

A candidate may not circulate nomination papers or be certified for placement on the ballot with a name which is generally viewed as a nickname unless that name is the candidate's actual legal name by birth or as adopted by common law usage. (Issued to Marjorie M. Miller on June 19, 1980)

You have requested a ruling by the State Elections Board concerning the restrictions contained in Wisconsin election laws on the use of nicknames by a candidate when circulating nomination papers and certifying candidates' names for placement on the ballot. ss.7.08(2)(a), 8.15(5), 8.20(2), Stats. You indicate that the form of the name under which you are generally known and would prefer to have certified for placement on the ballot is viewed by many as a nickname. You wish to appear on the ballot as Marjorie Midge Miller or as Midge Miller. You are currently circulating nomination papers as Marjorie M. Miller and have appeared on the ballot since 1970 as Marjorie M. Miller.

In addition to your request for a formal opinion we have also been contacted by two other candidates, Mr. G. Douglass Cofrin and Mr. Joseph L. Looby. Mr. Cofrin is circulating nomination papers as Douglass Cofrin, but would like to be certified for placement on the ballot as Doug Cofrin. Mr. Looby is circulating nomination papers as Joseph L. Looby, but would prefer to be certified for placement on the ballot as Joe Looby.

A recent decision of the Wisconsin Supreme Court has interpreted s.7.08(2)(a), Stats., which provides for certification of candidates by the State Elections Board for placement on the ballot. That decision allows candidates to appear on the ballot with three full names and overturns a previous Election Board ruling, El.Bd. Op. 78-16. The decision did not reach the question of whether a candidate could appear on the ballot with a nickname, if that was how the candidate was generally known.

The legislature has specifically prohibited the use of nicknames by a candidate since 1959. (ss.5.05(1), 5.08(1), Stats. (1959). During the 1961 legislative session, the legislature defeated a bill which would have permitted a candidate to appear on the ballot using the name of the candidate as it appeared on nomination papers in the absence of a court determination that use of the name would confuse or mislead the electorate. SB 399 (1961). The prohibition against the use of nicknames and titles is aimed at preventing a candidate from obtaining an undue advantage by the use of a sloganeering name or turning the ballot into a campaign or entertainment medium because of the nature of a nickname that would be used by a candidate.

Some candidates have appeared on the ballot with a name generally viewed as a nickname. This is because the name used was the person's actual name and had been supported by evidence such as a birth certificate. In the case of the candidacy of Jimmy Carter, the State Attorney General's office ruled that the name Jimmy was the candidate's legal name. In other cases it simply has been a matter of clerk error.

Under Wisconsin law a candidate may adopt any name he or she pleases as a legal name if it is not used for a fraudulent purpose. In re Petition of Kruzal, 67 Wis. 2d 138, 226 NW 2d 458 (1975), 63 OAG 501 (1974). The situation presented here does not involve a situation where one of the candidates has adopted a different legal name under the common law because all three candidates use different forms of their name in other situations, such as signing checks, campaign registration statements and campaign finance reports. This is also not a case where the candidates are not readily identifiable by the name that is on the nomination papers which are being circulated. Representative Miller has been elected to the Assembly since 1970 using the name Marjorie M. Miller. The other two candidates' names are familiar and common forms of a proper name which would be readily identifiable in their complete form on the ballot.

The State Elections Board cannot ignore the express prohibition of the legislature regarding the use of nicknames on the ballot. There is little possibility that the electorate will be confused over the identity of the candidates if they appear on the ballot under the names on their nomination papers. In the event a name which is viewed by many as a nickname is a candidate's actual legal name, either as given to the candidate at birth or as adopted by common law usage, then the candidate may be certified for placement on the ballot by that name.