



STATE OF KANSAS

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January 16, 1987

ATTORNEY GENERAL OPINION NO 87- 7

The Honorable Bill Graves
Secretary of State
Capitol, 2nd Floor
Topeka, Kansas 66612

Re: Elections -- Independent and Other Nomination
Certificates; Terms of Office; Filling Vacancies --
Collection of Signatures for Petition

Synopsis: K.S.A. 25-302a requires that the circulator of a petition circulated pursuant to that statute be a registered voter of the county in which the petition is circulated. The statute requires additionally that petitions circulated under K.S.A. 25-302a be examined for sufficiency pursuant to the provisions of K.S.A. 25-3601 et seq. K.S.A. 25-3602(c) states that the circulator of a petition shall be a resident of the political or taxing subdivision in which the election is sought to be held. In that a person may have only one residence under Kansas law, an individual in Kansas is prohibited from claiming simultaneous residence in one county, and voter registration (and thus residence) in another county. Accordingly, in light of these statutory provisions, the circulator of a petition may not collect signatures from residents of other counties even if they sign the petition while in the circulator's county. Cited herein: K.S.A. 25-302a; 25-407; 25-3602; K.S.A. 1986 Supp. 77-201.

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Dear Secretary Graves:

As Secretary of State, you request our opinion on the legality, under K.S.A. 25-302a, of a circulator collecting signatures from residents of other counties if they sign the petition while in the circulator's county. Specifically, you inform us that members of the Libertarian party are wanting to circulate petitions from various counties in Reno County. Assuming, for example, that a Shawnee County petition would be signed only by residents of Shawnee County, the question remains as to whether said petition could legally be circulated in Reno County instead of Shawnee County. In order to answer your inquiry, it is necessary to examine K.S.A. 25-302a, the statute which designates the procedure which must be followed in order for a political party to be officially recognized in the state of Kansas, and K.S.A. 25-3602, the statute which deals generally with sufficiency of petitions.

The issue you present (i.e. whether a petition for a particular county must be circulated in that county) has never been addressed by the Kansas courts. Furthermore, neither of the aforementioned statutes specifically addresses the question you raise. Accordingly, we look to the plain language of the statutes to determine if the legislature intended to require that petitions be circulated only in their county of origin.

K.S.A. 25-302a provides in part:

"Any political party seeking official recognition in this state after the effective date of this act shall, at least 60 days before the deadline for filing nomination papers and declarations of candidates, file petitions signed by qualified electors equal in number to at least 2% of the total vote cast for all candidates for the office of governor in the state in the last preceding general election.

"Appended to each petition per page or set of pages shall be an affidavit by the circulator of the petition affirming that such circulator is a duly registered voter of the county in which the petition was circulated and that the circulator

personally witnessed the signing of the petition by each person whose name appears thereon.

"Each page of said petition shall bear the names of registered voters of a single county. All petitions shall be grouped according to the county in which each was circulated before being filed with the secretary of state." (Emphasis added.)

We note two important provisions of this statute. First, K.S.A. 25-302a plainly provides that the circulator of the petition must be a duly registered voter of the county in which the petition was circulated. Second, the statute states that petitions shall be grouped according to the county in which each was circulated. While this language does not specifically require that each petition be circulated in its own county, it appears that such may have been the intention of the legislature.

We note also that subsequent language in K.S.A. 25-302a provides:

"The secretary of state shall transmit such petitions to the county election officer of each county for which petitions were presented to be examined for sufficiency pursuant to the provisions of K.S.A. 25-3601 et seq. and amendments thereto and applicable regulations." (Emphasis added.)

Therefore, the legislature specifically directed that all petitions circulated pursuant to K.S.A. 25-302a meet the general sufficiency of petition requirements set out in K.S.A. 25-3602. That statute provides at subsection (c):

"Every petition shall contain, at the end of each set of documents carried by each circulator, a verification, signed by the circulator, to the effect that the circulator personally witnessed the signing of the petition by each person whose name appears thereon. The circulator of a petition shall be a resident of the political or taxing

subdivision in which the election is sought to be held." (Emphasis added.)

Of particular importance is the sentence which states that the circulator of a petition shall be a resident of the political or taxing subdivision in which the election is sought to be held. This provision, considered together with the requirement in K.S.A. 25-302a that the circulator of a petition be a registered voter of the county in which the petition was circulated, automatically eliminates the possibility that petitions from various counties may be circulated within a single county. For example, under K.S.A. 25-3602, the circulator of a Shawnee County petition must be a resident of Shawnee County. At the same time, if the Shawnee County petition were circulated in Reno County, K.S.A. 25-302a would require the circulator to be a registered voter of Reno County.

Kansas law allows a person to have only one residence for purposes of voter registration. K.S.A. 25-407, which describes the rule for determining the residence of a voter, states that:

"'Residence' means the place adopted by a person as such person's place of habitation, and to which, whenever such person is absent, such person has the intention of returning."

Further, K.S.A. 1986 Supp. 77-201 twenty third, the statute which defines residence for purposes of statutory construction, indicates a person is allowed only one residence under general Kansas law. The statute provides:


"'Residence' means the place which is adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be deemed the person's residence."

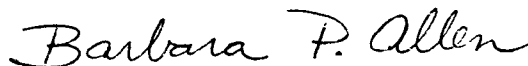
In light of these definitions, we conclude that a person may have only one residence under Kansas law, whether it be for voter registration purposes or otherwise. Using the example cited previously, an individual in Kansas would thus be prohibited by law from claiming to be both a resident of

Shawnee County and a registered voter (and thus a resident) of Reno County. Therefore, in our opinion, a Shawnee County petition could not be legally circulated in Reno County, even if it was signed by residents of Shawnee County, as circulating a petition in such a manner would necessarily violate the voter registration and residency requirements of K.S.A. 25-302a and K.S.A. 25-3602.

In summary, K.S.A. 25-302a requires that the circulator of a petition circulated pursuant to that statute be a registered voter of the county in which the petition is circulated. The statute requires additionally that petitions circulated under K.S.A. 25-302a be examined for sufficiency pursuant to the provisions of K.S.A. 25-3601 et seq. K.S.A. 25-3602(c) states that the circulator of a petition shall be a resident of the political or taxing subdivision in which the election is sought to be held. In that a person may have only one residence under Kansas law, an individual in Kansas is prohibited from claiming simultaneous residence in one county, and voter registration (and thus residence) in another county. Accordingly, in light of these statutory provisions, the circulator of a petition may not collect signatures from residents of other counties even if they sign the petition while in the circulator's county.

Very truly yours,


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