



# 2014-061

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

May 28, 2014

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Honorable Jim Bennett  
Secretary of State  
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Independent Candidates – Elections –  
Candidates – Ballots

Pursuant to section 17-9-3 of the Code of Alabama and section 17-6-21, as amended by Act 2014-006, where there are fewer than 76 days preceding an election and the names of candidates have been printed on ballots, a candidate may choose to withdraw, but that person's name may not appear thereafter on any subsequent ballot for that election year. That candidate's name will remain on the ballot and any votes received by that candidate should not be certified for that candidate. In like measure, if a political party disqualifies a candidate fewer than 76 days before an election and after ballots have been printed, the disqualified candidate may not thereafter appear on any subsequent ballot for that election year.

Dear Mr. Bennett:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May a person who has qualified to run as a candidate with a political party, but then either withdraws his name as a candidate of that party or is disqualified by a political party, subsequently run as an independent candidate or minor-party candidate in the same election year?

### FACTS AND ANALYSIS

Section 17-9-3 of the Code sets forth the mechanism by which the name of political party candidates, independent candidates, and “minor” political party candidates may appear on the general election ballot. ALA. CODE § 17-9-3 (2006). A portion of this statute has been referred to as the “sore loser” law. The relevant portion of this section states as follows:

The judge of probate may not print on the ballot the name of any independent candidate who was a candidate in the primary election of that year and the name of any nominee of a political party who was a candidate for the nomination of a different political party in the primary election of that year.

ALA. CODE § 17-9-3 (2006).

This provision basically allows every candidate only one opportunity to run for an elected position in any given year. Thus, it prevents a candidate from having his or her name placed on a general election ballot as an independent candidate in the same year he or she lost in the party primary. See opinions to Honorable L.W. Noonan, Judge of Probate, dated August 10, 1992, A.G. No. 92-00371 and Honorable Billy Joe Camp, Alabama Secretary of State, dated August 12, 1992, A.G. No. 92-00382.

In this particular matter, your inquiry comes prior to the primary election, which is scheduled for June 3, 2014, but after all ballots have been printed for the primary election. Because of the timing of your inquiry, the applicability of this statute to your inquiry may seem questionable as no candidate has lost the primary election. But the plain language of this provision is written much more broadly than its colloquial moniker or nickname suggests. Section 17-9-3 of the Code prevents a person who was a candidate in the primary or a nominee of a political party from thereafter being on the ballot in the same election year. Based upon the information provided in your inquiry, the person in question was a candidate for a political party.

When a person chooses to withdraw his or her name as a candidate for a political party or a political party chooses to disqualify someone as a candidate for nomination, there are certain applicable time constraints pursuant to Act 2014-006, which amended section 17-6-21 of the Code. Section 17-6-21 of the Code, as amended, states that political parties and candidates have up to the 76<sup>th</sup> day prior to an election to make changes in its certification of a candidate. ALA. CODE § 17-6-21 (as amended by Act 2014-006). After this date, a

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candidate may withdraw his name or a political party may disqualify its candidate, but that person's name will remain on the ballot. Any votes received by that person will not be certified for that candidate. *Id.* Section 17-6-21(b) also specifies that after the 76<sup>th</sup> day a political party may not substitute another candidate for the disqualified candidate.

Based on the foregoing, it is the opinion of this Office that once a candidate's name has been printed on a ballot and there are fewer than 76 days before an election, that candidate may not thereafter appear on a subsequent ballot representing any other political party, or as an independent candidate, or as a minor-party candidate.

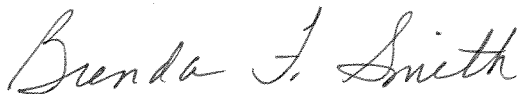
#### CONCLUSION

Pursuant to section 17-9-3 of the Code and section 17-6-21, as amended by Act 2014-006, where there are fewer than 76 days preceding an election and the names of candidates have been printed on ballots, a candidate may choose to withdraw, but that person's name may not appear thereafter on any subsequent ballot for that election year. That candidate's name will remain on the ballot and any votes received by that candidate should not be certified for that candidate. In like measure, if a political party disqualifies a candidate fewer than 76 days before an election and after ballots have been printed, the disqualified candidate may not thereafter appear on any subsequent ballot for that election year.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:

  
BRENDA F. SMITH  
Chief, Opinions Division

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