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May 2, 1979

Honorable Richard H. Pierce
Assistant Majority Leader
Maine State Senate
State House
Augusta, Maine 04333

Dear Senator Pierce:

This will respond to your written opinion request of April 5, 1979, in which you raised several questions.

You have inquired whether a candidate for municipal office must be a "qualified voter" where the municipal charter makes no reference to such a qualification. The answer to your question depends upon which municipal office is sought. I am enclosing copies of 30 M.R.S.A. §§2060 and 5351 (1978) which enumerate some of the qualifications for certain municipal offices. As you will note, 30 M.R.S.A. §2060(3)(A) provides that "[i]n order to hold the office of selectman, a person must be a voter in the town in which he is elected."

You have also raised two questions regarding the notarization of nomination petitions under 21 M.R.S.A. §494(7)(1978 Supp.) which provides in relevant part:

> "A nomination petition shall be verified and certified as follows.
>
> A. The circulator of a nomination petition shall verify by oath or affirmation before a Notary Public, Justice of the Peace or other person authorized by law to administer oaths that all of the signatures to the petition were made in his presence and that to the best of his knowledge and belief each signature is the signature of the person whose name it purports to be and each person is a resident of the electoral district named in the petition."

You have inquired whether the candidate whose nominating petition is being circulated may take the circulator's acknowledgement in accordance with section 494(7).

Pursuant to 4 M.R.S.A. §951(1979), a notary public, "[w]hen authorized by the laws of this State or of any other state or country to do any official act,...may administer any oath necessary to the completion or validity thereof." See also Greely v. Greely, 118 Me. 491, 107 A.296(1919). Section 954 of Title 4 enumerates certain acts which a notary public cannot legally perform.[1] Additionally, all notaries are subject to the "party to the instrument" rule. This rule is thoroughly explained in 1 Am.Jur.2d, Acknowledgments §16 at 458 as follows:

> "...[T]he generally accepted view is that an officer or a person otherwise legally authorized to take acknowledgments is not qualified to act where he has a financial or beneficial interest in the proceedings or will acquire such interest under the instrument to be acknowledged."

See also 58 Am.Jur.2d Notaries Public §22 at 468; C.L.Meier, Anderson's Manual For Notaries Public §4.4 at 61 (2d ed.1940).

A candidate for elective office obviously has a direct and significant interest in the validity of a nominating petition circulated on his behalf. In view of this interest in the instrument to be acknowledged, a candidate cannot act as a notary public with respect thereto.

Finally, you have asked whether it would make any difference in the above example if the circulator is the candidate's spouse. "[M]ere relationship to a party does not disqualify a notary" from taking the acknowledgments of that party. See 58 Am.Jr.2d Notaries §22 at 468; 1 Am.Jur.2d Acknowledgments §17 at 459. The candi-

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1. 4 M.R.S.A. §954(1979) provides in pertinent part:

> "It shall be unlawful for any notary public to take the acknowledgement of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employee where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation, where such notary is individually a party to such instrument."

date would be disqualified from acting as a notary public, not because of his spousal relationship to the circulator, but because of the "party to the instrument" rule.

I hope this information is helpful to you. Please feel free to contact me again if I can be of further assistance.

Sincerely,

RICHARD S. COHEN
Attorney General

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