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ATTORNEY GENERAL OPINION NO. 83- 10

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

Re: Elections -- City Elections -- One Person's Simul-
taneous Candidacies for Two City Offices

Synopsis: In the absence of a constitutional or statutory
provision to the contrary, a person has the right
to seek nomination to or become a candidate for
more than one city office to be filled in the same
election. Cited herein: K.S.A. 25-123, 25-213,
25-2113, 25-2116.

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Dear Secretary Brier:

You have asked whether, in city elections, a person "may file
for multiple positions appearing on a single city ballot."
Your question is prompted by the fact that, in at least one
city in Johnson County, "persons are now planning to file for
both the positions of city mayor and city . . . [councilman]."

Initially, we note that K.S.A. 25-213 contains the following
prohibitions:

"No name that is printed on the official pri-
mary election ballot for national and state
offices shall be printed or written in else-
where on such ballot or on the official pri-
mary election ballot for county and township
offices except for precinct committeeman or
committeewoman. No name that is printed on
the official primary election ballot for county
and township offices shall be printed or
written in on the official primary election

ballot for national and state offices or elsewhere on such county and township ballot except for precinct committeeman or committeewoman."

Clearly, the foregoing prohibitions regarding the name of a candidate appearing more than once on the official primary election ballot apply only to the election of national, state, county and township officers. They have no direct application to city elections. However, we note that K.S.A. 25-2113(b), which applies to elections in cities of the first class located in counties designated as urban areas, provides, in part:

"Election laws of a general nature which are applicable to partisan elections and which are not in conflict with this subsection (b) or any specific law applicable to election of city officers in any city to which this subsection (b) applies, shall apply to elections held under the provisions of this subsection (b)."

The question arises whether, by virtue of the foregoing, the previously-quoted provisions of K.S.A. 25-213 have been made applicable to elections in those cities specified in K.S.A. 25-2113(b). We think not. In our judgment, the "[e]lection laws of a general nature" which are made applicable to the elections in these cities are those general election laws pertaining to the manner of conducting elections, and do not include, for example, those election laws prescribing qualifications of candidates or imposing limitations on candidacies. The latter types, of course, have specific application to particular offices and, in our view, are not susceptible of application to other offices. Suffice it to state that the questioned provisions of K.S.A. 25-213 are very specific in limiting multiple candidacies of particular persons, and we do not believe they can be made generally applicable to other candidacies in the absence of a manifest legislative intent to do so. Accordingly, we find no basis for applying these provisions to the city elections contemplated by K.S.A. 25-2113(b).

We also have considered the implications of K.S.A. 25-2116(b), which states:

"On the ballots in general city elections, blank lines for the name of write-in candidates shall be printed at the end of the list of candidates for each different office equal to the number to be elected thereto. The purpose

of such blank lines shall be to permit the voter to insert the name of any person not printed on the ballot for whom he desires to vote for such office."

We do not believe this provision can be construed as implicitly prohibiting the printing of a candidate's name more than once on a city ballot. Its clear and unambiguous purpose is to provide for write-in candidates at city general elections. A construction which would expand the scope of this provision beyond such purpose is unwarranted by the terms of the statute.

One other statute is worthy of comment. K.S.A. 25-123 states:

"When a person is simultaneously elected to more than one office, such person may accept any such offices that are not incompatible with any other office accepted by such person. If a person accepts election to incompatible offices, the person shall be deemed to have accepted the office last accepted and to have declined any previously accepted incompatible office."

Although this statute does not precisely bear upon the matter at issue, we note it here for the purpose of indicating that the legislature has an awareness that it is possible for a person to be simultaneously elected to more than one office. This, of course, would include the situation where a person is elected to an office in each of two different governmental entities, but might also include the simultaneous election of one person to two different offices in the same governmental entity. While this statute cannot be relied upon as evidencing legislative intent to permit one person to be a candidate for two or more city offices at the same election, it tends to mitigate against a contrary conclusion in the absence of a specific statutory prohibition against such multiple candidacies.

Except for the statutes noted above, we have found no other statute having relevance to your inquiry. Moreover, we are unaware of any reported decision of the Kansas courts which is dispositive of the issue you have presented. Hence, it is appropriate to consider the statements of general authorities regarding this proposition. In so doing, we have found there to be a split in authority among the various other jurisdictions. The commentator in 25 Am.Jur.2d Elections §137 summarizes this division, as follows:

"The authorities are in conflict as to the right of an elector to seek nomination, or to

become a candidate, for more than one public office to be filled at the same election. Some authorities are of the view that dual nominations are prohibited by constitutional or statutory prohibitions against dual office holding, particularly where statutes require a candidate to file a declaration that he will accept the nomination and qualify for office. On the other hand, other authorities hold that such statutory or constitutional prohibitions against holding two offices at one time do not preclude an elector from seeking or accepting nominations for more than one office, in the absence of a specific prohibition." (Footnotes omitted.)

Even in the absence of constitutional or statutory prohibitions against seeking nomination to or becoming a candidate for more than one public office to be filled at the same election, there exists a division of authority. Such division was the exclusive subject of an annotation in 94 A.L.R. 2d 558.

Thus, the general authorities we have reviewed do not compel us to a conclusion as to the resolution of your inquiry. There appears to be equally divided authority on either side of this issue. However, on the basis of Gilbert v. Craddock, 67 Kan. 346 (1903), we are persuaded to the conclusion that, in the absence of any constitutional or statutory provision to the contrary, a person is not prohibited from being a candidate for more than one city office to be filled at the same election. As we noted previously, there are no Kansas cases deciding this precise question, but we believe the implications of the decision in Gilbert, supra, suggest the probable resolution of this issue by our appellate courts, should they have occasion to consider it. There, the Court was considering whether an incumbent city councilman was ineligible to be a candidate for the office of mayor. In resolving this question, the Court stated:

"Granting that the office of mayor and councilman are incompatible, and that the duties of both may not be exercised by the same person at the same time, a councilman is not thereby rendered ineligible to election to the office of mayor. Granting, further, that the resignation of an officer is not completed until it is accepted by the body empowered to appoint a successor, still the contention of the defendant would not be sound. There are ways plaintiff may lay down the office of councilman other than by resignation. One of these is by

the acceptance of an incompatible office. (23 A. & E. Encycl. of L., 2d ed., 427.) This would not require the concurrence of the mayor and council. When he shall be inducted into the office of mayor, he thereby vacates the office of councilman. He cannot hold both at the same time, but he may carry on the necessary legal proceedings to obtain the adjudication of his right to assume the office of mayor while he is yet councilman, just as he may carry on the effort to be elected as mayor while he is yet councilman; they are both means to the end of actually becoming mayor." 67 Kan. at 362, 363.

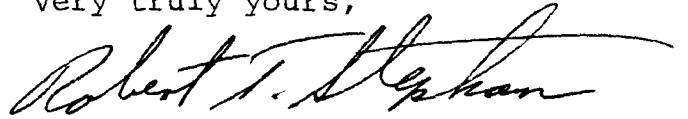
Granted, the Court in Gilbert was considering a situation where the incumbent of one city office was seeking election to another, but we believe the reasoning of the Court in resolving this question in the affirmative, when considered in conjunction with the provisions of K.S.A. 25-123 quoted above, suggests the basis for our opinion. In those jurisdictions which have concluded that a person cannot seek nomination to or be a candidate for more than one office in the same election, even in the absence of a statutory or constitutional provision to that effect, the basis for such conclusion has primarily been the fact that the state's constitution, statutes or common law precluded a person from holding both offices. Clearly, the statement in Gilbert quoted above mitigates against this rationale. Moreover, as we previously noted, K.S.A. 25-123 reflects legislative awareness that a person may be elected simultaneously to incompatible offices, and it prescribes the consequences thereof. Hence, we do not believe the inability of a person to simultaneously hold two particular offices precludes such person from seeking nomination to or becoming a candidate for such offices at the same election.

Therefore, to summarize the factors which are pertinent to our opinion: (1) By virtue of the provisions of K.S.A. 25-213 which govern the placement of candidates' names on the official primary election ballot, the legislature has precluded a person from being a candidate for a national, state, county or township office and simultaneously being a candidate for any other national, state, county or township office; (2) these provisions are not applicable to the election of city offices, and there is no other constitutional or statutory provision preventing a person from seeking nomination to or becoming a candidate for more than one city office to be filled at the same election; and (3) the fact that such city offices are incompatible does not, in and of itself, preclude a person from seeking nomination or election to both offices at the same election.

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Accordingly, it is our opinion that, in the absence of a constitutional or statutory provision to the contrary, a person has the right to seek nomination to or become a candidate for more than one city office to be filled in the same election.

Very truly yours,



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