

708

CANDIDATE, PRIMARY ELECTION—TO BE DISQUALIFIED FOR FAILURE TO FILE STATEMENT OF CONTRIBUTIONS AND EXPENDITURES WITHIN PRESCRIBED TIME—§§3517.10, 3517.11, R. C.

SYLLABUS:

If a person who was a candidate in a primary election fails to file the statement of contributions and expenditures or of no expenditures required by Section 3517.10, Revised Code, within the time prescribed by such section, the disqualification provision of Section 3517.11, Revised Code, becomes operative and that person is barred from receiving a certificate of nomination and from becoming a candidate in the general election.

Columbus, Ohio, July 22, 1959

Hon. Wilford R. Miller, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Are the provisions of Sections 3517.10 and 3517.11 of the Revised Code of Ohio, relating to the filing of a statement within 45 days, mandatory so as to disqualify these candidates from being listed on the ballot at the November election, regardless of the fact that they have filed or may hereafter file a statement of expenditures, or of no expenditures, after the 45 day period stated in the statutes?”

The question you raise was considered in Opinion No. 1415, Opinions of the Attorney General for 1957, page 729. That opinion held that Section 3517.11, Revised Code, as amended by Senate Bill No. 187, 102nd General Assembly, effective September 16, 1957, has the effect of disqualifying from future elections for a period of five years all candidates who receive contributions or make expenditures in connection with their candidacy in any election subsequent to September 16, 1957, and who fail to file such statement within the time required by Section 3517.10, Revised Code. The final paragraph of Section 3517.11, Revised Code, is pertinent to your inquiry and reads as follows:

“* * * In the event of a failure to file a statement with the secretary of state or in the event a statement filed with the secretary of state appears to disclose a violation of law, the secretary of state shall promptly report such facts to the attorney general who shall forthwith institute such civil or criminal proceedings as are appropriate. In the event of a failure to file a statement with a board or in the event a statement filed with a board appears to disclose a violation of law, such board shall promptly report such facts to the prosecuting attorney of the county of such board, who shall forthwith institute such civil or criminal proceedings as are appropriate. No certificate of nomination or election shall be issued to a person, nor shall a person elected to an office or position enter upon the performance of the duties of such office or position until he has fully complied with this section and sections 3517.08 and 3517.10 of the Revised Code. Failure of any candidate to file a statement within the time prescribed by section 3517.10 of the Revised Code shall disqualify said person from becoming a candidate in any future election for a period of five years.”

As it concerns candidates who receive contributions or make expenditures, the above cited opinion is a valid interpretation of the law, which I approve. It must be further noted that Section 3517.10, Revised Code, states in part as follows:

“* * * Such candidates who did not receive or expend, directly or indirectly, any money or things of value in connection with their nomination or election shall, not later than four p.m. of the forty-fifth day after such election, file a statement to that effect, subscribed and sworn to before an officer authorized to administer oaths. * * *”

Such a statement must patently be considered a statement within the meaning of that term as used in Section 3517.11, Revised Code. The failure to file such statement of no expenses necessarily, therefore, disqualifies a person from becoming a candidate in a future election for five years in the

same manner as the failure to file a statement of contributions and expenditures when such were actually received or made.

Attention must be drawn also to the provision of Section 3517.11, Revised Code, which states that the failure to file a statement shall disqualify a person from becoming a candidate in any future election for a period of five years. The question arises when does a person become a candidate? Inasmuch as Section 3513.05, Revised Code, which pertains to declarations of candidacy prior to the primary election, makes reference to a "person desiring to become a candidate for a party nomination," it follows from this that a person who files a declaration for candidacy before a primary election and participates as a candidate in such primary election is, in fact, a candidate for a party nomination and is not a candidate for the office for which election will be had at the ensuing general election.

Section 3513.22, Revised Code, provides for the issuance by the election officials who are required to declare the results of primary elections of certificates of nomination to the successful candidates for party nominations. It appears from this that a person becomes a candidate for an office for which an election will be held in the next general election at the time he receives a certificate of nomination pursuant to Section 3513.22, Revised Code.

Section 3517.11, Revised Code, as quoted above, states that no such certificate of nomination shall be issued to a person who has not fully complied with Section 3517.10, Revised Code, which section requires a candidate to file a statement of expenditures or no expenditures. Thus, no candidate could receive a certificate of nomination until he has filed the required statement and could not, therefore, become a candidate until such statement had been filed.

It is, therefore, my opinion and you are accordingly advised that, if a person who was a candidate in a primary election fails to file the statement of contributions and expenditures or of no expenditures required by Section 3517.10, Revised Code, within the time prescribed by such section, the disqualification provision of Section 3517.11, Revised Code, becomes operative and that person is barred from receiving a certificate of nomination and from becoming a candidate in the general election.

Respectfully,

MARK McELROY

Attorney General