OPINION NO. 74-034

Syllabus:

A person in the classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by R.C. 124.57, because that Section only prohibits partisan political activity. (Opinion No. 69-107, Opinions of the Attorney General for 1969; Opinion No. 3074, Opinions of the Attorney General for 1958, page 708; and Opinion No. 4058, Opinions of the Attorney General for 1954, page 367, overruled)

To: George C. Ellis, Holmes County Pros. Atty., Millersburg, Ohio
By: William J. Brown, Attorney General, May 3, 1974

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

> "Is an employee in the classified civil service of the state prohibited from holding the office of member of a county school board, when the primary and general elections for such office are non-partisan?"

Political activities of classified civil service employees are prohibited by R.C. 124.57 (formerly R.C. 143.41 and G.C. 486-23), which provides:

> "No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof; nor shall any officer or employee in the classified

> service of the state, the several counties, cities, and city school districts thereof, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.
> (Emphasis added.)

The purpose of this legislation is to prevent civil service employees from being obligated to public officers and political parties for their employment, and to prevent such employees from winning favors from political parties and public officials by means of political activity. See Heidtman v. Shaker Heights, 163 Ohio St. 109, 119 (1955).

Prior Attorney General Opinions have held that classified civil service employees could not hold governmental elected offices since holding such an office was participating in politics contrary to R.C. 124.57. Opinion No. 1074, Opinions of the Attorney General for 1929, page 1619; Opinion No. 2060, Opinions of the Attorney General for 1928, page 1119; Opinion No. 1312, Opinions of the Attorney General for 1916, page 375; Opinion No. 875, Opinions of the Attorney General for 1914, page 509. A 1954 opinion dealt with the specific issue of whether an employee in the classified civil service of the state who served as a member of a board of education was in violation of R.C. 124.57. That Opinion, No. 4058, Opinions of the Attorney General for 1954, page 367, contained a discussion on the nonpartisan aspect of board of education elections. However, the nonpartisan aspect of such an election was not interpreted as placing participation in such an election outside the scope of R.C. 124.57 (then R.C. 143.41). Opinion No. 4058, supra, page 370, reads as follows:

> "* * * In such a case it would appear to make no legal difference that the elective offices are non-partisan, since, whether the candidate for the elective office is a member of one of the political parties,or neither of them, he is, in the words of the statute, taking part in politics in a manner other than by voting as he pleases, and other than by expressing freely his political opinions.* * *"

In 1955, the Supreme Court of Ohio considered the case of Heidtman v. Shaker Heights, supra. In that case firemen who were municipal civil service employees of Shaker Heights had circulated and filed an initiative petition seeking to enact an ordinance which would establish a three platoon system in the fire department. The court determined that such activity was not in violation of R.C. 124.57, and stated the following concerning the definition of the term "politics" in that Section, at 163 Ohio St. 118-120:

> "The word, 'politics,' has two different definitions. In Funk & Wagnalls New Standard Dictionary (1952), the word, 'politics' is defined as '1--the branch of civics that treats of the principles of civil government and the conduct of state affairs; the administration of public affairs in the interest of peace, prosperity and safety of the state; statecraft; political science; in a wide sense embracing the science of government and civil polity;

(2) political affairs in a party sense; the administration of public affairs or the conduct of political matters so as to carry elections and secure public office; party intrigues; political wirepulling; trickery.'* * *

"* * * * * * * * *

"The statute does not define what it means by 'politics' except that, since it refers to solicitations for political parties or for candidates for public offices, and also to political organizations, it seems that the expression, 'take part in politics,' was intended to cover only the activities embraced in the second definition. Then, too, when we consider the purpose of the legislation, it seems to be concerned only with partisan politics.

"* * * * * * * * *

"Where legislation is silent as to the meaning of a word contained therein, and that word has both a wide and a restricted meaning, courts, in interpreting such legislation, must give such word a meaning consistent with other provisions of the legislation and of the objective to be achieved thereby. Under such logic, the word, 'politics,' as used in Section 486-23 [R.C. 124.57] must be defined as politics in its narrower partisan sense, * * *." (Emphasis added.)

Thus, the case states that the scope of R.C. 124.57 extends only to politics as defined within the second or more narrow definition of politics, that is, partisan politics. In contrast Opinion No. 4058, supra, clearly construed R.C. 124.57 to apply to politics in the broad sense, which includes nonpartisan political activity.

Thus, although Heidtman v. Shaker Heights, supra, is not directly in point here, it calls into question the conclusion of my predecessor in Opinion No. 4058, supra. The Ohio Supreme Court could not have expressed more clearly its belief that R.C. 124.57 covers only partisan politics.

However, a subsequent Opinion of one of my predecessors followed the broad interpretation of R.C. 124.57. Opinion No. 3074, Opinions of the Attorney General for 1958, page 708, advised that a person in the classified civil service could not be a candidate for, or hold the office of, member of a local board of education. My predecessor distinguished the case of Heidtman v. Shaker Heights, supra, on its facts, and reasoned as follows in rejecting the narrow construction of R.C. 124.57, at page 712:

"If we are to be bound by that principle as applicable in every case, then we would be compelled to apply it to elections of mayors and councilmen in the many cities of the state which by their charters have provided that such elections shall be on a non-partisan basis. It

> is notorious that partisan politics, to a bitter degree, does enter into practically every such election. * * *

Opinion No. 3074, supra, was approved and followed without discussion in Opinion No. 69-107, Opinions of the Attorney General for 1969.

In a recent case, Gray v. Toledo, 323 F.Supp. 1281 (N.D. Ohio 1971) members of the Toledo Police Department brought an action for a declaratory judgment concerning the constitutionality of R.C. 124.57, and other local provisions concerning public employees' political activities. This court also interpreted the word "politics" in R.C. 124.57 as being limited to the restrictive partisan definition. The court intimated that if the word were interpreted as having a broader meaning, the statute would be unconstitutional as a violation of free speech. See also United States Civil Service Comm'n. v. Nat'l Ass'n of Letter Carriers, 413 U.S. 589 (1973), Broadrick v. Oklahoma, 413 U.S. 601 (1973), United Public Workers v. Mitchell, 330 U.S. 75 (1947). In relation to R.C. 124.57 the court stated at 1286:

> "In declaring a litigant's rights under a state statute this Court must read the statute in light of the interpretation given to it by the state courts. * * * By interpreting the words 'political' and 'politics' in their narrower partisan sense, Section 143.41 [R.C. 124.57] regulates nonprotected political activity and is, therefore, a lawful enactment by the legislature. The statute does not prohibit the designated employees from directly engaging in nonpartisan political activity and expressly preserves their right to express their political opinions freely."

Gray v. Toledo, supra, discussed not only R.C. 124.57 but also a Toledo Police Department rule which expressly prohibited employees of the Police Department from holding public office. Judge Young found no unconstitutionality in such a rule, but the distinction between partisan and nonpartisan elective offices was not mentioned. The cases cited by Judge Young at 1288 as authority for the constitutionality of such a prohibition involved offices subject to partisan election.

In summary, the Opinions of my predecessors have consistently applied the broad construction of R.C. 124.57, but the Ohio Supreme Court has adopted the narrow construction, although in a case whose fact situation is distinguishable from the instant one.

This conflict can be resolved by a modification of the Opinions which, of course, must follow the ruling of the Supreme Court. My predecessor was reluctant to deviate from the conclusions of previous Opinions, even in the face of Heidtman v. Shaker Heights, supra, because of his fear that all nominally nonpartisan elections would be open to members of the classified civil service. He mentioned specifically, in the language previously quoted in this Opinion, the election of mayors and councilmen which are declared by city charters to be nonpartisan.

The question of election to those two offices, however, is not before me. Nor does the answer to your question necessarily entail a similar answer to that one. Election to boards of education is on a nonpartisan ballot, by law (R.C. 3505.04). There is no primary election--R.C. 3513.254 and 3513.255 state that nomination shall be made only by nominating petition, filed not later than ninety days before the general election. Such elections are thus fundamentally distinguishable from elections for councilman or mayor, which are traditionally held on a partisan basis, although some city charters do provide for non-partisan election to such offices. I express no opinion on the applicability of R.C. 124.57 to such elections. However, I am persuaded by Heidtman v. Shaker Heights, supra, to overrule my predecessor's opinions insofar as they relate to election to a board of education.

Finally, I should note that the Federal Hatch Act does not prohibit federal employees from participating as a candidate or in support of a candidate in a nonpartisan election, under regulations of the Civil Service Commission. 5 C.F.R. 733.11 (10) (1974). While the wording of the Hatch Act differs from that of R.C. 124.57, the purpose is similar.

In specific answer to your question, it is my opinion and you are so advised that a person in the classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by R.C. 124.57, because that Section only prohibits partisan political activity. (Opinion No. 69-107, Opinions of the Attorney General for 1969; Opinion No. 3074, Opinions of the Attorney General for 1958, page 708; and Opinion No. 4058, Opinions of the Attorney General for 1954, page 367, overruled)