

FILE

Subject

*Opinion of  
Sheriff*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

May 16, 1974

Opinion No. 74- 151

Myrlen L. Bell  
Barber County Attorney  
105 North Main  
• Medicine Lodge, Kansas 67104

Dear Mr. Bell:

You inquire concerning the forthcoming election for the office of sheriff of Barber County. You advise that, based upon certain information which you have in your possession, that it is your firm opinion that two of the four candidates are ineligible under K.S.A. 19-801b. One is not qualified, in your opinion, because he will have been a resident of Barber County for a period of less than one year on July 1, 1974, and the other you believe to be ineligible because he does not possess a high school diploma or its recognized equivalent.

K.S.A. 19-801b provides that [n]o person shall be eligible for nomination, election or appointment to the office of sheriff" unless such person possesses the enumerated qualifications. You inquire whether, as county attorney, you are required to take any affirmative steps to challenge the alleged lack of qualification of any of the respective candidates. K.S.A. 19-714 states thus:

"It shall be the duty of each county attorney, upon information being given him that any person has violated any of the provisions of the election laws, or license laws, to adopt effectual measures for the conviction of such person."

Statutes prescribing qualifications for elective office are not election laws for violation of which penal or civil sanctions exist in the nature of convictions. We know of no other statute

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prescribing the duties of the county attorney upon which could be predicated a duty to challenge the eligibility of any candidate who is alleged to lack the qualifications prescribed by law.

K.S.A. 25-308 sets forth the procedure for contesting the validity of a nomination on the basis of those causes and limitations thereon set forth at K.S.A. 25-1411 and -1412, respectively, including the objection that "[t]he contestee was not eligible to the office at the time of election." The procedure for considering such objections contemplated, at least impliedly, that the county attorney shall not, at least by virtue of his office, be required to assert such challenges, for it states in part thus:

"Such objections or questions arising in the case of nominations for county, township, city and school officers shall be filed with the county election officer and shall be considered by the county election officer, clerk of the district court, and county attorney or district attorney as the case may be, and a decision of a majority of these officers shall be final."

The county attorney would be ill-suited to participate in this panel if, by virtue of his office, he were obliged to assert the objection or lack of qualification in the first instance.

In sum, it is our opinion that it is not an official duty of the county attorney to commence any proceeding to challenge the qualifications of any candidate for elective county office.

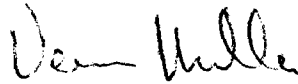
You state that, upon the candidates' assertions of their qualifications for nomination and election to the office, the county election officer has accepted their respective nomination papers. The county election officer acted properly in so doing, in our opinion. This office has long taken the view that the county election officer has no statutory duty, authority or responsibility to pass upon and judge the qualifications for nomination and election of any person who seeks to file formal papers effecting their candidacy.

There are at least two procedures where an alleged lack of qualification may be asserted. One procedure may be to seek injunctive relief from the District Court, to enjoin the county election officer from placing the name of the disputed candidate on the ballot prior to the primary election. A second procedure is that prescribed by K.S.A. 25-308, whereby an alleged ineligibility of a nominee may be raised after the primary. If the objection is

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found to be valid, and the nomination is declared void by the panel constituted for that purpose, a vacancy exists which shall be filled as provided by law.

Yours very truly,



VERN MILLER  
Attorney General

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