

- ELECTION: A. Under section 10278 if candidates whose name is written in receives more votes than the printed name of the other candidate, the candidate whose name is written in is legally elected.
- B. Judges of the primary have no authority to write name of candidate whose name is not printed on ballot for committee-  
July 31, 1934. man or committeewoman and hand same to voter.

Miss Josephine Howell  
County Clerk  
Vernon County  
Nevada, Missouri



Dear Miss Howell:

This department acknowledges receipt of your letter of July 27th pertaining to several questions and requesting an opinion of this department. Your letter is as follows:

"A candidate for Committeeman, who has duly filed, has been informed that a good many voters in his precinct are going to scratch his name and write in another name. He has requested me to write you and find out if the other man did receive more votes than he, would he be legally elected. He would also like to know if the Judges of the Primary have any authority to write this man's name on the ballot who has not legally filed."

Section 10278 R. S. No. 1929, relates to the method of electing committeemen and committeewomen and is as follows:

"At the August primary each voter may write in the space left on the ballot for that purpose the names of a man and a woman, qualified electors of the precinct, or voting district as the case may be, for committeemen for such township, or voting district, and the man and the woman receiving the highest number of votes in such township, or election district, shall be the members of the party committee of the county, or in the case of a city not within the county, of the city of which such voting precinct, or district is a part: Provided, that any qualified elector in any such voting precinct or district may have his or her name printed on the primary ballot,

or party ticket on which he or she may desire to become a candidate for committeeman or committeewoman by complying with the provisions of section 10257 R. S. 1929."

By this section you will note that if no parties file for committeemen or committeewomen, the voters may elect by writing in the names. Under the last proviso a candidate for committeeman or committeewoman may have the name printed on the primary ballot if Section 10257 dealing with the manner of filing a declaration is complied with. Under the circumstances which you present, one candidates name being printed on the ballot the other a candidate who is requesting voters to write in his name, if the candidate desires his name to be written in receives more votes than the candidate whose name is printed on the ballot, the candidate whose name has been written in will be legally elected. The primary election is for the selection of party nominees but in the case of committeemen and committeewomen it is a final or general election.

In the decision of Ousley vs. Powell, 12 S. W. (2d) p. 102, the Court held that the manner of voting in the situation which you present should be carried out as follows:

"\* \* \* These cases sustain appellant's position, but our statute and controlling decisions of our Supreme Court establish a different rule in this state. Section 4878, Stat. 1919, provides as follows: 'If a ballot should be found to contain a greater number of names for any office than the number of persons required to fill such office, it shall be considered as fraudulent as to the whole of the names designated to fill such office, but no further; but no ballot shall be considered fraudulent for containing a less number of names than are authorized to be inserted.' This section is found in the general election law, chapter 30, artl. 6, entitled 'Ballots, Voting and Returns.' In the same article, section 4895 provides: 'The provisions of this article shall apply to all the election precincts in this state.' There is no specific provision in the statute governing contests of election to office in cities of the fourth class. Section 4896, Stat. 1919, gives the circuit

court jurisdiction in cases of contested elections for county and municipal offices, and, since there is no separate provision applying to cities of the fourth class, it follows that the general provisions of law applicable to county offices also apply to offices of cities of this class, and we are clearly of the opinion that section 4878, supra, applies to a ballot cast for an officer of a city of the fourth class. This statute expressly provides that, if a ballot is found to contain a greater number of names for any office than is required to fill the office, it shall be considered fraudulent as to that office. This means, of course, that it cannot be counted for either of the parties, no matter how clearly the condition of the ballot might indicate the intention of the voter. When a statute provides what results shall follow a failure to comply with its terms, it is mandatory and must be obeyed. *Hossefall v. School District*, 143 Mo. App. 541, 545, 546, 128 S. W. 33. \* \* \* \*

You further inquire whether or not the judges of primary have authority to write the unprinted name on the ballot. The object sought to be attained in Section 10257 which is as follows:

"The name of no candidate shall be printed upon any official ballot at any primary election, unless at least sixty days prior to such primary a written declaration shall have been filed by the candidate, as provided in this article, stating his full name, residence, office for which he proposes as a candidate, the party upon whose ticket he is to be a candidate, that if nominated and elected to such office he will qualify, and such declaration shall be in substantially the following form:

I, the undersigned, a resident and qualified elector of the (\_\_\_\_\_ precinct of the town of \_\_\_\_\_), or (the \_\_\_\_\_ precinct of the ward of the city of \_\_\_\_\_), county of \_\_\_\_\_ and state of Missouri, do announce myself a candidate for the office of \_\_\_\_\_ on the ticket, to be voted for at the primary election

