July 6, 1940

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. C. M. Fry, Clerk
Town of Buckeye
Buckeye, Arizona

Dear Mr. Fry:

In your letter of May 31, 1940, you desire our opinion on the action of the election board on three ballots, reproductions of which you sent along as exhibits.

In the opinion of this office, the action taken was correct on all three ballots. Exhibit 1 contains three printed names marked with a cross, and two names written in, but neither with a cross in the appropriate square. In counting the vote of each of the printed names, by rejecting the two which were written in, the board followed the law, citing Sec. 55-412, A.C.A. 1939, which prescribes the manner of voting, and provides in Instruction 3, that:

> "If the voter desires to vote for any person whose name is not printed on the ballot, he will write the name of such person on the blank lines immediately below the names of all the candidates printed on the ballot for the particular office for which he desires to vote for such person, and mark the same with an 'X' in the square opposite such blank line".

And in Hunt vs. Campbell, 19 Ariz. 254, 169 Pac. 536, it was decided that a ballot may not be counted where the name of the candidate is written in but no mark made in the square after his name, either as printed upon the ballot or as written thereon.

As for Exhibit 2, on which two of the printed names are penciled out, two names are written in, and none of the names is marked with an "X", the entire ballot was correctly rejected in view of the law cited above.

Exhibit 3, on which one of the printed names is followed by a mark, two more names written in are followed by marks, and marks are made in the squares opposite three more blanks, was correctly rejected in its entirety. Beside in part violating Secs. 55-412 and 55-407, this ballot, calling for a choice of five candidates, falls squarely within the meaning of Sec. 55-509 which provides:

"If the voter marks more names than there are persons to be elected to an office, or if from the ballot, it is impossible to determine the voter's choice for an office, his ballot shall not be counted for such office".

Very truly yours,

JOHN L. SULLIVAN
Attorney General

WILLIAM P. MAHONEY, Jr.,
Assistant Attorney General

WPM: jm

46-79

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