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Opinion No. 08-130

Validity of Political Party Nomination

QUESTION

If an elected county office becomes vacant as a result of the August 7 general election this year, because the individual who holds that county office is a successful candidate for another office in that election, can a political party hold its convention and select a nominee for the county office after the August 7 election but before the successful candidate actually leaves office?

OPINION

No. Under Tenn. Code Ann. § 5-1-104(b)(2), the party convention to select a nominee to fill a vacancy must take place after the vacancy has occurred.

ANALYSIS

You have asked whether a political party can convene and nominate a candidate for a county office before that office becomes vacant. According to your request, a county official is a candidate in the August 7 election for a second county office. If the official is elected to the new office, he or she will assume that office on September 1. You have asked whether a political party can convene and nominate a candidate for the first county office at any time after the August 7 election, even if the official does not vacate the first office until September 1. Tenn. Code Ann. § 5-1-104 addresses filling vacancies in county offices that must be filled by the people. Under the relevant provision of Tenn. Code Ann. § 5-1-104(b)(2):

> . . . If the vacancy occurs less than sixty (60) days before the August election but sixty (60) days or more before the November election, *then nominees of political parties shall be selected by party convention and a successor elected in the November election.*

(Emphasis added). The next general election is November 4, 2008. Thus, under the facts set forth in your question, the vacant county office would be filled at the November election because the vacancy would occur no later than September 1, which is more than sixty days before that election.

Candidates nominated by the political party under Tenn. Code Ann. § 5-1-104(b)(2) must qualify by filing nominating petitions by noon on the fifty-fifth day before the election. The statute

does not specify how the election commission verifies that the candidate is the political party nominee. But Tenn. Code Ann. § 2-13-203(b) provides:

> Persons nominated other than by primary method for offices to be filled by the voters of one (1) county or any part of a county shall be immediately certified by the chair of the nominating body to the county election commission by the qualifying deadlines.

Thus, the chair of the nominating body must notify the county election commission of its selection immediately and in any event no later than noon on the fifty-fifth day before the election, which would fall on September 10.

The question is whether a political party may hold its convention and select its nominee after the August 7 election but before the vacancy occurs. Courts must attempt to give effect to the legislative purpose and intent of a statute, as determined by the ordinary meaning of its text, rather than seek to alter or amend it. *Griffin v. State*, 182 S.W.3d 795 (Tenn. 2006). The statute provides: "*If* the vacancy *occurs* less than sixty (60) days before the August election but sixty (60) days or more before the November election, *then* nominees of political parties shall be selected by party convention and a successor elected in the November election." Tenn. Code Ann. § 5-1-104(b)(2) (emphasis added). Thus, the statute provides that nominees of political parties will be selected by party convention "if the vacancy occurs" within the time limits provided.

For this reason, we think the plain meaning of the statute is that the party convention to select a nominee under this statute must take place after the vacancy has occurred. *See generally Waters v. State ex rel. Schmutzer*, 583 S.W.2d 756 (Tenn. 1979) (county legislative body's attempt to fill a vacancy before the office became vacant was invalid); Op. Tenn. Att'y Gen. 82-268 (May 24, 1982) (party county executive committees could not nominate candidates to fill vacant state senate seat until the senator's resignation became effective). Accordingly, it is our opinion that a nomination made in a political convention held before the vacancy occurs is invalid.

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