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September 26, 1984

FILE NO. 84-019

ELECTIONS:
Filling of Vacancies in
Nomination

Michael J. Hamblet, Chairman
State Board of Elections
1020 South Spring Street
Springfield, Illinois 62708

Dear Mr. Hamblet:

I have your letter wherein you inquire whether opinion No. 84-018, issued September 13, 1984, affects the validity of appointments made by the managing committees of established political parties to fill vacancies in nomination for the November 6, 1984, general election. As you are aware, I advised in the aforementioned 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 the primary. (Ill. Rev. Stat. 1983, ch. 46, par. 7-61.) In reaching this conclusion, I overruled opinion No. S-511, issued September 14, 1972 (1972 Ill. Att'y Gen. Op. 222), in which Attorney General Scott advised that such vacancies could be filled at any time prior to certification by the State Board of Elections [hereinafter referred to as the Board] pursuant to section 7-60 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 7-60). Notwithstanding the fact that opinion No. 84-018 concludes that the law provides for a substantially shorter period of time within which certain vacancies in nomination may be filled, it is my opinion that the construction of the law contained therein does not, at this juncture, affect nominations which were made in accordance with the earlier interpretation.

Section 7-60 of The Election Code provides that the Board shall, not less than 61 days before an election, certify to the county clerk of each county the name of each person nominated who was certified to the Board. Even under the reasoning of opinion S-511, the date of the certification of candidates by the Board would terminate the authority of political party managing committees to fill any vacancies in nomination, except those occurring after the Board's certification but more than 15 days prior to the election. Opinion No. 84-018 was not issued until after the

date for the Board's certification under section 7-60. Assuming that all vacancies in nomination in existence at the time of the primary were filled prior to the date of the Board's certification, it appears that there is now no basis or mechanism for removing nominees appointed to fill vacancies in nomination.

Section 10-8 of The Election Code (Ill. Rev. Stat. 1983, ch. 46, par. 10-8) provides in pertinent part:

"Certificates of nomination and nomination papers, and petitions to submit public questions to a referendum, being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing within 5 days after the last day for filing the certificate of nomination or nomination papers or petition for a public question, ***.

(Emphasis added.)

Objections to the validity of a candidate's nomination must be made in accordance with section 10-8 of The Election Code, or they are deemed waived. (See Swiney v. Peden (1922), 306 Ill. 131, 135; Welsh v. Shumway (1908), 232 Ill. 54, 59; People ex rel. Klingmueller v. Haas (1982), 111 Ill. App. 3d 88, 91-92.)

If a certificate of nomination is not objected to in accordance with the governing statute, the candidate is entitled to have his name placed upon the ballot. (Schuler v. Hogan (1987), 168 Ill. 369, 376.) Failure to comply strictly with the provisions of The Election Code pertaining to the nomination of candidates by

political parties is not ordinarily fatal in the absence of fraud or actual harm. People ex rel. Harris v. Powell (1966), 35 Ill. 2d 384, 387; People ex rel. Bell v. Powell (1966), 35 Ill. 2d 381, 383; People ex rel. Meyer v. Kerner (1966), 35 Ill. 2d 33, 40-41.

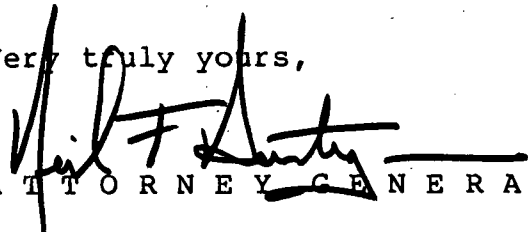
Under the interpretation of section 7-61 of The Election Code set forth in opinion No. S-511, the managing committees of political parties may have filled vacancies in nomination in existence at the time of the March, 1984, primary election after certification by the canvassing board but prior to the certification of State candidates by the State Board of Elections. Even though, under the reasoning of opinion No. 84-018, such nominations were invalidly made and thus, were subject to timely objection pursuant to section 10-8 of The Election Code, the failure of any person to object within the statutory time limit has resulted in a waiver of any right to object to the validity of the nominations. Consequently, it is my opinion that county clerks are under a mandatory duty to place the names of such nominees on the ballot. See People ex rel. Deaton v. Gifford (1933), 353 Ill. 107; Reynolds v. Conti (1971), 132 Ill. App. 2d 505, 508.

Therefore, for the reasons set forth above, it is my opinion that the conclusions expressed in opinion No. 84-018 cannot, at

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this juncture, affect the validity of appointments made to fill vacancies in nomination in accordance with earlier interpretations of section 7-61 of The Election Code.

Very truly yours,


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