

OFFICIAL OPINION NO. 1

May 27, 1975

Honorable Otis R. Bowen, M.D.
Governor of Indiana and
Chairman, Indiana State Election Board
Room 206 State House
Indianapolis, Indiana 46204

Dear Governor Bowen:

This is in response to your request for an official opinion as to whether state law permits the casting of "write-in" votes and the counting of such votes in Indiana.

ANALYSIS

The Indiana Election Code specifies several means by which a candidate's name may appear on the ballot. With respect to a party primary, a candidate must file his declaration of candidacy pursuant to the Indiana Code of 1971, Section 3-1-9-5. With respect to a general or city election, a candidate may, where appropriate, be certified by his party, or, in the case of nomination by primary election, by the appropriate certifying officer pursuant to the Indiana Code of 1971, Section 3-1-11-1; he may, where appropriate, be nominated by petition pursuant to the Indiana Code of 1971, Section 3-1-11-1; or he may, if he is an independent candidate, file a declaration and petition pursuant to the Indiana Code of 1971, Section 3-1-11-4.

These provisions fairly and liberally permit any qualified person in Indiana to stand for election to public office. The Legislature has provided no other means for a candidate to place his name on the ballot. It has *not* authorized a "write-in" candidacy.

It is true that several sections of the 1945 Election Code contain what may be construed as references to "write-in" votes. For example, Section 3-1-23-23 refers to paster ballots which a voter may prepare and take with him into the

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voting booth. Section 3-1-24-4 authorizes election boards to "see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine." Furthermore, based on what it thought was implied by Section 3-1-23-23 (prior Burns' Section 29-5023), the Supreme Court, in *Ubelhor v. George* (1967), 248 Ind. 330, 227 N.E. 2d 443, upheld the election of two school board candidates whose votes all were cast by means of pasters.

The Indiana General Assembly, however, subsequent to *Ubelhor, supra*, and the prior case of *Cleveland v. Palin* (1935), 209 Ind. 382, 199 N.E. 142, cited therein, has indicated clearly that it is *not* its intention to permit "write-in" voting. It did so by specifically repealing the Acts of 1945, Ch. 209, § 272, (prior Burns' Section 29-5103), the section of the Election Code which expressly had defined "irregular ballots" to mean "ballots voted for any person whose name does not appear on the ballot label on the machine as a candidate for office." Acts 1969, Ch. 420, § 1. Although the term "irregular ballots" was used in connection with "write-in" voting by machine, the result intended by the Legislature must be applied equally to "write-in" voting by paper ballot or else violate constitutional equal protection guarantees. To the extent that any remaining sections of the Election Code are read as permitting "write-in" voting, they are repealed by implication.

CONCLUSION

It is, therefore, my Official Opinion that the laws of Indiana do *not* permit the casting of "write-in" votes. The Indiana General Assembly has provided a liberal mechanism for the citizens of Indiana to have their names placed on the ballot either as party candidates or as independent candidates. If there were any doubt before, the Indiana General Assembly in 1969 made clear its intention that only those candidates whose names appear on the ballot may be voted for legally.