

CANDIDATES: (1) If there are two  
ELECTIONS: positions to be filled at an  
ELECTION OF SCHOOL CANDIDATES: election pursuant to Section  
SCHOOLS: 162.291, RSMo 1986, for  
SCHOOL BOARDS: members of the board of a  
SCHOOL ELECTIONS: six-director school district  
WRITE-INS: and only one candidate has  
filed, a write-in candidate

is not required to file a declaration of intent as provided in  
Section 115.453(4), RSMo 1986, for his votes to be counted; and  
(2) in the circumstances described above, two undeclared  
write-in candidates can defeat the one candidate listed on the  
ballot if they receive the greater number of votes.

April 1, 1991

OPINION NO. 110-91

John T. Kay  
Moniteau County Prosecuting Attorney  
Moniteau County Courthouse  
California, Missouri 65018

Dear Mr. Kay:

This opinion is in response to your questions asking:

- (1) If there are two positions to be filled at an election for members of a six-director school district and only one candidate has filed, does a person wishing to be a write-in candidate need to file a declaration of intent as required in Section 115.453(4) or can he receive votes without such a declaration being filed?
- (2) If your answer to the first question is that a person need not file a declaration of intent to become a write-in candidate in order to receive votes, can two undeclared write-in candidates defeat the one candidate listed on the ballot, or are the undeclared write-ins only eligible to receive votes for and be elected to

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the second position for which no one  
filed?

Section 115.453(4), RSMo 1986, provides, in pertinent part,  
as follows:

115.453. Procedure for counting  
votes for candidates.--Election judges  
shall count votes for all candidates in the  
following manner:

\* \* \*

(4) Write-in votes shall be counted  
only for candidates for election to office  
who have filed a declaration of intent to  
be a write-in candidate for election to  
office with the proper election authority  
prior to 5:00 p.m. on the second Friday  
immediately preceding the election  
day. . . . This subdivision shall not  
apply to elections wherein candidates are  
being elected to an office for which no  
candidate has filed.

\* \* \*

We assume that your questions refer to an election pursuant  
to Section 162.291, RSMo 1986, which provides as follows:

162.291. Directors--election--  
qualifications.--The voters of each  
six-director district other than urban  
districts shall, at municipal elections,  
elect two directors who are citizens of the  
United States and resident taxpayers of the  
district, who have resided in this state  
for one year next preceding their election  
or appointment, and who are at least  
twenty-four years of age.

This statute does not require candidates to declare for a  
particular position; rather, the two candidates receiving the  
greatest number of votes are elected as the two directors. This  
is in contrast to the requirements of Section 162.281, RSMo  
1986, that ". . . when directors are to be elected for terms of  
different lengths, each candidate shall declare for a term of a  
specific number of years and the different terms shall be voted  
upon as separate propositions."

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In the situation described in your first question, only one candidate has filed for an election to fill two positions. Therefore, "candidates are being elected to an office for which no candidate has filed" within the meaning of the exception to the requirement of filing a "declaration of intent to be a write-in candidate" as set out in Section 115.453(4), RSMo 1986. We conclude that in the situation described in your first question, a person wishing to be a write-in candidate is not required to file a declaration of intent to be a write-in candidate in order for his votes to be counted.

Because of the conclusion reached in answer to your first question, it is necessary to address your second question asking whether two undeclared write-in candidates can defeat the one candidate listed on the ballot or if they are only eligible to be elected to the "second position for which no one filed."

In the scenario you have provided, "candidates are being elected to an office for which no candidate has filed." Section 115.453(4), RSMo 1986. However, because candidates do not declare under Section 162.291, RSMo 1986, for a particular position, it cannot be determined which office has no declared candidate.

"Election laws must be liberally construed in aid of the right of suffrage. . . . While mandatory statutory requirements must be followed, '[e]lections should be so held as to afford a free and fair expression of the popular will. . . .'" Kasten v. Guth, 375 S.W.2d 110, 113 (Mo. 1964), quoting State at Inf. McKittrick ex rel. Martin v. Stoner, 347 Mo. 242, 146 S.W.2d 891, 894 (Mo. 1941).

To conclude that the undeclared write-in candidates can only be considered for one of the two positions as director would mean that the declared candidate automatically is elected as a director, even if write-in candidates receive a greater number of votes. We believe such a result is contrary to the "free and fair expression of the popular will." Id. Therefore, we conclude the two undeclared write-in candidates can defeat the one candidate listed on the ballot if they receive the greater number of votes.

#### CONCLUSION

It is the opinion of this office that: (1) if there are two positions to be filled at an election pursuant to Section 162.291, RSMo 1986, for members of the board of a six-director school district and only one candidate has filed, a write-in candidate is not required to file a declaration of intent as

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provided in Section 115.453(4), RSMo 1986, for his votes to be counted; and (2) in the circumstances described above, two undeclared write-in candidates can defeat the one candidate listed on the ballot if they receive the greater number of votes.

Very truly yours,



WILLIAM L. WEBSTER  
Attorney General