OPINION NO. 70-011

Syllabus:

1. It is not necessary to provide write-in spaces on primary election ballots for the offices of member of the state central committee of a political party in Ohio, or delegate or alternate to the national convention of a political party, but such write-in space must be provided for the office of member of the county central committee of such political party.

2. The office of member of the county central committee of a political party in Ohio, being a public office, must appear on the ballot even though no candidate has qualified to have his name printed on the ballot for the office, in order that votes cast for eligible write-in candidates may be counted.

To: Ted W. Brown, Sec. of State, Columbus, Ohio
By: Paul W. Brown, Attorney General, February 4, 1970

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

> "I would appreciate receiving your opinion interpreting Amended Substitute Senate Bill No. 17 and Section 3513.14 of the Revised Code as those statutes relate to the requirement for write-in spaces on the ballot for the offices of delegates and alternates to the national and state conventions, member of the state central committee, and

member of the county central committee, including the requirement for the appearance on the ballot of the offices of member of the state central committee and member of the county central committee in the event no person files and qualifies as a candidate."

As you indicate, Amended Substitute Senate Bill No. 17 was enacted with a view toward satisfying the requirement of providing means to enable qualified voters to vote for persons other than those whose name appears on an election ballot, as the Supreme Court enunciated this requirement in Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24. In this case, Ohio was ordered to provide write-in spaces on ballots, or other reasonable means for voting for independent candidates "for all offices for the November 1968 general election."

The purpose of the Act in question is "/t/o amend sections 3505.03, 3505.04 and 3513.10 and to enact section 3513.041 of the Revised Code to provide for write-in candidates and the payment of a filing fee." Section 3513.041, supra, which is the section of the statute providing for write-ins, reads in pertinent part as follows:

> "A write-in space shall be provided on the ballot for every office, but write-in votes shall not be counted for any candidate who has not filed a declaration of intent to be a write-in candidate pursuant to this section. A qualified person who has filed a declaration of intent may receive write-in votes at either a primary or general election. Any candidate * * * shall file a declaration of intent to be a write-in candidate before four p.m. of the twentieth day preceding the election at which such candidacy is to be considered. * * *"
> (Emphasis added.)

Section 3513.14, Revised Code, on the other hand, relating specifically to primary ballots only, reads in pertinent part as follows:

> "* * * /I/nasmuch as candidates for the office of delegate and alternate to the national and state conventions, member of the state central committee, and member of the county central committee are elected at the primary election no blank space shall be left on the ballot after the named of the candidates for such office, and no vote shall be counted for any person whose name has been written in on said ballot for any such offices. If no person files and qualifies as a candidate for the office of member of the state central committee or member of the county central committee such office shall not appear on the ballot."
> (Emphasis added.)

Sections 3513.041 and 3513.14, supra, which relate at least in part to the same subject matter, must undoubtedly be read in pari materia. There appears to be a conflict between these two statutory provisions in regard to the offices enumerated in the foregoing excerpt of Section 3513.14, supra, at least to the extent that these offices are public offices to which the "one man, one vote" doctrine reiterated in Williams v. Rhodes, supra, applies.

Therefore, it is necessary to resort to certain rules of statutory construction to resolve which of these statutes controls in the present instance.

It is fundamental that a statute is always presumed to be constitutional, and where necessary a constitutional meaning will be inferred to preserve its validity. 3 Sutherland, Statutory Construction, Section 5903 (3rd ed. 1943). Furthermore, when statutes which are in pari materia conflict with each other, another fundamental rule is to be applied. This is stated as follows in 2 Sutherland, op. cit. supra, Section 5201:

> "The intent of the legislature when a statute is found to be ambiguous may be gathered from statutes relating to the same subject matter - statutes in pari materia. On the presumption that whenever the legislature enacts a provision it has in mind the previous statutes relating to the same subject matter, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in the prior statutes, and they all should be construed together. Provisions in an act which are omitted in another act relating to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purpose. Prior statutes relating to the same subject matter are to be compared with the new provision; and if possible by reasonable construction, both are to be so construed that effect is given to every provision of each. Statutes in pari materia, although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other. But if there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the former will control as it is the later expression of the legislature. * * *"
> (Emphasis added.)

Amended Substitute Senate Bill No. 17 was, as you indicate, enacted in response to the United States Supreme Court mandate contained in Williams v. Rhodes, supra. This mandate was couched in very broad terms. It is not unreasonable to conclude that the intent of the General Assembly in enacting this legislation was to make provision for write-in voting in elections for every public office in the State of Ohio, as Williams v. Rhodes, supra, seemed to require, whether such public office is filled at a primary election or at a general election. Therefore, it must be determined which of the offices enumerated in Section 3513.14, supra, which is the subject of your request, is a public office.

Historically, and as a general rule, the officers of a political party have not been considered governmental officers. 25 Am. Jur. 2d, Elections, Section 124, states this position as follows:

> "In most states officers of a political party, such as members of a party executive committee, are not public or governmental officers, even when provided for by statutory law. The duties of a public office are in their nature public. They involve in their performance the exercise of some portion of the sovereign power, whether great or small, in

> the performance of which all citizens, irrespective of party, are interested, either as members of the entire body politic or of some duly established division of it. Manifestly, membership in a political committee belonging to one party or another does not come within the above description of what constitutes public office, and the fact that the legislature undertakes by statute to regulate the election and conduct of political committees does not make the office a public one. The members thereof continue to be, as before, officers of the political party that elects them, and their duties are confined to matters pertaining to the political party to which they belong and which alone is interested in their proper performance."

In this spirit it has been held, for example, that delegates to a national convention are party officers, and not state officers. Alexander v. Booth (Fla. 1952), 56 So. 2d 716, and a federal court has recently declined to apply the "one man, one vote" principle to a claim of malapportionment in a state's delegation to a national convention. Irish v. Democratic Farmer-Labor Party of Minnesota (1968), 399 F. 2d 119. If a delegate to a national convention is a party officer and not a state officer, it necessarily follows that an alternate to such a convention is, likewise, a party officer and not a state officer. There is nothing in Ohio law which would require a different conclusion in Ohio in regard to the foregoing offices.

Nevertheless, depending on particular circumstances, an officer of a political party may be held to be a public officer. In Ohio, members of a county central committee, and the chairman of such a committee, have been held to be public officers. State ex rel. McCurdy v. DeMaioribus (1967), 9 Ohio App. 2d 280, summarizes these holdings as follows, beginning at page 282:

> "* * * [I]n 1962, the Ohio Supreme Court, in State, ex rel. Hayes v. Jennings, 173 Ohio St. 370 (analyzed in 31 Cinc. Law Rev. 479), held that under Section 305.02 (B), Revised Code, authorizing the county central committee of a political party to fill vacancies in certain offices held by members of the party, the committeemen were made public officers by virtue of the grant to them of certain powers to be exercised by them in the office they held. In paragraph one of the syllabus, the Supreme Court states:
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> "'The provisions of Section 305.02, Revised Code, effective October 12, 1961, which authorize the members of the central committee of a political party to fill vacancies occurring inter alia, in the office of clerk of courts of a county, confer official power upon the members of the central committee, and this annexation of power to this position makes it a public office and is a constitutional grant of power by the General Assembly. (Section 1, Article X, Ohio Constitution.)'
>
> "Unless we are to take the anomalous position that the office of committeemen is a 'public office'

> for some purposes, i.e., appointment of interim officials, and not for others, i.e., regular party business, it would appear that in Ohio the office of party committeemen is now amenable to the quo warranto statute. Similarly, as the committeemen themselves are public officers, it follows that the presiding official of the group of public officers would also be a 'public officer.' See, State, ex rel. Attorney General v. Andersen (1887), 45 Ohio St. 196, 199. Consequently, we determine, and therefore hold, that the chairmanship of a county central committee is a public office * * *." (Emphasis added.)

It is to be noted that the Hayes v. Jennings, supra, and McCurdy v. DeMaioribus, supra, cases were both in reference to county committees, and the conclusions reached in these cases were based on the fact that the members of a county central committee exercised certain appointive powers granted to them in Section 305.02, Revised Code. The Ohio statutes relating to the powers of a state central committee confer no similar power on the members of such a committee in regard to any state-wide office. In point of fact, the Ohio Constitution prescribes the manner in which vacancies in state-wide offices are to be filled. None of such offices are filled through appointment by the state central committee of a political party in a manner analogous to the appointment of county officers by a county central committee in accordance with Section 305.02, supra. Therefore, the rationale of these cases in regard to county central committees is not applicable to the state central committee of a political party.

In summary, I conclude that the offices of member of the state central committee of a political party in Ohio, or delegate or alternate to the national convention of a political party are offices of the party, and not public offices the election to which is governed by the "one man, one vote" principle reiterated in Williams v. Rhodes, supra, and intended to be covered by the provisions of Substitute Senate Bill No. 17, particularly Section 3513.041, supra. Therefore, it will not be necessary to provide write-in spaces on primary ballots in elections for the foregoing offices. I further conclude that the office of member of the county central committee, while an office of the party, is also a public office in this state, and the provisions of write-in space on primary ballots for elections to this office are governed by the requirements for the provision of write-in space as prescribed in Section 3513.041, supra, and that any provision of the Revised Code, to the extent that it would prevent such equality of treatment, was repealed by implication through the enactment of Substitute Senate Bill No. 17.

Therefore, it is my opinion and you are hereby advised that it is not necessary to provide write-in spaces on primary election ballots for the offices of member of the state central committee of a political party in Ohio, or delegate or alternate to the national convention of a political party, but that such write-in space must be provided for the office of member of the county central committee of such political party. Further, the office of member of the county central committee, being a public office, must appear on the ballot even though no candidate has qualified to have his name printed on the ballot for the office, in order that votes cast for eligible write-in candidates may be counted.