

Opinion No. 136

**Nomination — Write-In Votes, Number Necessary to Be Nominated
Primary Election—Nomination
by Write-In Votes, Number
Necessary**

Held: A person who receives write-in votes in a primary election, to qualify as a nominee and accept such nomination must receive at least five per cent (5%) of the votes cast for such office at the last preceding general election at which election the office in question was filled.

August 25, 1948

Mr. James H. Higgins
County Attorney
Meagher County
White Sulphur Springs, Mont.

Dear Mr. Higgins:

You have requested my opinion on the following:

How many write-in votes does a person have to receive in the primary election to nominate, so that such person may accept such a nomination and pay the filing fee, and have his name printed on the official ballot?

The answer to your inquiry is contained in Chapter 65 of the Political Code of Montana, 1935, and Section 640 thereof, which deals with the filing of petitions of nomination.

Said Section 640, Revised Codes of Montana, 1935, was amended by the legislature by Chapter 27, Laws of 1945, and the pertinent provision thereof is as follows:

"Any person receiving the nomination by having his name written in on the primary ballot, and desiring to accept such nomination shall file with the secretary of state, county clerk, or city clerk, a written declaration indicating his acceptance of said nomination within ten (10) days after the election at which he receives such nomination, and at the same he shall pay to the officer with whom such declaration of acceptance is filed the fee above provided for filing a primary nominating petition for such office, **provided that such person must receive at least five per cent (5%) of the votes cast for such office at the last preceding general election.**" (Emphasis supplied).

It is to be noted the legislature by the above underlined provision amended the section so as to discourage the practice of write-in candidates in primary elections.

The section now provides in clear, unambiguous and unmistakable language, "Provided that such person must receive at least five per cent (5%) of the votes cast for such office at the last preceding general election."

The foregoing quoted amendment means the last general election at which the office in question was filled by vote of the electors; any other interpretation would make the amendment meaningless.

In the case of *Mitchell v. Banking Corp.*, 95 Mont. 23, the Montana Supreme Court said:

"It will be presumed that the legislature in amending an existing law intended to make some change therein, and therefore the courts will endeavor to give some effect to the amendment."

In the later case *In re Wilson's Estate*, 102 Mont. 178, it has been stated:

"Statutes must be so construed that no word therein is to be considered meaningless, if such construction can be reasonably found that will give it effect."

It is, therefore, my opinion, and I agree with you, that a person who receives write-in votes in a primary election to qualify as a nominee and accept such nomination must receive at least five per cent (5%) of the votes cast for such office at the last preceding general election at which election the office in question was filled.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General