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FILE NO. S-406

**ELECTIONS:
Petitions for Nominations**

**Honorable C. E. Corbett
State's Attorney
Piatt County
Monticello, Illinois**

Dear Mr. Corbett:

I have your recent letter wherein you state:

"The County Clerk of this County has requested an opinion concerning the order of names on the primary ballot to be voted March 21, 1972.

The facts are:

There are three candidates for the Republican nomination for the office of State's Attorney of this County. Candidate EATON filed his petition by depositing it in the mail in Monticello, addressed to the County Clerk, on Sunday, December 12. The County Clerk got her mail (including the petition of EATON - which was postmarked December 13) out of her box in the Post Office on her way to work, at approximately 8:15 A.M. She then

took her mail to her office in the Courthouse, entering her office by a basement door, which is not the entrance for the public. She then opened the envelopes, but did not remove the contents of any of the envelopes.

The hours of the office of the County Clerk are 8:30 A.M. to 4:30 P.M., and such hours are posted on the entrance door of the office.

Upon opening her office promptly at 8:30 A.M., Candidate EASTBURN was waiting to file his petition, and did so file it. It was subsequently determined that the EATON petition had arrived by mail.

The question presented is whether a tie exists (under Chapter 46, Sec. 7-12(6), Illinois Revised Statutes, 1969. Candidate EATON contends his petition should be deemed filed as of 8:00 A.M., or as of the normal opening hour, as the case may be (in accordance with the above cited statute). Candidate EASTBURN contends that the EATON petition and all petitions received thereafter should be deemed as filed as of 8:30 A.M. (the normal opening hour of such day), and, since the EASTBURN petition was also filed at 8:30 A.M., a tie exists."

As you have indicated in your letter, the controlling statutory provision is subparagraph 6 of Section 7-12 of "An Act concerning elections." (Ill. Rev. Stat. 1969, Ch. 46, Par. 7-12, subparagraph (6)) which provides as follows:

"The Secretary of State and the various clerks with whom such petitions for nominations are filed shall specify the place where filings shall be made and upon receipt shall endorse thereon the day and hour on which each petition was filed. Petitions filed by mail and received after midnight and on hand upon the opening of the office involved, shall be deemed as

filed as of 8:00 a.m. of that day or as of the normal opening hour of such day, as the case may be, and all petitions received thereafter shall be deemed as filed in the order of actual receipt. Where 2 or more petitions are received simultaneously, the Secretary of State or the various clerks with whom such petitions are filed shall break ties and determine the order of filing, and such determination shall be conclusive."

The statute is not without ambiguity. Under one interpretation all petitions filed in person would necessarily have to be treated as filed after the opening hour and not coincidental therewith. In effect, the candidate who spends long hours at the Clerk's door to insure being first in line would have to take a back seat to the man who drops his petition in the mail so that it is received prior to opening of the office on the first day set for filing. There is nothing in the statute which would indicate that the legislature intended to so completely overthrow the first-in-line tradition. It is clear that the legislature did intend to partly abrogate that tradition by insertion of the provisions relating to filing by mail. I see nothing in the statute which would authorize or require an interpretation of the statute in such a way as to

relegate all petitions personally filed to a secondary position on the ballot. If the legislature had wanted to do so, the statutory language appropriate to such results could easily have been inserted in the amendment. In addition, Section 7-12, sub paragraph 6 of the statute was substantially amended in 1969, including addition of the second and third sentences thereof. Historically, the amendment was enacted for the purpose of adapting to the decision of the United States Court of Appeals for the Seventh Circuit, in the case of Weisberg v. Powell, 417 F. 2nd 383, the per curiam opinion in which case was handed down on October 3, 1969 (rehearing was denied October 17, 1969). The amendment to sub-paragraph 6, supra was introduced on October 4, 1969 as Senate Bill 1269 and was signed by the Governor on October 23, 1969. The Court in the Weisberg case treated the petitions received by mail before the opening of the office on the first day for filing those petitions, as tied with those presented personally by the candidates or their representatives at 8:00 A.M. Although the opinion of the Federal Court is not as clear as it might be, the result was to treat

petitions received by mail, and at least some of those received in person, as having all been received at the same time.

Another factor considered by the Court in the Weisberg case was the ability and the practice of the defendant Secretary of State to select the time when his office would pick up the mailed petitions. In your case, the Clerk has a post office box which she apparently habitually empties prior to the opening of her office each morning. It is certainly within her ability to pick the mail up at the post office at any time in the day she chooses, thereby controlling the time when the mailed petitions come into her possession. In holding, as I do, that the candidate who delivers his petition to the Clerk in person as the office opens for business, makes it possible for that candidate to control his own destiny to the extent that his petition will at least be tied with mailed petitions.

I further note that the statute refers to "receipt" rather than filing. To say that the candidates standing at the door of the Clerk's office when it opens for business

Honorable C. E. Corbett

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must necessarily deliver his petition a fraction of a second, or of a minute, after the official opening hour is to deal in fractional periods of time more appropriate to scientific experiments than to the statute in question. If such a lapse of time does exist it is de minimus.

In conclusion, I am of the opinion that a tie does exist and both the Eaton and Eastburn petitions should be deemed filed as of 8:30 A.M.

Very truly yours,

A T T O R N E Y G E N E R A L

JCB