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1. FILING STATEMENT OF RECEIPTS AND EXPENDITURES — WITHIN TEN DAYS AFTER NOVEMBER, 1955 ELECTION—SECTION 3517.10 RC—PROVISIONS DIRECTORY RATHER THAN MANDATORY—TEN DAY PERIOD—CERTIFICATES OF ELECTION — MAY BE ISSUED TO SUCCESSFUL CANDIDATES — JUSTICES OF PEACE — WHO FILE STATEMENTS WITHIN REASONABLE TIME — PRIOR TO TIME VACANCY IN OFFICE HAS BEEN FILLED—SECTION 1907.04 RC.
2. SECTION 3517.10 RC—EFFECTIVE PRIOR TO JANUARY 1, 1956, REQUIRED FILING OF STATEMENT, RECEIPTS AND EXPENDITURES BY CANDIDATE ONLY IN CASES WHERE CONTRIBUTIONS RECEIVED OR FUNDS EXPENDED IN ELECTION—WHERE NO RECEIPTS OR EXPENDITURES, NO STATEMENT REQUIRED—AFFIDAVIT TO THAT EFFECT SHOULD BE FILED BY CANDIDATE—NO NECESSITY TO FILE WITHIN TEN DAY PERIOD.

## SYLLABUS:

1. As to the November 1955 election the provisions of Section 3517.10, Revised Code, requiring the filing of a statement of receipts and expenditures within ten days after such election are directory rather than mandatory as to such ten day period, and certificates of election may be issued to successful candidates for the office of justice of the peace who file such statements within a reasonable time thereafter and prior to the time the vacancy in such office has been filled as provided in Section 1907.04, Revised Code.

2. Section 3517.10, Revised Code, as effective prior to January 1, 1956, required the filing of a statement of receipts and expenditures by a candidate only in those cases where contributions were received or funds were expended in connection with an election. Where no such receipts or expenditures are involved no statement with respect thereto is required by such section. A candidate may establish that fact by filing an affidavit to that effect but there is no necessity that such affidavit be filed within the ten day period provided in that section.

Columbus, Ohio, February 3, 1956

Hon. Gibson L. Fenton, Prosecuting Attorney  
Williams County, Bryan, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have several Justices of the Peace that have been elected in this County, or whose names have been written in, who have not qualified. Is it possible for them to qualify after January 1, 1956 to the office of Justice of Peace?”

In an earlier communication regarding this matter you have informed me that the question thus presented arose primarily due to the failure of the candidates in question to file a statement of expenditures for which provision is made in Section 3517.10, Revised Code. This section provides in part:

“Every candidate \* \* \* who \* \* \* received, or expended, directly or indirectly, any money or things of value in connection with the nomination or election of any candidate at any election held in this state shall, not later than four p.m. of the tenth 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. \* \* \*”

In this connection we may consider the following provision in Section 3517.11, Revised Code, as it existed prior to January 1, 1956:

“\* \* \* 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 sections 3517.08 and 3517.10 of the Revised Code.”

Although this section was amended, effective January 1, 1956, to provide, in addition, that such failure “shall disqualify said person from becoming a candidate in any future election for a period of five years”, it is not believed that such penalty would apply in the case at hand to prevent present qualification because (1) the “failure” to file took place during the ten-day period following the election and (2) the penalty is against future *candidacy* rather than qualification in office.

In Opinion No. 1813, Opinions of the Attorney General for 1928, p. 595, the syllabus reads:

“Under the provisions of Section 5175-2, General Code, every candidate who is voted for at any election or primary election within this state, is required to file within ten days after such election an itemized statement of all expenditures pertaining to his candidacy. The ten day period, however, is directory and not mandatory as to time. Where persons are elected as members of a board of education and have not filed their expense accounts within said ten day period, they may do so thereafter if the vacancies have not been filled previously and may enter upon the discharge of the duties of the office.”

See also my Opinion No. 1666, Opinions of the Attorney General for 1952, p. 530, to the same effect so far as the directory nature of the provision here in question is concerned.

In passing it may be suggested that a possible reason for the failure to file a statement of expenditures in the case of write-in candidates is that no contributions were received nor any expenditures made. In such case, it will be observed, the language of Section 3517.10, *supra*, does not require the filing of a statement. It has become the practice, however, in such cases to file an affidavit that no expenditures were made and no contributions received, solely for the purpose of establishing the proposition that no statement was required. If the ten-day provision relative to the filing of the statement of receipts and expenditures is

directory only, *a fortiori*, there is no necessity that such affidavit be filed within such period.

There being no suggestion in your inquiry that any vacancies in the offices concerned have occurred by reason of a refusal to serve, or other cause as provided in Section 1907.04, Revised Code, I am impelled to conclude, in specific answer to your inquiry that:

1. As to the November 1955 election the provisions of Section 3517.10, Revised Code, requiring the filing of a statement of receipts and expenditures within ten days after such election are directory rather than mandatory as to such ten-day period, and certificates of election may be issued to successful candidates for the office of justice of the peace who file such statements within a reasonable time thereafter and prior to the time the vacancy in such office has been filled as provided in Section 1907.04, Revised Code.

2. Section 3517.10, Revised Code, as effective prior to January 1, 1956, required the filing of a statement of receipts and expenditures by a candidate only in those cases where contributions were received or funds were expended in connection with an election. Where such receipts or expenditures are involved no statement with respect thereto is required by such section. A candidate may establish that fact by filing an affidavit to that effect but there is no necessity that such affidavit be filed within the ten day period provided in that section.

Respectfully,

C. WILLIAM O'NEILL

Attorney General