



DENISE W. MERRILL
SECRETARY OF THE STATE
CONNECTICUT

July 27, 2012

Jerry Labriola, Jr., Chairman
Republican State Central Committee
31 Pratt Street, Fourth Floor
Hartford, CT 06103

The Honorable John McKinney
Senate Minority Leader
Legislative Office Building
Room 3400
Hartford, CT 06106

The Honorable Lawrence F. Cafero, Jr.
House Republican Leader
Legislative Office Building
Room 4200
Hartford, CT 06106

Dear Chairman Labriola, Senator McKinney and Representative Cafero:

I am writing this letter in response to your recent inquiry regarding party placement on the November 2012 general election ballot. More specifically, you have inquired about the application of Connecticut General Statutes §9-249a by my office for the 2011 as well as for the 2012 general election ballots.

It is important to note that I am responding to your inquiry pursuant to Connecticut General Statutes §9-3 which states:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54.

Our office has consistently interpreted Connecticut General Statutes §9-249a since 1990 in light of various major and minor party interactions such as the "A Connecticut Party" achieving major

July 27, 2012

Page 2

party status. Most important to our review of this statutory section is its plain language. As you correctly note, the pertinent part of Connecticut General Statutes §9-249a provides:

- (a) The names of the parties shall be arranged on the machines in the following order:
 - (1) The party whose candidate for Governor polled the highest number of votes in the last-preceding election;
 - (2) Other parties who had candidates for Governor in the last-preceding election, in descending order, according to the number of votes polled for each such candidate...

Of particular importance in this section is the word “party”. Since this statutory section refers to the term “party” by necessity the definitions of 9-372 must apply. If these definitions apply, they can only refer to major and minor parties because they are the only party categories recognized in Title 9 of the General Statutes. Moreover, subsections (1) and (2) of Section 9-249a contain the term “party” and not the term “party designation.”

Applying these definitions to the issues at hand, we come to a different result than the one you suggest in your inquiry. You correctly identify the candidates for Governor; however, you do not differentiate between the appearance of a candidate on the ballot by “party” nomination and by nominating petition with a “party designation”. Taking this crucial difference into account results in the conclusion reached by my office in 2011: the Democratic Party is listed on the first row on the ballot followed by the Republican Party listed on the second row. Governor Malloy was a candidate of only a single “party” on the ballot in 2010, that of the Democratic Party. Ballot access by Governor Malloy on the Working Families Party line was achieved by nominating petition with “party designation” in 2010. Pursuant to In re Election of the United States Representative for the Second Congressional District, 231 Conn. 602 (1994), votes cast for candidates appearing on two separate lines on the ballot are to be treated as votes for the candidate and included in such candidate’s vote totals for such election.

Finally, it is important that I address your concern regarding the New York State statutory section that you have offered as comparable. Unlike the relevant Connecticut statute referenced above, the New York statute references “the candidate or candidates of the party which polled *for its candidate* for the office of governor...” New York statute §7-116 (emphasis added). The difference in the language of the two statutory sections is clear and results in a different treatment of candidates and their placement on the ballot. In the State of New York, the legislature found it important to include the additional language regarding the votes cast for the candidate of the particular party. The Connecticut legislature did not include such language.

The intentional exclusion in the Connecticut law becomes even more apparent when we look to the definitions of “major” and “minor” party in Connecticut General Statutes §9-372. In each case, the legislature expressly included the language “whose candidate..., *under the designation of that political party...*” (emphasis added) within the definitions of “major” and “minor” party. Clearly, the legislature had the ability to include such language in Connecticut General Statutes §9-249a but it did not. As you are aware, we must interpret each statutory section and each word

July 27, 2012
Page 3

within each statutory section as if the words were expressly intended to be included or excluded by the General Assembly. *See generally* Engle V. Personnel Appeal Board, 175 Conn. 129, 129-130 (1978).

I hope that you find this information helpful. Please contact my office with any additional questions or concerns.

Sincerely,



Denise W. Merrill