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PRIMARY ELECTION—CANDIDATE MAY NOT LAWFULLY FILE DECLARATIONS FOR NOMINATION TO TWO OR MORE INCOMPATIBLE OFFICES—BOARD OF ELECTIONS SHOULD REJECT SECOND DECLARATION OF CANDIDACY IF IT IS FOR NOMINATION TO OFFICE INCOMPATIBLE WITH OFFICE DESIGNATED IN FIRST DECLARATION OF CANDIDACY—GENERAL ASSEMBLY—STATE SENATOR—STATE REPRESENTATIVE.

SYLLABUS:

A person can not lawfully file, in connection with the same primary election, declarations of candidacy to become a candidate for nomination to two or more incompatible offices; and, consequently, a board of elections should reject a second declaration of candidacy of a person who has already filed a declaration of candidacy in connection with the same primary election, if such second declaration of candidacy is for nomination to an office which is incompatible with the one designated in the first.

Columbus, Ohio, March 18, 1948

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

This will acknowledge receipt of your letter wherein you request my opinion on the following two questions:

“(1) May the same person’s name be entered in a party primary for two different offices, such as State Senator and Representative to the General Assembly?”

“(2) If your answer to No. (1) is in the negative, what precise steps should the Board of Elections take and from which of the respective offices is the candidate’s name to be removed?”

At the outset it should be pointed out that all elective offices are not incompatible. In other words, a person may at the same time occupy as many offices as he may be elected or appointed to providing the offices so held are not incompatible with each other. Offices, of course, are incompatible when specifically made so by statute. In addition thereto, offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both. *State, ex rel. v. Gebert*, 12 O.C.C. (N.S.) 274. You require relative to “two different offices, such as state senator and representative to the General Assembly.”

It manifestly requires no argument to show that said two offices are incompatible and I assume, therefore, that your inquiry concerns only offices which are incompatible.

The provisions of law governing the filing of declarations of candidacy are set out in Section 4785-70 et seq. of the General Code. Section 4785-71, which prescribes the form of a declaration of candidacy, provides in part:

“The form of declaration of candidacy and petition which a person desiring to be a candidate for a party nomination or a candidate for election to an office or position to be voted for at a primary election shall be substantially as follows:

DECLARATION OF CANDIDACY
PARTY PRIMARY ELECTION

I, (name of candidate), the undersigned, hereby declare that my voting residence is in precinct of the (Township) or (Ward and City or Village) in the county of, Ohio; that my post-office address is..... (Street and Number, if any, or Rural Route and Number) of the (City, Village or Postoffice) of, Ohio: that I am a qualified elector in the precinct in which my voting residence is located. I am a member of the Party. I hereby declare that I desire to be (a candidate for nomination as a candidate of the Party for election to the office of) (a candidate for or election to office or position of) at the primary election to be held on the day of, 19.., and I hereby request that my name be printed upon the official primary election ballot of the said Party as a candidate for (such nomination) or (such election) as provided by law.

I further declare that, if elected to said office or position, I will qualify therefor, and that I will support and abide by the principles enunciated by the Party in its national and state platforms.

Dated this day of, 19...

.....
(Signature of candidate)

The State of Ohio }
County of..... }

..... (Name of candidate), being duly sworn, deposes and says that he is the candidate named in the above declaration of candidacy and that the statements and declarations therein contained are true as he verily believes.

.....
(Signature of candidate)

Subscribed and sworn to before me this day of, 19...

(Signature of officer administering oath)

.....
(Title of officer)' "

It will be noted from the above that the candidate not only declares, under oath, that he desires to be a candidate for the office named in such declaration, but in addition thereto, under oath and in writing, declares that "if elected to said office he will qualify therefor."

It is certainly difficult to perceive how a person who is duly sworn can truthfully say that he desires to become a candidate for two different offices which are incompatible and that if elected to each, he will qualify for each. Obviously such declarations can not be carried out. I am unable to bring myself to the position that the General Assembly, when it enacted Section 4785-71 and stated therein in express terms that a person declaring himself to be a candidate must state under oath that he desires to be a candidate and that if elected he will qualify for the office, intended thereby to permit such person so declaring himself either to withdraw his candidacy before election or refuse to qualify when and if elected. Furthermore, if the same person were permitted to file a declaration of candidacy to each of the two offices to which you allude and subsequently thereto he were nominated and in turn elected to each of said offices, he obviously could not qualify for both and, consequently, under the terms of Section 10 of the General Code, the one for which he failed to qualify would have to be filled as in the case of a vacancy. A vacancy in either the office of state senator or that of representative to the General Assembly is, under the provisions of Section 11 of Article II of the Constitution, and Section 4829, General Code, filled by special election.

Certainly, the General Assembly can not be presumed to have enacted a law which, under any circumstances, would, in its application, produce such unreasonable and absurd consequences. In 37 O. Jur., page 644 et seq., it is stated:

"One of the established rules for the construction of statutes is that doubtful provisions should, if possible, be given a reasonable, rational, sensible, or intelligent construction. Accordingly, it is the duty of the courts, if the language of a statute fairly permits, or unless restrained by the clear language of the statute, so to construe it as to avoid unreasonable, absurd, or ridiculous consequences. Accordingly, in interpreting an ambiguous statute, the reasonableness or otherwise of one construction or the other is a matter competent for consideration."

In view of the above, it would appear, and it is accordingly my opinion, that a person may not file declarations of candidacy to become a

candidate for nomination to two or more incompatible offices at the same primary election.

Your second question, it seems to me, is answered by the foregoing discussion. By that I mean to say that when a person files a declaration of candidacy he must be regarded as intending to carry out the declarations and promises made by him therein. Obviously, therefore, if it would become impossible for him to do so because of his fulfillment of the declarations and promises set out in a second declaration of candidacy, it would appear that when he attempts to file such second declaration the same must be rejected. In other words, once having made his choice and stated under oath that he desired to become a candidate for the office designated in the first declaration filed and that if elected thereto he would qualify for the same, it is difficult for me to understand, in light of the statutory provisions governing the filing of such declarations, why he should not be held thereto.

Therefore, in specific answer to your questions, you are advised that in my opinion a person can not lawfully file, in connection with the same primary election, declarations of candidacy to become a candidate for nomination to two or more incompatible offices; and, consequently, a board of elections should reject a second declaration of candidacy of a person who has already filed a declaration of candidacy in connection with the same primary election, if such second declaration of candidacy is for nomination to an office which is incompatible with the one designated in the first.

Respectfully,

HUGH S. JENKINS,
Attorney General.