

ELECTIONS) No vote may be counted in primary for unopposed
) candidate unless X is placed before name. Marking
) off name of unopposed candidate does not invalidate
) ballot as to other offices.

August 9, 1950

8/14/50

Honorable Homer F. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

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Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"With regard to the interpretation of the primary election laws in this state, I would like your opinion on the application of same to the following specific instances, namely:

"1). A voter votes his party ticket in the primary, but does not put a cross in the square in front of the name of an unopposed candidate for office, does this count for this candidate?

"2). A voter runs a line thru the name of an unopposed candidate on his party ticket. Does this ticket count for the other candidates for whom he expresses choice on his ticket, or does this invalidate the whole ticket so that it has to be thrown out?"

Section 120.45 of House Bill No. 2057, Sixty-fifth General Assembly, provides in part as follows:

" * * * At the head of each such ticket, immediately following the date of such election, shall be printed the following: 'Instruction to voters: Place an X in the square opposite the name of the person for whom you wish to vote'. The voter

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shall cast his vote in accordance with this instruction and shall vote in no other manner. * * *

This provision clearly requires a voter to place an X in the square opposite the name of a person for whom he wishes to vote. Should no X be placed in the square opposite a person's name, no vote may be counted for such person under this section although the candidate is unopposed. There is no provision for voting straight tickets in the primary election similar to that found in the laws regarding general elections.

As for your second question, there is no provision in the primary election laws which renders void the marking of a ballot in such a way as to obliterate the name of a candidate which appears on such ballot. In view of the absence of such provision, we feel that the ballot should be counted for the other persons for whom votes have been legally cast on the ballot. As stated by the Supreme Court of Missouri in the case of Nance v. Kearbey, 251 Mo. 374, 1. c. 383, " * * * The uppermost question in applying statutory regulation to determine the legality of votes cast and counted is whether or not the statute itself makes a specified irregularity fatal. If so, courts enforce it to the letter. * * *"

There being no such statutory provision, we feel that the irregularity about which you inquire does not invalidate the entire ballot.

CONCLUSION

Therefore, it is the opinion of this department that when a voter votes his party ticket in the primary, but does not place an X in the square in front of a name of an unopposed candidate for office, no vote may be counted for such candidate.

We are further of the opinion that when a voter obliterates the name of an unopposed candidate on his party ticket, this does not invalidate the entire ballot, but it may be counted for the other candidates for whom he expresses choice on his ticket.

Respectfully submitted,

APPROVED:



J. E. TAYLOR
Attorney General

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