

Subject

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Elections - Ballots
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STATE OF KANSAS

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VERN MILLER
Attorney General

September 23, 1974

Opinion No. 74- 323

The Honorable William R. Novak
Representative - 70th District
Lost Springs, Kansas 66859

Dear Representative Novak:

In reference to the recent contest of the primary election in the 70th Representative District, you inquire, whether the ballots were printed in conformity with K.S.A. 25-213, which states in pertinent part as follows:

"At all national and state primary elections, the national and state offices as specified for each in this section, shall be printed upon one ballot and the county and township offices as specified for each in this section, shall be printed upon another ballot."

As indicated during the hearing before the state contest board, the ballots which the board considered were not properly printed, in that both national, state and county offices appeared on one ballot.

You inquire, secondly, whether this violation could "void the election in the entire district, or just that portion of the district in which the ballots were improperly printed." At 26 Am. Jur. 2d, *Elections*, § 224, the writer states the applicable and guiding rules thus:

"Since the purpose of statutes in reference to the preparation of ballots is to prevent fraud and secure freedom of choice, they should not be so construed as to make the right of voting insecure. Accordingly, in many jurisdictions the result of an election will not be disturbed by the fact that there was a failure to make available to voters official ballots, or ballots conforming to statutory requirements. This conclusion appears to have been predicated to a large extent in a number of cases on the determination by the courts that the requirements of the statute were merely directory rather than mandatory. A vital consideration guiding the courts in determining whether an election should be declared invalid is the reluctance to reach a decision that would result in the disfranchisement of the voters. Thus, it has been held that mere defects

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in the form of the ballot should not void the election, thereby depriving the electorate of the fruit of their exercise of the right to vote and that irregularities in an official ballot due to the error mistake of an election officer do not vitiate the vote of an elector innocent of any wrong or default in the matter. Under this rule [for example], the fact that the officer who is charged with the duty of preparing an official ballot causes to be printed thereon the ticket of a political party that has forfeited its right to representation on the ballot by a failure to file a certificate of nomination does not justify a refusal to count ballots marked in favor of such ticket.... An election is not vitiated by immaterial departures from laws relating to the uniformity of the ballot, by the misspelling of a candidate's name, or by immaterial defects in the description of the proposition submitted. However, if the mistakes in the ballot operate to prevent the holding of a free, fair, and honest election, courts will declare the election void."

In *Peabody v. Burch*, 75 Kan. 543, Pac. 1016 (1907), the Kansas Supreme Court adhered to the above principles of law. Thus, contrary to your contention, an error by the election officer in the preparation of ballots does not necessarily void the votes cast on those ballots. At the contest hearing, there was no suggestion whatever that electors in the area in question would have cast their votes in the race in question differently if county and township officers had been printed on another ballot.

At the contest hearing, there was no evidence or indeed, any basis for argument, that the error in printing the ballots in any way affected the voters in the full, free and fair exercise of their franchise in the race in question. There is absolutely no basis whatever for a conclusion that the error in any way affords a basis for invalidating the election.

Yours very truly,



VERN MILLER
Attorney General

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