

BALLOTS: Section 115.351, RSMo 1986, prevents  
CANDIDATES: a Republican candidate who was  
ELECTIONS: defeated in the primary election from  
GENERAL ELECTIONS: filing as an independent candidate for  
PRIMARY CANDIDATE: the same office in the November  
PRIMARY ELECTIONS: general election.

September 13, 1988

OPINION NO. 169-88

Jack L. Miller  
Laclede County Prosecuting Attorney  
P.O. Box 1222  
Lebanon, Missouri 65536

Dear Mr. Miller:

This opinion is in response to your question asking:

Does Section 115.351 prevent a Republican candidate from the primary election, who was defeated, from filing as an independent party candidate in the November general election?

On the opinion request form you submitted, you state that a Republican candidate for sheriff of Laclede County in the August 1988 primary was defeated by approximately 1,000 votes. That candidate has now petitioned the county clerk to place his name as an independent candidate for sheriff in the November general election.

Section 115.351, RSMo 1986, provides:

115.351. Candidate may not file for more than one office or as a candidate for the same office on more than one ticket at the same election.--No person who files as a party candidate for nomination or election to an office shall, without withdrawing, file as another party's candidate or an independent candidate for nomination or election to the office for the same term. No person who files as an independent candidate for election to an office shall, without withdrawing, file as a party candidate for nomination or election to the office for the same term. No person shall file for one office and, without withdrawing, file for another

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office to be filled at the same election. Any person violating any provision of this section shall be disqualified from running for nomination or election to any office at the primary and general election next succeeding the violation. (Emphasis added.)

The primary rule of statutory construction is to ascertain the intent of the lawmakers from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). In determining the legislative intent, the courts consider the language of the statute and the words employed in their plain and ordinary meaning. State ex rel. D.M. v. Hoester, 681 S.W.2d 449, 450 (Mo. banc 1984).

In the situation about which you are concerned, the person filed as a Republican party candidate for nomination for the office of sheriff of Laclede County for the next term. He now seeks to file as an independent candidate for election to that same office for the same term. Since the primary election has been concluded, it is not possible for the candidate to come within the exception of having withdrawn. Therefore, Section 115.351 prevents the candidate who is the subject of your question from being an independent candidate for sheriff of Laclede County in the November general election.

#### CONCLUSION

It is the opinion of this office that Section 115.351, RSMo 1986, prevents a Republican candidate who was defeated in the primary election from filing as an independent candidate for the same office in the November general election.

Very truly yours,



WILLIAM L. WEBSTER  
Attorney General