



JENNIFER BRUNNER
OHIO SECRETARY OF STATE
180 East Broad Street, 15th floor
Columbus, Ohio 43215-3726 USA
Tel.: 1-614-466-2655
Fax: 1-614-644-0649
www.sos.state.oh.us

2009 MAY - 1 AM 9:31

RECEIVED

April 24, 2009

Lorana M. Kelly
2235 Ravenwood Avenue
Dayton, Ohio 45406

Re: Your inquiry regarding write-in candidacy for Dayton City Commission

Dear Ms. Kelly:

Your letter regarding candidacy for the Dayton City Commission was directed to my attention. This letter stated that your petition for nomination in the primary election was rejected due to lack of a sufficient number of valid signatures. You have asked whether you would be entitled to file as a write-in candidate for the office of city commissioner.

As a preliminary matter, I cannot provide you with legal counsel and if you desire legal advice on any of these issues, you should consult with private counsel. This letter is not, and should not be considered, legal advice.

Because Dayton is a charter municipality the city law director is the proper authority to interpret the Dayton City Charter. It appears that the Dayton city law director has previously analyzed this issue. His analysis is contained in the April 17, 2007 letter to the Montgomery County Board of Elections that you attached with your letter. In that letter, Director Patrick J. Bonfield explained that the only method to become a candidate for mayor or city commissioner is the nomination process under Section 7 of the Dayton City Charter. That provision states that candidates for commissioner and mayor "shall be nominated by a primary election." Thus, as Mr. Bonfield states, the Dayton City Charter does not permit write-in candidates for mayor or city commissioner.

Your letter is correct that when a municipal charter does not address an issue, the general laws of the state apply. Moreover, the Dayton City Charter explicitly incorporates the general election laws of Ohio except where those laws conflict with the Charter's provisions. Dayton City Charter, § 12; State ex rel. Greene v. Montgomery Cty Bd. of Elections, Slip Opinion No. 2009-Ohio-1716, at ¶ 17. In your case, however, there is no reversion to the general laws of the state because the municipal charter *does* expressly address this issue. Section 7 of the Dayton City Charter provides the *exclusive* method of ballot access and there is no provision for write-in candidates, according to Mr. Bonfield. Acting under its home rule power under the Ohio Constitution, the City of Dayton has chosen not to have write-in candidates for mayor and city commissioner. The general state law permitting write-in candidates does not supersede the specific provision of the Dayton City Charter.

Sincerely,

Joshua A. Kimsey
Elections Counsel

cc: Montgomery County Board of Elections

CITY OF DAYTON, OHIO

DEPARTMENT OF LAW
CIVIL DIVISION



CITY HALL • 101 WEST THIRD STREET

P.O. BOX 22 • DAYTON, OHIO 45401

937 333-4100 • FAX 937 333-3628

www.cityofdayton.org

RECEIVED

2009 MAR 11 PM 2:31

March 6, 2009

Mr. Steven P Harsman, Director
Board of Elections
14 West Fourth Street
Dayton, OH 45402

RE: Petitions for City of Dayton Candidates

Dear Mr. Harsman:

Questions from your office regarding petitions for City of Dayton candidates have been brought to my attention. Specifically, you ask, pursuant to the Dayton Charter, 1) whether the signer of a petition must be registered at the same address within the City as provided on the petition and 2) whether the signer of a petition may be registered at an address outside the City but reside within the City.

Your request references an opinion from the Dayton Law Department, dated March 9, 1999. The 1999 opinion remains unchanged. As noted in the opinion, the City Charter requires signers of petitions to be "registered electors of the City." See Sections 7(A) and (D). This requirement was interpreted by the Court of Appeals for Montgomery County in *State ex rel. Froelich v. Board of Elections* (1979), 65 Ohio App.2d 23. Our previous opinion stated that this case stands for the proposition that petition signers must be registered to vote at a Dayton address.

Based upon the ruling in this case, it is the opinion of the Law Department that a signer must be registered to vote at a Dayton address, as maintained in the records of the Board of Elections, for such signature to be counted. There is no requirement in the Charter that the Dayton address listed on the petition be the same as the Dayton address of registration.

Of course, it remains within the Board's authority to determine the validity or invalidity of any individual petitions. Please feel free to contact me if you have any additional questions or concerns.

Respectfully,

John J. Danish
City Attorney

C: Mr. Young
Ms. Lavender



April 17, 2007

Mr. Steven P. Harsman, Director
Montgomery County Board of Elections
451 West Third Street
P.O. Box 8705
Dayton, Ohio 45481-8705

Re: Write-In Candidacy

Dear Mr. Harsman:

You have requested an opinion as to whether a person, who fails to garner sufficient valid signatures on nominating petitions to have his name placed on the ballot as a candidate for the City of Dayton Commission at a primary election, may nonetheless have his name appear on the ballot as a write-in candidate at an ensuing general election. It is my understanding that you have already determined that state law prohibits such a write-in candidacy.

Candidates for mayor or city commissioner of the City of Dayton, Ohio are required to be nominated for the office in accordance with section 7 of the Charter of the City of Dayton, Ohio. The candidate must accept his or her nomination. Id. The Charter provides no other method by which a person may be a candidate for either mayor or city commissioner of the City of Dayton, Ohio. Therefore, in response to your inquiry, it is my opinion that the Charter of the City of Dayton, Ohio does not permit a person to appear as a write-in candidate for mayor or city commissioner of the City of Dayton, Ohio. See Dayton v. Horstman, 77 Ohio L. Abs. 570 (Common Pleas, 1957).

Please feel free to contact me if there are additional questions.

Very Truly Yours,

Patrick J. Bonfield, Director
Department of Law

Cc: Mr. Young
Mr. Earley

Montgomery County

APR 19 2007

Board of Elections

Department of Law
Civil Division
(937) 443-4100

City Hall
101 West Third Street
P.O. Box 22
Dayton, Ohio 45401

DAYTON

March 9, 1999

Ms. Lynda Hohnhorst, Director
Board of Elections
14 West Fourth Street
Dayton OH 45402

RECEIVED
99 MAR 11 PM 2:58
BOARD OF ELECTIONS
MONTGOMERY COUNTY, OHIO

Re: Petitions for Election for City Commissioners
City of Dayton

Dear Ms. Hohnhorst:

Your questions regarding some petitions which have been filed for the upcoming election for the office of City Commissioner(s) for the City of Dayton have been brought to my attention. Specifically, you are concerned with the validity, pursuant to the Dayton Charter, of signatures on petitions which 1.) lack a date of signing, or 2.) indicate a City address, yet bear the signature of an individual registered to vote outside the City.

With respect to your first question, the City Charter requires each signer of a petition to place after his name, his place of residence by street and number. Charter Sec. 7(B). This requirement also appears at Charter Sec. 7(D), which prescribes the form "substantially" to be followed. However, the Charter contains no requirement, either explicit or in the prescribed form, that a signer indicate the date of signing.

As regards your second question, Charter Sec. 7(A) requires that a candidate's petition must be signed by at least 500 signatures of "registered electors of the municipality." This requirement has been interpreted by the Court of Appeals for Montgomery County in State ex rel. Froelich v. Board of Elections (1979), 65 Ohio App.2d 23. We believe that case stands for the proposition that such a signer must be registered to vote at a Dayton address, in the records of the Board of Elections, for such signature to be counted.

Of course, we recognize that it is within the Board's authority to determine the validity or invalidity of any individual petitions. If you have any further questions or require clarification, please feel free to consult with this office.

Respectfully,

John J. Daniels

for J. Rita McNeil
Director of Law

SSS:bal

cc: Ms. Lemmie
Mr. Williams

Department of Law
Civil Division
(513) 443-4100

City Hall
101 West Third Street
P.O. Box 22
Dayton, Ohio 45401



February 25, 1997

Ms. Lynda Hohnhorst, Director
Board of Elections
14 West Fourth Street
Dayton, Ohio 45402

Re: Petitions for Election for
Mayor and City Commissioners
City of Dayton

Dear Ms. Hohnhorst:

It has been brought to my attention that some confusion has arisen as to the information that needs to be entered in some of the blanks in the form petition(s) for the upcoming election for the offices of Mayor and City Commissioner(s) for the City of Dayton. The form in question at the very top bears the date of January, 1993.

Because the Charter of the City of Dayton speaks in terms of "substantial compliance" with the prescribed form, and because in the past, as I am to understand, the blanks in question have been accepted by the Board of Elections with various types of information, and because I also feel that no detriment results to any of the potential candidates, it is my opinion that the fourth (4th) blank of the first paragraph of the aforementioned Petition for Nomination form is acceptable if filled with either "General," "Regular," or "Primary." The fifth (5th) and sixth (6th) blanks are also acceptable if filled either "May 6, 1997" or "November 4, 1997." Finally, the seventh (7th) blank is acceptable if filled with "Dayton" or "Regular" or "Primary" or "Regular/Primary."

Please let me know if you require any additional information.

Respectfully,

J. Anthony Sawyer
Director of Law

cc: Ms. Lemmie
Mr. Francis

RECEIVED
97 FEB 25 AM 11:26
BOARD OF ELECTIONS
MONTGOMERY COUNTY, OHIO

CITY OF DAYTON, OHIODEPARTMENT OF LAW
CIVIL DIVISION; 1
CITY HALL • 101 WEST THIRD STREET
P.O. BOX 22 • DAYTON, OHIO 45401
937 333-4100 • FAX 937 333-3628
www.cityofdayton.org

March 9, 2009

Mr. Steven P Harsman, Director
 Board of Elections
 14 West Fourth Street
 Dayton, OH 45402

RE: Petitions for Election
 For Mayor and Commissioner
 City of Dayton

Dear Mr. Harsman:

You requested an opinion today with regard to petitions for election to the office of Mayor and Commissioner of the City of Dayton. You raised multiple issues which will be dealt with in summary fashion below. If you require a more detailed discussion of any particular item or issue, please feel free to contact me.

- One issue is the verification of a nominating committee member. Sections 7(C) and (D) of the City Charter require the names of five registered electors of the city in each petition. If the Board of Elections cannot verify that the petition identifies "five registered electors of the City" then the petition is not in substantial compliance with the Charter and is not valid.
- The next question is whether a committee member must be a resident of the City of Dayton. Please see opinions from the Dayton Law Department dated March 9, 1999 and March 6, 2009, copies of which are attached. These opinions address the definition of "registered elector" and lead to the conclusion that a committee member must be registered to vote at a Dayton address and must also be a Dayton resident. The registration address and the residence address need not be the same.
- Another issue is the identification of the office sought. Section 7(D) of the Charter presents the form of the petition and requires substantial compliance. The form requires the insertion or identification of the office. Given that the petition addresses the election of the Mayor and the Commissioners, identifying the office sought is a matter of substantial compliance. A petition that fails to identify the office sought is not valid.
- An issue is the address listed for the candidate. Candidates for office "shall be residents of the city and have the qualifications of electors therein." Charter Section 6(A). As noted above, this means that the candidate must be registered to vote at a Dayton address and also be a Dayton resident. The Charter does not prevent petitions from containing different residence addresses for candidates, so long as the addresses listed are within Dayton. It is possible for a candidate to change addresses within the City during the petition process without invalidating the petitions. Moreover, Section 7(D) of the Charter only requires substantial compliance with the form presented. Typos or clerical errors in

2009 MAR 10 PM 10:05

RECEIVED

stating the address may be technical, not substantial, in nature. See *Stern v. Board of Elections of Cuyahoga Cnty.* (1968), 14 Ohio St.2d 175.

- Also at issue is whether alterations to the petition invalidates the petition. Specifically, you ask if an apparent alteration that changes the name of a committee member is fatal to the petition. As already noted, the identification of the committee members is a matter involving substantial compliance with the Charter. The petition language may be altered and corrected prior to circulation. However, if one or more names of the committee members are altered after any electors have signed the petition, the petition is invalid.
- Finally, there is the question of whether Ohio Revised Code Section 3513.05 limits the number of signatures that can be submitted for a petition filing. As explained by the Court of Appeals for Montgomery County in *State ex rel. Froelich v. Board of Elections* (1979), 65 Ohio App.2d 23, Dayton elections are governed by the Charter, not state law, when the Charter specifically speaks to an issue. It is the belief of the Law Department that the Charter sufficiently addresses the number of signatures on a petition, setting a minimum but not a maximum, so as to preclude the application of state law in this area.

Of course, it remains within the Board's authority to determine the validity or invalidity of any individual petitions. Please feel free to contact me if you have any additional questions or concerns.

Respectfully,



John J. Danish
City Attorney

C: Mr. Young
Ms. Lavender