



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

July 13, 1979

ATTORNEY GENERAL OPINION NO. 79- 138

The Honorable Jack H. Brier
Secretary of State
2nd Floor, State Capitol
Topeka, Kansas 66612

RE: Elections--Presidential Preference Primary
Act--Costs and Filing Procedures

Synopsis: Pursuant to K.S.A. 1978 Supp. 25-4508, as amended, only those costs which are solely attributable to the conduct of a local election and which are in addition to costs incurred to conduct the presidential preference primary election held simultaneously are expenses that shall be paid by the governmental subdivision holding such local election.

Persons filing a declaration of intent to be a candidate in the Kansas presidential preference primary election need not comply with the terms of K.S.A. 25-206 and must only deposit a writing, along with the required fee, sufficient to satisfy the terms of K.S.A. 1978 Supp. 25-4502.

* * *

Dear Secretary Brier:

In your letter of May 17, 1979, you seek our opinion as to the meaning of K.S.A. 1978 Supp. 25-4508, as amended. L. 1979 ch. 113, §7. Specifically, you inquire "[d]oes the

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phrase 'direct costs solely attributable thereto' mean that the county or other governmental subdivision is responsible only for the cost of printing the ballots and publishing the official election notices for their particular election or does it mean that the county or other governmental subdivision is also responsible for its proportional share of the costs of personnel, rental and maintenance for conducting the election?"

The pertinent section provides:

"Not later than sixty (60) days following a presidential preference primary election held pursuant to this act, the board of county commissioners of each county shall certify to the secretary of state the amount of all necessary direct expenses incurred by the county in conducting the presidential preference primary election. In the event any election is held on the same day as the presidential preference primary election the direct costs solely attributable thereto shall be paid by the county and the subdivision of government responsible therefor shall reimburse the county. Payment for such expenses shall be made to the county treasurer of the county upon warrants of the director of accounts and reports pursuant to vouchers approved by the secretary of state. Upon receipt of such payment and reimbursements, the county treasurer shall deposit the entire amount thereof in the county election fund, if there is one and if there is not then the county general fund.

"The secretary of state, with the advice of the director of accounts and reports, shall determine the correctness of each amount certified under this section and adjust any discrepancies discovered before approving vouchers for payment to any county." [Emphasis added.]

The 1979 Legislature amended this section by adding the above underlined provisions in an obvious attempt to clarify the law in regard to precisely the question you now present. As you know, it is virtually impossible to determine what expenses are properly attributable to the county or the state without benefit of a particular fact situation. However, from the wording of the statute, as amended, we can offer some guidelines.

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Clearly, the printing of ballots for the presidential preference primary is the legal responsibility of the State, exclusively. Likewise, the ballots for the local election are an obligation incurred solely by the county. In the case of rented space, personnel and maintenance, all such costs necessary for the conduct of the presidential preference primary are to be borne by the State. We do not believe the legislature intended such costs to be prorated between the state and county. Were such costs to be divided between the state and county, any county holding a simultaneous local election would be asked to pay costs of the presidential preference primary, costs not "solely attributable" to the local election. Such a result is clearly contrary to the terms of the 1979 amendments. If additional personnel, space or maintenance is a result of the local election, such costs are, of course, the responsibility of the county conducting the election.

The statute vests in the Secretary of State, with the advice of the Director of Accounts and Reports, the discretion to "determine the correctness of each amount certified under this section" as "direct expenses" of the presidential preference primary election. It is because no hard and fast rule can be established that the Secretary of State is given the discretion to determine what costs can justifiably be regarded as "direct expenses" of the presidential preference primary election. If the Secretary of State, with the aid of the Director of Accounts and Reports, in the good faith exercise of his sound discretion is unable to make the determination whether costs in a specific case are "direct expenses," then please do not hesitate to contact this office for assistance.

In a subsequent letter, dated May 22, 1979, you seek clarification of K.S.A. 1978 Supp. 25-4502 as amended, L. 1979 ch. 113 §1, which provides in pertinent part:

"(b) The name of any candidate for a political party nomination for president of the United States shall be printed on the ballots only if, not later than twelve o'clock noon, February 12 prior to the presidential preference primary or, if such date falls on Saturday, Sunday or a holiday, not later than twelve o'clock noon the following day that is not a Saturday, Sunday or holiday:

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(1) The candidate files with the secretary of state a declaration of intent to become a candidate accompanied by a fee of one hundred dollars (\$100); or

(2) there is filed in the office of secretary of state a petition in the form prescribed by K.S.A. 1978 Supp. 25-205, signed by not less than one thousand (1,000) registered electors, who are affiliated with the political party of such candidate as shown by the party affiliation list. The secretary of state shall determine the sufficiency of each such petition, and such determination shall be final. [Emphasis added.]

Specifically, you inquire as to the procedure necessary to file a declaration of intent to become a candidate [K.S.A. 1978 Supp. 25-2402(b)(1)], i.e., whether a candidate must appear personally before the Secretary of State as is contemplated in K.S.A. 1978 Supp. 25-206 or whether a candidate may file a declaration of intent by mail or otherwise and still be in compliance with the statute. As you note in your letter, there is no reference to K.S.A. 1978 Supp. 25-206 in the Presidential Preference Primary Election Act (K.S.A. 1978 Supp. 25-4501 et seq.). As K.S.A. 1978 Supp. 25-4502 as amended does not specifically incorporate the procedural aspects of K.S.A. 1978 Supp. 25-206 for filing a declaration of intent to become a candidate, the issue is whether K.S.A. 1978 Supp. 25-206, by its terms, applies to the presidential preference primary election or in the alternative, whether the legislature implicitly intended that those procedures be incorporated into the Presidential Preference Primary Election Act.

K.S.A. 1978 Supp. 25-206 establishes a filing fee for candidates for elected offices including "any national... office." Although a candidate for a political party nomination for President of the United States might be construed as a candidate for a national office, the language and context of both the statute and the act, considered as a whole, compel the conclusion that this section does not encompass presidential primary candidates. In our opinion, the reference in K.S.A. 1978 Supp. 25-206, to national office is limited in its scope by the succeeding sentence of the statute which refers only to the offices of "United States

senators [and] congressmen from any district or at large." K.S.A. 1978 Supp. 25-206 dictates the form which a declaration of intent shall take, and that form presumes the candidate to be a Kansas resident as the blanks provided for the candidate's address require the insertion only of the candidate's county or street address. The form is obviously so designed because in order to qualify as a candidate for any of the offices to which that statute applies an individual must be a Kansas resident. Equally obvious is the fact that a candidate for the office of the President of the United States need not necessarily be a resident of the state of Kansas. Thus, we can only conclude that K.S.A. 1978 Supp. 25-206 does not by its terms apply to the presidential preference primary election.

Further, we are of the opinion that the legislature did not intend to incorporate the provisions of K.S.A. 1978 Supp. 25-206 into K.S.A. 1978 Supp. 25-4502 or it would have so provided. Note that in K.S.A. 1978 Supp. 25-4502(b)(2) and again in K.S.A. 1978 Supp. 25-4505 (as amended by L. 1979 Ch. 113 §4), the legislature specifically incorporated the form and provisions of K.S.A. 1978 Supp. 25-205 and K.S.A. 25-3105 respectively. The fact that the legislature expressly incorporated the provisions of these other statutes into the Presidential Preference Primary Election Act but made no mention whatsoever of K.S.A. 1978 Supp. 25-206, in our opinion supports the view that the legislature did not intend the provisions of 25-206 to apply to candidates filing under K.S.A. 1978 Supp. 25-4502.

Specifically, K.S.A. 1978 Supp. 25-206 requires the declaration of intention to be attested to before a county election officer, the Secretary of State or their respective representatives. Failure to comply with this provision has been held adequate grounds for refusing to place a candidate on the primary election ballot. Smith v. Bowman, 126 Kan. 576 (1928). However, where no such requirement is specifically mandated by statute, as in the case of the Kansas Presidential Preference Primary Election Act, such a requirement will not be implied. 29 C.J.S. Elections §114 (1965); State v. State Election Board, 197 Okla. 167, 170 P.2d 206 (1946).

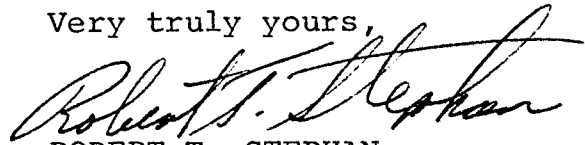
That being the case, the question becomes what procedures and documents are necessary for a Presidential candidate to file a declaration of intent with the Secretary of State? As noted previously, K.S.A. 1978 Supp. 25-4502

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requires only that the candidate's declaration of intent be filed with the Secretary of State. In City of Overland Park v. Nikias, 209 Kan. 643 (1972), the Kansas Supreme Court noted that "[t]he word 'file' contemplates the deposit of a writing with the proper official. (State v. Heth, 60 Kan. 560, 57 Pac. 108; Rathburn v. Hamilton, 53 Kan 470, 37 Pac. 20.)" Thus, to comply with the terms of K.S.A. 1978 Supp. 25-4502(b)(1) as amended, a presidential hopeful need only "deposit" with the Secretary of State, by whatever means he or she deems appropriate, a writing constituting a declaration of intent to become a candidate. As no form is prescribed for the declaration, any document conveying such an intent, so long as it is accompanied by the requisite fee, would appear to satisfy the filing requirement set out in K.S.A. 1978 Supp. 25-4502. The statute does not require that such a document be certified or attested to and the Secretary of State, absent statutory authority, has no power to require that the declaration be certified as is required under K.S.A. 1978 Supp. 25-206.

If we can be of any further assistance, please do not hesitate to contact us.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:pc