission, 4301.403

LIQUOR CONTROL—*continued*
Permits—*continued*
Felony committed by permit holder or permit applicant, effect, 4303.29
Number of C and D permits per county, 4303.29
Population restrictions, 4303.29
Revocation or suspension due to local option election, 4301.362
Townships, annexed to "wet" municipalities, 4301.401
Transfer, consent of liquor control department, 4303.29
Sale of liquor
State-owned lodges, effect of local option status, 4301.402
U.S. Christopher Columbus Quincentenary Jubilee Commission, exhibit sponsored by
Liquor sales at, exemption from local option and population restriction requirements, 4301.403
Voters to determine, 4301.32 to 4301.402
See also LOCAL OPTION ELECTIONS.
State-owned lodges, sales, 4301.402
Sunday sales, local option elections, 4301.351
Effect of vote, 4301.361
Tax on spiritous liquor, county levy to finance sports facility, 307.697
Violations
Permit holder, by; local option election on
Convention center sales, 4301.323, 4301.333
Violations by permit holder, local option election on, 4301.321, 4301.331

LOCAL OPTION ELECTIONS, 4301.32 to 4301.402, 4305.14, 4305.15
Airport liquor sales, effect, 4301.40
Ballots, form, 4301.35 to 4301.533, 4305.14
Hotel, restaurant or shopping mall service, 4301.353
Beer sales, 4305.14, 4305.15
Convention center sales, 4301.323 to 4301.325
Ballots, form, 4301.354, 4301.355
Petition to hold, 4301.333 to 4301.335
Results of election, effect, 4301.364, 4301.365
Enforcement of results, 4301.391
Expenses, 4301.35
Sunday sale determination, 4301.351
Frequency of elections, 4301.37
Beer, 4305.14
Hearing on protest against petition, 4301.33, 4301.331, 4305.14
Convention center sales, 4301.333 to 4301.335
Hotel, motel, and lodge exception, 4301.37
Hotel service, 4301.322, 4301.332, 4301.353, 4301.363
Liquor by the glass, 4303.29
Question form, 4301.35
Liquor permits, effect, 4301.321, 4301.331, 4301.40
See also LIQUOR CONTROL, generally.
C and D permit holders, closure of premises, 4301.39
Restrictions added to permit, 4301.39
Unlawful due to election
Deposit with liquor control department, 4301.39
Refund of unexpired portion of fees, 4301.39
Liquor store establishment, question form, 4301.35
"No" vote, effect, 4301.36 to 4301.37
Notice of petition and results, to liquor control department, 4301.39
Notice of petition to permit holders, convention center sales, 4301.333 to 4301.335
Off-premise consumption of alcoholic beverages, question form, 4301.35
On-premise consumption of alcoholic beverages, question form, 4301.35
Permit holder who violated liquor control laws, on, 4301.321, 4301.331
Convention center sales, 4301.323, 4301.333
Petition to hold, 4301.33 to 4301.34, 4305.14, 4305.15
Board of elections, powers and duties, 4301.32, 4301.33, 4305.14
Convention center sales, 4301.333 to 4301.335

LOCAL OPTION ELECTIONS—*continued*
Petition to hold—*continued*
Hearing on protest against, 4301.33, 4301.331, 4305.14
Convention center sales, 4301.333 to 4301.335
Liquor by the glass, 4303.29
One county per petition paper, 4301.34
Protest against, 4301.33, 4301.331, 4305.14
Convention center sales, 4301.333 to 4301.335
Public inspection, 4301.33, 4301.331, 4305.14
Restaurant, hotel or shopping mall service, 4301.332
Signatures, determination of number, 4301.32, 4305.14
Plat of local option election precinct to liquor control department, 4301.39
Questions, form, 4301.35, 4301.351, 4305.14
Convention center sales, 4301.354, 4301.355
Hotel, restaurant or shopping mall service, 4301.353
Recounts, 4301.39
Restaurant service, 4301.322, 4301.332, 4301.353, 4301.363
Results, enforcement, 4301.391
Secretary of state, duties, 3501.05
Shopping mall service, 4301.322, 4301.332, 4301.353, 4301.363
Special election, 4301.352
Sunday sales, 4301.351
State-owned lodges, effect on sales, 4301.402
Sunday sales, 4301.351
Effect of vote, 4301.361
Township, 4305.14
U.S. Christopher Columbus Quincentenary Jubilee Commission sponsoring exhibition
Liquor sales at, exemption from local option requirements, 4301.403
"Yes" vote, effect, 4301.36 to 4301.37

LOITERING
Polling places, at, 3501.30, 3501.35, 3599.24(A), 3599.31
Penalties, 3599.24(B)

MALLS
Local option elections, 4301.322, 4301.332, 4301.353, 4301.363

MANDAMUS
Appeals courts
Power to issue, 2501.02
Elections board appointments, compelling, 3501.07
Public records, to compel inspection, 149.43

MAPS
Village territory, detachment, 709.39

MARRIAGE
Name change of voter due to, report to board, 3503.19

MASTER COMMISSIONERS
Bribery, 2921.02

MAYORS
Acting mayors, villages, 733.25
Conservator of the peace, as, 733.24
Death, 733.08, 733.25
Election of
Village mayors, 733.24
Legislative authorities
Village authority, president, 733.24
Removal, 3.08, 733.08, 733.25
Residency requirement for office, 733.24
Resignation, 733.08, 733.25
Succession to office, 733.08
Suspension, 3.08
Term of office
Village mayors, 733.24
Vacancy in office, 733.08, 733.25, 733.31

MAYORS—*continued*
Veto power, exempt ordinances, 731.28

MEDICAID
Political contributions by providers, 3599.45

MEDICAL EMERGENCY ABSENTEE VOTING, 3509.08

MEETINGS
Executive sessions, 121.22
Sunshine law, 121.22
Voting and quorum requirements, 121.22

MEMORIALS
Financing, 345.05

MENTAL HEALTH SERVICE DISTRICTS—See ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICE DISTRICTS.

MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES BOARDS, COUNTY
Tax levies to finance in excess of ten-mill limitation, 5705.19(L)
Replacement levy, 5705.192

MENTALLY ILL PERSONS
Civil rights, 5122.301
Hospitalization, voting residence, 3503.04
Registration, 3503.18
Voting rights, 5122.301
Voting rights, forfeiture, O Const V §6

MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED PERSONS
Institutionalization, voting residence, 3503.04
Registration, 3503.18
Schooling and training facilities
Tax levies to finance in excess of ten-mill limitation, 5705.19(L)
Replacement levies, 5705.192
Services for, levies, 5705.05(E)
Voter registration, cancellation, 3503.18

MILITARY SERVICE
Absentee voting, Ch 3511
See also ABSENTEE VOTING, generally.
Affidavit, 3511.05
Application, 3511.02
Ballots, 3511.02 to 3511.08
Challenge, 3511.12
Counting ballots, 3511.11, 3511.12
Dependent of armed forces member, by, 3511.01
Identification envelope, 3511.05 to 3511.07
Outside United States on election day, 3511.05, 3511.09, 3511.11
Spouse of armed forces member, by, 3511.01
Voting procedure, 3511.09, 3511.10
County officer's absence from office due to, 305.03
Income tax exemption, municipal, 718.01
Pre-registration not required, 3511.02

MILITIA
Absentee voting, 3509.02, 3509.031
See also ABSENTEE VOTING, generally.
Officers
Commissioning by governor, 107.05 to 107.07
Conflict of interest, O Const II §4

MINOR POLITICAL PARTY, 3501.01, 3517.012

MINORS
Elections, simulated for, 3501.051
Neglected
Appeals
Jurisdiction, 2501.02
Jurisdiction
Appeals courts, 2501.02
Simulated elections for, 3501.051
Voter eligibility, 3503.01, 3503.011

MISCONDUCT IN OFFICE, 3.07
Election officials, 3599.16 to 3599.20, 3599.38
Elections board members or employees, removal, 3501.15
Forfeiture of office, 3.07
General assembly members, 3.07
Graft, 2921.43
Judges, 3.07, 1901.10
Precinct officials, 3599.16 to 3599.20, 3599.38
Removal procedure for public officer, 3.08

MOTOR VEHICLE LICENSE TAX
County levy
Additional levies, 4504.15, 4504.16
Repeal, 4504.021
Hearings on resolution to levy, 4504.02
Referendum, submission to, 305.31 to 305.99
Repeal, 4504.021
Resolution to levy, 4504.02
Use of revenues, 4504.02
Municipal levy, 4504.06
Additional levies, 4504.17 to 4504.172
Rates
County levy, 4504.02
Municipal levy, 4504.06
Resolution to levy, 4504.02, 4504.06
Township levy
Additional levy, 4504.18
Use of revenues
County levy, 4504.02
Municipal levy, 4504.06

MOTOR VEHICLE SALES TAX
County levy prohibited, 5739.021
Transit authority levy prohibited, 5739.023

MOTOR VEHICLES BUREAU
Deputy registrars
Contract awarded for political reasons, prohibited, 4503.032
Ethics commission statement, 102.021, 102.99
Political contributions, disclosure, 102.021, 102.99
Political solicitation of prohibited, 4503.032
Jury selection from registrar's list of licensed drivers, 2313.06
Registrar to provide for voter registration, 3503.11, 4507.06

MOVING OUT OF STATE
Presidential elections, voter eligibility, Ch 3504

MUNICIPAL CORPORATIONS
Actions
Officers or legislators, against, 733.72
Annexation
Election, 709.17
Notice to board of elections, 709.011
Appropriations, effective date of ordinance, 731.30
Assets
Merger of municipality with other political subdivision, effect, 709.47
Bonds and notes
Disability assistance, financing, 131.23
General assistance, financing, 131.23
Hospital services, for, 749.03
Issuing authority, defined, 5705.01(C)
Unsecured indebtedness, financing, 131.23

MUNICIPAL CORPORATIONS—*continued*
Boundaries—See Territory, this heading.
Census
Registered voters, based on, 703.011
Charter cities
Merger of political subdivisions, effect, 709.46
Charter cities; initiative and referendum statutes, applicability, 731.41
Charters, O Const XVIII §7 to O Const XVIII §9
Amendment, 731.211; O Const XVIII §9
City councils, 731.03, 731.04, 733.08, 733.09
See also Legislative authorities, this heading.
Clerks, 731.04
Vacant offices, notification of board of elections, 709.011
Commissions
Mergers, negotiation of conditions, 709.45, 709.46
Contracts
Conflict of interest, officers or legislators, 733.72
Hospital facilities
Joint operation with hospital association, 749.02, 749.03
Water supply, for, 743.24
Debt limitations
Bond issue to finance matching funds to federal aid, 139.02
Exemptions, 131.23
Definitions, 703.01
Elections, O Const XVIII §14
Ballots, 3505.03, 3505.04
Canvassing returns, 3505.33
Charter adoption or amendment, O Const XVIII §8, O Const XVIII §9
Councilmen, 3513.02
Defined, 3501.01
Merger with other political subdivision, following, 709.46
Nonpartisan, 3513.01
Primaries, prerequisites for holding, 3513.251
Special
First election following incorporation, 707.21
Time and frequency, 3501.02
Employees, conflict of interest, 102.04
See also PUBLIC OFFICERS AND EMPLOYEES, generally.
Fiscal officer, defined, 5705.01(D)
Funds
Merger of municipality with other subdivision, effect, 709.47
Government, plans of
Merger of political subdivisions, effect, 709.47
Home rule, O Const XVIII §7
Income tax, 718.01
Incorporation, 707.04
Judgments against, tax levies to pay, 5705.05(A)
Law directors—See LAW DIRECTORS, CITY.
Legislative authorities, 731.09, 733.02
Actions against, 733.72
Alternative form of government, under, 731.01
Appointment to unexpired term, 731.11, 731.43
Compensation of members
Illegal, 733.72
Conflict of interest of members, 731.02
Complaint, 733.72
Election, 731.01, 731.03, 731.09, 731.12, 731.43, 733.08, 733.25
Eligibility for office, 731.02
Employees, 731.04
Forfeiture of office
Change of residence, due to, 731.02
Number of members, 731.01
Officers, 731.04
Organization, 731.01
Powers and duties, 731.43
President
Succession to office, 733.08, 733.09
Village mayor as, 733.24
President pro tempore, 731.04, 733.08
Villages, 731.11

MUNICIPAL CORPORATIONS—*continued*
Legislative authorities—*continued*
Residency requirement, 3.15
Terms of office, 731.03
Vacancies, 731.11, 731.43, 733.31
Levies—See Taxes and levies, this heading.
Liability
Merger of political subdivisions, effect, 709.47
Local option elections—See LOCAL OPTION ELECTIONS.
Mayors—See MAYORS.
Newly established
Election of legislative authority, 731.01
Officers—See also PUBLIC OFFICERS AND EMPLOYEES, generally.
Actions against, 733.72
Bond
Failure to give, 731.49
Change in status of municipality, effect, 703.07
Conflict of interest, 102.04
Election following incorporation, 707.21
Ethics, Ch 102
Forfeiture of office, 3.07, 731.49
Merger of political subdivisions, effect, 709.46, 709.47
Misconduct, 733.72
Nominating petitions, 3513.01
Nomination, O Const V §7
Without intervention of primaries, 705.92
Oath of office, 733.68
Failure to take, 731.49
Qualifications, 733.68
Recall, 705.92
Removal, 705.92, 733.72
Residency qualifications, 3.15, 731.12, 733.08, 733.25, 733.68
Terms of office, 707.21; O Const XVII §1, O Const XVII §2
Vacancies, 3.07, 733.31
Notice to boards of elections, 709.011
Ordinances and resolutions
Change in status of municipality, effect, 703.07
Effective date, 731.30, 731.31
Emergency, 731.30
Initiative and referendum, 731.28 to 731.41
Legislative authorities; length of term, election to change, 731.03, 733.09
Merger of municipality with other political subdivision, effect, 709.47
Motor vehicle license tax, additional levies, 4504.17 to 4504.172
Transit systems, participation in regional authority, 306.32
Veto by mayor, exempt ordinances, 731.28
Pension plans, tax levies to support, 5705.06(G)
Powers and duties
Surrender of corporate rights
Villages, by, 703.20
Primaries, prerequisites, 3513.01, 3513.251; O Const V §7
Public body, defined, 121.22
Public works—See PUBLIC WORKS.
Records and reports, disclosure, 149.43
Sanitary fund, tax levies to finance, 5705.05(D)
Special elections
First election following incorporation, 707.21
Taxes and levies—See also LEVIES, generally.
Current expenses, 5705.05(D)
Elections to approve levies, 5705.25 to 5705.261
General fund supplemental tax levy, 5705.191
Income tax, 718.01
Motor vehicle license tax, 4504.06
Additional levies, 4504.17 to 4504.172
Ten-mill limitation by charter, 5705.18
Taxing authority, defined, 5705.01(C)
Territory, 707.04
Boundary changes, notice to boards of elections, 709.011
Conformity with township boundaries, 503.07, 503.08, 703.22

MUNICIPAL CORPORATIONS—*continued*
Territory—*continued*
Merger, 709.44
Townships, identical with, 703.22
Townships
Exclusion of municipal from territory, 503.09

MUNICIPAL COURTS
Accounts and accounting, 1901.31
Clerks
Affidavits, taking, 1901.31
Compensation, 1901.31
Election and term, 1901.31, 3501.02
Powers and duties, 1901.31
Costs, 1901.31
Creation
Date, 1901.06
Dockets, 1901.31
Election of judges—See MUNICIPAL JUDGES.
Environmental division
Franklin county municipal court
Judge, 1901.051
Judge, 1901.051
Fines collected by
Disposition, 1901.31
Housing division
Judge, 1901.051
Toledo
Judges, 1901.051
Judges—See MUNICIPAL JUDGES.
Jurisdiction, 1901.02
Territorial jurisdiction, 1901.02
Unclaimed funds, 1901.31

MUNICIPAL JUDGES
Absent or incapacitated, 1901.10
Bribery, 2921.02
Candidates for office of, 1901.07, 1901.10
See also CANDIDATES, generally.
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07
Compensation, 1901.10
County levies to finance, 5705.05(E)
Forfeiture, 3.07
Election of, 1901.06 to 1901.10
Ballot, 3505.04
Declaration of candidacy, 3513.08
Environmental division, 1901.051
Housing division, 1901.051
Independent candidates, 3513.28
Time and frequency, 3501.02; O Const XVII §1
Unexpired term, for, 107.08
Ethics, Ch 102
Forfeiture of office, 3.07
Misconduct, 3.07, 1901.10
Nominating petitions, 1901.07, 1901.10
Oath, 1901.10
Oaths, administration, 3.24
Qualifications, 1901.06
Removal, 3.08, 1901.10
Residency requirements, 3.15
Substitute judges, 1901.10
Suspension, 3.08
Term of office, 1901.07, 1901.08; O Const XVII §1
Vacancies in office, 3.07, 107.08, 1901.10; O Const IV §13, O Const XVII §2

NAMES
Candidates, of
Certification, 3505.01
Change, 3505.02
Death of candidate, 3505.01
Identical, differentiation, 3505.021, 3513.131

NAMES—*continued*
Candidates, of—*continued*
Primaries, 3513.05
Printing specification, 3505.08
Rotation—See Rotation of names on ballot, this heading.
Change
Candidates for public office, 3513.06, 3513.271
Registered voters, notification requirement, 3503.11, 3503.19
Nicknames, 3513.06
Political advertising, use of fictitious, 3599.09(B)
Rotation of names on ballot, 3505.03, 3505.04
Absentee voters' ballots, 3509.01
Marking devices, 3513.15, 3513.151
Voting machines, 3507.06
Township, 709.39

NATIONAL GUARD—See also MILITIA.
Absentee ballots, Ch 3511
See also ABSENTEE VOTING, generally.

NEWSPAPERS—See also LEGAL ADVERTISING; NOTICE.
Influencing candidates and voters, 3599.08
Legal advertising requirements, 7.12
Public proceedings, notice, 121.22

NOMINATING PETITIONS, 3501.38, 3503.06, 3513.251 to 3513.28
Board of elections, duties, 3501.11
Bribery for signatures, 3599.14
Certification of independent, 3513.262
Challenge, 3513.262, 3513.263
Circulators, requirements, 3501.38, 3513.05, 3513.07
County court judges, 1907.13
Deadlines, 3513.05, 3513.08, 3513.251, 3513.262
Independent candidates, 3513.257
Delegates to party conventions, 3513.12
Destruction or mutilation, 3599.15
Disclosure, 3513.05, 3513.263
False signatures, 3599.28
Filing of, 3513.05, 3513.257, 3513.262
Deadlines—See Deadlines, this heading.
Forgery, 3599.14
Form, 3513.07, 3513.08, 3513.261
Group, 3513.12, 3513.261; O Const X §4, O Const XVIII §8
Independent candidates, 3513.257
Municipal, 3513.251
Unexpired term, for, 3513.31
Judicial candidates
County judges, 1907.13
Independent, 3513.28
Municipal judges, 1901.07, 1901.10
Misrepresentation, 3599.14
Municipal candidates, 3513.251
Municipal court judges, 1901.07, 1901.10
Municipal officers, 3513.01
Name change, 3513.06
Nominations—See NOMINATIONS.
Number of signatures, 3513.05
Independent candidates, 3513.257
Prohibition to party candidates, 3513.04
Protests, 3501.39
Replacement for removed officials, 705.92
Sale or purchase, 3599.15
School boards, 3513.254, 3513.255
Signature of candidate, 3513.09
Signatures on petition, 3501.38, 3503.06, 3513.05
State board of education, 3513.259
Theft, 3599.15
Township officers, 3513.01
Township officials, 3513.253
Unexpired term, for, 3513.31
Unqualified person signing, 3599.13

NOMINATING PETITIONS—*continued*
U.S. constitutional convention delegates, 3523.04
Validity, 3501.38, 3501.39, 3513.05, 3513.262, 3513.263
Violations and penalties, 3501.39, 3599.13 to 3599.15, 3599.28
Notice of penalty, 3501.38

NOMINATIONS, Ch 3513; O Const V §7
Board of election duties, 3501.11
Contested, 3515.08 to 3515.16
Deadlines, 3513.05, 3513.08, 3513.251, 3513.262
Independent candidates, 3513.257
Newly formed parties, members of, 3517.013 to 3517.016
Officers of newly incorporated townships, 707.21
Percentage requirement for write-in candidates, 3513.23
Petitions—See NOMINATING PETITIONS.
Primary election, Ch 3513
See also PRIMARIES.
Write-in candidates, 3513.23

NONPROFIT CORPORATIONS
Political action committees, soliciting for, 3517.082

NOTARIES PUBLIC
Conflict of interest, O Const II §4

NOTES—See BONDS AND NOTES.

NOTICE, 7.11, 3501.03, 3501.11
See also LEGAL ADVERTISING; particular subject concerned.
Administrative agencies, by; special meetings, 121.22
Ballots, contract for printing, 3505.13
Campaign violation hearings, 3599.091(F), 3599.092(C)
Charter amendments, county, 307.70
Constitutional amendments, 7.10, 7.101; O Const II §1g, O Const XVI §1
County charter amendments, 307.70
County contracts to be awarded, 307.87
Initiative and referendum, 7.101; O Const II §1g
Newspapers, requirements, 7.12
Polling place relocation, 3501.21
Precinct change, 3501.21, 3503.17
Precinct official, increase in compensation, 3501.28
Rates for legal advertising, 7.11
Recount, 3515.03
Referendum proposal, O Const II §1g
Sales tax, proposed county levy, 5739.021
School special election, assignment of voters, 3503.01
Soil and water conservation districts
Projects, assessment for, 1515.24
Tax levies, proposed
Election regarding, 5705.25 to 5705.261, 5705.71(D)
Rates, 7.11
Sales tax levy, county, 5739.021
School levies
Emergency, 5705.194
Special, 5705.21
Special levies, 5705.25
Vacancy in office, appointment to fill, 3.02
Judicial office, 107.08
School board member, 3313.11
Voter registration, time and place, 3503.12
Zoning resolution hearings
County, 303.12
Township, 519.12

NURSING AND REST HOMES
Voting residence of residents, 3503.04

OATHS AND AFFIRMATIONS
Administration, 3.24
Auditors
City, 733.68

OATHS AND AFFIRMATIONS—*continued*
Board of elections
Director, 3501.13
Duty to administer, 3501.11
Members, 3501.08
Certification, 3.24
Challenged voter, 3505.20
Election contest petitioners, 3515.09
Mayors, oath of office, 733.68
Municipal court
Clerk administering, 1901.31
Judges, 1901.10
Municipal officers and employees, 733.68
Failure to take, 731.49
Pollwatchers, 3505.21
Precinct officials, 3501.31
Sheriffs, concerning qualifications, 311.01
State board of education members, 3301.03
Treasurers
City, 733.68
Voter, challenged, 3505.20

OFFENSES—See CRIMES AND OFFENSES; VIOLATIONS AND PENALTIES.

OFFICERS, PUBLIC—See PUBLIC OFFICERS AND EMPLOYEES.

OFFICIAL RESULTS, 3505.33 to 3505.37

ONE PER CENT ACT, 5705.02

ORDINANCES OR RESOLUTIONS
County—See COUNTY COMMISSIONERS, at Resolutions.
Health district special levy, 3709.29
Invalidation of resolution, 121.22
Library trustees, for special tax levy, 5705.23
Motor vehicle license tax, levying, 4504.02, 4504.06
Municipal—See MUNICIPAL CORPORATIONS, at Ordinances and resolutions.
Township—See TOWNSHIP TRUSTEES, at Resolutions.

PARDONS
Civil rights, restoration, 2961.01

PARK DISTRICTS
Dissolution, petition for election, 1545.36
Tax levies, 5705.05(E)
Replacement levies, 5705.192
Township, 511.27
Township
Tax levies to finance, 511.27

PARKS AND RECREATION
Bonds and notes to finance, 1545.21
Municipal facilities
Election to determine creation, 755.01
Municipal facilities, tax levies to finance, 5705.05(D)
Tax levy, 1545.041
Township
Tax levies to finance, 511.27
Township park
Conversion of, 1545.041
Township park, financing, 511.28
Zoological parks, tax levies to finance, 5705.19(Z)

PAROLE
Civil rights, restoration, 2961.01
Final release, 2967.16
Life imprisonment sentence, 2967.16
Records and reports, disclosure, 149.43
Rights, restoration, 2961.01, 2967.16

PAROLE—*continued*
Voting rights, 2961.01

PARTIES—See POLITICAL PARTIES.

PARTY AFFILIATION—See POLITICAL PARTIES, at Membership.

PATRONAGE, 2921.43

PAYROLLS
Deductions
Political contributions, for, 3599.031(A)
Right of refusal, notification of, 3599.031(B)

PEACE
Mayor's duty to preserve
Village mayors, 733.24

PENALTIES—See VIOLATIONS AND PENALTIES.

PERJURY
Definitions pertaining to, 2921.01
Election actions, 3599.36

PERMISSIVE TAX REPEAL, 324.021, 4504.021

PERSONAL PROPERTY, TAXATION
Levy, 5705.01
Rates, O Const II §1e
Voting and tabulating equipment exempt, 3506.04, 3507.03

PETITIONS, 3501.38, 3519.05 to 3519.06
Approval by attorney general, 3519.01
Board of elections, duties, 3501.11
Bribery for signatures, 3599.14
Candidates
Declaration of candidacy, 3513.04 to 3513.10
See also DECLARATION OF CANDIDACY.
Nominating petitions, 3513.251 to 3513.28
See also NOMINATING PETITIONS.
Challenge, 3519.16
Circulators—See CIRCULATORS OF PETITIONS.
Constitutional amendment, O Const II §1a
Contested election, 3515.09
Declarations of candidacy, 3513.04 to 3513.10
Destruction or mutilation, 3599.15
Detachment of village territory, 709.39
False signatures, 3599.28
Filing requirements, 3519.14, 3519.15; O Const II §1a to O Const II §1c
Forgery, 3599.14
Form, 3519.05
Group, 3513.12, 3513.261; O Const X §4, O Const XVIII §8
Initiative and referendum, Ch 3519
See also INITIATIVE AND REFERENDUM, generally.
Local option elections—See LOCAL OPTION ELECTIONS.
Misrepresentation of issues, 3599.14
Municipal corporations
Merger with other political subdivisions, 709.45, 709.48
Municipal elections, O Const XVIII §14
See also ISSUES.
Initiative and referendum, 731.31 to 731.40
Fraud, penalties, 731.36 to 731.40
Newly formed political parties, 3517.011
Nominating, 3513.251 to 3513.28
See also NOMINATING PETITIONS.
Number of signatures required, 3519.01, 3519.14, 3519.16; O Const II §1a to O Const II §1c
Park districts, dissolution, 1545.36
Recall—See PUBLIC OFFICERS AND EMPLOYEES, at Recall petitions.

PETITIONS—*continued*
Requirements, 3519.01
Sale or purchase, 3599.15
School districts
New, creation, 3311.26
Transfer of territory, 3311.22
Secretary of state, duties, 3501.05
Signatures, 3519.10, 3519.14 to 3519.16; O Const II §1g
Qualified, 3501.38, 3503.06
Supplementary, 3519.16; O Const II §1b
Tax levy decrease, 5705.261
Theft, 3599.15
Township zoning resolutions, 519.12
Unqualified person signing, 3599.13
Validity, 3519.22; O Const II §1g
Verification, 3519.06, 3519.15
Violations and penalties, 3599.13 to 3599.15, 3599.28
Zoning
County, 303.12
Township, 519.12

PLANNING COMMISSIONS AND DEPARTMENTS
Tax levies in excess of ten-mill limitation, 5705.19(M)
Zoning, powers and duties; township resolutions, 519.12

PLATFORMS, POLITICAL, 3513.11

PLATS AND PLATTING
Local option election precinct, to liquor control department, 4301.39
Villages
Detachment of territory, 709.39

POLICE
Election duties, 3501.33 to 3501.35
Violations and penalties, 3599.18, 3599.31, 3599.38
Misconduct, election duties, 3599.18
Tax levies to support
In excess of ten-mill limitation, 5705.19(J)
Township
Expansion of district, voter approval, 505.48
Township and township districts, 505.48

POLICE AND FIREMEN'S DISABILITY AND PENSION FUND
Contributions by employers, tax levies to provide, 5705.19(W)
Tax levies to finance, 5705.06(G)

POLITICAL ACTION COMMITTEES
Campaign finance reporting, 3517.11
See also CAMPAIGN FINANCE REPORTING.
Corporation contributing to, 3599.03
Corporations soliciting for, 3517.082
Defined, 3517.01
Payroll deductions for, notice of right of refusal, 3599.031

POLITICAL ACTIVITIES
Classified service employees, restrictions, 124.57, 124.60; Appx to 124.57
Deputy motor vehicle registrars, solicitation of prohibited, 4503.032
Illegal, Ch 3599
See also VIOLATIONS AND PENALTIES, generally.

POLITICAL ADVERTISING, 3599.08 to 3599.092
Corrupt practices, 3599.08
Disclaimers or identification required, 3599.09
Exemptions, 3599.09(A)
Radio and television, 3599.09(B)
Violation, 3599.09(C)
Exemption from identification, 3599.09(A)
Fictitious names, use of, 3599.09(B)
Fine for violations, 3599.09(C), 3599.091(D)

POLITICAL ADVERTISING—*continued*
Identification, 3599.09
Rates, 3517.13(H), 3517.99(F)
Solicitations, 3517.09
Unfair practices, 3599.091, 3599.092

POLITICAL CONTRIBUTIONS, 3517.08 to 3517.15
Accounts, 3517.10
Anonymous, reporting, 3517.10
Concealing or misrepresenting, 3517.13, 3517.99
Bribery, 3599.01(A)
Penalties, 3599.01(B)
Cash, restrictions, 3517.13, 3517.99
Civil service, restrictions, 124.57
Contract awards to contributors, 3517.13
Conversion for personal or business use, 3517.13, 3517.99
Corporations, by, 3599.03(A)
Ballot issues, 3599.03(C)
Reporting requirements, 3599.03(C)
Stockholders, officers, attorneys, or agents using corporate funds for, 3599.03(B)
Corporations soliciting, 3517.082
Corrupt practices, 2921.43, 3599.04
County officials, soliciting from employees, 2921.431
Definition, 3517.01, 3517.08
Door-to-door solicitation, 3517.091
Employee of candidate, by, 3517.10
Exemption from reporting requirement, 3517.10
Fines for violations, 3517.11, 3517.15, 3517.991
Forms, 102.09
Illegal purposes, for, 3599.04
Improper, soliciting, 2921.431
Income tax checkoff, by, 3517.16
Investigation, 3517.11, 3517.15
Medicaid provider, by, 3599.45
Office facilities for political parties, gifts for, 3517.101, 3517.99
Payroll deductions, 3599.031(A)
Right of refusal, notification of, 3599.031(B)
Personal or business use, 3517.13, 3517.99
Political party fund, to, 3517.16
Reporting requirements, 3517.10 to 3517.15, 3517.99
See also CAMPAIGN FINANCE REPORTING.
Rules, 3517.15
Solicitation, door-to-door, 3517.091
Soliciting from public employees, 2921.431
Statement to be filed, 102.02
Violations and penalties, 3517.11, 3517.13, 3517.15, 3517.99, 3517.991, 3599.01 to 3599.04

POLITICAL PARTIES, Ch 3517
Affidavit, un-American activities, 3517.07
Affiliation—See Membership, this heading.
Assessments against candidates, 3517.09
Board of election appointments, recommendations, 3501.07
Bylaws, filing requirements, 3517.02
Campaigns—See CAMPAIGNS.
Central committees, 3517.02 to 3517.06
Municipal officers, appointment by, 733.31
Residency requirements, 3513.05, 3517.02
Committees, 3517.02 to 3517.06
Certificates of election, 3513.24
Declaration of candidacy, 3513.04
List of members, filing requirements, 3517.02, 3517.06
Meetings, 3517.04
Nominating petitions, 3513.04
Organization, 3517.04
Proxies, 3599.35
Selection of members, 3517.02, 3517.03
Term of members, 3517.05
Treasurer, 3517.10
Constitution of, filing requirements, 3517.02
Contributions—See POLITICAL CONTRIBUTIONS.

POLITICAL PARTIES—*continued*
Conventions, 3513.11 to 3513.121
See also Delegates, this heading.
County central committees, 3517.02 to 3517.06
Defined, 3501.01, 3517.01
Delegates, 3513.11 to 3513.121; O Const V §7
Bribery, 3599.01
Certificates of election, 3513.151
Impersonation, 3599.35
Minor and intermediate parties, election procedure, 3513.122
National, election, 3513.121
National, election procedure, 3513.12, 3513.122; O Const V §7
Ballots, 3513.15, 3513.151
Pledge of support for presidential candidates, 3513.12
Proxies, 3599.35
State, appointment, 3513.11
Expenditures, 3517.08 to 3517.15
Financial institutions; sale of mailing, membership, or contributor lists to, 3517.19
Formation, 3517.011 to 3517.016
See also Newly formed, this heading.
Illegal activities, 3517.07
Intermediate parties
Convention delegates, election, 3513.122
Defined, 3501.01
Joint candidacy requirements, 3513.04 to 3513.05
Legal existence, 3517.012
Major parties, defined, 3501.01
Membership
Challenge, 3513.19
Determination, 3513.05
Exemption from state requirements, 3517.015
Minor parties
Convention delegates, election, 3513.122
Defined, 3501.01
National convention delegates, 3513.12, 3513.121, 3513.122; O Const V §7
Ballots, 3513.151
Rotation of names, 3513.15
Certificates of election, 3513.151
Newly formed, 3517.011 to 3517.016
Declaration of intent, 3517.01
Exemptions from certain election laws, 3517.013 to 3517.016
Legal existence, 3517.012
Petitions, 3517.011
Office facilities, gifts for, 3517.101, 3517.99
Officials
Bribery, 2921.02
Defined, 3501.01
List, filing requirements, 3517.02
Platforms, state; formulation, 3513.11
Pledge of support for presidential candidates by delegates to party conventions, 3513.12
Political party fund, 3517.16 to 3517.18
Advisory opinions on uses of money from, 3517.18
Allowable uses of money from, 3517.18
Audits of required statements, 3517.17
Creation, 3517.16
Deposits of money into, 3517.16
Eligibility of parties, 3517.17
Filing of required statements, 3517.17
Payments to qualifying political parties, 3517.16, 3517.17
Prohibited uses of money from, 3517.18
Rules, 3517.15
Violations, penalty, 3517.99
Pollwatchers, appointment, 3505.21
Presidential electors, voting procedure, 3505.40
Primaries, Ch 3513
See also PRIMARIES.
State central committees, 3517.02 to 3517.06
State conventions, 3513.11
Un-American activities, 3517.07

POLITICAL PARTIES—*continued*
Violations and penalties, 3599.35
Voter registration lists, access to, 3503.23

POLLBOOKS AND POLL LISTS, 3501.30, 3503.23, 3505.18, 3505.31
Absentee voter's ballots, 3509.06
Destruction, removal, etc., 3599.16, 3599.24, 3599.34
Falsification, 3599.29, 3599.33
Former residents, 3504.04
Jury commissioners, filed with, 2313.06
Posting lists at polling place, 3503.23
Primaries, 3513.18
Sealing and preservation, 3505.31

POLLING PLACES, 3501.29 to 3501.35
Absentee ballots, counting, 3509.06
Business hours, 3501.32, 3505.26
Change of—See CHANGE OF POLLING PLACE LOCATION.
Closing, 3501.26, 3501.32, 3505.26
Congregating at, 3599.30, 3599.31
Defined, 3501.01
Early closing of island polling places, 3501.32
Flags, U.S.; display, 3501.30
Forms and supplies, 3501.30 to 3501.31
Return of unused, 3501.37
Handicapped persons, provisions, 3501.29
Island polling places, early closing, 3501.32
Liability insurance, 3501.29
Location, 3501.18, 3501.29
Change—See CHANGE OF POLLING PLACE LOCATION.
Notice of change, 3501.21
Loitering, 3501.30, 3501.35, 3599.24, 3599.31
Maps displayed at, 3501.30
Notice of change, 3501.21
Number, 3501.18
Opening, 3501.32
Police and sheriff, duties, 3501.33 to 3501.35
Misconduct, 3599.18
Pollwatchers—See PRECINCT OFFICIALS.
Removable structures, 3501.29
Schoolhouses used as, 3501.18, 3501.29
Voting compartments, 3501.29

POLLWORKERS—See PRECINCT OFFICIALS.

POSTAL SERVICE
Change of address of postal customers, notification of election board, 3503.22

POSTING REGISTERED VOTER LISTS, 3503.23

PRECINCT LISTS, 3503.23
See also POLLBOOKS AND POLL LISTS.

PRECINCT OFFICIALS, 3501.22 to 3501.28
Absent on election day, 3501.31
Absentee voting, eligibility, 3509.02
Appointment, 3501.22
Authority, 3501.33
Candidates serving as, 3501.27
Certification, 3501.24, 3501.27
Compensation, 3501.28
Conflict of interest, 3501.15, 3501.27
Counting officials, 3501.24 to 3501.26
Expenses, reimbursement, 3501.36
Influencing voters, penalty, 3599.38
Interpreters, 3501.221
Intimidating, 3599.24
Misconduct, 3501.22, 3599.16 to 3599.20, 3599.38
Notice of inability to serve, 3501.31

PRECINCT OFFICIALS—*continued*
Oath of office, 3501.31
Pay, 3501.28
Presiding judge, 3501.25, 3501.31
Primary elections, 3501.23, 3513.03
Qualifications, 3501.27
Receiving officials, 3501.24, 3501.26
Removal, 3501.22
Special elections, 3501.23
State reimbursement, 3501.27
Training, 3501.27
Vacancy in office, 3501.22
Violations and penalties, 3599.16 to 3599.20, 3599.32, 3599.38

PRECINCTS
Absentee voting, Ch 3509
See also ABSENTEE VOTING.
Armed forces members, spouses, and dependents; by, Ch 3511
Board of elections, duties, 3501.11
Boundaries, change of—See CHANGE OF PRECINCT BOUNDARIES.
Counting officials, 3501.24 to 3501.26
Counting stations, 3506.16
Defined, 3501.01
Districting, 3501.11, 3501.18
Interpreters, 3501.221
Lists, 3503.23
See also POLLBOOKS AND POLL LISTS.
Number of electors in, 3501.18
Officials—See PRECINCT OFFICIALS.
Pollbooks—See POLLBOOKS AND POLL LISTS.
Polling places—See POLLING PLACES.
Receiving officials, 3501.24, 3501.26
Records and reports—See also POLLBOOKS AND POLL LISTS.
Absentee ballots, 3509.06
Ballots, 3505.26 to 3505.31
See also BALLOTS.
Violations and penalties, 3599.19, 3599.29, 3599.34
Recounts, 3515.01 to 3515.071
See also RECOUNTS.
Redistricting, 3501.18, 3503.17
Notice to voters, 3501.21
Voting and tabulating equipment, because of, 3506.16, 3507.14
Registration lists, correction, 3503.24
Veterans' home as, 3501.20
Voting and tabulating equipment, Ch 3506, Ch 3507
See also VOTING AND TABULATING EQUIPMENT.

PRESIDENT, UNITED STATES
Canvassing of votes cast, 3505.33
Electors—See ELECTORAL COLLEGE.
Independent candidate, 3513.257
Pledge of support to
Delegates to party conventions, 3513.12; O Const V §7
Presidential electors, 3505.40
Time and frequency, 3501.02
Voter eligibility, former resident, Ch 3504
Withdrawal of candidacy, 3513.30
Write-in candidates, 3513.041

PRESIDING JUDGES, 3501.25, 3501.31

PRETESTS OF BALLOT TABULATORS, 3506.19

PRIMARIES, Ch 3513; O Const V §7
See also CANDIDATES; ELECTIONS, generally.
Age requirement for voting, 3503.011
Ballots, 3513.13 to 3513.17
See also BALLOTS, generally.
Certification, 3513.05

PRIMARIES—*continued*
Ballots—*continued*
Counting, 3513.21, 3513.22
Board of elections, duties, 3501.11, 3513.03
Canvassing returns, 3513.21, 3513.22, 3513.24
Challenge of voter's right, 3513.19, 3513.20
Contested, 3515.08 to 3515.16
See also CONTESTED ELECTIONS, generally.
Counting ballots, 3513.21, 3513.22
See also RETURNS, generally.
Declaration of results, 3513.22
Defined, 3501.01
Election procedure, 3513.18
Financing by tax levies, 5705.05(B)
Fraud, vote buying, 3513.19
Municipal corporations
Councilman, 3513.02
Prerequisites for holding, 3513.01; O Const V §7
Newly formed parties, 3517.012 to 3517.016
See also POLITICAL PARTIES, at Newly formed.
No primary held, 3513.02
Officials, 3513.03
Party committee members, election during, 3517.03
Pollwatchers, 3513.19
Precinct officials, appointment, 3501.23
Purpose, 3513.01
Records and reports
Amendment due to recount, 3515.05
Nominating petitions, processing, 3513.263
Results, 3513.22
Recounts, 3515.01 to 3515.071
See also RECOUNTS, generally.
Returns, counting, 3513.21, 3513.22
See also RETURNS, generally.
Special elections to fill vacancy, 3513.312, 3513.32
Tie votes, 3513.22
Time and frequency, 3501.01, 3513.01, 3513.12
Townships, prerequisites for holding, 3513.01; O Const V §7

PRINTING OF BALLOTS, 3505.13 to 3505.15
Bidding, 3505.13
Contracts, 3501.11, 3505.13
Inspection, 3505.14, 3505.15
Packaging, 3505.15
Proofs, 3505.14
Specifications, 3505.08
Primaries, 3513.13
Violations and penalties, 3599.22, 3599.23

PRISONERS
Absentee voting, 3509.02, 3509.08
Disfranchisement, 3503.18

PRIVILEGED INFORMATION
Attorney work product, 149.43
Ballots, secrecy, 3599.20
Disclosure by public official or employee, 102.03
Ethics complaints and investigations, 102.99
Law enforcement investigatory work, 149.43
Sunshine law exception for meetings considering, 121.22

PROBATE COURTS
Appointment powers, township officers, 503.24
Fees and costs
Advance deposits
Complaints against municipal officers or legislators, 733.72
Judges
Bribery, 2921.02
Certificates of election, 107.05
Commissioning by governor, 107.05 to 107.07
Fees, 107.06

PROBATE COURTS—*continued*
Judges—*continued*
Compensation
County levies to finance, 5705.05(E)
Forfeiture, 3.07
Conflict of interest, 3.11
Election of
Ballot, 3505.04
Canvassing returns, 3505.33
Declaration of candidacy, 3513.08
Independent candidates, 3513.28
Time and frequency, O Const XVII §1
Unexpired term, for, 107.08
Ethics, Ch 102
Forfeiture of office, 3.07
Independent candidates, 3513.28
Misconduct, 3.07
Oath of office, 3.23
Oaths, administration, 3.24
Removal or suspension, 3.08
Residency requirements, 3.15, 2701.04
Terms of office, O Const XVII §1
Vacancies in office, 3.07, 107.08; O Const IV §13, O Const XVII §2
Change of residence, due to, 2701.04
Municipal officers, actions against, 733.72
Schools, powers and duties, 3313.85

PROBATION
Civil rights, restoration, 2951.09, 2961.01
Records and reports, disclosure, 149.43
Voting rights, 2961.01

PROCEDENDO
Appeals courts
Power to issue, 2501.02

PROCLAMATIONS
Municipal census, 703.01, 703.011
Opening and closing of polls, 3501.32, 3505.26
U.S. constitutional conventions, 3523.01

PROHIBITION WRITS
Appeals courts
Power to issue, 2501.02

PROOFS OF BALLOTS, 3505.14
See also PRINTING OF BALLOTS, generally.

PROSECUTORS, COUNTY—See also COUNTY OFFICERS, for general provisions.
Acting, appointment, 305.02
Bonds for, acting and assistants, 305.02
Campaign contributions to, by medicaid provider, 3599.45
Conflict of interest, 3.11, 309.02
Election, 309.01
Ballot, 3505.03
Canvassing returns, 3505.33
Eligibility, 309.02
Employees, political contributions to prosecutors, 2921.431
Incompatible offices, 309.02
Oath of office, acting and assistant prosecutors, 305.02
Opinions, 309.09
Political contributions, soliciting from employees, 2921.431
Powers and duties, 309.09
Qualifications, 309.02
Removal or suspension, 3.08
Terms of office, 309.01
Terms of office; unexpired, appointment to fill, 305.02
Vacancies, 305.03
Appointment to fill, 305.02

PROTESTS, 3513.05, 3513.262
Nominating petitions, against, 3501.39

PROXIES
Political conventions delegates, 3599.35

PUBLIC EMPLOYEES—See PUBLIC OFFICERS AND EMPLOYEES.

PUBLIC LIBRARIES—See LIBRARIES AND LIBRARY DISTRICTS.

PUBLIC MEETINGS—See MEETINGS.

PUBLIC OFFICERS AND EMPLOYEES
Appointment to elective office, 3.02
Bribery, 102.03, 2921.02
Commissioning, 107.05 to 107.07, 3505.34, 3505.38
Fees, 107.06
Compensation—See COMPENSATION, generally.
Conflict of interest, 3.11, 102.03, 102.04, 2921.42
Penalties for violations, 102.99
Contracts, unlawful interest in, 2921.42
Convicted felon ineligible for office, 2961.01
Defined, 102.01, 2921.01(A)
Elected
Disciplinary hearings, 121.22
Financial disclosure, statement, 102.02
Election procedure, Ch 3501 to Ch 3599; O Const XVII §1
See also CANDIDATES; particular office sought.
Qualifications, 3.02
Unexpired term, for, 3.02; O Const XVII §2
Election promise, appointment due to, 731.36
Eligibility, O Const II §5, O Const XV §4
Felon ineligible, 2961.01
Ethics, Ch 102
Fees, improper, 2921.43
Felon ineligible to hold office, 2961.01
Financial disclosure, statements, 102.02
Forms, 102.09
Penalties for violations, 102.99
Forfeiture of office, 3.07, 3.15(B)
Graft, 2921.43
Kickbacks, 2921.43
Misconduct—See MISCONDUCT IN OFFICE.
Oath of office, 3.24
Administration by, 3.24
Organizations, membership, 102.03
Patronage, 2921.43
Political activities, restrictions, 124.57, 124.60; Appx to 124.57
Political contributions by, 2921.431, 3517.10
Prohibited political activities by classified employees, 124.57, 124.60; Appx to 124.57
Recall petitions
Bribery for signatures, 3599.14
Destruction or mutilation, 3599.15
False signatures, 3599.28
Forgery, 3599.14
Misrepresentation of issues, 3599.14
Municipal officials, 705.92
Sale or purchase, 3599.15
Signatures
False, 3599.28
Qualified, 3503.06
Theft, 3599.15
Unqualified person signing, 3599.13
Violations and penalties, 3599.13 to 3599.15, 3599.28
Removal, 3.07, 3.08
Residency requirements, 3.15
Successors to office, 3.01, 3.02
Suspension, 3.08
Failure to declare former name on declaration of candidacy, 3513.06

PUBLIC OFFICERS AND EMPLOYEES—*continued*
Terms of office, 3.01, 3.02; O Const XVII §2
Travel expenses, 102.03
Vacancies in office—See VACANCIES IN OFFICE.

PUBLIC RECORDS, 149.43, 3501.13
See also RECORDS AND REPORTS, generally.

PUBLIC UTILITIES, TAXATION
Service tax
Levy, 324.02
Referendum, submission to, 305.31 to 305.99
Repeal, 324.021

PUBLIC WORKS
Bidding
County facilities, 307.86 to 307.921
Bidding, county facilities, 307.86 to 307.921
Counties, by, 307.86 to 307.921
County
Bidding, 307.86 to 307.921
Sales tax levy, 5739.026
Municipal
Appropriations, ordinances, 731.30
Buildings, tax levies for maintenance and operation, 5705.05(D)
Notice, 7.11
Tax levies to finance, 5705.05
In excess of ten-mill limitation, 5705.19(F)
Special, 5705.06

PURGING REGISTRATIONS—See CANCELLATION OF VOTER REGISTRATION.

PURPOSE, SINGLE—See SINGLE PURPOSE FOR ISSUES.

QUALIFICATIONS
Candidates—See CANDIDATES, at Eligibility.
Party nomination, for, 3513.191
Precinct officials, for, 3501.27
Registration, for, 3503.01, 3503.011, 3503.07

QUESTIONS OF LAW
Appeals on
Jurisdiction, 2501.02

QUESTIONS OF LAW AND FACT
Election contest appeals, 3515.15

QUO WARRANTO
Appeals courts
Power to issue, 2501.02

RACING, HORSE, 3769.04

RADIO—See also NOTICE; POLITICAL ADVERTISING.
Lease renewal by county for communications system, 307.861
Public bodies, notice of meetings to, 121.22

RAILROADS
Tax levy to finance property or service development, 5705.19(CC)

REAL PROPERTY, TAXATION
Improvements, defined, 5705.01(E)
Rates, O Const II §1e
Soil and water conservation districts, levy, 1515.28
Transfer tax
Levy, 322.02
Referendum, submission to, 305.31 to 305.99
Repeal, 322.021

RECALL, 3.07, 3.08
See also PUBLIC OFFICERS AND EMPLOYEES, at Recall petitions.

RECEIPTS, REGISTRATION, 3503.13

RECORDERS, COUNTY—See also COUNTY OFFICERS, for general provisions.
Acting, appointment, 305.02
Automatic data processing board, membership, 307.84
Conflict of interest, 3.11
Election, 317.01
Ballot, 3505.03
Canvassing returns, 3505.33
Fees
Detachment of village territory, advance payment, 709.39
Incompatible office, county engineer, 315.02
Political contributions, soliciting from employees, 2921.431
Records and reports
Detachment of territory
Village, 709.39
Term of office, 317.01
Vacancy in office, 305.03
Appointment to fill, 305.02
Village surrendering corporate rights, filing of resolution, 703.20

RECORDS AND REPORTS—See also particular subject concerned.
Absentee ballots, recording, 3509.06
Amendment due to recount, 3515.05
Annual, 3501.05, 3501.11
Ballots, 3505.26 to 3505.31
Board of elections, duties, 3501.11, 3501.13
Campaign financing—See CAMPAIGN FINANCE REPORTING.
Canvassing of election results, 3505.32 to 3505.37
Disclosure, 149.43, 3501.13, 3503.26, 3599.161
Conflict of interest, 102.03
Evidence, availability, 3515.12, 3515.13
Mandamus to compel inspection of public records, 149.43
Pollbooks and poll lists—See POLLBOOKS AND POLL LISTS.
Prohibiting inspection of election records, penalty for, 3599.161
Public, defined, 149.43
Retention requirements, 3505.31
Violations and penalties, 3599.16, 3599.29, 3599.34
Voter registration, 3503.13
Lists, 3503.23 to 3503.26
Presidential elections, 3504.04

RECOUNTS, 3515.01 to 3515.071
Applications, 3515.01 to 3515.03
Automatic, 3515.011
Contest of election, involving, 3515.13
Declaration of results, 3515.05
Deposit, 3515.03
Eligibility, 3515.01
Fees, 3515.03, 3515.07, 3515.071
Funding, 3515.071
Margin requirements, 3515.011
Notice of, 3515.03
Procedure, 3515.04
Stopping, 3515.03, 3515.04
Subsequent to recount in selected precincts, 3515.06
Time requirements, 3515.02, 3515.03
Witnesses, 3515.03

RECREATION CENTERS
Tax anticipation notes, 5705.198
Tax levies in excess of ten-mill limitation, 5705.19(H), 5705.198

RECREATION DISTRICTS, JOINT
Tax levies in excess of ten-mill limitation, 5705.198

REDISTRICTING, CONGRESSIONAL, 3521.01

REFEREES
Bribery, 2921.02

REFERENDUM, Ch 3519; O Const II §1c to O Const II §1g
See also INITIATIVE AND REFERENDUM.
County tax, 305.31 to 305.42
Library district transfer, 3375.03

REGIONAL TRANSIT AUTHORITIES—See TRANSIT SYSTEMS.

REGISTRARS, VOLUNTEER DEPUTY, 3503.10, 3503.11(B)

REGISTRATION, 3503.06 to 3503.33; O Const V §1
Absentee voting—See ABSENTEE VOTING, generally.
Assistance, 3503.11
Fraudulent or corrupt, 3599.11
Board of elections, duties, 3501.11
Bribery, 3599.01, 3599.02
Cancellation, 3503.18, 3503.21, 3503.22
See also CANCELLATION OF VOTER REGISTRATION.
Previous registration, 3503.33
Census of municipal corporations based on, 703.011
Change of name, notice, 3503.11, 3503.19
Change of residence, 3503.11, 3503.111, 3503.16, 3503.22
Registrar of motor vehicles providing, 4507.06
Change requested by voter, 3503.111
Costs, apportionment, 3501.17
Death, disposition of forms, 3503.22
Denial, 3503.11
Disclosure, 3503.13, 3503.26
Disfranchisement, 3503.18
Distribution of forms, 3503.11
Driver's license application, during, 4507.06
Duplicate, 3503.12
Elections board directors and deputies, by, 3503.11
Erroneous, 3503.16, 3503.30
False signatures, 3599.28
Forms and supplies, 3503.08 to 3503.15, 3503.19
See also FORMS AND SUPPLIES, generally.
General assembly member, by, 3503.11
Handicapped persons, removal of architectural barriers, 3503.12
Hours, 3501.10
Investigation by board of elections, 3503.25
Lists, 3503.23 to 3503.26
Official, 3503.23
Posting, election day, 3503.23
Precinct, 3503.24
Statewide, 3503.27
Loitering at places of, 3599.24(A)
Penalties, 3599.24(B)
Marriage, name change, 3503.19
Motor vehicle deputy registrars, at, 3503.11(D)
Name change, 3503.11, 3503.19
Notice, 3501.03
Notice of refusal, 3503.11
Notice of time and place, 3503.12
Places for, 3503.11
High schools and vocational schools, 3503.10
Precinct redistricting, effect, 3503.17
Qualifications, 3503.07
Records and reports, 3501.11, 3503.13
Correction, 3503.22 to 3503.30
Deceased voters, disposition of forms, 3503.22
Former residents, 3504.04
Registrar of motor vehicles, by, 3503.11, 4507.06

REGISTRATION—*continued*
Reinstatement, 3503.21
Residency requirements—See RESIDENCY REQUIREMENTS, at Voter registration.
Schools, provided in, 3503.10
Secretary of state, by, 3503.11
Signature, 3503.15
Time, 3503.11
Violations and penalties, 3599.11, 3599.28, 3599.29
Members and employees of board of elections, 3599.16
Precinct officials, by, 3599.17
Registrars, by, 3599.17, 3599.18
Vocational schools, provided in, 3503.10
Volunteer voter registrars, 3503.10, 3503.11(B)

REIMBURSEMENTS
Pollworker training, 3501.27
Special election chargebacks, 3501.17

REINSTATEMENT OF REGISTRATION, 3503.21

RELIGION
Absentee voting due to religious observance, 3509.02

RELIGIOUS ORGANIZATIONS
Exemptions from municipal income tax, 718.01

REMOVAL FROM OFFICE, 3.07, 3.08
See also PUBLIC OFFICERS AND EMPLOYEES, at Recall petitions.

REORGANIZATION OF BOARD OF ELECTIONS, 3501.09

RESIDENCY REQUIREMENTS
Appeals court judges, 3.15
Auditors of cities, 733.10
City council members, 731.02
City council president, 733.09
Common pleas court judges, 3.15, 2301.01
County judges, 3.15, 1907.13
County officials, 3.15
Court officers, 3.15
Elected officers, 3.15
General assembly members, 3.15; O Const II §3
Judges, 3.15, 2701.04
Common pleas courts, 2301.01
Law directors, city, 733.49
Mayors, 733.24
Municipal judges, 3.15, 1901.06
Municipal legislative authority members, 3.15, 731.02, 731.12
Municipal officials, 3.15, 733.68
Political party controlling committee, 3513.05, 3517.02
State board of education members, 3.15
U.S. constitutional convention delegates, 3523.04
Township officers, 3.15
Village clerks, 733.26
Village legislative authority members, 731.12
Village mayors, 733.24
Village officers, 3.15
Voter registration, 3503.02
Change, 3503.11, 3503.111, 3503.16
Defined, 3501.01
Investigation by elections board, 3501.11

RESOLUTIONS—See ORDINANCES OR RESOLUTIONS.

REST HOMES—See NURSING AND REST HOMES.

RETURNS
Absentee voting, 3509.06
See also ABSENTEE VOTING, generally.

RETURNS—*continued*
Abstracts, certification, 3505.33 to 3505.37
Amendment due to recount, 3515.05
Annual report, 3501.05
Board of elections, duties, 3501.11
Bond issues, certification, 3318.07
Canvasses, 3505.32 to 3505.37
Judicial elections, 3505.33
Presidential election, 3505.33
Primary election, 3513.21, 3513.22
Counting, 3505.26 to 3505.31
Primaries, 3513.21, 3513.22
Declaration of results, 3505.33 to 3505.37
Amendment due to recount, 3515.05
Delivery to board of elections, 3505.29, 3505.30
Primary elections, 3513.21, 3513.22

ROADS—See HIGHWAYS AND ROADS.

ROTATION OF CANDIDATE NAMES—See NAMES, at Rotation of names on ballot.

RULES AND RULEMAKING POWERS—See also particular agency or subject concerned.
Meetings of state agencies, notice, 121.22

SALES TAX, COUNTY
Adoption, 5739.021, 5739.026
Election to repeal, 5739.022(A)
Convention facilities, financing, 5739.026
Emergency telephone system, 5739.026
Increase, 5739.021
Permanent improvements, 5739.026
Purpose, 5739.021, 5739.023, 5739.026
Rates, 5739.021, 5739.023
Referendum on passage, 305.31 to 305.99, 5739.021
Regional transit authorities levying, 5739.023, 5739.026
Rates, 5739.023
Submission of question before voters, 306.70, 306.71
Repeal, 5739.022(B)
Telephone system, emergency, 5739.026

SAMPLE BALLOTS, 3505.08

SAVINGS AND LOAN ASSOCIATIONS
Political parties selling mailing, membership, or contributor lists to, 3517.19

SCHOOLS AND SCHOOL DISTRICTS
Annexation by municipalities, 3311.06
Agreements between school districts governing Interdistrict payments, 3311.06
Township merging with municipal corporation, 709.46
Boards of education—See EDUCATION, LOCAL BOARDS; EDUCATION, STATE BOARD.
Bond issuing authority, defined, 5705.01(C)
Bonds and notes
Unsecured indebtedness, financing, 131.23
Boundaries of districts; changes, notification to board of elections, 3313.261
Budgets, inclusion of emergency levies, 5705.194
Buildings and lands
Polling places, as, 3501.18, 3501.29
Charter, 3301.16
Classification of districts, 3301.16
Classroom facilities, tax levy to finance, 3318.06, 3318.07
Closing of schools, emergency levy to prevent, 5705.194 to 5705.197
Consolidation, 3311.261
County school districts
County school financing districts, 3311.50
Levies, 5705.211, 5705.215

SCHOOLS AND SCHOOL DISTRICTS—*continued*
County school districts—*continued*
Special education tax
City, local, or exempted village district withdrawing from or joining county district, 3311.50
Tax anticipation notes, 5705.212
Creation of district, ballot issues, 3311.26
Debt limitations, exemptions, 131.23
Deficits
Emergency levy tax anticipation notes, 5705.194
Special levies, 5705.192, 5705.21
Definitions
Elementary schools, 3301.16
High schools, 3301.16
Dissolution of districts, 3301.16
Elections
Ballots, multi-county issue, 3505.071
Emergency school levy, 5705.194 to 5705.197
Joint vocational school districts, tax levy, 3311.21
Renewal levies, 5705.194, 5705.197
Special elections, assignment of voters, 3503.01
Special levies, 5705.192, 5705.21
Elementary schools, defined, 3301.16
Emergency levies, 5705.194 to 5705.197
Emergency school advancement fund
Transfer of school district, cancellation of indebtedness, 3311.22, 3311.231
Fiscal officer, defined, 5705.01(D)
Foundation program
Payments to districts
Newly-created districts, 3311.26
Transfer of territory, effect, 3311.22, 3311.231
Funds
Annexation of district, effect, 3311.06, 3311.22
Consolidation of districts, effect, 3311.261
High schools
Defined, 3301.16
Improvements
Special levies
Replacement levy, 5705.192, 5705.21
Income tax
Effective date, 5748.03
Election
Ballot, form of, 5748.03
Certification of results, 5748.03
Repeal, 5748.04
Resolution proposing levy, 5748.02
Joint county school districts, 3311.053
Joint vocational school districts
Replacement levy, 5705.192
New districts
Creation, 3311.26
Petition for creation, 3311.26
Petitions
New local districts, 3311.26
Transfer of school territory, 3311.22
Probate courts, powers and duties, 3313.85
Records and reports, disclosure, 149.43
Redistricting, notification to board of elections, 3313.261
Special education—See SPECIAL EDUCATION.
Tax anticipation notes, 5705.194, 5705.212
Special levies, 5705.21, 5705.212
Taxes and levies
Classroom facilities, financing, 3318.06, 3318.07
County school districts, 5705.211, 5705.215
Current expenses, 5705.05(F)
Emergency levies, 5705.194 to 5705.197
In excess of ten-mill limitation, 5705.212
Ballot form, 5705.251
Income tax
Repeal, 5748.04
Resolution proposing levy, 5748.02
Incremental tax, 5705.212
Ballot form, 5705.251

SCHOOLS AND SCHOOL DISTRICTS—*continued*
Taxes and levies—*continued*
Limitation, number of levy questions during calendar year, 5705.214
Original tax, 5705.212
Ballot form, 5705.251
Renewal levies, 5705.194, 5705.197, 5705.212
Ballot form, 5705.251
Replacement levies, 3311.21
Single additional tax levy, 5705.213
Ballot form, 5705.251
Special levies, 5705.192, 5705.21
Taxing authority, defined, 5705.01(C)
Transfer of district, 3311.06
Consolidation, 3311.261
County school district levying special education tax
Other district joining or withdrawing from county district, 3311.50
Transfer of territory, 3311.22
Voter registration
Forms, distribution, 3503.11
Volunteer registrars provided in, 3503.10

SCIENCE MUSEUMS
Tax levy in excess of ten-mill limitation, 5705.19(AA)

SEAT BELTS
Fines, 1901.31

SECRETARY OF STATE—See also PUBLIC OFFICERS AND EMPLOYEES, for general provisions.
Absentee voting by, 3509.02
Ballot board, duties, 3505.061
Membership, O Const XVI §1
Board of elections
Appointment of members, 3501.05, 3501.06
Removal of members and officers, 3501.16
Chief election officer, powers and duties, 3501.04, 3501.05
See also Election duties, this heading.
Commissioning of public officials, duties, 107.06, 107.07
Election duties, 3501.04, 3501.05
Arbitrator, as; tie votes, 3501.11
Candidacies, notification of ethics commissions, 102.09(A)
Certification of winning candidates for state offices, 3505.34, 3505.35
Declaration of results and certification, 3505.33 to 3505.35
Ohio ballot board, regarding, 3505.061; O Const XVI §1
Political contributions, rulemaking power, 3517.08, 3517.15
Political party fund, rulemaking powers, 3517.15
Training of precinct officials, 3501.27
Voting and tabulating equipment
Approval, 3506.05, 3507.04
Rulemaking power, 3507.15
Election of
Ballot, 3505.03
Time and frequency, 3501.02
Unexpired term, for, O Const XVII §2
Fees for commissioning of public officers, 107.06, 107.07
Financial disclosure forms, duties, 102.09(D)
Initiative or referendum petition, duties, 3519.01
Major political parties, designation of, 3517.17
Municipal corporations, powers and duties
Certifying number of permanent residents, 703.01, 703.011
Detachment of village territory, 709.39
Ohio ballots board, duties, 3505.061
Membership, O Const XVI §1
Political parties, major; designation of, 3517.17
Political party fund, statements filed by parties, 3517.17
Records and reports concerning elections, 3501.05
Rulemaking powers
Campaign expenditures and contributions, 3517.08, 3517.15
Political party fund, 3517.15
Voting and tabulating equipment, 3507.15

SECRETARY OF STATE—*continued*
Term of office, O Const XVII §2
Vacancy in office, O Const XVII §2
Voter registration, providing for, 3503.11

SEDITION
Political party, by, 3517.07

SENATE, STATE—See GENERAL ASSEMBLY.

SENATE, UNITED STATES—See CONGRESS, UNITED STATES.

SENIOR CITIZENS—See AGED PERSONS.

SERVICE OF PROCESS
Election contest petition, 3515.10
Municipal courts, by
Clerks' powers and duties, 1901.31
Public officials, removal, 3.08

SEVENTEEN-YEAR-OLD VOTERS, 3503.011, 3503.07

SHERIFFS
Acting, 305.02
Basic training course, 311.01
Conflict of interest, 3.11
County engineer, serving as, 315.02
Continuing education requirement, 311.01
Election duties, 3501.33 to 3501.35
Violations and penalties, 3599.18, 3599.31, 3599.38
Election of, 311.01
Ballot, 3505.03
Canvassing returns, 3505.33
Time and frequency, 3501.02
False statement of qualifications, 311.01
Oath concerning qualifications, 311.01
Political contributions, soliciting from employees, 2921.431
Qualifications, 311.01
False statements, 311.01
Removal, 3.08
Terms of office, 311.01
Vacancies, 305.02, 305.03

SHOPPING CENTERS
Local option elections, 4301.322, 4301.332, 4301.353, 4301.363

SIGNATURES
Candidates, declaration of candidacy and nominating petition, 3513.09
Charter petitions for counties, 307.94
Initiative and referendum petitions, 3519.10, 3519.14 to 3519.16; O Const II §1g
See also INITIATIVE AND REFERENDUM, generally.
Qualified signatures, 3501.38, 3503.06
Nominating petitions, 3501.38
See also NOMINATING PETITIONS, generally.
Number required, 3513.05
Independent candidates, 3513.257
Voter registration form, 3503.15

SIMULATED ELECTIONS FOR MINORS, 3501.051

SINGLE PURPOSE FOR ISSUES
Tax levies, 5705.19

SOIL AND WATER CONSERVATION
Referendum, submission, 305.31 to 305.99
Tax levies by districts, 5705.05(E)

SOIL AND WATER CONSERVATION DISTRICTS
Assessments, 1515.24
  Referendum petition, 1515.26
Bond issue for projects, 1515.24
Funds
  Bond issue, 1515.24
  Maintenance of project, 1515.24
Projects
  Bond issue, 1515.24, 1515.28
  Financing
    Real property assessments, 1515.24
  Maintenance
    Excess funds used for, 1515.24
  Real property assessments to finance, 1515.24

SOLICITATION
Political contributions, door-to-door, 3517.091

SORE LOSER, 3513.04

SPECIAL EDUCATION
Special levies, 5705.192, 5705.211, 5705.215
Tax
  City, local, or exempted village district withdrawing from or joining county school district, 3311.50

SPECIAL ELECTIONS
Cost, 3501.17
Dates for, 3501.01
Death or withdrawal of candidate
  Declaration of candidacy filing, subsequent to, 3513.301
  Nominated candidate, 3513.312
Defined, 3501.01
Municipalities holding, 707.21
Precinct officials, 3501.23
School elections, assignment of voters, 3503.01
Time and frequency, 3501.02
U.S. congress, vacancy, 3521.02, 3521.03

SPECIAL LEVIES—See LEVIES.

SPORTS FACILITIES
County financing, 307.696, 307.697
  Cigarette tax levy, 5743.024

STATEMENT OF EXPENDITURES—See CAMPAIGN FINANCE REPORTING.

STATUTES
Effective date, O Const II §1c, O Const II §1d
  Initiative proposal, O Const II §1b
Initiative or referendum petition, proposal or opposition, Ch 3519

STATUTORY AGENTS
Village petitioners for detachment of territory, 709.39

STOCKHOLDERS
Political contributions from corporate funds
  Violations, penalties, 3599.03(B)
Solicitations from by corporation for political action committees, 3517.082(B)

STREETS
Improvements, effective date of ordinance, 731.30
Tax levies to finance, 5705.05(D)
  In excess of ten-mill limitation, 5705.19(G)
    Replacement levies, 5705.192

SUBPOENAS
Elections commission issuing, 3599.091(C), 3599.092(C)

SUNDAY SALES, 4301.351, 4301.361
  See also LOCAL OPTION ELECTIONS, generally.

SUNSHINE LAW, 121.22

SUPERSEDEAS WRITS
Appeals courts, powers to issue, 2501.02

SUPPLIES—See FORMS AND SUPPLIES.

SUPREME COURT, STATE
Chief justice
  Election, term, 2503.02
Commission on grievances and discipline
  Financial disclosure by members, 102.02
  Powers and duties, 102.01
  Records and reports, disclosure, 102.99
Constitutional amendment proposals, jurisdiction, O Const XVI §1
Election contest, jurisdiction, 3515.08
Judges, 2503.01 to 2503.03
  Election of, 2503.03, 3501.02
    Canvassing of votes, 3505.33
    Declaration of candidacy, 3513.08
    Independent candidates, 3513.28
    Time and frequency, 3501.02
    Unexpired term, O Const IV §13, O Const XVII §2
  Number of, 2503.01
  Residency requirements, 2701.04
  Terms of office, 2503.03
  Vacancies in office, O Const IV §13, O Const XVII §2

TABULATING EQUIPMENT—See VOTING AND TABULATING EQUIPMENT.

TAX ANTICIPATION NOTES
Alcohol, drug addiction, and mental health service districts, 5705.221
Children services levy, 5705.24
Community centers, 5705.21
County improvements, for, 5705.193
  Issuance, consent of county commissioners, 5705.191, 5705.193
Cultural centers, 5705.21
Human or social programs, for, 5705.191
Joint recreation districts, 5705.198
Joint vocational school districts, 3311.21
Libraries, for, 5705.23
Park districts, issuance, 1545.21
Permissive tax, 322.02, 322.021, 324.02
Recreation districts, joint, 5705.198
School levies, 5705.212
  Emergency school levies, 5705.194
  Special levies, 5705.21, 5705.212
Soil and water conservation district projects, for, 1515.28
Tax levies
  Decrease, effect, 5705.261
  In excess of ten-mill limitation, 5705.191
    County, 5705.193
Township issuing
  Town hall improvements, 511.02

TAX LEVIES—See LEVIES.

TAXATION—See also particular taxing authority concerned.
County levy on merchandise, 5739.021
Definitions, 5705.01
Income tax, municipal, 718.01
Legal advertising of rates, 7.11
Levies—See LEVIES.
Permissive tax, 322.02, 322.021, 324.02
Personal property—See PERSONAL PROPERTY, TAXATION.

TAXATION—*continued*
Public utilities—See PUBLIC UTILITIES, TAXATION.
Rates, publication, 7.11
Real property—See REAL PROPERTY, TAXATION.
Voting and tabulating equipment exempt, 3506.04, 3507.03

TAXATION DEPARTMENT
Levies in excess of ten-mill limitation, certification, 3318.07, 5705.25
Political party fund
Application for money from, forms, 3517.17
Payment of money from to qualifying political parties, 3517.16

TAXING DISTRICTS—See also particular type concerned.
Debt limitations, bond issue to finance matching funds to federal aid, 139.02
Definitions, 121.22, 5705.01
Tax levies, Ch 5705

TAXPAYERS' SUITS
Municipal residents, by, 733.72

TEACHERS RETIREMENT SYSTEM
Tax levy to provide, 5705.05(F)

TELEPHONE SYSTEM, EMERGENCY
County sales tax to finance, 5739.026

TELEPHONES
Emergency service, tax levy, 5705.19(BB)

TELEVISION—See also POLITICAL ADVERTISING, generally.
Public bodies to notify about meetings, 121.22

TEN-MILL LIMITATION—See LEVIES.

TERMS OF OFFICE—See particular office concerned.

TESTING BALLOT TABULATORS, 3506.19

THEFT
Election petitions, 3599.15
Referendum petitions, 305.40, 305.99, 3599.15

THREATS
Employer influencing voter, 3599.05, 3599.06

TIE VOTES, 3505.33, 3515.14
Candidates for state offices, 3505.34
District candidates, 3505.36
Multicounty districts, 3505.37
Primaries, 3513.22

TIME LIMIT FOR VOTING, 3505.23

TITLE TO PROPERTY
Public officials and employees, disclosure of holdings, 102.02

TOLEDO
Municipal court
Housing division judges, 1901.051

TOWN HALLS, 511.01, 511.02

TOWNSHIP TRUSTEES
Counsel to
County prosecutor as, 309.09
Township law director as, 309.09
Election, 505.01

TOWNSHIP TRUSTEES—*continued*
Hearings
Motor vehicle license tax, additional levy, 4504.18
Resolutions
Fire district, tax levy or addition of territory, 505.37
Police
Districts, creation, expansion or dissolution, 505.48
Tax levies
Fire districts, 505.37
In excess of ten-mill limitation, 5705.19, 5705.191
Transit systems, participation in regional authority, 306.32
Zoning—See also ZONING, at Township.
Amendments, 519.12
Terms of office, 505.01

TOWNSHIPS
Annexation, 709.39
Townships, to, 503.08
Unincorporated area by municipal corporation
Voter approval required, 709.45, 709.46
Bonds and notes—See also BONDS AND NOTES, generally.
Fire protection, 505.37
Issuing authority, defined, 5705.01(C)
Town hall improvements, 511.02
Boundaries
Changes, notice, 507.051
Conformity with municipal corporation, 503.07, 503.08, 703.22
Buildings and grounds, public
Town hall; acquisition, construction, or improvement, 511.01, 511.02
Clerks, 507.01
Contracts
Fire protection, 505.37
Debts
Limitations
Bond issue to finance matching funds to federal aid, 139.02
Exemptions, 131.23
Unsecured, 131.23
Detachment of municipal territory, 503.09
Dissolution, 703.22
Elections—See also ELECTIONS, generally.
Cemetery, establishment, 517.04, 517.05
Clerk, of, 507.01
Nonpartisan, 3513.01
Parks
Levies to finance, 511.27
Primaries, prerequisites for holding, 3513.01
Time and frequency, 3501.02
Town hall construction or improvements, 511.01, 511.02
Trustees, of, 505.01
Zoning plan, adoption, 519.11
Employees, conflict of interest, 102.04
See also PUBLIC OFFICERS AND EMPLOYEES, generally.
Fees and costs
Legal counsel, 309.09
Fiscal officer, defined, 5705.01(D)
Funds, supplemental tax levy, 5705.191
Initiative and referendum—See also INITIATIVE AND REFERENDUM, generally.
Motor vehicle license tax
Additional levy, 4504.18
Zoning resolutions—See also ZONING, at Township.
Amendments, 519.12
Repeal, 519.25
Judgments against, tax levies to pay, 5705.05(A)
Law directors as counsel to township officers, 309.09
Merger of unincorporated areas with municipal corporations
Annexation petitions, filing, 709.48
Voter approval required, 709.45, 709.46
Names, 709.39

TOWNSHIPS—*continued*
New
Formation by detachment from municipality, 709.39
Municipal territory, exclusion, 503.09
Notice
Town halls, proposed improvements, 511.01
Zoning resolution amendments, 519.12
Officers—See also PUBLIC OFFICERS AND EMPLOYEES, generally.
Appointment to fill vacancy, 503.24, 503.241
Conflict of interest, 102.04
Election
Ballots, 3505.03, 3505.04
Canvassing returns, 3505.33
Nominating petitions, 3513.253
Time and frequency, 3501.02; O Const XVII §1
Nominating petitions, 3513.01
Nomination, O Const V §7
Residency requirements, 3.15
Terms of office, O Const XVII §1
Vacancies, 503.24
Board of elections, notice to, 507.051
Petitions
Annexation, 503.08
Exclusion of municipal territory, 503.09
Primaries, prerequisites to holding, O Const V §7
Public body, defined, 121.22
Public works
Fire stations, 505.37
Town halls, 511.01, 511.02
Records and reports, disclosure, 149.43
Resolutions—See TOWNSHIP TRUSTEES.
Taxes and levies—See also LEVIES, generally.
Current expenses, 5705.05(G)
Elections to approve levies, 5705.25 to 5705.261
Fire protection, for, 505.37
Hospital services, financing, 513.13
Motor vehicle license tax, 4504.18
Parks and park districts, for, 511.27
Parks, financing, 511.28, 1545.041
Replacement levies, 5705.192
Police protection, for
Expansion of police district, voter approval, 505.48
Town hall improvements, 511.02
Taxing authority, defined, 5705.01(C)
Town halls; acquisition, construction, or improvement, 511.01, 511.02
Trustees—See TOWNSHIP TRUSTEES.
Water supply improvements
Tax levies to support in excess of ten-mill limitation, 5705.19(FF)
Wetlands; acquisition, maintenance, or repair
Tax levies to support in excess of ten-mill limitation, 5705.19(HH)
Zoning—See ZONING.

TRAFFIC CONTROL
Financing
Motor vehicle license tax, 4504.02

TRANSIT SYSTEMS
Bonds and notes
Regional authorities issuing, 306.40, 306.49
County tax levies
In excess of ten-mill limitation, 5705.19(Q)
Sales tax, 5739.023
Financing, sales tax allocation and use, 5739.023
Regional
Ballot for multi-county election issue, 3505.071
Sales tax levy, 5739.023
Rates, 5739.023
Tax levy and bonds, 306.40
Territorial boundaries, 306.32

TRANSIT SYSTEMS—*continued*
Regional authorities
Property tax levy, 306.49
Sales tax levy
Submission of question before voters, 306.70, 306.71
Use and storage tax levy, submission of question before voters, 306.70, 306.71
Sales tax levy, 5739.026
Tax levies in excess of ten-mill limitation, 5705.19(Q)

TREASON
Political party, by, 3517.07

TREASURER, STATE—See also PUBLIC OFFICERS AND EMPLOYEES, for general provisions.
Election
Ballot, 3505.03
Declaration of results and certification, 3505.33 to 3505.35
Time and frequency, 3501.02
Unexpired term, for, O Const XVII §2
Term of office, O Const XVII §2

TREASURERS, CAMPAIGN, 3517.081, 3517.10

TREASURERS, CITY
Acting, 733.31
Oath of office, 733.68
Vacancies in office, 733.31
Village clerk-treasurer, 733.261

TREASURERS, COUNTY—See also COUNTY OFFICERS, for general provisions.
Acting, appointment, 305.02
Automatic data processing board, membership, 307.84
Conflict of interest, 3.11
Election of, 321.01
Ballot, 3505.03
Canvassing returns, 3505.33
Time and frequency, 3501.02
Incompatible office, county engineer, 315.02
Political contributions, soliciting from employees, 2921.431
Terms of office, 321.01
Vacancy in office, 305.02, 305.03

TRUSTEES
Legal advertising by
Rates, 7.10

TUBERCULOSIS TREATMENT FACILITIES
Fiscal officer, defined, 5705.01(D)
Tax levies to support treatment facilities
In excess of ten-mill limitation, 5705.191
Special, 5705.20

UNITED STATES
Congress—See CONGRESS, UNITED STATES.
Constitution—See CONSTITUTIONAL AMENDMENTS, UNITED STATES.
President—See PRESIDENT, UNITED STATES.

UNIVERSITIES AND COLLEGES
Fiscal officer, defined, 5705.01(D)
Municipal income tax exemptions, 718.01
Students
Residency, effect on municipal census, 703.01
Tax levies
In excess of ten-mill limitation, 5705.19(E)
Special, 5705.06(C)

U.S. CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION
Exhibition, sponsoring
Liquor sales at, exemption from local option and population restriction requirements, 4301.403

USE AND STORAGE TAX
Transit authority levying, submission of question before voters, 306.70, 306.71

VACANCIES IN OFFICE, 3.07; O Const XVII §2
Appointive offices, 3.02
Auditors, city, 733.31
Auditors, county, 305.02, 305.03
Board of education, 3301.16, 3313.11
Chief justice of supreme court, 2503.02
Common pleas court clerks, 305.02, 305.03
Congress, U.S., 3521.02, 3521.03
Coroners, county, 305.02, 305.03
County commissioners, 305.02, 305.03
County court judges, 1907.11
County officers, 3.07, 305.02, 305.03
Declaration of candidacy, 3513.08
Education, boards of
Local, 3313.11
State, 3301.06
Elections board members and officers, 3501.06, 3501.07, 3501.16, 3501.161
Elections commission, 3517.14
Elections, filled by, 3.02
Engineers, county, 305.02, 305.03
Financial disclosure form provided to appointee, 102.09(B)
General assembly members, O Const II §11
Independent candidates, 3513.28, 3513.31
Judges, 3.07, 107.08; O Const IV §13, O Const XVII §2
Change of residence, due to, 2701.04
County courts, 1907.11
Municipal courts, 1901.10
Supreme court
Chief justice, 2503.02
Law directors, city, 733.31
Local boards of education, 3313.11
Mayors, 733.08, 733.25, 733.31
Municipal auditors, 733.31
Municipal clerks, notice to board of elections, 709.011
Municipal court
Judges, 1901.10
Municipal courts
Clerks, 1901.31
Municipal legislative authorities, 731.43, 733.31
Municipal officers, 3.07, 733.31
Notice to board of elections, 709.011
Nominee, 3513.31, 3513.311
Ohio ballot board, 3505.061
Precinct officials, 3501.22
Prosecutors, county, 305.02, 305.03
Recorders, county, 305.02, 305.03
Senate, U.S., 3521.02
Sheriffs, county, 305.02, 305.03
Special election to fill, 3513.32
State board of education members, 3301.06
Supreme court
Chief justice, 2503.02
Term of appointees to elective offices, 3.02
Township officers, 503.24
Board of elections, notice to, 507.051
Treasurers, city, 733.31
Treasurers, county, 305.02, 305.03
United States senators and representatives, 3521.02, 3521.03

VENUE
Election controversies, 3501.05

VETERANS' HOME
Election precincts, as, 3501.20
Voting residence, 3503.03

VETERANS' RELIEF
Tax levy for, 5705.05(E)

VETO POWERS
Governor, restrictions, O Const II §1b
Mayors, exempt ordinances, 731.28

VICTIMS OF CRIME
County assistance programs
Tax levies in excess of ten-mill limitation, 5705.19(II)

VILLAGES—See also MUNICIPAL CORPORATIONS, for general provisions.
Census
Registered voters, based on, 703.011
Classification, 703.01, 703.011
Clerk-treasurer, 733.261
Clerks
Acting clerks, appointment, 733.31
Census, certifying, 703.20
Election, 733.26
Initiative and referendum, filing with, 731.28, 731.29, 731.32
Merger of office with treasurer's office, 733.261
Residency requirement for office, 733.26
Terms of office, 733.26
Vacancy in office, 733.31
Defined, 703.01
Legislative authorities, 731.11, 731.12
President, 733.24
Maps, 709.39
Mayor, 733.25
Officers
Residency requirements, 3.15
Petitions
Detachment of territory, 709.39
Plats, 709.39
Powers and duties
Surrender of corporate rights, 703.20
President pro tempore as acting mayor, 733.25
Public affairs board, 735.28
Territory
Detachment, 709.39
Treasurers; election, term, duties, 733.261

VIOLATIONS AND PENALTIES, Ch 3599
Aiding and abetting, 3599.11, 3599.25
Arrest, 3501.33, 3501.34
Board of elections, duties, 3501.11
Bribery—See BRIBERY.
Coercion—See COERCION.
Fraud—See FRAUD.
General penalty, 3599.40
Intimidation of election officials, 3599.24
Investigation, 3501.11, 3517.11, 3517.15, 3599.091(C), 3599.092(C)
Perjury, 3599.36
Political party fund, misuse, 3517.99
Second offenses, 3599.39
Secretary of state, duties, 3501.05
Stuffing ballot boxes, 3599.26
Vote buying and selling, 3513.19, 3599.01
Voter, by, 3599.02
Witnesses, failure to appear or testify, 3599.37

VOCATIONAL SCHOOLS
Tax levies to finance, 3311.21
Voter registration provided in, 3503.10

VOLUNTARY ASSIGNMENT
Legal advertising by assignee
Rates, 7.10

VOLUNTEERS
Voter registrars, 3503.10, 3503.11(B)

VOTERS AND VOTING
Absentee, Ch 3509
See also ABSENTEE VOTING.
Age requirements, 3503.01, 3503.011; O Const V §1
Assistance—See ASSISTING VOTERS.
Bribery, 3599.01, 3599.02
Canvassing of returns—See RETURNS.
Challenge—See CHALLENGES AND CHALLENGERS TO ELECTORS.
Constitutional amendment, proposal, Ch 3519
See also INITIATIVE AND REFERENDUM, generally.
Defined, 3501.01
Disabled voter, 3501.29, 3503.12, 3505.24
See also HANDICAPPED PERSONS.
Disfranchisement, 2961.01, 3503.18, 3599.39; O Const V §4, O Const V §6
Eligibility, 3503.01 to 3503.07; O Const V §1
Absentee voters, 3509.01, 3509.02
Servicemen, Ch 3511
Change of residence, 3503.11
Presidential elections, former residents, Ch 3504
U.S. constitutional convention, 3523.02
Felon, 2961.01, 3503.18, 3599.39
Former residents, presidential elections, Ch 3504
Fraud—See FRAUD.
Handicapped voters, 3501.29, 3503.12, 3505.24
See also HANDICAPPED PERSONS.
Hours, 3501.32
Illegal, 3599.12
Aiding and abetting, 3599.25
Illiterate, 3505.24
Impersonating an elector, 3505.22, 3599.12
Influencing, 3599.05 to 3599.092, 3599.31
Election officials, by, 3599.38
Initiative petition, by—See INITIATIVE AND REFERENDUM.
Institutionalized persons, 3503.04
Interference by employer, 3599.05, 3599.06
Interpreters for voters, 3501.221
Mentally ill persons, 5122.301; O Const V §6
Military service—See MILITARY SERVICE.
Newly formed party, right to vote for in primary, 3517.016
Non-English speaking, interpreter for, 3501.221
Patients, residence, 3503.04
Petitions, signing by, 3503.06
See also PETITIONS, generally.
Political opinion, influencing by employer, 3599.05
Polling place relocation, notice to, 3501.21
Precinct redistricting, notice to, 3501.21
Probation, parole, or pardon; following, 2961.01
Procedure, 3505.18 to 3505.31
Violations and penalties, 3599.24, 3599.25
Qualifications, 3503.01, 3503.011
See also Eligibility, this heading.
Recount of votes, application, 3515.01 to 3515.03
See also RECOUNTS, generally.
Registration—See REGISTRATION.
Removal of public officials, complaint by, 3.08
Residency requirements—See RESIDENCY REQUIREMENTS, at Voter registration.
Servicemen, spouses, and dependents, Ch 3511
See also MILITARY SERVICE, at Absentee voting.
Board of elections office, voting at, 3511.10
Seventeen-year-old, 3503.011, 3503.07
Tie votes—See TIE VOTES.
Veterans' home residents, 3503.03
Vote buying and selling, 3599.01, 3599.02

VOTERS AND VOTING—*continued*
Voting and tabulating equipment, Ch 3506, Ch 3507
See also VOTING AND TABULATING EQUIPMENT.

VOTING AND TABULATING EQUIPMENT, Ch 3506, Ch 3507
Acquisition, 3506.03, 3506.04, 3507.02, 3507.03
Adoption, 3506.02, 3507.01
Approval, 3506.05, 3507.04
Ballot cards, 3506.08, 3506.09
Board of examiners, duties, 3506.05, 3507.04
Bonds issued for purchase, 3506.02, 3506.03, 3507.01, 3507.02, 3507.16
Counters turned back to zero, 3505.31
Custody, 3506.04, 3507.03
Definitions, 3506.01
Experimental use, 3506.04, 3507.03
Marking and tabulating equipment, Ch 3506
Redistricting precinct, 3506.16
Rules and regulations governing, 3507.15
Specifications, 3506.06 to 3506.08, 3507.05, 3507.06
Tampering, 3599.27
Tax exemption, 3506.04, 3507.03
Testing tabulating equipment, 3506.19
Violations, 3599.23, 3599.27
Voting machines, Ch 3507
Board of examiners, duties, 3507.04
Rules and regulations governing, 3507.15
Specifications, 3507.05

VOTING MACHINE EXAMINERS BOARD, 3506.05 to 3506.07, 3507.04, 3507.05

WAIVER
Annexation, election, 709.30

WASTE DISPOSAL
Levies in excess of ten-mill limitation, 5705.19(V)

WATER POLLUTION CONTROL
Municipal powers and duties, 743.24

WATER SUPPLY AND WATERWORKS
Change of address by consumers, notification of elections board, 3503.22
Elections regarding contracts with private suppliers, 743.24
Municipal
Contracts for, 743.24
Private systems
Contracts with municipalities, 743.24
Tax levies in excess of ten-mill limitation, 5705.19
Village public affairs board, powers and duties, 735.28

WATERSHED DISTRICTS
Tax levies, 5705.05(E)

WEAPONS
Exclusion from polling places, 3505.21

WELFARE
Tax levies to finance, 5705.05
In excess of ten-mill limitation, 5705.19(Y), 5705.191

WETLANDS
Townships; acquisition, restoration or maintenance of
Tax levies in excess of ten-mill limitation, 5705.19(HH)

WHARVES
Tax levies for maintenance and operation, 5705.05(D)

WITHDRAWAL OF CANDIDATE, 3513.30

WITNESSES AND TESTIMONY
Bribery, 2921.02
Competency of witness, election law violations, 3599.41
Confidentiality of identity, 149.43
Election violations
  Competency, 3599.41
  Failure to appear or testify, 3599.37
  Perjury, 3599.36

WRITE-IN CANDIDATES
Declaration of intent, 3513.041
Marking ballot, 3505.23
Primary elections, 3513.23
Prohibition in case of candidacy for party nomination, 3513.04

WRITS
Appeals courts
  Powers to issue, 2501.02

ZONING
Rural
  Hearings on amendments, 303.12

ZONING—*continued*
Rural—*continued*
  Plans, 303.12
    Filing with county recorder, 303.11
    Repeal, 303.25
Township
  Adoption of regulations, vote upon, 519.11
  Amendment, 519.12
  Effective date, 519.11
  Fees and costs, application for amendment, 519.12
  Hearings on amendments, 519.12
  Plans
    Amendment, filing with county recorder, 519.12
    Filing with county recorder, 519.11
  Repeal, 519.25
  Repeal of county plan, 303.25
  Supplemental resolutions, 519.12

ZOOLOGICAL PARKS
Tax levies in excess of ten-mill limitation, 5705.19(Z)
  Replacement levies, 5705.192