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August 29, 2025

ATTORNEY GENERAL OPINION NO. 2025-19

The Honorable Scott Schwab
Kansas Secretary of State
Memorial Hall, 1st Floor
120 SW 10th Ave.
Topeka, Kansas 66604

Re: Elections—Election and Terms of State Officers—Governor and
Lieutenant Governor; Nomination and Election Jointly

Elections—Election and Terms of State Officers—Governor and
Lieutenant Governor; Filing of Nomination Petitions or Declaration of
Intention to Become Candidates; Deadline for Filing

Elections—Election and Terms of State Officers—Governor and
Lieutenant Governor; Declaration; Fee

Synopsis: Because the candidates for Governor and Lieutenant Governor run together as a joint candidacy, a vacancy in one slot terminates the candidacy unless state law provides a means for filling the vacancy. When the vacancy occurs after the candidacy has filed for the primary election but before the filing deadline, the remaining member cannot fill the vacancy because no statute authorizes him to do so. But he may re-file as part of a new candidacy, which must fulfill all the statutory requirements for ballot access, including paying the full filing fee when submitting a declaration of intention to become candidates. Cited herein: K.S.A. 25-4003; 25-4004; 25-4006.

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Dear Secretary Schwab:

As Kansas Secretary of State, you ask about the appropriate course of action when one member of a Governor/Lieutenant Governor candidacy that has already filed for office withdraws or dies before the filing deadline has passed. In your scenario, the candidacy has obtained ballot access by filing a declaration of intention to become candidates and paying the requisite filing fee, as opposed to relying on nominating petitions.¹ As you note, no statute addresses this precise situation. But other statutes shed light on the proper procedure.² We conclude that when one member of the candidacy withdraws or dies after filing but before the filing deadline, the candidacy terminates. And while the other member may re-file as part of a new candidacy—and pay the full filing fee if he does—he cannot fill the vacancy in his original candidacy.

In Kansas, the Governor and Lieutenant Governor “shall be nominated and elected jointly.”³ In other words, “voters must select a ‘team.’”⁴ K.S.A. 25-4004 governs primary ballot access for the candidacy, and it provides that “[t]he names of candidates . . . shall be printed upon the official primary ballot when each pair thereof shall have qualified to become candidates.” If one member of the candidacy departs and there is a formal withdrawal under K.S.A. 25-306a, then there is no remaining “pair” to put on the ballot.⁵ The candidacy thus terminates barring some other provision of state law. Statutes that address vacancies at other points—after the filing deadline but before the primary election, and then after the primary election—bear this out.

- K.S.A. 25-3906 governs vacancies that occur after the filing deadline but before the primary election.

¹ See K.S.A. 25-4004.

² We must consider the relevant statutes “in pari materia with a view of reconciling and bringing [them] into workable harmony if possible” while construing the “statutes to avoid unreasonable or absurd results.” *N. Nat. Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, 918, 296 P.3d 1106 (2013).

³ Kan. Const. art. 1, § 1; see also K.S.A. 25-4003 (“The candidates for governor and lieutenant governor shall be nominated and elected jointly as provided in this act.”).

⁴ *Grogan v. Graves*, No. CIV.A. 90-2378-O, 1990 WL 182377, at *3 (D. Kan. Oct. 30, 1990).

⁵ K.S.A. 25-306a provides that “[a]ny person who has been nominated to be a candidate at any primary election for any . . . state . . . office may cause such person’s name to be withdrawn from nomination” by filing a qualifying written request with the Secretary of State before the filing deadline. And “[n]o name so withdrawn shall be printed on the ballots for such office for such primary election.” *Id.* Because the statute uses “person,” we interpret this statute to enable either member of a Governor/Lieutenant Governor candidacy to withdraw and thereby terminate the candidacy. And we believe this statute governs withdrawals for candidacies even if they obtain ballot access by submitting a declaration and paying a filing fee. Although the statute uses “nominated,” it expressly references the deadline for “the declaration of intent to become a candidate.” *Id.* And K.S.A. 25-306d(b) precludes the Secretary of State from refunding the “filing fee” when a person has “withdraw[n] from candidacy pursuant to K.S.A. 25-306a.”

- Subsection (d) provides that if the vacancy causes a party to “not hav[e] a pair” running in the primary election, then “a vacancy shall thereby also occur for the other two of such offices,” and these “vacancies shall be filled” at a state party convention.⁶ However, “[i]f the initial vacancy” is in the Lieutenant Governor slot, then the original Governor candidate “shall be the only governor candidate at such convention.”⁷
- Subsection (e) provides that when there is at least one other pair running for the party’s nomination, the Governor candidate “shall” fill a vacancy in the Lieutenant Governor slot.⁸
- K.S.A. 25-3905(c) addresses vacancies that occur after the primary election in the same manner as K.S.A. 25-3906(d): Both positions are declared vacant to be filled at a party convention, and the Governor candidate “shall be the only governor candidate at such convention” if the vacancy is in the Lieutenant Governor slot.⁹

As shown by these statutes, in certain situations the Legislature has chosen to “save” the ballot access of the candidacy from an otherwise fatal vacancy, either through a convention or a selection.¹⁰ But without a statutory procedure, the candidacy terminates. This is best illustrated by K.S.A. 25-3906(e), which addresses vacancies that occur after the filing deadline when more than one candidacy has filed for the same party nomination. While a Governor candidate may fill a vacancy in the Lieutenant Governor slot, no similar provision addresses a vacancy in the Governor slot—there is no elevation, convention, or selection. Instead, the candidacy simply ends.

The same holds true for the situation you describe: There is no statutory means for saving the candidacy when a vacancy occurs post-filing and pre-deadline, and it would be inappropriate to “read into the statute language not readily found there.”¹¹ The Legislature knows how to prescribe a procedure for allowing a candidacy to continue, and it did not include one for this scenario.¹² While the remaining member

⁶ K.S.A. 25-3906(d).

⁷ *Id.*

⁸ K.S.A. 25-3906(e).

⁹ K.S.A. 25-3905(c).

¹⁰ See also K.S.A. 25-3908 (listing the three statutory methods for filling vacancies).

¹¹ *State v. Nambo*, 295 Kan. 1, 3, 281 P.3d 525 (2012) (quotation marks omitted).

¹² See *State v. Crawford*, 39 Kan. App. 2d 897, 899, 185 P.3d 315 (2008) (“The maxim *expressio unius est exclusio alterius*, i.e., the inclusion of one thing implies the exclusion of another, may be applied to assist in determining actual legislative intent which is not otherwise manifest.” (quotation marks omitted)).

is free to find another running mate and pursue ballot access, he must do so as part of a new candidacy.¹³

We now turn to the filing fee. Because a pre-filing-deadline vacancy terminates the candidacy, the remaining member may become part of a new candidacy. This candidacy must follow the same rules as any other candidacy to obtain ballot access, including paying any filing fee. There is no statutory provision for crediting a new candidacy with all or part of the filing fee that was paid by a terminated candidacy,¹⁴ nor is there any indication that early filers should receive preferential treatment if the candidacy later falls apart.¹⁵

K.S.A. 25-4006 governs the filing fee for “candidates for governor and lieutenant governor,” and it treats all candidacies equally. It sets the filing fee at “*a sum equal to the total* of 1% of one year’s salary for governor and 1% of one year’s salary for lieutenant governor.”¹⁶ Thus, the candidacy must pay a single indivisible fee. Although the fee is determined by the salary for each position, there is no indication that the fee may be broken up so that part of it could be credited to another candidacy.

As with filling a vacancy, the Legislature could have provided an avenue for allowing all or part of a filing fee to roll over to a new candidacy. But it did not. Accordingly, a new candidacy cannot receive any credit for a previous candidacy’s filing fee.

In sum, when one member of a Governor/Lieutenant Governor candidacy withdraws or dies after the candidacy has filed for office but before the filing deadline, the candidacy terminates. And while the remaining member is free to pursue a new candidacy with a new running mate, his candidacy must follow the statutory requirements to obtain ballot access, including paying the whole filing fee.

¹³ As a practical matter, we note that pre-deadline vacancies do not pose the same issues as post-deadline and post-primary vacancies. Before the filing deadline, the lineup of candidates is still fluid, and it is just as easy for the remaining member to access the ballot through a new candidacy as it is for any other candidacy to access the ballot.

¹⁴ See *Nambo*, 295 Kan. at 3. In fact, K.S.A. 25-306d(b) prevents the Secretary of State from refunding filing fees when there is a pre-deadline withdrawal. The Legislature considered the fate of filing fees after withdrawals, and it did not permit the fees to be credited to another candidacy.

¹⁵ Cf. *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983) (recognizing the importance of “generally-applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process”).

¹⁶ K.S.A. 25-4006 (emphasis added).

Sincerely,

/s/ Kris W. Kobach

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Attorney General

/s/ Adam T. Steinhilber

Adam T. Steinhilber
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