

Case No. 2020-0111

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL STEVEN M. TOWNS,

Relator,

v.

WILLIAMS COUNTY BOARD OF ELECTIONS,

Respondent.

RELATOR'S MERIT BRIEF

Caroline H. Gentry (0066138)
Porter Wright Morris & Arthur LLP
One South Main Street, Suite 1600
Dayton, Ohio 45402
Phone: (937) 449-6748
Fax: (937) 449-6820
cgentry@porterwright.com

Counsel for Relator

Derek S. Clinger* (0092075)
*Counsel of Record
Donald J. McTigue (0022849)
J. Corey Colombo (0072398)
Ben F.C. Wallace (0095911)
McTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
Fax: (614) 263-7078
dclinger@electionlawgroup.com
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
bwallace@electionlawgroup.com

Counsel for Respondent

TABLE OF CONTENTS

	<u>Page(s)</u>
I. INTRODUCTION	1
II. STATEMENT OF FACTS.....	3
III. LAW AND ARGUMENT	5
A. Standard of Review.....	5
B. Relator’s Conviction Is Void Because The State Violated His Due Process Rights By Prosecuting Him Without Having First Filed A Complaint With The Ohio Ethics Commission And Without Obtaining The Commission’s Authorization To Prosecute Relator.....	7
C. Relator’s Conviction Is Void Because The Bryan Municipal Court Violated The Separation Of Powers Doctrine When It Refused To Dismiss The Criminal Cases Filed Against Relator Even Though His Prosecution For Violations Of the Ohio Ethics Law Had Not Been Authorized By The Ohio Ethics Commission	14
D. The Provision In R.C. 311.01(B)(5) That Disqualifies Candidates For Sheriff Convicted Of First-Degree Misdemeanors Is Unconstitutional Because The Ohio Constitution Does Not Authorize The General Assembly To Disqualify Public Officials Simply Because They Are Convicted Of Misdemeanors.....	15
E. The Provision In R.C. 311.01(B)(5) That Disqualifies Candidates For Sheriff Who Have Been Convicted Of First-Degree Misdemeanors Is Unconstitutional Because There Is No Rational Basis To Disqualify Sheriffs But Not Any Other Public Officials Who Are Convicted Of Misdemeanors.....	20
F. Alternatively, Relator Is Entitled To A Reasonable Period Of Time To Remove The Disqualification Because He Immediately Appealed His Conviction	22
IV. CONCLUSION.....	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Blackwell v. Rothenberg</i> , 7th Dist. No. 04HA569, 2004-Ohio-4290, 2004 Ohio App. LEXIS 3901 (Aug. 9, 2004).....	13
<i>Capital Care Network of Toledo v. Ohio Dep’t of Health</i> , 153 Ohio St.3d 362, 2018-Ohio-440, 106 N.E.3d 1209.....	19
<i>In re Coppola</i> , 155 Ohio St. 329, 98 N.E. 2d 807 (1951).....	17
<i>Corrigan v. Gaul</i> , 61 Ohio Misc. 2d 119, 575 N.E.2d 524 (C.P. 1990).....	13
<i>Dorrian v. Scioto Conservancy Dist.</i> , 27 Ohio St.2d 102, 271 N.E.2d 834 (1971).....	8, 12
<i>Marbury v. Madison</i> , 5 U.S. 137, 2 L. Ed. 60 (1803).....	17-19
<i>Mason v. State</i> , 58 Ohio St. 30, 50 N.E. 6 (1898).....	17
<i>Mather v. Springfield Twp.</i> , 6th Dist. No. L-94-196, 1995 Ohio App. LEXIS 2062 (May 19, 1995).....	12
<i>Musto v. Lorain Cty. Bd. of Revision</i> , 148 Ohio St.3d 456, 2016-Ohio-8058, 71 N.E.3d 279	13
<i>PHH Mortgage Corp. v. Prater</i> , 133 Ohio St.3d 91, 2012-Ohio-3931, 975 N.E.2d 1008.....	11
<i>State v. Bodyke</i> , 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753.....	14, 17
<i>State v. Hochhausler</i> , 76 Ohio St.3d 455, 668 N.E.2d 457 (1996).....	14
<i>State v. Mole</i> , 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368	6, 21
<i>State ex rel. Plain Dealer Pub. Co. v. Floyd</i> , 111 Ohio St.3d 56, 2006-Ohio-4437, 855 N.E.2d 35	11
<i>State ex rel. Powers v. Curtis</i> , 12th Dist. No. CA2002-10-039, 2003-Ohio-6104 (Nov. 17, 2003).....	22
<i>State ex rel. Scott v. Franklin Cty. Bd. of Elections</i> , 139 Ohio St.3d 171, 2014-Ohio-1685, 10 N.E.3d 697.....	5
<i>State ex rel. Vana v. Maple Heights City Council</i> , 54 Ohio St.3d 91, 561 N.E.2d 909 (1990).....	22

<i>State ex rel. Watson v. Hamilton Cty. Bd. of Elections</i> , 88 Ohio St.3d 239, 725 N.E.2d 255 (2000).....	6
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Constitutions

U.S. Constitution, Article III, Section 2	18
U.S. Constitution, Fourteenth Amendment	7
Ohio Constitution, Article I, Section 2	2, 21
Ohio Constitution, Article I, Section 16	7
Ohio Constitution Article I, Section 20	19
Ohio Constitution, Article II, Section 5	16
Ohio Constitution, Article II, Section 38	16
Ohio Constitution, Article V, Section 4.....	passim

Statutes

R.C. Chapter 102.....	passim
R.C. 102.01	8
R.C. 102.03	passim
R.C. 102.06	passim
R.C. 107.01	20
R.C. 109.01	20
R.C. 113.01	20
R.C. 117.02	20
R.C. 118.99	20
R.C. 305.01	20
R.C. 307	16
R.C. 308	16

R.C. 309.02	20
R.C. 311.01	passim
R.C. 319.01	20
R.C. 321.01	20
R.C. 2921.41	16
R.C. 2921.43	20
R.C. 2961.02	16, 20
R.C. 3316.19	20
R.C. 3501.11	5
R.C. 3513.05	5
R.C. 3999.161	20

Other Authorities

1976 Ohio Att.Gen.Ops. No. 76-020	7, 12
1987 Ohio Att.Gen.Ops. No. 87-025	12
Ohio Ethics Comm’n Advisory Op. No. 2007-02, 2007 Ohio Ethics Comm. LEXIS 8	7, 12, 15
Desario & Freel, <i>Ohio Ethics Law Reforms: Tracing The Political And Legal Implications</i> , 30 Akron L.Rev. 129 (1996).....	8, 10

I. INTRODUCTION

Relator Steven M. Towns brings this action for a writ of mandamus to compel Respondent Williams County Board of Elections to certify his name for placement upon the Republican ballot in the upcoming March 17, 2020 primary election for the office of Sheriff. Respondent wrongly determined that Relator is ineligible to be on the ballot because he was convicted of a first-degree misdemeanor for violating R.C. 102.03(B). Although R.C. 311.01(B)(5) states that “no person” who has been convicted of a first-degree misdemeanor “is eligible to be a candidate for a sheriff,” Respondent has a clear legal duty to place Relator’s name on the ballot for several reasons.

First, the Ohio Ethics Commission did not authorize Relator’s prosecution. The Ohio Ethics Commission and two other ethics commissions have exclusive jurisdiction to interpret Chapter 102 of the Ohio Revised Code, investigate violations of R.C. 102.03, hold confidential hearings, settle or dismiss complaints, and authorize cases for prosecution if certain requirements are met. R.C. 102.06. Here, there is no evidence that any charge or complaint was filed with the Ohio Ethics Commission, that it had any involvement in investigating or reviewing the conduct that led to the conviction, or that it authorized Relator’s prosecution. Because Relator was deprived of the procedures and protections set forth in Chapter 102, his prosecution violated his rights to due process and his conviction is void. Relator’s conviction is also void because the Municipal Court violated the separation of powers doctrine when it decided to exercise

jurisdiction over the criminal cases against Relator, and to deny his request to dismiss those charges, even though Relator's prosecution was not authorized by the Ohio Ethics Commission. Respondent has a clear legal duty to place Relator's name on the ballot because his conviction is void as a matter of law.

Relator also has a clear legal right to have his name placed on the ballot because the provision in R.C. 311.01(B)(5) that disqualifies any candidate for Sheriff who has been convicted of a first-degree misdemeanor is facially unconstitutional. Ohio Constitution, Article V, Section 4 only authorizes the General Assembly to disqualify election officials convicted of *felonies*; it does not authorize such a penalty for officials convicted of *misdemeanors*. In addition, R.C. 311.01(B)(5) violates the Equal Protection Clause in the Ohio Constitution, Article I, Section 2 because Ohio law only disqualifies Sheriffs—not any other types of elected officials—from being elected to public office if they have *any* type of first-degree misdemeanor conviction. For both of these reasons, R.C. 311.01(B)(5) is unconstitutional and therefore does not disqualify Relator's candidacy.

Finally, Respondent should not have removed Relator's name from the ballot because Ohio courts have held that elected officials who are disqualified because of a felony conviction have a reasonable amount of time to remove that disqualification upon assuming office. Here, Relator immediately appealed his conviction and

reasonably expects a decision before the November 2020 general election. Respondent has a clear legal duty to maintain the status quo until Relator's appeal has been decided.

II. STATEMENT OF FACTS

Relator currently holds the elective office of Sheriff of Williams County. [Complaint, ¶ 5; Answer, ¶ 5.] Respondent is the duly established and acting election authority for Williams County. [Complaint, ¶ 6; Answer, ¶ 6.]

Relator timely filed a valid declaration of candidacy and petition containing a sufficient number of valid signatures to be a Republican candidate for the office of Sheriff of Williams County at the March 17, 2020 primary election. [Complaint, ¶ 7; Answer, ¶ 7.] Respondent subsequently certified Relator's candidacy and placed his name on the March 17, 2020 Republican primary ballot. [Complaint, ¶ 8; Answer, ¶ 8.]

Complaints for violations of Section 102.03 shall be filed with the Ohio Ethics Commission, which has the authority to review the complaint, conduct an investigation, hold a hearing, dismiss or settle the complaint, or refer the matter for prosecution. R.C. 102.06. Relator was convicted of a first-degree misdemeanor in the Bryan Municipal Court for violating R.C. 102.03(B), a provision of the Ohio Ethics Law. [Exhibit 1, Second Towns Aff., ¶ 2.] At no time did Relator receive any communication from the Ohio Ethics Commission regarding the conduct that gave rise to this conviction. [*Id.*, ¶ 3.] Relator is not aware of any complaint or charge filed against him regarding that conduct either with, or by, the Ohio Ethics Commission. [*Id.*] He is not aware of any

facts that would support a finding that the Ohio Ethics Commission referred this matter to the special prosecutors who filed the complaints and prosecuted the cases in the Bryan Municipal Court to their conclusion. [*Id.*, ¶ 4.]

Through his attorney, Relator asked the Bryan Municipal Court to dismiss the criminal cases because the Ohio Ethics Commission had not authorized them to be filed. [Exhibit 1, Second Towns Aff., ¶ 5 & Exhibit A.] The State responded by arguing that the Ohio Ethics Commission does not have exclusive authority to authorize prosecutions of the Ohio Ethics Law. [*Id.*, ¶ 6 & Exhibit B.] The Bryan Municipal Court agreed with the State and denied Relator's motion to dismiss. [*Id.*, ¶ 7 & Exhibit C.]

On November 5, 2019, a jury found Relator guilty of a first-degree misdemeanor charge in the Bryan Municipal Court for an alleged violation of R.C. 102.03(B) that occurred on October 19, 2018. [Complaint, Exhibit C.] The same jury acquitted Relator of a first-degree misdemeanor charge for an alleged violation of R.C. 102.03(B) that occurred on July 23, 2019. [Complaint, Exhibit D.]

On January 3, 2020, three Republican candidates for the office of Sheriff of Williams County filed protests against Relator's candidacy with Respondent. Specifically, they petitioned for the removal of Relator's name from the primary ballot under R.C. 311.01(B)(5). [Complaint, ¶ 14; Answer, ¶ 14.]

Respondent held a hearing on January 13, 2020 to determine Relator's eligibility to be a candidate for Sheriff. [Complaint, ¶ 16; Answer, ¶ 16.] During the hearing,

Relator argued that his conviction was invalid because the Ohio Ethics Commission had not authorized his prosecution. [Exhibit 1, Second Towns Aff., ¶ 8.] Respondent impliedly rejected Relator's argument by voting to remove his name from the primary ballot. [*Id.*, ¶ 9.] The hearing transcript is still not available but will be filed promptly after it has become available.

Relator immediately appealed his conviction to the Sixth District Court of Appeals. [Complaint, Exhibit E.] That appeal remains pending.

III. LAW AND ARGUMENT

A. Standard Of Review.

Relator is seeking a writ of mandamus to certify his name for placement on a ballot. Such a writ will issue if (1) Relator has a clear legal right to have his name placed on the ballot, (2) Respondent has a clear legal duty to place his name on the ballot, and (3) Relator lacks an adequate remedy in the ordinary course of law. *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, 2014-Ohio-1685, 10 N.E.3d 697, ¶ 14. Respondent has a clear legal duty to determine whether Relator is eligible to be a candidate for Sheriff under R.C. 3501.11(K) and 3513.05. If Relator satisfies these requirements, then he has a clear legal right to have his name placed on the ballot. Additionally, due to the proximity of the March 17, 2020 primary election, Relator lacks an adequate remedy in the ordinary course of law. *Scott* at ¶ 15.

Relator contends that Respondent wrongly relied upon R.C. 311.01(B)(5) to remove him from the ballot because the relevant portion of that statutory provision (specifically, from “and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree ...” to the end of paragraph (B)(5)) is unconstitutional. “It is appropriate to consider the merits of [Relator’s] constitutional claim in this mandamus action because an action for a declaratory judgment and prohibitory injunction would not be sufficiently speedy in this expedited election case.” *State ex rel. Watson v. Hamilton Cty. Bd. of Elections*, 88 Ohio St.3d 239, 242, 725 N.E.2d 255 (2000). “[S]tatutes are presumed to be constitutional unless shown beyond a reasonable doubt to violate a constitutional provision.” *Id.* This Court must resolve all reasonable doubts in favor of the constitutionality of a challenged statute. *Id.* However, when “it appears beyond a reasonable doubt that the statute and the Constitution are clearly incompatible ... it is the duty of this court to declare the statute unconstitutional.” *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 11.

One reason that Relator contends that the challenged portion of R.C. 311.01(B)(5) is unconstitutional is because it violates the Equal Protection Clause in the Ohio Constitution, Article I, Section 2. The “rational basis” test requires that the challenged law be upheld “if it is rationally related to a legitimate governmental purpose.” *Mole* at ¶ 26. As the party seeking to invalidate the statute, Relator “bears the burden to negate

every conceivable basis that might support the legislation.” *Id.* at ¶ 27 (internal quotations and citation omitted).

B. Relator’s Conviction Is Void Because The State Violated His Due Process Rights By Prosecuting Him Without Having First Filed A Complaint With The Ohio Ethics Commission And Without Obtaining The Commission’s Authorization To Prosecute Relator.

Relator has a clear legal right to have his name placed on the ballot as a candidate for Sheriff because the State unlawfully prosecuted him for alleged violations of R.C. 102.03 without having previously filed a complaint or charge with the Ohio Ethics Commission, and without having obtained the Commission’s authorization to prosecute him. Although Respondent will argue that the Commission’s involvement was unnecessary, that argument is belied by the structure of Chapter 102 and other evidence, including the Ohio Attorney General’s conclusion that certain prosecutors “have the authority to initiate prosecutions for alleged violations of R.C. Chapter 102 *when appropriately requested to do so by the Ohio Ethics Commission*” 1976 Ohio Atty.Gen.Ops. No. 76-020, at syll. ¶ 2 (emphasis added). Because Relator was denied the statutory procedures and protections provided by the Ohio Ethics Law, his prosecution and conviction violated his rights to due process under the Ohio Constitution, Article I, Section 16 and the Fourteenth Amendment to the United States Constitution.

The Ohio Ethics Commission is an Executive Branch agency that is “statutorily empowered to administer, interpret, and enforce Chapter 102” of the Ohio Revised

Code, also known as the Ohio Ethics Law. Ohio Ethics Comm’n Advisory Op. No. 2007-02, 2007 Ohio Ethics Comm. LEXIS 8, at *1-2. The General Assembly enacted the Ohio Ethics Law in 1974, shortly after the Watergate scandal, and chose to “divide[] [its] enforcement authority and jurisdiction among three entities.” Desario & Freel, *Ohio Ethics Law Reforms: Tracing The Political And Legal Implications*, 30 Akron L.Rev. 129, 130 (1996). Those entities are the Joint Legislative Ethics Committee, the Board of Commissioners on Grievances and Discipline of the Supreme Court, and the Ohio Ethics Commission. R.C. 102.01(F). The appropriate ethics commission for most public officials, including County Sheriffs, is the Ohio Ethics Commission. R.C. 102.01(F)(3); Desario & Freel at 130.

The Ohio Ethics Law grants these commissions the exclusive jurisdiction to interpret, apply and enforce Chapter 102 with respect to the public officials who fall under their jurisdictions. For example, the law provides that each commission “*shall receive* and may initiate complaints against persons subject to this chapter concerning conduct alleged to be in violation of this chapter” R.C. 102.06(A) (emphasis added). Further, each commission “*shall investigate* complaints, may investigate charges presented to it, and may request further information.” R.C. 102.06(B) (emphasis added). The word “shall” is mandatory. *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834, at syll. ¶ 1 (1971). Therefore, suspected violations of the Ohio Ethics Law must be submitted to the appropriate ethics commission.

The Ohio Ethics Law also provides specific procedural protections to those accused of violating Chapter 102. Complaints made by third parties must be made by affidavit, on personal knowledge and subject to the penalty of perjury. R.C. 102.06(A). The commission will not take any formal action against the subject of an investigation until a complaint has been filed. R.C. 102.06(B). All of the information that it obtains will remain private, confidential and protected from public disclosure, except for disclosure to the Inspector General, an appropriate prosecuting authority, a law enforcement agency or another appropriate ethics commission. R.C. 102.06(B), (F).

If the commission determines that a complaint is not frivolous and that there is reasonable cause to believe that the Ohio Ethics Law has been violated, then it shall hold a hearing that is recorded and “closed to the public.” R.C. 102.06(B). The accused person has the right to counsel, the right to reasonable notice of the charges, the right to examine and produce evidence, the right to call and subpoena witnesses, the right to confront his accusers, and the right to cross-examine witnesses. *Id.* If the commission finds that the complaint is not well-founded, then it shall dismiss it and shall not publicly report its finding unless the accused person requests that it do so. *Id.*

But if, after a hearing, the commission finds “by a preponderance of the evidence that the facts alleged in the complaint are true *and constitute a violation of*” the Ohio Ethics Law, then the commission “shall report its findings to the appropriate prosecuting authority for proceedings in prosecution of the violation.” R.C.

102.06(C)(1)(a) (emphasis added). This pre-prosecution requirement contemplates that the appropriate ethics commission will *always* interpret and apply the provisions of the Ohio Ethics Law to the facts of each potential violation, before the initiation of any criminal prosecution. This structure ensures that the Ohio Ethics Law will be uniformly interpreted and applied by the appropriate ethics commissions before criminal charges are submitted to a court for adjudication.

The prior version of the Ohio Ethics Law did not allow each commission to take any action other than to prosecute or dismiss a complaint. Desario & Freel, *Ohio Ethics Law Reforms: Tracing The Political And Legal Implications*, 30 Akron L.Rev. 129, 137 (1996). The Ohio Ethics Commission lobbied successfully to add other remedies to Chapter 102 that would allow it to more fairly and expeditiously resolve alleged violations of the Ohio Ethics Law. *Id.* at 137-38. For example, “[f]irst-time, non-serious, non-continuing ethics violations may now be addressed through the use of remedial processes such as mediation, alternative dispute resolutions, restitution, resignation from office, contract invalidation, or other options that do not require the time and resources inherent in criminal prosecutions.” *Id.* at 148 (citing R.C. 102.06(G)). These new remedies gave the Ohio Ethics Commission “the authority to resolve ethics violations in a manner commensurate with the alleged transgression.” *Id.* at 152.

Through this statutory structure, the General Assembly created three Executive Branch agencies with subject-matter expertise and made it possible for them to develop

a uniform interpretation of the Ohio Ethics Law, apply that interpretation to specific factual situations involving public officials, do so in a manner that provides ample procedural protections and ensures confidentiality, and have the option of imposing a remedy short of a criminal prosecution if deemed to be appropriate.

Relator was denied the benefit of these carefully-designed statutory procedures and protections. It is undisputed that the Ohio Ethics Commission did not receive a complaint about Relator's conduct, did not hold a hearing, did not interpret and apply R.C. 102.03(B) to the facts underlying his conviction, did not keep information about Relator's alleged violation confidential, and did not consider the appropriateness of a remedy short of a criminal prosecution. Relator's due process rights were violated because he was deprived of the "opportunity to be heard ... at a meaningful time and in a meaningful manner." *State ex rel. Plain Dealer Pub. Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, 855 N.E.2d 35, ¶ 45 (internal quotations and citation omitted); *see also PHH Mortgage Corp. v. Prater*, 133 Ohio St.3d 91, 2012-Ohio-3931, 975 N.E.2d 1008, ¶ 9 (holding that due process requires an "opportunity for hearing appropriate to the nature of the case") (internal quotations and citation omitted). Accordingly, Relator's conviction is void and it should be invalidated.

Respondent is expected to argue that the Ohio Ethics Law does not require prosecutors to consult, file a complaint with, or obtain authorization from the Ohio

Ethics Commission before prosecuting a public official for violating Chapter 102.

Instead, the procedures in Chapter 102 are voluntary. This argument is refuted by:

- The General Assembly's use of the word "shall" when it decreed that each ethics commission "shall receive" and "shall investigate" complaints alleging violations of the Ohio Ethics Law. R.C. 102.06(A), (B); *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834, at syll. ¶ 1 (1971).
- The requirement that the Ohio Ethics Commission hold a hearing and make certain findings before referring the matter to a prosecutor. R.C. 102.06(C)(1)(a).
- The fact that the Ohio Ethics Commission "is statutorily empowered to administer, interpret, and enforce Chapter 102." Ohio Ethics Comm'n Advisory Op. 2007-02, 2007 Ohio Ethics Comm. LEXIS 8, at *1-2.
- The Ohio Attorney General's opinion that certain prosecutors "have the authority to initiate prosecutions for alleged violations of R.C. Chapter 102 *when appropriately requested to do so by the Ohio Ethics Commission*" 1976 Ohio Atty.Gen.Ops. No. 76-020, at syll. ¶ 2 (emphasis added).
- The Ohio Attorney General's longstanding position that he will not opine on the Ohio Ethics Law because he will not interfere with the Ohio Ethics Commission's authority to interpret that law. 1987 Ohio Atty.Gen.Ops. No. 87-025, at syll. ¶ 3.
- Statements from Ohio courts that reflect their understanding that violations of the Ohio Ethics Law must be referred to the Ohio Ethics Commission in the first

instance. See *Mather v. Springfield Twp.*, 6th Dist. No. L-94-196, 1995 Ohio App. LEXIS 2062, *8 (May 19, 1995) (adopting the lower court's conclusion that "reversal or vacation of an administrative decision is not the remedy for a violation of R.C. 102.03; the remedy is to notify the Ethics Commission, who conducts an investigation. If the investigation reveals that there is probable cause to believe that a violation occurred, the Ethics Commission refers the matter to the County Prosecutor."), quoted in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, 71 N.E.3d 279, ¶ 55. See also *Blackwell v. Rothenberg*, 7th Dist. No. 04HA569, 2004-Ohio-4290, 2004 Ohio App. LEXIS 3901, ¶ 12 (Aug. 9, 2004) ("The proper way to raise an issue regarding whether a public official is acting ethically is by filing a complaint with the Ohio Ethics Commission.... [It] may then investigate those complaints and report an ethical violation to the appropriate prosecuting authority if it finds by a preponderance of the evidence that there is an ethical violation."); *Corrigan v. Gaul*, 61 Ohio Misc. 2d 119, 124, 575 N.E.2d 524 (C.P.1990) (dismissing county prosecutor's lawsuit seeking to enjoin county treasurer's participation in radio advertisements because "a remedy at law exists within the statutory framework of R.C. Chapter 102 (the Ohio Ethics Law)" and "[w]hether or not the treasurer's involvement with the TransOhio commercials is a breach of ethics is a factual determination to be made by the Ohio Ethics Commission.").

In sum, the State violated Relator's due process rights by prosecuting him for a violation of R.C. 102.03(B) without first filing a complaint with the Ohio Ethics Commission and obtaining the Commission's authorization to file a criminal complaint against him. Relator's conviction is therefore void and he has a clear legal right to have his name placed on the Republican primary ballot as a candidate for Sheriff.

C. Relator's Conviction Is Void Because The Bryan Municipal Court Violated The Separation Of Powers Doctrine When It Refused To Dismiss The Criminal Cases Filed Against Relator Even Though His Prosecution For Violations Of the Ohio Ethics Law Had Not Been Authorized By The Ohio Ethics Commission.

For the reasons stated above, the Bryan Municipal Court erred when it failed to dismiss the criminal charges that the State filed against Relator because the Ohio Ethics Commission had not authorized the State to prosecute Relator. The Bryan Municipal Court's failure to dismiss these charges also violated the separation-of-powers doctrine. For this reason, too, Relator's conviction is void and he has a clear legal right to have his name placed on the Republican primary ballot as a candidate for Sheriff.

The separation-of-powers of doctrine is inherent in a constitutional structure that creates three separate branches of government. *State v. Hochhausler*, 76 Ohio St.3d 455, 465-66, 668 N.E.2d 457 (1996). Each branch must have the ability to exercise the duties and powers conferred upon it, without interference or encroachment from the other branches. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 39-44.

Here, the Bryan Municipal Court (the Judicial Branch) violated the separation-of-powers doctrine by refusing to dismiss the criminal charges against Relator, because it thereby usurped the jurisdiction of the Ohio Ethics Commission (the Executive Branch) which “is statutorily empowered to administer, interpret, and enforce Chapter 102.” Ohio Ethics Comm’n Advisory Op. 2007-02, 2007 Ohio Ethics Comm. LEXIS 8, at *1-2. The Municipal Court’s violation of the separation-of-powers doctrine provides another basis for invalidating Respondent’s conviction.

D. The Provision In R.C. 311.01(B)(5) That Disqualifies Candidates For Sheriff Convicted Of First-Degree Misdemeanors Is Unconstitutional Because The Ohio Constitution Does Not Authorize The General Assembly To Disqualify Public Officials Simply Because They Are Convicted Of Misdemeanors.

Under the challenged statute, “no person is eligible to be candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person ... has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude ... *and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree.*” R.C. 311.01(B)(5) (emphasis added). The emphasized language is unconstitutional because the General Assembly lacks the power to disqualify anyone from holding elected office simply because they have been convicted of an unspecified first-degree misdemeanor. Instead, the Ohio Constitution only empowers the General Assembly to disqualify public officials convicted of felonies, embezzlement, crimes of moral turpitude, or offenses adjudicated by specific

procedures that are not applicable here. Because the Ohio Constitution reserves all non-delegated powers to the people, these express grants of authority necessarily bar the General Assembly from disqualifying public officials on non-enumerated grounds. Accordingly, the challenged provision is unconstitutional.

In three provisions of the Ohio Constitution, the people of Ohio have empowered the General Assembly to exclude certain people from holding public office:

- Article V, Section 4 states: “The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.” The General Assembly exercised the power granted to it by this constitutional provision by enacting R.C. 2961.02.
- Article II, Section 5 states: “No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state....” The General Assembly exercised the power granted to it by this constitutional provision by enacting R.C. 2921.41(C).
- Article II, Section 38 states: “Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law” The General Assembly exercised the power granted to it by this constitutional provision by enacting R.C. 3.07 and 3.08.

None of these provisions—and no other provision of the Ohio Constitution—empowers the General Assembly to disqualify persons from holding office simply because they have been convicted of *any* first-degree misdemeanor (not just those constituting moral turpitude). Accordingly, the challenged portion of R.C. 311.01(B)(5) is unconstitutional.

Nearly one-hundred and twenty two years ago, this Court reached a contrary conclusion when it held that because the General Assembly has plenary power to determine the qualifications of those who hold public office, Ohio Constitution Article V, Section 4 does not define the universe of those who can be disqualified from holding public office. *Mason v. State*, 58 Ohio St. 30, 50 N.E. 6 (1898). This Court followed *Mason* when it addressed the question again nearly seventy years ago. *In re Coppola*, 155 Ohio St. 329, 335-36, 98 N.E. 2d 807 (1951).

Stare decisis is not controlling in cases involving constitutional questions of law so this Court could simply ignore these decisions. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 34-37. Alternatively, the Court could overrule *Mason* and *In re Coppola* because they were incorrectly decided. There are at least two reasons why the above-cited provisions of the Ohio Constitution expressly limit the General Assembly's power to disqualify people from holding public office, and therefore do not authorize the challenged provision in R.C. 311.01(B)(5).

The first reason why the Ohio Constitution expressly limits the General Assembly's disqualification authority is illustrated by the constitutional interpretation

employed in the seminal case of *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60 (1803). In that case, three applicants sought a writ of mandamus compelling the Secretary of State to deliver commissions that had been signed by the former President and sealed by the Secretary. Chief Justice Marshall held that although the commissions were valid and the applicants had a legal right to them, the Supreme Court could not issue a writ of mandamus because the U.S. Constitution, Article III, Section 2 limited its original jurisdiction: “[T]he supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction.” The applicants urged the Supreme Court to rely on a statute that authorized the Court to issue writs of mandamus, arguing that Congress had the power to expand the grant of original jurisdiction contained in Article III, Section 2. Chief Justice Marshall rejected that argument:

If it had been intended to leave it to the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial powers, and the tribunals in which it should be vested. The subsequent part of the section is mere surplusage, is entirely without meaning, if such is to be the construction....

Affirmative words are often, in their operation, negative of other objects than those affirmed; and in this case, a negative or exclusive sense must be given to them or they have no operation at all.

It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such a construction is inadmissible, unless the words require it.

Marbury at 174.

These rules of constitutional interpretation apply squarely here. When this Court applies them to Article V, Section 4, it must conclude that the General Assembly cannot expand the scope of that constitutional provision by disqualifying public officials who are convicted of misdemeanors, not just felonies. Otherwise, this provision's grant of authority to the General Assembly to disqualify public officials convicted of felonies would be "mere surplusage, entirely without meaning." *Marbury* at 174. Such a construction would be "inadmissible" because "[i]t cannot be presumed that any clause in the constitution is intended to be without effect." *Id.* The provision's "affirmative words" of disqualifying those convicted of felonies must be given "a negative or exclusive sense ... or they have no operation at all." *Id.* As in *Marbury*, the legislature lacks the authority to expand the scope of this constitutional provision.

There is another reason why the scope of Article V, Section 4 should be limited to its plain terms. Ohio Constitution Article I, Section 20 states that "all powers, not herein delegated, remain with the people." The plain meaning of Ohio Constitution Article I, Section 20 requires the Court to apply the limitation set forth in Article V, Section 4 as it is written, because the people of Ohio delegated only as much power to the government as is stated in the Constitution, and no more. See *Capital Care Network of Toledo v. Ohio*

Dep't of Health, 153 Ohio St.3d 362, 2018-Ohio-440, 106 N.E.3d 1209, ¶ 66 (O'Connor, J., dissenting) ("All power then that is not explicitly retained by the federal or state governments resides with the people. When the people use their power to place specific restraints on government, this court has a responsibility to honor and enforce that decision.").

For these reasons, the portion of R.C. 311.01(B)(5) that disqualifies candidates for Sheriff who have been convicted of first-degree misdemeanors is unconstitutional. Relator therefore has a clear legal right to have his name placed on the Republican primary ballot for the office of Sheriff.

E. The Provision In R.C. 311.01(B)(5) That Disqualifies Candidates For Sheriff Who Have Been Convicted Of First-Degree Misdemeanors Is Unconstitutional Because There Is No Rational Basis To Disqualify Sheriffs But Not Any Other Public Officials Who Are Convicted Of Misdemeanors.

Sheriffs are the only Ohio public officials who are disqualified from running for office if they are convicted of any type of first-degree misdemeanor. R.C. 311.01(B)(5). Such a disqualification does not apply to anyone else on the county level, including County Commissioners (R.C. 305.01), Prosecuting Attorneys (R.C. 309.02), County Auditors (R.C. 319.01), or County Treasurers (R.C. 321.01). Such a disqualification also does not apply to anyone on the state level, including the Governor (R.C. 107.01), Attorney General (R.C. 109.01), Treasurer (R.C. 113.01) and Auditor (R.C. 117.02). Except for Sheriffs, all Ohio public officials must either be convicted of a felony (R.C.

2961.02) or, for a handful of them, a specified misdemeanor (R.C. 118.99(C), 2921.43(E), 3316.19(C), or 3599.161(C)) to be disqualified from holding elective office.

There is no rational basis for disqualifying Sheriffs, but no other type of Ohio public official, from running for or being elected to office because of a conviction for any type of first-degree misdemeanor. “[T]he rational-basis test requires that the classification must bear a rational relationship to the legitimate government interest or that reasonable grounds must exist for drawing the distinction.” *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, 74 N.E.3d 368, ¶ 28. Even under a rational-basis review, this Court “insist[s] on knowing the relation between the classification adopted and the object to be attained.” *Id.* (internal quotations and citations omitted).

The purpose of the challenged provision in R.C. 311.01(B)(5) is not apparent from the face of the statute. The only conceivable basis is the State’s legitimate interest in maintaining high standards for public law enforcement. *Mole* at ¶ 45-48. But restrictions that are rationally related to that interest must be “directly tied to the officer’s conduct as an officer.” *Id.* at ¶ 49. A statute that disqualifies candidates for Sheriff who are convicted of *any* first-degree misdemeanor is not tied to the candidate’s conduct as an officer. Nor is it rational to impose this disqualification on Sheriffs but decline to impose it on other elected law enforcement officials, including the Attorney General and Prosecuting Attorneys. Instead, this statute imposes precisely the type of arbitrary

classification that should be struck down by this Court because it violates the Equal Protection Clause in the Ohio Constitution, Article I, Section 2. *Id.*

F. Alternatively, Relator Is Entitled To A Reasonable Period Of Time To Remove The Disqualification Because He Immediately Appealed His Conviction.

Alternatively, if Relator's conviction is not reversed, he is entitled to a reasonable period of time to remove the disqualification because he immediately appealed his conviction. Although that appeal is not expected to be ruled upon before the March 17, 2020 primary election, Relator reasonably expects to receive a decision before the November 3, 2020 general election. Relator should be allowed to maintain his candidacy while he pursues a reversal of his conviction. *See, e.g., State ex rel. Vana v. Maple Heights City Council*, 54 Ohio St. 3d 91, 94, 561 N.E.2d 909 (1990); *State ex rel. Powers v. Curtis*, 12th Dist. No. CA2002-10-039, 2003-Ohio-6104, ¶ 51 (Nov. 17, 2003).

IV. CONCLUSION

For the reasons stated, this Court should issue the requested writ of mandamus and order Respondent to place Relator's name on the Republican primary ballot for the office of Sheriff.

Respectfully submitted,

/s/ Caroline H. Gentry
Caroline Gentry (0066138)
Porter Wright Morris & Arthur LLP
One South Main Street
Dayton, Ohio 45402
Phone: (937) 449-6810

Fax: (937) 449-6820
cgentry@porterwright.com

Counsel for Relator

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2020, a copy of the foregoing document was served upon the following counsel of record via e-mail:

Derek S. Clinger (dclinger@electionlawgroup.com)
Donald J. McTigue (dmctigue@electionlawgroup.com)
J. Corey Colombo (ccolombo@electionlawgroup.com)
Ben F.C. Wallace (bwallace@electionlawgroup.com)
McTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215

Counsel for Respondent

s/Caroline H. Gentry
Caroline H. Gentry

Counsel for Relator

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL STEVEN M. TOWNS,

Relator,

v.

WILLIAMS COUNTY BOARD OF ELECTIONS,

Respondent.

RELATOR'S APPENDIX OF CITED
CONSTITUTIONAL PROVISIONS AND STATUTES

Caroline H. Gentry (0066138)
Porter Wright Morris & Arthur LLP
One South Main Street, Suite 1600
Dayton, Ohio 45402
Phone: (937) 449-6748
Fax: (937) 449-6820
cgentry@porterwright.com

Counsel for Relator

Derek S. Clinger* (0092075)
**Counsel of Record*
Donald J. McTigue (0022849)
J. Corey Colombo (0072398)
Ben F.C. Wallace (0095911)
McTIGUE & COLOMBO LLC
545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
Fax: (614) 263-7078
dclinger@electionlawgroup.com
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
bwallace@electionlawgroup.com

Counsel for Respondent

U.S. Constitution, Article III, Section 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

U.S. Constitution, Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Constitution, Article I, Section 2

Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

Ohio Constitution, Article I, Section 16

Redress in courts.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

Ohio Constitution, Article I, Section 20

Powers reserved to the people.

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

Ohio Constitution, Article II, Section 5

Who shall not hold office.

No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the general assembly, until he shall have accounted for, and paid such money into the treasury.

Ohio Constitution, Article II, Section 38

Removal of officials.

Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

Ohio Constitution, Article V, Section 4

Forfeiture of elective franchise.

The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of a felony.

R.C. 3.07

Forfeiture of office for misconduct in office.

Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10, inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings.

R.C. 3.08

Procedure for removal of public officers.

Proceedings for the removal of public officers on any of the grounds enumerated in section 3.07 of the Revised Code shall be commenced by the filing of a written or printed complaint specifically setting forth the charge and signed by qualified electors of the state or political subdivision whose officer it is sought to remove, not less in number than fifteen per cent of the total vote cast for governor at the most recent election for the office of governor in the state or political subdivision whose officer it is sought to remove, or, if the officer sought to be removed is the sheriff or prosecuting attorney of a county or the mayor of a municipal corporation, the governor may sign and file such written or printed complaint without the signatures of qualified electors. Such complaint shall be filed with the court of common pleas of the county where the officer against whom the complaint is filed resides, except that when the officer against whom the complaint is filed is a judge of the court of common pleas, such complaint shall be filed in the court of appeals of the district where such judge resides, and all complaints against state officers shall be filed with the court of appeals of the district where the officer against whom the complaint is filed resides. The judge or clerk of the court shall cause a copy of such complaint to be served upon the officer, against whom the complaint has been filed, at least ten days before the hearing upon such complaint. Such hearing shall be had within thirty days from the date of the filing of the complaint by said electors, or by the governor. The court may suspend the officer pending the hearing.

The removal proceedings filed in the court of common pleas shall be tried by a judge unless a jury trial is demanded in writing by the officer against whom the complaint has been filed. If a jury is demanded, it shall be composed of twelve persons who satisfy the qualifications of a juror specified in section 2313.17 of the Revised Code. If nine or more persons of that jury find one or more of the charges in the complaint are true, such jury shall return a finding for the removal of the officer, which finding shall be filed with the clerk of the court and be made a matter of public record. If less than nine persons of that jury find that the charges on the complaint are true, the jury shall return a finding that the complaint be dismissed. The proceedings had by a judge upon such removal shall be matters of public record and a full detailed statement of the reasons for such removal shall be filed with the clerk of the court and shall be made a matter of public record.

R.C. 102.01(F)

Definitions.

As used in this chapter:

(F) Except as otherwise provided in division (A) of section 102.08 of the Ohio Revised Code, “appropriate ethics commission” means:

- (1) For matters relating to members of the general assembly, employees of the general assembly, employees of the legislative service commission, and candidates for the office of member of the general assembly, the joint legislative ethics committee;
- (2) For matters relating to judicial officers and employees, and candidates for judicial office, the board of commissioners on grievances and discipline of the supreme court;
- (3) For matters relating to all other persons, the Ohio ethics commission.

Restrictions on present or former public officials or employees.

(A)

(1) No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(2) For twenty-four months after the conclusion of service, no former commissioner or attorney examiner of the public utilities commission shall represent a public utility, as defined in section 4905.02 of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission, or agency.

(3) For twenty-four months after the conclusion of employment or service, no former public official or employee who personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, the development or adoption of solid waste management plans, investigation, inspection, or other substantial exercise of administrative discretion under Chapter 343. or 3734. of the Revised Code shall represent a person who is the owner or operator of a facility, as defined in section 3734.01 of the Revised Code, or who is an applicant for a permit or license for a facility under that chapter, on any matter in which the public official or employee personally participated as a public official or employee.

(4) For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board. Division (A)(4) of this section does not apply to or affect a person who separates from service with the general assembly on or before December 31, 1995. As used in division (A)(4) of this section "person" does not include any state agency or political subdivision of the state.

(5) As used in divisions (A)(1), (2), and (3) of this section, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the

proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in division (A)(4) of this section, “matter” includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. As used in division (A) of this section, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

(6) Nothing contained in division (A) of this section shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which the public official or employee was employed or on which the public official or employee served.

(7) Division (A) of this section shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(8) Division (A) of this section does not prohibit a nonelected public official or employee of a state agency, as defined in section 1.60 of the Revised Code, from becoming a public official or employee of another state agency. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official’s or employee’s new state agency on any matter in which the public official or employee personally participated as a public official or employee at the official’s or employee’s former state agency. However, no public official or employee of a state agency shall, during public employment or for twelve months thereafter, represent or act in a representative capacity for the official’s or employee’s new state agency on any audit or investigation pertaining to the official’s or employee’s new state agency in which the public official or employee personally participated at the official’s or employee’s former state agency through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(9) Division (A) of this section does not prohibit a nonelected public official or employee of a political subdivision from becoming a public official or employee of a different department, division, agency, office, or unit of the same political subdivision. Division (A) of this section does not prohibit such an official or employee from representing or acting in a representative capacity for the official’s or employee’s new department, division, agency, office, or unit on any matter in which the public official or employee personally participated as a public official or employee at the official’s or employee’s former department, division, agency, office, or unit of the same political subdivision. As

used in this division, "political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(10) No present or former Ohio casino control commission official shall, during public service or for two years thereafter, represent a client, be employed or compensated by a person regulated by the commission, or act in a representative capacity for any person on any matter before or concerning the commission.

No present or former commission employee shall, during public employment or for two years thereafter, represent a client or act in a representative capacity on any matter in which the employee personally participated as a commission employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or immediate family owns or controls more than five per cent. No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or immediate family, or a partnership, trust, business trust, corporation, or association of which the public official or employee or the public official's or employee's immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging that sale with the clerk or secretary of the public agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure

of clients of attorneys or persons licensed under section 4732.12 of the Revised Code, or patients of persons licensed under section 4731.14 of the Revised Code.

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(G) In the absence of bribery or another offense under the Revised Code or a purpose to defraud, contributions made to a campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

As used in this division, "contributions," "campaign committee," "political party," "legislative campaign fund," "political action committee," and "political contributing entity" have the same meanings as in section 3517.01 of the Revised Code.

(H)

(1) No public official or employee, except for the president or other chief administrative officer of or a member of a board of trustees of a state institution of higher education as defined in section 3345.011 of the Revised Code, who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from giving to that public official or employee the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or

employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in section 3345.011 of the Revised Code, pays membership dues. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is not required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from promising or giving to that public official or employee an honorarium or the payment of travel, meal, and lodging expenses if the honorarium, expenses, or both were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of those persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

(2) No person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds shall solicit or accept, and no person shall give to that board member, officer, or employee, payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.

(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. The house of representatives and senate, in their code of ethics, and the Ohio ethics commission, under section 111.15 of the Revised Code, may adopt rules setting standards and conditions for the furnishing and acceptance of such travel, meals, and lodging, expenses, or reimbursement.

A person who acts in compliance with this division and any applicable rules adopted under it, or any applicable, similar rules adopted by the supreme court governing judicial officers and employees, does not violate division (D), (E), or (F) of this section. This division does not preclude any person from seeking an advisory opinion from the appropriate ethics commission under section 102.08 of the Revised Code.

(J) For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and improper influence on the public official or employee with respect to that person's duties. As used in this division, "organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use the public official's or employee's official position with regard to the interests of the organization on the matter if the public official or employee has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect that person's personal, pecuniary interests.

(K) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with division (B) of section 309.06 and section 2921.421 of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections 733.621 and 2921.421 of the Revised Code, for a township law director appointed under section 504.15 of the Revised Code to appoint assistants and employees in accordance with sections 504.151 and 2921.421 of the Revised Code, or for a coroner to appoint assistants and employees in accordance with division (B) of section 313.05 of the Revised Code.

As used in this division, "chief legal officer" has the same meaning as in section 733.621 of the Revised Code.

(L) No present public official or employee with a casino gaming regulatory function shall indirectly invest, by way of an entity the public official or employee has an ownership interest or control in, or directly invest in a casino operator, management company, holding company, casino facility, or gaming-related vendor. No present public official or employee with a casino gaming regulatory function shall directly or indirectly have a financial interest in, have an ownership interest in, be the creditor or hold a debt instrument issued by, or have an interest in a contractual or service relationship with a casino operator, management company, holding company, casino facility, or gaming-related vendor. This section does not prohibit or limit permitted passive investing by the public official or employee.

As used in this division, "passive investing" means investment by the public official or employee by means of a mutual fund in which the public official or employee has no control of the investments or investment decisions. "Casino operator," "holding company," "management company," "casino facility," and "gaming-related vendor" have the same meanings as in section 3772.01 of the Revised Code.

(M) A member of the Ohio casino control commission, the executive director of the commission, or an employee of the commission shall not:

(1) Accept anything of value, including but not limited to a gift, gratuity, emolument, or employment from a casino operator, management company, or other person subject to the jurisdiction of the commission, or from an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission;

(2) Solicit, suggest, request, or recommend, directly or indirectly, to a casino operator, management company, or other person subject to the jurisdiction of the commission, or to an officer, attorney, agent, or employee of a casino operator, management company, or other person subject to the jurisdiction of the commission, the appointment of a person to an office, place, position, or employment;

(3) Participate in casino gaming or any other amusement or activity at a casino facility in this state or at an affiliate gaming facility of a licensed casino operator, wherever located.

In addition to the penalty provided in section 102.99 of the Revised Code, whoever violates division (M)(1), (2), or (3) of this section forfeits the individual's office or employment.

Complaints; investigation, disposition; reports; compromise or settlement.

(A) The appropriate ethics commission shall receive and may initiate complaints against persons subject to this chapter concerning conduct alleged to be in violation of this chapter or section 2921.42 or 2921.43 of the Revised Code. All complaints except those by the commission shall be by affidavit made on personal knowledge, subject to the penalties of perjury. Complaints by the commission shall be by affidavit, based upon reasonable cause to believe that a violation has occurred.

(B) The appropriate ethics commission shall investigate complaints, may investigate charges presented to it, and may request further information, including the specific amount of income from a source, from any person filing with the commission a statement required by section 102.02 or 102.021 of the Revised Code, if the information sought is directly relevant to a complaint or charges received by the commission pursuant to this section. This information is confidential, except that the commission, in its discretion, may share information gathered in the course of any investigation with, or disclose the information to, the inspector general, any appropriate prosecuting authority, any law enforcement agency, or any other appropriate ethics commission. If the accused person is a member of the public employees retirement board, state teachers retirement board, school employees retirement board, board of trustees of the Ohio police and fire pension fund, or state highway patrol retirement board, or is a member of the bureau of workers' compensation board of directors, the appropriate ethics commission, in its discretion, also may share information gathered in the course of an investigation with, or disclose the information to, the attorney general and the auditor of state. The person so requested shall furnish the information to the commission, unless within fifteen days from the date of the request the person files an action for declaratory judgment challenging the legitimacy of the request in the court of common pleas of the county of the person's residence, the person's place of employment, or Franklin county. The requested information need not be furnished to the commission during the pendency of the judicial proceedings. Proceedings of the commission in connection with the declaratory judgment action shall be kept confidential except as otherwise provided by this section. Before the commission proceeds to take any formal action against a person who is the subject of an investigation based on charges presented to the commission, a complaint shall be filed against the person. If the commission finds that a complaint is not frivolous, and there is reasonable cause to believe that the facts alleged in a complaint constitute a violation of section 102.02, 102.021, 102.03, 102.04, 102.07, 2921.42, or 2921.43 of the Revised Code,

it shall hold a hearing. If the commission does not so find, it shall dismiss the complaint and notify the accused person in writing of the dismissal of the complaint. The commission shall not make a report of its finding unless the accused person requests a report. Upon the request of the accused person, the commission shall make a public report of its finding. The person against whom the complaint is directed shall be given reasonable notice by certified mail of the date, time, and place of the hearing and a statement of the charges and the law directly involved and shall be given the opportunity to be represented by counsel, to have counsel appointed for the person if the person is unable to afford counsel without undue hardship, to examine the evidence against the person, to produce evidence and to call and subpoena witnesses in the person's defense, to confront the person's accusers, and to cross-examine witnesses. The commission shall have a stenographic record made of the hearing. The hearing shall be closed to the public.

(C)

(1)

(a) If, upon the basis of the hearing, the appropriate ethics commission finds by a preponderance of the evidence that the facts alleged in the complaint are true and constitute a violation of section 102.02, 102.021, 102.03, 102.04, 102.07, 2921.42, or 2921.43 of the Revised Code, it shall report its findings to the appropriate prosecuting authority for proceedings in prosecution of the violation and to the appointing or employing authority of the accused. If the accused person is a member of the public employees retirement board, state teachers retirement board, school employees retirement board, board of trustees of the Ohio police and fire pension fund, or state highway patrol retirement board, the commission also shall report its findings to the Ohio retirement study council.

(b) If the Ohio ethics commission reports its findings to the appropriate prosecuting authority under division (C)(1)(a) of this section and the prosecuting authority has not initiated any official action on those findings within ninety days after receiving the commission's report of them, the commission may publicly comment that no official action has been taken on its findings, except that the commission shall make no comment in violation of the Rules of Criminal Procedure or about any indictment that has been sealed pursuant to any law or those rules. The commission shall make no comment regarding the merits of its findings. As used in division (C)(1)(b) of this section, "official action" means prosecution, closure after investigation, or grand jury action resulting in a true bill of indictment or no true bill of indictment.

(2) If the appropriate ethics commission does not find by a preponderance of the evidence that the facts alleged in the complaint are true and constitute a violation of section 102.02, 102.021, 102.03, 102.04, 102.07, 2921.42, or 2921.43 of the Revised Code or if the commission has not scheduled a hearing within ninety days after the complaint is filed or has not finally disposed of the complaint within six months after it has been heard, it shall dismiss the complaint and notify the accused person in writing of the dismissal of the complaint. The commission shall not make a report of its finding unless the accused person requests a report. Upon the request of the accused person, the commission shall make a public report of the finding, but in this case all evidence and the record of the hearing shall remain confidential unless the accused person also requests that the evidence and record be made public. Upon request by the accused person, the commission shall make the evidence and the record available for public inspection.

(D) The appropriate ethics commission, or a member of the commission, may administer oaths, and the commission may issue subpoenas to any person in the state compelling the attendance of witnesses and the production of relevant papers, books, accounts, and records. The commission shall issue subpoenas to compel the attendance of witnesses and the production of documents upon the request of an accused person. Section 101.42 of the Revised Code shall govern the issuance of these subpoenas insofar as applicable. Upon the refusal of any person to obey a subpoena or to be sworn or to answer as a witness, the commission may apply to the court of common pleas of Franklin county under section 2705.03 of the Revised Code. The court shall hold proceedings in accordance with Chapter 2705. of the Revised Code. The commission or the accused person may take the depositions of witnesses residing within or without the state in the same manner as prescribed by law for the taking of depositions in civil actions in the court of common pleas.

(E) At least once each year, the Ohio ethics commission shall report on its activities of the immediately preceding year to the majority and minority leaders of the senate and house of representatives of the general assembly. The report shall indicate the total number of complaints received, initiated, and investigated by the commission, the total number of complaints for which formal hearings were held, and the total number of complaints for which formal prosecution was recommended or requested by the commission. The report also shall indicate the nature of the inappropriate conduct alleged in each complaint and the governmental entity with which any employee or official that is the subject of a complaint was employed at the time of the alleged inappropriate conduct.

(F) All papers, records, affidavits, and documents upon any complaint, inquiry, or investigation relating to the proceedings of the appropriate ethics commission shall be sealed and are private and confidential, except as otherwise provided in this section and section 102.07 of the Revised Code.

(G)

(1) When a complaint or charge is before it, the Ohio ethics commission or the appropriate prosecuting authority, in consultation with the person filing the complaint or charge, the accused, and any other person the commission or prosecuting authority considers necessary, may compromise or settle the complaint or charge with the agreement of the accused. The compromise or settlement may include mediation, restitution, rescission of affected contracts, forfeiture of any benefits resulting from a violation or potential violation of law, resignation of a public official or employee, or any other relief that is agreed upon between the commission or prosecuting authority and the accused.

(2) Any settlement agreement entered into under division (G)(1) of this section shall be in writing and be accompanied by a statement of the findings of the commission or prosecuting authority and the reasons for entering into the agreement. The commission or prosecuting authority shall retain the agreement and statement in the commission's or prosecuting authority's office and, in the commission's or prosecuting authority's discretion, may make the agreement, the statement, and any supporting information public, unless the agreement provides otherwise.

(3) If a settlement agreement is breached by the accused, the commission or prosecuting authority, in the commission's or prosecuting authority's discretion, may rescind the agreement and reinstitute any investigation, hearing, or prosecution of the accused. No information obtained from the accused in reaching the settlement that is not otherwise discoverable from the accused shall be used in any proceeding before the commission or by the appropriate prosecuting authority in prosecuting the violation. Notwithstanding any other section of the Revised Code, if a settlement agreement is breached, any statute of limitations for a violation of this chapter or section 2921.42 or 2921.43 of the Revised Code is tolled from the date the complaint or charge is filed until the date the settlement agreement is breached.

R.C. 107.01

Election; governor; term.

The governor shall be elected quadrennially, jointly with the lieutenant governor, and shall hold his office for a term of four years. The term of office of the governor shall commence on the second Monday of January next after his election.

R.C. 109.01

Election; term.

The attorney general shall be elected quadrennially, and shall hold his office for a term of four years. The term of office of the attorney general shall commence on the second Monday of January next after his election.

R.C. 113.01

Election; term.

The treasurer of state shall be elected quadrennially, and shall hold his office for a term of four years. The term of office of the treasurer of state shall commence on the second Monday of January next after his election.

R.C. 117.02

Election; term.

The auditor of state shall be elected quadrennially and shall hold his office for a term of four years. The term of office of the auditor of state shall commence on the second Monday of January next after his election.

R.C. 118.99(C)

Prohibited activities of officers and employees; penalties.

(A) During the fiscal emergency period, no officer or employee of the municipal corporation, county, or township shall do any of the following:

(1) Knowingly enter into any contract, financial obligation, or other liability of the municipal corporation, county, or township involving an expenditure, or make any expenditure in excess of the amount permitted by division (E) of section 118.06 or division (B) of section 118.11 or by section 118.12 of the Revised Code;

(2) Knowingly enter into any contract, financial obligation, or other liability of the municipal corporation, county, or township, or knowingly execute or deliver debt obligations, or transfer, advance, or borrow moneys from one fund of the municipal corporation, county, or township to or for any other fund of the municipal corporation, county, or township where any of such actions are required to be approved by the financial planning and supervision commission unless such actions have been so approved or deemed to be approved as provided in or pursuant to this chapter;

(3) Knowingly fail or refuse to take any of the actions required by this chapter for the preparation or amendment of the financial plan, or knowingly prepare, present, or certify any information or report for the commission or any of its employees, advisory committees, task forces, or agents that is false or misleading or which is recklessly prepared or presented without due care for its accuracy, or, upon learning that any such information is false or misleading, or was recklessly prepared or presented, knowingly fail promptly to advise the commission, or the employee, advisory committee, task force, or agent to whom such information was given, of that fact;

(4) Knowingly use or cause to be used moneys of a construction fund for purposes other than the lawful purposes of the construction fund, or knowingly use or cause to be used moneys of a fund created under this chapter for the payment of principal and interest on debt obligations, or a bond retirement fund, or sinking fund for other than the payment of the principal of and interest on debt obligations or other authorized costs or payments from such funds, or knowingly fail to perform the duty of such officer or employee to cause the prompt deposit of moneys to any of the funds referred to in this division.

(B) The prohibitions set forth in division (A) of this section are in addition to any other prohibitions provided by law for a municipal corporation, county, or township, or by or pursuant to a municipal charter.

(C) In addition to any other penalty or liability provided by law for a municipal corporation, county, or township, or by or pursuant to a municipal charter, a violation of division (A)(1), (2), (3), or (4) of this section is a misdemeanor of the second degree. Upon conviction of any officer or employee of a municipal corporation, county, or township for any violation under division (A)(1), (2), (3), or (4) of this section, such officer or employee shall forfeit office or employment. For the seven-year period immediately following the date of conviction, such officer shall also be ineligible to hold any public office or other position of trust in this state or be employed by any public entity in this state.

R.C. 305.01

Composition and election of board; terms of members.

The board of county commissioners shall consist of three persons who shall be elected as follows:

(A) In November, 1974, and quadrennially thereafter, one county commissioner shall be elected to take office on the first day of January following.

(B) In November, 1972, and quadrennially thereafter, two commissioners shall be elected. The term of one of such commissioners shall commence on the second day of January next after his election, and the term of the other commissioner shall commence on the third day of January next after his election.

(C) Thereafter such officers shall hold office for the term of four years and until their successors are elected and qualified.

R.C. 309.02

Qualifications of candidate for prosecuting attorney.

No person shall be eligible as a candidate for the office of prosecuting attorney, or shall be elected to such office, who is not an attorney at law licensed to practice law in this state. No prosecuting attorney shall be a member of the general assembly of this state or mayor of a municipal corporation.

R.C. 311.01(B)(5)

Qualifications for sheriff; basic training course; continuing education.

(A) A sheriff shall be elected quadrennially in each county. A sheriff shall hold office for a term of four years, beginning on the first Monday of January next after the sheriff's election.

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements:

(5) The person has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this state.

R.C. 319.01

County auditor; term of office.

A county auditor shall be chosen quadrennially in each county, who shall hold his office for four years, commencing on the second Monday in March next after his election.

R.C. 321.01

County treasurer; election and term.

A county treasurer shall be elected quadrennially in each county, who shall hold his office for four years from the first Monday of September next after his election.

R.C. 2921.41(C)

Theft in office; restitution; withholding of retirement benefits.

(A) No public official or party official shall commit any theft offense, as defined in division (K) of section 2913.01 of the Revised Code, when either of the following applies:

(1) The offender uses the offender's office in aid of committing the offense or permits or assents to its use in aid of committing the offense;

(2) The property or service involved is owned by this state, any other state, the United States, a county, a municipal corporation, a township, or any political subdivision, department, or agency of any of them, is owned by a political party, or is part of a political campaign fund.

(B) Whoever violates this section is guilty of theft in office. Except as otherwise provided in this division, theft in office is a felony of the fifth degree. If the value of property or services stolen is one thousand dollars or more and is less than seven thousand five hundred dollars, theft in office is a felony of the fourth degree. If the value of property or services stolen is seven thousand five hundred dollars or more, theft in office is a felony of the third degree.

(C)

(1) A public official or party official who pleads guilty to theft in office and whose plea is accepted by the court or a public official or party official against whom a verdict or finding of guilt for committing theft in office is returned is forever disqualified from holding any public office, employment, or position of trust in this state.

R.C. 2921.43(E)

Soliciting or receiving improper compensation.

(A) No public servant shall knowingly solicit or accept, and no person shall knowingly promise or give to a public servant, either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(B) No public servant for the public servant's own personal or business use, and no person for the person's own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment, or position of trust in this state for a period of seven years from the date of conviction.

R.C. 2961.02

Conviction of disqualifying offense as bar to holding public office or position of public employment or serving as volunteer.

(A) As used in this section:

(1) "Disqualifying offense" means an offense that has both of the following characteristics:

(a) It is one of the following:

(i) A theft offense that is a felony;

(ii) A felony under the laws of this state, another state, or the United States, that is not covered by division (A)(1)(a)(i) of this section and that involves fraud, deceit, or theft.

(b) It is an offense for which the laws of this state, another state, or the United States do not otherwise contain a provision specifying permanent disqualification, or disqualification for a specified period, from holding a public office or position of public employment, or from serving as an unpaid volunteer, as a result of conviction of the offense, including, but not limited to, a provision such as that in division (C)(1) of section 2921.41 of the Revised Code.

(2) "Political subdivision" has the same meaning as in section 2744.01 of the Revised Code.

(3) "Private entity" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association that receives any funds from a state agency or political subdivision to perform an activity on behalf of the state agency or political subdivision.

(4) "State agency" has the same meaning as in section 1.60 of the Revised Code.

(5) "Theft offense" has the same meaning as in section 2913.01 of the Revised Code.

(6) "Volunteer" means a person who serves as a volunteer without compensation with a state agency or political subdivision or who serves as a volunteer without compensation

with a private entity, including, but not limited to, an uncompensated auxiliary police officer, auxiliary deputy sheriff, or volunteer firefighter.

(B) Any person who pleads guilty to a disqualifying offense and whose plea is accepted by the court or any person against whom a verdict or finding of guilt for committing a disqualifying offense is returned is incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the public office or position of public employment or serving as the volunteer involves substantial management or control over the property of a state agency, political subdivision, or private entity.

(C) Division (B) of this section does not apply if a plea, verdict, or finding of the type described in that division regarding a disqualifying offense is reversed, expunged, or annulled. The full pardon of a person who has pleaded guilty to a disqualifying offense and whose plea was accepted by the court or a person against whom a verdict or finding of guilt for committing a disqualifying offense was returned restores the privileges forfeited under division (B) of this section, but the pardon does not release the person from the costs of the person's conviction in this state, unless so specified.

R.C. 3316.19(C)

Prohibitions during fiscal emergency.

(A) During a fiscal emergency period for a school district, no school board member, officer, or employee of the school district shall do any of the following:

- (1) Knowingly enter into any contract, financial obligation, or other liability of the school district involving an expenditure, or make any expenditure in excess of the amount permitted by the commission pursuant to this chapter;
- (2) Knowingly enter into any contract, financial obligation, or other liability of the school district, or knowingly execute or deliver debt obligations, or transfer, advance, or borrow moneys from one fund of the school district to or for any other fund of the school district where any of such actions are required to be approved by the school district financial planning and supervision commission unless such actions have been so approved as provided in or pursuant to this chapter;
- (3) Knowingly fail or refuse to take any of the actions required by this chapter for the preparation or amendment of the financial recovery plan, or knowingly prepare, present, or certify any information or report for the commission or any of its employees, advisory committees, task forces, or agents that is false or misleading or that is recklessly prepared or presented without due care for its accuracy, or, upon learning that any such information is false or misleading, or was recklessly prepared or presented, knowingly fail promptly to advise the commission, or the employee, advisory committee, task force, or agent to whom such information was given, of that fact;
- (4) Knowingly use or cause to be used moneys of a fund for purposes other than the lawful purposes of the fund, or knowingly use or cause to be used moneys of a fund created for the payment of principal and interest on debt obligations, or a bond retirement fund, or sinking fund for other than the payment of the principal of and interest on debt obligations or other authorized costs or payments from such funds, or knowingly fail to perform the duty of such officer or employee to cause the prompt deposit of moneys to any fund.

(B) The prohibitions set forth in division (A) of this section are in addition to any other prohibitions provided by law for a school district officer or employee.

(C) In addition to any other penalty or liability provided by law for a school district board member, officer, or employee, a violation of division (A)(1), (2), (3), or (4) of this section is a misdemeanor of the second degree. Upon conviction of any officer or employee of a school district for any violation under division (A)(1), (2), (3), or (4) of this section, such officer or employee shall forfeit office or employment.

R.C. 3501.11(K)

Duties of board.

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

(K)

(1) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;

(2) Examine each initiative petition, or a petition filed under section 307.94 or 307.95 of the Revised Code, received by the board to determine whether the petition falls within the scope of authority to enact via initiative and whether the petition satisfies the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.

R.C. 3513.05

Filing of declaration of candidacy and petition; protests; certification of ballot forms.

Each person desiring to become a candidate for a party nomination at a primary election or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor and except as otherwise provided in section 3513.051 of the Revised Code, shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of section 3513.10 of the Revised Code. The declaration of candidacy and all separate petition papers shall be filed at the same time as one instrument. When the offices are to be voted for at a primary election, persons desiring to become joint candidates for the offices of governor and lieutenant governor shall, not later than four p.m. of the ninetieth day before the day of the primary election, comply with section 3513.04 of the Revised Code. The prospective joint candidates' declaration of candidacy and all separate petition papers of candidacies shall be filed at the same time as one instrument. The secretary of state or a board of elections shall not accept for filing a declaration of candidacy and petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy or a declaration of intent to be a write-in candidate, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any federal, state, or county office, if the declaration of candidacy is for a state or county office, or for any municipal or township office, if the declaration of candidacy is for a municipal or township office.

If the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the entire state, the petition, including a petition for joint candidates for the offices of governor and lieutenant governor, shall be signed by at least one thousand qualified electors who are members of the same political party as the candidate or joint candidates, and the declaration of candidacy and petition shall be filed with the secretary of state; provided that the secretary of state shall not accept or file any such petition appearing on its face to contain signatures of more than three thousand electors.

Except as otherwise provided in this paragraph, if the declaration of candidacy is of one that is to be submitted only to electors within a district, political subdivision, or portion thereof, the petition shall be signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member. If the declaration of candidacy is for party nomination as a candidate for

member of the legislative authority of a municipal corporation elected by ward, the petition shall be signed by not less than twenty-five qualified electors who are members of the political party of which the candidate is a member.

No such petition, except the petition for a candidacy that is to be submitted to electors throughout the entire state, shall be accepted for filing if it appears to contain on its face signatures of more than three times the minimum number of signatures. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures on petitions when the number of verified signatures equals the minimum required number of qualified signatures.

If the declaration of candidacy declares a candidacy for party nomination or for election as a candidate of a minor party, the minimum number of signatures on such petition is one-half the minimum number provided in this section, except that, when the candidacy is one for election as a member of the state central committee or the county central committee of a political party, the minimum number shall be the same for a minor party as for a major party.

If a declaration of candidacy is one for election as a member of the state central committee or the county central committee of a political party, the petition shall be signed by five qualified electors of the district, county, ward, township, or precinct within which electors may vote for such candidate. The electors signing such petition shall be members of the same political party as the political party of which the candidate is a member.

For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if the elector voted in that party's primary election within the preceding two calendar years, or if the elector did not vote in any other party's primary election within the preceding two calendar years.

If the declaration of candidacy is of one that is to be submitted only to electors within a county, or within a district or subdivision or part thereof smaller than a county, the petition shall be filed with the board of elections of the county. If the declaration of candidacy is of one that is to be submitted only to electors of a district or subdivision or part thereof that is situated in more than one county, the petition shall be filed with the

board of elections of the county within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located.

A petition shall consist of separate petition papers, each of which shall contain signatures of electors of only one county. Petitions or separate petition papers containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions or separate petition papers containing signatures of electors of more than one county are filed, the board shall determine the county from which the majority of signatures came, and only signatures from such county shall be counted. Signatures from any other county shall be invalid.

Each separate petition paper shall be circulated by one person only, who shall be the candidate or a joint candidate or a member of the same political party as the candidate or joint candidates, and each separate petition paper shall be governed by the rules set forth in section 3501.38 of the Revised Code.

The secretary of state shall promptly transmit to each board such separate petition papers of each petition accompanying a declaration of candidacy filed with the secretary of state as purport to contain signatures of electors of the county of such board. The board of the most populous county of a district shall promptly transmit to each board within such district such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the county of each such board. The board of a county within which the major portion of the population of a subdivision, situated in more than one county, is located, shall promptly transmit to the board of each other county within which a portion of such subdivision is located such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the portion of such subdivision in the county of each such board.

All petition papers so transmitted to a board and all petitions accompanying declarations of candidacy filed with a board shall, under proper regulations, be open to public inspection until four p.m. of the eightieth day before the day of the next primary election. Each board shall, not later than the seventy-eighth day before the day of that primary election, examine and determine the validity or invalidity of the signatures on the petition papers so transmitted to or filed with it and shall return to the secretary of state all petition papers transmitted to it by the secretary of state, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such board, together with its certification of its determination as to the validity or invalidity of the signatures thereon. All other matters affecting the validity or invalidity of such petition

papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

Protests against the candidacy of any person filing a declaration of candidacy for party nomination or for election to an office or position, as provided in this section, may be filed by any qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy the elector objects to, or by the controlling committee of that political party. The protest shall be in writing, and shall be filed not later than four p.m. of the seventy-fourth day before the day of the primary election. The protest shall be filed with the election officials with whom the declaration of candidacy and petition was filed. Upon the filing of the protest, the election officials with whom it is filed shall promptly fix the time for hearing it, and shall forthwith mail notice of the filing of the protest and the time fixed for hearing to the person whose candidacy is so protested. They shall also forthwith mail notice of the time fixed for such hearing to the person who filed the protest. At the time fixed, such election officials shall hear the protest and determine the validity or invalidity of the declaration of candidacy and petition. If they find that such candidate is not an elector of the state, district, county, or political subdivision in which the candidate seeks a party nomination or election to an office or position, or has not fully complied with this chapter, the candidate's declaration of candidacy and petition shall be determined to be invalid and shall be rejected; otherwise, it shall be determined to be valid. That determination shall be final.

A protest against the candidacy of any persons filing a declaration of candidacy for joint party nomination to the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the candidacy of any person filing a declaration of candidacy singly.

The secretary of state shall, on the seventieth day before the day of a primary election, certify to each board in the state the forms of the official ballots to be used at the primary election, together with the names of the candidates to be printed on the ballots whose nomination or election is to be determined by electors throughout the entire state and who filed valid declarations of candidacy and petitions.

The board of the most populous county in a district comprised of more than one county but less than all of the counties of the state shall, on the seventieth day before the day of a primary election, certify to the board of each county in the district the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within the district and who filed valid declarations of candidacy and petitions.

The board of a county within which the major portion of the population of a subdivision smaller than the county and situated in more than one county is located shall, on the seventieth day before the day of a primary election, certify to the board of each county in which a portion of that subdivision is located the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within that subdivision and who filed valid declarations of candidacy and petitions.

R.C. 3599.161(C)

Prohibiting inspection of election records.

(A) The director of elections, deputy director of elections, or an employee of the board of elections designated by the director or deputy director shall be available during normal office hours to provide any person with access to the public records filed in the office of the board of elections.

(B) No director of elections, deputy director of elections, or employee of the board of elections designated by the director or deputy director shall knowingly prevent or prohibit any person from inspecting, under reasonable regulations established and posted by the board of elections, the public records filed in the office of the board of elections. Records relating to the declination of a person to register to vote and to the identity of a voter registration agency through which any particular person registered to vote are not public records for purposes of this section.

(C) Whoever violates division (B) of this section is guilty of prohibiting inspection of election records, a minor misdemeanor, and shall, upon conviction, be dismissed from his position as director of elections, deputy director of elections, or employee of the board of elections.