

June 3, 1996

OPINION NO. 96-035

The Honorable James A. Philomena
Mahoning County Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503-1726

Dear Prosecutor Philomena:

You have requested an opinion concerning the participation of a civil service employee in political activity. Specifically, you ask whether a police officer in the classified service of a civil service township may be an independent candidate for county sheriff.

R.C. 124.57(A), which prohibits employees in the classified service of a civil service township from participating in political activity, provides, in part, as follows:

No officer or employee in the classified service of ... civil service townships, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof, or civil service townships; *nor shall any officer or employee in the classified service of ... civil service townships, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.* (Emphasis added.)

See 2 Ohio Admin. Code 123:1-46-02. The Ohio Supreme Court has held that this statute prohibits classified employees from engaging in partisan political activity. *Heidtman v. Shaker Heights*, 163 Ohio St. 109, 126 N.E.2d 138 (1955); *see Gray v. Toledo*, 323 F. Supp. 1281 (N.D. Ohio 1971); 1982 Op. Att'y Gen. No. 82-085; 1974 Op. Att'y Gen. No. 74-034.

In accordance with the Ohio Supreme Court's interpretation of R.C. 124.57, 2 Ohio Admin. Code 123:1-46-02 sets forth guidelines concerning political activity under R.C. 124.57. Pursuant to this rule, specific examples of prohibited partisan political activity include, but are not limited to, the following:

- (1) Candidacy for public office in a partisan election;
- (2) Candidacy for public office in a nonpartisan general election if the nomination to candidacy was obtained in a partisan primary or through the circulation of nominating petitions identified with a political party;
- (3) Filing of petitions meeting statutory requirements for partisan candidacy to elective office[.]

Rule 123:1-46-02(C). Thus, pursuant to R.C. 124.57, a police officer in the classified service of a civil service township may not be a candidate for public office in a partisan election insofar as such candidacy constitutes taking part in politics. *See* 1994 Op. Att'y Gen. No. 94-087 at 2-430; *see, e.g.*, 1982 Op. Att'y Gen. No. 82-085. *See generally Doyle v. Ohio Bur. of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990) (a properly promulgated administrative rule is given the force and effect of law).

Resolution of your specific question, therefore, requires that I address two fundamental questions. Firstly, does a candidate for county sheriff run in a partisan election. A review of the election laws in Ohio discloses that the election to the office of county sheriff is on a partisan basis. A primary election is held for nomination of candidates by political parties. In addition, candidates for the office of county sheriff are not elected on a nonpartisan ballot at the general election. R.C. 3505.04. To the contrary, the general election ballot for the office of county sheriff states the name of the political party that nominated the candidate at the primary election preceding the general election. R.C. 3505.03. Insofar as the election laws provide for a partisan election to the office of county sheriff, 1984 Op. Att'y Gen. No. 84-070 at 2-225 n.2, a police officer in the classified service of a civil service township is prohibited by R.C. 124.57 from being a candidate for that office.¹

I turn now to the second question whether the status of the individual as an independent candidate for county sheriff permits the individual to be a candidate for sheriff in a partisan election. An examination of the relevant law indicates that it makes no legal difference whether the police officer is a Republican, Democrat, or Independent candidate for the office of county sheriff. As stated above, R.C. 124.57 prohibits classified employees from taking part in partisan politics in a manner other than to vote or express their political opinions. The purpose of R.C. 124.57 is to prevent employees in the classified service from participating in activities that are partisan in nature.

¹ The legislative history of R.C. 124.57 also supports the conclusion that a police officer in the classified service of a civil service township may not be a candidate for county sheriff. Specifically, the 119th General Assembly failed to pass a proposed amendment to R.C. 124.57 that would have exempted law enforcement officers in the classified civil service who wish to be candidates for the office of county sheriff from the prohibition against classified employees running for political office. *See* H.B. 597, 119th Gen. A. (1991) (as introduced). It, thus, appears that R.C. 124.57 was intended by the General Assembly to prohibit police officers in the classified service of a civil service township from becoming candidates for the office of county sheriff. *See generally Caldwell v. State*, 115 Ohio St. 458, 154 N.E. 792 (1926) (reference may be made to the legislative proceedings for assistance in determining legislative intent).

A classified employee takes part in a partisan activity when he becomes a candidate for public office in a partisan election. As stated in 1928 Op. Att'y Gen. No. 2276, vol. II, p. 1582 at 1584, "[reading R.C. 124.57] as a whole and in light of the purpose of the civil service law I am inclined to the opinion that taking part in politics must be limited to those activities designed to further party interests, or *to further the election or defeat of a candidate.*" (Emphasis added.) See *Jackson v. Coffey*, 52 Ohio St. 2d 43, 44, 368 N.E.2d 1259, 1260 (1977) ("[t]he term *_politics_* appearing in [R.C. 124.57] has been defined to include partisan activities such as securing and holding public office through elections").

Accordingly, I believe that the prohibition against taking part in politics applies even when the police officer is an independent candidate for the office of county sheriff. As the Cuyahoga County Court of Appeals, in the course of interpreting *Heidtman, supra*, stated: "*Heidtman* apparently held that even R.C. 124.57 precludes candidacies by civil service employees though they have no involvement with a political party.... The *Heidtman* decision said that independent candidates are *_taking part in politics,_* and used *_partisan_* activities to include *_securing and holding public office through elections._*" *Hudak v. Cleveland Civil Serv. Comm'n*, 44 Ohio App. 3d 15, 18, 540 N.E.2d 741, 744 (Cuyahoga County 1988).

Therefore, it is my opinion and you are advised that a police officer in the classified service of a civil service township may not be an independent candidate for county sheriff.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS:

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