

OPINION NO. 68-013

Syllabus:

A political party formed pursuant to Section 3517.01, Revised Code, must have a state convention to nominate its presidential electors pursuant to Section 3513.11, Revised Code, and a national convention to nominate its presidential candidate, pursuant to Section 3513.12, Revised Code, in order for its candidate to have a place on the presidential ballot.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, January 22, 1968

I have received your request for my opinion wherein you inquire, in essence:

Does a political party formed subsequent to the primary election in a presidential election year acquire an inherent right to participate in the general election by virtue of Revised Code Section 3517.01 and, if so, by what means?

Section 3513.11, Revised Code, provides, in part:

"At the state convention of each political party held in 1952, and in each fourth year thereafter, persons shall be nominated as candidates for election as presidential electors to be voted for at the next succeeding general election. Within five days after the holding of each such convention the chairman and secretary thereof shall certify in writing to the secretary of state the names of all persons nominated at such convention as candidates for election as presidential electors." (Emphasis added)

Section 3513.12, Revised Code, provides in pertinent part:

"* * *The name of such first and second choice for nomination as candidate for the presidency of each candidate for election as such delegate or alternate shall be printed and appear on the primary ballots immediately below the name of such candidate in such a way as to clearly disclose the preference of each candidate. Each candidate for election as such delegate or alternate may also file along with his declaration of candidacy and certificate a statement in writing signed by him in the following form:
Statement of candidate for election

as " { delegate }
 { alternate } to the (here insert name of

political party) national convention.

"I hereby declare to the voters of my political party in the state of Ohio, that, if elected as

" { delegate }
 { alternate } to their national party convention

I shall, to the best of my judgment and ability, support that candidate for president of the United States who shall have been selected at

this primary by the voters of my party in the manner provided in sections 3513.01 to 3513.32, inclusive, of the Revised Code, as their candidate for such office.

.....
delegate

For signature of candidate for

alternate"

Consistent with the above quoted Code sections is Section 3505.10, Revised Code, which provides in pertinent part:

"In each of such enclosed rectangular spaces shall be printed the names of the candidates for president and vice-president nominated as such by the national convention of a political party to which delegates and alternates were elected in this state at the next preceding primary election. The names of candidates for electors of president and vice-president of any political party shall not be placed on the ballot, but shall, after nomination, be certified to the secretary of state as required by Section 3513.11 of the Revised Code. A vote for any of such candidates for president and vice-president shall be a vote for the electors of the political party by which such candidates were nominated and whose names have been certified to the secretary of state."

(Emphasis added)

Section 3513.11, 3513.12, and 3505.10, supra, are fortified by the thrust of Section 7, Article V, Ohio Constitution, which provides, in part:

"* * *All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority. (Adopted September 3, 1912)."

(Emphasis added)

A complete perusal of the Revised Code and Ohio Constitution suggests no other method for nominating either a presidential candidate or presidential electors. In State ex rel. Beck v. Hummel, 150 Ohio St. 127 (1948), the Court held that a presidential candidate must have been nominated at his political party's national convention to have a place on the presidential ballot, but pursuant to Section 4785-91, General Code, which provided for the nomination of independent candidates for election, permitted his electors' names to be on the ballot, noting that the electors were independent state

officers. The substance of Section 4785-91, General Code, became Section 3513.27, Revised Code, which was subsequently repealed. This indicates a legislative intent to resolve the anomalous situation, presented in State ex rel. Beck v. Hummel, supra, and to restrict a political party's implementation of its right to have a place on the presidential ballot to that specifically delineated in the Revised Code.

Therefore, it is my opinion and you are advised that a political party formed pursuant to Section 3517.01, Revised Code, must have a state convention to nominate its presidential electors pursuant to Section 3513.11, Revised Code, and a national convention to nominate its presidential candidate, pursuant to Section 3513.12, Revised Code, in order for its candidate to have a place on the presidential ballot.