

487.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND McAULIFFE BROTHERS, MARYSVILLE, OHIO, FOR PLUMBING, HEATING AND VENTILATING CONTRACTS FOR COTTAGE, OHIO HOSPITAL FOR EPILEPTICS, GALLIPOLIS, OHIO, AT AN EXPENDITURE OF \$10,415.00—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

COLUMBUS, OHIO, June 7, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for and on behalf of the Department of Public Welfare, and McAuliffe Brothers, of Marysville, Ohio. This contract covers the construction and completion of combined plumbing, and heating and ventilating contracts for cottage for patients, Ohio Hospital for Epileptics, Gallipolis, Ohio, and calls for an expenditure of ten thousand four hundred and fifteen dollars (\$10,415.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has also been submitted a contract bond upon which the United States Fidelity and Guaranty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

In this connection, it will be noted that the award was made prior to January 1, 1929, and that the original appropriation lapsed before such contract was approved by the Attorney General. However, it will be further noted that the 88th General Assembly, in Amended House Bill No. 203, reappropriated such funds and authorized the expenditure of money for such purposes with the consent and approval of the Controlling Board, which has been obtained.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

488.

SENATE BILL NO. 55—PROVIDING ADDITIONAL JUDGES FOR AKRON MUNICIPAL COURT—SPECIFIC QUESTIONS RELATING TO THEIR ELECTION DISCUSSED.

SYLLABUS:

The additional judges of the municipal court of Akron, two in number, provided for by Amended Senate Bill No. 55 passed by the 88th General Assembly, April 6, 1929, are to be elected at the regular election for municipal officers held in said city

on the 5th day of November, 1929; and candidates for said offices may be nominated at the primaries for municipal candidates to be held on the 13th day of August, 1929, upon declarations of candidacies therefor filed with the board of deputy state supervisors and inspectors of elections of Summit County on or before June 14th, 1929. If no declarations of candidacies for nominations to said offices are filed on or before June 14th, 1929, the board of deputy state supervisors and inspectors of elections of said county should leave two blank spaces upon the ballot to be voted at said primary election so that electors may write in the names of qualified persons whom they may desire to nominate for said offices.

COLUMBUS, OHIO, June 7, 1929.

HON. DON. ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication, enclosing a communication from the clerk of the Board of Deputy State Supervisors and Inspectors of Elections of Summit County, Ohio, in which an opinion is requested on certain questions therein stated. Said communication reads as follows:

“In regard to the additional municipal judgeships in the city of Akron created by the recent legislature, the following questions arise and this board requests your opinion on same:

1. Will there be an election for municipal judges in Akron this November?
2. If so, for how long a term?
3. Can Declarations of Candidacy be filed by June 14th?
4. Should we provide a space on primary ballot for this office if no declaration is filed?
5. Will your opinion to the above questions be applicable whether or not the Governor makes the appointments?”

The legislation referred to in the communication above quoted is Amended Senate Bill No. 55 passed by the 88th General Assembly, April 6, 1929, and which provides as follows:

“Section 1. That Section 1579-501 of the General Code be amended to read as follows:

Sec. 1579-501. The court shall consist of five judges, all of whom shall be qualified electors and residents of the city of Akron, and shall have been admitted to the practice of law in the State of Ohio for at least five years. Each judge shall receive a salary of six thousand dollars per annum, payable in monthly installments, two thousand dollars of which shall be paid out of the treasury of Summit County, and four thousand dollars of which shall be paid out of the treasury of the city of Akron. The vacations of the respective judges shall not exceed thirty days in any year and shall be at such times as may be fixed by the judges, and shall be so fixed that at least three judges shall be in attendance at all times.

Section 2. That existing Section 1579-501 of the General Code be, and the same is hereby repealed.”

This act was approved by the Governor, April 25, 1929, filed in the office of the Secretary of State, April 29, 1929, and goes into effect July 28, 1929.

Original Section 1579-501, General Code, was enacted as a part of an act passed by the 83rd General Assembly, April 3, 1919, 108 O. L. Part I, 516, entitled an act to

establish a municipal court in and for the city of Akron. Said Section 1579-501, General Code, was amended by an act passed May 12, 1921, 109 O. L. 537. As originally enacted, and as amended and now in force, said Section 1579-501, General Code, provides that said municipal court shall consist of three judges each of whom shall receive a salary of \$4,500 per annum, \$1,500 of which shall be paid out of the treasury of Summit County, and \$3,000 of which shall be paid out of the treasury of the city of Akron.

Section 1579-502, General Code, likewise enacted as a part of the act above referred to, establishing the municipal court of Akron, provides as follows:

"The judges shall be nominated and elected by the electors of the city of Akron at municipal elections in the same manner as judges of the court of common pleas are nominated and elected. The first election of judges shall be held at the regular municipal election in the year one thousand nine hundred and nineteen. The term of office of each judge shall be four years, commencing on the first day of January next after his election and continuing until his successor is elected and qualified."

It is obvious that the provision in Section 1579-502, General Code, that the first election of judges shall be held at the regular municipal election in the year 1919 refers to the election of judges, three in number, originally provided for by Section 1579-501, General Code, as enacted in the act establishing said municipal court. The only provisions of Section 1579-502, General Code, applicable to the nomination and election of the additional judges, two in number, provided for by Section 1579-501, General Code, as amended by the last General Assembly, is the provision that the judges shall be nominated and elected by the electors of the city of Akron at municipal elections in the same manner as judges of the Court of Common Pleas are nominated and elected. Under the provisions of Section 5054-1, General Code, the same being a part of the non-partisan judiciary act, 102 O. L., page 5, the election of judges of the particular courts therein named, "and judges of all other courts which are or may be established by law" shall be governed and controlled by the general election laws of the state except as is otherwise provided by said act (Sections 5054-1 to 5054-5, General Code).

Under the provisions of Section 1 of Article XVII of the State Constitution elections for all elective offices other than those for state and county offices are required to be held on the first Tuesday after the first Monday in November in the odd numbered years. In line with this constitutional provision Section 4836, General Code, provides that all elective municipal officers and judges and clerks of police courts shall be chosen on the first Tuesday after the first Monday in November in the odd numbered years.

Reading the provisions of Section 1579-502, General Code, in connection with the constitutional and statutory provisions just noted it follows that the additional judges, two in number, provided for by Amended Senate Bill No. 55, are to be elected on the first Tuesday after the first Monday of an odd numbered year after the effective date of said act; and in the absence of any provision in said act fixing the time when the additional judges therein provided for are to be elected, the answer naturally suggested would be that said judges are to be elected at "the first election occurring appropriate to that particular office, under the law regulating elections to that office." *State vs. Barbee*, 45 O. S. 347, 349; *Sawyer vs. State, ex rel.* 45 O. S. 343. This would be the municipal election to be held in the city of Akron on the first Tuesday after the first Monday in November, 1929.

By way of specific answer to your first question, therefore, I am of the opinion

that the additional judges provided for by Amended Senate Bill No. 55 are to be elected by the duly qualified electors of the city of Akron on Tuesday, November 5th, 1929.

By way of answer to the second question submitted, it may be noted that under the provisions of Section 1579-502, General Code, above quoted, such additional judges will each be elected for a term of four years commencing on the first day of January, 1930, and continuing until their respective successors are elected and qualified.

Touching the third question above presented, it may be observed that the conclusion here reached with respect to the first question submitted to the effect that the additional judges provided for by this act of the 88th General Assembly are to be elected at the municipal election to be held on the first Tuesday after the first Monday in November, 1929, compels the further conclusion that candidates for such offices may be nominated at the primaries for municipal candidates to be held on the second Tuesday in August, 1929. Under the provisions of Section 4963, General Code, primaries to nominate candidates for municipal offices are required to be held in each county at the usual polling places on the second Tuesday in August in the odd numbered years, while under the provisions of Section 4948, General Code, the term "primary" is required to be construed as meaning the primary election provided to nominate candidates to be voted for at the ensuing election. It follows from this, and by way of specific answer to your third question, that nominations for such additional judgeships may be made by the payment of the proper fees and by the filing of declarations of candidacy and certificates with the board of deputy state supervisors and inspectors of Summit County at least sixty days before the day for holding the primary election, as provided for by Section 4969, General Code. Inasmuch as said primary election will be held on August 13, 1929, declarations of candidacy for nominations for such offices are required to be filed by June 14, 1929.

In this connection it is recognized that the time above fixed as the last day upon which declarations of candidacies for nominations for said additional judgeships can be filed, is before the effective date of the act providing for such additional judgeships. In my opinion this is not a fact of any consequence, for the reason that aside from the exercise of the right of referendum reserved to the people with respect to the act here in question, this act will be in effect at the time when the judges provided for by said act are to be elected; and it is the right of the electors to elect these additional judges at the election on the first Tuesday after the first Monday in November, 1929, which fixes the prior rights with respect to the nomination of candidates for such office and all declarations of candidacies therefor.

Touching the fourth question presented in the enclosed communication from the board of deputy state supervisors and inspectors of elections of Summit County, it may be observed that under the provisions of Section 4970, General Code, the name of no candidate for office shall be printed upon an official ballot used at any primary unless prior to the beginning of the period limited by law, a declaration of candidacy and certificate shall have been filed with the board of deputy state supervisors and inspectors of elections in his behalf in the form prescribed by said section of the General Code. However, Section 4967, General Code, provides, among other things, that all statutory provisions relating to general elections shall, so far as applicable, apply to and govern primary elections. This suggests a consideration of the provisions of Section 5025, General Code, as dispositive of the question submitted. Said Section 5025, General Code, so far as the same is applicable to the consideration of this question provides:

"If upon a ticket there is no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names if they were printed thereon with the blank spaces herein provided for, shall be left."

It will be noted that by the provisions of this section if on a ticket there is no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names if they were printed thereon, shall be left on the ticket. By way of specific answer to the fourth question, therefore, I am of the opinion that if there are no declarations of candidacy for nominations for said judgeships, two blank lines should be left on each of the ballots voted at said primary election; and that said ballots should otherwise be prepared so as to conform to law.

In this connection it may be well to note Section 4984-1, General Code, which provides that no nomination in such case shall be made for an office by writing in the name of the candidate unless the name of the person attempted to be nominated and receiving the highest number of votes for said office shall have been written on at least eight per cent of all the ballots which have been voted at such primary election.

With respect to the fifth question submitted in the communication from the board of deputy state supervisors and inspectors of elections it may be observed that no question is presented in said communication with respect to the power and authority of the Governor on and after the effective date of the act providing for these additional judges to make appointments of qualified persons to such offices, and no opinion is here expressed with respect to this question. It may be observed, however, that nothing that the Governor may do in this matter can in any way affect the conclusions reached in this opinion with respect to the nomination and election of the judges who are to be elected for the four-year terms beginning January 1, 1930. If it should appear that the Governor is authorized to make appointments to said office on and after the effective date of the act creating said additional offices, and such appointments are made by him, this might perhaps authorize the election of judges for the short terms in said offices existing from and after the election date in November, 1929, to January 1, 1930. No opinion, however, is intended to be expressed on this question.

Respectfully,

GILBERT BETTMAN,
Attorney General.

489.

BOND—COUNTY OFFICERS—PREMIUMS DUE AFTER JULY 18, 1927,
PAID BY COMMISSIONERS—HOUSE BILL NO. 40, 87TH GENERAL
ASSEMBLY NOT RETROACTIVE.

SYLLABUS:

1. *County commissioners were unauthorized to pay refunds upon the premiums on bonds of county officers which were paid prior to the effective date of the law authorizing the payment of premiums of surety bonds for county officers as enacted in 112 Ohio Laws.*

2. *In the event that such officers had new bonds executed after the effective date of said law for the unexpired portion of the term of such officers, which said bonds were duly approved by the county commissioners, the premium thereon should be paid by the county commissioners.*

3. *In those cases in which bonds had been executed prior to the enactment of the law, and premiums accrued thereon after the effective date of said law, for a period of the official term to run after the effective date of said law, such renewals should*