

MARCH 9, 1951.

HON. ALFRED E. DRISCOLL,
Governor of New Jersey,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 11.

DEAR GOVERNOR:

You have requested a formal opinion as to which of the two lists of nominations for Democratic appointees to county election boards, submitted by Congressman Hart and Senator O'Mara, respectively, should be recognized pursuant to R. S. 19:6-18, which provides, *inter alia*:

"The chairman of the State committee of each of such two political parties shall during the month of February in each year, in writing, nominate one person residing in each county, duly qualified, for member of the county board in and for such county."

In your request for this opinion, it is stated that Senator Edward J. O'Mara has been, by letter, certified by Charles Quinn, Secretary of the Democratic State Committee, to have been duly elected Chairman of the Democratic State Committee and that Congressman Edward J. Hart, by telegram, has advised that he is the Chairman of the Democratic State Committee. Briefs have been received from Congressman Hart and Senator O'Mara and an open hearing has been held, at which oral argument was made and additional facts presented.

R. S. 19:5-4 states: "The annual meeting of the State Committee shall be held on the first Tuesday after such primary election . . . at which annual meeting the members of the committee in the year in which a Governor is to be elected, shall elect some suitable person as chairman to hold office for four years, or until his successor is elected."

After the primary election of 1949, Edward J. Hart was elected for the four-year statutory term, which will not expire until 1953. His election to the office of Chairman of the Democratic State Committee has been heretofore recognized by you by the acceptance of his nomination of persons for appointment to the membership of the county election boards.

The Constitution of the State Committee of the Democratic Party, adopted January 9, 1950, by Article IV. "MEETINGS" provides:

"The State Committee shall meet annually immediately prior to the State Convention defined in Revised Statutes, section 19:5-6, and it shall be the policy that from time to time special meetings shall be had at the call of the chairman or at the call of eleven or more of the members on petition in writing. Meetings shall be held only on notice given in writing seven or more days from the date of sending of notice unless the chairman shall declare, in writing, an emergency to exist and summons the State Committee by written notice delivered not less than 48 hours before such call."

On February 1, 1951, the following telegram was sent to the members of the State Committee:

"An important dinner and business meeting of the State Committee will be held at Hotel Hildebrecht, Trenton, on Monday, February fifth, at six-thirty P. M. to discuss the party situation and any other business that may come before the meeting.

(Signed) CHARLES QUINN,
Secretary."

The minutes of this meeting recite that Chairman Hart was absent. The discussion at the meeting is set forth in the minutes. After the discussion, a motion was carried "that Edward J. Hart be removed as State Chairman because of his persistent failure to perform the duties required by law and the Constitution and By-Laws of the State Committee, and because he has wilfully and wantonly refused and neglected to discuss with the State Committee, at any time, campaign strategy, party policy, patronage, conditions of the party, or anything for the good of the Democratic Party."

After the passage of this motion, the minutes read as follows:

"Mrs. Hawkins then nominated, seconded by Mr. Ewart, Edward J. O'Mara for the office of Chairman of the State Committee of the Democratic Party in New Jersey. No other nominations were made. Mr. O'Mara was then elected Chairman."

The purpose of the meeting on February 5th was not set forth in the notice. The minutes do not disclose that Congressman Hart was apprised of the charges to be made against him or that he was afforded the opportunity of a hearing. To determine the issue raised in your request for this opinion it is not necessary to decide the legal questions pertaining to the form of the petition calling the meeting, the sufficiency of the notice of the meeting, and the propriety of the action on the charges against Congressman Hart, in his absence and without notice to him.

The former New Jersey Supreme Court, in *Driscoll vs. Sakin*, 121 N. J. L. 225, affirmed 122 N. J. L. 414 said:

"The act creating the office (member of county election board) provides for the nomination by the State Chairman of the two most powerful political parties of two of the members of the board. To insure a democratic form of government, it is necessary that there be at least two strong political parties holding different views upon political questions. Only as a result of public discussion can a wise policy be adopted. To insure honest elections it is essential that the county board be made up at least by the choice of both powerful political parties."

In the same case, which was followed by *Haines vs. Appleton*, 123 N. J. L. 492, the delegation to the State Chairman of the nomination of the members of the county boards was held to be constitutional. The respective State Chairmen of the two major political parties are vested with authority, in the words of the Court in *Driscoll vs. Sakin, supra*, to "act in matters of high public interest, and . . . are subject to constitutional restraint. . . ."

As was said in *Nixon vs. Condon*, 286 U. S. 73:

“. . . when those agencies (State political organizations) are invested with an authority independent of the will of the association in whose name they undertake to speak, they become to that extent the organs of the State itself, the repositories of official power.”

The nomination of the members of the county election boards and the election of the State Chairman are controlled by statute. The determination whether you should accept the nominations submitted by Congressman Hart or Senator O'Mara depends upon the construction of the statute. R. S. 19:5-4 reads as follows:

“At the primary for the general election of the year in which a Governor is to be elected, one male and one female member of the State committee of each of the political parties shall be elected in each county. The male receiving the highest number of votes among the male candidates and the female receiving the highest number of votes among the female candidates shall be declared elected.

“The members of the State committee of each of the political parties shall take office on the first Tuesday following their election, on which day the terms of all members of such committees theretofore elected shall terminate. The annual meeting of the State committee shall be held on the first Tuesday after such primary election at the hour and place to be designated in a notice in writing to be mailed by the chairman of the outgoing State committee to each member-elect, at which annual meeting the members of the committee in the year in which a Governor is to be elected, shall elect some suitable person as chairman to hold office for four years, or until his successor is elected. The committee shall have power to adopt a constitution and by-laws for its proper government. The chairman shall preside at all meetings of the committee and shall perform all duties required of him by law and the constitution and by-laws of such committee.

“A member of a State committee of any political party may resign his office to the committee of which he is a member, and upon acceptance thereof by the committee a vacancy shall exist. A vacancy in the office of a member of the State committee of any political party, howsoever caused, shall be filled for the unexpired term by the members of the county committee of such political party in the county in which the vacancy occurs.

“Members of the State committee shall serve for four years or until their successors are elected. The State committee shall choose its chairman and the member or members of the national committee of its political party.”

The statute clearly provides that the term of the chairman shall be “for four years or until his successor is elected.” The statute has as its source chapter 187, of the Laws of 1930. It is significant that R. S. 19:6-5 which has its source in the same act provides that members of district election boards “may be summarily removed from office, with or without cause.”

R. S. 19:6-8 provides:

“The terms of office of the members of the district boards shall be for one year or until their successors are appointed . . .”

When the identical words were used by the Legislature in fixing the term of members of the district boards, the words "or until their successors are appointed" evidently were not considered to empower a summary removal since the Legislature deemed it necessary to specifically provide by statute that a member might summarily be removed from office with or without cause.

The Supreme Court of this State in *Ringle vs. Republican State Committee*, 122 N. J. L. 435, in construing the same words of the act relating to the term of members of the State committee, as it was before the amendment of 1948, said:

"The statute, R. S. 19:5-4, provides for a term of office of three years 'or until a successor is elected,' and in case of vacancy, howsoever caused, to be filled by members of the county committee in the county where the vacancy occurs.

"We conclude that the voiding of the election of the successor of relator caused a vacancy in the office, R. S. 19:3-25; and that relator was thus continued in office until the election of his successor."

Thus the Legislature has indicated that the words "or until their successors are appointed" did not carry the power of summary removal with or without cause and the Supreme Court has construed "or until a successor is elected" to authorize the incumbent to "hold-over" until the election of his successor.

It is not necessary to discuss the effect of the sentence "the committee shall have power to adopt a constitution and by-laws for its proper government" since the constitution and by-laws could not prevail against the provisions of the statute which are so definite and clear. Moreover there is nothing in the constitution of the Democratic State Committee to authorize what was done in this instance.

There has been no decision submitted to me in either of the briefs, and research has disclosed no decision of the courts of this State which construes the statute to give to the State committee power to remove the chairman for cause. Until a court of competent jurisdiction construes the statute otherwise, its certain words must control.

Since the statute fixes the specific term of four years and does not provide for the removal of the State Chairman, I advise you that you should accept and appoint the nominations for members of the county boards of elections submitted by Edward J. Hart who was duly elected as State Chairman, who has been recognized as such in the acceptance of nominations heretofore made by him, and who is now exercising the statutory authority vested in that office.

Respectfully yours,

THEODORE D. PARSONS,
Attorney General.