



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 16

Honorable Lloyd Polson
State Representative
Sixty-Second District
Room 170-W, State Capitol
Topeka, Kansas

Re: Elections--City Elections--Filing Deadline for
Candidates

Synopsis: The filing deadline for all city elections (in the absence of a charter ordinance providing otherwise) is 12:00 o'clock noon of the Tuesday preceding by 10 weeks the first Tuesday in April. Said deadline is mandatory, and the only recourse for a candidate, who was prevented from filing for a city office because of the failure of the city clerk to keep his or her office open until 12:00 o'clock noon on the prescribed date, is to seek relief from a court of law. Cited herein: K.S.A. 25-2109, as amended by L. 1982, ch. 157, §6.

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Dear Representative Polson:

You advise that citizens of the city of Summerfield attempted to file for certain city offices on January 25, 1983, but that the city clerk was not available for such filing purposes. You request our opinion as to what "recourse" is open to said citizens, and as to whether there are any means whereby they could now become candidates.

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The deadline for filing to become a candidate for a city office (in the absence of charter ordinance providing otherwise) is prescribed by K.S.A. 25-2109, as amended by L. 1982, ch. 157, §6, which statute provides as follows:

"The filing deadline for all city elections shall be 12:00 o'clock noon of the Tuesday preceding by 10 weeks the first Tuesday in April."

For city elections to be held in the current year, the filing deadline prescribed by the aforesaid statute was 12:00 o'clock noon on Tuesday, January 25, 1983. The Kansas Supreme Court has held that such a filing deadline is mandatory, and that a declaration or statement of candidacy filed after the deadline is a nullity. Bird v. Beggs, 116 Kan. 619 (1924); State, ex rel. v. Lutz, 116 Kan. 621 (1924). Courts in other states, which have ruled upon the question, have also held that filing deadlines prescribed by election laws are mandatory. See 72 A.L.R. 290. Additionally, this office has previously noted the duty of the city clerk to receive, record and transmit declarations of candidacy, and the fact that candidates for city offices enjoy no option of filing a statement of candidacy with any public officer other than the city clerk. See Kansas Attorney General Opinion No. 79-29 (copy enclosed).

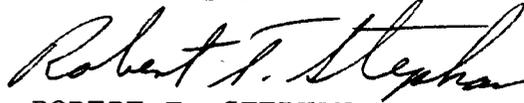
We are unaware of any reported case wherein a Kansas court has considered whether a candidate may be excused from meeting a filing deadline because of a city clerk's failure to keep his or her office open. However, in two cases from other jurisdictions, courts have granted relief to candidates who were prevented from filing prior to the deadline because of the failure of the clerk to keep his or her office open for the requisite period of time. Application of Byrne, 88 A.2d 283 (N.J. Superior Ct., 1952); Application of Zichello, 50 N.Y.S.2d 48 (N.Y. Sup. Ct., 1944). Although said courts recognized the mandatory nature of the filing deadlines, it was found that the petitioners therein had made a reasonable and diligent effort to comply therewith, and that the exceptional circumstances of their "default" were excusable.

Although a Kansas court might grant relief to a candidate who was prevented from filing for a city office because of a city clerk's failure to keep his or her office open until 12:00 o'clock noon on January 25, 1983, the question in such a case is whether

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there has been an "excusable default" under the particular facts, and the determination of said question rests with a court of law. See Application of Zichello, supra at 52. Accordingly, in our judgment, the only recourse for a citizen of the city of Summerfield, who was prevented from filing to become a candidate for a city office because of the improvident conduct of the city clerk on the filing deadline, is to seek relief from a court of law.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm
Enclosure