

Opinion No. 64-104

August 5, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Alberta Miller, Secretary of State, State Capitol Building, Santa Fe, New Mexico

QUESTION

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May printed stickers or pasters be used in the space provided in voting machines for write-in votes?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 3-3-6, N.M.S.A., 1953 Compilation states that there is no prohibition against a voter "writing on his ballot the name of any person for whom he desires to vote for any office." Section 3-4-17, N.M.S.A., 1953 Compilation provides that a voter may write the name of a person for whom he desires to vote so long as that person's name does not appear on the voting machine.

Thus the single issue to be resolved is whether use of a printed sticker or paster meets the "writing" requirement. Arriving at a correct answer to this question is fraught with certain difficulties. First, our Supreme Court has never been called upon to answer the question. Second, an examination of the cases from other jurisdictions establishes that the holdings are not uniform. Some decisions hold that stickers or pasters are permissible only when expressly provided by statute. **McFarland v. Spengler**, Cal., 248 Pac. 521. Other decisions hold that stickers or pasters are permissible as write-in votes unless prohibited by statute. **Murray v. Floyd**, Minn., 11 N.W. 2d 780.

In Minnesota the statute was much like ours and provided as follows:

"When he (the voter) so desires, he may write other names in the blank spaces under the printed names of candidates, and the names so written shall be counted"

The Court held in **Snortum v. Homme**, 119 N.W. 59, that the words "write" and "written" as used in the statute include any mode of representing words or letters. The court states as follows:

"Therefore our construction of the statute here in question is that it gives to a voter who desires to vote for a person other than those whose names are on the official ballot the right to express the name of the person for whom he intends to vote by writing or putting his name in the blank space, and, further, that if he intends to avail himself of the latter method he may provide himself before going into the booth, with, and use, the printed or typewritten name of his choice on adhesive paper; that is, with the so-called paster or sticker."

See also: **Jonkman v. Striplin**, Mich., 237 N.W. 375; **O'Brien v. Board of Election Commissioners**, Mass., 153 N.E. 553; **State v. Anderson**, Wis., 211 N.W. 938.

There are two basic reasons why this office is of the opinion that our courts would follow the Minnesota case. First, the word "written" has often been held to include "printed." In the case of **Henshaw v. Foster**, 26 Mass. 312, the court held that printed votes are written votes. Second, it is an indisputable fact that in this State we have an extremely long ballot. When this fact is coupled with the time limit on voting prescribed in Section 3-4-16, N.M.S.A., 1953 Compilation it would seem to us that the use of stickers in a writein campaign would expedite the flow of voters.