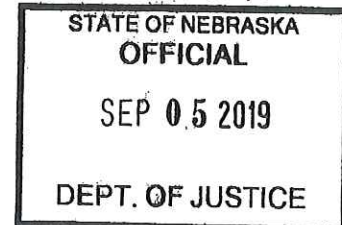


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DOUGLAS J. PETERSON
ATTORNEY GENERAL

No. 19-011



SUBJECT: Calculation of the Period Within Which Candidates for Certain Public Offices Must File Statements of Financial Interests

REQUESTED BY: Frank J. Daley, Jr., Executive Director
Nebraska Accountability and Disclosure Commission

WRITTEN BY: Douglas J. Peterson, Attorney General
Lynn A. Melson, Assistant Attorney General

INTRODUCTION

You have requested our opinion "as to how to calculate the period within which candidates for certain public offices must file Statements of Financial Interests with the Commission pursuant to § 49-1494(5) of the Nebraska Political Accountability and Disclosure Act (NPADA)." That statute provides that a candidate who fails to file a statement of financial interests with the Nebraska Accountability and Disclosure Commission ["Commission"] within five days after the deadline specified in subsection (3) or (4) of § 49-1494 shall not appear on the ballot. The issue is how to calculate the five day provision of § 49-1494(5) for the upcoming election year of 2020.

In your request letter you point out that, in 2020, March 1 falls on a Sunday, which affects the filing deadlines set out in § 49-1494(3) and (4). These deadlines, in turn, impact the calculation of the five day period set out in § 49-1494(5). You ask whether, in a year such as 2020 in which March 1 falls on a Sunday, the five day period set out in subsection (5) would then be calculated with March 2 as the first day of the statutory five day period or with March 3 as the first day of the statutory five day period.

ANALYSIS

Several Nebraska statutes have application to your question. First, Neb. Rev. Stat. § 49-1493 (Cum. Supp. 2018) requires that individuals who hold specified public offices must file a statement of financial interests disclosing such information as the officeholder's sources of income, business associations, and financial holdings. The contents of the statement of financial interests are enumerated at Neb. Rev. Stat. § 49-1496 (2010).

Neb. Rev. Stat. § 49-1494 (Cum. Supp. 2018) provides that candidates for the public offices specified in § 49-1493 must also file a statement of financial interests. Subsection 49-1494(3) provides, in part, that a candidate who files to appear on the ballot before January 1 of the election year must file supplementary statements with the Commission on or before March 1 of the election year. Subsection 49-1494(4) provides, in part, that a candidate who files to appear on the ballot during the calendar year in which the election is held must file a statement of financial interests with the Commission on or before March 1.

Your question pertains to Neb. Rev. Stat. § 49-1494(5) which states that "a candidate for an elective office specified in section 49-1493 who fails to file a statement of financial interests . . . within five days after the deadline in subsection (3) or (4) of this section and section 49-1493 shall not appear on the ballot."

Neb. Rev. Stat. § 49-1494 was amended by 2016 Neb. Laws LB 400 to provide that candidates for elective office must file a statement of financial interests directly with the Commission rather than with an election official, that candidates who filed their candidate filing papers in the December before the election year must file the statement by March 1, and that a candidate who fails to file the statement within five days after the specified deadline shall not appear on the ballot. The statute was amended again by 2017 Neb. Laws LB 451 to also create a March 1 deadline for candidates who file their candidate papers in the year of the election.

We are not aware of any case law construing the statute, as amended. However, in Nebraska, a fundamental principle of statutory construction is to "determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense." *Harvey v. Nebraska Life and Health Ins. Guaranty Ass'n*, 277 Neb. 757, 764, 765 N.W.2d 206, 211 (2009); *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017). Statutory language is to be given its plain and ordinary meaning in the absence of anything indicating to the contrary. *First Nat. Bank of Omaha v. Davey*, 285 Neb. 835, 830 N.W.2d 63 (2013). While a court may examine the legislative history of the act in question to ascertain the intent of the Legislature, resort to legislative history is appropriate only when statutory language is ambiguous. *State ex rel. City of Elkhorn v. Haney*, 252 Neb. 788, 566 N.W.2d 771 (1997). In our view, the language of § 49-1494 is not ambiguous.

Further, Nebraska has a statutory rule for computing time. Neb. Rev. Stat. § 25-2221 (2016) provides that “the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office shall be open.” The statute then proceeds to list these “nonjudicial” days.

While the computation of time provision in § 25-2221 refers to “any action or proceeding,” the Court has applied the statute “not only to matters in litigation, but also to statutes.” *State ex rel. Wieland v. Beermann*, 246 Neb. 808, 811, 523 N.W.2d 518, 522 (1994). In *Wieland*, the Court applied § 25-2221 to calculate a statutory deadline found in Neb. Rev. Stat. § 32-707.01, which provided that an explanatory statement must be filed “not less than four months prior to the general election.” There, where an act needed to be performed a certain number of months prior to an event, the Court determined the statutory time period must conclude before election day. *See also Ruan Transport Corp. v. Peake, Inc.*, 163 Neb. 319, 79 N.W.2d 575 (1956); *State ex rel. Smith v. Nebraska Liquor Control Comm’n*, 152 Neb. 676, 42 N.W.2d 297 (1950) (Section 25-2221 establishes a uniform rule applicable to both the construction of statutes and to matters of practice).

More recently, the Court considered whether a motion for rehearing was timely filed with the Tax Equalization and Review Commission [“TERC”]. *Strode v. Saunders County Bd. of Equalization*, 283 Neb. 802, 815 N.W.2d 856 (2012). A TERC rule required that a motion for rehearing must be filed “within ten (10) calendar days of the date that the [d]ecision . . . was filed.” The decision at issue was filed on March 16, 2011 and that filing date became the triggering event after which the period of time began to run. The Court applied § 25-2221, excluded the day of the decision, and found that the tenth calendar day was March 26. Because March 26 was a Saturday, the plaintiffs had until the next business day, or Monday, March 28, to file a motion for rehearing.

We now turn to the March 1 deadline for filing a statement of financial interests found in Neb. Rev. Stat. § 49-1494(3) and (4). When March 1 falls on a Saturday, Sunday or nonjudicial day, the filing would be timely pursuant to § 25-2221 if filed on the next business day. Thus, in 2020, the statement of financial interests will be timely if filed on Monday, March 2. In our opinion, the five day provision of § 49-1494(5) would be computed by excluding the day of the triggering event, which will be March 2 in 2020, and counting five days beginning with March 3. Then, as the fifth day, March 7, falls on a Saturday in 2020, the absolute deadline for a candidate to file a statement of financial interests and be eligible to appear on the ballot will be Monday, March 9.

Your request letter also refers to Neb. Rev. Stat. § 49-1203 (2010) which provides that if the date for filing various documents or making any payment required to be filed or made to the State or a political subdivision falls on a weekend, nonjudicial day, or legal

holiday, "such filing or payment shall be considered timely if performed in person or postmarked on the next business day." Section 49-1203, along with § 49-1201 and § 49-1202, pertain generally to the filing of a report, claim, statement or other required document by mail. We do not think application of § 49-1203 would lead to a different result. And, in the *Strode* case, discussed above, the Court stated that the provisions of § 49-1203 were "compatible" with its use of the time computation method specified in § 25-2221. 283 Neb. at 808, 815 N.W.2d at 861.

Finally, while we found no prior Attorney General opinions which answer your question, we note that this office has for a number of years computed filing deadlines in a manner consistent with this opinion for purposes of our review of the official election calendar prepared by the Secretary of State pursuant to Neb. Rev. Stat. § 32-206 (Cum. Supp. 2018).

CONCLUSION


Based on our analysis above, we conclude that the five day provision of Neb. Rev. Stat. § 49-1494(5) should be computed pursuant to Neb. Rev. Stat. § 25-2221. In 2020, application of that statute will result in a deadline of March 9, 2020, for candidates for certain public offices to file a statement of financial interests in time to appear on the ballot.

Sincerely,

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Approved by:


Attorney General