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SPRINGFIELD

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FILE NO. S-401

**ELECTIONS:
County Board Elections**

Honorable Robert E. Richardson
State's Attorney
LaSalle County
Ottawa, Illinois 61350

Dear Mr. Richardson:

I have your recent letter wherein you stated that your County Clerk has posed a question based upon the following facts: to-wit, where you have two candidates running in a district for county board member, both on the same political party and no candidate for any other party, is it then required that plain ballots be furnished at this primary for the opposite party without any names on it?

It has been held that the General Assembly has the power to regulate the manner in which the right to vote at a primary election is exercised as long as the regulations do not

deprive an individual member of a political party of rights guaranteed to him by constitutional provisions. (People by Brundage v. Brady, 302 Ill. 576.)

The controlling statutory provisions are Sections 7-5 and 7-12 of "An Act concerning elections." (Ill. Rev. Stats. 1969, ch. 46, pars. 7-5 and 7-12.) The pertinent portion of Section 7-5 reads as follows:

"* * *"

"No primary shall be held where the name of not more than one person of each political party is entitled to be printed on the primary ballot as a candidate for the nomination for each office to be filled at an election at which no other offices are to be voted on.

"* * *"

The pertinent portion of Section 7-12 reads:

"* * *"

"In any case where the name of not more than one person of each political party is entitled to be printed on the primary ballot as a candidate for the nomination for any office to be filled at an election at which no other offices are to be voted on the city clerk, county clerk or State Electoral Board as the case may be shall certify the name of such person as the nominee for such office and no primary shall be held."

From the foregoing statutes it is clear that where not more than one name appears on a primary ballot no primary is

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to be held. Under the facts presented in your letter more than one name appears on the ballots. In such a situation I am of the opinion that a primary should be held. Ballots should be prepared for each political party, as defined in Section 7-2 of "An Act Concerning Elections" (Ill. Rev. Stats. 1969, ch. 46, par. 7-2) which reads as follows:

"* * * * A political party, which at the general election for State and county officers then next preceding a primary, cast more than 5 per cent of the entire vote cast in any county, is hereby declared to be a political party within the meaning of this Article, within said county, and shall nominate all county officers in said county under the provisions hereof, * * * *"

One of the ballots, of course, will have no names. A primary elector of this party may write in the name of a candidate pursuant to Section 7-46 of "An Act Concerning Elections" (Ill. Rev. Stats. 1969, ch. 46, par. 7-46) which provides in part as follows:

"* * * *"

"Any primary elector may, instead of voting for any candidate for nomination or for committeeman or for delegate or alternate delegate to national nominating conventions, whose name is printed on the primary ballot, write in the name of any other person affiliated with such party as a candidate for the nomination for any office, or for committeeman,

or for delegates or alternate delegates to national nominating conventions, and indicate his choice of such candidate or committeeman or delegate or alternate delegate, by placing to the left of and opposite the name this written a square and placing in the square a cross (X).

"* * * *"

This office has previously had occasion to consider the question which you have presented and to interpret the foregoing provision of Section 7-46 of "An Act Concerning Elections." (Ill. Rev. Stats. 1969, ch. 46, par. 7-46.) In an opinion dated March 10, 1911 found at page 425 of the 1911 Illinois Attorney General's opinions the following language appears at page 426:

"The second paragraph of section 46 of the primary election act, provides, in part, as follows:

'Any primary elector may, instead of voting for any candidate for nomination or for committeeman whose name is printed on the primary ballot, write in the name of any other person affiliated with such party as a candidate for the nomination for any office, or for committeeman, and indicate his choice of such candidate or committeeman by placing to the left of and opposite the name thus written a square and by placing in the square a cross (X) * * * .'

Under the provisions of this section, the primary elector is given the right to write in the name of

any person affiliated with his party as a candidate for the nomination for any office, and it has been the holding of this department that even though no petitions have been filed, yet it is the duty of the officer charged with preparing the ballots to prepare blank ballots for those parties entitled to participate in the election, but which had failed to file petitions. The theory of the primary law is that the electors of a political party entitled to participate in the primary shall freely exercise their rights as to the choice of candidates, and the mere fact that no petitions have been filed will not do away with this essential right of the voter."

In conclusion, I am of the opinion that if more than one name is on the ballot of one political party for an office, that a ballot should be prepared for the other political party even though it has no names in order to give an elector the opportunity of writing in a name.

Very truly yours,

A T T O R N E Y G E N E R A L