

MS

OPINION NO. 418  
Answered by Letter -- Culver

October 31, 1968

Honorable William C. Batson, Jr.  
Prosecuting Attorney  
Butler County  
Poplar Bluff, Missouri 63901

Dear Mr. Batson:

This is in response to your inquiry concerning the question whether an entire ballot is voided when an individual votes for two candidates for the same office on different party tickets.

Section 111.580, RSMo 1959, reads in part:

"2. All candidates of the party whose circle is marked shall be counted as voted for excepting where squares are crossed preceding the names of the candidates in other columns. If two or more candidates for the same office are thus designated, neither shall be counted. If the cross (X) is not placed in the circle immediately below the party name at the head of the column, but does appear in the squares opposite the various candidate's names, then only these names shall be counted for, and none other. A cross (X) mark is any line crossing any other line at any angle within the voting space, and no ballot shall be declared void because a cross (X) mark therein is irregular in form.

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4. A ballot placed in the ballot box without any marks shall not be counted. Ballots shall be counted only for the person for whom the marks thereon are applicable; when a voter shall place a mark against two or more names for the same office, and only one

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candidate is to be chosen for the office, none of the candidates shall be deemed to have been voted for and the ballots shall not be counted for either such candidate."

The primary purpose in construing election laws relating to the marking of ballots is to ascertain the voter's intention and give effect to his vote. Riefle v. Kamp, Mo. App. 1952, 241 Mo. App. 1151, 247 S.W. 2d 333. Consequently, an entire ballot should never be found void except when it is virtually impossible to determine a voter's intention on any and all candidates. Here the statutes clearly indicate that when votes are attempted to be cast for two or more names for an office for which only one candidate is to be chosen, then the vote for that particular office is void, but not the entire ballot.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

WLC/jlf