

March 17, 1960.

HON. EDWARD J. PATTEN
Secretary of State
 State House
 Trenton, New Jersey

FORMAL OPINION 1960—No. 5

DEAR MR. PATTEN :

You have asked us whether it was lawful for you to reject a petition for electors of president and vice-president to represent a party whose candidates for president and vice-president are both inhabitants of the same state as the electors, New Jersey. In our opinion, your rejection of this petition was lawful and was required by the United States Constitution and the applicable laws of this state.

The petition in question was offered for filing in attempted compliance with R.S. 19:13-3 to 13. These statutes provide for the direct nomination by petition for candidates to be voted on at the general election. R.S. 19:13-4 provides that in the case of a petition nominating electors of president and vice-president of the United States, the names of the candidates for president and vice-president for whom such electors are to vote may be included in the petition. The petition in question does designate the names of the candidates for president and vice-president for whom the electors named in the petition are to vote. The petition reads in part as follows :

“PETITION OF NOMINATION FOR GENERAL ELECTION

NOVEMBER 8, 1960

FOR ELECTORS OF PRESIDENT AND VICE-PRESIDENT

* * *

To the Honorable Secretary of State :

We, the undersigned, hereby certify that we reside in the State of New Jersey, and are legally qualified to vote for such candidates, and pledge ourselves to support and vote for the persons named in such petition, and that we have not signed any other petition of nomination for the primary or for the general election for such office. And we request that you cause to be printed upon the official general election ballot the names of the candidates and their designation of party or party principle.

We further certify the title of the party which the said Electors represent is the Poor Mans Party, and the candidates of the said party for whom the Electors are to vote are Henry Krajewski for President, and Anne Marie Yezo for Vice-President.

R.S. 19:13-7 provides that any petition for direct nomination for the general election to be received for filing must bear a verification by at least five of the voters signing the petition. The petition bears a verification with signatures as follows :

“STATE OF NEW JERSEY, }
 COUNTY OF HUDSON } ss.

Stephen Tichy, 8623 Durham Ave.
 Charles W. Krajewski, Sr., 176 Charles St., Secaucus, N. J.
 Anne Marie Yezo, 8617 Durham Ave., North Bergen, N. J.

Henry Krajewski, 201 Secaucus Rd., Secaucus, N. J.
Stephanie Krajewski, 201 Secaucus Rd., Secaucus, N. J.
Charles Sehoch, 235 Pen Horn Ave., Secaucus
Anne Tichy, 8623 Durham Ave., No. Bergen

being duly sworn, upon their oaths saith that they are the signers of the petition hereto annexed, and are legal voters of the State of New Jersey; that the said petition is made in good faith; that the affiants saw all the signatures made thereto, and verily believe that the signers are duly qualified voters."

The third and fourth of the above verifying signatures are those of the candidates for whom the electors are to vote for vice-president and president, respectively. The verification shows that both candidates are inhabitants of the State of New Jersey.

The first clause of the 12th Amendment to the Constitution of the United States provides that:

"The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; * * *."

Thus, an elector from New Jersey may not cast his ballot for a candidate for president and a candidate for vice-president both of whom are inhabitants of New Jersey. This has always been a requirement of the federal constitution. See Article II, section 1, clause 3. Therefore, the electors nominated in the petition in question cannot lawfully vote for the candidates for whom they are required to vote according to the petition since both candidates are inhabitants of New Jersey.

L. 1944, c. 16, § 1, N.J.S.A. 19:14-8.1, provides that in lieu of the names of candidates for electors there shall be printed on the ballots the names of the candidates for president and vice-president printed together under the title "Presidential Electors For." For voters to express a preference for electors who are to vote for Henry Krajewski and Anne Marie Yezo would be ineffectual since the electors cannot carry out the will of such voters. Even if these candidates received the greatest number of votes cast, the electors named in the petition could not cast their ballot for them as president and vice-president.

R.S. 19:13-22 directs that you certify to each county clerk the names only of such candidates "for whom the voters within such county may be by law entitled to vote * * *." R.S. 19:13-10 and 11 authorize you to reject summarily petitions obviously not in conformity with the provisions of the election law.

Accordingly, your rejection of the petition in question was required by the United States Constitution and the applicable law of New Jersey.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General