

El. Bd. Op. 79-1 (Reaffirmed 5/5/08)

Summary:

The timely filing of a declaration of acceptance, as required under §8.15 (4)(b), Stats., is a condition precedent to the right of a nominee to have his or her name appear on the official ballot. (Issued to Frank J. Bucaida, March 1, 1979)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on May 5, 2008. The opinion was codified by 1987 Wisconsin Act 381 at §8.30(4), Stats., which provides that the official or agency with whom such declaration is required to be filed may not place a candidate's name on the ballot, if the filing is not made within the time prescribed under §8.21, Stats.

Opinion:

You inquire whether the name of a person who was nominated for a town office by nomination papers submitted prior to the filing deadline should be placed on the spring election ballot for such office where the papers were not accompanied by a declaration of acceptance and the filing deadline has now passed.

Section 8.10, Stats., as amended by ch. 427, Laws of 1977, reads, in part, as follows:

"Nominations for spring election. (1) Candidates for office to be filled at the spring election shall be nominated by nomination papers, or by nomination papers and selection at the primary if a primary is held, except as provided for towns and villages under s. 8.05.¹ Unless designated in this section or s. 8.05, the general provisions pertaining to nomination at the September primary apply.
(5) Each candidate shall file with his or her nomination papers a sworn declaration in the manner prescribed by s. 8.15 (4)(b) that the candidate will qualify for the office, if elected."

Section 8.15, Stats., applies to nominations for the September primary. Subsection (1) of the statute provides that "Only those candidates for whom nomination papers containing the necessary signatures acquired within the allotted time and filed before the deadline shall have their names printed on the official September primary ballot."

Section 8.15 (4)(b), Stats., as amended by ch. 427, Laws of 1977, further provides, in part, as follows:

"Each candidate shall file with his or her nomination papers, a declaration, sworn to before any officer authorized to administer oaths, that the candidate meets or will at the time he or she assumes office meet applicable age, citizenship, residency or voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and of this

¹ Section 8.05, Stats. sets forth the general procedure for the nomination of candidates for elective office in towns and villages and authorizes nomination by town or village caucus or by nomination paper with provision for nonpartisan primary.

state, and that he or she will otherwise qualify for office if nominated and elected. In the case of candidates for local office, the candidate shall also swear that he or she has not been convicted of any felony for which he or she has not been pardoned."

The general requirement that candidates must file a declaration that they will qualify for public office if nominated and elected has been a part of the nomination process for over 75 years. Ch. 451, sec. 5, Laws of 1903. Over the years the requirement has consistently been interpreted by the attorney general as a mandatory provision of the election laws which must be complied with by candidates in order to have their names printed on the official ballot. See 1908 Op. Att'y Gen. 357; 1912 Op. Att'y Gen. 342; I Op. Att'y Gen. 227; III Op. Att'y Gen. 331, 332 (1914); XIII Op. Att'y Gen. 427 (1924).

The mandatory nature of the requirement was also recognized by our supreme court in *State ex rel. Barber v. Circuit Court*, 178 Wis. 468, 481, 190 N.W. 563 (1922), where the court states that:

"The only requirement found in the statute as a condition precedent to the right of a nominee to a place upon a ballot is that he shall file a declaration that if elected he will accept the office and qualify thereforUntil the legislature specifically declares that there shall be other conditions precedent to the right of the nominee at the primary to have his name appear upon the official ballot, we must hold there are no other than the filing of the declaration referred to."

The two earliest attorney general opinions cited above found late filing of the declaration acceptable, if accomplished before the ballots were prepared. However, the 1924 opinion, which has remained unchanged since, specifically advised election officials that any late filing of the declaration was unacceptable and precluded placement on the ballot. In XIII Op. Att'y Gen. at 428, the following is stated:

"The filing of the nomination paper must be made not later than the last Tuesday of July, and the filing of the declaration referred to...is necessary to complete the filing. A candidate who fails to file such declaration within the time limited therefore is in my opinion in no better position as to the right to have his name printed on the official ballot than one who fails to file any nomination paper whatever, and the clerk is as much prohibited from printing the name of such candidate on the official ballot in the one case as in the other."

Finally, most recently, in *state ex rel. Ahlgrimm v. State Elections Bd.*, 82 Wis. 2d 585, 593, 263 N.W. 2d 152 (1978), where an incumbent circuit judge had filed his nomination papers before the filing deadline, but in the wrong place, the court pointed out at pp. 592-593 that:

"Filing deadlines have consistently been treated as mandatory by this court. For example, in *State ex rel. Stearns v. Zimmerman*, 257 Wis. 443, 43 N.W. 2d 681 (1950), this court held that where a candidate for the United States Senate did not file his nomination papers in the Secretary of State's Office or present them for filing until after the 5:00 p.m. deadline (he tendered the papers at 5:02 p.m.), he was properly denied a place on the ballot. We reiterated that filing deadlines for nomination papers must be strictly observed. *Id.* at 445. Moreover, this court rejected the candidate's claim that the then statutory counterpart to sec. 5.01 (1), Stats., calling for a liberal construction of the election law so as to give effect to the will of

the electors notwithstanding informalities or failure to comply with its provisions, required the opposite conclusion. In response to this argument, this court said: '... to enlarge the time which the legislature has designated for the filing of nomination papers would be to amend the statute, not to construe it.'" Id. at p. 446.

We also note that in a decision of the Circuit Court for Dane County, dated January 17, 1979, the Court, relying principally on Ahlgrimm, ruled that "The filing of the declaration and the filing of nomination papers are conditions precedent to placement of a name on the ballot, and the court's language in Ahlgrimm is equally persuasive on the question of late (or improper) filing of the declaration." State ex rel. David Caulkins v. Eldon L. Hoel, Dane County Circuit Court, Br IV, Case No. 79-CV-141.

Based on the foregoing, it is the opinion of the Board that the timely filing of a declaration of acceptance, pursuant to §8.15 (4)(b), Stats., is a condition precedent to the right of a nominee to have his name appear on the official ballot. Therefore, under the circumstances you describe, where the nomination papers of a candidate for town office which were submitted prior to the filing deadline were not accompanied by a declaration of acceptance and the filing deadline has now passed, it is the further opinion of the Board that the town clerk is not authorized to place the name of the candidate on the official spring election ballot.