

OPINION NO. 84-025**Syllabus:**

Pursuant to R.C. 3513.05 and R.C. 3513.261, a board of elections may not certify as valid the petition of a candidate for county office who does not reside in the county in which he seeks office.

To: Sherrod Brown, Secretary of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 11, 1984

I have before me your request for my opinion regarding the residency requirements for election to certain county offices. Specifically, your question asks whether an individual who possesses the requisite professional qualifications for the office of prosecuting attorney, coroner, or engineer must be an elector and resident of the county in order to petition for election to such office.

Qualifications for the office of prosecuting attorney are set forth in R.C. 309.02, for coroner in R.C. 313.02, and for engineer in R.C. 315.02. None of these statutes contains a residency requirement for the holding of the office. Therefore, one possessing the requisite professional qualifications may be appointed to the appropriate office even though he is not a resident elector of the county in which he will serve. 1968 Op. Att'y Gen. No. 68-072. As a result, in a less-populous county having no resident professional who desires to serve as prosecuting attorney, engineer, or coroner, it is nonetheless possible to fill the office and ensure the performance of its functions.

It is also possible, under certain narrow facts, for a non-resident to appear on the ballot for county office. In State ex rel. Jeffers v. Sowers, 171 Ohio St. 295, 170

N.E.2d 428 (1960), an action in prohibition, the sole candidate for nomination to the office of county engineer was a resident of the county who died after the primary. Pursuant to the provisions of R.C. 3513.31 the board of elections proposed to fill the ballot position vacancy thus created with the name of an individual who was not a resident of the county. In denying the writ and allowing the candidacy, the Jeffers court noted the general rule that residence within a political subdivision is not a necessary qualification for office in the absence of any express statutory or constitutional provision requiring such residence. The court also noted that the vacancy procedures under R.C. 3513.31 do not require the filing of a petition. However, the facts and rationale of Jeffers render it clearly inapplicable in resolving the specific question you have posed.

Ohio election laws contain certain express statutory provisions that separately apply to both partisan and non-partisan candidacies and that require the candidate filing a petition to be an elector of the area served by the office he seeks. For partisan candidates filing a declaration of candidacy, the controlling provision is R.C. 3513.05 and pertains to the power of a board of elections to review the sufficiency of petitions. It reads:

If they find that such candidate is not an elector of the state, district, county, or political subdivision in which he seeks a party nomination or election to an office or position, or has not fully complied with this chapter, his declaration of candidacy and petition shall be determined to be invalid and shall be rejected. . . .

For non-partisan candidates filing nominating petitions, the controlling provision is R.C. 3513.261, which prescribes the form of such petitions and which requires the candidate to state the following under penalty of election falsification: "I further declare that I am an elector qualified to vote on the office I seek." A non-resident of the county cannot fully and truthfully comply with this provision for the preparation of his petition and, therefore, his petition cannot be certified as valid. See State ex rel. Smith v. Smith, Secretary of State, 101 Ohio St. 358, 129 N.E. 879 (1920). With regard to R.C. 3513.261, I note that the statutorily prescribed wording of a petition may itself establish substantive requirements for election and either omissions or false statements on the petition may be fatal to the candidacy. See State ex rel. Reese v. Bd. of Elections, 6 Ohio St. 2d 66, 215 N.E.2d 698 (1966); State ex rel. Schmelzer v. Bd. of Elections, 2 Ohio St. 3d 1 (1982).

It is thus apparent from the pertinent provisions that, while county residency is not a prerequisite for the holding of the aforementioned county offices, or even for election to such offices under certain facts, the same is not true of filing for county office by petition. Ohio law clearly provides that the right to petition for these offices and seek the powers, duties, and emoluments pertaining to them is reserved in the first instance to qualified electors of the county.

Accordingly, it is my opinion, and you are so advised, that pursuant to R.C. 3513.05 and R.C. 3513.261, a board of elections may not certify as valid the petition of a candidate for county office who does not reside in the county in which he seeks office.