



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

July 8, 1976

ATTORNEY GENERAL OPINION NO. 76- 211

Mr. Milford Grassberger
Johnson County Election Commissioner
135 South Fir
Olathe, Kansas 66061

Re: Elections--Precinct Committee Members--Eligibility

Synopsis: The county election officer has no authority to pass upon and determine the qualifications of persons who make timely filings of candidacy for elective positions, including the position of precinct committeeman and committeewoman.

* * *

Dear Mr. Grassberger:

K.S.A. 25-3801 states in pertinent part thus:

"At each primary election, the members of the party residing in each precinct in each county of the state shall elect a man of their number as precinct committeeman and a woman of their number as precinct committeewoman. No person shall be eligible to be a candidate for or hold the office of precinct committeeman or precinct committeewoman of a party in any precinct unless such person actually lives, resides and occupies a place of abode in such precinct, and is in all other respects a qualified elector and is shown as a member of such party on the party affiliation list, in the office of the county election officer."

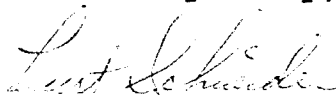
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You inquire whether as county election officer, you are authorized to pass upon the qualifications of persons who declare themselves candidates for precinct committeeman and committeewoman, and to refuse to place on the ballot the names of those persons you determine to be ineligible or unqualified.

It has long been the position of this office that the county election officer has no authority to determine the qualifications of candidates. No Kansas statute grants any authority whatever to the filing officer to make any determination upon the eligibility and qualifications of any person who declares himself or herself to be a candidate for elective position. K.S.A. 25-308 provides a procedure whereby a candidate for nomination to office may be challenged on the ground that the candidate was not eligible for the nomination. K.S.A. 25-1411 *et seq.* provides a procedure whereby the election of any person to any county, township, city or school office may be challenged on the ground that the "contestee was not eligible to the office at the time of election."

There appears to be no statutory contest procedure applicable to the election of precinct committee members. However, the lack of any such procedure does not warrant an inference of authority in the filing officer, where none exists by statute, to hear and determine questions and challenges to the eligibility and qualifications of candidates for election to those positions. Having a declared party affiliation is equally a condition of eligibility for election as is the necessary residence, and voter registration. The filing officer has no authority to inquire into or verify residence and to make an *ex parte* determination so as to remove from the ballot timely declared candidates. Similarly, in my judgment, the filing officer has no greater authority to inquire into and determine qualifications based on registration or declared party affiliation. The mere fact that this information is readily verifiable from the records of the county election commissioner in no way alters the lack of authority of the filing officer to act upon that information, to remove persons he deems ineligible from the ballot when no statute grants such authority.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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cc: The Honorable Elwill M. Shanahan
Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Mr. Sherman A. Parks
Attorney
Office of the Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612