

OFFICE OF THE ATTORNEY GENERAL



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December 21, 1999

Honorable Jim Bennett
Secretary of State
Secretary of State's Office
P. O. Box 5616
Montgomery, AL 36103

Write-in Votes – Candidates – Election Officials

Write-in votes should be counted and totals given only for living human beings that receive write-in votes.

Dear Mr. Bennett:

This opinion of the Attorney General is issued in response to your request.

QUESTION

What are the requirements for the canvassing of write-in votes under Alabama law and, specifically, do any provisions exist to exclude non-candidates from the canvassing of write-in votes?

FACTS AND ANALYSIS

Section 17-8-20 of the Code of Alabama authorizes write-in votes and states:

If the elector desires to vote for any person whose name does not appear upon the ballot, he can so vote by writing the name in the proper place on the blank column.

ALA. CODE § 17-8-20 (1995). Similar provisions apply to voting machines and electronic vote-counting systems. ALA. CODE § 17-9-7 (1995); Procedures for Electronic Vote Counting Systems, Rule 307-X-1-16.

Section 17-14-1 provides for the canvassing of votes in county elections and states in pertinent part:

[T]he board shall make a correct statement from the returns of the votes from the several precincts of the county of the whole number of votes given therein for each officer, and the *person* to whom such votes were given.

ALA. CODE § 17-14-1 (1995) (emphasis added). Rule 307-X-1-18 of the Procedures for Electronic Vote Counting Systems provides that “any write-in votes shall be counted and the totals added to the certificates of result. Each county’s certified returns for all state officers and for electors for President and Vice President are delivered to the Secretary of State’s Office for canvassing. ALA. CODE §§ 17-13-7, 17-19-4 (1995).

As provided in section 17-14-1, vote totals shall be given for each “person” receiving write-in votes. Person is defined as “a human being; a living human body.” Webster’s New World Dictionary 555 (1972). Write-in votes are commonly cast for fictional characters such as “Mickey Mouse” and “Donald Duck,” as well as for “None of the Above,” and dead people. It is the opinion of this Office that vote totals should be given only for living human beings that receive write-in votes.

CONCLUSION

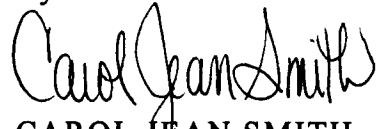
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I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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