



STATE OF NEW YORK

STATE BOARD OF ELECTIONS

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May 25, 1990

Eli Vigliano
Attorney At Law
Westchester Financial Center
50 Main Street, 10th Floor
White Plains, NY 10606

Dear Mr. Vigliano:

This office has had an opportunity to review your November 1, 1989 complaint regarding the September 9, 1989 Democratic Judicial Convention in the 9th Judicial District.

The cross-endorsement of judicial candidates is not prohibited by the Election Law. The fact that the Westchester County Democrat and Republican parties reduced their agreement to cross-endorse to writing does not transform this into illegal conduct. This same reasoning holds true for the agreement for Judicial Candidate Albert J. Emanuelli to resign his Supreme Court seat eight months after election in order to receive a cross-endorsement for Surrogate Judge. See People v. Cunningham, 88 Misc.2d 1065, 1976. As you noted in your complaint, the state law requiring truth in campaign advertising was struck down by the federal courts as violating the First Amendment, Vanasco v. Schwartz, 401 F. Supp. 87 (E.D.N.Y. 1975).

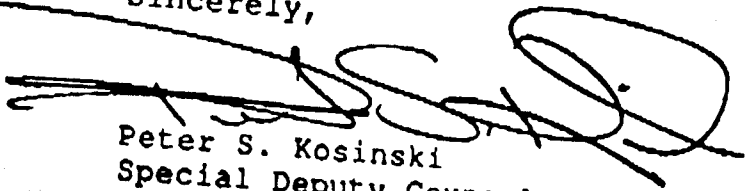
The other part of your complaint involves the form of the Democratic Judicial Convention in the 9th Judicial District. While the alleged improprieties in the form of the convention may be defects to the nominating process, the proper avenue for challenging the form of a convention is not in a criminal prosecution. The nomination or designation of any candidate for a public office may be contested in a proceeding instituted in the Supreme Court by an aggrieved candidate, chairman of a party committee, or a person that has filed objections. The opportunity for a person to file objections expires 10 days after the holding of such convention.

EX A

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For the above reasons, this agency declines to conduct a full investigation of this complaint and will close the case. If you have any questions regarding this matter, please contact us.

Sincerely,



Peter S. Kosinski
Special Deputy Counsel

PSK/smb
cc: Patrick Brown
Associate Counsel to the Governor

-----X
Complaint of

DETERMINATION

Eli Vigliano
-----X

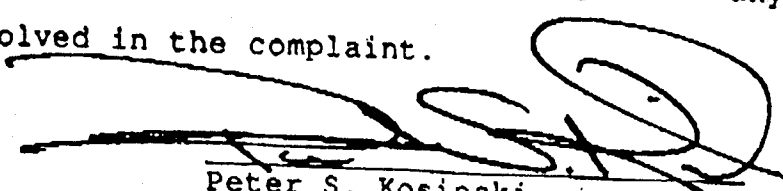
WHEREAS, this Board received a complaint from Eli Vigliano through a referral from the Governor's office regarding allegations of wrongdoing during the 1989 campaign in the Ninth Judicial District, and,

WHEREAS, the allegations objected to the agreement between political leaders in Westchester County to cross-endorse judicial candidates in the Ninth Judicial District and the form which the Democratic Judicial Convention in the Ninth Judicial District took, and,

WHEREAS, nothing in the Election Law prevents political parties from cross-endorsing candidates for elective office absent a showing that material consideration was traded for an endorsement, and,

WHEREAS, while the Election Law does provide specific instructions for the conduct of judicial conventions, the proper method for challenging the form of a judicial convention is to file objections and bring a case in the Supreme Court, not through a criminal prosecution,

NOW THEREFORE, this Board determines that this complaint does not indicate any criminal wrongdoing on the part of any of the persons involved in the complaint.


Peter S. Kosinski

DATED: May 25, 1990