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LETTER 60-242-L

LES HARDY- ORIGINATOR

October 4, 1960

Mr. Henry Valencia
Clerk, Board of Supervisors
P. O. Box 156
Nogales, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Valencia:

Please refer to your letter of September 21, 1960, with regard to the placing of a name of a primary write-in candidate on the ballot at the next general election for Member of the Arizona House of Representatives.

Your letter states that at the last primary election there were "write-in votes cast for one Clinton Moller for State Representative." Farther along in your letter you stated that write-ins were listed for Clint Meller, Clifton Meller, Clinton Miller, Clinton Meller, Clint Miller, Clinton L. Meller.

Thus it appears that in addition to different Christian names there were written in on the primary ballot three different surnames, namely, "Miller", "Millor" and "Meller".

Under such circumstances it is difficult to conceive which name the Board of Supervisors should select to place upon the general election ballot; and, furthermore, if the selection of a surname is made by the Board of Supervisors, then there rises the question as to what Christian name should be selected to be joined with the surname on the ballot, because it appears that the following Christian names were written in on the primary ballot, namely, "Clint", "Clifton" and "Clinton".

Unless the Board of Supervisors can make a correct selection from these various name designations as to the person nominated, and such person received a sufficient vote to nominate him under such designation, then it is the opinion of the Attorney General that the person who claims he was nominated should institute an appropriate court action to have a judicial determination of the name the Board of Supervisors should place upon the general election ballot.

We think the foregoing conclusion is supported by the following authorities:

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38 Am. Jur. (Name) § 38, pp. 614, 615
18 Am. Jur. (Elections) § 195, p. 311
29 C.J.S. p. 253
45 A.L.R.2d 1094, 1095

Your letter further states that Mr. Mellor served as a member of the election board at the primary election. The last sentence of A.R.S. § 16-771 A provides:

"No United States, state, county or precinct officer, nor a candidate for office at the election, other than a precinct committeeman or a candidate for the office of precinct committeeman, is qualified to act as judge, inspector or cleric."

The purpose of the foregoing provision is to prohibit a candidate for public office, with the exceptions named, to occupy a position on the election board which could afford him the opportunity to encourage or persuade electors to cast ballots for such person's nomination or election.

See: 38 Am. Jur. (Elections) § 32, p. 201
1 A.L.R. 1541

Obviously, the presence of Mr. Mellor upon the election board was calculated to influence, and undoubtedly did influence, electors to vote for him in the primary election, thereby violating, in principle, what the words quoted above were designed to prevent.

Therefore, having regard for the intent of the law in preserving the purity of elections, it is the opinion of the Attorney General that Mr. Mellor by such conduct has disqualified himself from nomination as a candidate for the House of Representatives.

Very truly yours,

WADE CHURCH
The Attorney General

LESLIE C. HARDY
Chief Assistant
Attorney General

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cc: Hon. Robt. M. Hathaway
Member Ariz. House of Rep.

60-1422