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Elections Vacancies: Presidential Electors
21 MRSA 401
21 MRSA 1533

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August 10, 1976

Harold C. Pachios, Chairman
Maine Democratic State Committee
62 State Street
Augusta, Maine 04330

Dear Harold:

This responds to your letter of May 11, 1976, in which you made certain inquiries relating to the status of the First District Elector in light of certain actions at the Democratic State Convention. Initially, I would note that this office generally does not respond to requests for opinions from other than public agencies or officials. We believe, however, that response in this case is appropriate, as in this instance the Democratic State Convention was acting in a quasi-public capacity choosing candidates for election. This question relates to placement of certain such candidates on the ballot.

FACTS:

Your letter sets out certain facts which are restated herein:

The Democratic State Convention met to nominate, among other candidates, four persons to run as Presidential Electors. There were candidates to represent the Second Congressional District and the two at-large positions. There was no candidate listed on the convention ballot for Presidential Elector from the First Congressional District.

Some county caucus chairmen permitted write-in votes for First District Electors, other county caucuses were advised that write-in votes were not permitted for any person who had not

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submitted a valid nominating petition. As a result of this activity, no person was certified as the nominee of the Convention for the First Congressional District Presidential Elector.

We assume that all of these actions were done in good faith so that there is no question of any attempt to circumvent the convention process and substitute the state committee's choice for the convention's.

QUESTIONS:

You pose two questions:

1. In view of the facts set forth above, would it be proper to consider write-in votes which were permitted in some but not all of the county caucuses and award the nomination to that person receiving the highest number of write-in votes?

Authorization to nominate Presidential Electors through State Conventions is provided at 21 M.R.S.A. § 401-2-C. The general rules of nomination, including such matters as the basis of representation by which nominees are selected, is, however, left to the State Committee of the appropriate party. 21 M.R.S.A. § 401-1. Presumably, therefore, the State party has developed rules for qualification and election of candidates for Presidential Elector or otherwise. In addition, the national parties have developed certain rules to guide State party conventions. These rules would govern election practices at conventions. Interpretation of these rules would be appropriate matters for the State party and the convention and not for our office. Therefore, we are not able to answer your initial question.

We would, however, make the following observations: first, it is a general principle of election practices that all electors qualified to vote in a certain election (here the party convention) shall have equal opportunity to exercise their franchise. Such did not occur in this instance as some caucuses were permitted write-in votes and others were not. Additionally, we question whether it would be possible, at this date and after closing of the convention, for party officials to approve a candidate as being chosen by convention without the formal processes of the convention, including challenges and appeals. Therefore, we believe that the present status of the First Congressional District

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Presidential Elector is that either the convention has failed to nominate a candidate, or such candidates as there were failed to properly qualify.

2. In the event that your answer to the first question is negative, are the provisions of 21 M.R.S.A. § 1533 applicable; that is, does the Governor by proclamation declare a vacancy in the manner set forth in § 1473 and order the Democratic State Committee to fill such vacancy?

Section 1533 does not apply to the above-described factual situation. Section 1533 addresses the matter of "vacancy in the office of Presidential elector." At the present time there is no such vacancy as there is no such office, the Presidential election having not yet occurred. Section 1533 is intended to deal with the situation where, after a Presidential elector is chosen, the office of Presidential elector becomes vacant before the time when, pursuant to 21 M.R.S.A. § 1183, the Presidential electors meet in convention.

As indicated above, the present situation involves a matter where a party has not nominated a candidate through its regular process or where candidates for such nomination by the party failed to qualify. The manner of filling vacancies so created is prescribed by the provisions of 21 M.R.S.A. §§ 1441 through 1475. Under these provisions, it is clear that the State Committee has jurisdiction over the choice of candidates for a nominee to fill a vacancy of Presidential elector. 21 M.R.S.A. § 1443-4. The manner of nominating candidates is then specified in § 1474 which provides:

" If a person nominated for an office other than United States Senator, Representative to Congress or Governor at a regular primary election dies, withdraws or becomes disqualified before the general election, the Governor shall issue a Proclamation as provided in section 1473, and the procedure outlined in section 1442 must be followed."

This provision speaks in terms of primary elections. However, the vacancy provisions were clearly intended to apply to Presidential electors, 21 M.R.S.A. § 1443-4, and these are selected by convention. 21 M.R.S.A. § 401-2-C. To have the vacancy provisions apply to candidates for Presidential electors,

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but to exclude such candidates from the specific provisions for filling vacancies would create an absurd result which will not be presumed in statutory construction if a reasonable alternative construction is available. Here that alternative construction would be to construe the terms "primary election" in section 1474 as general and directive in scope in a section which is intended to apply to all candidacies other than that for United States Senator or Representative or Governor. Specifically, to nominate a candidate for First Congressional District Presidential elector, the following procedure should be provided:

1. The State Committee should officially notify the Governor and the Secretary of State that because of failure to nominate a candidate or failure of a candidate to qualify for election, a vacancy exists and that there is no candidate of the Democratic Party for First Congressional District Presidential elector.

2. After this official notification is received, the Governor should issue a proclamation declaring the vacancy, order the Democratic State Committee to fill the vacancy (21 M.R.S.A. § 1443-4) and specify a time and place for the Democratic State Committee to meet to fill that vacancy - all of these actions of the Governor being mandated by 21 M.R.S.A. § 1473.

3. The Democratic State Committee should meet as specified and follow the procedures for choosing a candidate set by 21 M.R.S.A. § 1442.

4. Once the candidate is selected, a certificate designating the candidate, the candidate's residence, the title of the office sought, the political party, and the method of choosing the candidate should be delivered to the Secretary of State. The certificate must be signed by the Chairman of the Democratic State Committee and attested by the party secretary. 21 M.R.S.A. § 1442-2.

5. The candidate must file a written acceptance with the Secretary of State. 21 M.R.S.A. § 1442-3.

The Secretary of State must then make the appropriate change in the ballot. We presume that in this instance ballots have not yet been prepared so that the Secretary of State would make the appropriate notation in his files as to the name of the candidate to be placed on the ballot when the ballots are prepared.

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We hope this information is helpful.

Sincerely,



JOSEPH E. BRENNAN
Attorney General

JEB:we

cc: Honorable James B. Longley
Honorable Markham L. Gartley