

Joint Resolutions & the Revised Code (5-8-2023)

Question: Can SJR 2, which was approved by the Ohio Senate and is pending in the Ohio House, be amended to expand the August 8, 2023, special election in order to place SJR 2 on that ballot?

Answer: No.

Although the Ohio Constitution permits the General Assembly to schedule votes on joint resolutions for general elections, primary elections, and special elections, *see* Art. XVI, sec.1, Ohio statutory law, as recently amended, does not permit joint resolutions to be voted upon at the special election scheduled for August 8, 2023. That is why SB 92 was proposed to amend the Ohio Revised Code.

That legislation, however, has not passed, but there may be plans to incorporate language in the joint resolution to expand the issues that can be voted on at the August 8, 2023, special election and thus to permit the joint resolution to be placed on that ballot.

Such an expanded joint resolution, however, violates a basic principle of Ohio law, namely that joint resolutions may not be used to adopt statutory provisions. Indeed, in 1897 the Ohio Supreme Court in *State ex rel. Attorney General v. Kinney* (1897), held that “[*t*he statute law of the state can neither be repealed nor amended by a joint resolution of the general assembly.” (emphasis added).

It would be a different case had ORC 3501.01 not been amended last year to limit the issues that can be voted upon in special elections in August

H. 458 (134th GA) made the following change in ORC 3501.01(D):

Special election" means any election other than those elections defined in other divisions of this section. A special election may be held only on the first Tuesday after the first Monday in May, ~~August~~, or November, on the first Tuesday after the first Monday in August in accordance with section 3501.022 of the Revised Code,

As also amended in H. 458, ORC 3501.022 does not authorize an August special election to vote on joint resolutions.

S.B. 92 (135th GA), as passed by the Senate, however, would add the following new language to ORC 3501.022:

(B) A special election may be held on that day for the purpose of submitting a statewide ballot issue to the voters under Section 1 of Article XVI, Ohio Constitution.

Background of *Kinney*

In 1896, the General Assembly included in a joint resolution calling for a constitutional convention language “directing the mode in which they [i.e., the voters] shall vote thereon” as well as a “provision authorizing the deputy state supervisors of elections to determine how the official ballot shall in this regard be printed, and . . . [a] provision that the convention shall not sit more than 90 days, and that the pay of its members shall not exceed five dollars each per day” The court held that those provisions were void, and it further held that the whole [joint] resolution was void.

Application to SJR 2

Ohio law does not currently permit a vote on a joint resolution at the August 8, 2023, election, and to change this requires the adoption of a statutory change by the General Assembly. And as the *Kinney* decision makes clear, this change cannot be made in a joint resolution. Thus, SJR 2 may not be revised to include statutory-like language expanding the items that may be placed on the August 8, 2023, ballot.