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ELECTIONS—CANDIDATES—DEFEATED FOR PARTY NOMINATION, §3513.04 R.C. FORBIDS CANDIDACY AT GENERAL ELECTION IN THAT SAME YEAR FOR “ANY OFFICE TO BE FILLED AT SUCH GENERAL ELECTION—JUDGE, COUNTY COURT; §1907.051 R.C.

SYLLABUS:

Where an individual has unsuccessfully sought his party's nomination for the office of county commissioner in the May 1958 primary, the provisions of Section 3513.04, Revised Code, forbid his candidacy in the 1958 general election for “any office” whether a primary election is provided by law to choose candidates therefor or whether nomination is achieved only by petition as in the case of county judge elections as provided in Section 1907.051, Revised Code.

Columbus, Ohio, August 1, 1958

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

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

"A candidate for county commissioner who was defeated in the primary is seeking the office of county judge in the November general election.

"Section 3513.04 of the Revised Code (effective January 1, 1958) states in part:

'No person who seeks party nomination for an office or position at a primary election by declaration of candidacy shall be permitted to become a candidate at the following general election for any office by nomination petition or by write-in.'

"The language of this section read literally would seem to bar such a person from *any office*. However, does the prohibition pertain to candidates running for an office where it is not possible for the candidate to run in a primary. There is no primary for the office of county judge.

"Since a person can become a candidate for county judge in the general election only, I would appreciate your opinion as to whether this section covers such candidate.

"As petitions for county judge must be filed by August 6, 1958, your opinion is requested as soon as conveniently possible."

The language which you have quoted from Section 3513.04, Revised Code, was formerly codified in substantially identical language in Section 4785-90, General Code, having been enacted in that substance in Amended Substitute Senate Bill No. 269, 99th General Assembly, effective January 1, 1952. See 124 Ohio Laws, 673 (678).

Prior to this amendment of Section 4785-69, General Code, this provision read:

"Candidates for party nomination to state, district, county and municipal offices or positions, for which party nominations are provided by law, and for election as delegates or alternates to national or state party conventions, and for election as members of party controlling committees, shall have their names

printed on the official primary ballot by filing a declaration of candidacy and paying the filing fee as required by law. No person who seeks party nomination for an office or position at a primary shall be permitted to become a candidate at the following election for *the same* office by petition." (Emphasis added)

The change from the limited expression "the same office" quite clearly evinces a legislative intent greatly to expand the scope of the inhibition in question, and because it is too plain to admit of any interpretation otherwise than as embracing every possible office I cannot see how it could be construed to provide the exception which you suggest. See *Slingshuff v. Weaver*, 66 Ohio St., 621.

It is accordingly my opinion that where an individual has unsuccessfully sought his party's nomination for the office of county commissioner in the May 1958 primary, the provisions of Section 3513.04, Revised Code, forbid his candidacy in the 1958 general election for "any office" whether a primary election is provided by law to choose candidates therefor or whether nomination is achieved only by petition as in the case of county judge elections as provided in Section 1907.051, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General