August 10, 2006

The Honorable J. Kenneth Blackwell
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

SYLLABUS: 2006-035

1. A vacancy created in a party nomination for the office of United States representative when a party nominee withdraws his candidacy after the eightieth day before the general election may be filled by appointment in accordance with R.C. 3513.31(B).

2. R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from being appointed pursuant to R.C. 3513.31(B) to fill a vacancy in a party nomination for the office of United States representative.

3. R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from running as a candidate in a special election held pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

August 10, 2006

OPINION NO. 2006-035

The Honorable J. Kenneth Blackwell
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

Dear Secretary of State Blackwell:

Your office has requested an opinion about the application of R.C. 3513.04, R.C. 3513.31, and R.C. 3513.312 when a person who was nominated at a primary election to be his party's candidate for election to a federal office decides to withdraw his candidacy in advance of the general election to be held in November 2006.

A person nominated at the primary election in May 2006 to be his party's candidate for election to the office of United States representative has decided to withdraw his candidacy.[1] The candidate's withdrawal will create a vacancy in the party nomination for that office. A person who was unsuccessful in seeking a party nomination (which was sought by declaration of candidacy, *see* note 2, *infra*) at the primary election in May 2006 to be the party's candidate for a statewide office is under consideration to replace the person who has decided to withdraw his candidacy for election to the office of United States representative.

With respect to the foregoing situation, the following questions are presented:

1. Does R.C. 3513.312 prohibit filling by appointment pursuant to R.C. 3513.31 a vacancy created in a party nomination for the office of United States representative when the party nominee withdraws his candidacy after the eightieth day before the general election?

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[1] The person who has decided to withdraw his candidacy for election represents Ohio's eighteenth congressional district. The eighteenth congressional district has as its territory all of Carroll County, Coshocton County, Guernsey County, Harrison County, Hocking County, Holmes County, Jackson County, Knox County, Morgan County, Muskingum County, Tuscarawas County, and Vinton County, and parts of Athens County, Belmont County, Licking County, and Ross County. R.C. 3521.01(A)(18).

2. Does R.C. 3513.04 preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from being appointed pursuant to R.C. 3513.31, or running as a candidate in a special election held pursuant to R.C. 3513.312, to fill a vacancy in a party nomination for the office of United States representative?

Methods of Filling a Vacancy in a Party Nomination Under R.C. 3513.31 and R.C. 3513.312

R.C. 3513.312 authorizes holding a special election for the purpose of selecting a person to fill a vacancy in a party nomination that is created when a candidate for the office of United States representative either withdraws his candidacy or dies prior to the general election within the time frame specified therein. This statute provides as follows:

> (A) Notwithstanding [R.C. 3513.31], if a person nominated in a primary election as a party candidate for the office of representative to congress for election at the next general election withdraws as such candidate prior to the eightieth day before the day of such general election, or dies prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created shall be filled by a special election held in accordance with [R.C. 3513.312(B)].
>
> (B) The boards of elections of all the counties contained in whole or in part within the congressional district in which a vacancy occurs as described in [R.C. 3513.312(A)] shall, as soon as reasonably practicable, conduct the special election and give notice of the time and places of holding such election as provided in [R.C. 3501.03]. Such election shall be held and conducted and returns thereof made as in the case of a primary election.
>
> (C) The state shall pay all costs of any special election held pursuant to this section.

R.C. 3513.31 addresses, *inter alia*, the appointment of a person to replace a candidate, previously nominated in a primary election or by petition, who withdraws his candidacy or dies prior to the general election, or is disqualified as a candidate under R.C. 3513.052. The statute confers the power to make such an appointment upon the relevant party committee and specifies the time within which the appointment must be made.

Unlike R.C. 3513.312, the application of R.C. 3513.31 in the foregoing circumstance is not limited to vacancies created in a party nomination for a specific office, whether established under federal law or state law. Rather, the power of appointment conferred by R.C. 3513.31 may be exercised with respect to candidacies that are to be submitted to the electors of (1) the entire state, R.C. 3513.31(A); (2) a district comprised of more than one county but less than all the counties of the state, R.C. 3513.31(B); (3) a county, R.C. 3513.31(C); (4) a district within a county, R.C. 3513.31(D); or (5) a subdivision within the county, R.C. 3513.31(E).

The situation described to us comes within the purview of division (B) of R.C. 3513.31 (see note 1, *supra*):

> If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district comprised of more than one county but less than all of the counties of the state, withdraws as that candidate or is disqualified as that candidate under [R.C. 3513.052], the vacancy in the party nomination so created may be filled by a district committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose. The district committee shall consist of the chairperson and secretary of the county central committee of such political party in each county in the district. The district committee shall be called by the chairperson of the county central committee of such political party of the most populous county in the district, who shall give each member of the district committee at least two days' notice of the time, place, and purpose of the meeting. If a majority of the members of the district committee are present at the district committee meeting, a majority of those present may select a person to fill the vacancy. The chairperson and secretary of the meeting shall certify in writing and under oath to the board of elections of the most populous county in the district, not later than four p.m. of the seventy-sixth day before the day of the general election, the name of the person selected to fill the vacancy. The certification must be accompanied by the written acceptance of the nomination by the person whose name is certified. A vacancy that may be filled by an intermediate or minor political party shall be filled in accordance with the party's rules by authorized officials of the party. Certification must be made as in the manner provided for a major political party.

We have been asked to consider the situation in which a party nominee for the office of United States representative withdraws his candidacy after the eightieth day before the general election to be held in November 2006. Pursuant to the plain language of R.C. 3513.312(A), a vacancy in a party nomination for the office of United States representative shall be filled by special election if the person who was so nominated withdraws his candidacy "prior to" the eightieth day before the general election. Accordingly, if a party nominee for the office of United States representative withdraws his candidacy *after* the eightieth day before the general election, R.C. 3513.312 does not apply, which means that no special election may be held to fill the vacancy created by the withdrawal of the candidacy.

The question, therefore, is whether the vacancy created by withdrawal of the candidacy after the eightieth day before the general election may be filled in accordance with R.C. 3513.31(B). For the following reasons, it is our opinion that a vacancy created in a party nomination for the office of United States representative when a party nominee withdraws his

candidacy after the eightieth day before the general election may be filled by appointment in accordance with R.C. 3513.31(B).

The General Assembly has not included any language in either R.C. 3513.31 or R.C. 3513.312 expressly declaring that the special election authorized by R.C. 3513.312 shall be the sole and exclusive method of filling a vacancy in a party nomination for the office of United States representative that is caused by the nominee's withdrawal of his candidacy. From this fact alone it is logical to conclude that the appointment process authorized by R.C. 3513.31(B) may be used to fill such a vacancy. Had the General Assembly intended to foreclose the use of R.C. 3513.31(B)'s appointment process to fill a vacancy in a party nomination for the office of United States representative, and make R.C. 3513.312's special election the exclusive way of filling that vacancy, it would have been a simple matter for the legislative body to include language to that effect within one statute or the other. That the General Assembly did not choose to do so demonstrates that the appointment process described in R.C. 3513.31(B) may be used to fill the vacancy in lieu of the special election authorized by R.C. 3513.312.

This conclusion draws further support from the plain language of R.C. 3513.31(B) authorizing an appointment to fill a vacancy in a party nomination for a candidacy that "is to be submitted to the electors of a *district* comprised of more than one county but less than all of the counties of the state." (Emphasis added.) This unambiguous language applies to a candidacy for the office of United States representative, and to this candidacy in particular, *see* note 1, *supra* (listing those twelve whole counties and parts of four counties that comprise Ohio's eighteenth congressional district, as set forth in R.C. 3521.01(A)(18)).

In addition, no language appears in either R.C. 3513.31 or R.C. 3513.312 from which it is reasonable to infer that holding a special election pursuant to R.C. 3513.312 is the exclusive way of filling a vacancy in a party nomination for the office of United States representative that is caused by the nominee's withdrawal of his candidacy. Rather, the language of these two statutes demonstrates quite the opposite, namely, that an appointment to fill the vacancy may be made pursuant to R.C. 3513.31(B) when the special election process authorized by R.C. 3513.312 is unavailing because the withdrawal of candidacy occurs after the eightieth day before the general election. The express reference to R.C. 3513.31 in the first sentence of R.C. 3513.312 indicates that these two statutes are to be applied in a way that permits their provisions to operate fully and harmoniously. *State ex rel. Comm. for the Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation v. City of Lakewood*, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362, at ¶20 (2003) (it is "a fundamental rule of statutory construction that statutes relating to the same subject matter should be construed together" and "[i]n construing such statutes *in pari materia*, they should be harmonized so as to give full application to the statutes" (quoting *State ex rel. Thurn v. Cuyahoga Cty. Bd. of Elections*, 72 Ohio St. 3d 289, 294, 649 N.E.2d 1205 (1995))); *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995 (1995) ("[a]ll statutes relating to the same general subject matter must be read *in pari materia*, and in construing these statutes *in pari materia*, this court must give them a reasonable construction so as to give proper force and effect to each and all of the statutes"); *accord State ex rel. Mirlisena v. Hamilton Cty. Bd. of Elections*, 67 Ohio St. 3d 597, 599, 622 N.E.2d 329

(1993). Accordingly, R.C. 3513.31(B) must be permitted to operate and must be given full effect when a special election cannot be held under R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative. *See generally State ex rel. Ruehlmann v. Luken*, 65 Ohio St. 3d 1, 3, 598 N.E.2d 1149 (1992) ("[i]n general, election statutes must be strictly complied with, … [n]evertheless, courts must avoid unduly technical interpretations that impede the public policy favoring free, competitive elections" (citations omitted)).

The General Assembly enacted R.C. 3513.312 in 1985, and it must be presumed to have done so with full knowledge of what it enacted previously in R.C. 3513.31. *See* 1985-1986 Ohio Laws, Part II, 2761, 2828 (Am. Sub. H.B. 238, eff. July 1, 1985); *State v. Thompson*, 102 Ohio St. 3d 287, 2004-Ohio-2946, 809 N.E.2d 1134, at ¶18 (2004) (as stated in *State v. Conyers*, 87 Ohio St. 3d 246, 250, 719 N.E.2d 535 (1999), a court "'must presume that the General Assembly is aware of previously enacted legislation'"). *Accord State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235 (1979); *Charles v. Fawley*, 71 Ohio St. 50, 53, 72 N.E. 294 (1904); *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993 (1900). In this instance, permitting an appointment under R.C. 3513.31(B) to fill a vacancy in a party nomination for the office of United States representative that is created by a candidacy's withdrawal after the eightieth day before the general election will contravene neither the language nor the spirit of R.C. 3513.312. Such appointment must be made, however, in accordance with the time frame set forth in R.C. 3513.31(B) (certification of the person selected to fill the vacancy shall be made in writing and under oath to the board of elections of the most populous county in the district "not later than four p.m. of the seventy-sixth day before the day of the general election").

R.C. 3513.04 Does Not Preclude an Unsuccessful Candidate in a Primary Election from Becoming a Candidate in the General Election Pursuant to R.C. 3513.31(B) or R.C. 3513.312

The second question of your office asks whether R.C. 3513.04 precludes a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from being appointed pursuant to R.C. 3513.31(B), or running as a candidate in a special election held pursuant to R.C. 3513.312, to fill a vacancy in a party nomination for the office of United States representative when the party nomination is for candidacy at the following general election. For the reasons that follow, R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from being appointed pursuant to R.C. 3513.31(B) to fill a vacancy in a party nomination for the office of United States representative. Further, R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from running as a candidate in a special election held pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative.

R.C. 3513.04 states, in pertinent part:

> *No person who seeks party nomination for an office or position at a primary election by declaration of candidacy* or by declaration of intent to be a write-in candidate and no person who is a first choice for president of candidates seeking election as delegates and alternates to the national conventions of the different major political parties who are chosen by direct vote of the electors as provided in this chapter *shall be permitted to become a candidate by nominating petition or by declaration of intent to be a write-in candidate at the following general election for any office* other than the office of member of the state board of education, office of member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee. (Emphasis added.)

R.C. 3513.04 thus prohibits any person who unsuccessfully sought a party nomination for a statewide office at the primary election in May 2006 from then seeking election at the following general election for the office of United States representative (or any other office with certain exceptions) "by nominating petition or by declaration of intent to be a write-in candidate."[2] *See* 1993 Op. Att'y Gen. No. 93-052 at 2-252.

R.C. 3513.04 does not, however, bar the person from becoming a candidate for the office of United States representative at the following general election through means other than "by nominating petition or by declaration of intent to be a write-in candidate." *See State ex rel. Gottlieb v. Sulligan*, 175 Ohio St. 238, 240, 193 N.E.2d 270 (1963) ("an examination of [R.C. 3513.04] reveals that by its very terms its operation is confined to those situations where a candidate seeks a place on the ballot either by a write-in vote or by nominating petition"). *See generally State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620 (1998) ("[u]nder the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded"), *cert denied*, 526 U.S. 1145 (1999). Accordingly, R.C. 3513.04 does not apply unless the person's nomination as a candidate pursuant to R.C. 3513.31(B) or R.C. 3513.312 constitutes selection "by nominating petition or

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[2] In light of your questions, it is clear that the person who sought the party nomination for statewide office (lieutenant governor) did so by declaration of candidacy. *See generally* R.C. 3513.04 (candidates for party nominations to state offices, for which party nominations are provided by law, shall have their names printed on the official primary ballot by filing a declaration of candidacy and paying the fees specified for the office under R.C. 3513.10, except that the joint candidates for party nomination to the offices of governor and lieutenant governor shall, for the two of them, file one declaration of candidacy); R.C. 3513.05 ("[w]hen the offices are to be voted for at a primary election, persons desiring to become joint candidates for the offices of governor and lieutenant governor shall, not later than four p.m. of the seventy-fifth day before the day of the primary election, comply with [R.C. 3513.04]. The prospective joint candidates' declaration of candidacy and all separate petition papers of candidacies shall be filed at the same time as one instrument").

by declaration of intent to be a write-in candidate." *State ex rel. Gottlieb v. Sulligan*, 175 Ohio St. at 240, 193 N.E.2d 270.

Provisions governing a person's candidacy by declaration of intent to be a write-in candidate are set forth in R.C. 3513.041, which states, in relevant part:

> A write-in space shall be provided on the ballot for every office, except in an election for which the board of elections has received no valid declarations of intent to be a write-in candidate under this section. Write-in votes shall not be counted for any candidate who has not filed a declaration of intent to be a write-in candidate pursuant to this section. A qualified person who has filed a declaration of intent may receive write-in votes at either a primary or general election.

That is, under this statute, a declaration of intent to be a write-in candidate is the means by which a person becomes eligible to receive votes at a general election as a write-in candidate.

Unlike the case with a declaration of intent to be a write-in candidate, there is no statutory definition of the phrase "nominating petition." The Ohio Supreme Court, however, has determined the meaning of this phrase for purposes of the election laws of Ohio. *See generally Brennaman v. R.M.I. Co.*, 70 Ohio St. 3d 460, 464, 639 N.E.2d 425 (1994) ("[i]t is a general axiom of statutory construction that once words have acquired a settled meaning, that same meaning will be applied to a subsequent statute on a similar or analogous subject").

In *State ex rel. Gottlieb v. Sulligan*, 175 Ohio St. at 240-41, 193 N.E.2d 270, which addressed whether R.C. 3513.04 relates to persons selected to fill a vacancy in a party nomination under R.C. 3513.31, the court explained:

> An examination of the election laws indicates that the phrase, "nominating petition," has a specific meaning. Under our statutes the candidates for public office may gain nomination by two methods: One, by filing a declaration of candidacy accompanied by a petition entitling one to be a participant in the direct party primary wherein candidates from all political parties seek their nomination; or, two, by what is designated as a nominating petition, the method by which the independent candidate may seek his place on the elective ballot. *In other words, the nominating petition is the method by which the independent candidate seeks his place on the elective ballot.* Clearly, a selection by a party committee of a party candidate to fill a vacancy on the ballot would not fall within the meaning of a nominating petition. The purpose of Section 3513.31, Revised Code, is to replace a duly nominated party candidate, who, because of death or withdrawal, has created a vacancy in the party ticket. The selection is of a party candidate and not an independent candidate and thus does not constitute a nominating petition or a petition in any sense.
>
> The purpose of Section 3513.04, Revised Code, clearly is to prevent a disappointed party candidate who has failed to be selected as a nominee in the

> primary from again trying to be placed on the elective ballot by entering the arena as an independent candidate.
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> The operation of Section 3513.04, Revised Code, is confined to a nominating petition within the meaning of such term as used in the Ohio statutes and does not relate to persons selected by a party committee under the terms of Section 3513.31, Revised Code. (Citation omitted and emphasis added.)

See R.C. 3513.257;[3] *Foster v. Cuyahoga Cty. Bd. of Elections*, 53 Ohio App. 2d 213, 226-27, 373 N.E.2d 1274 (Cuyahoga County 1977); *State ex rel. Sweet v. Hancock Cty. Bd. of Elections*, Case No. 5-93-43, 1993 Ohio App. LEXIS 5479, at **7-9 (Hancock County Oct. 25, 1993); 1993 Op. Att'y Gen. No. 93-052; *see also Anderson v. Celebrezze*, 460 U.S. 780, 784 n.2 (1983) (obiter dictum in the case states "the parties agree that [a candidate's] timely withdrawal from the Ohio primary avoided the application of the State's 'sore loser' statute, [R.C. 3513.04], which disqualifies a candidate who ran unsuccessfully in a party primary from running as an independent in the general election"). *Compare* R.C. 3513.261 (a nominating petition does not require a candidate to disclose party affiliation) *with* R.C. 3513.07 (a declaration of candidacy and petition of candidate requires a candidate to declare his party affiliation). *See generally* Ohio Const. art. V, § 7 ("[a]ll nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law"). The Ohio Supreme Court in *State ex rel. Gottlieb v. Sulligan* thus determined that the phrase "nominating petition," as used in R.C. 3513.04, is limited to petition papers filed by an independent candidate. *Accord Foster v. Cuyahoga Cty. Bd. of Elections*, 53 Ohio App. 2d at 226, 373 N.E.2d 1274; *State ex rel.*

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[3] R.C. 3513.257 states, in part:

> Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, except persons desiring to become independent joint candidates for the offices of governor and lieutenant governor and for the offices of president and vice-president of the United States, shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in [R.C. 3513.261]. Persons desiring to become independent joint candidates for the offices of governor and lieutenant governor shall file, not later than four p.m. of the day before the day of the primary election, one statement of candidacy and one nominating petition for the two of them. Persons desiring to become independent joint candidates for the offices of president and vice-president of the United States shall file, not later than four p.m. of the seventy-fifth day before the day of the general election at which the president and vice-president are to be elected, one statement of candidacy and one nominating petition for the two of them.

Sweet v. Hancock Cty. Bd. of Elections, Case No. 5-93-43, 1993 Ohio App. LEXIS 5479, at **7-9; 1993 Op. Att'y Gen. No. 93-052.

Unlike declarations of intent to be a write-in candidate or nominating petitions, a special election under R.C. 3513.312 and appointment under R.C. 3513.31(B) are methods by which parties may select their candidate for the office of United States representative. R.C. 3513.31(B) states that in certain circumstances a person may be selected by party officials to fill a vacancy in the party's nomination for an elective office:

> If a person nominated in a primary election as a party candidate for election at the next general election, whose candidacy is to be submitted to the electors of a district comprised of more than one county but less than all of the counties of the state, withdraws as that candidate or is disqualified as that candidate under [R.C. 3513.052], the vacancy in the party nomination so created may be filled by a district committee of the major political party that made the nomination at the primary election, if the committee's chairperson and secretary certify the name of the person selected to fill the vacancy by the time specified in this division, at a meeting called for that purpose.

R.C. 3513.312(A) authorizes holding a special election to fill a vacancy in a party nomination for the office of United States representative:

> Notwithstanding [R.C. 3513.31], if a person nominated in a primary election as a party candidate for the office of representative to congress for election at the next general election withdraws as such candidate prior to the eightieth day before the day of such general election, or dies prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created shall be filled by a special election held in accordance with division (B) of this section.

A review of R.C. 3513.31(B) and R.C. 3513.312 thus discloses that neither provision requires a person to file a declaration of intent to be a write-in candidate in accordance with R.C. 3513.041 or nominating petition in order to be eligible to receive votes for the office of United States representative at a general election. Instead, a person appointed under R.C. 3513.31(B) to fill a vacancy in a party nomination for the office of United States representative becomes a candidate and eligible to receive votes for that office when the person provides a written acceptance of the party's nomination. Also, R.C. 3513.32 requires a person nominated by special election pursuant to R.C. 3513.312 to have filed a declaration of candidacy under R.C. 3513.04 in order to become a candidate who is eligible to receive votes for the office of United States representative at the special and general elections. *See generally* R.C. 3513.312(B) (a special election held pursuant to R.C. 3513.312 "shall be held and conducted and returns thereof made as in the case of a primary election").

Accordingly, a person appointed pursuant to R.C. 3513.31(B) or elected pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative

becomes a candidate who is eligible to receive votes for that office without filing a nominating petition or declaration of intent to be a write-in candidate. As a result, such a person is not selected by nominating petition or declaration of intent to be a write-in candidate. Therefore, R.C. 3513.04 does not apply when a person is appointed pursuant to R.C. 3513.31(B) or elected pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative.

In addition to comporting with the plain language of the statutory provisions, our conclusion also directly follows from the Ohio Supreme Court's reasoning and analysis set out in *State ex rel. Gottlieb v. Sulligan*. In that case, the court expressly held:

> Section 3513.31, Revised Code, relating to the selection of candidates to fill vacancies, is, therefore, valid, and a selection thereunder does not constitute a selection by nominating petition. Therefore, inasmuch as Section 3513.04, Revised Code, confines its prohibitions to those seeking candidacy or election by write-in votes or nominating petition, it does not apply to a candidate selected by party committee under the provisions of Section 3513.31, Revised Code.

Id. at 242, 193 N.E.2d 270.

Because R.C. 3513.04 does not expressly apply to a person appointed pursuant to R.C. 3513.31(B) or elected pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for an office, but rather, is limited to persons selected "by nominating petition or by declaration of intent to be a write-in candidate," it must be concluded that R.C. 3513.04 does not apply when a person is appointed pursuant to R.C. 3513.31(B) or elected pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative. *See generally Lynch v. Gallia Cty Bd. of Comm'rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) ("a reviewing court must not construe a statute so as to supply words that are omitted"); *Cleveland Elec. Illum. Co. v. City of Cleveland*, 37 Ohio St. 3d 50, 524 N.E.2d 441 (1988) (syllabus, paragraph three) (in interpreting statutes, "it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used"). *See generally also Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370 (1948) ("the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute").

Accordingly, R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from being appointed pursuant to R.C. 3513.31(B) to fill a vacancy in a party nomination for the office of United States representative. In addition, R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from running as a candidate in a special election held pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative.

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised as follows:

1. A vacancy created in a party nomination for the office of United States representative when a party nominee withdraws his candidacy after the eightieth day before the general election may be filled by appointment in accordance with R.C. 3513.31(B).

2. R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from being appointed pursuant to R.C. 3513.31(B) to fill a vacancy in a party nomination for the office of United States representative.

3. R.C. 3513.04 does not preclude a person who was unsuccessful in seeking a party nomination for a statewide office at the primary election in May 2006 from running as a candidate in a special election held pursuant to R.C. 3513.312 to fill a vacancy in a party nomination for the office of United States representative.

Respectfully,

JIM PETRO
Attorney General