

OPINION NO. 66-005**Syllabus:**

1. A district established by the reapportionment plan is not a "subdivision smaller than a county" within the meaning of Section 3513.05, Revised Code, despite the geographical area included in such district, and all candidates filing declarations of candidacy for nomination for election to the office of Representative to the General Assembly must file petitions containing sufficient signatures to meet the requirements of that section as they apply to candidates to be elected from a county or a congressional district smaller than a county.

2. Nominating petitions filed pursuant to Section 3513.256, Revised Code, by independent candidates for election to the office of Representative to the General Assembly must contain the number of signatures required by that section and the signers of such petition must be electors of the district from which such candidate may be elected.

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To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, January 7, 1966

Your request for my opinion reads:

"The recent reapportionment of the Ohio General Assembly has created an inconsistency in the provisions of Revised Code Sections 3513.05, 3513.256 and 3513.257 on which I would appreciate your opinion.

"As you know, the newly created districts vary greatly in size with some consisting of many contiguous counties and still others confined to areas smaller than a county. Legislative districts previous to this time have been coextensive with county lines which necessitated candidates filing with the Board of Elections, declarations of candidacy containing the signatures of at least one hundred qualified electors of the same political party, and otherwise to comply with the provisions contained in paragraph four of Revised Code Section 3513.05.

"Paragraph five immediately following contains those provisions applicable to those candidacies which are to be submitted to the electors within a subdivision smaller than a county, and requires the signatures

of at least five qualified electors of the subdivision who are members of the same political party.

"A literal application of the present provisions of Revised Code Section 3513.05 to the various existing legislative districts would lead to the illogical conclusion that some candidates for state representative would be required to procure the signatures of between one hundred and five hundred qualified electors in order to establish their candidacies, while others who reside in those districts which are now smaller than a county would need only to obtain signatures of between five and twenty-five qualified electors in order to establish their candidacies.

"A similar inconsistency now exists in the provisions of Revised Code Sections 3513.256 and 3513.257 in regard to the candidacies of independent candidates. Since the office of representative to the General Assembly would no longer appear to be a county office within the meaning of Section 3513.256, must a prospective candidate be governed by the requirements of Section 3513.257, as are other district candidates, or do the requirements of Section 3513.256 still apply regarding the number of qualifying signatures the candidate must obtain on the face of his nominating petitions?"

Section 3513.05, Revised Code, reads in pertinent part:

"Each person desiring to become a candidate for a party nomination or for election to an office or position to be voted for at a primary election shall, not later than four p.m. of the ninetieth day before the day of such primary election, file a declaration of candidacy and petition and pay the fee required by section 3513.10 of the Revised Code. Such declaration of candidacy, petition, and all part-petitions shall be filed at the same time as one instrument.

* * * * *

"If the declaration of candidacy declares a candidacy which is to be submitted only to electors within a district comprised of more than one county but less than all of the counties of the state, the petition shall be signed by at least one hundred qualified electors of such district who are members of the same political party as the political party of which the candidate is a member, or by such electors equal in number to at least five per cent of the number of votes

cast for the candidate for governor of the same political party in such district at the next preceding regular state election if such five per cent is less than one hundred, and such declaration of candidacy and petition shall be filed with the board of elections of that county or part of a county within the district which had a population greater than that of any other county or part of a county within the district according to the last federal decennial census; provided that such board shall not accept or file any such petition appearing on its face to contain the signatures of more than five hundred electors.

"If the declaration of candidacy declares a candidacy which is to be submitted only to electors within a county or a congressional district smaller than a county, the petition shall be signed by at least one hundred qualified electors of such county or district who are members of the same political party as the political party of which the candidate is a member, or by such electors equal in number to at least five per cent of the number of votes cast for the candidate for governor of the same political party in such county or district at the next preceding regular state election if such five per cent is less than one hundred and such declaration of candidacy and petition shall be filed with the board of the county; provided that such board shall not accept or file any such petition appearing on its face to contain the signatures of more than five hundred electors.

"If the declaration of candidacy declares a candidacy which is to be submitted only to electors within a subdivision smaller than a county, the petition shall be signed by at least five qualified electors of such subdivision who are members of the same political party as the political party of which the candidate is a member, and such declaration of candidacy and petition shall be filed with the board of the county within which such subdivision is located, or within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located, if the subdivision is situated in more than one county; provided that such board shall not accept or file any such petition appearing on its face to contain the signatures of more than twenty-five electors.* * *"

The fact that the geographical area included within a district under the reapportionment plan is less than an entire county does not make such district a "subdivision smaller than a county" within the meaning of Section 3513.05, Revised Code. The term "subdivision"

is not defined in the election law, but it is my conclusion that the "subdivision" referred to in that section is a "political subdivision" as defined in Section 3501.01, Revised Code. That section shows this definition:

"As used in the sections of the Revised Code relating to elections:

* * * * *

"(N) 'Political subdivision' means 'county,' 'township,' 'city,' 'village,' or 'school district.'

The Supreme Court interpreted Sections 4785-3 (q) and 4785.70, General Code, the predecessors to Sections 3501.01 and 3513.05, Revised Code, in The State, ex rel. Rowe vs. Schirmer, 131 Ohio St., 90. The following language in the opinion is pertinent here:

"The chief source of the difficulty here encountered arises from the provision that 'in the case of a candidate for an office in a county or district larger than a county and less than a state, at least one hundred electors of his party or by at least five per cent of the vote cast for his party candidate for governor at the next preceding state election if such five per cent is less than one hundred; in the case of a candidate for office in a subdivision less than a county, such petition shall be signed by at least five electors of such subdivision.' It is apparent that the first part of this provision relates to a county and also to a district larger than a county but smaller than a state. It is equally clear that the second part applies to a 'subdivision' less than a county, but the word 'district' is not included, as in the first. Thus this statute unfortunately makes no specific provision for a 'district' smaller than a county. Therefore the question reduces itself to whether a 'district' less than a county is to be considered as impliedly comprehended within the term 'a subdivision less than a county.'

"Although the above quoted sections themselves are of little assistance in solving this difficulty, the election code does not leave the matter to speculation. Section 4785-3 (q), General Code, as amended in 114 Ohio Laws, 679, contains the following definition of the word 'subdivision':

"The term "political subdivision" shall mean a county, township, city, village or school district.'

"If proper significance is attached to the omission of the word 'district,' the solution of the problem is found simply by the application of the ancient and logical principle of expressio unius est exclusio alterius. The Legislature has power to provide reasonable definitions of the terms employed in its enactments, and in this instance the result is an eminently fair and proper one. If this court were to disregard Section 4785-3 (q) and hold that the term 'subdivision' includes any congressional district less than a county, the anomalous result would be a provision permitting a petition with five names in a district smaller in area but larger in population than a district in which a petition with a minimum of one hundred names is required. This would produce at least a startling lack of uniformity in the operation of the statute among the various congressional districts of Ohio.

"This court is therefore unanimously of the opinion that Section 4785-3 (q) is controlling and that the term 'subdivision' as employed in Section 4785-70 does not embrace a congressional district smaller than a county. The relator's demurrer to the answer is overruled and the peremptory writ is denied."

It is unnecessary to discuss the earlier case of Downer vs. Bernon, 12 Ohio Law Abs., 672, in which the Court of Appeals for Cuyahoga County had reached a different conclusion.

In my opinion the decision in the Rowe case, supra, is authority for the conclusion that a district under the reapportionment plan is not such a subdivision within the meaning of Section 3513.05, Revised Code, that a petition signed by not less than five nor more than twenty-five electors would be valid. Moreover, Section 3513.05, Revised Code, shows clearly the legislative direction as to the minimum and maximum numbers of signatures required on petitions to be filed with declarations of candidacy, and this section requires that all candidates for similar offices comply with those requirements. It seems to me that inherent in this section is the intention that all such candidates be governed equally, and I am unable to conclude that some candidates for election to the House of Representatives may be required to secure a much greater number of signatures while others need secure only five.

Section 3513.256, Revised Code, reads in part:

"The nominating petition of independent candidates for the office of representative to the general assembly,* * *, shall be signed by not less than twenty-five qualified electors of the county, or not less than seven per cent of the number of electors who voted for governor at the next preceding regular state election in the county, whichever is the greater.* * *"

Under the reapportionment plan, apportionment districts and county boundaries are not identical; nevertheless, an independent candidate for election to the office of Representative to the General Assembly must file nominating petitions pursuant to this section. The entire tenor of the election laws indicates to me the legislative intention that both nominating petitions and those filed with declarations of candidacy must be signed by electors who are legally qualified to support and vote for the candidate for whom such petitions are signed. Thus, it would be meaningless to have petitions signed by electors who live within a county but outside of the apportionment district in which votes may be cast for an individual candidate. I find nothing which would in any way vary the number of signatures required by Section 3513.256, Revised Code, but I do conclude that the signers must be electors of the district from which a candidate may be elected.

It is, therefore, my opinion and you are advised:

1. A district established by the reapportionment plan is not a "subdivision smaller than a county" within the meaning of Section 3513.05, Revised Code, despite the geographical area included in such district, and all candidates filing declarations of candidacy for nomination for election to the office of Representative to the General Assembly must file petitions containing sufficient signatures to meet the requirements of that section as they apply to candidates to be elected from a county or a congressional district smaller than a county.

2. Nominating petitions filed pursuant to Section 3513.256, Revised Code, by independent candidates for election to the office of Representative to the General Assembly must contain the number of signatures required by that section and the signers of such petition must be electors of the district from which such candidate may be elected.