

82-499

# OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

AUG 9 1982

JAMES R. SOLOMON, JR.  
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT

WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 834-5150

Honorable S. A. Graham  
Pike County Probate Judge  
Troy, Alabama 36081

Superintendent of Education -  
Elections - Boards of  
Education

Probate judge should not  
cause name of legally  
unqualified candidate for  
primary election to appear on  
ballot.

Dear Judge Graham:

We have received your letter requesting an  
Attorney General's opinion in which you relate these  
facts:

"Mr. James Loren Gibson filed his  
Declaration of Candidacy and  
qualified with the Pike County  
Democratic Executive Committee to  
run for Superintendent of Education  
in September 1982, Primary  
Election.

Pursuant to Sections 16-9-2 and  
16-9-4, Code of Alabama 1975, Dr.  
Wayne Teague, State Superintendent  
of Education certified to me that  
Mr. Gibson holds an Alabama  
certificate in administration and  
supervision, and that he also  
'holds a master's degree from a

Honorable S. A. Graham  
Page Two

recognized university.'  
Furthermore Dr. Teague's letter  
stated:

'In my opinion, Mr. Gibson has  
not submitted proof of three years  
of successful educational  
experience during the five years  
next preceding this election, as  
stipulated in Section 16-9-4 of  
Laws of Alabama Relating to  
Education 1975.'"

Your question is whether under these circumstances you  
should cause Mr. Gibson's name to be printed on the  
September primary ballot.

The probate judge in each county is required by  
Code of Alabama 1975, § 17-16-11(c) to have the ballots  
prepared for the primary election. Section 17-16-12  
provides that

"The name of no candidate shall  
be printed upon any official ballot  
used at any primary election unless  
such person is legally qualified to  
hold the office for which he is a  
candidate . . ."

The Alabama Supreme Court held in Kinney v. House, 243  
Ala. 393, 10 So.2d 167 (1942) that

"The Probate Judge need not  
proceed blindly in printing the  
ballots and if it plainly appears  
to him, even as a ministerial  
officer, that the nominations were  
contrary to the mandatory  
provisions of the statute, we think  
he had the right to decline to  
print the names on the ballot and  
leave the matter for the court."

Honorable S. A. Graham  
Page Three

In light of these authorities it is our opinion that a probate judge has the right and duty to see that only the names of legally qualified candidates be printed on the primary ballot.

The legal qualifications for county superintendents of education are set out in § 16-9-2. Among the requirements of § 16-9-2 is the requirement of subsection (a)(3) that the candidate

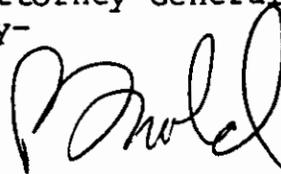
"Submit proof to the state superintendent of education of three years of successful educational experience as a teacher, principal, supervisor, superintendent, educational administrator or instructor in school administration during the five years next preceding his appointment or election;"

It is readily apparent from Dr. Teague's letter to you that Mr. Gibson has failed to meet this requirement. It is therefore our opinion that you should not cause Mr. Gibson's name to appear on the primary ballot.

I hope this answers your questions. If I or this office can be of further assistance, please call on us.

Sincerely,

CHARLES A. GRADDICK  
Attorney General  
By-



RONALD C. FOREHAND  
Assistant Attorney General

RCF/js