1415

ELECTIONS: STATEMENT OF RECEIPTS AND EXPENDITURES, §§ 3517.08, 3517.10, 3517.11 RC—6211 OAG 1956, p. 93, APPROVED AND FOLLOWED — CANDIDATES HAVING NO RECEIPTS NOR EXPENDITURES — WRITE-IN CANDIDATES WHO HAVE MADE NO SOLICITATIONS FOR VOTES—FILING OF SUCH STATEMENTS; TIME HELD DIRECTORY WHEN—§ 3517.11 RC, DISQUALIFICATION FROM OFFICE, WHEN APPLICABLE.

SYLLABUS:

1. With reference to the filing of statements of campaign expenditures in connection with the November 1957 general election, the applicable statutes are Section 3517.08, Revised Code, as enacted in Senate Bill No. 242, 100th General Assembly, effective January 1, 1954; Section 3517.10, Revised Code, as enacted in Senate Bill No. 220, 101st General Assembly, effective January 1, 1956; and Section 3517.11, Revised Code, as enacted in Senate Bill No. 187, 102nd General Assembly, effective September 16, 1957.

2. There is no requirement in existing Section 3517.10, Revised Code, that a candidate, who received no contributions and made no expenditures in connection with his candidacy in an election, must file a statement of expenditures as therein provided. Where no such contributions or expenditures are involved the candidate may establish such fact by filing an affidavit to that effect with the board of elections concerned, but there is no necessity that this be done within the thirty day period provided in that section. Paragraph two of the syllabus in Opinion No. 6211, Opinions of the Attorney General for 1956, page 93, approved and followed.

3. Sections 3517.08, 3517.10, and 3517.11, Revised Code, apply only to individuals who knowingly offer themselves as candidates either by formal declarations of candidacy or by solicitation of write-in votes, and they do not apply to individuals merely by reason of the circumstance that they have received write-in votes in an election.

4. The provision in Section 3517.11, Revised Code, for withholding from a successful candidate a certificate of election *until* he has fully complied with Sections 3517.08, 3517.10, and 3517.11, Revised Code, does not require that such compliance be had strictly within the thirty day period prescribed in Section 3517.10, Revised Code, and such certificates should be issued to such candidates who file such statements within a reasonable time after the election. Paragraph one of the syllabus in Opinion No. 6211, Opinions of the Attorney General for 1956, page 93, approved and followed.

5. The amendment, in Senate Bill No. 187, 102nd General Assembly, effective September 16, 1957, of that provision in Section 3517.11, Revised Code, relative to disqualification from candidacy for office for five years for "failure to file a statement of expenditures," by adding thereto the words "within the time prescribed by Section 3517.10 of the Revised Code," has the effect of so disqualifying all candidates who, in the November 1957 election, received contributions or made expenditures in connection with their candidacy in such election, and who failed to file such statement not later than four p. m. of the thirtieth day after such election; and a filing of such statement thereafter is ineffective to avoid such disqualification.

Columbus, Ohio, December 11, 1957

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I have for consideration your query as to the effect of failure of a candidate in the November 1957 election to file a statement of campaign expenditures as required in Section 3517.10 and 3517.11, Revised Code. Initially we may note that the latter section was thrice amended by the 102nd General Assembly, *viz.,* in Senate Bills Nos. 63 and 187, and in House Bill No. 501. The latter by its own terms does not become effective until January 1, 1958, and hence, can have no application to the election here involved. Senate Bill No. 187 was passed and approved some days after the passage and approval of Senate Bill No. 63, the latter becoming effective on August 20, 1957, and the former on September 16, 1957. It thus follows that Section 3517.11, Revised Code, as enacted in Senate Bill No. 187, is the statute which must here be applied.

Prior to January 1, 1956, Section 3517.11, Revised Code, contained the following language:

> "If the statement prescribed by section 3517.10 of the Revised Code relates to the nomination or election of persons whose candidacy for nomination or election was submitted to electors throughout the entire state, such statement shall be filed with the secretary of state. If such statement relates to the nomination or election of persons whose candidacy for nomination or election was submitted only to electors within a district comprised of more than one county but less than all of the counties of the state, it shall be filed with the board of elections of the most populous county of such district, and if such statement relates to the nomination or election of persons whose candidacy for nomination or election was submitted only to electors within a county, it shall be filed with the board of such county; provided that if such statement relates to the nomination or election of persons who were candidates for nomination or election to the office of member of the house of representatives of congress, it shall be filed with the secretary of state.
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> "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.*"

(Emphasis added.)

Effective January 1, 1956, the following language was added to Section 3517.11, Revised Code:

> "Failure of any candidate to file a statement of expenditures shall disqualify said person from becoming a candidate in any future election for a period of five years."

Section 3517.10, Revised Code, to which reference is thus made, at that date required of "every candidate" the filing "not later than four p. m. of the tenth day after such election" of a statement of expenditures, contributions, *etc.*, in connection with the nomination or election of such candidate "at any election."

With this language before him for scrutiny my immediate predecessor in this office ruled in Opinion No. 6211, Opinions of the Attorney General for 1956, page 93, as disclosed by the syllabus:

> "1. As to the November 1955 election the provisions of Section 3517.10, Revised Code, requiring the filing of a statement of receipts and expenditures within ten days after such election are directory rather than mandatory as to such ten day period, and certificates of election may be issued to successful candidates for the office of justice of the peace who file such statements within a reasonable time thereafter and prior to the time the vacancy in such office has been filled as provided in Section 1907.04, Revised Code.
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> "2. Section 3517.10, Revised Code, as effective prior to January 1, 1956, required the filing of a statement of receipts and expenditures by a candidate only in those cases where contributions were received or funds were expended in connection with an election. Where no such receipts or expenditures are involved no statement with respect thereto is required by such section. A candidate may establish that fact by filing an affidavit to that effect but there is no necessity that such affidavit be filed within the ten day period provided in that section."

In the course of that opinion the writer said, pp. 95, 96:

"Although this section was amended, effective January 1, 1956, to provide, in addition, that such failure 'shall disqualify said person from becoming a candidate in any future election for a period of five years,' it is not believed that such penalty would apply in the case at hand to prevent present qualification because (1) the 'failure' to file took place during the ten-day period following the election and (2) *the penalty is against future candidacy rather than qualification in office.*

"In Opinion No. 1813, Opinions of the Attorney General for 1928, p. 595, the syllabus reads:

" 'Under the provisions of Section 5175-2, General Code, every candidate who is voted for at any election or primary election within this state, is required to file within ten days after such election an itemized statement of all expenditures pertaining to his candidacy. The ten day period, however, is directory and not mandatory as to time. Where persons are elected as members of a board of education and have not filed their expense accounts within said ten day period, they may do so thereafter if the vacancies have not been filled previously and may enter upon the discharge of the duties of the office.'

"See also my Opinion No. 1666, Opinions of the Attorney General for 1952, p. 530, to the same effect so far as the directory nature of the provision here in question is concerned.

"In passing it may be suggested that a possible reason for the failure to file a statement of expenditures in the case of write-in candidates is that no contributions were received nor any expenditures made. In such case, it will be observed, the language of Section 3517.10, supra, does not require the filing of a statement. It has become the practice, however, in such cases to file an affidavit that no expenditures were made and no contributions received, solely for the purpose of establishing the proposition that no statement was required. If the ten-day provision relative to the filing of the statement of receipts and expenditures is directory only, a fortiori, there is no necessity that such affidavit be filed within such period. * * *"

(Emphasis added)

I am fully in accord with this reasoning and these conclusions as applicable to the then existing statutory language, and it remains only to inquire to what extent the newly enacted statutory provisions mentioned above have effected a change in the law.

Referring then to Senate Bill No. 187, *supra,* we note that three important changes, here pertinent ,were made in Section 3517.11, Revised Code, and these changes were effected by the following language in that section:

> "* * * *The board of elections or the secretary of state shall issue a receipt to the person filing such statement. This receipt shall show the date and time of such filing.*
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> "On or before the twentieth day after any election in which statements are required to be filed by section 3517.10 of the Revised Code, every candidate subject to the provisions of sections 3517.10 and 3517.11 of the Revised Code shall be notified by mail of the requirements of those sections. The secretary of state shall *notify all candidates required to file such statements* with his office, and the board of elections of every county *shall notify all candidates required to file* such statements with it.
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> "Failure of any candidate to file a statement of expenditures *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."
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> (Emphasis added)

The General Assembly thus provided for (1) the giving of a receipt as proof of the date and time of filing, (2) a notice of the filing requirement addressed to all candidates on or before the twentieth day after any election to which Section 3517.10, Revised Code, is applicable, and (3) the addition to the disqualification provision of language referring to the "time prescribed" for filing in Section 3517.10, Revised Code.

This latter section we may here note was amended effective January 1, 1956, to define the "time prescribed" as "not later than four p. m. of the *thirtieth* day after such election." This provision is again changed, in House Bill No. 501, *supra,* to the forty-fifth day after the election but, as noted above, this act will not by its own terms become operative until January 1, 1958.

As to the mandatory or directory nature of the disqualification provision, every one of these three changes point surely to the legislative intent that it should be mandatory. Previously, this provision was for disqualification upon "failure * * * to file." The new language provides for disqualification upon "failure * * * to file *within the time prescribed by section 4517.10* * * *."

No language could be clearer, and it must be given some effect. 37 Ohio Jurisprudence, 617, Section 341. It is wholly free of ambiguity, and we must accept its plain meaning. Slingluff v. Weaver, 66 Ohio St., 621.

Add to this the precaution taken to avoid instances of inadvertent disqualification by the giving of a notice ten days before the end of the filing period. Add, also, the precaution to avoid future disputes as to disqualification by giving a receipt showing the date and hour of filing. These precautions point squarely to the notion that the General Assembly *anticipated* the possibility of frequent cases of disqualification, and thus evinced the legislative idea that they were enacting a mandatory provision; and I conclude that it is mandatory.

Here I may say, however, that I am in complete agreement with the writer of the 1956 opinion, *supra,* on the point that Section 3517.10, Revised Code, has no application to candidates in those cases where no contributions were received and no funds were expended. Specifically, I concur in paragraph two of the syllabus therein reading as follows:

> "2. Section 3517.10, Revised Code, as effective prior to January 1, 1956, required the filing of a statement of receipts and expenditures by a candidate only in those cases where contributions were received or funds where expended in connection with an election. Where no such receipts or expenditures are involved no statement with respect thereto is required by such section. A candidate may establish that fact by filing an affidavit to that effect but there is no necessity that such affidavit be filed within the ten day period provided in that section."

On the point last made in this ruling the law will change, it will be noted, on January 1, 1958, when Section 3517.10, Revised Code, as enacted in House Bill No. 501, *supra,* becomes effective so as to *require* a sworn statement in cases of this sort.

We next come to consider the effect of the following provision in Section 3517.10, Revised Code:

> "* * * 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."

We have already noted that my immediate predecessor in office twice ruled this provision to be directory so far as the *time* of compliance with these sections is involved, and he cited a still earlier ruling of this office to the same effect. Opinion No. 6211, Opinions of the Attorney General for 1956, page 93; Opinion No. 1666, Opinions of the Attorney General for 1952, page 530; and Opinion No. 1813, Opinions of the Attorney General for 1928, page 595. I deem it helpful to quote at some length from the 1952 opinion, *supra* pp. 534-536:

> "As further authority for the proposition that *wilful* intent to defeat the requirements of the corrupt practices act must be shown, reference should be made to the cases of State v. Long, 19 O.N.P. (N.S.), 29, and State, ex rel. Riggs v. Jaquis, 11 O.C.D., 91. The third headnote in the Jacquis case reads:
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> " 'The statute having pointed out the specified offenses on account of which one may forfeit his office, a court is not authorized to add other causes and declare that for such acts or omissions one may forfeit or be deprived of his office. Therefore, the Garfield law requiring statements of nomination and election expenses to be filed within ten days, contains no express provision that one who fails to comply therewith shall forfeit his office, a court has no power to so declare.' "
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> "In Opinion No. 1221, Opinions of the Attorney General for 1924, page 87, Opinion No. 1813, Opinions of the Attorney General for 1928, page 595 and Opinion No. 2620, Opinions of the Attorney General for 1928, page 2178, my predecessors in office held that, although an elected officer could not enter into the performance of his duties or receive any of the emoluments of the office until a proper statement of expenditures had been filed by him, the ten day limitation for such filing was directory and not mandatory as to the time of filing.
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> "It appears that in construing corrupt practices acts, the authorities out of Ohio, as well as those in Ohio, have held that technical non-compliance with such acts, not involving wilful intent or fraud, may not serve as a basis for forfeiture of nomination or election. 18 American Jurisprudence, page 339; Annotation in 103 A.L.R., 1424. Such authorities hold that in order to conform to the requirements of the statutes or to the truth, a candidate, who in good faith had theretofore filed an incorrect statement, may file an amendment correcting such statement, even after the last date for filing as prescribed by statute. Barnard v. Superior Court, 187 Mich. 560; Re Wilhelm, 111 Pa. Super. Ct., 133. The reasoning of the court in the case of Commonwealth, ex rel. Kovacs v. Schrotnick, 240 Pa. 57, is particularly

in point. In this case the absence of any express provision for a forfeiture for not filing an account in connection with the provisions for penalties was held to negative any inference that a forfeiture of office was contemplated. The court noted the prohibition against the elected candidate entering upon the duties of his office *until "he has filed such account"* which it construed as a *plain inference that he might enter upon such duties after filing such account. The language of the last sentence of Section 4785-187 is similar to that under consideration in the Kovacs case.*

"As heretofore noted, and as contrasted with the specific provisions of the election laws declaring a forfeiture of nomination in case of expenditures in excess of that permitted under Section 4785-184, there is *no specific provision of such laws forfeiting such nomination for failure to file* a full, true and itemized statement of expenditures *within ten days.* The only penalty for such failure prescribed by the election laws is the provision that no certificate of nomination shall be issued to a person *until* he has filed such statement. Section 4785-187, supra." (Emphasis added)

It is plain, therefore, that over a long period of years there has been repeated and continued administrative interpretation of this provision as being applicable only where there is a *complete* failure of compliance with the filing requirement, timely or otherwise. This is a statutory provision of which every member of the General Assembly must be presumed to have had personal knowledge by reason of his own election and the filing of his own statement of expenditures. Whether *every* such member had personal knowledge of such long continued administrative interpretation we may readily doubt, but I do not hesitate to impute such knowledge to the General Assembly as the repository of the legislative power. On this point it is said in 37 Ohio Jurisprudence, 774, Section 445:

"The re-enactment by Congress of the same provisions after a departmental construction has been given thereto has been regarded as the equivalent of an adoption and re-enactment of that construction, and as controlling in the construction of a law of doubtful meaning; and such construction generally will be followed after such reenactment. * * *"

In State, *ex rel. v.* Brown, 121 Ohio St., 73, the court in the *per curiam* decision said, pp. 75, 76:

"* * * The interpretation placed by the Attorney General, the tax commission, and the secretary of state upon Section 5521 since its enactment in 1911 down to the beginning of this year,

> and upon Section 8623-80 since its enactment in 1927 down to the beginning of this year, has been to the effect that corporations were permitted to dissolve or retire from the state between January 1st and the last day for the filing of their franchise tax reports, to wit, March 31st, without making any report or paying any franchise tax for the year of dissolution or retirement."
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> "Section 5521, General Code, having received the construction that it has, and Section 8623-80 being passed by the Legislature many years after the construction given Section 5521 was established, it is to be presumed that the Legislature intended the exemption, *or would have plainly provided otherwise.* * * *" (Emphasis added)

Of somewhat more importance is the rule that re-enactment of a provision in substantially identical language following judicial construction thereof amounts to a legislative adoption of such construction. 37 Ohio Jurisprudence, 773, Section 444. In Brewer v. DeMaioribus, 102 Ohio App., 567, the court in a *per curiam* decision said, p. 570:

> "A careful reading of these two sections of the Revised Code discloses a clear intent on the part of the Legislature to make the *filing* of a statement of expenditures by a candidate for office *mandatory* but the *time* within which it is to be filed *merely directory.* * * *" (Emphasis added)

Here we should observe the circumstance, noted by the court in the Kovacs case, 240 Pa. 57, that for failure to file within the "time prescribed" there was imposed a penalty, in our own case disqualification of future candidacy, but no provision for forfeiture of office directly and expressly attached to failure to file within such "time prescribed." Such forfeiture, or more precisely, the prohibition of entry upon the duties of the office, is found in *another* provision of the statute, and it is operative only *until* the candidate complies. The use of the word "until" is wholly inconsistent with a rigid time limit within which this prohibition can be avoided.

Now the fact is that the General Assembly has not, in any of its recent amendments of Section 3517.11, Revised Code, "plainly provided otherwise" with reference to this administrative and judicial interpretation, for in none of them has it changed *a single word* of the sentence

quoted above with reference to the withholding of a certificate of election *until* the candidate has complied with the three sections named.

The use of the word "until" plainly implies an indefinite period within which compliance may be had *for the purpose of obtaining a certificate of election.* It is, at the least, ambiguous, and because ambiguity in election laws which work a forfeiture or disfranchisement must be strictly interpreted, it is my view that the will of the electors should not be defeated where eventual compliance, within a reasonable time, with the law is had. Forfeitures of any sort are not favored by the law and statutory provisions therefor should be interpreted accordingly. State *ex rel.,* Cline v. Industrial Commission, 136 Ohio St., 33. I conclude, therefore, that the provision in existing Section 3517.11, Revised Code, for withholding a certificate of election until compliance with the provisions of that section and Sections 3517.08 and 3517.10, Revised Code, is had is directory only as to *time* of compliance; and it is my opinion that such certificate should be issued to a successful candidate where such compliance is had in a reasonable time following the election despite the circumstance that such candidate may be barred, under the *disqualification* provision in Section 3517.11, Revised Code, from being a candidate in any future election for a period of five years.

A point relative to the disqualification of write-in candidates, is perhaps deserving of mention here even though it may be thought presently to be academic.

It can scarcely be doubted that in many instances write-in votes are cast for individuals without their knowledge, for individuals who have in no sense put themselves forward as candidates as this term is commonly understood. Are such persons, without knowledge of the votes cast for them, to be disqualified as candidates in future elections for five years for failure to comply with the statutes here under consideration?

The word "candidate" is defined by Webster, in the broadest sense, as follows:

> "One who offers himself, or is put forward by others, as a person or an aspirant or contestant for an office, privilege or honor."

In Cyclopedic Law Dictionary the term is defined in a narrower sense as follows:

"(Lat. candidus, white). Said to be from the custom of Roman candidates to clothe themselves in a white tunic.

"One who offers himself for an office. One must offer himself either directly, or by consenting to the presentation of his name by others to be a candidate. 2 Maule & S. 212.

"It has been held to include persons seeking a nomination for office. 112 Pa. St. 624."

The Latin derivation of the word is not without some significance for the original meaning was undoubtedly limited to those who were conscious and willing and active candidates. Accordingly, because statutory provisions for forfeitures are to be strictly construed, I am inclined to the view that the term "candidate" as used in Section 3517.10 and 3517.11, Revised Code, includes only those individuals who knowingly and willingly and openly *put themselves forward* as such, either formally or as write-in candidates, and that it does not include those individuals whose names have been written-in on the ballot and voted for without their knowledge, consent, or solicitation.

In specific answer to your inquiry, therefore, it is my opinion:

1. With reference to the filing of statements of campaign expenditures in connection with the November 1957 general election, the applicable statutes are Section 3517.08, Revised Code, as enacted in Senate Bill No. 242, 100th General Assembly, effective January 1, 1954; Section 3517.10, Revised Code, as enacted in Senate Bill No. 220, 101st General Assembly, effective January 1, 1956; and Section 3517.11, Revised Code, as enacted in Senate Bill No. 187, 102nd General Assembly, effective September 16, 1957.

2. There is no requirement in existing Section 3517.10, Revised Code, that a candidate, who received no contributions and made no expenditures in connection with his candidacy in an election, must file a statement of expenditures as therein provided. Where no such contributions or expenditures are involved the candidate may establish such fact by filing an affidavit to that effect with the board of elections concerned, but there is no necessity that this be done within the thirty days period provided in that section. Paragraph two of the syllabus in Opinion No. 6211, Opinions of the Attorney General for 1956, page 93, approved and followed.

3. Sections 3517.08, 3517.10, and 3517.11, Revised Code, apply only to individuals who knowingly offer themselves as candidates either by

formal declarations of candidacy or by solicitation of write-in votes, and they do not apply to individuals merely by reason of the circumstances that they have received write-in votes in an election.

4. The provision in Section 3517.11, Revised Code, for withholding from a successful candidate a certificate of election *until* he has fully complied with Sections 3517.08, 3517.10, and 3517.11, Revised Code, does not require that such compliance be had strictly within the thirty day period prescribed in Section 3517.10, Revised Code, and such certificates should be issued to such candidates who file such statements within a reasonable time after the election. Paragraph one of the syllabus in Opinion No. 6211, Opinions of the Attorney General for 1956, page 93, approved and followed.

5. The amendment, in Senate Bill No. 187, 102nd General Assembly, effective September 16, 1957, of that provision in Section 3517.11, Revised Code, relative to disqualification from candidacy for office for five years for "failure to file a statement of expenditures," by adding thereto the words "within the time prescribed by Section 3517.10 of the Revised Code," has the effect of so disqualifying all candidates who, in the November 1957 election, received contributions or made expenditures in connection with their candidacy in such election, and who failed to file such statement not later than four p. m. of the thirtieth day after such election; and a filing of such statement thereafter is ineffective to avoid such disqualification.

Respectfully,
WILLIAM SAXBE
Attorney General