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ATTORNEY GENERAL OPINION NO. 92- 49

The Honorable Bill Graves
Secretary of State
State Capitol, 2nd Floor
Topeka, Kansas 66612

Re: Elections--Independent and Other Nomination
Certificates; Terms of Office; Filling
Vacancies--Independent Nominations; Requirements;
Signators; Effect of Voting in Primary

Synopsis: K.S.A. 1991 Supp. 25-303(g) precludes an elector who has signed a certificate of nomination for a candidate for a public office from signing certificates of nomination for additional candidates for the same public office. The provision does not prevent persons who have participated in nominating candidates at the primaries from signing an independent nomination petition for candidates for the same office. Cited herein: K.S.A. 25-301; K.S.A. 1991 Supp. 25-303; K.S.A. 25-601.

* * *

Dear Secretary of State Graves:

You request our opinion regarding whether an elector who votes in the presidential preference primary election to be held April 7, 1992 is precluded from signing a petition seeking to place the name of an individual on the general election ballot as a candidate for president.

The names of only those individuals whose nominations have been made and certified as provided by law may appear on the official general ballot. K.S.A. 25-601. The nominations may include party nominations, K.S.A. 25-301, and independent nominations. K.S.A. 1991 Supp. 25-303. Independent nominations of candidates for president may be made by nomination petitions signed by not less than 5,000 qualified voters. Id. Subsection (g) of K.S.A. 1991 Supp. 25-303 provides "no person shall join in nominating more than one person for the same office, and if this is done, the name of such petitioner shall not be counted on any certificate."

Restrictions similar to that set forth in K.S.A. 1991 Supp. 25-303(g) have been the subject of litigation in several states. The provision which most closely resembles K.S.A. 1991 Supp. 25-303(g) was litigated in State v. Harmon, 127 P. 221 (Nev. 1912). The statute in question in Harmon read in part: "No person shall join in nominating, under the provisions of section 4 of this act, more than one nominee for each office to be filled." The court determined that the language used in the provision:

"[M]eans only that, when an elector has signed a certificate of nomination of a candidate for a public office representing a certain party or principle, he is disqualified from thereafter signing another petition of nomination of another candidate for the same office, and he may also be prohibited from nominating the same candidate for the same office, but as representing some other party or principle." Harmon, 127 P. at 222.

Similar conclusions have been reached in the following cases regarding statutory restrictions on signing nomination petitions: Jacobs v. Pyle, 219 N.W. 250 (S.D. 1928); People v. Smith, 99 N.E. 568 (N.Y. 1912); O'Connor v. Smithers, 99 P. 46 (Co. 1908); State v. Burdick, 46 P. 854 (Wyo. 1896).

Interpretation of a statute is a matter of law, and it is the function of the court to interpret a statute to give it the effect intended by the legislature. Brabander v. Western Cooperative Electric, 248 Kan. 914, 917 (1991). The fundamental rule of statutory construction is that the purpose and intent of the legislature governs when the intent can be ascertained from the statute. Id. at 916. In determining

legislative intent, the court is not limited to consideration of the language used in the statute, but may properly look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. Workers Compensation Fund v. Silicone Distributing, Inc., 248 Kan. 551, 556 (1991).

The restriction set forth in K.S.A. 1991 Supp. 25-303(g) has been applicable since 1901. See L. 1901, ch. 177, § 3. It has remained virtually unchanged since its enactment. Although decisions of courts of other states regarding interpretation of a statute, the provisions of which are similar to a Kansas statute, are not binding on the Kansas courts interpreting a Kansas statute, the cases provide a strong indication of the legislature's understanding at the time of enactment of the Kansas statute. K.S.A. 1991 Supp. 25-303(g) precludes an elector who has signed a certificate of nomination for a candidate for a public office from signing certificates of nomination for additional candidates for the same public office. The provision does not prevent persons who have participated in nominating candidates at the primaries from signing an independent nomination petition for candidates for the same office. 25 Am.Jur.2d Elections § 172 (1966). Due to the use of the Australian ballot, any other interpretation would result in a statute the provisions of which would be impossible to enforce.

Very truly yours,



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