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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

June 5, 1974

Opinion No. 74- 181

Mr. Wayne Gibson
Neosho County Clerk
Neosho County Courthouse
Erie, Kansas 66733

, Dear Mr. Gibson:

We are advised that as county election officer, you have requested the opinion of Mr. Radford, Neosho County Attorney, concerning the following. Because of his possible personal interest in the question, he has forwarded the request to our office, for a response to you on the question.

We are advised that a young man who moved from Neosho County several years ago has just filed for nomination and election to the office of County Attorney of Neosho County. This candidate has lived in the State of Arkansas for several years, and is believed to be graduating from a law school in that state on or about June 1, 1974. He intends to take the Kansas bar examination on July 30 and 31, 1974. The results of that examination will not be announced until at least several weeks thereafter.

K.S.A. 1973 Supp. 19-701 states thus:

"No person shall be eligible for the nomination or election to the office of county attorney of any county unless such person shall have been regularly admitted to practice law within the state of Kansas, and is at the time of his nomination and election a regularly qualified practicing attorney under said laws."

The question presented is whether the name of this candidate should be printed on the primary election ballot. In Moore v. Wesley, 125 Kan. 22, 262 Pac. 1035 (1928), the court stated thus, albeit as obiter dictum:

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"[A] person who holds a permit issued by this court authorizing him to practice law until the next bar examination is not irregularly admitted to practice law, but ad interim is a regularly qualified practicing attorney This was defendant's situation when elected to the office of county attorney, and having successfully passed the next bar examination he was not and is not disqualified to hold that office under R.S. 19-701."

If the candidate in question has not been issued a temporary permit authorizing him to practice law until the results of the examination are determined, the question remains whether the county election officer must print his name on the primary election ballot.

It has consistently been the view of this office that the county election officer has no responsibility or authority to pass upon the qualifications for office of persons appearing before him to declare their candidacy for public office. That officer has no authority to determine unilaterally that a candidate is unqualified and to decline a proffered filing on that ground. Similarly, he has no authority to refuse to print on the ballot the name of any candidate who has filed a lawful and timely declaration for office.

If the candidate should be nominated, his lack of qualification may be raised and determined as provided under K.S.A. 25-308. If, of course, prior to the primary election, an action was brought in the District Court, the county election officer would be required to comply with any order entered therein regarding preparation of the ballot. However, absent a judicial determination and order, it is our view that the county election officer must print the name of the candidate on the ballot, and may not make any determination of the candidate's qualifications or lack thereof as a prerequisite to placing the name on the ballot.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Elwill Shanahan, Secretary of State
Raymond W. Radford, Neosho County Attorney