

# MAINE STATE LEGISLATURE

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81-48

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 18, 1981

Honorable Frank P. Wood  
Maine State Senate  
State House  
Augusta, Maine 04333

Dear Senator Wood:

This will respond to your recent letter in which you ask the following questions concerning the use of stickers to cast write-in votes in a municipal election:

1. Are stickers with the person's name printed on them valid for use in a municipal election? If so, the voter must adhere the sticker and then mark the ballot for it to be counted.

2. Are stickers with the person's name and a printed X on them a valid way to cast a vote? In other words, the voter simply adheres the sticker on the ballot without marking the ballot with a pencil."

The provisions of Title 30 which pertain to the manner in which a town election is to be conducted do not specifically address the question of whether "stickers" are permitted to be used to cast a write-in vote. However, 30 M.R.S.A. §2066 (1978) provides in relevant part"

"Except as otherwise provided by this Title or by charter, the method of voting and the conduct of a municipal election are governed by Title 21."

Title 21 contains two statutes which regulate the use of "stickers" in casting a write-in vote. 21 M.R.S.A. §921(2) (1980-1981 Supp.), which applies only to primary elections, specifically permits the use of such "stickers." 21 M.R.S.A. §922(2)(A) (1980-1981 Supp.), which applies to general elections, expressly forbids the use of "stickers" to vote for a write-in candidate. See generally Op. Atty.Gen., September 12, 1980. We believe that with respect to the use of "stickers" in a municipal election, 21 M.R.S.A. §921(2) (1980-1981 Supp.) applies

and therefore, we conclude that write-in "stickers" may be used in such elections. We find clear support for our conclusion in the language of 30 M.R.S.A. §2061(5) (I) (1980-1981 Supp.) which provides:

"5. Ballots, specimen ballots and instruction cards shall be prepared by the [town] clerk according to the following provisions:

\* \* \*

I. Instruction cards containing the substance of Title 21, sections 861 to 863, 891, 892, 921, 923, 1579 and 1580, to guide voters in obtaining and marking ballots and to inform them of penalties for improper conduct shall be printed."

In view of the fact that 30 M.R.S.A. §2061(5) (I) (1980-1981 Supp.) explicitly refers to 21 M.R.S.A. §921, we believe that the use of "stickers" at a municipal election is governed by that statutory provision. Accordingly, we answer your first question by stating that "stickers with the person's name printed on them [are] valid for use in a municipal election."<sup>1</sup>

We believe the answer to your second question is found in the plain language of 21 M.R.S.A. §921(2) (1980-1981 Supp.) which provides:

"A voter shall mark his ballot at a primary election with a cross...or a check mark...according to the following provisions:

\* \* \*

2. If he wishes to vote for a person whose name is not on the ballot, he shall write the name and municipality of residence or paste a sticker containing the name and municipality of residence in the blank space

1. We should point out that in a recently issued opinion, we concluded that 21 M.R.S.A. §921(2) (1980-1981 Supp.) does not apply to municipal elections to the extent that it requires a write-in vote to include the person's municipality of residence. See Op. Atty. Gen.; April 22, 1981. Our opinion was premised upon the language of 30 M.R.S.A. §2061(5) (B) (1978) which provides:

"At the end of the list of candidates for each office there shall be left as many blank spaces as there are vacancies to be filled, in which a voter may insert the name of any person for whom he desires to vote."

(emphasis added).

We have enclosed a copy of our opinion dated April 22, 1981 for your information.

provided at the end of the list of candidates for nomination to the office in question, with the surname first or last. He shall then place the mark in the square at the left of it."

In our view, section 921(2) clearly contemplates that a write-in "sticker" will contain only the name and municipality of residence of the write-in candidate<sup>2</sup> and that the voter himself "shall then place the [cross or check] mark in the square at the left of" the blank space.<sup>3</sup> We interpret 21 M.R.S.A. §921(2) as requiring a voter who wishes to cast a write-in vote to do more than simply adhere a "sticker" containing a pre-printed cross or check mark. In particular, we believe that such a voter must actually "mark his ballot...with a cross... or a check mark...." Accordingly, it is our conclusion that a write-in vote should not be counted where the voter has merely adhered a "sticker" containing

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2. We wish to re-emphasize that in the context of a town election, unless otherwise provided by the town charter, a write-in vote need not include the candidate's municipality of residence. See note 1, supra. See also Op. Atty. Gen., April 22, 1981.

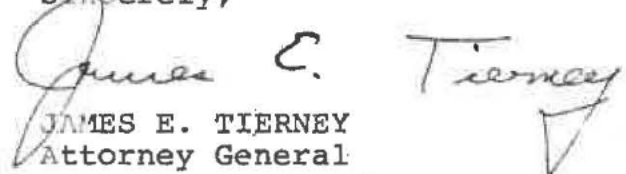
3. We should also point out that pursuant to 30 M.R.S.A. §2066 (1978), the provisions of Title 21 govern the method of voting at a municipal election "[e]xcept as otherwise provided" by Title 30 "or by charter." Consequently, a town is free to regulate by charter; the manner of casting write-in votes, including the use or "stickers", in a municipal election. Cf. Op. Atty. Gen., October 31, 1980. Accordingly, this opinion is premised upon the assumption that the town in question either does not have a charter or, if it does, the terms of that charter are such that 21 M.R.S.A. §921(2) (1980-1981 Supp.), governing the use of "stickers" generally, applies to a town election.

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the candidate's name and a pre-printed cross or check mark, but has not actually marked his ballot with a cross or check mark.<sup>4</sup>

I hope this information is helpful to you.

Sincerely,

  
JAMES E. TIERNEY  
Attorney General

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4. Our conclusion is not altered by the fact that 21 M.R.S.A. §925(4) (1980-1981 Supp.) provides that "[i]f a voter marks his ballot in a manner which differs from the instructions at the top of the ballot but in such a manner that it is possible to determine the voter's choice then the vote for the office or question concerned shall be counted." As was the case with respect to 21 M.R.S.A. §921(2), we construe the foregoing language from 21 M.R.S.A. §925(4) as requiring that a voter actually mark his ballot in some fashion so as to indicate his choice. In our view, section 925(4) is simply not applicable where a voter fails to make a mark upon his ballot, but merely adheres a pre-printed sticker containing a cross or check mark.