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There are different legal issues at play with this opinion. Running for office and filing a petition is one matter. Winning the office and being qualified to hold the same is a different issue.

ISSUE: May an individual who wishes to file a petition with the Hardin County Board of Elections for the position of regular (not council at large) City Council for the City of Kenton also hold the position of Highway Worker 1 in the classified position.

ANSWER: Yes.

I am not aware of any legal authority requiring the Board of Elections to disqualify a candidate because he may be a public employee or official. The powers and duties of the Board of Elections are generally set out in Ohio Revised Code Section Title 35. The board's duties include reviewing the validity of petitions and nomination papers, see Ohio Revised Code §3501.11(K); receiving returns of elections, see Ohio Revised Code §3501.11(L); and certifying the results of the election, Ohio Revised Code §3501.11(M). However, none of these provisions specifically require the board of elections to pull a petition because the person seeking office may or may not be qualified.

Under Ohio election laws a candidate generally need not qualify for the prospective office in order to run for or be elected to that office. However, once elected the candidate must be qualified when he assumes that office. The board of elections duties mainly pertain to candidates and elections, not to the "qualifications of the office holder" after an election.

Further analysis for the question of "qualifications of the office holder after the election" one must look to Ohio Revised Code §731.02, which sets forth the requirements of a member of the legislative authority of a city. It speaks to the requirements for that office, residency, and they be an elector. Ohio Revised Code §731.02 states as follows:

Members of the legislative authority at large shall have resided in their respective cities, and members from wards shall have resided in their respective wards, for at least one year immediately preceding their election. Each member of the legislative authority shall be an elector of the city, shall not hold any other public office, except that of notary public or member of the state militia, and shall not be interested in any contract with the city, and no such member may hold employment with said city. A member who ceases to possess any of such qualifications, or removes from the member's ward, if elected from a

ward, or from the city, if elected from the city at large, shall forthwith forfeit the member's office.

The purpose of establishing a one-year residency requirement in this section is to recognize that the state has a substantial and compelling interest in encouraging qualified candidacies for election to the office of member of the legislative authority of a city by ensuring that a candidate for such office has every opportunity to become knowledgeable with and concerned about the problems and needs of the area the candidate seeks to represent. In enacting this requirement, the general assembly finds that the one-year period is reasonably related to this purpose, while leaving unimpaired a person's right to travel, to vote, and to be a candidate for public office. (Emphasis added)

Specifically Ohio Revised Code Section 731.02 places a statutory restriction on a member of the legislative authority at large to not hold any other *public office*.

Note that Ohio Revised Code §705.12 speaks to the other members of the legislative authority of a municipal corporation in the city legislative authority who are not members at large. This statute §705.12 states as follows:

Members of the legislative authority of a municipal corporation shall be electors of the municipal corporation. They shall not hold any other public office or employment, except that of notary public or member of the state militia, or state or county central committeeman of a political party, or state or county executive committeeman of a political party, or state or county officer of a political party, and shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipal corporation. Any member who ceases to possess any of the qualifications required by this section shall forthwith forfeit his office. Any contract in which any such member is or becomes interested may be declared void by the legislative authority. (Emphasis added)

From a clear reading of this statute, the legislature places further restrictions on a regular member of city council in a city form of municipal government. They cannot hold public office nor employment. This employment restriction is not found in §731.02 for members at large legislative authority. Here if the candidate wins he, however, would not be qualified as a member of regular city council. This is because he has public employment. See O.R.C. 705.12.

Another point of analysis is the position which the prospective petitioner now holds is in the classified position with the County Engineer's Office as a highway worker 1. This position of being a classified employee is also restricted on what political activity the classified employee may participate in. Under O.R.C. 124.57 there are specific restrictions placed on what political activity a classified employee can be involved in. The only allowed political participation of a classified employee is to be able to vote as they please and to express freely political opinions.

Additionally, O.A.C. 123:1-46-02 lists what activities are permitted by a classified employee under (B)(1-9). Also under section (C) of the O.A.C. section 123:1-46-02 specifically lists the areas that a classified employee is not permitted to participate. One of the areas is being a candidate for public office in a partisan election. The seeking of a position of City Council is an election that is a partisan election and can not be undertaken by a classified employee. However the requirements of qualifying for and taking the position of city council is not a function of the Board of Elections.

A candidate that wins his election may be subject to civil and criminal sanctions. In 1983 Ohio Op. Atty. Gen. No. 95 a classified employee's appointing authority has the authority to take action pursuant to O.R.C. 124.34 to remove or otherwise discipline a classified employee who engages in partisan political activity in violation of O.R.C. 124.57. That authority is discretionary not mandatory. A classified employee who participates in partisan political activity may further as well be prosecuted

under O.R.C. 124.62. A conviction under 124.62 renders the position of the employee vacant by virtue of such conviction.

In conclusion, it is my opinion that the Highway Worker 1 in the classified position with the county engineer's office may file a petition for election for the seat of a regular council member of city government. Further, it is the opinion of my office that the individual may have his petition filed and that is not a disqualifying event for the board of elections to consider. Further, if this individual would be elected to the office he is not qualified to hold regular city council office pursuant 705.12 O.R.C. Further even past this analysis he may be disqualified if convicted for violating O.R.C. 124.57. He merely holds employment in the classified position which has restrictions on political activity a classified employee may participate. He also may be removed by his employer from his employment pursuant O.R.C. 124.34

Sincerely,

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