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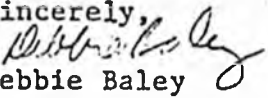
4/21/82

Dear Representative Martin:

I discussed your question with Patty Ann Polley in the Division of Elections after our meeting this morning. She advised me that the division cannot undertake investigations into the validity of candidates' declarations of candidacy. The Attorney General has issued an opinion on this very question, as well; I have attached a copy for your reference.

I hope this answers your question.

Sincerely,


Debbie Baley
Lt. Governor's Office

LEUTENANT GOVERNOR

TO: Honorable Terry Miller
Lieutenant Governor

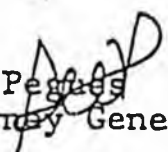
DATE: January 27 1980

FILE NO: J-66-412-88

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Constitutional resi-
dency requirements
for elective state
office

By: 
Rodger W. Pegues
Assistant Attorney General

You have asked what you, as Lieutenant Governor and the state's chief election officer, should do with respect to the application of the constitution's residency requirements to those who file for elective state office.

As a general rule, you should accept filings which are valid on their face, and it is neither your duty nor your function to question their validity.

Under the Alaska Constitution, one who files for elective public office must have been a resident of the State (and, for legislators, of the election district) for a prescribed period. */ A candidate's eligibility for filing is determined "immediately preceding his filing for office." Alaska Const., art. II, § 2, art. III, § 2. The requisite information is entered on the declaration of candidacy which is filed by the candidate. AS 15.25.030(8).

The Election Code makes no provision for the election officials to reject an application which is valid on its face and timely filed. Under AS 15.25.040, an untimely filed declaration of candidacy clearly must be rejected. But there is no similar provision for rejecting a declaration which substantially complies with the prescribed requirements for filing for office. With respect to residency, those requirements are that, in substance, the candidate states that he meets "the specific residency requirements of the office for which he is a candidate." AS 15.25.030(8). Given substantial compliance by the candidate, his name must

*/ For the legislature, three years in the State and one in the district is required. Alaska Const., art. II, § 2. For governor and lieutenant governor, seven years in the State is required. Alaska Const., art. III, §§ 2, 7.

Honorable Terry Miller
January 22, 1980
Page #2

be placed on the ballot. AS 15.25.060.

For the most part, the Alaska Election Code, like many others, depends upon the adversarial nature of the election process for enforcement. The law reasonably assumes that a candidate's opponents will be the first to raise complaints against any false or fraudulent filing. Residence (domicile) is an elusive legal concept. Proof of residence consists of both objective facts and subjective feelings. A determination requires a full blown hearing and an independent, nonpartisan decision maker. The Election Code quite wisely does not provide for the election officials to make such determinations.

Of course, if a declared or would-be candidate states to the election officials that in his own mind he does not believe he is a resident of the state or of the election district or that he believes that he no longer meets the constitution's residency requirements, then the officials -- on the basis of that admission -- may reject a declaration of candidacy from that person unless it is preceded or accompanied by a withdrawal or repudiation of the admission of disqualification. While election officials have no duty to question or determine residency, they are not compelled to ignore admissions of disqualification. However, whether one is qualified or not is a legal question and an admission of disqualification could be dead wrong. Therefore, the election officials must honor any subsequent withdrawal or repudiation of such an admission. And, indeed, if they are convinced at the outset that a candidate's admission of disqualification is in error, they can and should disregard it and accept a timely and properly filed declaration of candidacy from the candidate.

RWP/pjg

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 29 Date on Bill: 1/17/83
 Title: relating to the verification of residency of candidates for certain
 Sponsor: Martin, Flood & Lindhauer public offices
 Requestor: State Affairs Committee (HOUSE) 1/14/83 1:45 pm Rm.102

1. Estimated fiscal impacts on: Division of Elections staff

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87
Capital							
Operating					-4-		-3-
Total							

b. Revenues:

Revenue							

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: Regulations must be written and adopted to require coordination between Div. of Elections and local taxing authorities to confirm length of residency. (\$1,000 in FY 85)
 Staff time must be allocated to verify residency of 120-150 state office candidates every 2 years. This should take the month of July for one person. (\$3,000 every 2 years)

4. Disclaimer: This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: T P Thoma Phone: 4611
 Division: Elections Date: _____
 Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:
 Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor

COMMITTEE REPORT

HOUSE

3/16

(7)
1/17/83

FURTHER: JUDICIARY
FINANCE

Date: 3/14/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 29

Relating to the verification of residency of candidates for certain public offices.

under consideration and reports it back as follows:

- do pass [] do not pass
- [] do pass with attached amendments(s)
- [] replace with CS for _____ [] same title [] new title
- and recommends _____
- [] AND attaches a "Letter of Intent" New Fiscal Note *Sept 25*
- [] reports it back without recommendation Zero Fiscal Note Attached
- [] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Walt Furnace
John J. Conroy
Walt Furnace
Ronald J. Furr

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Rep. Walt Furnace
CHAIRMAN

AMENDED TITLE:

AN ACT RELATING TO THE VERIFICATION OF RESIDENCY OF CANDIDATES FOR CERTAIN PUBLIC OFFICES

PRIME SPONSOR: MARTIN.

CO-SPONSORS: FLOOD, LINDAUER.

CURRENT STATUS: 3/16/83 IN (H) FINANCE

REFERRAL: JUDICIARY

HB 29	HOUSE	ACTION
DATE	SEQ	PAGE

LEGISLATIVE ACTION

01/17/83	01	0024
01/18/83	02	0049
03/16/83	03	0501
03/16/83	04	0501

 FIRST READING -- COMMITTEE REPORTS
 FIN. COMM REFERRAL ADDED BY UNAN CONSENT
 S.A. -- DP05
 S.A. F/NOTE HSE SUPPL #25
 FINANCE
 JUDICIARY
 RULES

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