

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 09-176

Use of Birth Name Not Required in Running for Office

QUESTIONS

1. May a person who qualifies for and is elected to a local governmental body under a name other than her birth name legally hold office?
2. If it is determined that such person violated the law by running for such office under a name other than her birth name, would any votes cast by her as a local elected official be invalidated?

OPINIONS

1. Tennessee election laws do not require that an individual use his/her birth name in order to qualify for and to hold public office.
2. In light of the answer to your first question, a response is not necessary.

ANALYSIS

1. A person's birth name is commonly understood as the name that appears on the birth certificate. A person's birth name can, however, be different from his or her legal name. The Tennessee Supreme Court has held that "a person's legal name is that given at birth, or as voluntarily changed by either spouse at the time of marriage, or as changed by affirmative acts as provided under the Constitution and laws of the State of Tennessee." *Dunn v. Palermo*, 522 S.W.2d 679, 688 (Tenn. 1975).

Tenn. Code Ann. §2-5-204(c) governs the placing of candidates' names on ballots and provides:

- (c) If no less than four (4) members of the county election commission vote in the affirmative that a candidate's name on the

ballot would be confusing or misleading, *the county election commission may require further identifying information or may omit any confusing or misleading portion of the name.* In an election where the candidate's name will appear on the ballot in more than one (1) county, the authority shall rest with the state election commission. (Emphasis added)

Under this statute, the state election commission is given the discretionary authority to: (1) determine whether a candidate's name is confusing or misleading, and if so, (2) determine whether such misleading or confusing portion should be omitted from the ballot. However, neither this statute nor any other provision of Tennessee election law requires that an individual use his or her birth name in order to qualify for and to hold public office.

2. In light of our response to your first question, no response is necessary.

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Requested by:
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