



STATE OF KANSAS

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March 13, 1979

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ATTORNEY GENERAL OPINION NO. 79-29

Ms. Mary Bolton
Rice County Clerk
Rice County Courthouse
Lyons, Kansas 67554

Re: Elections--City Elections--Filing Statements
 of Candidacy with City Clerk

Synopsis: The practice of closing the office of city clerk several days prior to the deadline for filing declarations of candidacy for elective city offices potentially operates to deprive otherwise qualified persons of their statutory right to seek election to city office, and where the closing of the city clerk's office prevents a potential candidate from filing a declaration of candidacy, it also would constitute a breach of the city clerk's statutory duty to receive, record and transmit the same to the county election officer.

* * *

Dear Ms. Bolton:

You have requested an opinion of this office regarding the provisions a city clerk must make for accepting statements of candidacy, together with pertinent supporting documents, from candidates for city offices. Specifically, you have asked, in effect, whether the office of city clerk can be closed prior to the deadline for filing such statements of candidacy.

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General statutory provisions pertaining to city elections are found at K.S.A. 25-2101 et seq. The filing deadline is prescribed by K.S.A. 25-2109:

"The filing deadline for all city elections shall be 12:00 o'clock noon of the Tuesday preceding by nine (9) weeks the first Tuesday in April."

Persons desiring to become candidates for city offices must follow the procedure for filing for office set forth in K.S.A. 1978 Supp. 25-2110 or 25-2110a. Under either statute, whether the prospective candidate is seeking an office elected at large or by district, he or she must file a statement of candidacy with the city clerk before the above-described deadline, accompanied either by a filing fee or petition, as provided by the appropriate statute. Thereafter, or during such time, as provided by identical language in the respective subsections (a) of these two statutes,

"[t]he 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, forthwith to the county election officer."

This procedure is the only method whereby persons seeking city office may have their names placed on the ballot. Previous Attorneys General have concluded that the procedure is exclusive, and that a candidate enjoys no "option of filing [a statement of candidacy] with any public officer other than that prescribed by statute." Opinions of the Attorney General, Vol. VIII, p. 514 (1973).

Statutorily, then, a potential candidate for an elective city office has a prescribed time in which to declare his or her candidacy for such office, and such declaration of candidacy can be filed only with the city clerk, who has a statutory duty to receive, record and transmit the same to the county election officer. While we have found no statutory provisions prescribing office hours for the office of city clerk or mandating the days of the week when such office shall be open, we must conclude that a city clerk cannot maintain office hours such that a person is effectively precluded from declaring such

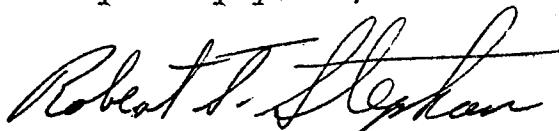
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person's candidacy for an elective city office. To do so not only infringes on the statutory right of an otherwise qualified individual to seek election to a city office, but it also creates a breach of the city clerk's statutory duty to receive, record and transmit declarations of candidacy to the county election officer.

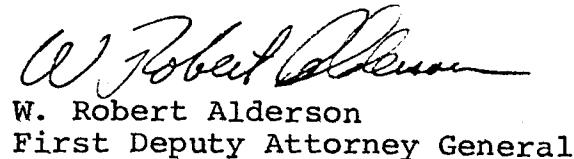
In this regard, we find some authority for the proposition that an election official whose duties are ministerial may be liable in damages for breach of duty to a candidate for office whose name does not appear on the ballot because of the breach. 25 Am. Jur. 2d Elections, §48 (especially note 3). We need not express an opinion as to the applicability of that proposition in Kansas, but note it only to identify the potential consequences of failure to perform statutorily prescribed duties.

As to your specific inquiry regarding the practice of closing the office of city clerk eleven (11) calendar days prior to the deadline for filing declarations of candidacy for city offices, we find such practice to be inappropriate, in light of the previously discussed statutory provisions. In our opinion, such arbitrary action potentially operates to deprive otherwise qualified persons of their statutory right to seek election to city office, and where the closing of the city clerk's office prevents a potential candidate from filing a declaration of candidacy, it also would constitute a breach of the city clerk's statutory duty to receive, record and transmit the same to the county election officer.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk