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Elections (Candidates Names)
21 MRSA 702-2-I

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 10, 1976

Mr. Markham L. Gartley
Secretary of State
State House
Augusta, Maine 04333

Re: Review of Opinion on Proper Names for Presidential Candidates

Dear Mr. Gartley:

This responds to your request that we review the opinion of August 20, 1976, relating to proper names for Presidential candidates, in light of materials subsequently submitted by a representative of the 1976 Democratic Presidential Campaign Committee, Inc.

FACTS:

The Secretary of State has received from the Democratic National Committee a certificate of the names of the candidates for the President and Vice-President. The certificate shows the candidate's name for President as "Jimmy Carter." Initial inquiries by this office in connection with preparation of the opinion of August 20, 1976, which inquiries were directed to the State Democratic Party, indicated that the legal name of the Democratic Presidential candidate is James Earl Carter or James E. Carter. Materials provided subsequent to issuance of the opinion of August 20, 1976, indicate the following:

1. The Democratic Presidential candidate had, while Governor of Georgia, approved many documents under the name "Jimmy Carter."
2. The Democratic Presidential candidate appeared on the 1970 Georgia general election ballot as "Jimmy Carter."
3. Documents presented to the office indicate that all business with the Federal Election Commission relating to the current Presidential campaign is being conducted under the name "Jimmy Carter."

4. The Attorney General of Wisconsin had approved use of the name "Jimmy Carter" on the Wisconsin Democratic Primary Ballot.

5. In filing his notice of candidacy for Governor of Georgia, Mr. Carter had signed the notice of candidacy "James Earl Carter, Jr." which notice included an oath which read as follows: "I the undersigned being first duly sworn on oath, do depose and say: that my name is James Earl Carter, Jr." That oath was dated September 23, 1970.

No materials have been received which indicate that the Democratic Presidential candidate has in any way officially changed his name from that which he swore to in his notice of candidacy in the State of Georgia.

In addition to the factual materials, our office was also furnished a copy of a memorandum of law to the Secretary of State which urges that Jimmy Carter is the proper name to be on the ballot, citing several cases in support thereof.

QUESTION AND ANSWER:

Upon review of the factual materials presented and a review of relevant cases, we see no basis to change the opinion of August 20, 1976, which opinion held that the law of the State of Maine requires that a candidate appear on the ballot with surname first, followed by first name, in this case "James," and a middle name or initial if one exists, which it does in this case.

DISCUSSION:

Maine law relating to general election ballots provides as follows:

"The ballot must contain the name, without any title, and municipality of residence of each nominee, arranged under the proper office designation alphabetically with the surname first." 21 M.R.S.A. § 702-1.

The law additionally provides:

"The name of each nominee shall appear on the ballot as follows: Surname first, in block capital letters, followed by the first name and middle name or initial; or surname first, in block capital letters, followed by the first name or first initial and the middle name."
21 M.R.S.A. § 702-2-I.

Thus, Maine law is quite specific that the candidate's first name must appear and if the candidate has a middle name, that middle name or the middle initial must appear.

The question then develops as to what is Mr. Carter's first name. A review of the precedent indicates that people have been allowed to adopt names different from given names after many years of use. Thus, in both Smith v. United States Casualty Company, 90 N.E. 947 (N.Y., 1910) and Laflin and Rand Powder Co. v. Steytler, 23 A. 215 (Pa., 1892), names different than the given names were allowed to be used in business transactions in cases where the name in question, though not the given name, was a name used over many years, (in Smith, during a persons' entire adult life.) These cases, often cited in later cases, form the basis for the general doctrine of law that a name continually used by a person over many years becomes that person's name by adoption. However, in this case, that doctrine must be interpreted in light of the facts which indicate that in the candidate's last campaign for major office prior to the Presidential campaign, he swore under oath that his name was "James Earl Carter, Jr." Not knowing whether, or how many times, the candidate has used the name "James Earl Carter, Jr." since the affirmation of that name in 1970, it does not appear that the candidate has totally and exclusively used the name "Jimmy" over a period of years sufficient to give effect to the common law doctrine.

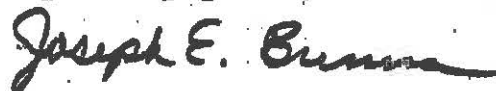
Additionally, there are certain statutes which apply here, specifically, the above-cited provisions of the election laws which specify the names required. Unfortunately, precedent interpreting such provisions of the election laws is not on point. Thus, most "first name" precedent involves cases decided well after the election or after dates for petition filings where courts, after the fact, have applied the well-accepted doctrine that they will look primarily to the intent of voters, or petitioners, and try to give it effect in absence of fraud. Opinion of the Justices, 152 Me. 219 (1956). However, even in these instances statutes requiring first names have been interpreted in some, but not in all cases, to mean actual first names and not short names or nicknames, even though the interpretation had the effect of voiding names on a petition (cf. Dupré v. St. Jacques, 153 A. 240 (R.I., 1931) and Hartigan v. Thornton, 175 A. 250 (R.I., 1934)).

This case, however, is not a matter where an after-the-fact review of petition signatures, ballots or write-in votes is at issue. Instead, we face the situation where the question of compliance with the law before the fact is presented. In such instances the statute must be interpreted more strictly. The statute calls for a certain

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specific manner of designating names. It is not clear that the candidate's first name is other than "James" either by operation of the common law doctrine based on many years of use or by operation of any name change statute in Georgia or elsewhere. In fact, a relatively recent affirmation of the name "James" has been provided. Further, we have the accepted doctrine of the Maine courts in interpreting the law relating to names that: "There are situations in which the public interest entitles the state to demand that a person identify himself by his true, legal name in connection with his performance of certain activities." In Re Reben, 342 A.2d 688, 694 (Me., 1975). Here, the public interest intended to be served by 21 M.R.S.A. § 702-2-I is that the candidate's actual name appear on the ballot and that candidates not gain unfair advantage by use of nicknames or short names which might lead voters to confuse them with other persons or otherwise think that the person they are voting for is someone different than is on the ballot.* It is arguable that a voter would not be confused regardless of whether Mr. Carter's name appeared on the ballot as "Jimmy Carter" or "James E. Carter, Jr." However, not every candidate for public office acquires the public identity of a candidate for President, and the same rules must be used for all candidates for all offices. In furtherance of that law, it is our understanding that your office has advised candidates for State office, on occasion, that they may not use nicknames or abbreviated versions of names. The same rules must apply to all candidates whether one is running for the State House of Representatives or President. In Maine the rule is that a candidate appear on the ballot using a surname first, an actual first name or initial, then a middle name or initial if there is one. Accordingly, we reaffirm the opinion of August 20, 1976.

Very truly yours,



JOSEPH E. BRENNAN
Attorney General

JEB:mfe

* In 1976, 21 M.R.S.A. § 702-2-I was amended by P.L. 1975, c. 761, § 30. The old law requiring designation by "given name" was changed to require designation by "first name." In this case, however, the first name, "James" does not appear to have changed by operation of law or otherwise.