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DON STENBERG
ATTORNEY GENERAL

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DEPUTY ATTORNEYS GENERAL

#94071

NO.
STATE OF NEBRASKA
OFFICIAL
SEP 9 1994
DEPT. OF JUSTICE

DATE: September 8, 1994

SUBJECT: Authority of the Secretary of State, Under ***Neb. Rev. Stat.*** § 32-517 (1992), to Consider the Legality of Particular Candidacies for Office

REQUESTED BY: Allen J. Beermann
Nebraska Secretary of State

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

On September 7, 1994, the Eurek/Secretary of State Committee, a political committee supporting the candidacy of Allan Eurek for Secretary of State, filed an "Application for Determination of the Legality of the Candidacy of Kate Witek for the Office of Lieutenant Governor" with your office. That Application was ostensibly under authority of ***Neb. Rev. Stat.*** § 32-517 (1992), and in it, Eurek asked you to conduct a hearing and subsequently rule on the validity of Kate Witek's candidacy for Lieutenant Governor, and to order that her name not be placed on the general election ballot on the grounds that she does not meet the residency and citizenship requirements of the Nebraska Constitution for that office. You have requested our opinion as to your jurisdiction or authority to consider the Eurek Committee Application at this stage in the election process. For the reasons discussed below, we do not believe that you have jurisdiction to make a determination as to Ms. Witek's candidacy at this point, or to grant the hearing requested by Mr. Eurek's committee.

Section 32-517 provides, in pertinent part:

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Lisa L. Cabral
Laurie Smith Camp
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Mary L. Hewitt
Lauren Lee Hill
Jay C. Hinsley
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Paul N. Potadle
James H. Spears
Mark D. Starr
John R. Thompson
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

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> All certificates of nomination or nomination statements which are in apparent conformity with the provisions of sections 32-512 to 32-516 shall be deemed to be valid unless objections thereto are duly made in writing within ten days after the filing of the same. In case such objection is made, notice thereof shall forthwith be mailed to all candidates who may be affected thereby, addressed to them at their respective places of residence as given in the certificate of nomination or in the nomination affidavits of such persons on file in that office. This section shall not prevent any political party committee of the jurisdiction of the state, district, or county from instituting actions in court based upon fraud or crime resorted to in connection with the certificate of nomination or the acceptance thereof. No county committee may bring such action as to candidates for congressional or state offices or as to candidates to be elected from legislative districts composed of more than one county. A state political committee may bring an action to determine the legality of any candidate for a state or congressional office or for any district office where the district composes more than one county. Objections to the use of party name may also be made and passed upon in the same manner as objections to certificates and nomination statements. . . . .

There are several reasons why the provisions of this statute do not form the basis for jurisdiction by your office over the issues presented in the Application regarding the candidacy of Ms. Witek.

First of all, the initial portion of Section 32-517 makes it clear that persons may object to particular candidacies if those objections are made within 10 days of the filing of the nomination certificate for the candidates in question. This provision is mandatory, and must be strictly followed, or the certificate of nomination is regarded as valid. ***State ex rel. Casper v. Piper***, 50 Neb. 40, 69 N.W. 383 (1896). In the present instance, the certificate of nomination for Ms. Witek for the office of Lieutenant Governor was issued in June of 1994, and the filing of the Eurek Committee Application occurred on September 7, 1994, which is obviously long past the ten day deadline established by Section 32-517. Consequently, the objections under this portion of the statute are out of time, and the Witek nomination must be deemed to be valid. This portion of the statute does not give you jurisdiction to hear the Eurek Committee Application.

It also may be argued that you have jurisdiction to hear the Eurek Committee Application on the basis of that portion of Section 32-517 which provides that, "[a] state political committee may bring an action to determine the legality of any candidate for a state or congressional office or for any district office where the district composes more than one county." In this regard, the contention is that the Eurek/Secretary of State Committee is a political committee and therefore, it may present its application to you to have you determine the validity of the Witek candidacy. In our view, this argument is without merit for two reasons.

First, Nebraska law provides that, in interpreting a statute, courts must determine legislative intent and the meaning of the statute from an examination of the statute as a whole, in light of its objectives and purposes. ***Nuzum v. Board of Ed. of School Dist. of Arnold***, 277 Neb. 387, 417 N.W.2d 779 (1988); ***Sorensen v. Meyer***, 220 Neb. 457, 370 N.W.2d 173 (1985). As a result, the sentence in Section 32-517 cited above which deals with the rights of political committees to bring an action to determine the legality of a candidacy must be read in conjunction with the entire statute, and in particular, in conjunction with the two sentences which precede it. We believe that when these sentences are read together, it becomes evident that the "political committee" referred to is a committee of one of Nebraska's political parties rather than a committee supporting the election of a particular candidate. Therefore, while a political party might be able bring an action to test the validity of Ms. Witek's candidacy in some circumstances, Mr. Eurek's election committee cannot do so.

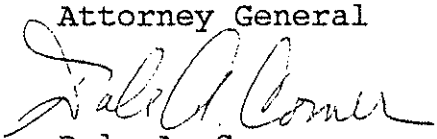
More importantly, the sentence in question allows a political committee to "bring an action" to determine the legality of a particular candidacy. Unless the context is shown to intend otherwise, "action" in Nebraska includes any proceeding in court. ***Grantham v. General Telephone Company***, 187 Neb. 647, 193 N.W.2d 449 (1972). Consequently, it seems to us that this portion of the statute contemplates a lawsuit in court to test the legality of particular candidacies. It does not give you authority or jurisdiction to hear such matters in the context of a proceeding in your office.

For the various reasons expressed above, we do not believe that you have jurisdiction or authority to consider the matters set out in the Eurek Committee Application, or to conduct a hearing in

that regard. Therefore, we recommend that you refuse to consider the Eurek/Secretary of State Committee Application.

Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

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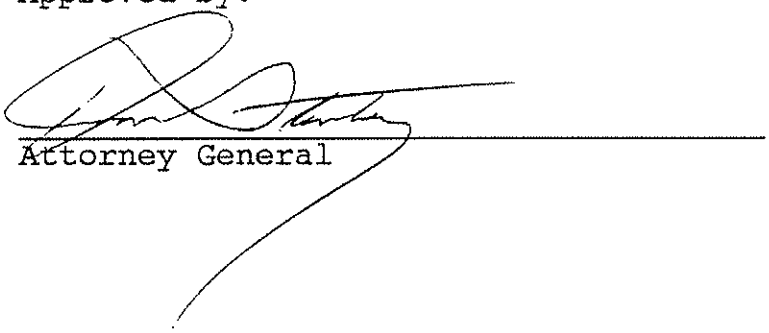
Approved by:



Attorney General