

# OFFICE OF THE ATTORNEY GENERAL



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Honorable Robert H. Kirksey  
Judge of Probate  
Pickens County Courthouse  
Carrollton, Alabama 35447

Elections - Voters - Write-In  
Votes

Discussion of the law related  
to write-in voting.

Dear Judge Kirksey:

I am responding to your opinion request of September 13, 1980, in which you ask a number of questions related to write-in voting in a general election in a county using paper ballots. Your questions are as follows:

"1. Are there any requirements of law for a person to qualify as a write-in candidate?"

There are no requirements for a person to qualify as a write-in candidate in order to receive write-in votes. Of course, any person elected to office must fulfill both the statutory and constitutional requirements for that office.

"2. If an office has certain prerequisites in order for a person to be qualified to fill such office, at what stage in the election process is a determination made as to whether or not a person who has received write-in votes for such office meets such prerequisites?"

It is my opinion that the determination as to whether a write-in candidate meets the qualifications for a particular office would have to be made after the candidate is elected to office. If he does not have the necessary qualifications, he must then be disqualified.

"3. At what place on a paper ballot should a voter write in the name of a person for whom they desire to cast a write-in vote?"

There should be a blank column on the right of the ballot containing only the titles of the offices for which candidates may be voted. Section 17-8-4, Code of Alabama 1975. The elector is to use this column to write in the name of any person for whom he desires to vote whose name is not printed on the ballot, pursuant to the provisions of Sections 17-8-5 and 17-8-20, Code of Alabama 1975. However, if the name is written on the ballot in such a manner that the elector's choice may easily be determined, the vote should be counted. See Wilkerson v. Cantelou, 165 Ala. 619, 51 So. 799 (1910), in which the Alabama Supreme Court held that where the name of the Democratic nominee had been scratched out and another name written in its place, the write-in vote should be counted for that office.

"4. When a voter is attempting to cast a write-in vote for a particular office and erroneously writes in the name of his choice on a line of the ballot assigned to another office, how should such vote be counted?"

The vote must be counted as a vote for the office title under which it appears. The election officials cannot determine the intention of the voter other than by the place where the name appears on the ballot.

"5. When a voter makes an (X) mark under a party emblem on the ballot (as if to cast a straight party-ticket vote) and also writes in the name of a person in the write-in column for one of the offices on the ballot, how should this ballot be counted?"

It is my opinion that the ballot should be counted as a vote for every candidate on the party ticket except for the office which has the write-in vote. The write-in vote should be counted for the office under whose title it is placed. See Section 17-8-16, Code of Alabama 1975.

"6. When a voter is casting a write-in vote in an election in which there is a Democratic Party candidate for a particular office, but there is not a Republican Party candidate for that office, may the voter write in the name of the person of his choice in the Republican Party column, or must he write it in exclusively in the write-in column?"

It is my opinion that, based on the holding in Wilkerson v. Cantelou, cited above, the voter may write in the name of a candidate in the party column.

"7. May rubber stamps or stick-on labels or any other method, other than handwriting, be used for indicating the name of a write-in choice?"

The Attorney General has ruled in prior opinions that stickers or rubber stamps may not be used, and that the name must actually be written in. See Opinion to Frank B. Lloyd, Judge of Probate, Crenshaw County, July 21, 1954, Quarterly Report of Attorney General, Vol. 76, p. 15; and opinion to B. A. Reynolds, Judge of Probate, Dallas County, Nov. 3, 1966, Quarterly Report of Attorney General, Vol. 125, p. 16.

"8. How much accuracy or particularity should be required in writing in the name of a person as a write-in choice, as regards the spelling of the name, the use of initials in the place of the given name, or the use of titles, such as 'Dr. Smith', rather than 'Joe E. Smith'?"

This question is answered in a prior Attorney General's opinion to Lee M. Otts, dated Nov. 4, 1966, Quarterly Report of Attorney General, Vol. 126, p. 18, where it was stated that initials rather than a full name might be used, but that the last name only would be insufficient. In that opinion, the test for determining whether the name is sufficient was stated as follows:

"In final analysis, it is my opinion that if a person writes in a candidate's name, it must be done in such fashion that the election officials can determine exactly what person the elector intended to vote for. There is no yardstick that I can lay down in this regard, but the name written in must be identifiable with the person seeking the office."

"9. What, if any, assistance may a voter have in voting a write-in vote? Who may have such assistance? Who may give such assistance?"

It is my opinion that a voter is entitled to the same assistance in voting a write-in vote as he is to vote a regular ballot. The guidelines for such assistance are established in Section 17-8-29, Code of Alabama 1975.

"10. Is it necessary that a voter, making a write-in vote, place an X mark beside the name of the write-in candidate?"

There is no statutory requirement that the voter place an X mark beside the name of the write-in vote. The purpose of the X mark is to evidence the intention of the voter to vote for a particular candidate. By the act of writing in a person's name, he has already evidenced this intention. Thus, the x mark is unnecessary.

"11. Is it possible for a voter to write-in and cast a vote for an office which does not appear on the ballot due to the fact that no candidate qualified for that office? (For example, the office of constable.) If so, how should the voter cast such a vote?"

I am not aware of any prohibition against writing in a name for an office which should be up for election, but for which nobody has qualified. In order to cast such a vote, the voter would have to write the name in the blank column and would have to specify in writing the office for which he was casting the vote.

Sincerely,

CHARLES A. GRADDICK  
Attorney General  
By-



LINDA C. BRELAND  
Assistant Attorney General

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