RE: county chairman issue

Donald Kersey <DKersey@wvsos.com>

Thu 6/27/2019 1:46 PM

To:Brad McElhinny <Brad.McElhinny@wvradio.com>;

Cc:Mike Queen <MQueen@wvsos.com>; Chuck Flannery <CFlannery@wvsos.com>;

📎 2 attachments

Response Ltr from State Republican Executive Committee Chair (6.26.2019).pdf; WVSOS Response to State Republican Executive Committee Chair (6.26.2019).pdf;

Brad,

I answered each of your questions below in turn. As a general response, I'd like to reinforce the fact that the Secretary of State's Office is not the property authority to opine on the actual issues in this matter; we are simply a filing office.

1. **First, could I have a copy of the SoS response, as well as Mrs. Potter's reply to the first SoS letter?**

    Yes sir, see attached.

2. **The earlier letter to Mrs. Potter asked her to cite statutory authority, but I only see that she cited the previously referenced bylaws and the precedent of your office accepting previous rosters from her. Is there any indication of what the statutory authority truly is?**

    W. Va. Code § 3-1-11 provides, in part, "The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party. All acts of such state or other committees may be reviewable by the courts."

    The law allows—and several courts have affirmatively recognized—state parties to make rules that govern party matters so long as they are consistent with the law. Whether those party rules and/or the propriety of decisions made by party members are intra-party disputes and, in at least some circumstances, matters for the courts per W. Va. Code § 3-1-11; not the Secretary of State's Office.

3. **The SoS in its June 24 letter cites specifics from WV Code 3-1-9(g) to indicate the county chairman has the duty to provide an updated roster. Then the June 26 letter briefly references general provisions of that section of code, linking it to court cases that have opined that political parties possess broad authority over regulation matters. Could you expand on the office's reading of 3-1-9(g)?**

    The Secretary of State's Office is mentioned three (3) times in W. Va. Code § 3-1-9(g). Specifically:

    > *A current listing of all executive committees' members shall be filed with the Secretary of State by the end of July of each year.*

    > *The chair of each executive committee shall submit an updated committee list to the Secretary of State within ten days of a change occurring.*

An appointment to fill a vacancy does not take effect if the executive committee does not submit the updated list to the Secretary of State within the allotted time period.

Looking just to W. Va. Code § 3-1-9(g), it's clear that (1) we are the filing office for current listings of executive committee members; (2) we are the filing office for updated committee lists; and (3) as the filing office, we must time-stamp updated committee lists to provide proof to the public that they were submitted within the allotted time period.

Regarding whether our Office may accept a roster submitted by someone other than the chair of a county executive committee, W. Va. Code § 3-1-9 provides no guidance. Therefore, under W. Va. Code § 3-1-11, State ex rel. Goodwin v. County Court of Putnam County, 125 S.E.2d 417, 147 W.Va. 62 (1962) and State ex rel. Zagula v. Grossi, 1964, 138 S.E.2d 356, 149 W.Va. 11, it is clear that the Secretary of State's Office is not a referee over intra-party disputes, and that parties have broad authority to regulate itself.

4. **Does that section of code, or any section of code, shed light on the SoS authority to enforce an election result? Am I misinterpreting the role of county party chairs, or are they purely part of the party structure? If so, why are they on ballots?**

   Regarding authority to "enforce" an election result, our Office "certifies" certain election results per various provisions of Chapter 3. However, following certification, there is no statutory Secretary of State function relating to enforcement of the election results.

   Regarding executive committee chairs, the position of "chair" is not on the ballot; it is an intra-party selection process by the committee itself. The executive committee members are on the Primary ballot per W. Va. Code § 3-1-9(b). I have no background knowledge as to why the Legislature placed these positions on the ballot.

5. **Related: Has this action not turned over an election result, and would the SoS not have authority over that?**

   Such are determinations up to the courts. The Secretary of State's Office is not granted such authority.

6. **Is there any legal indication that the state chairwoman can both create a vacancy and then fill it? And, if so, what are the circumstances under which that could occur?**

   Again, W. Va. Code § 3-1-11 appears to grant parties general authority to cover such issues under party rules, and determinations of the propriety of those rules or actions taken by a party appear to be up to the party's internal dispute resolution processes and/or the courts. The Secretary of State's Office is merely a filing office in this case.

7. **Does this reading by your office indicate that anyone on the state executive committee could submit a new county roster to the SOS without that county's committee taking action and without an actual vacancy?**

   Put simply, that's not our role to decide. You question assumes our Office has authority to look behind the 4 corners of an updated roster submission. This Office's plain-meaning reading of the law is abundantly clear: we're a filing office. So looking to the party's authority per W. Va. Code § 3-1-11, "The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party. All acts of such state or other committees may be reviewable by the courts."

Best,