

1110.

ELECTION JUDGES—PRESIDING AT NON-REGISTRATION AND REGISTRATION PRECINCTS—HOW SELECTED—DOMINANT PARTY DEFINED.

SYLLABUS:

1. *The words "dominant party" used in Section 4853, General Code, refer to the party which cast the highest vote for Governor at the preceding state election.*
2. *Under Section 4853, General Code, in a precinct where voters are not required to register, the presiding judge of elections at the November, 1929, election, will be selected from the dominant party in the precinct as determined by the vote cast for Governor in said precinct at the November, 1928, election.*
3. *Under Section 4921, General Code, in a precinct located in a city of 11,800 population or more, the presiding judge or chairman at the November, 1929, election will be selected by ballot by the registrars and judges of election in that precinct from among their number.*
4. *Under Section 4785-119, General Code, passed by the 88th General Assembly, to become effective January 1, 1930, in either a registration or non-registration precinct, at a regular November election, the election board will designate one of the election judges of the dominant party as presiding judge.*

COLUMBUS, OHIO, October 28, 1929.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"The clerk of the Deputy State Supervisor of Elections has come to me, stating that he has received nominations for presiding judge of the November election in one of the precincts of this county from both the Republican and Democratic parties. The question arises as to which party is to be favored and this involves the question of which is the 'dominant party' in the precinct, as meant by Section 4856, G. C.

The poll book and tally sheet of this precinct shows that at the last November election, the Democratic candidate for Governor received 110 votes and the Republican candidate for Governor, 106 votes. The Democratic candidate for Lieutenant Governor received only 86 votes, while the Republican candidate for Lieutenant Governor received 112 votes.

The vote for every candidate for state and county offices, except the Governor, shows a majority for the Republican candidate, the average majority being 20 votes for the Republican candidate.

Our attention has been directed to a former opinion of Hon. U. G. Denman, Attorney General, rendered in 1902, in which he construes the words 'dominant party' to mean the political party, which cast the highest number of votes at the last preceding November election for Governor or Secretary of State, but the election officials do not feel quite satisfied with the correctness of this opinion, especially in view of the facts above set forth. I would appreciate your opinion upon this question at the very earliest time."

You do not state in your inquiry whether the question you present arises in a precinct where voters are required to be registered or in a precinct where voters are not required to register. However, inasmuch as your question involves the construc-

tion of the phrase "dominant party" it is assumed that you refer to non-registration precincts, since this phrase is used in Section 4853, General Code, controlling selection of presiding judges of elections in non-registration precincts, and is not used in Section 4921, General Code, controlling selection of election judges in registration precincts.

Section 4853, General Code, reads as follows :

"At least ten days before any general election, the Deputy State Supervisors of each county shall appoint for each precinct in which the voters are not registered four judges and two clerks of elections, residents of the precinct, who shall constitute the election officers of such precinct. The Deputy State Supervisors shall designate one judge in each precinct to act as presiding judge, who shall be selected from the dominant party in the precinct, as determined by the next preceding November election."

This section is in pari materia with Section 4789, General Code, which provides for the appointment of Deputy State Supervisors and Inspectors of Elections and reads :

"On or before the first day of May, biennially, the State Supervisor and Inspector of Elections shall appoint for each such county two members of the Board of Deputy State Supervisors and Inspectors of Elections, who shall each serve for a term of four years from such first day of May. One member so appointed shall be from the political party which cast the highest number of votes at the last preceding November election for governor, and the other member shall be appointed from the political party which cast the next highest number of votes for each officer at such election."

The phrase "dominant party" being nowhere defined, it is my opinion it should be construed in the light of Section 4789, and in ascertaining such "dominant party" in a given precinct for the election in November, 1929, the Deputy State Supervisors should be guided by the vote cast for Governor in 1928 in that precinct.

This reasoning is in line with a similar opinion rendered by my predecessor and found in the Annual Report of the Attorney General for 1909-1910, page 120.

It is significant to note that the 88th General Assembly in enacting the new election code which becomes operative January 1, 1930, repealed Section 4789, supra, but retained practically the same phrase in new Section 4785-8—

"one of whom shall be from the political party which cast the highest number of votes in the state for the office of Governor at the last preceding state election,"

and in repealing Sections 4853 and 4921, General Code, and in enacting in their stead, Section 4785-119, retained the phrase, "dominant party."

It will be observed that in selecting presiding judges or chairmen in election precincts located in registration cities, the election board is guided by Section 4921, General Code, which reads :

"On Monday, the day preceding the November election in each year, the registrars, as judges of election and the other two judges of election in each precinct shall meet at the polling place appointed for holding the election therein at seven o'clock afternoon, punctually, and then and there organize

as a board by electing one of their number by ballot as chairman. If they fail so to elect a chairman within ten minutes, they shall immediately choose a chairman by drawing lots. At this meeting, they shall make all necessary arrangements for securing the ballot boxes and the proper accommodations for themselves and the clerks of elections in receiving and counting ballots at the ensuing election, and also, if requested, for the witnesses and challengers designated by each political party, as provided in the next section."

In other words, in registration cities the presiding judge at the November, 1929, election, will be selected by ballot by the registrars and judges of election in the precinct.

Specifically answering your question, I am of the opinion that in a precinct where the voters are not required to register, the presiding judge in the November election in 1929, shall be of the political party which polled the greatest number of votes for Governor in that precinct at the November election in 1928; and in precincts where the voters are required to register, the presiding judge or chairman shall be selected by ballot of the registrars and judges of election in said precinct.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1111.

CORONER—MAY HOLD INQUEST UPON DEAD BODY BROUGHT INTO HIS COUNTY—CONDITIONS NOTED—LIMITATIONS OF PROSECUTING ATTORNEY IN EXPENDITURE OF HIS SECTION 3004 FUND, DISCUSSED.

SYLLABUS:

1. *The coroner of a county into which a dead body had been brought after death in another county, may lawfully hold an inquest thereon, providing there are reasonable grounds to suspect that the death had been caused by violence, through unlawful means, and providing further, that an inquest had not previously been held by the coroner of the county where the death had occurred or where the body may have been previously found.*
2. *A prosecuting attorney, in the expenditure of the funds allowed by him, by virtue of Section 3004, General Code, is limited only in such expenditures to expenses incurred by him in the performance of his official duties and in the furtherance of justice not otherwise provided for.*

COLUMBUS, OHIO, October 28, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

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

"One H. J. died at the Boys Industrial School in Fairfield County. His body was removed to Marietta, Ohio, his former home. The coroner