

# MAINE STATE LEGISLATURE

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*File Trans Independent Candidates Declaration,  
Independent Candidates*

*21 M.R.S.A. §§ 493*

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March 7, 1978

Honorable Minette H. Cummings  
Senate Chamber  
State House  
Augusta, Maine

Dear Senator Cummings:

We are responding to your oral request for an opinion of this office on a question concerning the procedure for nomination by petition for election to any federal, state or county office. Your question is whether an individual who seeks nomination as a candidate for such office as an unenrolled ("independent") candidate, i.e. nomination by petition rather than by party primary election, may file declarations of candidacy for more than one office and subsequently decide which of these offices the individual will actually seek.

Your question must be reviewed in light of the provisions of 21 M.R.S.A. Chapters 15 and 17 which concern nomination by primary election and nomination by petition, respectively. A candidate for nomination by primary election is required to file a primary petition and a consent form by or before 5:00 p.m. on April 1st of the election year in which it is to be used. 21 M.R.S.A. §§ 444 and 445, (8). If the primary petition is legally sufficient, the individual becomes a candidate for nomination and the nominee is chosen by primary election on the second Tuesday of June. By comparison, an individual seeking nomination for the office by petition under the provisions of 21 M.R.S.A. Chapter 17 must file a signed declaration of candidacy by or before 5:00 p.m. on April 1st of the election year and must subsequently file the nomination petition before 5:00 p.m. on the date of the primary election. 21 M.R.S.A. §§ 493 and 494, (9). Your question is whether, in the latter case, a person seeking nomination by petition may file more than one declaration of candidacy under § 493 by April 1st and later file a nomination petition for only one of these offices by the second Tuesday of June. The answer to your question is negative, for the reasons stated below.

The answer to your question requires examination of 21 M.R.S.A. § 491, which reads as follows:

"§ 491. Nomination authorized

"The nomination of a candidate, other than by a party, for any federal, state or county office shall be made by nomination petition, as provided in this chapter. A person may file as a candidate for any federal, state or county office either by primary election or nomination petition, but not by both. A person may not file, whether by primary election or nomination petition, as a candidate for more than one federal, state or county office in an election." (Emphasis provided)

The question is whether the single office limitation of the sentence underlined in § 491 above acts upon a person seeking nomination by petition at the time of the declaration of candidacy or at the time of filing the nomination petition. This sentence was added to § 491 by P.L. 1975, c. 770, § 88 (S.P. 799, L.D. 2345, as amended by Senate Amendment "H," S-558). The Statement of Fact for Senate Amendment "H" reads:

"This amendment makes clear what is implied in the law now, that a person may file for only one federal, state or county office at any election."

During debate on this amendment, the sponsor of the amendment stated:

"This amendment merely states what is now the interpretation of the law that is followed by the Secretary of State, something that isn't specific and clear in the law, and that is that a person may not file for more than one office. . . . For example, you couldn't file for sheriff and for the Legislature and then withdraw one of those petitions before the ballots were printed."

Senate Amendment "H" also added Section 87 to L.D. 2345, which section added identical language of limitation to the provisions on nomination by primary election (21 M.R.S.A. § 441). Therefore, it is clear that the Statement of Fact for the amendment and the Floor comments apply equally to the procedures for nomination by primary or by petition, and the sections must be construed together to give harmonious effect to the intent of the legislation.

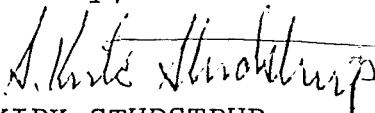
It is our opinion that the word "file" as used in both sections 441 and 491 was intended by the Legislature to mean the initial indication of an individual seeking election that he wishes to be considered for nomination as a candidate. If the nomination is by primary election, the first indication would be filing of a primary petition and consent. In the case of nomination by petition, this would be by filing of the declaration of candidacy. Both of these filings are required to take place by or before 5:00 p.m. on April 1st. This opinion is supported by the Legislative History previously noted, which indicates the intent to treat all individuals seeking candidacy equally. A further example of this intent is found in P.L. 1977, c. 425, which repealed and replaced all of 21 M.R.S.A. chapters 15 and 17 and which gave both enrolled and unenrolled candidates equal accessibility to public office by reducing the number of signatures required of an unenrolled candidate to assert his candidacy.

Furthermore, in the case of nomination by primary election, the filing which takes place on April 1st is the only filing which is required by statute, and, therefore, the limiting provision of § 441 would have no application if it did not apply to this filing. Finally, the opinion is supported by the consistent reference to the office sought in the singular throughout the statutory provisions for nomination.

In light of the foregoing, it is our opinion that an individual seeking nomination by petition may file a declaration of candidacy for only one office.

Please continue to call on us whenever we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe