

Subject

Electing Ballots  
Write-In

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STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

August 29, 1974

Opinion No. 74- 298

Mr. Bert Blank  
398 7th Street  
Phillipsburg, Kansas 67661

Dear Mr. Blank:

We are advised that a question has arisen concerning the nomination of an individual as a Democratic candidate for the office of county clerk. According to the information we have been furnished, this individual was a declared candidate for the Republican nomination. Losing that nomination, the individual was nominated, instead, by Democratic electors by write-in votes.

That the individual was a declared candidate for the Republican nomination is no bar to nomination by Democratic electors by write-in votes. See *State ex rel. Graybill v. Tipton*, 166 Kan. 145, 199 P.2d 463 (1948). The question is raised, however, by the vote of which party the sufficiency of that candidate's write-in votes is to be determined. K.S.A. 25-213 states thus in pertinent part:

"No person shall receive the nomination nor have his name printed on the ballot for the general election in any case where no nomination or declaration papers have been filed, unless he or she shall receive at least votes equal in number to ten percent (10%) of the total party vote of his or her party cast for governor in such state, county or district at the last general election."  
[Emphasis supplied.]

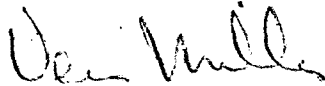
In Opinion No. 74-251, we concluded that inasmuch as the statute specifies with express particularity that a "party vote" be the measure of the number of write-in votes required, and inasmuch as no party vote is possibly determinable at a general election, the necessary number of votes must be determined by the number of votes cast by electors of the appropriate party at the last pre-

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ceding primary election. The question posed here is whether the party vote for the individual in question is that of the Republican or Democrat party.

In our opinion, it is the vote of the Democratic party electors which must be used. When an individual of whatever party is nominated by write-in votes of another party, the individual becomes the candidate of that party, regardless of party affiliation. The purpose of the requirement, of course, is to assure that a write-in candidate receives a given minimum of party support before the name appears on the general ballot. That minimum should be determined by the vote of the party whose electors have cast the write-in votes. In this instance, where two candidates seek a nomination as a Republican candidate, one wins the nomination, and the other loses, but receives write-in votes from Democratic electors, it would be pointless to measure the sufficiency of that write-in vote by the votes of electors of a party, in this case the Republican party, which already had a nominee. If the individual is to be a nominee, "his or her party" is the party whose electors have supported the candidate by write-in votes for its nomination. Accordingly, in this instance, we cannot but conclude that the sufficiency of the write-in votes must be determined by the Democratic vote for candidates for governor in the last preceding primary election.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm