

It is not deemed necessary to decide whether this sentence imposes upon the appraising authorities a hard and fast rule which can under no circumstances be departed from. It is sufficient to state that no good reason appears for believing that the case which the Commission states is not within the spirit as well as within the letter of the section. The cardinal rule of valuation is that expressed in section 5341, which provides that the governing value shall be "its actual market value as of the date of the accrual of the tax, except as hereinafter provided, and subject to the rules hereinafter prescribed." The provision quoted at the outset of this opinion is one of the "rules hereinafter prescribed," but it does not make for the interests to which it relates any different rule with respect to the date as of which the appraisal shall be made than that set forth in the general provision last above quoted. Therefore, the only thing which can be considered in a case of this kind is the value of the life interest at the time of the testator's death. Subsequent events can never justify a departure from that rule. Abundant authority might be cited upon this proposition.

In the case stated, X at the death of A had an interest the value of which depended upon his expectancy of life. That value as it stood at the death of A is in nowise affected by the untimely death of X.

As an instance of a case which would raise the only question which it is believed could be raised under section 5342 of the General Code, there might be mentioned a case in which the life interest passed to or was dependent upon the life of a person who at the death of the testator was himself in such physical condition as to make the interest obviously less valuable than an interest for his expectancy of life. That is to say, if the value of an estate for the life of X were in question and it was known that X was on his deathbed with an incurable disease, this fact might well justify departure from the statutory rule, because it would certainly affect the selling value of the interest at the date of the testator's death. No such question is raised in the Commission's letter, and no opinion is expressed upon the point just mentioned.

It is the opinion of this department, therefore, that in the case stated the value of the several interests should be determined without regard to the fact of the sudden death of X prior to the determination of the tax.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1787.

BOARD OF EDUCATION—SPECIAL ELECTION—WHEN BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS SHOULD SET DATE FOR HOLDING ELECTION IN VIEW OF ABSENT VOTERS LAW—WHEN SUCH BALLOTS SHOULD BE PREPARED—AT LEAST FORTY DAYS SHOULD BE ALLOWED TO LAPSE BETWEEN TIME OF CALLING SUCH ELECTION AND ELECTION DAY ITSELF.

1. *Where a board of education, or other body authorized to call a special election under the statutes, passes a resolution providing for such special election, and thereafter certifies such resolution to the board of deputy state supervisors of elections, such board, in setting the time of the election, should take cognizance of the existence of the absent voters law and the provisions of section 5080-1, relative to the rights of certain committees to witness the count, where a question or proposition has been submitted.*

2. Ballots to be used in any election should be prepared for use not less than thirty days before the day of the elections at which the same are to be used, and an absent voter's ballot and cast the same in the manner provided by law, during the period of thirty days prior to the day of the election.

3. Under the provisions of section 5080-1 G. C., a board of education should allow at least forty days to lapse between the time of calling such election and election day itself, where a question is to be submitted to a vote of the electors and the resolution calling the election must be furnished to the board of deputy state supervisors of elections in sufficient time, prior to such election day, that the board of deputy state supervisors of elections may have such ballots available for absent voters thirty days before the day of the election itself. The notice of any such special school election shall be posted or published at least ten days prior to the date of such election, as provided in section 4839 G. C.

COLUMBUS, OHIO, January 14, 1921.

HON. JOHN L. LOTT, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department upon the following statement of facts:

“On January 3, 1921, the board of education of the Cromers rural school district in Seneca county, Ohio, adopted a resolution submitting to the electors of that district, at a special election to be held on January 15, 1921, the question of whether the schools of that district should be centralized; and also submitting, at the same time, the question of issuing bonds in the sum of \$100,000 for the purpose of raising funds with which to erect a centralized school building in the event that the proposition to centralize the schools of the district should carry.

The resolution thus adopted was filed with the deputy state supervisors of elections of this county on January 4, 1921, and notices posted on the same date.

At present there are qualified voters of that school district absent therefrom, some of whom, by reason of illness, or distance from home, will be unable to return to their homes in order to cast their votes at such special election.

The question I submit is the length of time notice shall be given of the time of holding such election.

Section 4839, General Code, reads:

‘The clerk of each board of education shall publish a notice of all school elections * * * at least ten days before the holding of such election.’

Section 5078-1, General Code, commonly called the ‘Absent Voters’ law, provides for the delivery or mailing of such ballots; and later sections provide how such tickets may be voted.

The question I submit is whether, in view of the provisions of section 5078-1, which gives to an absent voter the right, within thirty days prior to the holding of any election, to apply for and to vote an ‘absent voter’s’ ticket, the giving of but ten days’ notice of the time of holding this special election, is sufficient notice; in other words, whether the provisions of section 4839, with respect to notice, has been modified and the time required extended so that the notice to be given shall not be less than thirty days, conforming the notice to the provisions of the absent voters law.”

Pertinent sections of the statutes read in part as follows:

"Section 5025-1: Ballots for the use of absent voters for the several precincts of the state and for every election held therein shall be prepared in accordance with law as are the regular voters' ballots in the same form and on paper of the same quality, and in addition to the number of ballots provided by law for the use of the voters in the several voting precincts of the state, there shall be such an additional number of such absent voter's ballots printed as the county boards of deputy state supervisors of election shall determine to be necessary for use in the several precincts of their respective counties. These ballots shall be so printed and along with all other absent voter's supplies shall be prepared for use not less than thirty days before the day of the election at which the same are to be used."

"Section 5078-1: It shall be lawful for any qualified elector who finds that he will be unavoidably absent from his home precinct on the day of any general, special or primary election to apply to the clerk of the board of deputy state supervisors of elections of his home county in writing or in person not earlier than thirty days and not later than three days prior to election day, stating the fact of his unavoidable absence from his precinct on election day and making application in writing for an absent voter's ballot. After such clerk shall have satisfied himself that the applicant is a duly qualified voter in such precinct * * * he shall deliver to such voter or send him by registered mail, as the case may be, one of the absent voter's ballots provided for such election, together with an identification envelope and a return envelope such as are hereinafter described, to be used by said voter as hereinafter directed. * * * Where there are two or more ballots to be voted at such election in the absent voter's home precinct he shall be supplied with one of each such ballots."

"Section 5078-3: At any time not more than thirty days nor less than three days prior to the day of election, the elector who has made application for and received the absent voter's supplies herein provided for, may appear before any board of deputy state supervisors of elections of this state, or any officer or clerk of such board at the office of said board, or before any officer either within or without this state, authorized to administer oaths, and mark and seal his ballot under the scrutiny of such official * * *. In the event such ballot is marked prior to the day of election before the board of deputy state supervisors or some officer or clerk of such board of the home county of the elector, the identification envelope containing the ballot when sealed, shall be placed by such board, officer or clerk in a safe place and kept there unopened until same shall be delivered to the presiding judge of the proper precinct as provided in section 5078-5 herein." (107 vs. 52.)

"Section 13350-3: Whoever * * * hinders or attempts to hinder a duly qualified elector from voting an absent voter's ballot * * * shall be guilty of a felony. * * *

"Section 5080-1: Not later than forty 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 deputy state supervisors of elections of any county asking that such petitioners be recognized as the committee entitled to nominate inspectors to the county at such election, as herein provided. If more than one committee alleging themselves to advocate or oppose the same measure file such petitions, the board of deputy state supervisors shall decide and announce by registered mail to each committee *not later than thirty days*

immediately preceding the election, which committee is entitled to nominate such inspectors. Such decision shall not be final but any aggrieved party may institute mandamus proceedings in the common pleas court of the county wherein such deputy state supervisors have jurisdiction to compel such board of deputy state supervisors to certify the nominees of such aggrieved party to the judges of elections as herein provided." (104 vs. 124.)

Bearing upon the right of committees to be represented in the count upon any question submitted, as provided in section 5080-1, this department, on November 4, 1919, issued Opinion No. 757, appearing at page 1394, Vol. 2, Opinions of the Attorney-General, in which it was held:

"Under existing laws such challengers and witnesses can be appointed in three ways only:

* * * * *

(3) At any election committees in good faith advocating or opposing any measure to be voted upon have the right in question (section 5080-1 G. C.)"

You now desire to know whether, in the light of the absent voters law, a rather recent piece of legislation, coupled with the provisions set forth in section 5080-1, supra, the board of education can call an election to be held ten days after such call is made in the resolution of the board of education, thereby preventing, in a very large degree, the operation of the absent voters law and the provisions set forth in section 5080-1.

o In your letter you make an excerpt from section 4839 G. C., which reads in full as follows:

"The clerk of each board of education shall publish a notice of all school elections in a newspaper of general circulation in the district or post written or printed notices thereof in five public places in the district at least ten days before the holding of such election. Such notices shall specify the time and place of the election, the number of members of the board of education to be elected, and the term for which they are to be elected, or the nature of the question to be voted upon. (97 v. 354)"

An examination of the history of the above statute shows that it was made a law in April, 1904, and appears in 97 Ohio Session Laws, 354. The provisions appearing in the absent voters law were enacted in 1917, and appear in 107 O. L., 52. The provisions above quoted, as to the rights of committees where questions are submitted to the electors (section 5080-1), appear in 104 O. L., 124, having been enacted in 1914. It will thus be noted that the absent voter's provisions and the provisions as to witnesses to the count, where certified by a proper committee, are much later provisions than 4839 G. C., which you quote, and under these circumstances the provisions set forth in the later enactment would govern, and section 4839 must be read in the light of later enactments. The intent of the law is that every qualified elector should have a reasonable opportunity to cast his ballot in any election in his precinct, whether in the election of candidates or in the voting upon some particular question. Thus we find that provision, even for the military, when absent from the state, has been made in section 5078-7, that these citizens may have an opportunity to pass upon questions which might affect conditions or property in their home territory.

It would appear at first glance that possibly section 4839, providing for the "notice," would conflict with the absent voters law, and the requirements of section

5080-1, supra, but the "notice" for an election, technically speaking, is not the resolution or the call for such election. When boards of education or other bodies pass a resolution calling a special election, they must take notice of the existence of all other statutes which might affect the time of such election, so that the rights of all might be conserved. As an illustration of this, there are certain kinds of special elections which, under other statutes, cannot come until a certain time, and yet the notice itself is governed by section 4839 G. C., supra. Attention is invited to the following two excerpts from prior opinions of this department, to-wit:

"The first step necessary in the organization of the village school district is the election of a board of education. *This election cannot take place until the coming November election.* The statutes provide for notices of elections to be given. *Section 4839 General Code provides for notices of election for school districts * * *.*" (Opinions of the Attorney-General, page 464, Vol. 1, 1913.)

"As a matter of fact, the resolution itself, as such, is not required to be published, the notice being sufficient, in all probability, if it states the substance thereof, that is, enough of it to apprise the electors of the district of the nature of the proposition submitted to them." (Opinions of the Attorney-General, page 1516, Vol. 2, 1913.)

It is for the board of deputy state supervisors to prepare the ballots and make the necessary arrangements for the submission of any question, and such board is governed by the election laws of the state, one of which is section 5025-1 G. C., that the "ballots * * * shall be prepared for use not less than thirty days before the day of the election at which the same are to be used."

A board of education cannot call an election upon a proposition with the intervening time before the election so short that the absent voters law and the provisions of section 5080-1 are not permitted to operate.

"A board of education, desiring to submit the question of centralization to the qualified electors of its district, at a special election to be called for that purpose, should pass a resolution declaring its intention and fixing the time and place of holding said election. A copy of said resolution should be certified to the board of deputy state supervisors of elections of the county, *in order that said board may prepare the ballots and make the necessary arrangements* for the submission of said question." (Opinions of the Attorney-General, p. 340, Vol. 1, 1915), (p. 1985, Vol. 2, 1915.)

That all concerned must recognize the provisions of section 5080-1, General Code, providing for the witnesses to a count, if the same are desired, even to the point of providing special deputies, is held in a former opinion of this department, No. 1892, Vol. 2, Opinions of the Attorney-General for 1915, the syllabus of which reads:

"It is the duty of the sheriff of a county upon the filing of the signed statement mentioned in section 5169-15 G. C., *by the duly recognized committee or committees provided for by section 5080-1 G. C.*, to appoint the special deputies mentioned in said section 5169-15 G. C." (Opinions of the Attorney-General for 1915, Vol. 2, p. 1892.)

There could be no special election unless there was a resolution or a call for the same, and yet such election might be held to be valid after the votes are counted,

even though the "notice" provided in section 4839 G. C. had been omitted, thus indicating that the "notice" is not the gist of the situation or the governing factor which regulates the time that must intervene between the resolution for an election and the election itself.

"Failure to publish notice of an election for board of education as required by section 4839 G. C., will be treated as *an irregularity only*, where there is no showing that the result of the vote would have been in any way changed had publication been made as provided by law." (Opinions of the Attorney-General for 1917, Vol. 3, p. 2182.)

That an absent voter has a right to cast his ballot at an election prior to the election day itself, has been held in a former opinion of this department, to-wit:

"An absent voter *has a right* to make application for an absent voter's ballot at any time up to midnight of Saturday, where an election is held on Tuesday." (Opinions of the Attorney-General for 1918, Vol. 2, p. 1453.)

Many questions cannot be submitted at special elections, but must wait until submission at a general or township election, in which event the resolution calling the election might occur months before the election itself, yet the notice must run only a short time prior to the actual vote.

It would seem that the times of notice of a special election really should be the same in each instance for the sake of uniformity, but this is not true, for the "notice" required to be published for special elections ranges under our statutes from ten days up to thirty days, in some instances being "fifteen days," "two weeks," "four weeks," etc.

See sections 2309, 5649-5a, 1176, 5639, 2453, 5642-1, 3077, 3127, 9263, 9888, 9889, 2503-2, 3181, 3259, 3285, 3292, 3298-57, 3395, 3400, 7562-3, 3513, 3515, 3527, 3577-1, 3546, 3697-3, 3701, 3774, 3937, 3931, 3946, 4000-22, 4053, 4227-5, 4471 and 14821-3, as to where this lack of uniformity on the notice for special elections exists.

A number of these sections state the time that must run before the vote must be held and also provide in the same section for the "notice" feature, thus indicating that, as heretofore pointed out, the notice itself is not the call or the resolution or the provision for the election. Thus section 14821-3, after indicating the time when such vote should be taken under that section, closes with these words:

"No notice of such election shall be required." (103 O. L., 205.)

The question of the validity of the election herein mentioned, as affecting the legality of the centralization and that of the bonds, should the proposition carry, is not passed upon.

Based upon the sections quoted and the citations given, it is therefore the opinion of this department that:

1. Where a board of education, or other body authorized to call a special election under the statutes, passes a resolution providing for such special election, and thereafter certifies such resolution to the board of deputy state supervisors of elections, such board, in setting the time of the election, should take cognizance of the existence of the absent voters law and the provisions of section 5080-1, relative to the rights of certain committees to witness the count, where a question or proposition has been submitted.

2. Ballots to be used in any election should be prepared for use not less than thirty days before the day of the election at which the same are to be used, and an

absent voter has a right to make application for an absent voter's ballot and cast the same in the manner provided by law, during the period of thirty days prior to the day of the election.

3. Under the provisions of section 5080-1 G. C., a board of education should allow at least forty days to lapse between the time of calling such election and election day itself, where a question is to be submitted to a vote of the electors and the resolution calling the election must be furnished to the board of deputy state supervisors of elections in sufficient time, prior to such election day, that the board of deputy state supervisors of elections may have such ballots available for absent voters thirty days before the election itself. The notice of any such special school election shall be posted or published at least ten days prior to the date of such election, as provided in section 4839 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1788.

MUNICIPAL CORPORATIONS—MAY LEGALLY ENACT ORDINANCES TO PROVIDE FOR UNLAWFUL TRAFFICKING IN INTOXICATING LIQUORS—STATE MAY INSTITUTE PROSECUTION FOR SAME OFFENSE UNDER CRABBE ACT—HOW MONEYS FROM CITY ORDINANCES CASES DISTRIBUTED.

1. *Within the limits of their powers, municipalities may legally enact ordinances providing punishment for those unlawfully trafficking in intoxicating liquors.*
2. *Under such circumstances the right of the state to institute a prosecution for the same offense under the Crabbe Act is not abrogated.*
3. *Moneys arising from prosecutions under city ordinances in such cases will be distributed in the manner provided for ordinance cases and not in accordance with the provisions of the Crabbe Act.*

COLUMBUS, OHIO, January 14, 1921.

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

GENTLEMEN:—Your communication of recent date is as follows:

"We are respectfully calling your attention to House Bill No. 620, Laws of Ohio 108, page 1182, generally known as the Crabbe Act, and we beg to advise you that quite a number of cities and villages of the state of Ohio (for illustration, we will mention the city of Warren and the village of Willard) have enacted ordinances fixing penalties for trafficking in intoxicating liquors similar to the Crabbe Act; some of them with the same penalties, others even with greater penalties, and such municipalities are trying cases upon arrest under these ordinances and covering the fines and forfeitures into the municipal treasuries, thereby circumventing section 6212-19 G. C., as follows:

'Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal or county officer.'