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RCW 55
✓
April 26, 1972

Peter M. Damborg, Deputy

Secretary of State

Craig H. Nelson, Assistant

Attorney General

Validity of the Signature of Ronald Webber of Waterville on the Democratic Primary Nomination Petition of P. Eric Berg.

You recently referred to the Attorney General, for his review and comments, the eight (8) page answer of P. Eric Berg to the challenge which was made concerning the signature of Ronald Webber which appeared on the Democratic Primary Nomination Petition filed by Mr. Berg as a candidate for State Representative in Waterville.

The pertinent facts, as presented by Mr. Berg in his answer, are as follows:

Ronald Webber, a registered voter of Waterville, submitted a Democratic enrollment application to the Waterville City Clerk at some time prior to March 22, 1972, pursuant to the provisions of 21 M.R.S.A. § 71. On March 22, 1972, Mr. Webber's name did not appear on the enrollment list at the Waterville Democratic caucus; therefore, he filed a second Democratic enrollment application at the caucus. The reason Mr. Webber's name did not appear on the enrollment list at the caucus was that his first application which he had filed with the City Clerk had not been acted upon by the Waterville Board of Registration pursuant to 21 M.R.S.A. § 71(2). At some time after the Democratic caucus on March 22, 1972, Mr. Webber signed the Democratic Primary Petition of P. Eric Berg; however, on April 7, 1972 the Secretary of State was advised by the Chairman of the Waterville Board of Registration that Ronald Webber, as well as several other persons whose signatures appeared on the Primary Petition of Mr. Berg, was a registered voter but he was not yet enrolled in a political party.

The legal question that has been submitted in connection with the preceding facts is as follows: When does a registered voter, who submits an enrollment application to a City Clerk pursuant to 21 M.R.S.A. § 71 and is otherwise qualified to vote, become eligible to sign a primary petition for a candidate of the party designated on his enrollment application?

The provisions of Section 445(2) of Title 21 indicate that, in order to be eligible to sign a primary petition, a person must be enrolled in the party named in the petition.

Instead of having a Registrar of Voters, Waterville, being a city which has a population of over 5,000, has a Board of Registration consisting of three (3) members, as provided by section 43 of Title 21. It should also be noted that subsection 33 of section 1 of Title 21 defines "Registrar" to mean "the registrar or the board of registration of voters of a municipality", and subsection 4 of section 43 specifically provides that the provisions of the Maine Election Law pertaining to the Registrar apply equally to a board of registration and that "a board of registration may only act by unanimous or majority action." (Emphasis supplied.)

Furthermore, section 71 of Title 21 provides in pertinent part that:

"In a city or a town which has a board of registration, the clerk shall accept applications for registration and enrollment when the board is not in session."

"2. Final action by board. In any case, final action for acceptance of a registration or enrollment must be taken by the Board."
(Emphasis supplied.)

When the provisions of the Maine Election Law, which are cited and quoted above, are read together, they require final affirmative action upon an application filed by a person with the City Clerk in the form of a vote of the Board of Registration as a prerequisite to that person being enrolled in the political party named on the application. This construction is required because, under sections 43(4) and 71(2) of Title 21, the actions concerning voter registration and enrollment, whether ministerial or otherwise, which may be carried out personally by a single Registrar in smaller communities may only be carried out in larger communities, which have 3-member Boards of Registration, by a unanimous or majority vote of the Board members. In view of the fact that the Waterville Board of Registration had not yet acted affirmatively upon his enrollment application, it would appear that Mr. Webber was not legally enrolled, under the provisions of 21 M.R.S.A. § 71, in the Democratic party at the time he signed the Democratic Primary Petition in question.

In his answer, Mr. Berg has also reasoned that, even if Mr. Webber had not been legally enrolled in connection with his first application which he filed with the Waterville City Clerk, he had become effectively enrolled in the Democratic party when he filed a second enrollment application on March 22, 1972 at the Waterville

Democratic caucus. This alleged enrollment in connection with the filing of Mr. Webber's second application at the Waterville Democratic caucus is said to have taken place pursuant to the provisions of section 364 of Title 21; however, it would appear that this section merely allows a person who has been challenged at a municipal caucus to vote at that caucus after he has taken oath to the fact that, "I am a registered and enrolled voter in this district. . . ." (Emphasis supplied.) It can be seen from the words of the oath itself that in order for a person to be able to take the oath provided for in section 364, he must already be a registered and enrolled voter. It, therefore, seems clear that the oath and procedures found in section 364 do not provide an alternative means of enrolling in a political party at the time and place of that party's caucus.

Finally, in connection with the fact that the Waterville Board of Registration apparently did not meet to act upon Mr. Webber's enrollment application in time to make him eligible to sign Mr. Berg's Democratic Primary Petition, although section 174(1) requires each Registrar (and Board of Registration) to "keep the records current at all times by adding new enrollments. . . ." there appears to be no statutory provision and no case law which indicates what is meant by the word "current." (Emphasis supplied.) Furthermore, there is no specific statutory requirement concerning how often a Board of Registration must meet to act on enrollment applications and there is no statutory provision or rule of law which would operate to automatically finalize an enrollment application in the event that the Board of Registration does not meet to act on it within a prescribed period of time.

In conclusion, under the facts presented and for the various reasons set forth in the foregoing memorandum, it would appear that Ronald Webber was not legally enrolled in the Democratic party at the time he signed the Democratic Primary Petition of P. Eric Berg, and, therefore, under the provisions of section 445(2), his signature is void.

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