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June 26, 1979

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ATTORNEY GENERAL OPINION NO. 79-120

William Rex Lorson
Saline County Attorney
300 West Ash
City-County Building
Salina, Kansas 67401

Re: Elections--Filling Vacancies in Offices
and Candidacies--Determining Quorum of
District Convention

Synopsis: The provisions of K.S.A. 1978 Supp. 25-3902(e) require that one-third of the eligible members of a political party's district convention constitutes a quorum thereof. Within this context, "eligible members" means and refers to those persons within the district who have been duly elected or appointed as precinct committeemen or precinct committeewomen of such party.

* * *

Dear Mr. Lorson:

In your letter of June 1, 1979, you requested our opinion regarding the procedure to be followed in filling the vacancy created by the resignation of John Simpson as State Senator for the Twenty-Fourth Senatorial District, which encompasses Saline, Ellsworth and Lincoln Counties. Specifically, you asked us for an interpretation of the phrase "eligible members" as used in subsection (e) of K.S.A. 1978 Supp. 25-3902. Due to the exigencies of time, we provided you a verbal response to your inquiry, and the balance of this opinion reduces such response to writing.

William Rex Lorson
Page Two
June 26, 1979

Preliminary to considering your request, it should be noted that K.S.A. 1978 Supp. 25-3903 requires that a vacancy in the office of state representative or state senator "be filled by appointment by the governor of a person elected to be so appointed by a district convention held as provided in" K.S.A. 1978 Supp. 25-3902. Subsection (a) of 25-3902 provides that the district convention shall consist of "all committeemen and committeewomen of the party of the precincts in such district." Precinct committeemen and committeewomen are chosen pursuant to K.S.A. 25-3801, which provides, in essence, that for each political party there shall be a precinct committeeman and a precinct committeewoman in each precinct in each county of the state. Therefore, as applied to the Twenty-fourth Senatorial District, the precinct committeemen and precinct committeewomen for all of the precincts in each of the counties of Saline, Ellsworth and Lincoln shall comprise the district convention of the political party in such district. It is within this context that K.S.A. 1978 Supp. 25-3902(e) addresses the requirements for a quorum of the district convention, as follows:

"One-third of the eligible members of the convention shall constitute a quorum for such election. In the event a quorum is not present at the time and place that such convention is called, the members present shall adjourn the convention to a day and time certain and provide for notification of the time and place of such adjourned convention to be given to the eligible members not present." (Emphasis added.)

Absent an applicable statutory definition, the emphasized phrase "eligible members" in the foregoing quoted language is somewhat ambiguous, giving rise to more than one interpretation thereof. One such interpretation is that it refers to the total number of possible members of the convention, which would be equal to the number of precinct committeemen and committeewomen who have been elected or appointed, plus the number of vacant and unoccupied precinct committeeman and committeewoman positions. Such definition is premised on the fact that, as an adjective, "eligible," in essence, means "qualified" (Random House, College Dictionary, Revised Edition, 1975), and using it to modify "members" is redundant, since a member is a person who is qualified to hold a membership position. Thus, this argument continues, since some purpose

William Rex Lorson
Page Three
June 26, 1979

and meaning must be attributed to the legislature's use of "eligible" in this context, it is reasonable and plausible to equate it with "potential." If such is done, "eligible members" refers to the number of potential members, including vacant positions. It becomes synonymous with "membership positions."

The foregoing interpretation is not without some logic, but we do not find it to be the most appropriate construction of this phrase. Rather, it is our opinion that "eligible members" refers to all persons within the district who have been duly elected or appointed as precinct committeemen or committeewomen at the time of the district convention. Our conclusion is based in part on the fact that "members" means and refers to persons who compose a particular body; it is not equivalent to or synonymous with "positions."

Further, even though equating "eligible members" with "membership positions" might be appropriate in the statutory requirement that "[o]ne-third of the eligible members of the convention shall constitute a quorum," it is nonsensical to do so in the immediately succeeding requirement that, in the event a quorum is not present and the meeting is adjourned, notice of the adjourned meeting "be given to the eligible members not present." It is readily apparent that an absurd result would obtain by construing such provision as requiring notice to be given to vacant and unoccupied positions.

Thus, even though our interpretation might result in "eligible" being redundant or superfluous, we believe it to be the manifest legislative intent that a quorum of a party's district convention consists of one-third of the persons who are members thereof, i.e., one-third of the total number of persons within the district who have been duly elected or appointed as precinct committeemen or committeewomen of such party.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
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RTS:WRA:gk