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May 21, 1969

OPINION LETTER NO. 239

Honorable Thomas D. Graham  
State Representative  
312 East Capitol Avenue  
Jefferson City, Missouri 65101

Dear Mr. Graham:

This is in response to your request for an opinion from this office regarding the following inquiry concerning Jefferson City, Missouri.

On the upcoming City Charter Election, a voter has the right to vote for thirteen Commissioners. What happens to the ballot if the voter votes for more than thirteen?

Section 111.625 RSMo 1959 provides:

The provisions of Sections 111.390 to 111.620 apply to all election precincts in this state but do not apply to township or village elections, to school elections, to any city election in any city of the fourth class or to any election in any city of less than three thousand inhabitants existing under any special law.

Jefferson City is a third class city and thus the provisions of Section 111.580 RSMo 1959 are applicable to its elections. That statute provides in Section 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 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. (Emphasis supplied)

It is apparent that this statutory provision merely states what must result in a situation presented by your inquiry if the basic secrecy of

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the ballot is to be preserved in accordance with the Constitutional mandate, Mo. Const. Art. VIII, Sec. 3.

In *Riefle v. Kamp*, 247 SW 2d 333, 336 (Mo. St. L. Ct. App. 1952) the St. Louis Court of Appeals considered ballots where two candidates were to be voted for in a municipal election for councilman, and three names had been marked on each of the ballots. The court held that none of the three had been properly voted for, citing RSMo 111.580 supra, and held these ballots were "clearly void as they pertain to this office" and "should be rejected."

Therefore, in view of the absence of other provisions to the contrary specifically regarding Charter Elections, and the clear statutory provisions regarding elections generally, it is the opinion of this office that if a voter marks more than thirteen names for Commissioner in a city charter election, as to the office of Commissioner the ballot is void and no such ballot shall be counted for any of the candidates for that office.

Yours very truly,

JOHN C. DANFORTH  
Attorney General