



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 13, 1976

ATTORNEY GENERAL OPINION NO. 76-281

The Honorable Elwill M. Shanahan
Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Elections--General Ballot--Form

Synopsis: The voter instructions appearing on the official general ballot, as prescribed by K.S.A. 25-616 to advise voters that they may vote not only for party nominations, but also for independent nominations, and the designation should appear to the left of the box for the voters' cross mark.

* * *

Dear Secretary Shanahan:

By order of the United States District Court for the District of Kansas, entered by Judge Frank G. Theis on June 17, 1976, upon stipulation of the parties, in *McCarthy v. Shanahan*, case no. 76-237-C6, the Secretary of State is required to accept and certify for ballot position the names of independent candidates for presidential electors.

The form of the official general ballot is prescribed by K.S.A. 25-616. It includes the following voter instruction above the names of candidates for presidential electors.

"To vote for the group of electors nominated by one of the political parties place a cross X in the square opposite the names of the candidates of that party for president and vice-president."

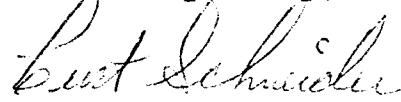
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The instruction is misleading, as applied to the official 1976 general ballot, which will include the names of presidential electors for Eugene McCarthy, an independent nominee and not the nominee of a political party. Use of the statutorily required language would presumptively compromise the ballot position of the independent candidates which the court has ordered to be accepted for inclusion on the ballot. To protect the right of the independent candidates who are constitutionally entitled to ballot position, and to conform to the judgment of the court in the cited case, it is my opinion that the misleading and inapplicable portion of the quoted language must be deleted. In lieu thereof, I approve of the use of the following language:

"To vote for the group of electors nominated by one of the political parties or by independent nominations place a cross X in the square opposite the names of the candidates for president and vice-president."

Secondly, you inquire concerning the designation of the status of the candidates to be placed to the left of the box for the voter's cross mark. K.S.A. 25-303 provides in pertinent part that "All nominations other than party nominations shall be known and designated as 'independent nominations'" In my judgment, the term "independent nominations" should appear to the left of the box.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj