

**Opinion No. 64**

**ELECTIONS; Candidates; Write in candidates; form of name not material when—Section 23-1704, Revised Codes of Montana, 1947**

**Held: Votes cast for a write in candidate must be counted if the voter's intentions are reasonably apparent from the ballot, whether the candidate's name as written on the ballot is in the same form as entered on the voter registration books or not.**

July 8, 1960

Mr. Robert E. Purcell  
Garfield County Attorney  
Jordan, Montana

Dear Mr. Purcell:

You have requested my opinion whether votes for a write in candidate may be counted if the candidate's name as written on the ballot is not in the same form as it appears on the voter registration books.

Section 23-1704, Revised Codes of Montana, 1947, provides:

"In the canvass of the votes, any ballot which is not endorsed as provided in this code by the official stamp is void and must not be counted, and any ballot or parts of a ballot from which it is impossible to determine the elector's choice is void and must not be counted; **if part of a ballot is sufficiently plain to gather therefrom the elector's intention, it is the duty of the judges of election to count such part.**" (Emphasis supplied)

The rule that the intention of the voter must be given effect was stated by the Montana Supreme Court in Peterson v. Billings, 109 Mont. 390:

"It has always been held in this state that if the intention of the voter can be fairly ascertained from the ballot, though not in strict conformity with the law, effect will be given to that intention. In other words, that the voter shall not be disfranchised or deprived of his right to vote through mere inadvertence, mistake, or ignorance, if any honest intention can be ascertained from his ballot.' "

A problem nearly identical to yours was before the Texas Court of Appeals in Johnston v. Peters, 260 S.W. 911. In that case the court said:

"Appellant was the only candidate for the office of sheriff who bore the name 'Johnston,' or any similar name, and he and Peters were the only candidates for that office. And when the voter wrote into the appropriate place on the ballot the name 'Johnston,' or any other name having a similar appearance or sound, the presumption is that the voter was voting for the candidate and not for someone else, **notwithstanding the name was misspelled or wrong initials were given . . .**" (Emphasis supplied)

It is therefore my opinion that votes cast for a write-in-candidate must be counted if the voter's intentions are reasonably apparent from the ballot and regardless whether the candidate's name is in the same form as entered on the voter registration books.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General