

OPINION
48-57

September 25, 1948 (OPINION)

ELECTIONS

RE: Write-In Candidacy

Your letter of September 24, 1948, relating to the question of rights to a place on the ballot of one having been nominated by stickers at the primary, has been received and sent to my desk.

You state that there was no candidate for the office of county treasurer, as no one filed a petition, but that three persons in the county received sufficient votes by stickers or "write-on" to entitle them to a place on the ballot. You state that the two highest of these three have withdrawn and do not wish to have their names appear on the ballot. The third is the present holder of the office by appointment to fill a vacancy and evidently he does wish to be a candidate.

Section 16-0435 of the 1943 Revised code reads as follows:

"All persons nominated in accordance with the provisions of this chapter shall be eligible as candidates to be voted for at the ensuing general election."

It is my opinion that no one can be forced to be a candidate for an office by the usual stickers, or writing his name on the primary ballot, even though he receives the number of votes required by section 16-0429. That is, the number of names required to make a sufficient petition.

It is, therefore, our opinion that if either one or both of the two receiving the highest number of votes by write-in or stickers at the primary election as nominations for county treasurer withdrew, the next highest would be entitled to a place on the ballot. Surely, this could not possibly injure any candidates who had been nominated by stickers or write-in for the same office after they have withdrawn.

P. O. Sathre

Attorney General