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**PRESIDENTIAL ELECTORS: Method of voting for and limitations thereon.**

At the general November election in presidential years, the people vote for and elect presidential electors rather than vote directly for presidential candidates.

Each political party is required to select its candidates for presidential electors at the fall convention and certify their names and those of the presidential candidates of that party to the secretary of state within 24 hours thereafter.

One may not split his ticket in voting for presidential electors nor vote for some but not all of the electors certified by a political party.

A political party which has nominated presidential candidates, selected candidates for presidential electors and certified the same to the secretary of state is entitled to have votes cast by write-in or sticker bearing the names of its presidential candidates tallied and certified as votes for its list of presidential electors even though such political party does not qualify to have its ticket printed on the ballot.

Each voter is required to place a cross in either the party circle or square and the cross may not be printed on a sticker.

A vote cast by inserting a sticker containing an uncertified list of names as presidential electors is void and need not be tallied.

In precincts using voting machines, an elector is not entitled to be furnished with a paper ballot to enable him to write-in or insert a sticker bearing the names of persons as presidential electors. He can only vote for a list of presidential electors as certified by one of the parties. This may be done by writing in or inserting a sticker bearing the names of the presidential candidates of that party in case they are not printed on the ballot, and provision is made on voting machines by which the voter may write-in or insert a sticker bearing the names of such presidential candidates.

Votes cast by placing a cross in either the party circle or square will be tallied as votes for the entire list of presidential electors certified by that party even though the voter has written in a different name for one or both the presidential candidates.

No. 4655

October 16, 1968.

Honorable Roger Craig  
State Senator  
Capitol Building  
Lansing, Michigan

Receipt is acknowledged of your letter requesting my opinion upon several questions pertaining to the method of voting for presidential electors, including voting therefor by sticker or write-in. Your questions will be answered seriatim. Before dealing with your specific questions, it is deemed appropriate to review the history of legislation in that area during the last four decades.

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector." Art. II, § 1, par. 2, United States Constitution.

"The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." Art. II, § 1, par. 4, United States Constitution.

The Twelfth Amendment to the United States Constitution provides for the casting of ballots by the presidential electors for their candidates as president and vice president.

Thus, in Michigan, the people at the ensuing presidential election to be held on November 5 will be voting for and will elect 21 presidential electors to which the state is entitled rather than voting directly for a president and vice president.

Section 45 of Act 116, M.C.L.A. § 168.45; M.S.A. 1956 Rev. Vol. § 6.1045, reads:

"Marking a cross (X) in the circle under the party name of a political party, at the general November election in a presidential year, shall not be deemed and taken as a direct vote for the candidates of the said political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state as in this chapter provided."

The several political parties are required to select their respective presidential electors at the fall state convention held in the presidential years. O.A.G. 1955-56, Vol. 1, No. 2323, p. 625. Section 42, M.C.L.A. § 168.42; M.S.A. 1968 Cum. Supp. § 6.1042, specifies:

"In the year in which presidential electors are to be elected as provided in section 43 of this act, each political party in this state shall choose at its fall state convention as many electors of president and vice-president of the United States as this state may be entitled to elect of senators and representatives in congress, and the chairman and the secretary of the state central committee of each political party shall, within 24 hours after the conclusion of the state convention, forward by registered or certified mail a certificate containing the names of such electors so chosen to the secretary of state. Those candidates for electors of president and vice-president of this state shall be deemed elected whose names have been certified to the secretary of state by that political party receiving the greatest number of votes for said office at the ensuing November election."

Provision for calling and holding of that convention is made by Section 591, M.C.L.A. § 168.591; M.S.A. 1956 Rev. Vol. § 6.1591, which provides:

"The state convention of all political parties for the nomination of candidates for state offices in the even numbered years shall be held

not less than 66 days before the general November election. The particular day and the hour and place of meeting shall be designated by the state central committees of the various political parties in the calls for said state conventions, which calls shall be issued at least 60 days prior to the August primaries."

Inasmuch as the 66th day preceding the ensuing general November election was Saturday, August 31, the final day for the holding of the state convention of any political party in 1968 was Tuesday, September 3. M.C.L.A. § 168.686a; M.S.A. 1968 Cum. Supp. § 6.1686(1). The names of the candidates nominated for president and vice-president are required to be certified by the chairman and secretary of each party to the secretary of state within 24 hours following the state convention. Sec. 686, M.C.L.A. § 168.686; M.S.A. 1968 Cum. Supp. § 6.1686. Such certification must also include the names of the presidential electors chosen at such convention. Sec. 42, *supra*.

Minor political parties are required to nominate candidates for the several offices at their respective political conventions rather than at a party primary. Sec. 532, M.C.L.A. § 168.532; M.S.A. 1956 Rev. Vol. § 6.1532. That the minor parties are subject to the same time limitations as are the major parties is demonstrated by Section 686a, reading in part:

" . . . At the times and manner provided for the calling of county and state conventions in sections 591, 592, 593 and 594 of this act, calls may be issued for county caucuses and state conventions. If caucuses and conventions are held, they shall be held at the times set forth in the sections listed. . . ."

So far as is known to this office, no votes cast by write-in or sticker for presidential electors were counted and tallied at the presidential elections between 1932 and 1960. However, in 1964 this practice was changed. The principal candidate of the Prohibition Party had failed at the 1960 election to receive a number of votes equal to 1 percent of the number of votes received by the successful candidate for secretary of state. For that reason, that party, absent filing of petition bearing the required number of signatures, was not entitled to have its ticket printed on the ballot at the 1962 and ensuing elections. Nevertheless, the party at its national convention in 1964 nominated candidates for the offices of president and vice-president. Presidential electors were chosen at a state convention and timely certified to the secretary of state with the demand that votes cast by writing in the names of the presidential candidates of that party be counted and tallied. That request having been denied in accordance with prior practice, an action in the nature of mandamus was instituted in the Michigan Supreme Court; *Earle H. Munn, et al., v. Secretary of State, et al.*, No. 51041, which resulted in order requiring said votes to be counted and tallied. Unfortunately, no opinion was filed by the court. However, subsection (4) of Section 737, M.C.L.A. § 168.737; M.S.A. 1956 Rev. Vol. § 6.1737, was relied upon. That reads:

"If the elector wishes to vote for a candidate not on any ticket, he may write or place the name of such candidate on his ticket opposite

the name of the office and make a cross (X) in the circle under the party name."

Based on the foregoing provisions of the statute, I interpret such order of the court as authorizing voting by means of write-in or sticker for the entire list of presidential electors of a political party which has:

1. Nominated presidential candidates;
2. Selected as a state convention presidential electors; and
3. Certified the names of both the candidates and electors to the secretary of state as required by the statute.

However, in order to do so, the voter would have to insert by means of write-in or sticker the names of the two presidential candidates of such political party rather than the names of the 21 presidential electors.

That which has been said above relates primarily to voting by means of paper ballots. However, only 15 percent of the electors of the state vote by that method. The remaining 85 percent vote on voting machines. The mechanics of casting votes for presidential electors by means of write-in or sticker on a voting machine varies from that where one is voting by paper ballot.

The party tickets are printed vertically on the paper ballots. On the voting machines, the names of the candidates for the respective offices appear horizontally on a "party row." Above the party tickets there are both the names of the particular offices as well as a write-in slot above each office. However, no name or names can be written in such slot without first raising the lid which cannot be done as long as the pointer above the names of the presidential candidates of any party whose ticket appears on the ballot on the machine is pulled down. Conversely, once the lid over the write-in slot has been opened, it is impossible to pull down the pointer over the names of the presidential candidates of any party on the machine. Thus, when the voter has opened the lid over the write-in slot and written in the name of anyone, no vote is registered on the machine for the list of presidential candidates for any party whose ticket appears thereon. Thus, it is impossible to cast a vote on the machine for the regular Democratic presidential electors and at the same time write in the name of McCarthy or anyone else.

Assuming, however, that the voter instead of pulling down the pointer over the names of the presidential candidates of any party, raises the lid and writes in the names of those certified by the Prohibition Party as its presidential candidates, this would constitute a vote for the presidential electors certified by that party. Again this year the Prohibition Party has nominated candidates for president and vice-president and has chosen presidential electors and certified the same in accordance with the statute. I am advised that is the only other party which has certified the names of its presidential candidates and presidential electors to the secretary of state.

However, for the reasons above indicated, any attempt to cast a vote by writing in the names of one or more persons other than those nomi-

nated by such a party as its presidential candidates would be ineffective and need not be counted.

Thus, splitting of one's ticket by voting for some of the presidential electors of more than one party or the voting for some but not all of the presidential electors selected by one party is not only not authorized, but is expressly prohibited by the statute. Instructions to voters, official ballot, Sec. 706 of Act 116, P.A. 1954; M.C.L.A. § 168.706; M.S.A. 1968 Cum. Supp. § 6.1706.

Nor, does the statute authorize or permit voting for one as a presidential elector unless he is one of those certified as having been chosen as such by a political party, and then, only as above stated.

Furthermore, the only method authorized for the casting of a vote for any list of presidential electors is by means of voting in the manner above outlined for the entire list of presidential electors chosen and timely certified by a political party.

With that background in mind, consideration will now be given to your specific questions.

"1. Section 45 of the Michigan Election Law says, 'Marking a cross (X) in the circle under the party name of a political party, at the general November election in a presidential year, shall not be deemed and taken as a direct vote for the candidates of the said political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the Secretary of state. . .'

"In view of the distinction made throughout the Michigan Election Law between 'circles' and 'boxes', does section 45 mean that a voter must always mark a cross in the party circle of a party circle of a paper ballot (or on a machine, pull the straight party lever at the beginning of his voting) in order to vote for president; and then, if he desires to split his ticket for other offices, he must then use the crossout procedures of sections 737 (2) and 737 (3)? And, if this is so, does this not mean that a box should not be printed opposite the names of the president and vice-president candidates?"

As above noted, the form of the official ballot as prescribed by the statute requires the printing of a square preceding the bracket embracing the names of the presidential candidates. Sec. 706, supra. One voting by paper ballot may vote for the entire list of presidential electors certified by a party whose ticket is printed on the ballot by either:

1. Placing a cross in the party circle, Section 45, supra; or
2. Placing a cross in the square in front of the bracket embracing the names of the presidential candidates of one of the parties whose ticket is on the ballot. Subsections (2) and (5) of Sec. 737, M.C.L.A. § 168.737; M.S.A. 1956 Rev. Vol. § 6.1737.

In the alternative, he may cast a vote for the entire list of presidential electors certified by the Prohibition Party by inserting by means of write-in or sticker the names of the presidential candidates certified by that

party in lieu of the names of the presidential candidates of one of the six parties whose ticket is printed on the ballot and placing a cross in either the party circle of that party or in the square preceding the names of the presidential candidates.

In voting on the machines, one may vote for the entire list of candidates certified by one of the parties whose ticket appears on the party row of the machine, being the same six parties, the tickets of which are printed on the paper ballots, by either pulling down the pointer over the names of the presidential candidates of that party or by pulling the party lever which brings the pointer down over the names of those presidential candidates, as well as the candidates nominated by that party for the remaining offices. Should the electors wish to vote for the list of presidential electors certified by the Prohibition Party, he may do so by either writing in the names of the presidential candidates of that party or inserting a sticker containing those names in the write-in slot in the manner above explained.

"2. In spite of the fact that the Michigan Election Law speaks of voting for president and vice-president, for example, in sections 758a, 784, etc., is it not the case that the voter, in fact, votes for a number of presidential elector candidates equal in number to the number of U. S. Representatives and Senators to which Michigan is entitled in the congress?"

You are correct. The people of Michigan will vote for and elect 21 presidential electors who in turn will cast their votes for candidates for president and vice-president of the United States.

"3. Is it the case that a so-called "write-in" vote for president and vice-president cannot be in the name of the national candidates for president and vice-president, but must instead be for the state candidates for presidential electors?"

For the reasons above set forth, this question is answered, "No."

"4. When sections 782 and 784, dealing with write-ins or so-called 'irregular ballots', refer to 'a combination of names that could not be voted with the machine,' are these sections not referring to the votes for the office of presidential elector, there being no other offices in Michigan for which independent levers (or boxes) are not already on the voting machines (paper ballots)?"

The predecessors of Section 782 and 784 of the Michigan election law, being Sections 13 and 15 of Chapter 21 of Act 351, P.A. 1925, are companion sections of that chapter. Section 13 required the furnishing of "irregular ballots" for use by an elector under certain circumstances or for certain purposes. Thus, it provided that the ballots were to be furnished:

". . . [t]o provide any and every voter who desires to vote for any person whose name is not on the machine or for any combination of names that could not be voted with the machine, . . ."

Section 15 limited the requirement for the furnishing of such ballots to those who requested the same in order to vote for:

“ . . . persons not nominated or for a combination of names that cannot be voted with the machine . . . ”

and

“ . . . for voting for presidential electors.”

With respect to the latter, it must be remembered that as above noted, the names of the presidential electors chosen by the respective political parties were printed on the ballot used at the 1928 and prior presidential elections and voted for the same as candidates for any other office.

These sections were re-enacted without substantive change as Sections 782 and 784 of the present Michigan election law. However, Section 782 was repealed by Act 62, P.A. 1966, and the provisions thereof rewritten and inserted as Section 782a, M.C.L.A. § 168.782a; M.S.A. 1968 Cum. Supp. § 6.1782(1). As thus clarified, the duty to furnish and the right of an elector in a machine precinct to vote by means of such a ballot is limited to voting:

“ . . . for more write-in candidates than there are spaces upon the voting machine or for any person whose name is not on the machine or for any combination of names that cannot be voted with the machine, . . . ”

By way of example, paper ballots were available for use by the electors of Wayne County at the 1966 primary and general elections due to the large number of circuit and recorder's court judges to be nominated and elected. Any voter who desired to vote for all the candidates to be nominated and elected by means of write-in or sticker would not have been able to do so on the voting machine, as there were not enough write-in slots.

However, one who desired to vote in a machine precinct at the 1968 November election by write-in for presidential electors would not be entitled to a paper ballot. Provision is made on the voting machine for voting by means thereof in the manner above described.

Nor, does the specific reference in Section 784 to voting by “irregular ballot” for “president and vice-president” authorize the same. To hold otherwise would ignore the legislative intent as evidenced by the amendments to the code commencing with Act 306, P.A. 1929, which changed the method by which one may vote for presidential electors and limits one to voting for the list of such electors certified by a political party.

5. (1) “Could a voter, under section 782, vote for 1, 2 or any number of presidential electors short of the total number allowed, just as he might wish to vote for not all candidates for another multiple office, such as state board of education?”

For the reasons above pointed out, this question is answered, “No.” This would be in direct violation of the above quoted instructions printed on the paper ballots. Sec. 706, supra.

5. (2) “Would such a partial vote not be a ‘combination of names that could not be voted with the machine’?”

No. See answer to Question 4, above.

5. (3) "Also, could such a vote under section 782 be cast for a combination of presidential electors, some of one political party and some of another?"

No. See the instructions to voters required to be printed on the ballots by Section 706, supra.

5a. "Section 784 establishes the general rule that 'no irregular ballot shall be voted for any person for any office, whose name appears on the machine as a nominated candidate for that office'. There are, however, exceptions to this rule in the section. They are 'persons not nominated or a combination of names that cannot be voted with the machine,' (2) 'voting for president and vice-president,' and (3) 'challenged votes.' In view of these exceptions, could a voter not vote an irregular ('write-in') ballot for some presidential electors nominated by a political party and other presidential electors not on any party's ticket?"

"Would not the above interpretation be consistent with section 772, which provides, 'A voting machine . . . must permit all voters to vote for any person for any office, whether or not nominated as a candidate by any party or organization.'"

For the reasons above set forth, both of your questions are answered, "No."

6. "May the 'portion of the face of the [voting] machine' required on models to demonstrate voting by voting machine, provided in section 777, not include a portion of the face of the voting machine containing the write-in sliders?"

Section 777, M.C.L.A. § 168.777; M.S.A. 1956 Rev. Vol. § 6.1777, requires that:

"A model representing a portion of the face of the machine and containing fictitious names must be delivered to each board of election inspectors for use on election day, . . ."

Historically, the manufacturers have furnished with each voting machine purchased by a city or township a model for use in demonstrating the manner of voting thereon as required by this section. The statute is silent as to whether the same must include that portion of the face containing the "write-in sliders." Such a model as you suggest certainly would comply with this requirement. While as your question indicates, the model presently in use does not contain this feature, nevertheless, that model satisfies any requirement of Section 777. As a practical matter, it is difficult to see how under those circumstances it would be possible for any election official to comply with your suggestion.

7. "On paper ballots, does a voter place the write-in sticker for an office in the sixth column (or line) (if there are five parties on the ballot), or as suggested in section 737 (4), does he place such sticker under his party's vignette, in his party's column, on the line for the office involved?"

As above noted, six parties have qualified to have their party tickets



printed on the ballot for the ensuing election. There is no provision for the printing of a seventh or blank column. Accordingly, the sticker must be placed over the names of the presidential candidates of one of the six parties. The voter must also place a cross in either the party circle or in the square in front of the bracket embracing the names of the presidential electors as printed on the ballot.

8. (1) "On a write-in sticker, may the cross inside the box ( [X] ) be printed on the face of the sticker?"

The cross may not be printed in the square, but instead, is required to be placed there by the individual voter.

"No vote shall be counted for any candidate unless a cross has been placed by the voter in the circle at the head of the party ticket, if any, on which the name of the candidate has been printed, written or placed or unless a cross has been placed by the voter in the square before the space in which the name of the candidate has been printed, written or placed." Subsection (11), Sec. 803, M.C.L.A. § 168.803; M.S.A. 1968 Cum. Supp. § 6.1803. That subsection was added to Section 803 by Act 195, P.A. 1957, presumably in view of the holding of the Supreme Court in *Burns v. Rodman*, 342 Mich. 410 (1955).

8. (2) "In any case, on a paper ballot, does 737 (4) remove the necessity of placing an 'X' in the box on the paper ballot in case the voter votes a straight party ticket or in all cases?"

In case the elector wishes to vote a straight party ticket, placing a cross in the party circle is all that is required. However, if he wishes to vote for the presidential electors of another party, he is required to place a cross in the square in front of the presidential electors of the latter party. Likewise, where he votes by means of writ-in or sticker on a party ticket other than the one in the party circle of which he has placed a cross, he is required to place a cross in the square. Of course, the voter may vote only for individual candidates by placing a cross in the appropriate square without placing a cross in the party circle of any party.

9. "Would a printed sticker of dimensions  $\frac{3}{8}$ " by  $1\frac{3}{4}$ " as follows register a vote in Michigan for each of the presidential elector candidates listed thereon, whether voted on a paper ballot, or a voting machine?"

I assume from your question that the list of 21 names printed on the sticker has not been certified to the secretary of state by any party as its list of presidential electors.

I differentiate the situations suggested by you from that in which the elector voting in a paper ballot precinct places a cross in the Democratic Party circle, strikes out the name of Hubert H. Humphrey and writes in that of Eugene McCarthy. Presumably, in that case the elector intends to vote for the list of presidential electors selected and certified by the Democratic Party, but merely wishes by his write-in to express his own

personal preference for the presidential candidate. Provision is made by subsections (1) and (6) of Section 803, supra, for the voiding of one's vote in case the voter has written or made some mark thereon for the purpose of distinguishing it. However, under these circumstances, the voter not having intended to distinguish his ballot, the same would constitute a valid vote for the entire list of presidential electors for the Democratic Party.

Where, however, instead of writing in the name of Senator McCarthy the voter places a sticker containing an uncertified list of 21 presidential electors over the names of the presidential candidates of a party, he cannot be assumed to have intended to vote for the list of electors certified by that party. Inasmuch as the statute limits electors to voting for the list of presidential electors certified by one of the parties and those whose names are printed on the sticker have not been certified to the secretary of state, casting of a vote for such list would not be possible. Thus, this would not constitute a valid vote for any list of presidential electors.

"Any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidate shall be void as to the candidate or candidates thereby affected." Subsection (8), Sec. 803, supra.

The method of voting by means of sticker or write-in by a voting machine is reviewed above. Due to the mechanics of voting on a machine, any such sticker is placed in the column for that office on the write-in roll, but unlike the paper ballot, is not identified with any particular party. Thus, using your example, a sticker containing an uncertified list of presidential electors placed in the column for that office on the write-in roll, as in the case of the paper ballot, would not constitute a vote for any list of presidential electors, but, of course, would not invalidate any other vote cast by that elector for candidates for other offices.

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