

ELECTIONS—STATEMENT OF CONTRIBUTIONS AND EXPENDITURES MUST BE FILED; TIME SET FOR FILING IN §3517.10 RC IS DIRECTORY ONLY—OBLIGATION TO FILE CONTINUES AND ELECTION OFFICIALS UNDER OBLIGATION TO RECEIVE AND FILE STATEMENT—DISQUALIFICATION FROM CANDIDACY UNDER §3517.11 RC OPERATES ONLY SO LONG AS STATEMENT IS NOT FILED.

SYLLABUS:

1. The requirement in Section 3517.10, Revised Code, that a statement of contributions and expenditures be filed by a candidate at any election is mandatory, but the requirement therein that such statement be filed "not later than four p. m. of the thirtieth day after such election" is directory only. A candidate who has failed to file such statement within such period is under a continuing obligation to do so, and the board of elections, or the secretary of state, as the case may be, is under a continuing obligation to receive and file such statement.

2. The provision in Section 3517.11, Revised Code, that "failure of any candidate to file a statement of expenditures shall disqualify said person from becoming a candidate in any future election of a period of five years" is operative during a period of five-years following the thirty-day period provided for in Section 3517.10, Revised Code, provided the "failure of any candidate to file a statement of expenditures" should that long continue. Where, during such period, a candidate actually files such statement the disqualification provided in this section is terminated.

Columbus, Ohio, May 21, 1957

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"At the request of the Mahoning County Board of Elections I am writing to secure your opinion on the following:

"X was a candidate for Precinct Committeeman in Precinct 3-C of the City of Struthers, Ohio, in the May Primaries of 1956, but was unsuccessful. No direct expenses were incurred by X during this election; he did receive \$11.45 as a campaign contribution in the form of campaign cards from his brother. X now desires to tender to the Board of Election an expense account showing the above contribution.

“The question presented for your opinion is:

“May X now tender said expense account and must the Board of Elections accept it so that he may become a candidate in future elections (not for the coming Primary election, May 7, 1957) in view of the provisions of R.C. 3517.11, which provides:

“Filing of Statement of Receipts and Expenditures (Last paragraph). 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.” (Eff. 1-1-56).

In connection with this matter I have also for consideration your letter of April 23, enclosing a copy of the petition in State, *ex rel.* Vasvari, v. Richert, *et al.*, No. 151198, Common Pleas Court of Mahoning County, a copy of the decision by the Mahoning County Court of Appeals in the same case, in that court on appeal from a judgment for defendant below, and a copy of the appellate court's entry of affirmance.

A comparison of this petition with your inquiry of April 13, makes it quite clear that the individual you refer to as “X” is actually the relator in the Vasvari case, *supra*. In that case it was sought by mandamus to compel the board of elections to accept for filing a nominating petition and to place relator's name on the ballot in the May 1957 primary.

The ruling of the court, so far as here pertinent, is evident from the following language in the opinion:

“It is undenied that appellant was a person and was a candidate for election as a Democratic precinct committeeman at the Democratic Primary in 1956; that he received a contribution of campaign cards, things of value; that he failed to file a full, true and itemized statement—setting forth in detail the moneys or things of value received by him and “the names of the persons from whom received” “in connection with the election” as precinct committeeman “not later than four p.m. of the thirtieth day after such election.”

“We concur in defendants' contention that not having filed his expense account in question the petition plaintiff attempted to file was not a valid petition, which determines this case adversely to appellant.”

The question you present is actually a dual one. First, you ask whether the board must now accept for filing a report which, as provided in Section 3517.10, Revised Code, should have been filed within thirty days after the May 1956 primary; and second, whether such filing now

would make it possible for Mr. X to become a candidate for office hereafter within less than the "period of five years" provision in Section 3517.11, Revised Code.

The second question is, of course, purely academic, for there is no assurance that Mr. X will ever again offer himself as a candidate for any office, and he is not currently such a candidate. It is the policy of this office, of course, not to express an opinion on purely academic questions. In the case at hand, however, it appears necessary, as will be disclosed hereinafter, to decide such question as an incident of reaching a conclusion as to the first.

As to your first question we may first note the following provision in Section 3517.10, Revised Code:

"Every candidate and campaign committee and every person, committee, association, or group of persons, incorporated or unincorporated, who contributed, promised to contribute, received, or expended, directly or indirectly, any money or things of value in connection with the nomination or election of any candidate at any election held in this state shall, not later than four p.m. of the thirtieth day after such election, file a full, true, and itemized statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth in detail the moneys or things of value so contributed, promised, received, or expended the names of the persons from whom received and to whom paid, and the object or purpose for which expended * * *."

Here there is plainly a mandatory duty to file a statement. The question is whether the provision as to filing within the specified period following the election is likewise mandatory. In *State, ex rel. Alcorn, v. Mitten-dorf*, 102 Ohio St., 229, where a question was raised as to the mandatory or directory character of a statute was involved, it was said by Marshall, C. J., p. 232:

"There are a great many statutes in which the time is fixed for doing stipulated things, and in which time is of the essence of the matter, and in such event the statute must be considered to be mandatory and the act cannot be performed at any other time. On the other hand, there are a very great many statutes commanding public officials to perform acts at certain fixed times where time is not of the essence of the matter, and in such instances the provisions are directory merely. There can be no good reason for claiming that time is of the essence of the provision for reading the list of delinquent taxpayers on personal property, and we

therefore hold that Section 5696, General Code, belongs to the latter class * * *.”

Is the statute here under scrutiny one “in which time is of the essence of the matter.”?

We may note, incidentally, that this question was not decided in the Vasvari case, *supra*, for the candidate there involved did not tender his statement to the board until February 15, 1957, so that as of February 6, 1957, the last date on which his nominating petition could lawfully have been filed, the candidate was disqualified as provided in Section 3517.11, Revised Code.

The statutory provision quoted above from Section 3517.10, Revised Code, is one designed to assure honesty and to prevent corrupt practices in elections, so far as that may be accomplished by disclosure of the financial data encompassed by the prescribed statement. That objective, in substance, or at least to some degree, would appear to be possible of attainment whenever the report is filed, however long delayed, provided the delinquent candidate is meanwhile disqualified as a candidate, although I do not mean to suggest that during such period such candidate could not be compelled by mandamus to file the report. This would indicate that the thirty-day provision is one designed for administrative convenience only, and hence, is directory only.

It must be borne in mind, too, that we are here concerned with a statute which is not only in derogation of common rights but one which works the forfeiture of an important civil right. As to forfeiture statutes, it is said in 37 Ohio Jurisprudence, 752, 753, Section 425:

“Forfeitures are not favored by the law, and statutes providing for a forfeiture are subject to a rule of strict construction. Whatever may be the nature or kind of forfeiture, it is not to be carried, by construction, beyond the clear expression of the statute creating it. Moreover, a statute should, if possible, be so construed as to avoid a forfeiture.”

It is not possible here reasonably to construe the statute so as wholly to avoid a forfeiture, but it is possible reasonably to avoid an absolute forfeiture for the full five-year term. This is so for the reason that Section 3517.11, Revised Code, provides for disqualification, *not* for failure to file the statement within the thirty-day period provided in Section 3517.10, Revised Code, but rather for “failure * * * to file a statement of

expenditures.” Thus, it could be said that during the five-year period, following such thirty-day period, an individual will be disqualified should he fail so long to “file a statement of expenditures;” but having filed such a statement during such period it can no longer be said that he has failed “to file a statement.”

For the reasons indicated, it is my view that this statute should be strictly construed, that the thirty-day provision should be regarded as directory only, and that a disqualification should be deemed terminated upon the filing of the statement in question. Hence, I conclude that the board is under a duty to accept such statement when tendered even though such tender be made after the thirty-day period provided in the statute.

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

1. The requirement in Section 3517.10, Revised Code, that a statement of contributions and expenditures be filed by a candidate at any election is mandatory, but the requirement therein that such statement be filed “not later than four p.m. of the thirtieth day after such election” is directory only. A candidate who has failed to file such statement within such period is under a continuing obligation to do so, and the board of elections, or the secretary of state, as the case may be, is under a continuing obligation to receive and file such statement.

2. The provision in Section 3517.11, Revised Code, that “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” is operative during a period of five-years following the thirty-day period provided for in Section 3517.10, Revised Code, provided the “failure of any candidate to file a statement of expenditures” should that long continue. Where, during such period, a candidate actually files such statement the disqualification provided in this section is terminated.

Respectfully,
WILLIAM SAXBE
Attorney General