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ATTORNEY GENERAL OPINION NO. 2024-6

Honorable Jeff Pittman  
Kansas Senate, District 5  
1008 S. Broadway  
Leavenworth, Kansas 66048

Re: Elections; Independent and Other Nominations Certificates;  
Acceptance of Multiple Nominations Prohibited; Acceptance of One  
Nomination

Synopsis: According to K.S.A. 25-306(a) no person is eligible to accept the nomination of more than one party for the same office. Moreover, according to K.S.A. 25-306e, if a person is nominated by more than one party, the person must designate which party nomination the person accepts.

Dear Senator Pittman:

As a member of the Kansas Senate, you recently asked about the legality of a candidate being nominated by more than one political party for the same office.

This practice, often referred to as “fusion voting” or a “fusion candidacy,” was tolerated in Kansas’ early years, but has been illegal both here and in most other states for more than a century.<sup>1</sup> A handful of states—Connecticut,<sup>2</sup> New York,<sup>3</sup> Oregon,<sup>4</sup> and Vermont<sup>5</sup>—still allow candidates to appear on a general-election

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<sup>1</sup> See R. Alton Lee, *Anti-Fusion Laws in Populist Kansas*, Heritage of the Great Plains (Winter 2014); James Gray Pope, *Fusion, Timmons v. Twin Cities Area New Party, and the Future of Third Parties in the United States*, 50 Rutgers L. Rev. 473, 484 (1998).

<sup>2</sup> Conn. Gen. Stat. §§ 9-242, 9-453(t).

<sup>3</sup> N.Y. Elec. Law §§ 6-120, 6-146, 9-112(4).

<sup>4</sup> Or. Rev. Stat. § 254.135.

<sup>5</sup> Vt. Stat. Ann. § 2474.

ballot as the nominee of more than one party, but it is a decidedly minority position.<sup>6</sup>

Kansas first prohibited fusion candidacies in 1901,<sup>7</sup> and still prohibits them today.<sup>8</sup> K.S.A. 25-306(a) specifically states that “[n]o person shall be eligible to accept more than one nomination for the same office.” Kansas law also appears to prohibit any person from being eligible to run as either an independent or a party nominee if the person has already filed either a declaration of intention to become a candidate for the same office or a nomination petition for the same office under the banner of another party.<sup>9</sup> A person also may not file a declaration of intention to become a candidate for office or a nomination for office if the person has accepted a nomination for the same office from another party.<sup>10</sup> If a person is somehow still nominated by more than one party for the same office, that person must file, within seven days, a sworn statement in the office where the nomination papers are required to be filed designating which nomination the person wants to accept.<sup>11</sup> If the candidate fails to make such a designation, the relevant election officer makes the selection for the candidate.<sup>12</sup>

For example, any candidate seeking and receiving the Republican Party nomination for the state senate could not also accept the nomination of a third party, such as the No Labels Party. If such a candidate were nominated by both parties, that candidate would have seven days to declare which party nomination the candidate accepts. Under no circumstances does Kansas law allow any person to appear on a general-election ballot as the nominee of more than one party.

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<sup>6</sup> Sixteen states expressly prohibit fusion candidacies in at least some elections. Del. Code Ann. tit. 15, § 4108; Ga. Code Ann. § 21-2-137; Ill. Comp. Stat. Ch. 10, § 5/7-12(9); Ind. Code § 3-10-1-15; K.S.A. 25-213(c); Ky. Rev. Stat. Ann. § 118.335; La. Rev. Stat. Ann. § 1280.25; Minn. Stat. § 204B.06; Mo. Rev. Stat. § 115.351; Neb. Rev. Stat. § 32-612(2); 25 Pa. Cons. Stat. Ann. § 2870(f); S.C. Code Ann. § 7-11-10(C); Tenn. Code Ann. § 2-5-101(f)(1); Tex. Elec. Code Ann. § 162.015; Wis. Stat. Ann. § 8.15(7). Four states allow a candidate to accept only one nomination. *See* Iowa Code § 49.39; Mich. Comp. Laws § 168.692; Mont. Code Ann. § 13-10-303; N.D. Cent. Code § 16.1-12-06. Twenty states and the District of Columbia effectively prohibit fusion tickets by requiring that a candidate be registered in the party from which he seeks nomination. *See* Ala. Code §§ 17-16-21, 17-16-14; Alaska Stat. § 15.25.030(14); Ariz. Rev. Stat. Ann. § 16-311(A); Cal. Elec. Code § 8002.5(a); Colo. Rev. Stat. § 1-4-601(2); D.C. Code Ann. § 1-1001.08; Fla. Stat. § 99.021(1)(b); Haw. Rev. Stat. § 12-3(a)(7); Me. Rev. Stat. tit. 21-A, § 334; Md. Elec. Law § 5-203; Mass. Gen. L. ch. 53, § 48; Nev. Rev. Stat. § 293.177; N.H. Rev. Stat. Ann. § 655:14; N.M. Stat. Ann. §§ 1-8-2, 1-8-3, 1-8-18; N.C. Gen. Stat. § 163-106; Ohio Rev. Code Ann. § 3513.07; Okla. Stat. tit. 26, § 5-105; R.I. Gen. Laws § 17-14-1; W. Va. Code § 3-5-7; Wyo. Stat. § 22-5-204.

<sup>7</sup> 1901 Kan. Sess. Laws., ch. 177 § 5.

<sup>8</sup> We decline to opine on the constitutionality of this restriction because it is the subject of ongoing litigation. *See United Kan., Inc. v. Schwab*, No. RN-2024-CV-000184 (Reno Cty. Dist. Ct.); *United Kan., Inc. v. Schwab*, No. SA-2024-CV-152 (Saline Cty. Dist. Ct.).

<sup>9</sup> K.S.A. 25-306(b).

<sup>10</sup> K.S.A. 25-306(c).

<sup>11</sup> K.S.A. 25-306e.

<sup>12</sup> *Id.*

Sincerely,

/s/ Kris W. Kobach

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/a/ Anthony J. Powell

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Solicitor General