

## OPINION NO. 72-024

**Syllabus:**

Under Section 3513.191, Revised Code, an individual is eligible to be a candidate at a party primary if he has not voted as a member of a different party at any primary within the next preceding four calendar years; and that the term, "calendar years", as used in the Section, means the period from January 1 to December 31.

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**To: Donald L. Jones, Washington County Pros. Atty., Marietta, Ohio**  
**By: William J. Brown, Attorney General, April 3, 1972**

Your request for my opinion states the following facts:

Candidates X and Y have filed declarations and petitions for nomination as the Democratic party candidate for representative from the 91st District to the General Assembly. Candidate X last voted in a primary election in 1967, at which time he voted as a member of the Republican party. Since that time he has voted in the general elections only. Candidate Y has challenged the eligibility of candidate X to run in the Democratic primary in view of his participation in the Republican primary in 1967.

The question is whether Candidate X is entitled to run as a candidate in the Democratic primary in May 1972.

The answer is to be found in Section 3513.191, Revised Code, which provides:

"No person shall be a candidate for nomination or election at a party primary if he voted as a member of a different political party at any primary election within the next preceding four calendar years."

In State, ex rel. Gareau v. Stillman, 18 Ohio St. 2d 63 (1969), an individual who had voted in the Democratic primary on May 4, 1965, sought to become a candidate for councilman in the Republican primary to be held on May 6, 1969. His right to become a candidate was challenged on the ground that Section 3513.191, supra, uses the term "calendar year" in the ordinary and customary meaning of the period from January 1 to December 31. The candidate urged that the phrase meant merely the passage of any 365 consecutive days. The Court's opinion reads in pertinent part as follows:

"The words 'calendar year' are commonly and ordinarily accepted as meaning the period of time from January 1 through December 31. \* \* \*

"In construing any legislative enactment, consideration of the legislative pro-

ceedings is helpful in determining the meaning and purpose of the act.

"The legislative proceedings in relation to Section 3513.191, Revised Code, show that it was enacted in its present form in 1955. As originally introduced this section read, in part, as follows: '# \* # he voted as a member of a different political party within the next preceding two years.' However, the Ohio Senate Journal (Volume 126, page 277) shows that the bill was amended in the Senate by inserting the word 'calendar.' The two-year period was later amended in the same bill to four years.

"Thus, in the instant case an examination of the legislative history of the section clearly shows that the General Assembly knowingly and intentionally used the words 'calendar year' in this section.

"It is obvious that the amendment in the Senate must have been made with a purpose. The only purpose of changing the general word 'year,' which means a period of 365 days and which is susceptible of different meanings so far as the time within which the 365-day period should begin and end, to the specific words 'calendar year' would be to adopt words which have a definite and common meaning as to the beginning and ending of the 365-day period which constitutes a year.

"As pointed out above, the words 'calendar year' designate a period of time from January 1 through December 31.

"The candidate in the instant case did vote as a Democrat within the next four preceding calendar years. He thus is not eligible to be a Republican candidate in the May 6, 1969, primary election."

See also State, ex rel. Bible v. Bd. of Elections, 22 Ohio St. 2d 57 (1970); State, ex rel. Bouse v. Cickelli, 165 Ohio St. 191 (1956); State, ex rel. Bouse v. Cickelli, 97 Ohio App. 43 (1954); Opinion No. 1261, Opinions of the Attorney General for 1964.

In all of the above cases an individual, who sought to be a candidate for nomination in a party primary election, had voted as a member of a different political party at a primary election within the next preceding four calendar years. He was, therefore, disqualified under express provision of Section 3513.191, *supra*. The facts stated in your letter present a different case. Candidate X voted in the Republican primary in 1967, but he did not vote in any primary during the calendar years 1968, 1969, 1970 and 1971. He is, therefore, eligible to be a candidate in the Democratic primary in May 1972 since he did not participate in a Republican primary during the next preceding four calendar years.

In specific answer to your question it is my opinion, and you are so advised that, under Section 3513.191, Revised Code, an individual is eligible to be a candidate at a party primary if he has not voted as a member of a different party at any primary within the next preceding four calendar years; and that the term, "calendar years", as used in the Section, means the period from January 1 to December 31.