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1. A CANDIDATE WHO FAILS TO FILE A STATEMENT OF EXPENDITURES IS SUBJECT TO THE SPECIFIC PENALTY UNDER SEC. 3517.10, R.C., NOT SEC. 3599.40, R.C. 2. IT IS MANDATORY THAT EACH CANDIDATE FILE A STATEMENT OF EXPENSES AND HE MAY BE PROSECUTED FOR FAILURE TO DO SO—§§3599.40, 3517.11, 3517.10 R.C.

## SYLLABUS:

1. A candidate for office who fails to file a statement of expenditures as required by Section 3517.10, Revised Code, within the time prescribed by that section, is subject to the specific penalty provided in Section 3517.11, Revised Code, for failure to file within the prescribed period, but is not subject to the penalty provision of Section 3599.40, Revised Code, for such failure.

2. Under Sections 3517.10 and 3517.11, Revised Code, it is mandatory that each candidate file a statement of expenses, and where a candidate fails to file at any time, he may be prosecuted for such failure and the penalty provided by Section 3599.40, Revised Code, may be imposed.

Columbus, Ohio, March 16, 1962

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

Dear Sir:

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

“The Board of Elections has called to the attention of this office the failure of a defeated candidate in a recent municipal election to file the statement of receipts and expenditures required by Section 3517.11 of the Revised Code.

“This Section provides that failure to file such statement, ‘shall disqualify said person from becoming a candidate in any future election for a period of five years.’

Section 3599.40 provides, in part, that

‘whoever violates any provision of Title XXXV of the Revised Code, *unless otherwise provided in such Title*, shall be fined \* \* \*’ (Emphasis added)

“Is the defeated candidate in question subject to prosecution under Section 3599.40, or is the provision in Section 3517.11 for disqualification to be considered as having ‘otherwise provided’ the penalty for such failure on the part of a candidate.”

Section 3517.11, Revised Code, provides in part:

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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. Failure of any candidate to file a statement within the time prescribed by section 3517.10, Revised Code, shall disqualify said person from becoming a candidate in any future election for a period of five years, except candidates for an elected office having a six year term who shall be disqualified from becoming a candidate in any future election for a period of seven years.”

Section 3599.40, Revised Code, provides:

“Whoever violates any provision of Title XXXV of the Revised Code, unless otherwise provided in such title, shall be fined not less than twenty-five nor more than five hundred dollars or imprisoned not less than ten days nor more than six months, or both. All prosecutions under Title XXXV of the Revised Code must be commenced within one year after the commission of the act complained of.”

Section 3517.40, Revised Code, requires every candidate to file a statement of expenses with the secretary of state or the county board of elections not later than four p.m. of the forty-fifth day after election. Section 3517.11, Revised Code, requires the secretary of state or the board of elections to report the failure of a candidate to file such reports to the attorney general or the county prosecutor for appropriate criminal or civil action, and provides that the failure to file the report required by Section 3517.10, Revised Code, within the prescribed time precludes the candidate from becoming a candidate in any future election for a period of five years or of seven years, depending on the length of the term for which he was originally a candidate.

The question presented by your request necessitates that I determine the meaning of the phrase "as otherwise provided in Title XXXV, Revised Code," as used in Section 3599.40, Revised Code. In this respect it is a fundamental principle of construction that the meaning of a particular phrase or provision in a statute may be found by considering the statute or act as a whole. 50 Ohio Jurisprudence 2d, 199, Statutes, Section 222. Chapter 3599., Revised Code, sets forth the specific violations and penalties therefor of the election laws of Ohio. Section 3599.40, *supra*, deals specifically with the penalty that may be imposed for a violation of any provision of Title XXXV, Revised Code, which title contains Chapters 3501., 3503., 3505., 3506., 3507., 3509., 3511., 3513., 3515., 3519., 3521., 3523., and 3599., Revised Code, all dealing with the election laws.

The Supreme Court of Ohio in commenting on such a clause in *McNary v. State*, 128 Ohio St., 497, at page 512 states:

"It is claimed by the state that Section 710-172, General Code, is an omnibus penalty statute, providing a penalty for all violations of the banking laws, except those sections wherein a specific penalty is provided for. Such thing can be done. It has been done by the General Assembly of Ohio, notably in the motor vehicle and intoxicating liquor laws. To our knowledge no one has ever insisted that the penalty should be included in the same section of the statute that defines the crime. All that is necessary is that a penalty be provided for the violation of the section in question. But the penalty must be provided, and it should be provided with that degree of clarity that characterizes all criminal law, to the end that its application must not be left to conjecture.

"Reference to the motor vehicle and intoxicating liquor laws divulges the fact that the penalty provisions are so clear and clean cut as to leave no room for doubt."

Thus it is obvious that Section 3599.40, Revised Code, is a general penal provision applicable to all sections of Title XXXV which do not contain a specific penalty, and the phrase "as otherwise provided in Title XXXV, Revised Code" must be construed to mean unless "a penalty" is otherwise provided in Title XXXV, Revised Code.

The Supreme Court of Ohio in *Ewing v. Toledo Savings Bank*, 43 Ohio St., 31, 1 N.E., 138, in discussing the meaning of the word "penalty," stated at page 36 of its opinion:

"\* \* \* This brings us to consider the meaning of the word 'penalties' as used in this statute. It must be assumed that the

general assembly was cognizant of the state of the law. It is true that no corporal punishment was inflicted in Ohio for usury. It is true also that usury to this state was not declared an offense for which punishment by fine was inflicted. But it is true, at the time this statute was passed, that by the laws of Ohio a contract for usury could not be enforced to the extent of the usury. To that extent the contract was forfeited. This forfeiture was a penalty within the meaning of the statute. \* \* \*

Also to be considered in this regard is the statement of the Court of Appeals of Summit County in *Ridgeway v. Akron*, 36 Ohio Law Abstract. at page 48:

“The accepted definition of a forfeit is ‘something to which the right is lost by the commission of a crime or fault’ or the losing of something by way of penalty.”

A consideration of the various authorities which discuss the meaning and import of a “penalty” clearly indicate that the term has no precise meaning, but is generally intended to embrace all the consequences visited by the law upon those who violate police regulations. 2 American Jurisprudence, 623, Forfeitures and Penalties, Section 27. 24 Ohio Jurisprudence 2d, 529, Forfeitures and Penalties, Section 11. Section 3517.11, Revised Code, sets forth clearly the consequences of failure to file the report required by Section 3517.10, Revised Code, within the prescribed time, and I consider the forfeiture of an individual’s right to run for public office for a period of five or seven years to be a severe penalty.

The question here presented, however, is whether the law provides a penalty for failure to file at *any* time, and if so, whether such penalty is contained in Section 3599.40, Revised Code.

Section 3517.10, Revised Code, states that each candidate must file a statement of expenses no later than four p.m. of the forty-fifth day after election. Under Section 3517.11, Revised Code, until a candidate files, he cannot receive a certificate of nomination or election, or if elected, cannot enter upon the duties of the office; but these restrictions, even if they be considered penalties, apply only to persons who have been nominated or elected, and do not affect defeated candidates.

Under Section 3517.11, *supra*, a candidate’s failure to file must be reported to the attorney general or a prosecuting attorney, as appropriate, and the officer concerned is then authorized to bring civil and criminal

proceedings. It thus appears that each candidate has a mandatory duty to file a statement, the purpose of such requirement being to allow inspection of receipts and expenditures of all candidates.

I have found no specific penalty for a failure of a candidate to file a statement of expenses, thus the penalty for failure to meet this requirement of law is found in the general provision, Section 3599.40, *supra*.

It is true that an accused could defeat a prosecution for failure to file by an actual filing. While this would probably save him from the penalty provision, the intent of the law would be realized since the statement would then be available for inspection.

Concluding, it is my opinion and you are advised:

1. A candidate for office who fails to file a statement of expenditures as required by Section 3517.10, Revised Code, within the time prescribed by that section, is subject to the specific penalty provided in Section 3517.11, Revised Code, for failure to file within the prescribed period, but is not subject to the penalty provision of Section 3599.40, Revised Code, for such failure.

2. Under Sections 3517.10 and 3517.11, Revised Code, it is mandatory that each candidate file a statement of expenses, and where a candidate fails to file at any time, he may be prosecuted for such failure and the penalty provided by Section 3599.40, Revised Code, may be imposed.

Respectfully,

MARK McELROY

Attorney General