

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**May 3, 2022**

**Opinion No. 22-09**

**Ability of Unsuccessful Primary Candidate for One Division of Circuit Court to Appear on General Election Ballot for a Different Division of Circuit Court**

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**Question 1**

Does Tenn. Code Ann. § 2-5-101 prohibit an unsuccessful primary candidate for one division of a circuit court from appearing on the ballot in the general election for a different division of the circuit court?

**Opinion 1**

Tennessee Code Annotated § 2-5-101(f) prohibits an unsuccessful primary candidate for one division of a circuit court from appearing on the subsequent general election ballot for a different division of the circuit court as an independent candidate or as a candidate of a different political party.

**Question 2**

Does Tenn. Code Ann. § 2-5-101 prohibit an unsuccessful primary candidate for one division of a circuit court from running as the same party's nominee in the general election for a different division of the circuit court when a primary election has been conducted for that different division of the circuit court and the party's nominee for that election was subsequently removed as the party's nominee?

**Opinion 2**

No.

**ANALYSIS**

Tennessee, like many other states, has a “sore loser” law in its Election Code—Tenn. Code Ann. § 2-5-101(f). *See* 26 Am.Jur.2d *Elections* § 265 (2022); 29 C.J.S. § 281 *Elections* (2022). The primary purpose of a “sore loser” law is to preserve the integrity of the primary process:

Allowing a defeated primary candidate to change political affiliation or to renounce all political affiliations and enter a race in which his former party has already chosen a candidate undermines the integrity of the primary process. For the primary election system to be an effective method of choosing candidates, the results of those elections must have some meaning.

*Crowe v. Ferguson*, 814 S.W.2d 721, 724 (Tenn. 1991).

Tennessee’s sore-loser law provides that “[n]o person defeated in a primary election or party caucus shall qualify as an independent for the general election,” Tenn. Code Ann. § 2-5-101(f)(3), and “[n]o candidate in a party primary election or party caucus may appear on the ballot in a general election as the nominee of a different political party or as an independent,” Tenn. Code Ann. § 2-5-101(f)(4).

In *Crowe*, the Tennessee Supreme Court found that these two statutory provisions—Tenn. Code Ann. §§ 2-5-101(f)(3) and (4)—squarely prohibit “an unsuccessful candidate in a party primary from appearing on the ballot in a subsequent partisan general election as an independent candidate or as a candidate of a different political party.” *Crowe*, 814 S.W.2d at 724. Accordingly, an unsuccessful primary candidate for one division of a circuit court is prohibited from appearing on the subsequent general election ballot for a different division of the circuit court as an independent candidate or as a candidate of a different political party.

The *Crowe* decision, though, intimates that Tenn. Code Ann. § 2-5-101(f) would not prohibit an unsuccessful primary candidate for one division of a circuit court from running as the same party’s nominee in the general election for a different division of the circuit court when a primary election for that different division of the circuit court had been conducted and the party’s nominee was subsequently removed as the party’s nominee.

At issue in *Crowe* was whether Tenn. Code Ann. § 2-5-101(f) prohibited two persons who were unsuccessful candidates in a party primary from subsequently running in a non-partisan general election for a different office. *Id.* at 723. The Court found that the concerns of the statute were not raised in this scenario. *Id.* at 724. The Court reasoned that the entry of the defeated primary candidates in the subsequent non-partisan race did not compromise the integrity of the primary election because the candidates abided by the results of the primary election and entered the non-partisan race without switching their political affiliation to qualify for the race. *Id.* at 724-25. Thus, the intent of Tenn. Code Ann. § 2-5-101(f) had been satisfied. *Id.* at 725.

Similarly, the integrity of the primary election would not be compromised by allowing an unsuccessful primary candidate for one division of a circuit court to run as the same party’s nominee in the general election for a different division of the circuit court when that different division of the circuit court had previously conducted a primary election and the party’s nominee was subsequently removed as the party’s nominee. As in *Crowe*, the candidate abides by the results of the primary election and enters the general election as a nominee for a different office without switching political affiliation to qualify for the race. The integrity of the primary system is preserved.

Moreover, the plain language of Tenn. Code Ann. § 2-5-101(f) supports the conclusion that the appearance of such a candidate on a general election ballot for a different division of the circuit court is permitted. Sections 2-5-101(f)(3) and (f)(4) prohibit an unsuccessful candidate in a primary election from appearing on the general election ballot as “an independent” or as the nominee or candidate “of a different political party.” *See Crowe*, 814 S.W.2d at 724. Neither § 2-5-101(f)(3) nor § 2-5-101(f)(4) forbids a defeated primary candidate from appearing on a general election ballot in a different race as the nominee of the candidate’s *same party*. It is well established that courts are to ascertain legislative intent “from the natural and ordinary meaning of

the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute's meaning.” *State v. Fleming*, 19 S.W.3d 195, 197 (Tenn. 2000); *State v. Butler*, 980 S.W.2d 359, 362 (Tenn. 1998) (same).

In sum, Tenn. Code Ann. § 2-5-101(f) prohibits an unsuccessful primary candidate for one division of a circuit court from appearing on the subsequent general election ballot for a different division of the circuit court as an independent candidate or as a candidate of a different political party. But Tenn. Code Ann. § 2-5-101(f) does not prohibit an unsuccessful primary candidate for one division of a circuit court from running as the same party's nominee in the general election for a different division of the circuit court when a primary election for that different division of the circuit court had been conducted and then the party's nominee was subsequently removed as the party's nominee.

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