



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

May 20, 1980

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

ATTORNEY GENERAL OPINION NO. 80-104

Mr. Jack Mendenhall  
Sheriff of Rush County  
LaCrosse, Kansas 67548

Re: Elections--Nomination--Sheriff's Qualifications

Synopsis: The qualifications to be possessed by a person seeking the office of sheriff, as specified in K.S.A. 1979 Supp. 19-801b, must be satisfied at the time of that person's nomination for such office, i.e., either at the time such person files independent nomination papers or at the time of the primary election where such person is a candidate for nomination. Such qualifications need not be satisfied at the time such person files either a declaration of candidacy or nomination petitions, since neither has the effect of nominating such person for the office, but merely causes such person's name to be placed on the primary election ballot. Cited herein: K.S.A. 1979 Supp. 19-801b, 25-202, 25-205, 25-206, K.S.A. 25-303.

\* \* \*

Dear Sheriff Mendenhall:

You inquire of this office whether or not a nonresident of Rush County would be eligible to "file" for Sheriff of Rush County. You describe such person as "not a qualified elector of the county."

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K.S.A. 1979 Supp. 19-801b provides in relevant part:

"(a) No person shall be eligible for nomination, election or appointment to the office of sheriff unless such person:

(1) Is a citizen of the United States and a qualified elector of the county."  
(Emphasis added.)

In Demaree v. Scates, 50 Kan. 275 (1893), the Kansas Supreme Court interpreted the then statutory phrase "eligible to the office," as follows:

"The term, eligible as used, does not mean 'eligible to be elected' to office. . . at the date of the election; but 'eligible or legally qualified' to hold the office after the election; that is at the commencement of the term of office" [citations omitted].

See also State v. Thorson, 6 N.W.2d 89 (N.D. 1942); Stain v. Christensen, 35 P.2d 775, 779 (Utah 1934); Samuels v. Hite, 216 P.2d 879 (Cal. 1950); Bradfield v. Avery, 102 P. 687 (Idaho 1909).

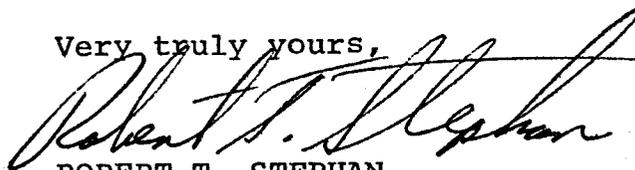
Based on the rationale of the courts in these cases, it is our opinion that a candidate for the office of sheriff must possess the qualifications prescribed in 19-801b at the time of his or her nomination. That is, "eligibility" as required by this statute is determined as of the time of nomination.

As stated in K.S.A. 1979 Supp. 25-202, nomination of candidates for national, state, county and township offices may be accomplished in essentially two ways--by primary election or by filing independent nomination papers, although 25-202 also makes exceptional provision for nomination by a delegate or mass convention of a political party, where such party did not poll the prescribed number of votes at the preceding general election. That exception aside, however, it is apparent that, depending on the method of nomination selected, a candidate for sheriff must meet the qualifications prescribed by 19-801b either at the time of the primary election held in accordance with article 2 of chapter 25 of the Kansas Statutes Annotated, or at the time of filing independent nomination papers, as prescribed by K.S.A. 25-303.

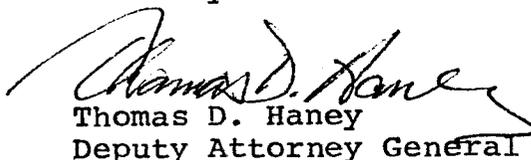
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Thus, in reference to your specific inquiry as to the eligibility of a person "filing" for the office of sheriff, if such "filing" is the filing of independent nomination papers, such person must be "eligible" as prescribed by 19-801b, at the time of such filing. However, if a person is merely filing a declaration of his or her intention to become a candidate, as provided for in K.S.A. 1979 Supp. 25-206, or filing nomination petitions circulated on such person's behalf, as provided for in K.S.A. 1979 Supp. 25-205, such person would not need to meet the requirements of 19-801b at the time of such filing. Declarations of candidacy and nomination petitions do not nominate a person for office. They merely cause a person's name to be placed on the ballot at the primary election, at which time a candidate for sheriff must satisfy the eligibility requirements of 19-801b, since the primary is one of the means of nomination.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Thomas D. Haney  
Deputy Attorney General

RTS:TDH:tls