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Opinion No. 63-19-L
R-105
January 18, 1963

REQUESTED BY: THE HONORABLE LLOYD C. HELM
Cochise County Attorney

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Do automatic recount provisions apply under
A.R.S. § 16-1001 in a contest between a
party nominee for Justice of the Peace de-
feated by a write-in candidate by 8 votes?

ANSWER: No.

A.R.S. § 16-1001 covers the subject for automatic recount
and it states in part:

"When the canvass of returns shows that the
margin between the two candidates receiving the
greatest number of votes for a particular office,
. . . does not exceed one tenth of one per cent
of the number of votes cast for both such candidates
. . . or does not exceed ten votes in the case of an
office to be filled by the electors of a county or
subdivision thereof, or does not exceed five votes
in the case of an office to be filled by the elec-
tors of a precinct, a recount of the vote upon such
candidates, measures or proposals shall be required."

This statute in part states that a candidate who wins by
more than a five vote margin in an election for a precinct office
need not be subject to an automatic recount.

Under A.R.S. § 22-111, the justice of the peace is elected
by qualified precinct electors only. Therefore, a justice of
the peace falls directly within the five vote margin rule cited
in A.R.S. § 16-1001. If he wins by more than five votes, he
is not subject to an automatic recount.

It makes little or no difference if the justice received
his five vote plus margin by way of the regular ballot or by
the write-in method. In either event, the votes count just as
much towards the five vote plus margin.

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In the situation described in your request, the candidate won the office of justice of the peace by eight votes and as such an automatic recount in regard to this fact situation is not required by A.R.S. § 16-1001.

We assume in this opinion that in the situation you describe the candidate won by more than one-tenth of one per cent of the number of votes cast for both such candidates. If he did not, then an automatic recount would be required under this portion of A.R.S. § 16-1001.


ROBERT W. PICKRELL
The Attorney General

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