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CANDIDATES—SHALL BE NOTIFIED ON OR BEFORE 20TH DAY AFTER ELECTION OF REQUIREMENT TO FILE STATEMENT OF RECEIPTS AND EXPENDITURES WHERE CANDIDATE, *NOT SO NOTIFIED*, FAILS TO FILE SUCH STATEMENT WITHIN SPECIFIED TIME—SUCH CANDIDATE IS NOT DISQUALIFIED FROM BECOMING CANDIDATE IN ANY FUTURE ELECTION FOR PERIOD OF FIVE YEARS—§§3517.10, 3517.11, R.C.

SYLLABUS:

The requirement of Section 3517.11, Revised Code, that candidates shall be notified on or before the twentieth day after the election of the requirements of Sections 3517.10 and 3517.11, Revised Code, is mandatory; and, where a candidate *who is not so notified* fails to file his statement of expense within the time specified in Section 3517.10, Revised Code, such candidate is not disqualified from becoming a candidate in any future election for a period of five years under Section 3517.11, Revised Code.

Columbus, Ohio, February 9, 1960

Hon. Joseph Blair Yanity, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir :

I have your request for my opinion reading as follows :

"I am requesting an opinion regarding Sections 3517.10 and 3517.11 of the Ohio Revised Code.

"At the November election, 1958, fifteen persons, residents of the City of Athens, were on the ballot to fill a fifteen-member commission for the purpose of framing a charter for the City of Athens. There was no other slate of candidates and there were fifteen to be elected and each one of the candidates was elected. Thereafter, on the forty-fourth day after the election, the Board of Elections, by phone, contacted two or three of the elected members of the commission and wanted to know when the commission members were going to get a statement of receipts and expenditures filed. These two or three members then started in to contact all the rest of the commission members but were unable to get all the statements signed and filed before four o'clock p.m. on the forty-fifth day, although completed statements for each elected member of the commission were filed very shortly thereafter.

"No candidate had any receipts or any expenditures in the election and the only notice received by the commission members was the phone call from the Board of Elections.

"Under this statement of facts, is any member who failed to file the statement required by Section 3517.10 barred by Section 3517.11 from becoming a candidate for office for a future period of five years?"

Section 3517.10, Revised Code, provides in part and so much as is required to answer your question as follows :

"Every candidate * * * shall, not later than four p.m. of the forty-fifth 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. Such candidates who did not receive or expend, directly or indirectly, any money or things of value in connection with their nomination or election shall, not later than four p.m. of the forty-fifth day after such election,

file a statement to the effect, subscribed and sworn to * * *. The form for such statements shall be prepared by the secretary of state, and furnished to the boards of elections in the several counties, and such boards shall supply printed copies of such form without charge.* * *.”

Section 3517.11, Revised Code, also insofar as applicable to your question reads as follows :

“If the statement prescribed by section 3517.10 of the Revised Code relates to * * * the nomination or election of persons whose candidacy for nomination or election was submitted only to electors within a county, it shall be filed with the board of such county ; * * * .

“*On or before the twentieth day* after any election in which statements are required to be filed by section 3517.10 of the Revised Code, every candidate subject to the provisions of sections 3517.10 and 3517.11 of the Revised Code shall be *notified by mail* of the requirements of those sections. * * * , and the board of elections of every county shall notify all candidates required to file such statements with it.

“* * * 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 section 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 of the Revised Code shall disqualify said person from becoming a candidate in any future election for a period of five years.”

Section 3517.11, Revised Code, *supra*, requires notice by *mail* from the board of elections on or before the twentieth day after election to the candidate of the requirement of the statute.

From your inquiry it appears that the majority of the candidates received no notice whatsoever, and that two or three of such candidates received a telephone call, the day before the required filing date. Thus, none of the referred to candidates received the required statutory notice as to time or method. In my opinion, the time of the telephone notice to a few constituted no notice at all.

In 30 Ohio Jurisprudence 244, Sec. 35, Notice, it is stated:

“Mailed notice, to be effectual, must be given as prescribed by statute * * * .”

In 30 Ohio Jurisprudence 244, Sec. 36, Notice, it is stated :

“If a party is entitled to a particular statutory notice, mere actual notice to him will not suffice.”

In the case of *Lake Shore Electric Ry. Co. v. Public Utilities Commission of Ohio*, 115 Ohio St. 311, the following is stated at page 315 :

“* * * Questions of the sufficiency of notice and of the kind and character of notice to be given are legislative problems, and, when the Legislature has spoken, the courts may not properly interfere unless a question of due process is presented. * * * In this case it cannot be said that there has been a substantial compliance, but rather it must be said that there has been a total failure to observe the requirements. It is urged by the applicant that it would be a matter of tremendous expense to make publication in a newspaper published at each county seat. It may be answered that the applicant is seeking a franchise covering a tremendous amount of territory. If the certificate has value in each of the counties of the state, the statute must be respected and that expense be incurred or any counties omitted must be eliminated from the application and the order. The statutory provisions as to notice are either mandatory or directory. To hold that they are directory would be to give the commission unlimited latitude and the procedure would thereby be rendered chaotic.

“* * *

It appears, therefore, that although all of the candidates failed to file statements within the prescribed time, the board of election also failed to notify said candidates as required by law. Thus, the question arises as to whether the penalty for not filing in time should be invoked where notice by the board was not given. As this question does not appear to have arisen before, it will be necessary to ascertain the intent of the legislature from the language used.

Prior to 1956, Section 3517.11, *supra*, did not contain a disqualification provision such as here in question. In Amended Senate Bill No. 220 of the 101st General Assembly (1955), effective January 1, 1956, a provision was inserted in the section as follows :

“* * * 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.”

This provision was interpreted in paragraph 2 of the syllabus of Opinion No. 1415, Opinions of the Attorney General for 1957, page 729, as follows :

“There is no requirement in existing Section 3517.10, Revised Code, that a candidate, who received no contributions and made no expenditures in connection with his candidacy in an election, must file a statement of expenditures as therein provided. Where no such contributions or expenditures are involved the candidate may establish such fact by filing an affidavit to that effect with the board of elections concerned, *but there is no necessity that this be done within the thirty day period provided in that section.* Paragraph two of the syllabus in Opinion No. 6211, Opinions of the Attorney General for 1956, page 93, approved and followed.” (Emphasis added)

In 1957, the following provision was inserted in Section 3517.11, *supra*:

* * *

“On or before the twentieth day after any election in which statements are required to be filed by section 3517.10 of the Revised Code, every candidate subject to the provisions of sections 3517.10 and 3517.11 of the Revised Code shall be notified by mail of the requirements of those sections. The secretary of state shall notify all candidates required to file such statements with his office, and the board of elections of every county shall notify all candidates required to file such statements with it.

* * *

Also, the disqualification provision was changed to read as follows:

“Failure of any candidate to file a statement of expenditures *within the time prescribed by section 3517.10 of the Revised Code* shall disqualify said person from becoming a candidate in any future election for a period of five years.” (Emphasis added)

The 1957 legislation, therefore, made the filing of the statement within the prescribed time mandatory. In the same enactment, however, the mandatory provision for notice was also inserted in the section. (127 Ohio Laws, 119; 127 Ohio Laws, 741 at 755.) The effect was to make the disqualification provision more stringent while at the same time the particular candidates concerned would be made more aware of the requirements of law and of the penalty for non-compliance.

In view of the above, I am of the opinion that the legislature intended that the required notice must be given by the board of elections or the disqualification provision regarding failure to file a statement within the required time is not applicable. In the instant situation, therefore, the candi-

dates in question should not be penalized for their failure to comply with Section 3517.11, *supra*.

Accordingly, it is my opinion and you are advised that the requirement of Section 3517.11, Revised Code, that candidates shall be notified on or before the twentieth day after the election of the requirements of Sections 3517.10 and 3517.11, Revised Code, is mandatory; and, where a candidate *who is not notified* fails to file his statement of expense within the time specified in Section 3517.10, Revised Code, such candidate is not disqualified from becoming a candidate in any future election for a period of five years under Section 3517.11, Revised Code.

Respectfully,

MARK McELROY
Attorney General