



OFFICE OF THE SECRETARY OF STATE

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STATE CAPITOL
P.O. Box 12697
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July 21, 1982

The Honorable Wilbert D. Roznovsky
County Judge, Lavaca County
P. O. Box 243
Hallettsville, Texas 77964

Election Law Opinion DAD-40
Re: Whether a defeated
primary candidate may
file as a write-in candi-
date at the November
General Election, and, if
so, will the write-in
candidate's name appear
on the General Election
ballot.

Dear Judge Roznovsky:

This opinion is in response to your letter of June 11, 1982.

This official election law opinion is rendered by me as
chief election officer of the state in accordance with
V.A.T.S. Election Code art. 1.03, subd. 1.

In your letter of inquiry you asked two questions:

- (1) Whether a Justice of the Peace who was defeated at the Primary as his party's nominee for County Judge may run as a write-in candidate at the General Election for re-election to the Justice of the Peace office; and
- (2) If the defeated Primary candidate may run as a write-in candidate, will his name appear on the ballot since he was not nominated for the Justice of the Peace office at the Primary.

There is no prohibition in the Texas Constitution, Texas Election Code, or Texas Civil Statutes which would operate as an impediment to a defeated primary candidate's running as a write-in candidate at the General Election. Particularly noteworthy is the fact that the Legislature, in art. 13.11a, prohibited defeated primary candidates from running as independents, which would allow them to have their names printed on the ballot, but not from running as write-in candidates at the November General Election. Accordingly, the Justice of the Peace who was defeated at the Primary for his party's nomination as county judge may file as a write-in candidate at the General Election for re-election to the office of Justice of the Peace.

Your second question asks, if the defeated primary candidate may run as a write-in candidate for re-election to his office, will his name appear on the November General Election ballot although he was not elected at the Primary as a party's nominee to that office. The answer to this question is no. V.A.T.S. Election Code, art. 6.01, states, in pertinent part:

. . . No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code . . .

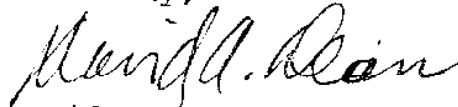
It is obvious from the foregoing quote that only party nominees, independent and non-partisan candidates who have met the qualifications and filing requirements of the Texas Election Code may appear on the General Election ballot.

There is authorization within the Texas Election Code for a space to be provided on the General Election ballot for write-in votes, however, a write-in candidate's name will not be printed on the ballot. See V.A.T.S. Election Code, art. 6.05. The conclusion, therefore, is that the defeated primary candidate who runs for re-election as a write-in candidate at the November General Election will be unable to have his name appear on the ballot.

SUMMARY

A Justice of the Peace defeated at the Primary for his party's nomination as county judge may run for re-election to the office of Justice of the Peace as a write-in candidate at the November General Election. The name of a write-in candidate may not appear on the General Election ballot.

Sincerely,



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APPROVED:
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