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FILE NO. S-428

ELECTIONS:
Office Hours

Honorable H. Carroll Bayler
State's Attorney
Clay County
Louisville, Illinois

Dear Mr. Bayler:

I have your recent letter wherein you state:

"The designated method of nominating members for the County Board of Clay County, Illinois, was by caucus. At the Republican Caucus held at District C of Clay County, Illinois, no nomination was made. However, at the Caucus, a designated committee to fill the vacancy caused by the failure to nominate a candidate on February 1, 1972, was appointed.

The last day for filing Certificates of Nomination in the office of the County Clerk of Clay County was February 14, 1972. A Certificate of Nomination was not delivered to the County Clerk at the close of the business day of February 14, 1972, that being 4:00 o'clock P.M. as designated by the County Board of Clay County. The Certificate of Nomination was handed to the County Clerk about 7:30 P.M. on February 14th.

I desire an opinion as to whether or not the County Clerk can accept the Certificate of Nomination after his office hours had closed and before midnight of the last day for filing. We desire to have an opinion as early as possible due to the fact that the Clerk is holding up the printing of the ballots until your opinion is received."

In addition to the information contained above, you have subsequently advised that the certificate of nomination, when delivered to the county clerk, was handed to him in the courthouse at a place other than his office and after his own office had closed.

The question which you ask has been previously determined by the Illinois Supreme Court in Daniels v. Cavner, 404 Ill. 372. In this decision the court at page 379 said:

"***

The statute states that nominating papers shall be filed with the clerk, which direction has been construed to mean with the clerk at his official office and during usual business hours. To allow the clerk to accept nomination papers at any other time would be contrary to our election statute and give arbitrary power to the clerk not intended. The purpose of such a rule is obvious, for it is not only the clerk who is interested in the proper and timely filing of nomination petitions, but other candidates for office and citizens and voters in general have a vital interest in the question of a waiver or extension of time for the filing of nomination papers. Papers of such nature should be contained in the files and records of the clerk, subject at all

times to the inspection of the whole public, both for their information and for their examination to see if objections may lie to their sufficiency. To allow filing at whatever place the clerk might be found would defeat such objects, and, as previously pointed out in Cowie v. Means, 39 Colo. I, 88 Pac. 485, the practice of indiscriminate filing could only lead to confusion and possible fraud.

In this case the papers were presented to the clerk at his home, long after the closing of his official office, and with no attempt ever having been made to file at the office. It is true that appellant made an endorsement on the papers, stating that they had been filed and noted the time they had been brought to his residence; however, filing denotes placing the documents on file as a record for the information of the public, thus appellant's notations could not alone constitute an effective filing. For the foregoing reasons, we hold that nominating papers of appellees directly interested in the writ of mandamus were not filed in the time or manner contemplated by the election statute.***"

It can be readily observed from the foregoing decision that if a statute requires nominating papers to be filed with the clerk, that means at the clerk's official office and during usual business hours. I am therefore of the opinion that the county clerk may not accept the certificate of nomination after his office hours had closed and before midnight of the last day for filing.

The only remaining question which is implicit in your letter is whether the certificate of nomination in this case

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could be filed on the next day which is the day after the last day for filing. In Volume 25 of American Jurisprudence 2d at page 831 (Elections, §140), is found the following statement:

"As a general rule, statutory provisions requiring a petition, certificate, or application of nomination to be filed with a specified officer within a stipulated period of time are mandatory. The officer may refuse to accept such a document for filing if it is not presented in time, and the time may not be extended by custom or practice adopted by the officer.
***"

Illinois is in accord with the view that statutory provisions requiring a certificate of nomination to be filed with a specified officer are mandatory. In People v. Lueders, 283 Ill. 283, the court held that nominating petitions for certain town officers must be filed within the required statutory time.

In conclusion, I am of the opinion that your county clerk may not accept the certificate of nomination after his office hours have closed and before midnight on the last day for filing.

Very truly yours,

A T T O R N E Y G E N E R A L