ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

May 22, 1991

FILE NO. 91-022

ELECTIONS:
Established Party Status of
Illinois Solidarity Party

Ronald D. Michaelson
Executive Director
State Board of Elections
1020 South Spring Street
Springfield, Illinois 62708

Dear Mr. Michaelson:

I have your letter wherein you inquire whether the Illinois Solidarity Party continues to be an established political party at the State level, as defined in section 10-2 of the Illinois Election Code (Ill. Rev. Stat. 1989, ch. 46, par. 10-2), following the November, 1990, general election. For the reasons hereinafter stated, it is my opinion that the Solidarity Party is not an established political party as defined therein.

500 South Second Street, Springfield, Illinois 62706 217-782-1090 • TDD 217-785-2771 • FAX 217-782-7046
100 West Randolph Street, Chicago, Illinois 60601 312-814-3000 • TDD 312-814-7123 • FAX 312-814-3806

In the 1990 general election, the Illinois Solidarity Party fielded only one candidate, Martin Ortega, who ran for one of three positions on the University of Illinois Board of Trustees. The total votes cast for University of Illinois Trustees was 8,404,967. Mr. Ortega received 226,103 votes. Section 10-2 of the Election Code provides, in pertinent part:

" * * *

> A political party which continues to receive for its candidate for Governor more than 5% of the entire vote cast for Governor, shall remain an 'established political party' as to the State and as to every district or political subdivision thereof. But if the political party's candidate for Governor fails to receive more than 5% of the entire vote cast for Governor, or if the political party does not nominate a candidate for Governor, the political party shall remain an 'established political party' within the State or within such district or political subdivision less than the State, as the case may be, only so long as, and only in those districts or political subdivisions in which, the candidates of that political party, or any candidate or candidates of that political party, continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates at succeeding general or consolidated elections within the State or within any district or political subdivision, as the case may be.
>
> * * *

(Emphasis added.) "

Prior to 1990, the Illinois Solidarity Party was an established political party throughout the State based upon the number of votes cast for the party's candidate for governor in 1986. The Illinois Solidarity Party, however, did not field a candidate for governor in 1990. Therefore, the party can

remain an established political party at the State level only if it is determined that its sole candidate received more than 5% of the vote cast for the office of University of Illinois Trustee. The issue is the proper method of measuring 5% of the vote cast in a race in which a total of seven candidates, three from each of the Democratic and Republican parties and one from the Illinois Solidarity Party, ran in a field for three trustee positions. Voters were instructed to vote for three of the candidates and the three candidates receiving the highest number of votes were elected.

The right of persons to organize and to make nominations as a political party is a privilege which may be regulated by the General Assembly. (People ex rel. Kell v. Kramer (1928), 328 Ill. 512, 518-19.) Section 10-2 of the Election Code provides the procedures whereby a political party may be established in Illinois.

The pertinent language of section 10-2 provides that a party, once established, may maintain its status as an established political party "within the State * * * only so long as * * * any candidate or candidates of that political party, continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates * * *". The use of both the singular and plural forms of "candidate" and "office" implies that the General Assembly intended the 5% rule to be comprehensive, and to apply not only to situations in

which two or more candidates from different parties vie for a single office in a head to head race, but also to situations in which a party may nominate multiple candidates in an at-large election for several offices. Section 10-2, however, does not specify the method by which the 5% threshold is to be applied in an at-large election.

In only one Illinois case have our courts discussed methods whereby a percentage of votes cast in an election involving a field of candidates running for more than one office may be attributed to individual candidates. In Leck v. Michaelson (1986), 111 Ill. 2d 523, the court considered the validity of a municipal ordinance which required that all municipal officers be elected by "50% of the votes cast for that office", as it applied to an election in which nine candidates ran for three at-large village board seats. The Supreme Court ultimately held that the ordinance in question was unconstitutionally vague, however, without endorsing either method of determination utilized by the courts below. Therefore, no judicially-approved method of applying a minimum percentage test to candidates in at-large elections may be extrapolated from that case.

In examining this question, I have considered several methods for applying the requirements of section 10-2 to an at-large election. Generally, however, these methods entail a departure from the literal language of the statute. While

statutes relating to the nomination of candidates have been deemed to relate to the exercise of the franchise, and thus are to be liberally construed (People ex rel. Dickerson v. Williamson (1900), 185 Ill. 106, 110), liberal construction does not obviate the principle that the meaning of a statute must be found in its language. Parizon v. Granite City Steel Company (1966), 71 Ill. App. 2d 53, 70.

One possible method of applying section 10-2 in this circumstance would require dividing the total vote cast for University of Illinois Trustees by three to yield an average vote for each of the offices elected, and applying the 5% test to the average vote. Section 10-2, however, specifies that the performance of a party's candidate is to be measured against the total of "all the votes cast for the office or offices" to be elected. While this method would permit the use of a simple calculation, it would not, in any way, reflect the vote actually cast for any of the three offices to which the candidate was seeking election, or to the three offices cumulatively. It is premised upon an artificial average of a number which cannot, in any event, be ascertained, because there is no accurate means to allocate votes cast for unsuccessful candidates to the seats which were filled. Consequently, although this method would be simple to apply, it does not fulfill the statutory formula.

Another possible method of applying the 5% threshold would be to measure a party's candidate's performance against the total number of votes cast for one of the candidates who was elected to office. Whether the 5% test should be based upon the vote total of the successful candidate who received the largest vote, or the successful candidate who received the smallest vote, creates ambiguity. More significantly, however, this method departs radically from the language of section 10-2. Under section 10-2, a candidate's performance is to be measured against the total number of votes cast for the office for which he or she was a candidate. This number must include not only the votes cast for the successful candidate, but also votes cast for other, unsuccessful candidates. This method, by failing to take into account those votes, would potentially permit a party's candidate to garner less than 5% of the total vote and still be deemed to have satisfied that requirement. This result would frustrate the State's legitimate interest in assuring that established political parties continue to receive at least minimal support from the electorate.

The obvious intent of section 10-2 is to permit a State-wide political party to continue as an established party only if it can demonstrate a minimum level of continued popular support at the State level. (See, Progressive Party v. Flynn (1948), 400 Ill. 102, 111; People ex rel. Dickerson v. Williamson (1900), 185 Ill. 106, 111.) Where compliance with

the 5% requirement of section 10-2 is to be based upon the votes cast in an at-large election in which a political party may slate multiple candidates for election to several positions, it is my opinion that the only method of measurement which accurately meets the terms of section 10-2 is a determination of whether the total vote received by the full slate of candidates nominated by a party for those offices exceeds the specified percentage of the cumulative votes cast for all of the offices to be filled. The intent of a statute is to be determined primarily from its language (North Bank v. F & H Resources, Inc. (1977), 53 Ill. App. 3d 950, 952), as well as the object to be attained. (Gannon v. C., M., St. P. & P. Ry. Co. (1961), 22 Ill. 2d 305, 317.) A statute cannot be construed so as to contravene its express provisions. (Rosewood Corp. v. TransAmerica Ins. (1974), 57 Ill. 2d 247, 253.) Section 10-2, in expressly providing that the threshold may be applied to "candidates of that political party, [who] continue to receive more than 5% of all the votes cast for the * * * offices for which they were candidates", permits the application of a cumulative test to these offices. Indeed, the only true indicator of a party's performance, in this circumstance is the level at which the party's candidates for at-large election perform cumulatively. This method effectuates the terms of section 10-2 by accounting for the total number of votes cast without allocating them artificially between candidates.

Applying this formula to the vote for University of Illinois Trustees in the November, 1990, election, the Solidarity Party fails to meet the requirements of section 10-2 of the Election Code. 8,404,967 votes were cast for the three University of Illinois Trustee positions. The number of votes cast for the Solidarity Party's sole candidate was 226,103, which is less than 5% of the total votes cast (420,248). Consequently, it is my opinion that the Illinois Solidarity Party does not remain an established political party for the purpose of nominating candidates for State-wide races.

I note, as a final matter, that each of the three other, unsuccessful candidates polled far in excess of 5% of the vote individually. Therefore, had any one of those candidates been the sole representative of his or her party on the ballot, that party would have met the requirements of section 10-2 and continued as an established political party based upon his or her performance.

Respectfully yours,

Roland W. Burris

ROLAND W. BURRIS
ATTORNEY GENERAL