



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 25, 1976

ATTORNEY GENERAL OPINION NO. 76-107

The Honorable Jim Lawing
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Elections--Presidential Electors--Nominations

Synopsis: K.S.A. 25-301, which prohibits independent nominations of presidential electors, does not unconstitutionally restrict ballot access by prospective candidates for nomination as presidential electors.

* * *

Dear Representative Lawing:

K.S.A. 25-301 states in pertinent part as follows:

"All nominations made by political parties shall be known and designated as 'party nominations,' and the certificates by which such nominations are certified shall be known and designated as 'party certificates of nomination.' Party nominations of candidates for public office can be made only by a delegate or mass convention, primary election or caucus of qualified voters belonging to one political party having a national or state organization. *Nominations for presidential electors can be made only by a delegate or mass convention or caucus of qualified electors belonging to a political party having a national or state organization.*"

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Presidential electors may not be nominated by the independent nomination procedure prescribed by K.S.A. 25-303.

You inquire whether this restriction is constitutional. In *Storer v. Brown*, 415 U.S. 724, 39 L. Ed. 2d 714, 94 S. Ct. 1274 (1974), the Court considered claims of one Hall and one Tyner, who claimed they had wrongfully been denied ballot position as independent candidates for President and Vice President. The Court stated thus:

"We start with the proposition that the requirements for an independent's attaining a place on the general election ballot can be unconstitutionally severe."

In *Jenness v. Fortson*, 403 U.S. 431, 29 L. Ed. 2d 554, 91 S. Ct. 1970 (1971), the Court upheld a requirement that independent candidates must demonstrate substantial support in the community by securing supporting signatures amounting to five percent of the total registered voters in the last election for filling the office sought by the candidate. The Court in that case described the supporting state interest thus:

"There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot -- the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election."

In *Storer* the Court acknowledged that a petition requirement of signatures equal in number to five percent of the total number of votes cast in California at the last general election did "not appear to be excessive."

K.S.A. 25-302a prescribes the petition requirement for the organization of a new political party, at "at least three percent (3%) of the total vote cast for all candidates for the office of governor in the state in the last preceding general election." This requirement is not on its face excessive. By proceeding to demonstrate the constitutionally permissible modicum of support through a political party organized pursuant to this statute, a candidate may be entitled to ballot position, and candidates for presidential electors may thus

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be nominated. This requirement, and the restriction upon the use of independent nomination procedure, is not on its face excessively burdensome under existing decisions of the United States Supreme Court, in my judgment, and K.S.A. 25-301 imposes a permissible requirement that nominations for presidential electors be made through a political party which has demonstrated the constitutionally permissible modicum of support required by Kansas law.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mrs. Lavina McDonald
Assistant Secretary of State
for Elections
2nd Floor - State Capitol Building
Topeka, Kansas 66612