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STATE OF ILLINOIS
SPRINGFIELD



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FILE NO. 84-018

ELECTIONS:
Filling of Vacancies in
Nomination

Honorable James T. Teros
State's Attorney, Rock Island County
Rock Island County Courthouse
Rock Island, Illinois 61201

Dear Mr. Teros:

I have your letter in which you state that one of the established political parties in Rock Island County failed to place any candidates in nomination for several county board districts prior to the March 20, 1984, primary election. You inquire whether such vacancies in nomination may be filled pursuant to section 7-61 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 7-61) at any time prior to the certification of candidates to the county clerk by the State Board of Elections (see Ill. Rev. Stat. 1983, ch. 46, par. 7-60), or

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whether such vacancies in nomination could have been filled only prior to the certification of nomination by the county canvassing board. (See Ill. Rev. Stat. 1983, ch. 46, par. 7-58.) For the reasons hereinafter stated, I agree with your conclusion that the vacancies in nomination for county board member of Rock Island County could have been filled only prior to the certification of nomination by the county canvassing board under section 7-58 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 7-58).

The method of nominating candidates for primary elections and the manner of conducting such elections is set out in article 7 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 7-1 et seq.). Section 7-56 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 7-56) provides for the canvass and tabulation of primary votes:

"As soon as complete returns are delivered to the proper election authority, the returns shall be canvassed as follows:

* * *

4. The officers who are charged by law with the duty of canvassing returns of general elections made to the county clerk, shall also open and canvass the returns of a primary made to such county clerk. Upon the completion of the canvass of the returns by the county canvassing board, said canvassing board shall make a tabulated statement of the returns for each political party separately, stating in appropriate columns and under proper headings, the total number of votes cast in said county for each candidate for nomination by said party, including candidates

for President of the United States and for State central committeemen, and for delegates and alternate delegates to National nominating conventions, and for precinct committeemen, township committeemen, and for ward committeemen. Within two (2) days after the completion of said canvass by said canvassing board the county clerk shall mail to the State Board of Elections a certified copy of such tabulated statement of returns. Provided, however, that the number of votes cast for the nomination for offices, the certificates of election for which offices, under this Act or any other laws are issued by the county clerk shall not be included in such certified copy of said tabulated statement of returns, nor shall the returns on the election of precinct, township or ward committeemen be so certified to the State Board of Elections. The said officer shall also determine and set down as to each precinct the number of ballots voted by the primary electors of each party at the primary.

* * *

"

Section 7-58 of The Election Code provides for the certification and proclamation of nominees by the appropriate canvassing board:

"Each of the boards respectively shall, upon completion of the canvassing of the returns, make proclamation of the result of the primary for each political party, and shall make and execute a certificate, and, except as hereinafter otherwise provided in this Section, unless a notice of contest has been filed with such board, shall, 12 days after the completion of the canvass, file such certificate in the office of the State Board of Elections, or in the office of each election authority whose duty it is to print the official ballot for the election for which the nomination is made, as the case may be, stating therein the name of each candidate of each political party so nominated or elected, as shown by the returns, together with the name of the office for which he was nominated or elected, including precinct, township and ward committeemen, and including in

the case of the State Board of Elections, candidates for state central committeemen, and delegates and alternate delegates to National nominating conventions. In case a notice of contest shall be filed with any canvassing board, or with the State Board of Elections, such board as to the office concerning which the contest shall have been filed shall withhold its certificate until a certified copy of the decree or order of the court hearing such contest shall have been filed with such board. The board shall, within one day after receiving a certified copy of the decree or order, proceed to finish the canvass of returns as corrected by such decree and make proclamation accordingly.

* * *

Upon the filing of the certificate in the office of the State Board of Elections, or in the office of the proper election authorities, as the case may be, the Board, or the proper election authorities, as the case may be, shall within one day thereafter, issue a certificate of nomination to each of the candidates so proclaimed nominated.

* * *

(Emphasis added.)

Section 7-60 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 7-60) provides in pertinent part:

"When the nomination is made for an office to be filled by the electors of an entire county, and where it is the duty of the county clerk to prepare the official ballot for election, it shall be the duty of the county clerk, under this Article, to place upon the official ballot to be voted at the election the names of all candidates nominated for office, as herein provided, as shown by the certificate of the canvassing board on file in his office, and the names of all candidates certified to him by the State Board of Elections.

* * *

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Not less than 61 days before an election to fill any office, the State Board of Elections shall certify to the county clerk of each county within which any of the electors may, by law, vote for such candidates for such offices, the name of each person nominated for such office.
* * *

* * *

(Emphasis added.)

Section 7-61 of The Election Code provides the manner of filling vacancies in nomination:

" * * *

Any vacancy in nomination under the provisions of this Article 7 occurring on or after the primary and prior to certification of candidates by the certifying board or officer, must be filled prior to the date of certification. * * *

* * * Vacancies shall be filled by the managing committee (or legislative committee in case of a candidate for State Senator or representative committee in the case of a candidate for State Representative in the General Assembly) of the respective political party for the territorial area in which such vacancy occurs.

* * *

If the name of no established political party candidate was printed on the consolidated primary or general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be created which may be filled in accordance with the requirements of this Section.

* * *

(Emphasis added.)

Pursuant to section 7-61 of The Election Code, the failure of an established political party to place upon the

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ballot the name of a candidate for nomination for a specific office, if no person is subsequently nominated as a write-in candidate, creates a vacancy in nomination which may be filled by the appropriate managing committee of that party. Resolution of your question depends upon the determination of what act constitutes the certification of candidates prior to which a vacancy in nomination must be filled.

In opinion No. S-511, issued September 14, 1972 (1972 Ill. Att'y Gen. Op. 222), Attorney General Scott cited sections 7-61 and 7-58 of The Election Code (see Ill. Rev. Stat. 1971, ch. 46, pars. 7-58, 7-60), which were substantially similar to the current provisions set out above, and concluded:

" * * *

The 'date of certification' under section 7-61 is that date upon which the proper board or officer officially files or issues a 'certification of candidates.' The State Electoral Board's certification under section 7-60 is the only 'certification' that can logically apply.

The certification by the local canvassing boards does not apply. After a primary, the local canvassing boards canvass the returns and then file a certificate with the Secretary of State, or in the office of the clerk whose duty it is to print the official ballot. * * *

* * *

The certifications by the local canvassing boards constitute the first official knowledge and recognition of the persons nominated in the primary election.

It is not logical to interpret the statute to require the managing committees to fill vacancies in nominations on a date before which

official notification of the names of the persons nominated is made. To require the various managing committees to fill vacancies in nominations before the official recognition of the persons who have been nominated would require those committees to rely upon the unofficial election returns and engage in a procedure which could be either useless or inexact. In the case of write-in candidates, the unofficial returns might show such a candidate to have been nominated while his subsequent failure to file an oath as required by section 7-58 could result in a vacancy in nomination not apparent from the original unofficial election returns. In short, the statute must be construed, if possible, to allow the managing committees precise knowledge of the offices in which nominations are vacant. The statute should not be construed to require those committees to enter into a guessing game as to the official results of the canvass of the election returns. I further note that the action of canvassing boards is to certify 'nominees' as shown by their canvass. They do not certify 'candidates.'

The fact that the Secretary of State or the appropriate clerk is required to issue a 'certificate of nomination' within one day after the canvassing board's certification letters makes it illogical to use the dates of issuance of such 'certificate of nomination' as the date before which the vacancies must be filled. * * *

* * *

(Emphasis added.) (1972 Ill. Att'y Gen. Op. 222, 224-25.)

Based on the pertinent language of The Election Code, I believe that the reasoning and conclusions of opinion No. S-511 are clearly erroneous, since the date of certification by a local canvassing board is a logical date at which to terminate the power to fill a vacancy in nomination existing at the time of the primary election.

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Section 7-58 of The Election Code provides that each canvassing board shall, upon completion of the canvassing of election returns, proclaim the results of the primary for each political party. Unless a notice of contest has been filed, the canvassing board shall, 12 days after the completion of the canvass, file in the office of the State Board of Elections or in the office of each election authority whose duty it is to print the official ballot a certificate stating the name of each candidate of each political party so nominated. Upon filing this certificate with the proper election authority, the State Board of Elections, county clerk or other election authority shall issue a certificate of nomination to each nominated candidate.

In opinion No. S-511, Attorney General Scott concluded that it was illogical to construe the date of the issuance of the certificate of nomination by the canvassing board as the date prior to which vacancies in nomination must be filled. Because the results of the primary election are proclaimed 12 days prior to the certification of nominations, however, there is ample notice of the existence of a vacancy in nomination. Moreover, the results proclaimed by the canvassing board clearly constitute official notice of the results of the primary, subject only to the possibility of contest, upon which a political party may rely in filling a vacancy in nomination.

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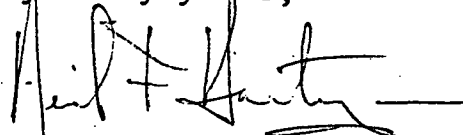
Contrary to the conclusions of the earlier opinion, a construction of section 7-61 of The Election Code which recognizes that the date of certification of nomination by the canvassing board terminates the period during which a vacancy in nomination created by the failure to slate a candidate for an office, does not require a political party to rely on "unofficial election returns" to fill that vacancy in nomination.

Further, the conclusion expressed in opinion No. S-511 was supported by the statement that the action of a canvassing board is to certify "nominees", not "candidates". (1972 Ill. Att'y Gen. Op. 222, 225.) Pursuant to section 7-58 of The Election Code, the canvassing board is required to certify "the name of each candidate of each political party * * * nominated" at the primary election (emphasis added). The canvassing board clearly is a "certifying board" for purposes of section 7-61 of The Election Code, and the action of the canvassing board constitutes the certification of candidates for purposes of that section, regardless of the purported question of semantics noted in opinion No. S-511. Contrary to the reasoning of opinion No. S-511, under the plain language of section 7-61 of The Election Code it is illogical to conclude that the certification of candidates by a canvassing board is not the act which terminates the ability of a political party to fill a vacancy in nomination in existence at the time of the primary election.

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Therefore, it is my opinion that vacancies in nomination created by the failure of a political party to slate candidates for nomination at a primary election may be filled only until such time as the appropriate canvassing board certifies the candidates nominated at such election.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Neil H. Hart", written over a horizontal line.

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