

MAINE STATE LEGISLATURE

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September 12, 1980

Honorable James K. McMahon -
P. O. Box 125
Kennebunk, Maine 04043

Dear Representative McMahon:

This will respond to your oral request for an opinion in which you have raised the following questions concerning the up-coming elections, in several counties throughout the State, for membership on a county's charter commission:

1. Whether there is a minimum number of write-in votes an individual must receive in order to be elected a county charter commissioner as a write-in candidate?
2. Whether it is permissible to use "stickers" to vote for a write-in candidate for county charter commissioner?

For the reasons discussed below, we conclude that (1) there is no minimum number of write-in votes required in order to be elected as a write-in candidate for county charter commissioner and (2) the use of "stickers" is not permitted when voting for a write-in candidate for county charter commissioner.

Preliminarily, it must be determined whether the answers to your inquiries are governed by the provisions of Title 21 of the Maine Revised Statutes. We conclude that they are. 30 M.R.S.A. §1552(1)(A) as amended by P.L. 1979, c.671 (effective July 3, 1980), provides that voter members of a county's charter commission, "shall be elected in the same manner as county officers, and shall be elected by district if the county officers are so elected, except that they shall be elected without party designation." The phrase "county officers" is defined in 30 M.R.S.A. §1502(1) to "mean the county commissioners in a county or the officers, under a charter, who exercise legislative powers within the county." At the present time, there are no counties in the State of Maine which have adopted a charter form of government. Consequently, the voter members of a county charter commission are to be elected "in the same manner" as are county commissioners, and the manner of electing county commissioners is governed by the statutory provisions of

Honorable James K. McMahon
Page Two

Title 21. See Op. Atty. Gen., July 22, 1980. See also Communist Party of the United States v. Gartley, Me., 363 A.2d 948, 950 (1976).

With respect to your first question concerning the number of write-in votes an individual must receive in order to be elected a county charter commissioner as a write-in candidate, our research has not uncovered any statute which requires such a candidate to receive a minimum number of write-in votes in order to be elected to office. 21 M.R.S.A. §450(1)(1965-1979 Supp.) provides that, in certain circumstances, a person "may be nominated at the primary election by receiving a number of valid write-in votes, as provided in section 921, subsection 2, equal to at least twice the number of signatures required under section 445, subsection 5, on a primary petition for a candidate for that office." Thus, section 450(1) of Title 21 requires a person to receive a minimum number of write-in votes in order to become a write-in nominee at a primary election. Of course, the up-coming elections for county charter commissioners are not primary elections, and, therefore, 21 M.R.S.A. §450(1) (1965-1979 Supp.) has no application to them. In any event, section 450(1) would not apply to county charter commissioners since 30 M.R.S.A. §1552(1)(A) mandates that "they shall be elected without party designation."

With the exception of 21 M.R.S.A. §450(1), which applies solely to write-in candidates for nomination at a primary election, we are not aware of any other provision of law which requires a write-in candidate to receive a minimum number of write-in votes in order to be elected to office. 21 M.R.S.A. §922 (1965-1979 Supp.) provides that a voter may "vote for a person whose name is not on the ballot" by writing the "name and municipality of residence in the blank space provided at the end of the list of nominees for the office in question, with the surname first or last. He shall then place the mark in the square at the left of it." Section 1093 of Title 21 establishes the manner in which the results of an election are to be determined. It provides, in pertinent part:

"In any election if there is more than one vacancy in an office, as many persons are...elected as there are vacancies to be filled in decreasing order of the plurality of votes received by them."


21 M.R.S.A. §1093(3)(1965). Thus, a person is elected to office as a write-in candidate if he receives a sufficient plurality of the votes cast. In those counties which elect charter commissioners by district, a person will be elected as a write-in candidate for charter commissioner if he receives the first or second highest plurality of votes cast for charter commissioner in the district. In those counties which do not elect charter commissioners by district, a person will be elected as a write-in candidate for charter commissioner if he receives at least the sixth highest plurality of votes cast for charter commissioner in the county. Depending upon the number of votes cast for the office of charter commissioner, a person could be elected as a write-in candidate for charter commissioner if he received a single write-in vote.

Honorable James K. McMahon
Page Three

With respect to your second question as to whether "stickers" may be used to vote for a write-in candidate for county charter commissioner, the answer to your inquiry is found in 21 M.R.S.A. §922(2)(A)(1965-1979 Supp.). Section 922(2)(A) flatly provides that "[a] sticker may not be used to vote for a write-in candidate."¹ A write-in candidate is defined as "a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect him." 21 M.R.S.A. §1(45)(1965). In our view, 21 M.R.S.A. §922(2)(A) clearly forbids the use of "stickers" to vote for a write-in candidate for election.

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:sae

1. It should be observed that 21 M.R.S.A. §921(2)(1965-1979 Supp.) expressly permits a voter to use a "sticker" to cast a write-in vote for a "candidate for nomination" at a primary election.