



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 21, 1975

Opinion No. 75- 135

Ms. Wilma Williams
Doniphan County Clerk
Doniphan County Courthouse
Troy, Kansas 66087

Dear Ms. Williams:

You inquire concerning the withdrawal of candidacies by three persons who filed for nomination and election to the city council of the City of Elwood.

You enclose copies of letters addressed to you by Messrs. Herman McFarland, Sanford Reed, Jr., and Gary Moss. The identical letters indicate that each person filed as a candidate for the Elwood city council prior to January 28, 1975. On that date at 8:00 a.m., each applied to the office manager of the Elwood city hall to withdraw his candidacy, who in turn returned to each one his filing papers and filing fee of \$5.00. Each indicates that he thereafter destroyed the filing papers, but being advised that the filing fee was nonrefundable, forwarded to you the filing fee of \$5.00. You question whether any laws were violated in these circumstances.

K.S.A. 25-306a commences thus:

"Any person who has been nominated to be a candidate at any primary election for any national, state, county, or township office may cause his name to be withdrawn from such nomination by his request in writing, signed by him and acknowledged before an officer qualified to take acknowledgments of deeds and filed . . . with the county election officer in the case of county and township offices . . . [not later than the filing deadline].

No statute specifically prescribes the manner of withdrawal of candidacy in a city election, for this provision, by its express

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terms, applies only to national, state, county or township elections. However, city elections are held at the same time as school elections. K.S.A. 25-2113(a) states thus:

"Except as provided in subsection (b) [inapplicable here] of this section, city elections shall be nonpartian. Laws applicable to elections occurring at the same time as city elections shall apply to city elections to the extent that the same are not in conflict with the provisions of this act." [Emphasis supplied.]

Because school elections are held at the same time as city elections, all laws applicable to school elections are applicable to city elections when the former are not in specific conflict with laws pertaining to the latter. K.S.A. 25-2009 provides generally that laws applicable to county and city elections shall apply to school elections, to the extent that the former do not conflict with laws pertaining to the latter. There being no specific statute dealing with withdrawal of candidacies in school elections, the general provision quoted above, K.S.A. 25-306a, applies to school elections, and thence, by virtue of K.S.A. 25-2113(a), to city elections. Thus, a withdrawal from a city election should be executed in the same manner as withdrawals from candidacy in other elections, i.e., by filing a written and notarized request for withdrawal, and all the documents, filing papers and request for withdrawa, should then be forwarded to the county election officer. Although the candidacies were withdrawn otherwise than in compliance with law, because the declarations of candidacy were not forwarded to you, the names could not be placed on the ballot for nomination or election.

K.S.A. 25-2421 defines the crime of election suppression thus:

"Election suppression is knowingly: (a) Suppressing any certificate of nomination, nomination papers, petition for nomination or any part thereof which have been duly filed.

(b) Being in possession of any certificate of nomination, nomination papers or petition for candidacy entitled to be filed under any of the

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election laws of this state and suppressing,
neglecting or failing to cause the same to be
filed at the proper time in the proper office."
[Emphasis supplied.]

Nomination papers, as described by K.S.A. 25-205 and -206, do not include declarations of candidacy, the former being substantially in the form prescribed by K.S.A. 25-205(1), and commonly called "nomination petitions." Thus, technically construed, the destruction of a declaration of candidacy, unlike the destruction of nomination petitions, does not fall within the offense of election suppression, as defined by statute. The destruction of election papers as defined by K.S.A. 25-2429 similarly does not include the destruction of declarations of candidacy, for it includes the willful destruction only of certificates of nomination, nomination papers, and letters of withdrawal. This omission is curious, for declarations of candidacy are equally as important in the election process, and certainly more commonly used by candidates, than nomination petitions. Nonetheless, the destruction in this case of declarations of candidacy does not fall within the literal language defining the two offenses described above. Thus, we cannot conclude as a matter of law that in the facts described above, there has been any prosecutable offense under the penal election laws of this state.

We would point out that K.S.A. 25-2419 commences thus:

"Misconduct of an election officer is,
while being charged with any election duty;
(a) Being grossly neglectful with respect
thereto."

The facts certainly suggest some carelessness and disregard of the election laws by the city clerk, or person acting in his stead, to receive filings of candidacy and of withdrawal statements. We cannot say, however, that such conduct is "grossly neglectful."

Lastly, you inquire concerning the filing of incomplete statements containing disclosures of substantial interest, as required by K.S.A. 75-4302. The filing officer has no duty whatever to determine the accuracy or completeness of a disclosure statement which is presented for filing. Obviously, the county election officer will

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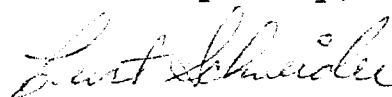
have no knowledge of the financial, business and other interests required to be described in the statement. Similarly, the county election officer has no knowledge of any other facts which the statement is required to contain. Responsibility for the completeness and accuracy of any such statement rests with the person executing same and presenting it for filing.

You also relay a letter to your office from Mrs. Jack Davis, of Elwood, Kansas, concerning the filing of an amended or supplemental statement of disclosure of substantial interests by one Orlo Vincent. The writer appears to question the legality of such a filing, on the apparent ground that because K.S.A. 1974 Supp. 75-4302 does not expressly mention such a supplemental or amended statement, it is not permitted.

This literalistic statutory construction is unsound, in our view. The purposes of statements required to be filed by K.S.A. 1974 Supp. 75-4302 is to advise the people of the "substantial interests" of their public officials. If a candidate or public officer files a statement which is in error or insufficient for any reason, that person is free to file a statement which corrects the error or omission of the previous statement. Certainly, in general, when a document is required by law to be filed, the law implies authority to correct any error or omission in that filing. If, of course, the filing of the initial document constitutes a public offense or crime, certainly, the filing of a later document does not erase, as it were, the previous offense or crime. Where, as here, a statement disclosing one's "substantial interests" is filed which is allegedly incomplete, it is certainly the prerogative of the candidate to file an amended statement or a supplemental statement, to correct any error in the initial filing. If there were any insufficiency in the initial filing which would constitute an offense under K.S.A. 1974 Supp. 75-4306, those facts should be reported to the county attorney, as we have previously advised Mrs. Davis. Absent facts suggesting intentional concealment or deception in the preparation of the filing of the initial statement, we doubt that a prosecutor would regard an error in a disclosure statement as grounds for criminal prosecution.

In our view, it is clearly permissible to accept a supplemental or amended statement of substantial interests for filing.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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