

FILE

Subject

Elections Ballots
Write Ins



Copy to _____

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 21, 1974

Opinion No. 74- 287

Mr. Jeff Johnson
Stevens County Attorney
Stevens County Courthouse
Hugoton, Kansas 67951

Dear Mr. Johnson:

You advise that a citizen who is registered as a Republican has received a sufficient number of write-in votes to receive the nomination to be a Democratic candidate for election on the general ballot. The county clerk inquires whether "the law require[s] the candidate to change his or her political affiliation to Democrat."

In State ex rel. Graybill v. Tipton, 166 Kan. 145, 199 P.2d 463 (1948), the court considered a case in which the names of two persons, Hardwick and Kelly, appeared in the printed Democratic ballot as candidates for the Democratic nomination as county commissioner. Hardwick was defeated as a Democratic candidate, but received a sufficient number of write-in votes on the Republican primary ballot to entitle his name to appear on the general election ballot as the Republican candidate. The county clerk refuses to allow his name to appear on the printed ballot. The Kansas Supreme Court decided to the contrary:

"In other words, the primary election statutes do not say that an elector, entitled to vote in the primary as a member of a particular party, may not be 'nominated' for an office in the primary by the voters of another party. There may be those who doubt the fairness or soundness of permitting this to be done, but that is a

Mr. Jeff Johnson
August 21, 1974
Page Two

question of public policy for the legislature
and not for judicial determination." 166 Kan.
at 149.

Although the declared party affiliation of the individual in question is Republican, the individual was lawfully nominated as a candidate of the Democratic party for election at the general election, and he or she is lawfully entitled to have his name placed on the ballot for that purpose. In addition, it is not a condition imposed by law upon the candidate that he have declared his party affiliation for any party whatever, or that he now declare his affiliation with the party whose voters nominated him at the primary election.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm