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Via Electronic Mail

January 25, 2016

Director John Meyer
Deputy Director Sue Schwamberger
Marion County Board of Elections
222 West Center Street
Marion, Ohio 43302

Re: Tie Vote on the Protest of Lisa Cooper's Candidacy

Dear Director Meyer and Deputy Director Schwamberger:

The Marion County Board of Elections held a special meeting on January 5, 2016, for a protest hearing concerning Lisa Cooper's candidacy for Republican Party State Central Committee, 26th Senate District. At the conclusion of the hearing, Chairperson Eshman-Thomas and Board Member Chaffin voted to deny the protest and allow Ms. Cooper to appear on the ballot. Board Member Smith and Board Member Frericks voted to grant the protest and keep Ms. Cooper off the ballot. Pursuant to R.C. 3501.11(X), the board submitted the tie vote to the Secretary of State for a decision.

The question before me is whether a prospective state central committee candidate is permitted to withdraw her candidacy and subsequently refile a petition for the same office at the same election.

Critical to this question is the determination of the nature of the office of "state central committee," in particular as Revised Code Title 35 is concerned.

The Ohio General Assembly has enacted several statutes in Title 35 that explicitly address the method by which a candidate for state central committee is elected. For example, R.C. 3517.02 states that, "all members of controlling committees of a major political party shall be elected by direct vote of the members of the party..." According to R.C. 3517.03, candidates for election as state central committee members are elected by direct vote at the primary held in an even-numbered year, in the same manner as provided in sections 3513.01 to 3513.32 of the Revised

Code. R.C. 3513.05 provides that each person desiring to become a “candidate for election to an office or position to be voted for at a primary election” shall file a declaration of candidacy.

The Attorney General has determined, however, that, just because the legislature undertakes by statute to regulate the election of state and county central committees, does not necessarily make either of those offices a “*public office*.”¹

In Ohio Attorney General Opinion 70-011, the Attorney General examined whether the office of state central committee is required to have a place for a “write-in” candidate on the ballot pursuant to R.C. 3513.041, which provides that a “write-in space shall be provided on the ballot for every office...,”² and a conflicting provision in R.C. 3513.14. Concluding that the office of state central committee is not an office for which a “write-in” blank must be provided on a primary election ballot, the Attorney General relied heavily upon his finding that state central committee is not a “public office.” Instead, the Attorney General found that state central committee is a “political office.” Paraphrasing the Opinion, membership in a political committee of one party or another does not constitute public office. The members of a political committee are officers of the political party that elects them, and their duties are confined to matters pertaining to the political party to which they belong. Nothing in Ohio law requires a different conclusion, the Attorney General opined.

I concur that the office of state central committee is not a “public office.” This conclusion is supported by the fact that “state central committee” is not included in any provision of Title 35 defining a “state office,” “county office,” “municipal office,” or any other type of public office. Accordingly, the argument advanced by Members Smith and Frericks under Title 35 is inapplicable to the office of state central committee.

Even if one were to assume, however, that state central committee were a “public office,” R.C. 3513.052(A), which generally prevents board of elections from accepting declarations of candidacy for multiple offices from the same candidate in the same election, does not list “state central committee” among the offices specified in the prohibition.³ While paragraph (A) includes

¹ OAG 70-011, p.4.

² RC 3513.041 (in relevant part): A write-in space shall be provided on the ballot for every office, except in an election for which the board of elections has received no valid declarations of intent to be a write-in candidate under this section. Write-in votes shall not be counted for any candidate who has not filed a declaration of intent to be a write-in candidate pursuant to this section. A qualified person who has filed a declaration of intent may receive write-in votes at either a primary or general election.

³ RC 3513.052 (A) No person shall seek nomination or election to any of the following offices or positions at the same election by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, or by becoming a candidate through party nomination in a primary election, or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code:

- (1) Two or more state offices;
- (2) Two or more county offices;
- (3) A state office and a county office;
- (4) A federal office and a state or county office;

“two or more state offices,” state central committee is not included in the definition of “state office” in paragraph (H) of the same statute. A “state office” includes only the offices of Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, member of the State Board of Education, member of the General Assembly, Chief Justice of the Supreme Court, and Justice of the Supreme Court. Therefore, the statute itself does not prevent a state central committee candidate from filing a second declaration of candidacy for any office at the same election.

In conclusion, I note the recent words of the Ohio Supreme Court, regarding the duty to “liberally construe words limiting the right of a person to hold office in favor of those seeking to hold office so that the public may have the benefit of choice from all qualified persons.”⁴

Accordingly, I break the tie to deny the protest and allow Ms. Cooper on the ballot.

Sincerely,



Jon Husted

cc: Members of the Marion County Board of Elections

(5) Any combination of two or more municipal or township offices, positions as a member of a city, local, or exempted village board of education, or positions as a member of a governing board of an educational service center.

⁴ State ex rel. Coble vs. Lucas County Board of Elections 130 Ohio St.3d 132 (2011), quoting State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections, 115 Ohio St.3d 126, (2007)