

**OPINION
64-96**

August 25, 1964 (OPINION)

Mr. Loren L. Johnson

State's Attorney

Nelson County

RE: Elections - Write-in Votes - Certificate of Nomination

This is in reply to your letter of August 21, 1964, in which you ask the following question:

"I would like an attorney general's opinion on the question of whether or not a person who is nominated by write-in votes at the time of an election has to make any affirmative action on his part in order to get his name placed on the November ballot, or if the nomination by the write-in votes is sufficient in itself to have his name placed on the ballot."

You do not state the specific office to which you refer. However this matter would generally appear to be governed by section 16-13-21 of the North Dakota Century Code which provides:

"NOTICE OF NOMINATION GIVEN CANDIDATE BY COUNTY AUDITOR - PUBLICATION OF FINDINGS OF CANVASSING BOARD. - Upon the completion of the canvass of the returns of a primary election by the county canvassing board, the county auditor shall mail or deliver in person to each candidate nominated for any county or district office a certificate of his nomination and notice that his name will be placed on the official ballot. The county auditor shall cause a copy of the findings of the canvassing board to be published in the official newspaper of the county."

Certificates of nomination for members of the legislative assembly from a district comprising more than one county are governed by section 16-13-22 of the North Dakota Century Code.

Section 16-12-06 of the North Dakota Century Code permits write-in votes. Section 16-04-29 governs the vote required at a primary election for nomination. The statutes do not distinguish between persons whose names have been printed on the ballot and persons whose names have been written on the ballot as write-in votes insofar as determining the person who has been nominated is concerned. We would also note that section 16-05-05 provides that whenever any person nominated for public office under the provisions of the title "Elections" shall, at least thirty days before election, in writing notify the officer with whom the certificate nominating him is filed that he declines such nomination, such nomination shall be void.

There is no distinction between a person nominated at a primary election by means of write-in votes and a person whose name has been printed on the primary ballot and who has been nominated at the

primary election insofar as placing the names on the general election ballot is concerned.

It is therefore our opinion that a person who is nominated by write-in votes at a primary election need not take any affirmative action on his part in order to have his name placed on the general election ballot. The nomination by write-in votes is sufficient in itself to have his name placed on the ballot.

HELGI JOHANNESON

Attorney General