

ELECTIONS:  
BALLOTS:

It is unlawful for a voter to attach a sticker containing the name of a person for whom the voter wishes to cast his vote printed thereon as provided in Section 111.580, RSMo 1949.



September 18, 1952

9-18-52

Honorable Charles E. Murrell, Jr.,  
Prosecuting Attorney of Knox  
County  
Edina, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"I would like an opinion from your office as to whether or not a name may be written in on the ballot at the General Election for an office for which there is not now a candidate and if the judges are required to count written in votes in such instances.

"In connection with the above question your attention is called to Subparagraph 2 of Section 111.580 R. S. Mo. 1949, which seems to indicate that a voter may vote for a 'write in' on a ballot but limits the 'write in' by providing for drawing of a line through the printed name of the candidate whose name appears on the ballot. The situation we have is one where there is no declared candidate for the office and therefore no printed name on the ballot.

"We would also like to know if there is any provision in the election laws for the placing of a name of a candidate on the ballot to be used at the General Election by the County Committee or any other body where there is no declared candidate for the office by the last day of filing for the office. In this connection I find no provision for such action in the present laws. I realize that it is possible that I may have overlooked such a provision in the statutes.

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"I would like also to have your opinion as to whether or not, in Missouri, a person seeking an office whose name does not appear upon the ballot, may have stickers made, the size of the space on the ballot for the office he seeks, having his name printed on one side with an X in a square before his name and the other side having glue on it so that the sticker may be glued to the ballot in the space provided for, for the office. In this connection, if a sticker can be used, what would be the effect if there is not a name on the printed ballot for the office?"

You first inquire whether a name may be written in on the ballot at the general election for an office where no candidate was nominated and consequently no name appears on the printed ballot. In this connection I am enclosing a copy of an opinion to the Honorable Samuel Semple, Prosecuting Attorney of Randolph County, October 21, 1948, holding that a voter may write in the name of a person he chooses for any office, regardless of whether or not there is a party nominee, and an opinion to the Honorable Arthur U. Goodman, Jr., Prosecuting Attorney of Dunklin County, September 23, 1944, holding that the ballot must contain a space for such office although no printed name will appear.

You next inquire as to whether or not the county committee or any other body may place the name of a candidate on the general election ballot where there is no declared candidate nominated at the primary for the office. I am enclosing a copy of an opinion to the Honorable Dwight H. Brown, Secretary of State, July 3, 1942, holding that no party committee would be authorized to fill a vacancy on its ticket after the primary except in a case where a vacancy occurs after the holding of the primary and such vacancy was caused by death or resignation of the candidate nominated and in no other case.

Your next inquiry deals with whether or not a person seeking an office whose name does not appear upon the ballot may have stickers made the size of the space on the ballot for the office he seeks, having his name printed on one side with an (X) in a square before his name, presumably so that the voter may attach the sticker in the space provided for, for the office. In this regard we direct your attention to Section 111.580, RSMo 1949, which provides in part as follows:

"1. On receipt of his ballot the voter shall forthwith, and without leaving the enclosed space, retire alone to one of the voting booths so provided, and shall prepare his ballot for voting in the following manner:

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\* \* \* \* \*

(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.

\* \* \* \* \*

"3. It shall not be lawful to deface or tear a ballot in any manner nor to erase any printed name (except as provided above in this section), figure, word or letter therefrom, nor to erase any mark made thereon by such voter, nor enclose in the folded ballot any other paper or any article. If the voter deface or tear a ballot, or wrongly mark the name or make an erasure therein, he may obtain one additional ballot on returning to a judge in charge of the ballots the one so defaced or wrongly marked.

\* \* \* \* \*

As indicated by paragraph 1, subsection 2 of Section 111.580, and as discussed in the enclosed opinion, a voter may write in the name of a person for whom he desires to vote where there is no declared candidate and no printed name on the ballot in the space provided for the office. Paragraph 3 provides that it shall be unlawful to deface a ballot or to enclose any other paper or article with the folded ballot. We are of the opinion that the provisions of this section are mandatory, *Hope v. Flentge*, 140 Mo. 390, and that the provision for writing in the name of a person for whom the voter chooses to cast his vote may only be complied with by actually writing in the name and not by attaching a sticker.

We are further of the opinion that attaching a sticker would be in violation of paragraph 3, which provides that no paper or any other article shall be enclosed in the folded ballot.

#### CONCLUSION

Therefore, it is the opinion of this office that it is unlawful for a voter to attach a sticker containing the name of a person for

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whom the voter wisher to cast his vote printed thereon, as provided  
in Section 111.580, RSMo 1949.

Respectfully submitted,

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APPROVED:

  
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J. E. TAYLOR  
Attorney General

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