



STATE OF KANSAS

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May 18, 1992

ATTORNEY GENERAL OPINION NO. 92- 66

John R. Wine, Jr.
General Counsel
Secretary of State's Office
2nd Floor, State Capitol
Topeka, Kansas 66612-1594

Re: Elections--Independent and Other Nomination
Certificates; Terms of Office; Filling
Vacancies--Independent Nominations; Petitions;
Candidates for President and Vice-President;
Substitution of Vice-Presidential Candidate

Synopsis: Any person who has been nominated for the office of vice-president may cause such person's name to be withdrawn from nomination by filing a request in writing with the secretary of state. A vacancy in a party nomination for vice-president may be filled by the party committee of the state provided the vacancy occurs after a primary election. Because Kansas statutes provide for substitution of party nominations for vice-president, a procedure must be made available for substitution of independent nominations for vice-president. Cited herein: K.S.A. 1991 Supp. 25-306b; K.S.A. 25-615; K.S.A. 1991 Supp. 25-616; K.S.A. 25-2501; 25-2503; 25-2504; 25-3901; K.S.A. 1991 Supp. 25-3905; L. 1968, ch. 406, §§ 2, 7; L. 1981, ch. 165, § 6; L. 1984, ch. 139, §§ 3, 4; Kan. Const., Bill of Rights, §§ 1, 2; U.S. Const., Amend. XII; U.S. Const., Amend. XIV.

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Dear Mr. Wine:

As general counsel for the secretary of state's office, you request our opinion regarding whether the person named as vice-presidential candidate on an independent nomination petition for president and vice-president may be replaced so as to permit a different name to appear on the general election ballot.

Your request is brought about due to the expected candidacy of Mr. Ross Perot for president. Mr. Perot is seeking to be placed on the general election ballot as an independent candidate for president. The nomination petitions being circulated in Kansas on behalf of Mr. Perot's candidacy contain the name of James B. Stockdale for vice-president. Mr. Perot has indicated that Mr. Stockdale is serving only as an interim or stand-in vice-presidential candidate and is not intended to appear on the general election ballot as candidate for vice-president. The individual who will actually serve as Mr. Perot's running mate will be named at a later date.

The role of the presidential electoral college has been modified as the purpose for its establishment has diminished. However, state statute appears to fail to accommodate the changing role of the presidential electoral college. Pursuant to the twelfth amendment to the United States constitution, the president and vice-president are selected by members of the presidential electoral college. As acknowledged by the Kansas Supreme Court, "[i]n a legal sense the people of this State vote for no candidate for President or Vice President [sic], that duty being delegated to 10 citizens who are authorized to use their own judgment as to the proper eligible persons to fill those high offices." Breidential v. Edwards, 57 Kan. 332, 339 (1896). The changing role of the presidential elector is noted by the court in The State ex rel. v. Pettijohn, 107 Kan. 447 (1920).

"As is well understood, a presidential elector was originally expected to exercise his own judgment in casting his vote as a member of the electoral college. He is now regarded as a mere representative of his party, selected to voice its choice in the matter. The voting for a list of presidential electors is with the vast majority a mere form by

which they seek to give expression to their preference for the offices of president and vice-president, being utterly indifferent as to the persons through whom legal effect is to be given to their action." Id. at 450.

The legislature has adopted this view as its own, and through L. 1981, ch. 165, § 6 and L. 1984, ch. 139, §§ 3, 4 deleted the requirement that the names of the presidential electors be printed on the official general ballot. K.S.A. 25-615; K.S.A. 1991 Supp. 25-616. However, state statute defines national election as "the election of members of the United States house of representatives, members of the United States senate or members of the United States presidential electoral college," K.S.A. 25-2503, and national officer or national officer as "the office or members of the United States house of representatives, members of the United States senate and members of the United States presidential electoral college." K.S.A. 25-2504. The definitions were included in an act which consisted of 146 sections. The provisions of the act clearly provide a procedure to be followed in the withdrawal and replacement of candidates for members of the electoral college. However, a review of legislative history is necessary to determine whether state statute provides for the withdrawal and replacement of candidates for president and vice-president.

K.S.A. 25-2501 states "[a]s used in this act, the words and phrases set out in K.S.A. 25-2502 to 25-2507 shall have the meanings respectively ascribed to them unless the context requires a different meaning." The definitions were set forth in sections two through seven of L. 1968, ch. 406, and were intended to apply to those statutes enacted in L. 1968, ch. 406.

K.S.A. 1991 Supp. 25-306b provides that "[a]ny person who has been nominated by any means whatsoever for any national, state, county or township office may cause such person's name to be withdrawn from nomination. . . ." K.S.A. 1991 Supp. 25-306b was originally enacted in 1970 and has been amended twice. At no time has the statute been enacted in the same legislative act as the definitions set forth in K.S.A. 25-2501 et seq. Therefore, in construing the statute, words in common usage should be given their natural and ordinary meaning. See Spor v. Presta Oil Co. Inc., 14 Kan.App.2d 696, 698 (1990). It is a common perception that the offices of president and vice-president, as executive

offices of the federal government, constitute national offices. Therefore, any person who has been nominated for the office of vice-president may cause such person's name to be withdrawn from nomination by filing a request in writing with the secretary of state. The request must be filed within the time provided in K.S.A. 1991 Supp. 25-306b.

K.S.A. 1991 Supp. 25-3905 provides in part that "[w]hen a vacancy occurs after a primary election in a party candidacy, such vacancy shall be filled by the party committee of the congressional district, county or state, as the case may be. . . ." Party candidacy is defined in K.S.A. 25-3901 as "a candidate of a political party for a party nomination at a primary election or the party candidate at a general election." Therefore, a vacancy which occurs when a person who has received a party nomination for vice-president and subsequently causes such nomination to be withdrawn pursuant to K.S.A. 1991 Supp. 25-306b may be filled by the party committee of the state provided the vacancy occurs after a primary election. However, no procedure is provided for filling a vacancy occurring in the independent nomination of vice-president.

A similar situation was addressed by the court in Anderson v. Firestone, 499 F.Supp. 1027 (N.D. Fla. 1980). The issue before the court in Anderson "is whether the plaintiffs [independent candidates for president and vice-president and residents signing the independent nomination petitions] are denied equal protection of the laws by the State's failure to provide the same or similar mechanism for filling the vacancy created by the withdrawal of an independent vice-presidential nominee as it provided in Section 110.111(3), Florida Statutes, to party candidates." Id. at 1029. The court determined that the failure of the state to provide for withdrawal from the ballot of the name of the surrogate and substitution on the ballot of the independent vice-president running mate undermines the integrity of the ballot and denies plaintiffs the equal protection of the laws.

"That denial is manifested by these results: Florida voters who successfully petitioned to place the Anderson ticket on the ballot will be denied the right to vote for that ticket; grave doubt is cast over the certified independent electors' ability to fulfill their legal obligation to vote in the electoral college for John B. Anderson and Patrick J. Lucey;

Plaintiff Lucey, the designated running mate, is denied access to the ballot; and Plaintiff Anderson is denied the right to have his actual and designated running mate's name appear with Anderson's name on the ballot.

"By refusing to protect the State's interest through means which are less burdensome to these plaintiffs, defendant State officials have created a situation which requires that provision be made for withdrawal of Milton Eisenhower's name from the November 4, 1980 general election ballot and substitution of the name of Patrick J. Lucey thereon. Only by such withdrawal and substitution can the defendants avoid an impermissible infringement of the constitutionally protected rights of these plaintiffs."
Id. at 1030-31.

Similar short-comings occur under Kansas statutes. Because Kansas statutes provide for substitution of party nominations for vice-president, a procedure must be made available for substitution of independent nominations for vice-president. To do otherwise would result in violations of the fourteenth amendment of the United States constitution and sections one and two of the bill of rights of the Kansas constitution.

Very truly yours,



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Richard D. Smith
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