

ELECTIONS: At a general election a voter may "write in" the name of any person he chooses for any office he chooses without regard to whether or not there is a regular party nominee. The person receiving the majority vote for any particular office is the person elected to said office.

September 28, 1948



Honorable Emory L. Melton
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Mr. Melton:

Your opinion request of recent date reads as follows:

"Under MRSA 1939, Section 11603, a voter may if he desires, vote for a candidate whose name does not appear on the printed ballot by drawing a line through the printed name of the regular candidate and write below such cancelled name the name of the person for whom he desires to vote, placing a cross in the square to the left of such name.

"As you will note from the enclosed ballot, there is only one candidate for Probate Judge. Could the voters fill this office in the manner provided for above? If so, would a simple majority of the votes elect the 'write in' candidate?

"Also, what would be the effect of a 'write in' candidate if the regular candidate had his name taken off the ballot?

"I shall appreciate your opinion on this matter at the earliest possible date."

As we understand your question, specifically you inquire whether or not it is possible for a voter to "write in" a person of his choice, and whether or not it is possible to so elect such person to office.

Section 11603, R.S.Mo. 1939, provides specifically as follows:

"* * * 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 cancelled 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.
* * *"

This section, in its essentials, has been on the statute books of Missouri since 1889, and, as you see, it provides for a voter to place upon the ballot the name of a person other than the regular party nominee should said candidate not appeal to him. The obvious reason behind this statute is that it is an attempt to prevent the disenfranchisement of a voter should the primaries or conventions used to nominate the candidates for office be subject to fraud or coercion or any other force which might destroy the free exercise of the right to vote by any and all persons. In 1892 the Supreme Court, en banc, in the case of Bowers v. Smith, 111 Mo. 45, l. c. 52, 53, passed upon Section 4773, R.S. Mo. 1889, (Now Section 11595, R.S. Mo. 1939), which section, as now, establishes the form of ballot to be used in the elections. In construing that section of the law, the court stated:

"* * * Nominations under it entitle the nominees to places upon the official ballots, printed at public expense; but the Missouri voter is still at liberty to write on his ballot other names than those which may be printed there.

"The statute recognizes this right by requiring sufficient blank space for such writing, next to the printed names of candidates for each office. Revised Statutes, 1889, sec. 4773.

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"* * * In Missouri any voter may add such a name for himself in the blank provided on the ballot for that purpose."

Further judicial support for the proposition that a voter at the general election may "write in" the name of any person

he chooses, regardless of whether or not there is a party nominee for that particular office, is found in the case of Bradley v. Cox, 271 Mo. 438, l. c. 448, 449:

"* * *Section 5900 provides that the voter, upon receiving the ballot, shall immediately retire to one of the booths in the polling place and that 'he shall prepare his ballot by selecting the ballot he desires to vote. He shall erase or strike out the name of any candidate he does not wish to vote for and write the name of his choice underneath.'"

Even in the dissenting opinion, l. c. 454, the court acknowledged the right of any voter to "write in" the name of his choice at the election. The court stated:

"* * *No authority in law for his name there in print, can be found. The only way it could have legally gotten on the ticket of any voter, was by the voter writing it in the space left under the caption and under the name of the nominee. * * *"

We, therefore, think it clear and obvious that, under the present statute and under the past decisions of this state, a voter may "write in" the name of any person he chooses at the time of the election. And as long as this situation exists there can be no disenfranchisement of the voter or no compulsion to accept a nominee distasteful to him.

We are enclosing a copy of an opinion rendered by this department under date of September 23, 1944, to the Honorable Arthur U. Goodman, Prosecuting Attorney of Dunklin County, which is in accord with this opinion.

Hon. Emory L. Melton

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CONCLUSION

We are of the opinion that at a general election a voter may "write in" the name of any person he chooses for any office he chooses without regard to whether or not there is a regular party nominee. Further, that, under our system of elections, the person receiving the majority vote for any particular office is the person elected to said office.

Respectfully submitted,

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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