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August 26, 2020

ATTORNEY GENERAL OPINION NO. 2020- 9

The Honorable Blake Carpenter
State Representative, 81st District
1300 E. Meadowlark Blvd., Apt. 2203
Derby, KS 67037

The Honorable Susan Humphries
State Representative, 99th District
8 Sagebrush St.
Wichita, KS 67230

Re: Elections—Primary Elections—Official Primary Election Ballots; Minimum Number of Votes Required for Election or Nomination

Synopsis: The basis for determining the number of write-in votes required for a person's name to appear on the general election ballot is the total of the current voter registration designated in the state, county or district in which the office is sought. Cited herein: K.S.A. 2019 Supp. 25-205; 25-213; 25-3301.

* * *

Dear House Majority Whip Carpenter and House Majority Caucus Chair Humphries:

As State Representatives for the 81st and 99th Districts, respectively, you request our opinion regarding the basis for determining the number of write-in votes required in the primary election for a person's name to be printed on the general election ballot as a political party's candidate for state, county or district office. You ask whether the basis is the number of registered members of a political party, as those are the only electors who may vote for candidates in a party's primary election.¹

¹ K.S.A. 2019 Supp. 25-3301.

K.S.A. 2019 Supp. 25-205 provides two methods through which a person's name may be printed on the official primary ballot; the person may file nomination petitions signed by the requisite number of electors or the person may file a declaration of intention to become a candidate, accompanied by the appropriate fee.² If no nomination petitions or declarations of intention are filed for a public office subject to election at the primary election, "the title to the office shall be printed on the ballot followed by a blank line with a square"³ An elector is thereby given the opportunity to write in the name of a candidate whose name may be printed on the general election ballot, provided the candidate receives the required number of write-in votes.

For most primary elections,⁴ K.S.A. 2019 Supp. 25-213(d) defines the requisite number of write-in votes as follows:

As a result of a primary election, no person shall receive the nomination and no person's name shall be printed on the official general election ballot when no nomination petitions or declarations were filed, *unless the person receives votes equal in number to not less than 5% of the total of the current voter registration designated in the state, county or district in which the office is sought*, as compiled by the office of the secretary of state No such person shall be required to obtain more than 5,000 votes.⁵

Determining the number of write-in votes required for a person's name to appear on the general election ballot requires interpretation of the phrase "equal in number to not less than 5% of the total of the current voter registration designated in the state, county or district in which the office is sought." In doing so, we apply the rules the rules of statutory interpretation used by our Supreme Court:

The most fundamental rule is that the intent of the legislature governs if that intent can be ascertained. An appellate court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. When a statute is plain and unambiguous, an appellate court does not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it. Where there is no ambiguity, the court need not resort to statutory construction. Only if the statute's language or text is unclear or ambiguous does the court

² K.S.A. 2019 Supp. 25-205(a).

³ K.S.A. 2019 Supp. 25-213(b). "No blank line shall be printed following any office where there are nomination petitions or declarations on file for the office except following the offices of precinct committeeman and precinct committeewoman." *Id.*

⁴ A person may be elected as precinct committeeman or precinct committeewoman by receiving at least five write-in votes, while a person may be nominated for township office by receiving three or more write-in votes. K.S.A. 2019 Supp. 25-213(d).

⁵ Emphasis added.

use canons of construction or legislative history or other background considerations to construe the legislature's intent.⁶

The statutory language is clear. The basis for determining the number of write-in votes required for a person's name to appear on the general election ballot is the total of the current voter registration designated in the state, county or district in which the office is sought. The provision does not include any references to a political party. "When, as here, a statute is plain and unambiguous, th[e] court does not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it."⁷ If the Legislature prefers the number be based on party registration, it may enact such language.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Richard D. Smith

Richard D. Smith
Assistant Attorney General

DS:AA:RDS:sb

⁶ *City of Dodge City v. Webb*, 305 Kan. 351, 356 (2016).

⁷ *In Interest of T.S.*, 308 Kan. 306, 310 (2018).