



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-026

September 23, 2016

The Honorable Jon Woods
State Senator
P. O. Box 8082
Springdale, AR 72766-8082

Dear Senator Woods:

You have requested my opinion on the following questions concerning county political party committee members and county convention delegates:

- 1) Does a delegate to the county convention automatically become a member of the county committee?
- 2) As an example, if a delegate to the county convention is appointed as a delegate per the procedure outlined in Ark. Code Ann. § 7-3-105(d), will that individual automatically become a county committee member even though they were not elected per Ark. Code Ann. § 7-3-104?
- 3) Does an affidavit of eligibility have to be notarized?
- 4) What happens if the affidavit of eligibility was not notarized, but was accepted by the party, correct paperwork filed and accepted with the county clerk, and the person is placed on the ballot by the county election commission? Is the person no longer eligible? Does it make a difference if the person was filing for county committee member or candidate for a county office?
- 5) Can a county committee, state party or other entity remove a candidate from the election ballot?

- 6) If an individual has properly filed, was accepted by the appropriate parties as described in Ark. Code Ann. § 7-3-104(2)(b), and the candidate is placed on the ballot by the county election commission, can a county committee or state party unilaterally remove that candidate from the ballot, render them ineligible, or as being elected as if they were on the ballot per Ark. Code Ann. § 7-3-104(2)(b)?
- 7) What constitutes a vacancy for a delegate, and what are the conditions under which a vacancy may be realized? Is there a procedure outlined in the statutes that governs how these vacancies are filled?

BACKGROUND

You relate the following information as background for the above questions:

Arkansas Code Annotated § 7-3-105 discusses the election of delegates to the county convention. Typically, the election of delegates and the election of county committee members are treated the same and the application and fillings are one and the same. This means normally those who are delegates will be the new county committee members. This should be true regardless of party affiliation.

Ark. Code Ann. § 7-3-105(d) allows for the filling of vacancies “existing or occurring in any of the positions of delegates after the primary elections have been held may be filled by the county committee.” The Executive Committee of the Republican Party of Arkansas recently approved procedures for how to fill these vacancies as delegates. The current county committee (current meaning the one existing now and not the one elected in the primary) will, by a majority vote, fill vacancies as delegates.

It appears, per Ark. Code Ann. § 7-3-104(4), the only proper way to fill a vacancy on a county committee is for that county committee to do so as described in Ark. Code Ann. § 7-3-104(4). Additionally, the current county committee cannot fill vacancies on a yet to be formed committee nor can there be vacancies unless the county committee is in effect.

RESPONSE

In response to Questions 1 and 2, no statute specifies that a person elected as a county convention delegate automatically becomes a member of the county committee of the political party, or that a person appointed to fill a vacancy in a delegate position automatically becomes a county committee member. But the party plainly has the right to govern its own membership and organization consistent with the statutory scheme in Ark. Code Ann. § 7-3-101 *et seq.*, and such a party rule would likely not violate the governing statutory scheme. The answers to these questions may therefore turn on party rules and procedures. I cannot opine further in this regard because the review of party directives is outside the scope of an opinion from this office.

The answer to Question 3 is likely “yes,” in my opinion. With regard to Question 4, the person’s eligibility would have to be decided by a court of competent jurisdiction, regardless of whether the person was filing for the county committee or as a candidate for county office. The answer to both Questions 5 and 6 is “no.” In response to Question 7, there is no statute defining what constitutes a vacancy in a county convention delegate position. The Election Code simply states that vacancies in a county convention delegate position “may be filled by the county committee.” It may be necessary to consult party rules for a definitive answer to this question.

Question 1: Does a delegate to the county convention automatically become a member of the county committee?

Question 2: As an example, if a delegate to the county convention is appointed as a delegate per the procedure outlined in Ark. Code Ann. § 7-3-105(d), will that individual automatically become a county committee member even though they were not elected per Ark. Code Ann. § 7-3-104?

No state statute automatically makes an elected or appointed delegate to a county convention a member of the county committee. But this is not the end of the inquiry. It is very likely that a party rule, policy, procedure, or custom may lawfully make an elected or appointed delegate to a county convention a member of the county committee.

Arkansas Code Annotated § 7-3-101 provides that subject to the provisions of the Election Code and other applicable laws, organized political parties shall:

- (1) Have the right to prescribe the qualifications of their own membership;
- (2) Prescribe the qualifications for voting in their party primaries;
- and
- (3) Establish rules and procedures for their own organization.¹

You state in your background information that “[t]ypically, the election of delegates and the election of county committee members are treated the same” and that “those who are delegates will be the new county committee members.” Because there is no state statute to this effect, I presume the party has acted pursuant to the above authority and automatically makes delegates into members of the county committee. It can lawfully do so as long as doing so is not inconsistent with the relevant laws.

Arkansas Code Annotated § 7-3-104 addresses the election or appointment of members of the county committee. It calls for the election of county committee members, but allows for the appointment of county committee members (by the county committee) in the case of vacancies.² Because the county committee may fill vacancies, a party rule, procedure, policy, or custom that lets the county committee automatically turn delegates into committee members would likely not run afoul of section § 7-3-104. This is true as long as there are vacancies on the county committee to fill.

The ultimate answer to your questions may therefore be “yes,” pursuant to party rules and procedures. I cannot opine further in this regard, however, as the review of party rules and procedures is outside the scope of an Attorney General opinion.

Question 3: Does an affidavit of eligibility have to be notarized?

Candidates for county committee member and convention delegate are required to file an “affidavit of eligibility” on or before noon of the last day of the party filing period.⁴ “Affidavit of eligibility” is defined as “an affidavit signed by a candidate

¹ Ark. Code Ann. § 7-3-101 (Repl. 2011).

² Ark. Code Ann. § 7-3-104(a)(4) (Repl. 2011).

⁴ Ark. Code Ann. §§ 7-7-203(c)(2) (Supp. 2015) and 7-7-301(a)(3) (Repl. 2011). The party filing period is a one-week period beginning at noon on the first Monday in November before the general primary. Ark. Code Ann. § 7-7-203(c)(1).

for elective office stating that the candidate is eligible to serve in the office he or she seeks.”⁵ The statute does not define “affidavit.” But it is well established that Arkansas courts construe unambiguous statutes according to the plain meaning of the words used.⁶ In this regard, an “affidavit” is commonly defined as a “written declaration made under oath before a notary public or other authorized officer....”⁷

I believe a court faced with the question would therefore likely conclude that an affidavit of eligibility must be notarized, that is, signed under oath, based on the plain meaning of “affidavit.”

Question 4: What happens if the affidavit of eligibility was not notarized, but was accepted by the party, correct paperwork filed and accepted with the county clerk, and the person is placed on the ballot by the county election commission? Is the person no longer eligible? Does it make a difference if the person was filing for county committee member or as a candidate for a county office?

I have found no authority on point regarding the effect, under these circumstances, of a candidate’s failure to sign the affidavit of eligibility under oath. The requirement of a sworn statement seems clear, both as to a county committee candidate and a candidate for county office, based on the plain meaning of “affidavit.” So the failure to satisfy the requirement could conceivably give rise to a challenge to the candidate’s eligibility for either of these positions.⁸

⁵ Ark. Code Ann. §§ 7-1-101(2) (Supp. 2015).

⁶ *E.g., May Const. Co., Inc. v. Town Creek Const. & Dev., L.L.C.*, 2011 Ark. 281, *6, 383 S.W.3d 389, 392 (“The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. When a statute is clear, it is given its plain meaning, and we will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language used.”) (internal citation omitted).

⁷ *The American Heritage Dictionary of the English Language* 28 (5th ed. 2011). See also *Black’s Law Dictionary* 68 (10th ed. 2011) (defining “affidavit” as “[a] voluntary declaration of facts written down and sworn to by a declarant, usu. before an officer authorized to administer oaths....”).

⁸ State law provides that “[n]o person’s name shall be placed upon the ballot as a candidate for any public office in this state at any election unless the person is qualified and eligible at the time of filing, or as otherwise may be provided by law.” Ark. Code Ann. § 7-5-207(b) (Supp. 2015).

But I believe it is equally clear that any such challenge could only be decided by a court of competent jurisdiction. The Arkansas Supreme Court has made it clear that when contesting an eligibility determination, a judicial remedy is the proper route: “When the eligibility of a person to appear on the ballot is controverted, it becomes a matter for the courts.”⁹

Persons wishing to challenge a certified candidate’s eligibility based on the failure to sign the affidavit of eligibility under oath would therefore have to place the issue before an Arkansas court. Having found no authority on point, I am unable to predict the outcome of such a challenge.

Question 5: Can a county committee, state party or other entity remove a candidate from the election ballot?

No. The Arkansas Supreme Court has specifically held that “the chairman and secretary of a political party do not have the judicial authority to determine that a candidate is ineligible to hold public office.”¹⁰ The Court has explained that such a determination must be made by a trial court:

At this stage of the election process, it would appear to this court that the appropriate procedure to be followed by the political party, should the party wish to remove a certified candidate’s name from the ballot pre-election, is to file a petition in circuit court for an eligibility determination and mandamus relief under the *Craighead County* procedures.¹¹

In the *Craighead County* case, the Court endorsed the procedure for pre-election attacks on a candidate’s eligibility to stand for election. The Court stated that “the board [of election commissioners] does not have the authority to declare a candidate ineligible and remove his name from the ballot when there is a dispute concerning the facts or the law.”¹² The Court concluded that only a court can

⁹ *Jacobs v. Yates*, 342 Ark. 243, 250, 27 S.W.3d 734, 738 (2000) (citing *Ivy v. Republican Party*, 318 Ark. 50, 883 S.W.2d 805 (1994)). See also *State v. Craighead County Bd. of Election Comm’rs.*, 300 Ark. 405, 779 S.W.2d 169 (1989).

¹⁰ *Jacobs*, 342 Ark. at 250, 27 S.W.3d at 738.

¹¹ *Hill v. Carter*, 357 Ark. 597, 605, 184 S.W.3d 431, 436 (2004).

¹² *Craighead County Bd. of Election Comm’rs.*, *supra* note 8, 300 Ark. at 409, 779 S.W.2d at 171.

determine the eligibility of candidates to run, and that the proper remedy for the enforcement of that right is a writ of mandamus coupled with a request for a declaratory judgment concerning the candidate's eligibility.¹³

Question 6: If an individual has properly filed, was accepted by the appropriate parties as described in Ark. Code Ann. § 7-3-104(2)(b), and the candidate is placed on the ballot by the county election commission, can a county committee or state party unilaterally remove that candidate from the ballot, render them ineligible, or as being elected as if they were on the ballot per Ark. Code Ann. § 7-3-104(2)(b)?

No. See response to Question 5 above.

Question 7: What constitutes a vacancy for a delegate, and what are the conditions under which a vacancy may be realized? Is there a procedure outlined in the state statutes that governs how these vacancies are filled?

There is no statute defining what constitutes a vacancy in a county convention delegate position.¹⁴ The Election Code defines "vacancy in election," "vacancy in nomination," and "vacancy in office,"¹⁵ But none of these definitions can be read to cover a vacancy among the delegates to the party's county convention who are selected at the party primary.

Section 7-3-105(d) (see response to Question 2 above) simply states that vacancies in a county convention delegate position "may be filled by the county committee." Any rules adopted by the party for its own membership and organization may also need to be considered in this regard.

Sincerely,


LESLIE RUTLEDGE
Attorney General

¹³ *Id.* at 412, 779 S.W.2d at 173.

¹⁴ By comparison, the county delegation selects delegates and alternates to conventions other than the county convention (*see* Ark. Code Ann. § 7-3-106(b)(1) (Repl. 2011)); and vacancies in these delegations are specifically addressed by statute. *Id.* at § 7-3-106(c).

¹⁵ Ark. Code Ann. § 7-1-101(36), (37), and (38) (Supp. 2015).