



Ohio Senate
Senate Building
1 Capital Square
Columbus, Ohio 43215-6111
Phone: (614) 644-7613
Manning@OhioSenate.gov
www.OhioSenate.gov

Nathan H. Manning
State Senator
13th District
11/13/2019

Senator Coley, Vice Chair Huffman, Ranking Member Craig, and members of the Senate Government Oversight and Reform Committee, thank you for the opportunity to testify on Senate Bill 233. This piece of legislation will modify an aspect of existing code, and will serve to prevent an unintended consequence of that law. Known as the “sore loser law,” ORC 3513.04 states that a candidate who appeared on the primary ballot for any position is ineligible to fill a ballot vacancy even for a different position on the November ballot.

The need for this legislation became apparent when a sitting mayor running for re-election resigned his position and effective candidacy days after winning the primary election unopposed. Due to the way that the law is currently written, five of the six candidates to fill the vacancy were disqualified because they had each appeared on the primary ballot for other positions. In light of the controversy that arose from this, the sole candidate left standing rescinded his candidacy. Following many conversations with those who were affected, it became clear that the current language is in need of modification to avoid this situation from repeating itself in other communities.

Qualified individuals should never be precluded from consideration for arbitrary reasons. This section of code creates unnecessary confusion and could eliminate the most experienced candidates from filling a ballot vacancy.

Attached for the committee’s review is the Lorain County Assistant Prosecuting Attorney Gerald Innes’ legal opinion advising the Lorain County Board of Elections that five of the six candidates were ineligible to fill the ballot vacancy.

Once again, thank you Chair Coley, Vice Chair Huffman, Ranking Member Craig and members of the Senate Government Oversight and Reform Committee for allowing me to testify on Senate Bill 233 today. I would be more than happy to answer any questions the committee has for me at this time.



DENNIS P. WILL

Prosecuting Attorney
Lorain County, Ohio

225 Court Street • 3rd Floor • Elyria, Ohio 44035
Phone 440.329.5389 • Fax 440.329.5430
email lcp@lcprosecutor.org

June 4, 2019

Paul Adams, Director
Lorain County Board of Elections
padams@loraincountyelections.com

Re: R.C. 3513.04
Our File No. 19-128

Dear Mr. Adams:

You have inquired whether candidates who ran for office in the primary may run for another office in the immediately following general election.

The third paragraph of Section 3513.04 of the Revised Code provides in pertinent part:

"No person who seeks party nomination for an office or position at a primary election by declaration of candidacy or by declaration of intent to be a write-in candidate...who are chosen by direct vote of the electors as provided in this chapter shall be permitted to become a candidate by nominating petition or by filling a vacancy under section 3513.31 of the Revised Code (Central Committee) at the following general election for any office other than the office of member of the state board of education, office of member of a city, local or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee."

Previously, the statute only precluded candidates through nominating petition. In a 2006 opinion the Attorney General stated that a candidate could fill a vacancy in office through the method provided in Section 3513.31. However, following that opinion, the statute was amended twice effective June 21, 2013 and again effective February 5, 2014, and now specifically adds an additional prohibition barring a person who appeared on a primary ballot from filling a vacancy **at the following general election.**

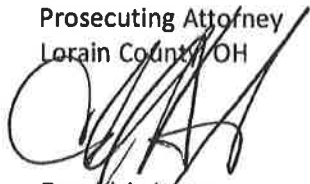
Although this statute is commonly referred to as a "sore loser" statute, it prevents anyone who has appeared on the ballot in the primary from running in November whether or not their candidacy was successful.

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It is the conclusion and opinion of this office that candidates who filed declaration of candidacy or declaration of intent to be a write-in candidate in the primary are not permitted to appear on the November ballot as a candidate for office other than the one for which they may have been the successful nominee.

Very truly yours,

DENNIS P. WILL
Prosecuting Attorney
Lorain County, OH

A handwritten signature in black ink, appearing to read 'G. Innes', is written over the typed name and title of the Assistant Prosecuting Attorney.

Gerald A. Innes
Assistant Prosecuting Attorney
440-329-5398

GAI/jld

cc: Anthony Giardini

Another constitutional argument against the Ohio “sore loser statute” ORC Section 3513.04, is that it attempts to unconstitutionally entertain a “purely political question”, a matter of interest of an purely “internal affair” of a political party, and there is no state governmental or public interest in the replacement of a partisan party successful candidate at the primary election who withdraws pursuant to ORC Section 3513.31. A pure political question arises from the “internal affairs” of a political party in replacing a vacancy in precinct committee positions and amending the by laws, and a court has no jurisdiction over such matters, *Jones vs. Geauga County Party Central Committee* (2017) 2017-Ohio-2930, Par. 32, 34, and 35. But a party central committee is engaged in state government or public interest matters and action when it fills a vacancy pursuant to the statute, such as ORC Section 3513.31, and thus a court has jurisdiction over such matters and such matters are not political questions, *State ex rel Hayes vs. Jennings* (1962) 173 OS 370 373-374.

X. Requirements for the Successful Primary Candidates

ORC Section 3513.052 contains provisions prohibiting candidacy for more than one office at a time. ORC 3513.052 (A)(5) (a combination of two or more municipal offices or positions). Also, ORC Section 3513.052 (G) and (H) (2) provides for the timely withdrawal from the first office or position to prevent a violation and disqualification under this prohibition of more than one office at a time, ORC Section 3513.052. *State ex rel O'Donnell vs. Cuyahoga County Board of Elections* (2000) 136 O App 3rd 584 (holding that the candidate did not violate ORC Section 3513.052 prohibition of more than one candidacy at the same time, when he first filed a petition with the Board of Election for a position for judge on the Court of Appeals for the Eighth District, and he circulated a petition for judge for the Common Pleas Court for Cuyahoga County, before he filed the common pleas court petition with the Board of Elections, he withdrew the Court of Appeals petition from and with the Board of Elections).

The Successful Primary Candidates must withdraw their candidacy for the general election with the Lorain County Board of Elections prior to the commencement of the 6-25-19 LCC meeting, in order to be considered and nominated for the replacement mayoral office position due to the mayoral vacancy resulting from the withdrawal of Ritenauer pursuant to ORC Section 3513.31. Once timely withdrawn, pursuant to ORC Section 3513.052 (G) and (H) (2) then the Successful Primary Candidates can be considered eligible and not have violated or be deemed disqualified under ORC Section 3513.052. Upon the election of the replacement for the mayoral vacancy due to the withdrawal of Ritenauer pursuant to ORC Section 3513.31, then any of the Successful Primary Candidates who failed to get the nomination and appointment can be considered and nominated to their prior offices and positions which became vacant upon their above withdrawal pursuant to ORC Section 3513.052 (G) and (H) (2). Another LCC meeting can be held for the temporary vacancy while being considered and nominated for the vacancy in the mayor office due to the withdrawal of Ritenauer pursuant to ORC Section 3513.31.