

ELECTIONS:
VOTING:
POLITICAL PARTIES:
WRITE-IN VOTES:

Write-in votes must be counted and totaled without regard to the party ticket the voter chances to use.

Opinion No. 345

October 15, 1964



Honorable Thomas O. Pickett
Prosecuting Attorney of Grundy County
924 Main Street
Trenton, Missouri

Dear Mr. Pickett:

This is in answer to your official opinion request concerning the counting of write-in ballots in which you ask the following question:

"The specific problem is whether write-in ballots for the same person on the Democratic, Republican and Independent columns of the ballots will be counted as a total for the benefit of said person whose name is written in or whether said votes will be counted only separately under the particular party affiliation for which cast."

At the outset of this opinion, we may simply state that this office cannot find statutory or case authority which would uphold the segregation of write-in votes as Democratic, Republican or Independent in counting the total votes for write-in candidates.

Section 111.580 (2) dealing with write-in votes provides:

"(2) If the voter desires to vote for one or more candidates whose name or names do not appear on the printed ballot he may do so by drawing a line through the printed name of candidate for such office, and writing below such canceled name the name of person for whom he desires to vote, and placing a cross mark in the square at the left of such name. The squares so marked shall take precedence over the cross marked in the circle."

Section 111.660 dealing with the procedure per entry of votes into the poll book provides:

"The clerk shall enter in separate columns, under the names of the persons voted for, as provided in the form of the poll books, all the votes read by the counting judges."

Section 111.670 dealing with the counting of votes provides:

"After the examination of the ballots shall be completed, the whole number of votes for each person shall be enumerated under the inspection of the judges, and set down as directed in the form of the poll books, and be publicly proclaimed to the persons present."

Section 111.580 (2), supra, dealing with write-in votes, authorizes such a vote as a legally cast vote. Section 111.660, supra, dealing with entry of votes into the poll book directs that the poll clerk shall enter into the poll book, under the name of the person voted for, all the votes read by the counting judge. No statutory provision is found which would authorize segregating write-in votes for a candidate into Democratic, Republican or Independent columns in a poll book. This section specifically provides that "all the votes" are to be entered under the name of the candidate. The form of the poll book is clearly set out in Section 111.510. No provision is made therein for segregating votes in the poll book in any manner.

Section 111.670 dealing with counting of votes directs that after all ballots are counted, "the whole number of votes for each person shall be enumerated * * *". Enumerated is defined in Webster's Dictionary simply as "counting". This section in explicit and clear language provides that the whole number of votes for each person shall be enumerated [counted]. This can only be interpreted to mean that all votes cast for a candidate must be counted as the total without regard to political parties. If the Legislature had intended totaling write-in votes as Democratic, Republican or Independent, it could easily have done so. However, there is no statutory authority which would authorize the totaling of write-in votes in such a manner.

In State ex rel. v. Coburn, 168 SW 956, the Missouri Supreme Court held on the question of the validity of write-in votes as follows, l.c. 959:

"* * * He [the voter] does not have to vote for the nominee of the party ticket he chances to use, but can vote for whom he pleases, whether the person of his choice has been nominated or not. * * * when the voter goes to the quietude of his booth to vote, he has the absolute and unqualified right to vote for whom he pleases."

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Thus, a voter is not restricted to the names on the printed ballot. The voter has an absolute and unqualified right to vote for whom he pleases. If a voter writes-in a candidate's name, that vote must be counted and given the same weight as any other vote without regard to the party ticket he chances to use.

CONCLUSION

It is the opinion of this office that write-in votes must be counted and totaled without regard to the party ticket the voter chances to use.

The foregoing opinion which I hereby approve was prepared by my Assistant, Jim DeNeen.

Very truly yours,


THOMAS F. EAGLETON
Attorney General