



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 13, 1976

ATTORNEY GENERAL OPINION NO. 76- 322

Mr. T. A. Blaser
Marshall County Attorney's Office
Marshall County Courthouse
Marysville, Kansas 66508

Re: Elections--Ballots--Write-In Votes

Synopsis: When the name of a candidate which is printed on the ballot is also written in, the voting mark cast for the name which is written in must be disregarded, and the vote thus cast is void. However, such unlawful vote does not, in and of itself, invalidate the remainder of the ballot.

* * *

Dear Mr. Blaser:

You advise that an individual who is a candidate for the office of township trustee, and whose name will be printed on the ballot thus, has determined to stand for election to the office of county commissioner as a write-in candidate. Thus, on ballots in the township, if the name of the candidate is written in, the name will appear twice on the same ballot. K.S.A. 25-613 states in pertinent part thus:

"No name that is printed on the ballot can be written elsewhere on the ballot."

You inquire how ballots on which the name is written in should be counted; *i.e.*, whether the entire ballot is invalidated, or whether the write-in vote alone is invalid. I enclose a photocopy of Opinion No. 74-367, in which Attorney General Vern Miller concluded

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that a written-in name was not an "identifying mark" which would invalidate the entire ballot under K.S.A. 25-3002(b)(2). That statute provides rules for the guidance of canvassers in determining the validity of ballots. No one of the rules applies specifically to the section here. However, subsection (b)(4) thereof states in pertinent part thus:

"The occurrences listed in this subpart (3) shall not invalidate the whole ballot but shall invalidate that portion, and that portion only, in which the occurrence appears. The votes on such portion of the ballot shall not be counted for any candidate listed or written in said portion, but the remainder of the votes in other portions of the ballot shall be counted. The occurrences to which this subpart (4) shall apply are:

* * *

(C) Whenever a voting mark is placed in the square at the right of a space where no candidate is listed."

Because a name which is printed on the ballot may not be written in elsewhere, any such name which is written in must be disregarded by the canvassers, and any voting mark placed to the right of a space in which such a name is unlawfully written in must likewise be disregarded. However, the entire ballot is not voided, but only the vote cast for the name which is unlawfully written in.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj