

El. Bd. Op. 78-14 (Reaffirmed 5/5/08)

Summary:

Dual nomination: When a candidate wins a partisan primary for an office for which he has filed nomination papers and a declaration of acceptance, and also wins, at the same primary, the party's nomination for another office by write-in votes, the candidate may not choose between the nominations, but must appear on the general election ballot as a candidate for that office for which nomination papers and a declaration of acceptance were filed. §§8.03 (1), 8.35 (4)(b), Stats. (Issued to Fred W. Shaffer, August 17, 1978)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on May 5, 2008.

Opinion:

You have requested the opinion of the Elections Board on the following fact situation: An individual files nomination papers as a partisan candidate for the state assembly, and wins the party nomination for that office without opposition. At the same primary at which the candidate wins the assembly nomination, he or she is nominated as a write-in candidate for the state senate, as the result of a campaign in which he or she does not take part. May the candidate choose which nomination appears on the general election ballot, or is the candidate permitted to appear only as an assembly candidate on that ballot?

Section 8.03, Stats., provides in pertinent part:

Multiple nominations. (1) The name of any person ...nominated for more than one office shall appear ...under the office to which he was first nominated. If the double nomination is simultaneous, the person nominated, before the deadline for filing the certificate of nomination shall file a written statement with the same person with whom he files his certificate stating he ...office preference. If the candidate fails to select his ...office, his name shall be placed under either ...office, but cannot appear more than

One could make a reasonable case for either of two constructions of the statute. The terms "nominated" and "nomination" are used in chapter 8 to describe both nomination by the filing of nomination papers and nomination by partisan primary. If the candidate in the instant question were "first nominated" to the assembly, by virtue of filing nomination papers for that office prior to being nominated by write-in for a senate seat, the first sentence of the subsection would apply and he or she must appear on the general election ballot as an assembly candidate. On the other hand, if there were a "simultaneous" double nomination, by virtue of the simultaneous primary victories, the second sentence of the subsection controls and the candidate may choose the office under which he or she wishes to appear on the general election ballot.

Because the proper reading of §8.03 (1), Stats., is not clear from the language, the Board must look to extrinsic aids to reach a construction consistent with legislative intent.

The best clue to that intent is provided by the statutory requirements that a candidate file a "declaration of acceptance" with his or her nomination papers. §8.15 (4)(b), Stats. The

declaration requirement ensures that the end-product of the nomination process—the printed ballot—contains the names of legitimate candidates, providing the electorate with meaningful choices. An elector at a general election should be able to assume that those whose names are printed on the ballot are legally qualified and willing to serve, and an elector of a party should be able to assume that those whose names appear on the party's primary ballot are legally qualified and willing to serve as the party's nominees. The desire to protect electors from wasting votes is also the underlying purpose of the prohibition of dual candidacies in §8.03, Stats. That object would be eroded if one who has filed, declared and won the primary for one office could decline that nomination in favor of another.

Recently the legislature confirmed the binding character of the declaration by deleting the statutory provision that allowed candidates to withdraw from the ballot. Chapter 340, Laws of 1977. Section 8.35 (1), now reads in pertinent part: "Any person who files nomination papers and a declaration of acceptance may not decline nomination. The name of such candidate shall appear upon the ballot except in case of death of the person" To allow the candidate in the instant question to choose between the nomination for the assembly and senate would be, in effect, allowing the candidate to withdraw a filed candidacy for the assembly, a result inconsistent with the letter and spirit of this legislative change.

In addition to its deleterious effect on the interest of the electorate, allowing the instant candidate a choice between the two nominations could harm another legitimate interest --that of the candidate's political party in ensuring that one who files a declaration for a particular office and wins the party's nomination for that office will accept it. Chapter 340, supra, eliminates the right of a party to fill vacancies on the ballot, unless the party's nominee has died. Thus, the result of allowing the candidate here to choose the write-in senate nomination would be to leave the party and its voters without an assembly candidate on the general election ballot.

Accordingly, the Elections Board concludes that, under the circumstances you have described, the candidate would have to appear on the November ballot as the party's assembly nominee. Of course, one of the implied conditions of the candidate's declaration for the assembly is that he wins the party's nomination. A loss in the primary for the assembly, coupled with a write-in victory for the senate nomination, would allow the candidate to file a declaration for the latter office and so appear on the general election ballot. §8.16 (2), Stats.