S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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October 5, 2006

Opinion No. 06-154

Validity of Shelby County Ballot

QUESTION

Whether the ballot used by the Shelby County Election Commission for the August 3, 2006, election violates Tennessee law.

OPINION

No.

ANALYSIS

You have asked whether the ballot used by the Shelby County Election Commission in the recent August 3, 2006, election violates any provision of Tennessee law. Presumably your question is concerned with the form and layout of the ballot used on the voting machines in Shelby County. There are several statutes governing the forms of voting machine and paper ballots, as well as the arrangement of information on the ballots. Tenn. Code Ann. § 2-5-206 governs the form of ballots used on voting machines, while Tenn. Code Ann. § 2-5-207 governs the form of paper ballots. Tenn. Code Ann. § 2-5-208 governs the arrangement of materials on ballots in general. It should be noted that the August 3 ballot was both a general election ballot with respect to local offices, appellate judges, district attorney and public defender, as well as a party primary ballot with respect to state and federal offices, including Governor, United States Senate and House of Representatives. In addition, the August 3 ballot included municipal elections for the cities of Collierville, Germantown, Millington and Memphis.

Tenn. Code Ann. § 2-5-206 (b) sets forth the arrangement for all voting machine ballots, with the exception of ballots on Automatic Voting Machine, Inc. type machines, C.E.S., Votomatic or comparable punch card voting systems, or Shouptronic or other comparable direct recording electronic voting systems. It provides, in part, as follows:

> (1) In primary elections, the title of the offices shall be placed vertically on the left or right side of the ballot, and there shall be a vertical column for each political party, and the names of the

> candidates shall be placed opposite the title of the office for which they are to be selected, in alphabetical order according to the initials of their surname, beginning with the first initial. Each column shall be designated by the name of the political party for that column.
>
> (2) In general elections, the title of the offices shall be placed vertically on the left or right side of the ballot, and there shall be a vertical column for each political party. Any candidate whose name is to be placed on the ballot by virtue of party nomination shall be listed in the political column of such candidate's party, opposite the title of the office the candidate seeks. One (1) vertical column for independent candidates shall be placed on the ballot and shall appear immediately after the political party columns. The independent candidates shall be listed in alphabetical order according to the initials of their surnames, beginning with the first initial. The independent candidate's name shall be listed opposite the title of the office the candidate seeks. This ballot format shall apply to all voting machine ballots, except in counties using Automatic Voting Machine, Inc. type machines, C.E.S., Votomatic or comparable punch card voting systems, or Shouptronic or other comparable direct recording electronic voting systems. . . . ***The ballot format for Shouptronic or other comparable direct recording electronic voting systems shall be governed by the rules set out by the coordinator of elections and the state election commission under § 2-9-110.*** Such rules shall be approved by not less than four (4) members of the state election commission.
>
> (3) If the arrangment as set out in subdivision (b)(1) and (2) will not fit on the voting machine ballot, the county election commission may arrange the ballot so that the voting machine will accomodate the entire ballot including, without limitation, the arrangement of material in vertical columns with the office appear first and the candidates for such office listed vertically beneath the office, with the political party nominees indicated by (D) or (R) and independent candidates by (I). (Emphasis added)

Tenn. Code Ann. § 2-5-208 governs the actual arrangement of material on ballots in general. Subsection (c) sets forth the order of the titles of the offices to be filled or for which nominees are to be chosen. Subsection (d)(1) provides that "[o]n general election ballots, the name of each statewide political party having nominees on the ballot shall be listed at the top of the columns, with the listing of the candidates' names underneath." It further provides, however, that "[i]f the ballot arrangement established in this section will not fit on a voting machine ballot, the county election commission may arrange the ballot so that the voting machine will accomodate the entire ballot." With respect to nonpartisan general election ballots and a political party's primary ballots,

subsection (d)(2) simply requires that "the names of all candidates for the same office shall be arranged alphabetically according to the initials of their surnames, beginning with the first initial." Finally, subsection (i) provides that

> [w]hen there are so many candidates for an office that their names will not all fit either horizontally or vertically on the ballot with the name of the office, the names shall be listed in alphabetical rotation from left to right in each necessary row in the following manners:
>
> '[ ] ADAMS [ ]BLACK [ ] CONWAY
> [ ] SMITH [ ] THOMAS [ ] THOMS
> [ ] VADEN'

There is also a specific provision concerning the placement of the names of candidates for judge of the supreme court. Subsection (k) requires the county election commission to "cause the names of the candidates to be arranged on the ballot so as to denote the grand division of the state for which they are seeking to be elected or whether they are candidates from the state at large by prefixing to the names of the candidates the words 'eastern,' 'western,' or 'middle' division, or 'the state at large.'

Your request did not contain a copy of the ballot used by the Shelby County Election Commission in the August 3, 2006, election; however, a copy of the voting machine ballot was obtained from the State Coordinator of Elections. Furthermore, it is our understanding, that in the August 3rd election, Shelby County used Diebold voting machines, which are direct recording electronic voting machines. As the machines used by the Shelby County Election Commission are direct recording electronic voting machines, the ballot format outlined in Tenn. Code Ann. § 2-5-206(b)(1) and (2) does not apply. Furthermore, as noted above, both Tenn. Code Ann. §§ 2-5-206 and 208 specifically authorize a county election commission to arrange the ballot in such a manner as to allow the voting machine to accomodate the entire ballot. From our review of the ballot, it appears that the voting machines were able to accomodate the entire ballot. Accordingly, it is our opinion that the ballot used by the Shelby County Election Commission in the August 3, 2006, election does not violate any provision of state law.

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