



LEIB
for
Prosecutor

NEWS

FOR IMMEDIATE RELEASE
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Larry Leib Defends Michigan Constitution with lawsuit seeking clarification of judge's eligibility to run

The Oakland County Circuit Court has agreed to hear expedited arguments sometime next week regarding a lawsuit filed in the race for Oakland County Prosecutor. On May 13, the filing deadline, Judge Richard D. Kuhn filed as a candidate. Judge Kuhn sat as a "visiting judge" as recently as May 2, 2008. Therefore, on May 20 the Leib campaign filed a request with the Oakland County Circuit Court for a "declaratory" ruling as to the eligibility of Judge Kuhn as a partisan candidate. The Leib campaign learned earlier that week that the Oakland County Clerk told a judicial accountability group that it was uncertain of its authority to act on information Judge Kuhn had "not considered" his obligations under the Michigan Constitution (Article VI, Sec. 21, see attached Attorney General Opinion) to wait at least a year before running for partisan office.

Kuhn argues that performing "judicial duties" is not the same as being a "judge". However, the Leib campaign believes that the provision is designed to protect the "separation of powers" under the Michigan Constitution. This is a valuable consideration unto itself, regardless of the politics of the situation. According to one Attorney General Opinion, the clause seeks to honor the noble and important purpose of "divorcing the judiciary from the political arena."

Leib's attorneys, Michael J. Devine and Jeff Leib, filed the request for a "declaratory judgment" because published reports also indicated that the Oakland County Clerk - Ruth Johnson - referred the matter to Oakland County Corporation Counsel, which then issued a letter declaring that it was uncertain of who or whether the Clerk had authority to remove the judge from the ballot. Published reports suggest that even Secretary of State Bureau of Elections specialists believe that no previous case of this nature has ever been raised. Perhaps this is because this provision has never previously been tested by a candidate who was so recently a judge. In the wake of such uncertainty, it is even more important to seek clarification of this pressing legal issue. The lawsuit is not a criticism either of the Oakland County Clerk or even Judge Kuhn, whose public service ironically dates back to being a delegate in 1962 to the very Constitutional Convention where this very provision was adopted.

Larry Leib made the following statement. "According to Judge Kuhn's own statements admitting he had 'not considered' his eligibility, this must have been a simple oversight. This case is not meant as a sleight against Judge Kuhn, whose long service has been honorable, or any other judge. I am a strict constructionist when it comes to legal matters, and upholding the law as it is written and its plain meaning is perhaps the most important quality for any prosecutor to have. The Constitution is plain, the issue is simple, and it is important to keep separate judicial matters from politics. As a delegate himself to the 1962 Constitutional Convention, I would hope that Judge Kuhn would accept the consequences of his oversight and that even judges must be bound by the rule of law."

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STATE OF MICHIGAN

JENNIFER M. GRANHOLM, ATTORNEY GENERAL

CONSTITUTIONAL LAW:
ELECTIONS:
JUDGES:
PUBLIC OFFICES AND OFFICERS:

Former judge's eligibility for non-judicial elective office

Under Const 1963, art 6, § 21, a judicial officer must terminate his or her judicial service at least one year before filing or being selected as a candidate for, or being elected to, a non-judicial elective office.

Opinion No. 7079

March 20, 2001

Honorable Samuel Buzz Thomas, III
State Representative
The Capitol
Lansing, MI

Const 1963, art 6, § 21, which renders sitting judges ineligible for other offices, provides that:

Any justice or judge of a court of record shall be ineligible to be nominated for or elected to an elective office other than a judicial office during the period of his service and for one year thereafter.

You have requested guidance on the practical application of this constitutional provision. Specifically, you ask whether a judicial officer must terminate his or her judicial service one year before: (a) the filing deadline for a non-judicial office; (b) the date a party convention votes to select a candidate for a non-judicial office; (c) the election to a non-judicial office; or (d) the date one assumes non-judicial office following an election, to be eligible for nomination for or election to a non-judicial elective office.

The term "elected," as used in Const 1963, art 6, § 21, refers to the actual date of the election. OAG, 1999-2000, No 7050, p 111 (March 30, 2000). That opinion concluded that the term "election," as used in section 374a of the Revised School Code, 1976 PA 451, MCL 380.1 *et seq*; MSA 15.4001 *et seq*, referred to the actual date of election to the subsequent office, not the date on which a person may become a candidate for the subsequent office, or the date on which a person actually assumes the duties of the subsequent office. The opinion noted that section 374a, in clear language, expressly referred to "election or appointment" to the subsequent office. But, in contrast to the statutory provision at issue in that opinion, the one year prohibition in Const 1963, art 6, § 21, also extends to being "nominated" for an elective non-judicial office. The cardinal rule in interpreting constitutional language is to give the language the common meaning it would convey to the popular mind. *Committee for Constitutional Reform v Secretary of State*, 425 Mich 336, 340; 389 NW2d 430 (1986).

Const 1963, art 6, § 21, clearly provides that any judge of a court of record may not be nominated for or elected to a non-judicial elective office until the judge has vacated his or her judicial office for at least one year. A review of Michigan election statutes reveals that persons may be nominated for non-judicial elective office by primary election, by selection at a convention, or by filing nominating petitions.

The most common method of nominating persons for elective office is the primary election. See the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq*; MSA 6.1001 *et seq*, chapter XXIV, beginning with section 531. The purpose of a primary election is to "select . . . nominees for a particular office." *Ferency v Secretary of State*, 190 Mich App 398, 415-416; 476 NW2d 417 (1991), *lv den* 439 Mich 953, 1021 (1992). OAG, 1999-2000, No 7050, p 111, *supra*, determined that the term "election" clearly referred to the actual date of the election for the subsequent office. Here, the term "nominated," in the context of a primary election, clearly refers to the actual date of the primary election in which a candidate is selected as the nominee to run for the subsequent office. Thus, in the context of a primary election, the term "nominated for" office, as used in Const 1963, art 6, § 21, means the day of the primary election when the candidate is selected to run for public office.

For some offices, nominees are selected at party conventions. For example, section 282 of the Michigan Election Law describes the nomination process for certain statewide educational offices as follows:

At its fall state convention each political party may nominate 2 candidates for membership on the board of regents of the University of Michigan, 2 candidates for membership on the board of trustees of Michigan State University and 2 candidates for membership on the board of governors of Wayne State University.

Here, the nomination for the office occurs at the party convention when a candidate is selected to run for the subsequent office. The candidate is nominated on the day the party convention votes to select the candidate as the party's nominee, just as a candidate is nominated at a primary election on the day of the vote to determine the nominee. Thus, where a candidate is selected at a party convention, the term "nominated for" office, as used in Const 1963, art 6, § 21, means the day the party convention votes to select the candidate as its nominee.

The third method of nominating persons for elective office is by simply filing nominating petitions. For example, under sections 1066 and 1067 of the Revised School Code, there are no primary elections for members of local boards of education. Rather, candidates for membership on local boards of education file "nominating petitions" to entitle themselves to appear on the official ballot for the general election of members of boards of education as "candidates who are duly nominated for each term of office." In this context, the term nominated for office, as used in Const 1963, art 6, § 21, means the day the nominating petitions are filed since that filing enables the candidate to become a nominee eligible to appear on the official ballot for the general election of members of boards of education.

Based on the plain meaning of Const 1963, art 6, § 21, if a candidate for non-judicial elective office is a former judge, the selection of that person, by whatever method, to stand as a candidate for non-judicial elective office, may not occur until the candidate has been out of judicial office for at least one year. Likewise, a former judge may not be elected to a non-judicial office for at least one year after ceasing to serve as judge.

It is my opinion, therefore, that under Const 1963, art 6, § 21, a judicial officer must terminate his or her judicial service at least one year before filing or being selected as a candidate for, or being elected to, a non-judicial elective office.

JENNIFER M. GRANHOLM
Attorney General