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1. MUNICIPAL COURT JUDGES—AMENDED SENATE BILL
   14, 99 GENERAL ASSEMBLY—EFFECTIVE JUNE 13, 1951—
   MANNER OF NOMINATING AND ELECTING JUDGES
   GOVERNED BY SECTION 1587 G. C.—EXCEPTION, PRO-
   VISIONS OF SECTION 1617 G. C.—CANDIDATES MAY BE
   NOMINATED IN 1951 IN ACCORDANCE WITH PROVI-
   SIONS OF LAW APPLICABLE TO SEVERAL MUNICIPAL
   COURTS—SEE a.b.c. OF SYLLABUS.

2. SECTION 1587 G. C. PROVIDES CANDIDATES FOR MU-
   NICIPAL COURT JUDGES SHALL BE NOMINATED IN
   SAME MANNER PROVIDED FOR JUDGES OF COMMON
   PLEAS COURT—SECTIONS 4785-67 THROUGH 4785-89 AND
   4785-91 THROUGH 4785-94 G. C.—CITY CHARTER—PRI-
   MARY ELECTION.

3. CHARTER, CITY OF CLEVELAND—PROVISIONS GOV-
   ERNING NOMINATION OF JUDGES OF MUNICIPAL
   COURT—SECTION 1587 G. C.

4. CHARTER, CITY OF CLEVELAND—PRIMARY ELECTION
   —EFFECT OF SECTION 1587 G. C.—APPLICATION OF SEC-
   TIONS 4785-67 THROUGH 4785-89 G. C.—NOMINATION OF
   COMMON PLEAS JUDGES.

SYLLABUS:

1. Under Amended Senate Bill No. 14, enacted by the 99th General Assembly
and effective on June 13, 1951, the manner of nominating and electing judges of
municipal courts is governed by the provisions of Section 1587, General Code, except
that, under Section 1617, General Code, candidates may be nominated in the year 1951
in accordance with the provisions of law applicable to the several municipal courts
designated for repeal by such Act, but only if (a) nominated at a regularly held
primary election held prior to the effective date of such Act, (b) nominated by
petition properly circulated and filed prior to the effective date of such Act, or (c)
nominated by petition properly circulated prior to and filed subsequent to the effective
date of such Act.

2. Under the provisions of Section 1587, General Code, candidates for municipal
court judges shall be nominated in the manner provided for judges of the common
pleas court (Sections 4785-67 to 4785-89, inclusive, General Code, and Sections 4785-91
to 4785-94, inclusive, General Code), except that in a municipality operating under
a city charter, candidates shall be nominated in conformity to the provisions of such
city charter if provisions are made therefor, or at any municipal primary election
which may be provided in such charter.

3. The charter of the City of Cleveland, containing no provisions governing the nomination of judges of the municipal court, does not fall within the scope of that portion of Section 1587, General Code, which provides that municipal court judges "shall be nominated in conformity to the provisions of such city charter if provisions are made therefor."

4. The charter of the City of Cleveland, by providing for a primary election on the fifth Tuesday before the regular municipal election, does fall within the scope of that portion of Section 1587, General Code, which provides that candidates for municipal court judges shall be nominated "at any municipal primary election which may be provided in such charter;" however, except as to the time of such primary election, the other requirements of Sections 4785-67 to 4785-89, inclusive, General Code, applicable to the nomination of common pleas judges by primary election are controlling and the provisions of such city charter, except as to the time of such primary election, are not applicable.

Columbus, Ohio, July 14, 1951

Hon. Frank T. Cullitan, Prosecuting Attorney

Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The passage of the Uniform Municipal Court Act effective June 13, 1951 presents us with the problem of whether or not candidates for the office of municipal judge in the City of Cleveland are to be nominated at the non-partisan primary election held five weeks prior to the general election in November in the event there are more than two candidates for a particular office.

"The charter of the City of Cleveland provides for the nomination and election of a mayor and a councilman from each ward. It does not specifically provide for the nomination and election of any other officer. It also provides that candidates for all offices to be voted for at any municipal election under the provisions of the charter shall be nominated at a nonpartisan primary election to be held on the fifth Tuesday prior to the general municipal election. Candidates may file nominating petition papers at least forty days prior to the day of the primary election. In case there shall not be for any office more than two persons who shall have filed petitions, the said persons are the candidates at the regular municipal election and the primary for the particular office will not be held. If there are more than two candidates, the primary election is held and the two candidates receiving the highest number of votes at the primary election are the candidates at the regular municipal election, and their names and no other are printed on the official ballot at the general election.

"Acting under old section 1579-5, General Code, candidates for judge of the municipal court of Cleveland have filed their nominating petitions in the general form, signed and verified in the manner and within the time required by the city charter for nominating petitions of other nominees for public office in the City of Cleveland, the time being at least seventy-five days before the general election. (See State ex rel. Hubbell v. Zollar, 136 O. S. 19.) It has hitherto been the practice to have the names of all candidates for the office of judge of the municipal court appear on the ballot at the general election, with no nonpartisan primary election such as is provided by the city charter for the offices of mayor and city councilman. Old Section 1579-5, General Code, provided that such judges shall be elected in the manner provided by law for the election of the judges of the court of common pleas.

"Section 1587 of the Uniform Municipal Court Act provides in part:

'All candidates for municipal judge, including candidates for chief justice, may be either nominated by petition or by primary election in the manner provided for judges of the court of common pleas, provided however that in a municipality operating under a city charter candidates shall be nominated in conformity to the provisions of such city charter if provisions are made therefor, or at any municipal primary election which may be provided in such charter. The nominating petition shall be in the general form and signed, verified and filed in the manner prescribed by sections 4785-91 to 4785-94, inclusive, of the General Code.

'The petition or declaration of candidacy 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 in section 4785-102 of the General Code, provided however that in a municipality operating under a city charter candidates shall be elected in conformity to the provisions of such city charter if provisions are made therefor or at any municipal primary election which may be provided in such charter.'

"The provisions of the Uniform Municipal Court Act and particularly those of Section 1587, General Code, pose the following questions:

"1. In the event there are more than two candidates for a particular office of judge of the municipal court of Cleveland, shall the names of such candidates appear on the

nonpartisan primary election ballot for the purpose of nom-
inating the two candidates who shall receive the highest vote
at such primary election?

"2. If such primary election is held, shall the names
of the two candidates receiving the highest number of votes
and no other appear on the ballot at the general election in
November?

"3. If such primary election is required, shall it be
held this year on the fifth Tuesday prior to the general
municipal election in November of 1951?"

As stated in your letter, the mayor and members of city council are
the only officers whose nomination and election are specifically referred
to and provided for in the charter of the City of Cleveland. In fact, the
charter makes no reference whatsoever to the office of judge or of clerk
of the municipal court, these being the offices provided for in Amended
Senate Bill No. 14, referred to in your letter as the Uniform Municipal
Court Act, such Act being passed by the General Assembly May 24, 1951
and being effective as an emergency measure on June 13, 1951 upon its
approval by the Governor.

Section 3 of the Cleveland Charter provides for a general election for
the choice of "elective officers provided for in this charter" on the first
Tuesday after the first Monday in November in odd numbered years.
Section 4 of such charter reads:

"Candidates for all offices to be voted for at any municipal
election *under the provisions of this charter* shall be nominated
at a nonpartisan primary election to be held on the fifth Tuesday
prior to such municipal election."   (Emphasis added.)

Section 5 of the charter, as to elections from the city at large, pro-
vides for the filing of a petition signed by at least three thousand electors
of the city and Section 8 thereof requires such petition to be filed "at
least forty days prior to the day of the primary election." Section 10
provides that at the regular municipal election the number of candidates
for any office shall be the two candidates on the primary election ballot
receiving the highest number of votes at the primary election and their
names and no others shall be printed on the official election ballot.

Your first question, in essence, is whether the nominations of candidates
in 1951 for the offices of judges of the Cleveland Municipal Court shall

be made in conformity to the provisions of the Cleveland Charter heretofore mentioned.

The answer to this question involves a consideration of the provisions of Section 1587, General Code, as enacted as a part of Amended Senate Bill No. 14 and as quoted in your letter. More specifically, it calls for an interpretation of the language of such section which, after providing that candidates for municipal judge "may be either nominated by petition or by primary election in the manner provided for judges of the court of common pleas," reads:

> "* * * provided however that in a municipality operating under a city charter candidates shall be nominated in *conformity to the provisions of such city charter if provisions are made therefor,* or *at* any municipal primary election which may be provided in such charter." (Emphasis added.)

By such language the General Assembly has provided, with two exceptions, that the nomination of municipal judges, whether by petition or by primary election, shall conform to the state statutes providing for nominations of common pleas judges.

The provisions for nominating common pleas judges by primary election are included within the general statutes relative to primary elections. Sections 4785-67 to 4785-89, inclusive, General Code.

Section 4785-67, General Code, provides for a primary election on the first Tuesday after the first Monday in May and Section 4785-67a, General Code, provides in odd numbered years no primary election shall be held where the number of persons filing declarations of candidacy for nomination of one political party shall not exceed, as to any such office, the number of candidates which such political party shall be entitled to nominate as its candidates for election to each such office. Section 4785-70, General Code, provides for the filing of a declaration of candidacy as a party candidate not later than 6:30 P. M. on the ninetieth day before the day of the primary election, the petition being signed by at least one hundred qualified electors or by sueh electors equal in number to at least 5% of the number of votes cast for the candidate for Governor of the same political party in the county at the next preceding regular state election, if such 5% is less than one hundred, and signed by not more than five hundred electors.

The state statutes make no provision for nominating at a primary

election any independent candidates for common pleas judge, such nominations being made only as party candidates.

The provisions for nominating common pleas judges by petition are included in the general statutes relative to nomination of independent candidates. Sections 4785-91 to 4785-94, inclusive, General Code. These provide for the filing of a nominating petition signed by qualified electors of the district not less in number than 1% of the number of electors who voted for Governor in such district at the next preceding general election and signed by not more than twice the number required by law and provide for the filing of such petition not later than 6:30 P. M. of the ninetieth day before the day of the general election.

The first exception made by Section 1587, General Code, to the requirement that the state statutes governing the nomination of judges of the common pleas court shall control as to the manner of nominating municipal court judges is that "in a municipality operating under a city charter candidates shall be nominated in conformity to the provisions of such city charter if provisions are made therefor." The City of Cleveland does operate under a city charter, but this fact alone does not satisfy the requirements of such language. As heretofore noted, such charter makes no provision for the nomination or election of any offices except mayor and councilmen. It does not provide for the nomination of municipal court judges, or any judges, either by specifically designating such office or by general language providing for the nomination for all elective offices. Instead, Section 4 of the charter only provides for nomination of candidates "for all offices to be voted for at any municipal election under the provisions of this charter." It clearly appears that such offices are those offices referred to in Section 3 of the charter, namely, "elective offices provided for in this charter," these offices being limited by the charter to mayor and councilmen.

I believe it is clear that Section 1587, General Code, by requiring that "provisions are made therefor" before authorizing nomination of municipal court judges in conformity with the provisions of a city charter instead of in the manner provided for the election of common pleas judges, was intended to and does require that such charter, by its terms, provide for a method of nominating such judges, and that this requirement of Section 1587, General Code, is not met by a charter providing only for the nomination of other designated officials.

In expressing the above opinion, I am fully cognizant of the holding of the Supreme Court in the case of State, ex rel. Stanley v. Benson, 127 Ohio St., 204. In that case, while holding that a municipality has no power by charter or otherwise, to create a court, it was held that a judge of the Police Court of Cleveland Heights was an elective municipal officer whose nomination was governed by the provisions of the charter of that city. In that case, however, the charter of the City of Cleveland Heights left no doubt as to its intended application to all elective officers, including the office of police judge. By way of contrast, the charter of the City of Cleveland contains no provision relative to the nomination and election of judges.

The second exception made by Section 1587, General Code, to the requirement that the state statutes governing the nomination of common pleas judges shall control as to the manner of nominating municipal court judges is contained in the language "or at any municipal primary election which may be provided in such charter." Contrasting this language with the first exception fortifies my previously stated opinion relative thereto. Had the General Assembly intended that the requirement of the first exception would be satisfied by a charter providing only for the nomination of other officials, the addition of the second exception would have been without meaning. Again contrasting such language with the first exception, it will be noted that the second exception does not provide for nomination in *conformity* to the provisions of such a charter, but only authorizes the primary election for nomination of municipal court judges to be held *at* any primary election provided in such charter. Such language necessarily deals only with the *time* of such primary election and it would follow that the other provisions of the state statutes relative to the manner of nomination of common pleas judges would be applicable to such a primary election held at the same time as a municipal primary election provided by charter if such charter does not, by its terms, provide for the nomination of such judges.

I have given consideration to the decision of the Supreme Court in the case of State, ex rel. Hubbell v. Zollar, 136 Ohio St. 19, referred to in your letter. This case interpreted the provisions of Section 1579-5, General Code, relative to the method of nominating candidates for the office of judge of the Municipal Court of Cleveland. Section 1579-5, General Code, under which the judges now serving on the Municipal Court of Cleveland were nominated, reads in part as follows:

"The judges of the municipal court, including the chief justice, shall be nominated by petition. Such petition shall be signed by at least twenty-five hundred electors of the city of Cleveland. *It shall be in the general form and shall be signed, verified and filed in the manner and within the time required by law for nominating petitions of other nominees for public office in the city of Cleveland.* Each elector shall have the right to sign petitions for not more than one candidate for each term. Such judges shall be elected by the electors of the city of Cleveland in the manner provided by law for the election of judges of the court of common pleas. * * *"   (Emphasis added.)

Although, at the time of the Zollar case, as now, the Cleveland charter made no provision for the nomination and election of any public officers, except mayor and councilmen, the holding of the court that the provisions of the city charter relative to the time for filing nominating petitions were governing as to candidates for municipal judge, and that the general provisions of Section 4785-92, General Code, relative to the time of filing all petitions for nomination as independent candidates were inapplicable, was predicated on the specific language of Section 1579-5, General Code, which I have emphasized in the above quotation. By way of contrast, Section 1587, General Code, contains no similar language.

For the reasons stated above, I am of the opinion that Amended Senate Bill No. 14, effective June 13, 1951, does not authorize or permit, under the existing provisions of the charter of the City of Cleveland, a non-partisan primary election for nomination of candidates for the offices of judges of the Cleveland Municipal Court.

Your second question is predicated on the assumption that such a non-partisan primary election may be held for nomination of candidates for such judicial offices under the provisions of the charter of the City of Cleveland. My opinion that no such non-partisan primary election is authorized or permitted answers this question.

Your third question reads as follows:

"If such primary election is required, shall it be held this year on the fifth Tuesday prior to the general municipal election in November of 1951?"

While I have expressed my opinion that no *such* primary election is required or authorized for municipal judges, that is, a non-partisan primary election under the provisions of Section 4 of the Cleveland charter, I shall consider the question of whether any primary election may or must be

held on the fifth Tuesday before the general municipal election of November, 1951 for nominations of candidates for municipal judges.

I again refer to the language of Section 1587, General Code, which provides that nominations of municipal judges by primary election shall be made "at any municipal primary election which may be provided in such charter." With reference to such language, I have expressed my opinion that such deals only with the *time* of the primary election and that the other provisions of the state statutes relative to the manner of nominating common pleas judges are applicable to such primary election. The above quoted language would authorize and require the holding of a primary election for nomination of party candidates for the office of municipal judge in conformity, except as to time of the primary, to the provisions of Sections 4785-67 to 4785-89, inclusive, General Code, if, in the time provided therein, there were filed declarations of candidacies of more persons for a nomination as a candidate of one political party than such party would be entitled to nominate for such office.

Section 4785-70, General Code, requires the filing of such declarations of candidacy ninety days before the primary. Since the primary will be held in the City of Cleveland, pursuant to charter, on October 2, 1951, it would appear that the last day for filing such declarations of candidacy has already expired. Assuming that no such declarations of candidacy were filed for the party nomination by such time, there would be no authority to hold any primary election for nomination for the office of municipal judge. Assuming that no such declarations were so filed, it follows that under the provisions of Section 1587, General Code, candidates for election to the offices of judges of the Cleveland Municipal Court may be placed on the ballot in November, 1951 only if they comply with the requirements of Sections 4785-91 to 4785-94, inclusive, General Code. In any event, candidates may file for the November, 1951 election in conformity to the requirements of said Sections 4785-91 to 4785-94, inclusive, General Code.

In your request for my opinion you have assumed, and in my discussion thus far I too have assumed, that the Manner of nominating and electing judges of the Cleveland Municipal Court in 1951 is governed by the provisions of Section 1587, General Code, as enacted by Amended Senate Bill No. 14. As heretofore stated, this Act took effect as an emergency measure upon its approval by the Governor on June 13, 1951. Since implicit in your request is the broader question of the correct manner

of nominating and electing such judges in 1951, I feel that one additional
question is presented by the Act requiring my consideration.

Section 3 of the Act reads:

> "This act is hereby declared to be an emergency measure
> necessary for the immediate preservation of the public peace,
> health, and safety. The reason for such necessity lies in the fact
> that an opportunity should be afforded to municipalities to elect
> judges at the general election in 1951, in order that the municipal
> courts established by this act may be instituted on January 1,
> 1952. Therefore, this act shall go into immediate effect."

Section 2 of the Act reads:

> "That existing sections 1558-1 to 1558-93j, inclusive, 1579-1
> to 1579-650, inclusive, sections 1579-666 to 1579-957, inclusive,
> and sections 1579-978 to 1579-1705, inclusive, of the General Code
> be, and the same are hereby repealed as of December 31, 1951."

Since by the terms of Section 2 of the Act all of the old provisions
relative to the municipal court of Cleveland, including Section 1579-5,
General Code, are not *expressly* repealed until December 31, 1951, the
question necessarily arises as to whether the nomination of candidates
for judges of the Cleveland Municipal Court in 1951 are governed by the
provisions of old Section 1579-5, General Code, or by the provisions of
new Section 1587, General Code. So far as expressly stated, both are now
in full force and effect.

Section 1617, General Code, as enacted by Amended Senate Bill No.
14, reads in part as follows:

> "The institution of all courts enumerated in section 1581 of
> the General Code shall take place on January 1, 1952, and the
> jurisdiction and procedure of the municipal courts theretofore
> existing shall continue until such date. A candidate who is
> nominated in the year 1951 in a regularly held primary election
> or by petition properly circulated and filed prior to the effective
> date of this act or by petition properly circulated prior to and filed
> subsequent to the effective date of this act, in accordance with the
> provisions of law existing at the time of such nomination or such
> circulation or filing, for the office of judge of a municipal court
> existing by virtue of the sections of the General Code designated
> for repeal by this act, shall be deemed a candidate for the office
> created under the provisions of sections 1581 to 1617, inclusive, of
> the General Code, and, if elected, shall be deemed elected to the
> office of judge created therin.

"The existing terms of the municipal judges or elected clerks shall not be diminished, but shall continue for the period for which they were created. The term of an existing appointed clerk in a territory having a population in excess of one hundred thousand shall end December 31, 1951. * * *"

It will be noted that by such section the intent of the General Assembly is clarified. That the General Assembly did not intend for the old municipal court sections dealing with elections to particular municipal courts be applicable to all nominations and elections in 1951 is apparent from the fact that, in effect, the General Assembly provided that the old laws should govern where a candidate is nominated in the year 1951 (a) in a regularly held primary election held prior to the effective date of the Act, (b) by petition properly circulated and filed prior to the effective date of the Act, and (c) by petition properly circulated prior to and filed subsequent to the effective date of the Act. The apparent purpose of Section 1617 was to permit the completion of all nominating proceedings begun before the effective date of the Act, but to require compliance with Section 1587 as to all other nominations in 1951. The apparent purpose of Section 2 of the Act in not expressly repealing, until Decembre 31, 1951, the section dealing with the various separate municipal courts was to prevent a complete void between the effective date of the Act and the institution of the new courts on January 1, 1952. To have repealed all of such sections before then would be to abolish the power of all presently existing municipal courts.

Another consideration which leads me to the conclusion that Section 1587, General Code, is controlling as to the method of nomination and election of municipal court judges in 1951, except as otherwise provided in Section 1617, General Code, is the well-established principle that in case of conflict between existing statutes, the provisions of the statute of later date of passage are governing.

I conclude, therefore, that the nomination and election of judges of the Cleveland Municipal Court are governed by the provisions of Section 1587, General Code, except as otherwise provided in Section 1617, General Code, and are not governed by the provisions of Section 1579-5, General Code.

In conclusion, it is my opinion that:

1. · Under Amended Senate Bill No. 14, enacted by the 99th General

Assembly and effective on June 13, 1951, the manner of nominating and electing judges of municipal courts is governed by the provisions of Section 1587, General Code, except that, under Section 1617, General Code, candidates may be nominated in the year 1951 in accordance with the provisions of law applicable to the several municipal courts designated for repeal by such Act, but only if (a) nominated at a regularly held primary election held prior to the effective date of such Act, (b) nominated by petition properly circulated and filed prior to the effective date of such Act, or (c) nominated by petition properly circulated prior to and filed subsequent to the effective date of such Act.

2.   Under the provisions of Section 1587, General Code, candidates for municipal court judges shall be nominated in the manner provided for judges of the common pleas court, Sections 4785-67 to 4785-89, inclusive, General Code, and Sections 4785-91 to 4785-94, inclusive, General Code, except that in a municipality operating under a city charter, candidates shall be nominated in conformity to the provisions of such city charter if provisions are made therefor, or at any municipal primary election which may be provided in such charter.

3.   The charter of the City of Cleveland, containing no provisions governing the nomination of judges of the municipal court, does not fall within the scope of that portion of Section 1587, General Code, which provides that municipal court judges "shall be nominated in conformity to the provisions of such city charter if provisions are made therefor."

4.   The charter of the City of Cleveland, by providing for a primary election on the fifth Tuesday before the regular municipal election, does fall within the scope of that portion of Section 1587, General Code, which provides that candidates for municipal court judges shall be nominated "at any municipal primary election which may be provided in such charter;" however, except as to the time of such primary election, the other requirements of Sections 4785-67 to 4785-89, inclusive, General Code, applicable to the nomination of common pleas judges by primary election are controlling and the provisions of such city charter, except as to the time of such primary election, are not applicable.

<div align="center">Respectfully,</div>

<div align="center">C. WILLIAM O'NEILL
Attorney General</div>