December 2, 1996

OPINION NO. 96-063

The Honorable Robert D. Rinfret
Holmes County Prosecuting Attorney
91 South Monroe Street
Millersburg, Ohio 44654

Dear Prosecutor Rinfret:

I have before me your opinion request concerning the effect of a county hospital board member's voting in the primary election of a party other than the one from which he was appointed. Information provided by your office indicates that your question is limited to the issue of whether a county hospital board member remains "from" a particular political party for purposes of R.C. 339.02, if, during his term of office, he votes in the primary election of a different political party. In order to answer your question, it is first necessary to discuss the statutory scheme governing the appointment of members to a board of county hospital trustees.

The management and control of a county hospital is vested in the board of county hospital trustees. R.C. 339.06(A). The board of county hospital trustees is composed of six, eight, or ten "electors" of the area served by the hospital. R.C. 339.02(C). The members are appointed by the board of county commissioners, the probate judge of the county senior in point of service, and the judge of the court of common pleas of the county senior in point of service, all of whom constitute the appointing authority. *Id.* The terms of board members are staggered so that not all board members' six-year terms expire during the same year. *Id.*

Concerning the composition of the board, R.C. 339.02(E) states in pertinent part:

> The board of county hospital trustees *shall be bipartisan, with an equal number of members from each of the two political parties* casting the highest number of votes in such county for its respective candidate for governor at the most recent gubernatorial election. Notwithstanding any other provision of this section, no more than two members of the board shall be electors of the area served by the hospital that is outside the county in which the hospital is located. (Emphasis added.)

The first sentence of R.C. 339.02(E) requires that the board be bipartisan and that it consist of an

equal number of members from the two political parties described therein.[1] *See generally Webster's New World Dictionary* 143 (2d college ed. 1978) (defining "bipartisan" as meaning, "of, *representing*, or supported by two parties" (emphasis added)). R.C. 339.02(E) thus suggests that the board, as a continuing body, must always be so constituted, and that such equal, bipartisan representation in the board's membership is a continuous requirement.

While R.C. 339.02(E) requires that county hospital board members be "from" or represent one of the two parties described therein, the General Assembly has not prescribed a method for determining whether an individual is "from" a particular party. I note, however, that R.C. 339.02(E) speaks in terms of the board's members being "electors" of the area served by the hospital. *See* 1992 Op. Att'y Gen. No. 92-048. It may, therefore, be useful to examine one's status as an "elector" in attempting to ascertain the General Assembly's intent in referring to an individual's being "from" a political party. *See* 1989 Op. Att'y Gen. No. 89-060 at 2-254 ("[u]nder the Ohio Constitution, and the election laws enacted pursuant thereto, _elector_ is a term used to designate those persons who are entitled, *inter alia*, to vote in elections held within the State of Ohio"); *see generally Commerce & Industry Insurance Co. v. City of Toledo*, 45 Ohio St. 3d 96, 102, 543 N.E.2d 1188, 1196 (1989) ("words and phrases in a statute must be read in context of the whole statute").

The qualifications of an elector are prescribed by Ohio Const. art. V, § 1 and R.C. 3503.01.[2] The connection between a person's eligibility to vote and that person's relationship to a particular political party is relevant in the context of party primary elections. *See State ex rel. Klein v. Cuyahoga County Bd. of Elections*, 102 Ohio App. 3d 124, 656 N.E.2d 1031 (Cuyahoga County 1995). R.C. 3503.011 prescribes who may vote in primary elections, as follows:

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[1] R.C. 339.02(F), concerning the removal of county hospital board members, states in part that, "no removal shall be made for political reasons."

[2] Ohio Const. art. V, § 1 states:

> Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections. Any elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.

R.C. 3503.01 states in pertinent part:

> Every citizen of the United State who is of the age of eighteen years or over and who has been a resident of the state thirty days immediately preceding the election at which the citizen offers to vote, is a resident of the county and precinct in which the citizen offers to vote, and has been registered to vote for thirty days, has the qualifications of an elector and may vote at all elections in the precinct in which the citizen resides.

> At a primary election every qualified elector who is or will be on the day of the next general election eighteen or more years of age, and who is a *member of* or is *affiliated with* the political party whose primary election ballot he desires to vote, shall be entitled to vote such ballot at the primary election. (Emphasis added.)

Thus, in order to be entitled to vote in a party's primary election, an elector must be a member of, or affiliated with, that party.

The manner in which an elector becomes a member of, or affiliated with, a political party for purposes of voting in that party's primary election is explained in R.C. 3513.19, governing challenges to a person's right to vote in a party primary, which states in pertinent part:

> (A) ....The right of a person to vote at a primary election may be challenged upon the following grounds:
> ...
> (3) That the person is *not affiliated with* or is *not a member of* the political party whose ballot the person desires to vote. Such party affiliation shall be determined by examining the elector's voting record for the current year and the immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of [R.C. 3513.05]....
> ....
> (B) When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, *membership in or political affiliation with* a political party *shall be determined by the person's statement*, made under penalty of election falsification,[3] *that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote*. (Emphasis and footnote added.)

Thus, R.C. 3513.19(A)(3) establishes as a basis for challenging a person's right to vote at a primary election the person's failure to be affiliated with, or a member of, the political party whose ballot the person wishes to vote. For purposes of such a challenge, party affiliation is determined by examination of the elector's voting record for the current year and the two immediately preceding calendar years and using the standard of party affiliation set forth in R.C. 3513.05, which states in pertinent part: "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."

In resolving such a challenge, a person's membership in, or affiliation with, a political party

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[3] Pursuant to R.C. 3599.36, election falsification is a misdemeanor of the first degree, the penalty for which is imprisonment for not more than six months, or a fine of not more than one thousand dollars, or both.

"shall be determined" by the person's statement, made under threat of criminal penalties, that the person "desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote." R.C. 3513.19(B). *See generally State ex rel. Klein v. Cuyahoga County Bd. of Elections*, 102 Ohio App. 3d at 128, 656 N.E.2d at 1034 ("[n]o law prohibits candidates or anyone else from changing parties at a primary election, which is the only time such a declaration is required"). A person's voting in the primary election of a political party, therefore, indicates the person's desire to be affiliated with that party and to support its principles. *See State ex rel. Bible v. Bd. of Elections*, 22 Ohio St. 2d 57, 58, 258 N.E.2d 227, 228 (1970) ("[u]nder R.C. 3513.19, only one who is a member of or affiliated with a party may cast his ballot at a primary election. Thus, when one votes at a primary, he necessarily establishes some party affiliation or membership"); *see also State ex rel. Kelly v. Bd. of Elections*, No. 67027 (Ct. App. Cuyahoga County April 13, 1994) (R.C. 3513.19 "still prohibits a person from voting in a party's primary if he is not affiliated with that party").

It is with this statutory scheme in mind that the requirements of R.C. 339.02(E) as to the appointment of electors "from" the two political parties described therein may be interpreted. Using the standard of affiliation set forth in R.C. 3513.05 and the method prescribed by R.C. 3513.19 for establishing one's affiliation with, or membership in, a political party, a person's voting in a party's primary election establishes the voter's affiliation with, and support for, that party.[4] I conclude, therefore, that when a person votes in a political party's primary, he is "from" that political party for purposes of R.C. 339.02(E), regardless of his prior political affiliation.

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[4] *Cf. State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 651 N.E.2d 995 (1995) (for purposes of appointing a person to fill a vacancy in office under R.C. 733.08, the court found that, in the absence of a statutorily prescribed method for determining the officer's party affiliation, it was reasonable, in making such determination, to consider "all relevant circumstances," *e.g.*, voting in the primary of a party for two consecutive elections, announcing oneself as a member of that party, and actively engaging in that party's politics after voting in its primary).

In the situation you describe, one county hospital board member, who was appointed as a Democrat, voted in a Republican party primary during his term of office. By voting in the Republican party primary, the board member established that, for purposes of R.C. 339.02(E), he was no longer "from" the Democratic party which he had been appointed to represent, even though he had been a Democrat at the time of his appointment, thus upsetting the balance in the board's bipartisan representation as required by R.C. 339.02(E).

Base on the foregoing, it is my opinion, and you are hereby advised that, for purposes of R.C. 339.02(E), a county hospital board member who is appointed from one political party and who, during his term of office, votes in the primary election of another political party, is no longer "from" the political party from which he was appointed.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

December 2, 1996

The Honorable Robert D. Rinfret
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91 South Monroe Street
Millersburg, Ohio 44654

SYLLABUS: 96-063

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