

ELECTIONS: PRESIDENTIAL BALLOT: WRITE IN: Authorized for presidential electors under state statutes, especially M.S. 1967 § 203.30, Subd. 2; Socialist Labor Party v. Rhodes, U.S. District Court, Ohio, Civil Action No. 68-224 and Dougherty v. Holm, 232 Minn. 68, 44 N.W.2d 83 (1950), discussed; Op. Atty. Gen. 28c-5, September 23, 1940 (based on repealed law) distinguished.

OFC
October 5, 1968

28c-5

Mr. Joseph L. Donovan
Secretary of State
180 State Office Building
St. Paul, Minnesota 55101

Dear Mr. Donovan:

In your letter you state substantially the following:

FACTS

Numerous citizens have asked of the Secretary of State whether write-in votes for the president or vice-president of the United States, or presidential electors, are permitted under Minnesota law.

The Secretary of State prints and distributes all presidential paper ballots. The general intent of the Voting Machine Law is that the voters using voting machines and electronic voting systems shall have the same opportunities to cast valid votes as those using paper ballots, no more, no less.

Based upon these facts you ask the following:

QUESTIONS

1. Are write-in votes for president, vice-president or presidential electors authorized?
2. Should the officials in charge of preparation of voting machines, lock out the write-in slot in the presidential column or row, and in the case of punch card devices omit any write-in provision for president, vice-president, and presidential electors?

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OPINION

Under prior Minnesota law, the statute prescribing the form of the presidential ballot contained language expressly prohibiting the inclusion of space for write-in votes. M.S. 1953 § 204.03 provided in pertinent part:

"The relative position of the several groups shall be determined by the rules applicable to other state offices. The groups of electors shall be separated by a blank space one quarter of an inch in width and so arranged as to permit placing a cross (x) after each name, and no blank lines shall be printed therein as in the case of other candidates or groups."

This statute was amended by Laws 1957, c. 408. Pursuant to an election law revision, the legislature enacted Laws 1959, c. 675, art. 9, § 4 which was substantially similar in content to the above-quoted statute, as amended. However, neither the 1957 amendment nor the new law contain the provision which expressly bans presidential write-in votes. The current law on the subject, M. S. 1967 § 208.04, is identical to the 1959 enactment with the exception of certain technical amendments immaterial to the question here presented.

Other current election laws in Minnesota contain provisions for the inclusion of blanks for write-in votes on the ballot. M.S. 1967 § 203.30, Subd. 1, provides in part:

"In the general election, except in the case of presidential electors, each name shall be followed on the same line in upper and lower case letters, by the

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political party designation of the candidate, or in the case of nonpartisan offices, each name shall be followed by the words, "nominated without party designation." At the general election, below the name of the last candidate for each office shall be placed as many blank lines as there are offices of that kind to be filled, and on the blank lines the voter may write the names of persons not printed on the ballot for whom he desires to vote, . . . "

We note that presidential electors are not excluded from the write-in provision of the statute. While this office issued an opinion on September 23, 1940, holding that the predecessor to the above-cited statute did not apply to presidential ballots, it is distinguishable. The 1940 opinion dealt with the situation in which a direct conflict existed because the express ban against write-in provisions on the presidential ballot existed at that time. As is mentioned above, the conflicting portion of the presidential ballot statute has been repealed.

M.S. 1967 § 206.07(4), dealing with voting machines, and M.S. 1967 § 206.07(5) dealing with electronic voting systems, both provide that spaces for write-ins shall appear on ballots used in connection with such devices. No exception is made in these statutes for the presidential ballot.

It is true that M.S. 1967 § 208.04 [PRESIDENTIAL BALLOT] does not itself make provision for write-in votes. Nevertheless, our state Supreme Court has held that where a specific statute such as this

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has a relationship to general law such as M.S. 1967 c. 203, the general law must also be considered in construing the specific statute:

"Statutes relating to the same general subject matter are in pari materia and are to be construed together, because presumably they are enacted in accord with the same general legislative policy and were intended to be a harmonious and uniform system of law. [omitting cited cases] Where statutes contain general and special provisions which seemingly are in conflict, the two should be construed together and, if possible, harmonized and reconciled and effect given to both. In such cases the general provision will be taken to affect only such cases within its general language as are not within the language of the special provision. [omitting cited case]" State ex rel. Interstate, etc. v. M.-St. Paul M.A. Comm., 223 Minn. 175, 25 N.W. 2d 718 (1947), at 223 Minn. 183, 184.

Based on the above, and pending future legislation to the contrary, it is our opinion that the presidential ballot should contain provision for write-in votes. This opinion is consistent with the basic rule governing interpretation of the election laws in Dougherty v. Holm, 232 Minn. 68, 44 N.W. 2d 83 (1950):

"Election laws should be liberally construed so as to secure to the people their right freely to express their choice. 2 Dunnell Dig. §2915, and cases under note 78." 232 Minn. 68 at 71.

We note that the exact question presented was recently adjudicated by a three judge federal court in Ohio in Socialist

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Labor Party, et al. v. Rhodes, Civil Action No. 68-224. That court held unconstitutional an Ohio statute prohibiting the inclusion of spaces for write-in votes on the Ohio ballot. In reaching its decision the court stated at pages 6 and 7 of its opinion concerning write-in votes:

"A write-in ballot permits a voter to effectively exercise his individual constitutionally protected franchise. The use of write-in ballots does not and should not be dependent on the candidate's chance of success. Denial of this unfettered freedom of choice is a denial of the equal protection of the laws as guaranteed by the 14th amendment."

The one dissenting judge concurred with the majority opinion on this point. It should be noted that this decision was appealed and will be argued before the United States Supreme Court this month.

Under the political system in this country a voter does not vote directly for a presidential candidate, but instead for a number of electors who then cast their votes for president and vice-president. Art. 2, § 1 of the United States Constitution provides:

"The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

"Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but

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no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."

Pursuant to this grant, the Minnesota legislature has directed:

"Presidential electors for the several political parties of this state shall hereafter be nominated by delegate conventions called and held under the supervision of the respective state central committees of the several parties of the state. The names of the persons nominated as presidential electors shall be certified to the secretary of state by the chairman of such convention for the office of presidential elector." M.S. 1967 § 208.03.

If the particular candidates for president and vice-president have been nominated by petition instead of at a party convention, their electors are also filed with the Secretary of State. M. S. 1967 § 202.13.

Votes are cast for these electors in the following manner:

"When presidential electors are to be voted for, a vote for the party candidates for president and vice-president shall be deemed a vote for that party's electors as filed with the secretary of state. The secretary of state shall cause the names of the candidates of each political party and those nominated by petition to be printed in capital letters, set in ten-point type, before the party designation. To the left of, and on a line of such surnames, near the margin, shall be placed a square or box, in which the voter may indicate his choice by marking an 'X', and one such mark opposite the candidate's name of any one party shall be counted as a vote for each elector in the party group on file with the secretary of state." M.S. 1967 § 208.04.

In the case of a write-in vote, the vote for the particular candidate for president cannot be deemed a vote for that candidate's

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electors because no list of electors will be on file with the Secretary of State as contemplated by the above-quoted statute. Additionally, it would be a useless gesture for a voter to write in his choice in any other manner than to vote directly for electors because the determination of which presidential electors are entitled to cast their ballots/^{is}made by the State Canvassing Board. Under Minnesota law, this determination is to be made in the following manner:

"The state canvassing board at its meeting on the second Tuesday after each such general election shall open and canvass the returns made to the secretary of state for presidential electors, and prepare a statement of the number of votes cast for the several persons receiving votes for these offices, and declare the person or persons receiving the highest number of votes for each office duly elected. When it appears that more than the number of persons to be elected as presidential electors have the highest and an equal number of votes, the secretary of state, in the presence of the board shall decide by lot which of such persons shall be declared elected. The governor shall transmit to each person so declared elected a certificate of election, signed by him, sealed with the state seal, and countersigned by the secretary of state; and immediately after the canvass is completed he shall cause a statement of their election to be published in one or more of the newspapers printed in the county of the state capitol and in one or more newspapers printed and published in a city of the first class contiguous to the city containing the state capitol." M.S. 1967 §208.05.

Therefore, a voter desiring to write in his choice on the presidential ballot must write in the office of presidential elector and names of as many as 10 candidates for presidential elector. We recog-

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nize that this process is somewhat cumbersome. However, the tradition of sticker campaigns in Minnesota provides a workable solution.

"The use of a sticker is held to be the same as writing in a name. (omitting cited cases)."
Murray v. Ford, 216 Minn. 68, 72, 11 NW2d 780, 1943.
See also 6 Dunnell Dig. Sec. 2955.

In light of this alternative and in order to minimize disruption of the ballot it would seem that one line for write-ins on the presidential ballot would suffice.

The voter wishing to write in only for President or President and Vice President will ask, what is ^{the} effect of such a vote. We find no present authority in Minnesota statutes or court decisions for counting such a vote although it may be argued and a court of law might rule -- based on the strong constitutional arguments propounded in Socialist Labor Party et al v. Rhodes, Civil Action No. 68-224 discussed above -- that such votes be counted and that if such presidential candidate were to prevail, he could then select and file a slate of presidential electors.

In Summary under Art. 2, §1, United States Constitution, the form and content of the presidential ballot are to be provided by the state legislature. Our opinion concludes that Minnesota statutes and in particular M.S. 1967, §203.30 (2) provide for write-ins on all general election ballots including the presidential ballot, with account taken of the right of our citizens to exercise the elective franchise pur-

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suant to Article VII of the Minnesota Constitution, and their right to equal protection under the laws as prescribed by the 14th Amendment to the United States Constitution.

That part of Question One concerning presidential electors is answered in the affirmative: the remainder of Question One and all of Question Two are answered in the negative.

Very truly yours,

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Attorney General

WILL H. HARTFELDT
Assistant Attorney General

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