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July 10, 2001

**OFFICIAL OPINION 2001-5**

The Honorable Bruce Munson  
State Representative  
7009 West Santa Fe Drive  
Muncie, Indiana 47304

RE: Political affiliation of appointees to county health board

Dear Representative Munson:

This letter responds to your request for an advisory opinion on the following question:

The Commissioners in Delaware County filled a vacancy on the county health board. By statute, the vacancy should have been filled by a Republican appointee. The person selected by the commissioners has a record of voting as a Democrat in primary elections. Does the appointment violate the law?

It is our opinion that if the appointment results in more than four (4) members of the board being from the same political party, the appointment is contrary to Indiana law.

**ANALYSIS**

The statute is unambiguous on the required political affiliation of members of a local health board chosen by the county executive pursuant to IND. CODE § 16-20-2-2:

**Members of local board of health.** -- A local board of health is composed of seven (7) members, *not more than four (4) of whom may be from the same political party.*

IND. CODE § 16-20-2-4 (emphasis added). In addition to the limitation on political affiliation, the members are to be chosen from specified categories, including no less than

two (2) licensed physicians, at least two others “knowledgeable in public health” chosen from designated health-related professions, and at least two (2) “representatives of the general public.” IND. CODE § 16-20-5.

The Legislature has defined “political affiliation of board appointees”:

(a) As used in this section, “board” means an administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similarly designated body of a political subdivision.

(b) Whenever a law or political subdivision’s resolution requires that an appointment to a board be conditioned upon the political affiliation of the appointee, or that the membership of a board not exceed a stated number of members from the same political party, at the time of an appointment **either of the following must apply** to the appointee: ~~must~~

(1) ~~have voted in~~ The most recent primary election **in which the appointee voted was a primary election** held by the party with which the appointee claims affiliation. ~~;~~~~or~~

(2) ~~if~~ The appointee ~~did not vote in the most recent primary election held by the party with which the appointee claims affiliation,~~ **is certified as a member of that party by the party’s county chairman for the county in which the appointee resides.**

(c) Notwithstanding any other law, if the term of an appointed member of a board expires and the appointing authority does not make an appointment to fill the vacancy, the member may continue to serve on the board for only sixty (60) days after the expiration date of the member’s term.

IND. CODE § 36-1-8-10 (emphasis added).<sup>1</sup>

Over fifty years ago, the Indiana Supreme Court upheld the constitutionality of statutes requiring selection or appointment of public officers or agents from members of a political party. Faced with a challenge to a statute requiring the judge of the circuit court to appoint to the Board of Registration members from “the two (2) political parties which cast the highest and next highest number of votes for secretary of state in such county at the last preceding election,” the court held that

[i]f we were to hold that the statute lays down a political test, it will be noted that our state Constitution nowhere prohibits a political test for public

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<sup>1</sup> The statute was amended by S.E.A. 395, 112<sup>th</sup> Gen. Assem., first Reg. Sess. 2001. Changes shown in **bold** became effective July 1, 2001. Language which was in effect until July 1, 2001, is shown with the ~~strikethrough~~.

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office. The only test for office which our Constitution proscribes is a religious test.

...

It is our opinion that when the legislature conferred upon the county chairman the right to make this nomination it was exercising a reasonable police regulation to promote the public welfare.

*State ex rel. Buttz v. Marion Circuit Court*, 225 Ind. 7, 14, 19, 72 N.E.2d 225, 229, 231 (1947).

#### CONCLUSION

Assuming the appointment that you are questioning results in more than four (4) members of the board being from the same political party, the appointment did not comply with Indiana law.

Sincerely,

Stephen Carter  
Attorney General