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OFFICIAL OPINION NO. 36

December 14, 1966

**ELECTIONS—Statutory Method of Placing Names of
Candidates on Paper Ballots—Procedure to be
Followed Where Voting Machines are Used.**

Opinion Requested by Hon. Edward J. Raskosky, State Representative.

You have requested my opinion concerning several questions which in substance are as follows:

1. Under the present constitutional and statutory laws of the State of Indiana in counties that use mechanical voting machines instead of paper ballots, where two or more persons are candidates for nomination for the same office, except a precinct office, at a direct primary election, must the names of the candidates be rotated by removing one name with its number from the top of the list for each office and by placing said name with its number at the bottom for each successive machine in the county?
2. Could the board employ another system to vary candidates' positions on the ballots, such as placing the names of all of the candidates for one office in a drum and then by lot drawing the candidate's position for placement on the machine, or placing the names on the ballot labels in the order in which the candidates filed for nomination?
3. Would rotation of names on paper ballots and non-rotation of names on voting machine ballot labels violate Art. 2, § 13 of the Constitution of the State of Indiana?

Your inquiries are directed to various sections of the Indiana Election Code, Acts 1945, ch. 208, as amended, which may be found in Burns IND. STAT. ANN., §§ 29-2801—6003.

Your first inquiry is apparently prompted by § 89 of the Code, as found in Burns § 29-3607, which you have cited, in part, in your letter and which reads in its entirety as follows:

“The names of all candidates for each office for whom nomination papers have been filed shall be arranged under the designation of the office, in alphabetical order according to the surnames with no title or nickname attached thereto. On the left margin of the ballot for each political party the name of the uppermost candidate for nomination as printed shall be number 12, and the next 13 and the next 14 and so on consecutively, to the end of the ballot; Provided, In every case where two (2) or more persons are candidates for nomination for the same office except a precinct office at a direct primary election, the number of ballot forms required shall be divided into sets equal to the greatest number of candidates for any one (1) office on said ballot and the names of said candidates with their respective numbers for each office when the number of said candidates is equal to two (2) or more shall, beginning with a form arranged in alphabetical order as heretofore provided in this section, be rotated by removing one (1) name with its number from the top of the list for each office and by placing said name with its number at the bottom of said list for each successive set of ballot forms. As nearly as possible an equal number of ballots of each set shall be delivered to each election precinct. *Sample ballots shall be printed from the first or official form of ballot only.*” (Emphasis added.)

This section is part of an article pertaining exclusively to primary elections. The duty of preparing and distributing primary ballots is imposed upon the county election board, by that article § 84, Burns § 29-3602. Another section provides that available voting machines may be used at a primary election on the order of the county election board, and further states:

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“When so ordered, all provisions of the laws of this state providing for or applying to the use of machines at elections, including preparation, delivery and return of same to place of storage, not inconsistent with the provisions of this article, and all provisions of this article, *as far as applicable*, shall apply to the use of such voting machines at such primary elections.” § 93, as amended by Acts 1947, ch. 120, § 11½, Burns § 29-3611. (Emphasis added.)

Therefore, it must be determined whether the provisions of the primary election article of the Code concerning rotation of names on the ballot are applicable to the use of voting machines at said elections.

The courts, in order to ascertain the intention of the Legislature, have resorted to various rules of statutory construction. Of particular assistance in resolving your problem is the rule that:

“A single statutory provision cannot be construed standing alone and must be construed in light of the entire act to which it applies.” *Demoss v. Demoss*, 135 Ind. App. 548, 551, 195 N.E. 2d 496, 498, 2 Ind. Dec. 612, 614 (1963).

Therefore, consideration must be given to those provisions of the election laws relating to the use of voting machines.

The authority for the purchase and use of voting machines is provided by § 383 of the Indiana Election Code, as last amended by Acts 1965, ch. 261, § 24, as found in Burns § 29-5803. The county election board is required to cause ballot labels to be put upon the voting machines for election day, § 274 of the Code, as amended by Acts 1951, ch. 12, § 10, as found in Burns § 29-5105.

“Ballot labels” are defined as the printed strips of card-board containing the names of the candidates, by § 2 of the Code, Burns § 29-2802. The same section defines “Official Ballots” as follows:

“. . . The words ‘official ballot’ means the ballot prepared, printed and supplied for use at an election of

public officers or a primary election. *The list of candidates used or to be used on the front of the voting machine shall be deemed official ballots for an election precinct in which a voting machine is used pursuant to law. . . .*" (Emphasis added.)

The reference in this section to "The list" of candidates indicates that only one list of candidates is to be used on voting machines and on official ballots in precincts in which voting machines are used. It applies both to general and primary elections. Further, § 271 of the Code, Burns § 29-5102, provides in part:

“. . . The county election board shall provide at least five (5) sample ballots for each precinct of the county in which a voting machine is to be used, which shall be arranged in the form of a diagram showing the entire front of voting machine as it will appear after the ballot labels are arranged thereon for voting on election day. The party ticket on such sample ballots, the offices to be filled and the names of the candidates thereon, shall be arranged in the same order in which they occur on the official ballots printed under the jurisdiction respectively of the state election board and county election board, . . . In all cases, the ticket shall be arranged on the voting machine for the purpose of voting in exact accordance with the sample ballots so furnished by the county election board. . . ." (Emphasis added.)

The section of the primary election article previously quoted, § 89, Burns § 29-3607, which requires rotation of names of candidates on ballots in primary elections, requires that sample ballots in such cases be printed from "the first or official form of ballot only." In the section of the voting machine article last quoted, it is specified that the sample ballots must follow the official ballots as to the order of candidates, and the ticket is to be arranged on the machine "in exact accordance with the sample ballots."

Section 274 of the Code was amended in 1951 to read, in part, as follows:

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“The county election board shall, before the day of the election, cause the proper ballot labels to be put upon each machine *with the device named and the list of candidates of each party in the same order and corresponding with the sample ballot* herein provided for, . . . The election boards shall compare the ballot labels on the machine with the sample ballot, see that they are correct. . . .” Acts 1951, ch. 12, § 10, Burns § 29-5105. (Emphasized portion added by the 1951 amendment.)

This section, as amended, also indicates that only one list of candidates is to be used on ballot labels on voting machines. This amendment to the voting machine article would supersede the rotation provisions of the primary election article to the extent to which they conflict, if any.

That the voting machine article was intended to cover the use of voting machines in primary elections is further indicated by the language in § 270 of the Code, Burns § 29-5101, which contains a proviso permitting the use of different colored labels for political parties in primary elections. The General Assembly has also required that the names of the candidates for school commissioners or school trustees shall be placed in alphabetical order on each and every one of the voting machines to be used in their election, § 273 of the Code, Burns § 29-5104, which is consistent with the non-rotation of candidates' names in a primary.

Courts will not read words into a plain and unambiguous statute, *Cain v. Staley Mfg. Co.*, 97 Ind. App. 235, 240, 186 N.E. 265, 266 (1933).

“A court may not under the guise of construction modify, amend, remodel or rewrite, nor disregard the terms and positive provisions of a statute. To depart from the meaning expressed by the words of the statute is to alter it, and it is not construction but legislation, and this court cannot construe an act any more broadly or give it any greater effect than its terms require.” *Meade Elec. Co. v. Hagberg*, 129 Ind. App. 631, 642, 643, 159 N.E. 2d 408, 414 (1959).

Therefore, it is my conclusion that the specific terms of the voting machine article of the Indiana Election Code require that all the names of candidates for any one office on a party ticket in a primary election be printed on only one list for the ballot labels, which is the list printed on the sample and official ballots, and that such names cannot be rotated on ballot labels as they are on paper ballots in primary elections.

There are further practical problems involved in rotating the names of candidates on voting machines under the present primary election rotation provision which, in my opinion, prevent the applicability of that provision to ballot labels on voting machines. That provision requires that, as nearly as possible, as many sets of ballots must be delivered to each precinct as there are candidates for the office for which the highest number of candidates has filed. You indicated in your letter that the number of candidates for State Representative in Lake County in the primary election of 1966 was fifty-four (54). To the best of my knowledge, there is no precinct in the State of Indiana which uses that many different voting machines on the day of any election. In the ordinary precinct in the state using voting machines, the number of machines does not exceed four, and the more usual number would be one or two, any of which would be inadequate to provide the prescribed rotation for primary candidates in each precinct, even in counties which are lightly populated, and would be grossly inadequate in the more populated counties. Furthermore, votes cast on a voting machine are tallied from counters on the back of the machine. Those counters are designated by numbers which cannot be changed, and the names of the candidates do not appear on the backs of the machines. Therefore, a different tally sheet would be required for each machine. Separation of a tally sheet from the machine for which it is printed could seriously distort the true results of the election. No statutory safeguards are supplied for such a procedure, which further indicates that it was not intended by the General Assembly:

“It is presumed that the Legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable con-

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struction; and "absurdity" meaning anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion.'" *Marks v. State*, 220 Ind. 9, 18, 19, 40 N.E. 2d 108, 111 (1942).

Since the proviso in the primary election article relating to rotation of names is not applicable to ballot labels on voting machines, the body of that section, § 89 of the Code, Burns § 29-3607, which requires that names of candidates be arranged under the designation of the office "in alphabetical order according to the surnames," governs the manner in which the names shall be listed on the ballot labels on voting machines in primary elections.

The county election board must place the names of candidates for a particular office in a primary election upon the ballot in alphabetical order; therefore, it is not authorized to substitute a procedure of its own as suggested in your second question.

In your letter, you also cited Art. 2, § 13, of the Constitution of Indiana, which reads as follows:

"All elections by the People shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be viva voce."

Apparently you are implying that this provision requires that all elections by the people shall be by paper ballot, since voting machines were unknown to the framers of the Constitution, or, at the least, that the law respecting the form of paper ballot must be applicable to the ballot label on the voting machine.

However, the Indiana Supreme Court upheld a statute authorizing the use of voting machines in elections when it was attacked as a violation of this constitutional section.

"It is important that the end sought by the framers of this constitutional provision be not confounded with the means adapted to secure it. The object the framers had in view was *secrecy* in the people's choosing of officers or measures and *publicity* in choosing by the mem-

bers of the General Assembly. . . . Voting by ballot involves secrecy, while *viva voce* voting insures publicity. . . . There was nothing sacred in the contrivance of a strip of paper with names or questions printed thereon, which the framers sought, to preserve by the use of the word 'ballot'; nor was there any imperative necessity for the use of the voice of the legislator which moved the convention to decree its perpetual exercise in legislative elections. The constitutional limitation is not violated by dispensing with the use of the paper contrivance in the one case, or the legislator's natural voice in the other, if in the former the people may choose in secret, and in the latter the legislator must make a public expression of his choice." *Spickerman v. Goddard*, 182 Ind. 523, 526, 527, 107 N.E. 2, 3 (1914).

It is my opinion, therefore, that since the use of voting machines is constitutional, the Legislature may provide the manner and method of listing the names of candidates on the ballot labels thereon. Any desired changes in the statutory procedure must be made by the General Assembly.

OFFICIAL OPINION NO. 37

December 15, 1966

**DEPARTMENT OF ADMINISTRATION—LEGISLATIVE
ADVISORY COMMISSION—Department's Duty to
Let Printing Contracts for Commission.**

Opinion Requested by Mrs. Mary L. Lauck, Secretary, Legislative Advisory Commission.

You have informed me that although the Legislative Advisory Commission has complied in the past with the state