



OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

*7-26-76
Vicki -
Please note
on Stuart Staff
E. D. W.*

OPINION

of

No. CV 76/5

EVELLE J. YOUNGER
Attorney General
FLOYD D. SHIMOMURA
Deputy Attorney General

May 6, 1976

THE HONORABLE ALISTER McALISTER, ASSEMBLYMAN FOR THE 25TH DISTRICT, has requested an opinion on the following questions:

1. Whether the new federal law requiring foreign language ballots in those counties containing substantial numbers of foreign language persons also requires, either expressly or by implication, that the ballot statements that a candidate for school board or local office may request to be distributed to the voters must also be printed in foreign languages.

2. If so, does the candidate have to pay for the cost of printing the foreign language statements.

The conclusions are:

1. In those city and school board elections in which the recent amendments to the Federal Voting Rights Act of 1965 (Pub. L. No. 94-73 (Aug. 6, 1975)) are applicable, any candidate's statement of qualification which is distributed to the voters pursuant to Elections Code section 10012 must be made available in both the specified minority language as well as in English.

2. A candidate may not be billed for the additional cost of preparing statements of qualification in minority languages if such were not requested by the candidate pursuant to Elections Code section 10012 but were required solely by reason of recent amendments to the Federal Voting Rights Act of 1965 (Pub. L. No. 94-73 (Aug. 6, 1975)).

ANALYSIS

Elections Code section 10012 (as amended by Stats. 1975, ch. 1158, § 19) provides, in pertinent part, that:

"Each candidate for nonpartisan elective office in any local agency, including any city, county, city and county or district, may prepare a candidate's statement on an appropriate form provided by the clerk. Such statement may include the name, age and occupation of the candidate and a brief description . . . of the candidate's education and qualifications expressed by the candidate himself; . . .

"The clerk shall send to each voter together with the sample ballot, a voter's pamphlet which contains the written statements of each candidate that is prepared pursuant to this section. . . . The clerk shall provide a Spanish translation to those candidates who wish to have one, and shall select a person to provide such translation from the list of approved Spanish language translators and interpreters of the superior court of the county or from an institution accredited by the Western Association of Schools and Colleges.

"The local agency may bill each candidate availing himself of these services a sum not greater than the actual prorated costs of printing, handling, and translating the candidate's statement, if any, incurred by the agency as a result of providing this service. Only those charges may be levied with respect to the candidate's statement and each candidate using these services shall be charged the same.

". . . Before the nominating period opens, the local agency for that election shall determine whether a charge shall be levied against that candidate for the candidate's statement Such decision shall not be revoked or modified after the seventh day prior to the opening of the nominating period. . . ."

Thus, under state law, a local candidate for nonpartisan elective office may, but need not, have a candidate's statement of qualifications prepared and sent to each voter. The candidate may also have such statement translated into Spanish. Finally, the local agency may, but need not, provide for the billing of candidates who avail themselves of this service.

I.

The first question asks whether the new federal law requiring foreign language ballots in those counties containing substantial numbers of foreign language persons also requires, either expressly or by implication, that the ballot statements that a candidate for school board or local office may request to be distributed to the voters must also be printed in foreign languages. It does so require.

Recent amendments to the Federal Voting Rights Act of 1965 (Pub. L. No. 94-73 (Aug. 6, 1975)), now require certain jurisdictions to provide election material in languages other than English as well as in English. Thus, section 203(c) of Title III of the Federal Voting Rights Act of 1965 provides, in pertinent part, that:

"Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: . . ." (Emphasis added.)

Subdivision (b) of section 203 referred to above, provides, in pertinent part, that:

"Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: . . ."

Title 28 of the Code of Federal Regulations section 55.7 provides that:

"Where a political subdivision (e.g., a county) is determined to be subject to . . . section 203(c), all political units which hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision for providing registration and election materials and assistance."

Thus, it is clear that in elections for city and local school district offices there is, if the criteria set forth in subdivision (b) of section 203 are met, a requirement that ". . . registration or voting notices, forms, instructions, assistance, . . . [and] other materials or information relating to the electoral process, . . ." be provided in languages other than in English. § 203, subd. (c) of Title III of the Federal Voting Rights Act of 1965, as amended.

The legal issue, therefore, is whether a candidate's statement of qualification which is distributed to the voters pursuant to Elections Code section 10012 is ". . . other materials or information relating to the electoral process, . . ." within the meaning of section 203, subdivision (c) of Title III of the Federal Voting Rights Act of 1965, as amended.

Title 28 of the Code of Federal Regulations section 55.12 provides, in pertinent part, that:

"The requirements of section . . . 203(c) apply with regard to the provision of 'any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.' These requirements are designed to allow members of applicable language minority groups to be informed of and participate in voting connected activities as effectively as English speaking persons are informed of and participate in such activities. Accordingly, the quoted language should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including the issuance, at any time during the year, of notifications or announcements that bear upon the electoral process." (Emphasis added.)

The candidate's statement of qualification is ". . . sen[t] to each voter together with the sample ballot . . ." Elec. Code § 10012. As the Court observed in Knoll v. Davidson, 12 Cal.3d 335, 352 (1974):

"The voter's pamphlet, which accompanies the sample ballot, purports to be an authoritative documentation that appears to give an imprimatur of official approval to statements of qualifications included therein. It is quite likely that this document would carry greater weight in the minds of the voters than normal campaign literature and that candidates who do not have their statements of qualifications in it would appear to be lacking in

official sanction. In short, it seems likely that candidates who have their statements of qualifications included in the voter's pamphlet have a clear advantage over candidates who do not."

Because of this "imprimatur of official approval" and the decisive role which, in many instances, it can play in voter evaluation of candidates, the statement of qualification appears to clearly fall within the class of election materials provided the voter which Congress intended, under specified circumstances, to be available to language minority members in order that they too can fully participate in the electoral process.

Therefore, in those city and school board elections in which the recent amendments to the Federal Voting Rights Act of 1965 are applicable, any candidate's statement of qualification which is distributed to the voters pursuant to Elections Code section 10012 must be made available in both the specified minority language as well as in English. 1/

II.

The second question asks if a candidate chooses to have his statement of qualification printed in English only and distributed to voters pursuant to Elections Code section 10012, may that candidate also be billed for the additional cost of a translation required by the recent amendments to the Federal Voting Rights Act. We think not.

Under state law, it is clearly optional with the local candidate as to (1) whether he will avail himself of the statement of qualification service and (2) whether he desires to have the statement translated into Spanish. See Elec. Code § 10012.

1. It has been suggested that a distinction be made between those elections in which the statements of qualification which are paid for by the candidate and those which are paid for by a public agency; i.e., the Federal Voting Rights Act amendments only applying to those paid for by a public agency. We disagree. Regardless of how the statements are paid for, the "imprimatur of official approval" remains. Moreover, even in those instances in which the candidates are billed, Elections Code section 10012 limits the chargeable expenses to ". . . printing, handling, and translating . . ." It is possible that not all costs are covered in these items. Thus, in either case, the candidates may, although to different degrees, be subsidized by public funds.

Elections Code section 10012 provides, in pertinent part, that:

"The local agency may bill each candidate availing himself of these services"
(Emphasis added.)

A candidate who chooses to have his statement of qualification printed only in English has merely "avail[ed]" himself of this portion of the service. The fact that federal law may require election officials, under certain circumstances, to also make such statement available in languages other than English may mean that such a candidate might benefit from such additional publication but it does not mean that the candidate "avail[ed]" himself of this service within the meaning of Elections Code section 10012.

This reading of Elections Code section 10012 appears consistent with the California Supreme Court's narrow construction of this section in Knoll v. Davidson, supra. At page 352, the Court, in pertinent part, said that:

"It is impermissible for the state or local agency involved to deny this opportunity solely on the basis of wealth, thereby giving an unfair advantage to the affluent and invidiously discriminating against those unable to afford the substantial fees. . . .

"However, we do not deem it necessary to strike down section 10012.5 [now section 10012], because, as we read the statute, it does not authorize such a prepayment system, but only permits the county to subsequently bill the actual cost of providing the services once the services contemplated by the statute have been provided. Section 10012.5 nowhere authorizes the local agency to make payment of the actual cost of providing the service of prerequisite to inclusion of the statement of qualifications. Nowhere does it compel the local agency to collect the actual cost. Nor does it authorize the local agency to collect the estimated cost of providing the service. The section merely provides that the 'local agency may bill each candidate availing himself of these services a sum not greater than the actual prorated costs of printing, handling, and translating, if any, incurred by the agency as a result of providing this service.'"

In conclusion, it is our opinion that a candidate may not be billed for the additional cost of preparing statements of qualification in minority languages if such were not requested by the candidate but were required solely by reason of recent amendments to the Federal Voting Rights Act of 1965 (Pub. L. No. 94- 73 (Aug. 6, 1975)).

* * *