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A PERSON OF NINETEEN YEARS OF AGE MAY HOLD THE POSITION OF CLERK OF THE BOARD OF TRUSTEES OF PUBLIC AFFAIRS OF A VILLAGE—§§735.28, 733.68 R.C.

SYLLABUS:

The position of clerk of the board of trustees of public affairs of a village, appointed pursuant to Section 735.28, Revised Code, is not a village office, and the person holding such position is not required to be an elector within the provisions of Section 733.68, Revised Code. Consequently, 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.

Columbus, Ohio, March 6, 1962

Hon. William H. Irwin, Prosecuting Attorney  
Belmont County, St. Clairsville, Ohio

Dear Sir:

Your request for my opinion asks whether a person 19 years of age may hold the position of clerk of the board of trustees of public affairs of a village.

Section 735.28, Revised Code, pertaining to such a board, reads as follows:

“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, residents of the village, who shall each be elected for a term of two 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.”

The first question that arises is whether the clerk of the board should be one of the members of the board. Section 735.28, *supra*, provides that one of the members is elected president, and then provides that the board may elect a clerk. Thus, it might be argued that the use of the word “elect” rather than “appoint” implies that the clerk is elected from the membership of the board. On the other hand, however, the section specifically states that the board shall elect *one of its members* president, but does not specifically state that the clerk must be one of the members. In view of this latter noted use of language, therefore, I am constrained to conclude that the clerk is not elected from the membership of the board.

Next to consider is Section 733.68, Revised Code, which reads in pertinent part :

“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, \* \* \*.”

One of the requirements of an elector is that he will be of the age of twenty-one years or more at the next ensuing November election (Section 3503.07, Revised Code). Consequently, a person who is only 19 years of age is not an elector, and under Section 733.68, *supra*, cannot hold an office in a municipal corporation. The next question, therefore, is whether the position of clerk of the board of trustees of public affairs is a public office.

The functions of a public officer are clearly defined in *State, ex rel. v. Jennings, et al.*, 57 Ohio St., 415. The second syllabus of this case reads as follows :

“To constitute a public office, against the incumbent of which *quo warranto* will lie, it is essential that certain independent public duties, a part of the sovereignty of the state, should be appointed to it by law, to be exercised by the incumbent, in virtue of his election or appointment in the office, thus created and defined, and not as a mere employe, subject to the direction and control of some one else.”

Section 735.28, *supra*, provides for the appointment (election) of the clerk but does not give him any specific duties. Section 735.29, Revised Code, sets forth the many powers and duties of the board, but does not refer in any way to the clerk. Nor have I been able to find any other statutes which could be said to give the clerk any independent duties or to invest him in any way with a part of the sovereignty of the state. It appears, therefore, that the clerk of the board of trustees of public affairs must be considered as a mere employee under the board with such duties as are directed by the board, and such clerk is not an officer of the village.

To conclude, it is my opinion and you are advised that the position of clerk of the board of trustees of public affairs of a village, appointed pursuant to Section 735.28, Revised Code, is not a village office, and the person holding such position is not required to be an elector within the provisions of Section 733.68, Revised Code. Consequently, 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.

Respectfully,

MARK McELROY

Attorney General