



STATE OF KANSAS

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February 18, 1985

ATTORNEY GENERAL OPINION NO. 85-19

James B. McKay, Jr.  
City Attorney  
P.O. Box 49  
El Dorado, Kansas 67042

Re: Cities of the Second Class--The Board of Commissioners--  
Mayor or Commissioners Holding Other Office

Elections--City Elections--Candidate for Office  
Elected at Large; Filing of Petition or Statement  
of Candidacy

Synopsis: K.S.A. 14-1302 provides, in part, that no member of  
the board of commissioners of a second class city  
may hold any other city office. That prohibition  
does not, however, preclude a city commissioner from  
becoming a candidate for the office of mayor.

K.S.A. 1984 Supp. 25-2110 provides, in part, that  
any person desiring to become a candidate for a  
city office elected at large must file a statement  
of candidacy with the city clerk before the filing  
deadline. The requirement that the statement be  
filed with the city clerk is mandatory, and a person  
who files a statement of candidacy (for a city office)  
with the county election officer may not have his  
or her name placed on the ballot. Cited herein:  
K.S.A. 14-1302, 25-308, K.S.A. 1984 Supp. 25-2110.

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Dear Mr. McKay:

You request our opinion concerning two questions arising from the efforts of a person holding the office of El Dorado City Commissioner to become a candidate for the office of Mayor. First, you ask whether the commissioner, whose term of office will expire in 2 years, may become a candidate for mayor and retain his position as a commissioner. Second, you ask if the county clerk may place the commissioner's name on the ballot notwithstanding deficiencies (set forth below) in filing his statement of candidacy.

In regard to your first question, K.S.A. 14-1302 provides, in part, that no member of the board of commissioners of a second class city shall hold any other city office. However, an authority on the law of municipal corporations indicates that such a prohibition does not extend to seeking nomination to more than one office:

"The statutory or constitutional provision prohibiting one person from filling two offices at one time does not preclude a candidate from seeking or accepting nomination for more than one office, in the absence of prohibition thereof . . . It has also been held that the prohibitory laws that one person shall not hold two offices at the same time relate not to the situation on election day but on the day he qualifies to perform the duties of the office. Accordingly, an officer may be elected to another office and resign the first and then qualify for the second office." 3 McQuillin, Municipal Corporations (3rd Ed.) §12.66.

In accordance with the above-quoted authority, it is our opinion that the prohibition against holding another city office set forth in K.S.A. 14-1302 does not preclude a city commissioner from becoming a candidate for the office of mayor.

In regard to your second question, you advise that the commissioner filed his statement of candidacy for the office of mayor with the county clerk, instead of the city clerk as required by K.S.A. 1984 Supp. 25-2110. You indicate that the county clerk "accepted such filing and the filing fee by mistake and is now using the procedure provided under K.S.A. 25-308 for placing the name of such candidate on the ballot," and ask whether the county clerk may place the commissioner's name on the ballot under these circumstances.

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Subsection (a) of K.S.A. 1984 Supp. 25-2110 provides in part as follows:

"In cities of the first and second class, any person desiring to become a candidate for a city office elected at large shall file with the city clerk before the filing deadline a statement of such candidacy on a form furnished by the county election officer as specified by the secretary of state. The city clerk of any city upon receiving any filing under this section shall record the same and transmit it, together with the filing fee or petition herein provided, within three business days to the county election officer." (Emphasis added.)

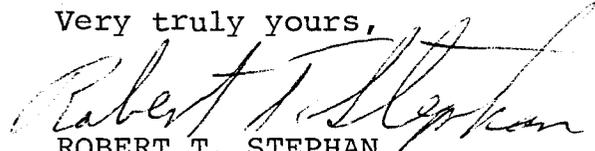
The Kansas Supreme Court has held that filing deadlines, such as that prescribed by the above-quoted statute, are mandatory, and that a declaration or statement of candidacy filed after the deadline is a nullity. See Bird v. Beggs, 116 Kan. 619 (1924); State ex rel. v. Lutz, 116 Kan. 621 (1924); Parsons v. Ryan, 144 Kan. 370 (1936). Although the court has not considered the validity of a statement of candidacy filed in the wrong office, several Kansas Attorney General Opinions have indicated that a candidate for city office must file with the city clerk rather than the county election officer, and that such a candidate "does not enjoy the option of filing his statement [of candidacy] with any public officer other than that prescribed by statute." See Kansas Attorney General Opinion Nos. 73-74 and 79-29; Letter Opinion dated January 28, 1969, published at VI Opinions of the Attorney General 341. Additionally, it is generally held that "statutory provisions requiring a petition, certificate or application of nomination to be filed with a specified officer within a stipulated period of time are mandatory." See 25 Am.Jur.2d, Elections §140. Therefore, in our judgment the requirement that a candidate must file a statement of candidacy with the city clerk is mandatory, and a person who files such a statement with the county election officer may not have his or her name placed on the ballot.

Although what has been said above is dispositive of your second question, it should be noted that K.S.A. 25-308 does not authorize the county clerk to place a candidate's name on the ballot where a statement of candidacy is not filed with the prescribed officer before the filing deadline. That statute only validates a

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declaration of intent filed "in apparent conformity with law,"  
and, as noted above, filing in the wrong office does not so  
conform.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JSS:TRH:jm