

Melinda Lemons

From: Adam Fogleman <afogleman@pulaskicounty.net>
Sent: Tuesday, October 26, 2021 4:21 PM
To: Melinda Lemons
Subject: Identified Ballot Error

Dir. Lemons,

I regret that I cannot confirm availability to attend the meeting tonight of the Pulaski County Board of Election Commissioners. Other meetings scheduled at or near that time may preclude my attendance; however, I am providing this email to address the ballot error that we discussed today.

The approved ballot style for the PCSSD annual school election omitted “unopposed candidates” for the two (2) school board seats up for election. The two (2) unopposed candidates are not incumbents.

Ark. Code Ann. 7-5-207 provides the following:

(a)(1) Except as provided in subdivision (a)(2) of this section, all election ballots provided by the county board of election commissioners of any county in this state for any election shall contain in the proper place the name of every candidate whose nomination for any office to be filled at that election has been certified to the county board of election commissioners and shall not contain the name of any candidate or person who has not been certified.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, unopposed candidates for all offices, including school board positions, shall be declared and certified elected without the necessity of including those names on the general election ballot.

(B)(i) In an election in which one (1) or more candidates are unopposed, the phrase “unopposed candidates” shall appear on the ballot, adjacent to a place in which the voter may cast a vote for all unopposed candidates by placing an appropriate mark.

(ii) Votes received by an unopposed candidate in any election in this state may be counted or tabulated by the election officials for administrative purposes, but shall not be certified unless otherwise provided by law.

(iii) Votes received by an unopposed candidate for the office of Governor, mayor, circuit clerk, or the office of a nonjudicial state elected official shall be counted or tabulated by the election officials and certified according to law.

(iv) The names of all unopposed candidates for the office of Governor, mayor, circuit clerk, and the office of a nonjudicial state elected official shall be separately placed on the general election ballot, and the votes for Mayor, Governor, Circuit Clerk, City Clerk, and a nonjudicial state elected official shall be tabulated as in all contested races.

(v) All unopposed candidates, other than for the offices of Governor, mayor, circuit clerk, and the office of a nonjudicial state elected official, shall be declared and certified as elected in the same manner as if the candidate had been voted upon at the election.

I have included the language of the statute, in full, to provide the context of the process. There is a ballot error resulting from the omission of “unopposed candidates” from the ballots; however, this is an administrative or technical error that will not affect the outcome of the election.

While the law requires that “unopposed candidates” appear on the ballot with an opportunity to vote for –but not against- unopposed candidates, the votes cast are not required to be tallied and the vote count SHALL not be certified in this election. All unopposed candidates, other than those listed as requiring a vote tabulation, shall be declared and certified in the same manner as if the candidate had been voted upon at the election. The framework of the law provides an opportunity for the participating qualified electors to cast ballots for, but not against, unopposed candidates in certain elections. This serves to elect the unopposed candidates, which is then reflected by the declaration and certification of the candidates as elected by the county board of election commissioners.

Ark. Code Ann. 7-5-209 addresses the correction of ballot errors. That statute states:

Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or description of candidates nominated for office or in the preparation of ballots, the county board of election commissioners shall in a public meeting announce the error or omission and immediately correct the error or omission or show cause why the correction should not be done.

The context of the error should be considered in determining how to accomplish a correction to the error made, if the Board determines that a correction is necessary. Because the votes for “unopposed candidates” are not tabulated, but appear on the ballot so that the candidates are elected by the presumed casting of ballots in favor of “unopposed candidates,” I would recommend that the Board exercise a correction with a light touch, to provide an opportunity for voters to participate in casting ballots in some form or fashion in favor of “unopposed candidates”, that offers as little disruption as possible to the millage election on the ballot.

Sincerely,

Adam Fogleman

