

SYLLABUS:

1. A candidate in a primary election who fails to file his statement of receipts and expenditures in accordance with Section 3517.11, Revised Code, shall not be disqualified from running in the following general election if the Board of Elections has failed to give the notice required by this section.

2. Notification of candidates by ordinary mail is sufficient to meet the requirements of Section 3517.11, Revised Code.

Columbus, Ohio, August 28, 1963

Hon. George E. Schroeder
Prosecuting Attorney
Putnam County
Ottawa, Ohio

Dear Sir:

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

“I respectively request your opinion on the following questions:

“1. In the event a candidate for election fails to file a statement of receipts and expenditures as called for under Revised Code Section 3517.11, is he disqualified from running for the office nominated in the primary election at the following general election if the Board of Election has failed to give notice to said candidate as provided in the above referenced code section?

“2. What type of notice must be given to every candidate by the Board of Election, that is, ordinary mail, certified mail, registered mail, etc.?

Section 3517.11, Revised Code, 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 Re-

vised 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.”

In regard to your first question, I refer you to Opinion No. 1147, Opinions of the Attorney General for 1960, page 81. In this opinion which is in response to a question similar to the one you present, my predecessor held that a candidate who is not notified in accordance with Section 3517.11, Revised Code, shall not be disqualified from becoming a candidate in any future election for a period of five years because of his failure to file a statement of expenses within the time designated in Section 3517.10, Revised Code. The syllabus of the opinion reads as follows:

“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.”

A distinction, however, can be drawn between the situation presented in your request and the one presented in the request for my predecessor's opinion. In that opinion there was a failure to file the required statements after a general election, while your request concerns the failure to file statements after a primary election. This distinction, nevertheless, is insignificant since the requirements of Sections 3517.10 and 3517.11, Revised Code, apply to candidates in primary elections as well as those in general elections. In the light of this, the same reasoning and authority used by my predecessor in regard to general elections can be applied to primary elections. It follows then, that a candidate in a primary

election who fails to file his statement of receipts and expenditures in accordance with Section 3517.11, Revised Code, cannot be disqualified from running in the following general election if the Board of Elections has failed to give the notice required by the above code section.

In response to your second question, it is my opinion that notification by ordinary mail will suffice to meet the requirement that a candidate shall be notified by mail in accordance with Section 3517.11, Revised Code. Even though this statute prescribes notification by mail, there is nothing in its designating what type of mail shall be used. On the other hand, there are numerous statutes in the Revised Code which provide not only for notification by mail but also for the type of mail to be used. For instance, Section 1333.24 states in pertinent part:

“The mailing of a *registered* letter with a return address marked thereon, addressed to the owner, at his address given at the time of the delivery of the article to a person, firm, or corporation to render any of the services or labor under sections 1333.22 and 1333.23 of the Revised Code, stating the time and place of sales constitutes notice. * * *” (Emphasis added)

Section 2117.17, Revised Code, provides in pertinent part as follows:

“* * * Such notice shall be served personally or by *registered mail* in the manner specified for service of notice of the rejection of a claim under section 2117.11 of the Revised Code. * * *”

(Emphasis added)

In view of these statutes designating the particular type of mail to be used, it is my opinion that since the legislature did not specify either the use of certified mail or of registered mail in Section 3517.11, Revised Code, then the legislature, by implication, intended that notification by ordinary mail would be sufficient.

In response to your questions, it is my opinion and you are accordingly advised that:

- 1.) A candidate in a primary election who fails to file his statement of receipts and expenditures in accordance with Section 3517.11, Revised Code, shall not be disquali-

fied from running in the following general election if the Board of Elections has failed to give the notice required by this section.

- 2.) Notification of candidates by ordinary mail is sufficient to meet the requirement of Section 3517.11, Revised Code.

Respectfully,
WILLIAM B. SAXBE
Attorney General