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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Elections – Independent Candidates
– Petitions – Ballots – Secretary of
State

The names of the independent candidates for President and Vice-President should be stated on the petition for ballot access filed with the Secretary of State under section 17-19-2 of the Code of Alabama.

Dear Secretary Worley:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May a group of independent candidates for presidential elector list themselves on a petition and, later, after they have submitted the petition, certify to the Secretary of State the names of the presidential candidate and vice-presidential candidate they are pledged to support, should they be elected to the electoral college?

FACTS AND ANALYSIS

Independent candidates for President and Vice-President must comply with section 17-19-2 of the Code of Alabama to have their names placed on the ballot in Alabama. Section 17-19-2 states as follows:

(a) When presidential electors are to be chosen, the Secretary of State of Alabama shall certify to the judges of probate of the several counties the names of all candidates for President and Vice-President who are nominated by any national convention or other like assembly of any political party or by written petition signed by at least 5,000 qualified voters of this state.

(b) The certificate of nomination by a political party convention must be signed by the presiding officer and secretary of the convention and by the chairman of the state executive or central committee of the political party making the nomination. Any nominating petition, to be valid, must contain the signatures as well as the addresses of the petitioners. Such certificates and petitions must be filed in the office of the Secretary of State no later than the 6th day of September next preceding the day fixed for the election.

(c) Each certificate of nomination and nominating petition must be accompanied by a list of the names and addresses of persons, who shall be qualified voters of this state, equal in number to the number of presidential electors to be chosen. Each person so listed shall execute the following statement which shall be attached to the certificate or petition when the same is filed with the Secretary of State: "I do hereby consent and do hereby agree to serve as elector for President and Vice-President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such elector for _____ for President and _____ for Vice-President of the United States" (inserting in said blank spaces the respective names of the persons named as nominees for said respective offices in the certificate to which this statement is attached).

The question raised is whether the petition and the accompanying statements from the presidential electors may be filed without naming the persons who will be the independent candidates for President and Vice-President, or whether the petition may be filed naming the electors as the candidates.

Section 17-19-2 requires that at least 5000 qualified voters of this State must sign a petition requesting that the persons named in the petition be placed on the ballot as independent candidates for President and Vice-President. This petition must be accompanied by the names and addresses of qualified voters in this State that are pledged to be presidential electors who support the independent candidates for President and Vice-President that are named as nominees in the petition. The petition must be filed by September 6, 2004, for the November 2004 general election. Once the petition signatures are verified, the Secretary of State certifies the names of the independent candidates to the probate judges for the printing of the ballots.

These provisions require that the petition name the persons the petitioners support for ballot access as independent candidates for President and Vice-President and that the petition be accompanied by a statement from the electors naming the independent candidates for President and Vice-President that the electors pledge to support. Thus, the names of the independent candidates may not be left blank at the time the petition is filed, nor may the petition name other persons who are not intended to be independent candidates. The purpose of a petition for an independent candidate is to support a particular candidate's access to the ballot, not a political party's access to the ballot. Thus, the candidate that voters are supporting for ballot access should be named in the petition so that the voters will know who the candidate is that they support for ballot access as an independent candidate.

This interpretation of the statute is consistent with earlier opinions in which this Office stated that the Secretary of State could provide a procedure similar to that provided for political parties that allows an independent presidential candidate to select a substitute vice-presidential candidate if the vice-presidential candidate who is named in the petition withdraws from the election. Opinions to Honorable Jim Bennett, Secretary of State, dated September 27, 1996, A.G. No. 96-00326 and to Honorable Don Siegelman, Secretary of State, dated September 24, 1984, A.G. No. 84-00465. Thus, even though the petition must name the presidential and vice-presidential candidates, the independent presidential candidate may make a substitution for the vice-presidential candidate if the person

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named in the petition withdraws after the petition is filed. The *Bennett* opinion stated that this process is consistent with the substitution process available to political parties with presidential candidates on the ballot in Alabama.


CONCLUSION

The names of the independent candidates for President and Vice-President should be stated on the petition for ballot access filed with the Secretary of State under section 17-19-2 of the Code of Alabama.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:


CAROL JEAN SMITH
Chief, Opinions Division

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