

September 1, 2005

OHIO ELECTIONS COMMISSION

Advisory Opinion 2005ELC-01

SYLLABUS: A candidate in a partisan municipal mayoral election who has submitted a statement of candidacy and nominating petition to run as an Independent candidate for that office, cannot use terms such as “registered Democrat” or “life-long Democrat” in campaign materials. Any candidate that uses such terms which reflect a party identification, is in violation of R.C. §3517.21(B)(10) by clear and convincing evidence.

TO: Jay Williams
Candidate for Mayor of Youngstown

You have requested an advisory opinion on the following issue:

Can a candidate in a partisan municipal mayoral election who has submitted a statement of candidacy and nominating petition to run as an independent candidate for that office, use terms such as “registered Democrat” or “life-long Democrat” in campaign materials?

According to your advisory opinion request letter, you are currently a candidate for the office of Mayor in the city of Youngstown at the next municipal election. This election is a partisan election in which candidates may first seek the nomination of their respective political parties. If a candidate is victorious in the primary election and receives the party nomination, that candidate proceeds to the general election where it is appropriate to express a party affiliation in any campaign materials. Your letter also indicates that you have chosen to seek the mayor’s office as an Independent candidate.

Ohio Revised Code §3501.01(I) law defines an Independent candidate as

any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition ... [Emphasis added]

As is stated in this code section, when a candidate seeks placement on a general election ballot the candidate “claims not to be affiliated with a political party ...” By filing this type of statement of candidacy and nominating petition, you

have specifically disavowed an affiliation with a registered political party in Ohio.

The Commission has addressed this issue in a previous case. Ohio Election Case No. 2003E-040 involved a candidate, David P. Reymann, who was running for a city council seat in the city of Akron as an independent candidate. Mr. Reymann had previously been a Democratic candidate and was reusing signs from an earlier campaign. The signs included the term “Democrat,” and a complaint was filed with the Commission alleging that such use was false. At the conclusion of the hearing in this case, the Commission found that using the term “Democrat” on campaign signs, when the person was running as an Independent candidate, was a false statement subject to the provisions of R.C. §3517.21(B)(10) by clear and convincing evidence.

As with the finding in the Reymann case, the Commission believes that the intended usage reflected in this advisory opinion request would also be a false statement, subject to the provisions of the Ohio Revised Code.

While the Commission acknowledges the requester’s party status based on his voting history and claimed party affiliation, the Commission believes it must show deference to Ohio’s statutory scheme for party affiliation. While R.C. §3501.01(I) is not within the Commission’s jurisdiction, the Commission must interpret R.C. §3517.21(B)(10) in light of this provision. By filing a statement of candidacy and nominating petition to run as an Independent candidate pursuant to R.C. §3513.257, and not as a party candidate in a primary election, the candidate has affirmatively stated that he or she is foregoing a party relationship. It would be inappropriate for the Commission to interpret Ohio’s false statement statute to allow any campaign materials to reflect a partisan relationship when a candidate has made such an affirmative declaration that is made under penalty of election falsification pursuant to R.C. §3599.36.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a candidate in a partisan municipal mayoral election who has submitted a statement of candidacy and nominating petition to run as an independent candidate for that office, cannot use terms such as “registered Democrat” or “life-long Democrat” in campaign materials. Any candidate that uses such terms which reflect a party identification, is in violation of R.C. §3517.21(B)(10) by clear and convincing evidence.

Sincerely,

Catherine Cunningham
Chair

