

October 11, 1938.

Mr. John Corbin,
County Attorney,
Phoenix, Arizona.

Dear Mr. Corbin:

I have before me your request of October 11th, requesting an opinion from this office on the following questions:

1. Is it the duty of the Secretary of State of the State of Arizona to prescribe the form in which the official ballots for the general election to be held November 8, 1938, shall be printed.
2. The certification of the Secretary of State of the names of the candidates for State and other offices furnished to the Board of Supervisors of Maricopa County contains the following:

For Governor, R.T. (Bob) Jones, Democrat Party
Jerrie W. Lee, Republican Party
James H. Kerby, under the designation of Arizona Independent Democrat.

The first two parties are entitled to be printed upon the ballot by virtue of Section 1278, Revised Code of Arizona, 1928; the third is entitled to be printed on the ballot by virtue of Section 1203, Revised Code of Arizona. The question is, how should the columns appear upon the official ballot?

3. In regard to the column provided for Arizona Independent Democrat, should lines and squares be provided for all state and county offices or should lines and squares be provided only for the office of Governor?
4. How should the name of a candidate for sheriff appear upon the ballot who is running as an "Independent Democratic" and whose candidacy has no connection with that of Candidate Kerby who is running as an "Arizona Independent Democrat"?

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5. How should the name of a candidate for constable appear on the ballot who is running under the designation "Independent Democrat"?

1. Sections 1268 and 1745, Revised Code of Arizona, 1928, place the duty upon the Secretary of State to certify to the different boards of supervisors of the counties, the names of persons who have qualified under the law to entitle their names to be printed on the official ballot. Nowhere does the law place upon the Secretary of State, the duty of prescribing the form in which these names should appear upon the ballot.

Section 1193, R.C.A. 1928, provides as follows:

"The boards of supervisors...shall prepare and provide ballots containing the names of all persons, certificates of whose nominations have been filed with them."

It is the opinion of this office that the statutes make it the duty of the boards of supervisors, and not the duty of the Secretary of State to prescribe the form in which the official ballots are to be printed.

2. An exhaustive study of the applicable statutes impels the conclusion that the legislature intended that names of candidates should appear upon the general election ballot by virtue of two distinct and separate authorities: First, by virtue of Section 1278, Revised Code of Arizona, 1928, which reads:

"A political organization which, at the last preceding general election shall have cast five per cent of the total vote in the state for its candidates, or of a subdivision thereof in which a candidate seeks nomination of such political organization for a local or county office, shall be entitled to representation on the official ballot as a political party. Whenever a petition signed by a number of qualified electors equal to at least two per cent of the votes cast for governor at the last preceding general election in at least each of five counties of the state, shall be filed with the secretary of state, verified by the affidavit of ten qualified electors of the state, ask-

ing that the signers thereof be recognized as a new political party, they shall be so recognized and such party shall be represented by an official ballot at the ensuing primary election and on the succeeding general election."

Second, by virtue of the provisions of Section 1293, Revised Code of Arizona, 1928, which is a codification of Section 2320, Revised Statutes of 1901, which reads as follows:

"Candidates for public office may be nominated otherwise than by convention or committee in the manner following: A certificate of nomination, containing the name of a candidate for the office to be filled, together with such information as is required to be given in certificates provided for in the case of nominations by convention or committee (except that said certificate shall designate, in not more than three words, instead of the party, the political or other name which the signers shall elect), shall be signed by voters residing within the political division in and for which the officer or officers are to be elected, to the number of at least one per centum of the entire vote cast at the last preceding election in such political division for which such nomination is made. The signatures to the certificate of nomination need not all be appended to one paper. Each voter signing such certificate shall add his place of residence."

The peculiar wording of this original section impels the conclusion that the legislature meant that names appearing on the ballot by virtue of this section, were to be under "designations" rather than "parties" and that there is a difference between a "designation" and a "party".

Section 1197, Revised Code of Arizona, 1928, prescribes the manner in which "parties" are to be arranged on the ballot in the following language:

"The lists of the candidates of the several parties shall be arranged with the names of the parties in alphabetical order, commencing with the left-hand column, but on the right-hand side of the ballot there shall be a column headed non-partisan."

The statutes do not provide for the manner in which "designations", shall appear other than regularly formed parties on the ballot. Therefore, it is the opinion of this office that Section 1197, supra, applies only to those names appearing on the ballot by virtue of Section 1278, supra, as "parties" and does not apply to those names appearing on the ballot by virtue of Section 1293, supra, as "designations".

It is the further opinion of this office that the Board of Supervisors of Maricopa County, should arrange the columns upon the ballot with the names of the "parties" in alphabetical order, commencing with the left hand column and ending with the extreme right hand column headed "non-partisan" and with the designation "Arizona Independent Democrat" in one of the columns appearing between.

3. It is the further opinion of this office that there should be a square at the top of every column for voting a straight ticket, but that it is not necessary to print blank lines or squares in every column for write-ins.

4. The name of the candidate for sheriff who is running as an "Independent Democratic" and whose candidacy has no connection with that of Candidate Kerby, shall appear in a separate column under the designation "Independent Democratic".

5. The name of the candidate for constable running under the designation "Independent Democrat" should appear upon the ballot in a separate column designated "Independent Democrat".

Very truly yours,

JOE CONWAY,
Attorney General

W. E. POLLEY,
Assistant Attorney General

EARL ANDERSON,
Special Assistant
Attorney General.