



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

September 14, 1972

FILE NO. S-511

ELECTIONS:
Filling of vacancies in
nomination

Honorable Clement M. Toohill
State's Attorney
DeWitt County
116 South Monroe
Clinton, Illinois 61727

Dear Mr. Toohill:

I have your letter wherein you state:

"I have a vacancy for a number of offices in my county. The party chairman may wish to fill these vacancies.

"The relevant Statute of the Election Code is in Section 7-61 which reads in part:

'Any vacancy ... must be filled prior to the date of certification.'

"I am requesting an opinion as to what 'date of certification' refers to:

1. That date of certification of the local canvassing board; or,

Honorable Clement M. Toohill - 2.

2. That certificate of the Secretary of State?

"In other words what is the last day that the party chairman can fill a vacancy for local county office nominations?

"It would seem that as the word is used in the plural, 'Certification of Candidates,' there must be additionally a certification on file from the State Election Board which would not be filed until 92 days before the election (last day for filing independent petitions.) and not later than 61 days as provided in 7-60. Such an interpretation would present no problem to the County Clerks because the ballot would not be printed until the certification of the State Election Board is received."

Section 7-61 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 7-61) reads, in part, as follows:

"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. Any vacancy in nomination occurring within a 7 day period prior to certification shall be filled within 8 days after the event creating the vacancy. The notice or resolution filling the vacancy shall be sent by U. S. mail or personal delivery to the certifying officer or board within 3 days of the action by which the vacancy was filled; provided, if such notice is sent by mail and the

Honorable Clement M. Toohill - 3.

U. S. postmark on the envelope containing such notice is dated prior to the expiration of such 3 day limit, the notice shall be deemed filed within such 3 day limit. Failure to so transmit the notice or resolution within the time specified in this Section shall authorize the certifying officer or board to certify the office without any name to fill said vacancy. Any vacancy in nomination occurring after the date of certification shall be filled within 8 days after the vacancy occurs. Vacancies shall be filled by the managing committee (or senatorial or representative committee, respectively, in case of a candidate for State Senator or Representative in the General Assembly) of the respective political party for the territorial area in which such vacancy occurs." (Emphasis added)

It is my opinion that the certification to which section 7-61 refers is the certification by the State Electoral Board to the several county clerks under section 7-60 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 7-60), which reads in part:

"Not less than 61 days before an election to fill any office, the State Electoral Board created in Section 7-14, 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, as shown by the certificate of the State Electoral Board on file in the office of the Secretary of State; such board shall meet, for the purpose

Honorable Clement M. Toohill - 4.

of making its certificates, at the call of the Secretary of State not less than 61 days before the election. In making their certificate to the several county clerks, where more than one candidate has been nominated by the same political party for any given office, it shall be the duty of the Electoral Board to certify the names of such candidates in the manner following, to-wit: The name of the candidate of such party for such office receiving the highest number of votes in the primary election as a candidate for such office, as shown by the official returns on file in the office of the Secretary of State shall be certified first under the name of such office, and the names of the remaining candidates of such party for such office shall follow in the order of the number of votes received by them respectively at the primary election, determined by official returns on file as aforesaid." (Emphasis added)

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

Honorable Clement M. Toohill - 5.

Secretary of State, or in the office of the clerk whose duty it is to print the official ballot. Section 7-58 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 7-58) explains the nature of this certificate:

"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 Secretary of State, or in the office of the clerk 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 Electoral Board, candidates for State central committeemen, and delegates and alternate delegates to National nominating conventions. * * *

"No such board shall file with the Secretary of State or with the appropriate clerk a certificate of nomination or election with respect to any person whose name was not printed on the primary ballot as a candidate unless such person files with the board within 30 days after

Honorable Clement M. Toohill - 6.

completion of the canvass the statement under oath prescribed in Section 7-10.1 and a statement under oath containing, insofar as applicable, the allegations contained in the statement of candidacy prescribed in Section 7-10.

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

* * * "

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

Honorable Clement M. Toohill - 7.

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. Such an interpretation would render the 7 day provision in section 7-61 meaningless and

Honorable Clement M. Toohill - 8.

again would require filling of nominations before official determination of the nominees is made.

Basically, the State Electoral Board certifies to the county clerk the names of candidates that are to appear on the official ballot. The State Electoral Board cannot issue its certificate until, at most, eighty-seven days before the election. This is made clear by section 10-6 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 10-6). Said section 10-6 provides that independent and third party candidates file certificates of nomination and nomination papers for National and State offices with the State Electoral Board at least ninety-two days before the election date. Section 10-7 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 10-7) grants any person, whose name has been presented as a candidate, five days to withdraw or until eighty-seven days before the election. Once the deadline for independents and third party candidates to file and withdraw has been reached, then the State Electoral Board can lawfully issue its certification of candidates. It must do so at least sixty-one days prior to the election.

Honorable Clement M. Toohill - 9.

I am of the opinion that the State Electoral Board issues the only "certificate of candidacy." This holding will produce a harmonious construction of section 7-61. Obviously, the legislature in providing that vacancies in nomination must be filled prior to the date of certification wanted to insure that these vacancies would be filled in time for the State Electoral Board to include the names of the new nominees in its certification of candidates. Also, it provides a reasonable balance between the conflicting interests of the managing committee that must fill a vacancy in nomination and a clerk who must make up an official ballot. The managing committee knows that the deadline for filling vacancies could possibly be eighty-seven days before the election. Thus, if a vacancy occurs several weeks before this time, the managing committee can take time in selecting someone to fill the vacancy. On the eighty-seventh day before the election, the committee should consider filling its vacancies within eight days. Section 7-61 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 7-61) provides:

"Any vacancy in nomination under the provisions of this Article 7 occurring on or after

Honorable Clement M. Toohill - 10.

the primary and prior to certification of candidates by the certifying board or officer, must be filled prior to the date of certification. Any vacancy in nomination occurring within a 7 day period prior to certification shall be filled within 8 days after the event creating the vacancy. * * *

By providing that, at least, the date of certification will be sixty-one days before the election, the legislature is insuring that the clerk who must make up the ballot has enough time to accomplish this task. To be sure, a vacancy can be filled after certification but this must be done within eight days after the vacancy occurs.

Basically, the State Electoral Board certifies the candidates for National and State office. At present, no board or officer certifies the candidates for county and local offices.

I am of the opinion that the managing committee must fill vacancies in county or local offices prior to the date of certification of National and State candidates. Thus, the date upon which the State Electoral Board issues its certification of candidates will serve as the deadline for filling

Honorable Clement M. Toohill - 11.

vacancies in county and local offices, when said vacancies occur prior to the date of certification. The alternative is to hold that there is no date of certification of county and local candidates. Thus, the process by which vacancies in county and local offices are filled would be thrown into chaos.

"It is a familiar rule of statutory construction that if the language employed admits of two constructions, one of which makes the enactment absurd if not mischievous, while the other renders it reasonable and wholesome, the construction which leads to an absurd result should be avoided."

Kloss v. Suburban Cook Co.
Sanatarium, 404 Ill. 87, 97.

By holding that the date of certification, for the purpose of filling vacancies in nomination for local and county offices, be the date upon which the State Electoral Board issues its certification of candidates, there is avoided the chaotic situation where there is no date of certification of local and county offices and a reasonable and wholesome construction is placed upon section 7-61.

Honorable Clement M. Toohill - 12.

It should be noted at this point that the managing committee in filling a vacancy in nomination for local and county offices must mail the notice or resolution of their selection to the clerk who has the responsibility of preparing the ballot. The managing committee should mail its notice or resolution of their selection to the State Electoral Board only if the State Electoral Board has jurisdiction over the particular office. Basically, this would be National and State offices.

It is a common rule of statutory construction that the spirit or intent of the law shall prevail over the letter of the law. (Lincoln Nat. Life Ins. Co. v. McCarthy, 10 Ill. 2d 489, 34 ILP, Statutes, sec. 115 (1958)). By holding that a vacancy in nomination for all offices must be filled prior to the date of certification by the State Electoral Board, the spirit of section 7-61 is fulfilled. This will allow the managing committee ample time to fill most vacancies while protecting the interest of the clerk who must have ample time to prepare the ballot.

Honorable Clement M. Toohill - 13.

The second question you pose in your letter is:
What is the last day upon which a vacancy for local county
office nominations may be filled?

I have already pointed out that the date of certification may occur between eighty-seven and sixty-one days before the election. Section 7-61 also provides that if a vacancy occurs within seven days before the date of certification, the managing committee has eight days from the time of the vacancy to fill the vacancy. Any vacancy in nomination occurring after the date of certification must be filled within eight days.

Very truly yours,

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