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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

February 1, 1974

Opinion No. 74 - 40

The Honorable Lynn Whiteside
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Dear Representative Whiteside:

K.S.A. 25-3108 and 25-3208 provide that in enumerated instances in which a tie vote occurs between any two or more persons, the canvassing board "shall determine by lot which person is nominated or elected." You request by vie whether these provisions should be changed.

At 26 Am. Jur. 2d, Elections, §315, the writer states thus:

"Where rival candidates for an office receive an equal number of votes, neither is elected. The office becomes vacant and may be filled by appointment where power exists to appoint an incumbent to the office in case of its vacancy or, where the incumbent of the office is entitled to hold the same until his successor is elected, he continues in office until it is determined who is entitled thereto. Likewise, in the case of a tie vote at a primary election, there is a vacancy that may be filled by the proper party committee." [Footnotes omitted.]

I do not recommend any change in this procedure. In my view, drawing by lot is at least as fair as, if not fairer than, any other proceeding which might be invoked to resolve the deadlock resulting from an evenly divided electorate.

Yours very truly,


VERN MILLER
Attorney General

VM:JRM:jdj