



**STATE OF ARKANSAS**  
**Office of the Attorney General**

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Opinion No. 94-060

March 31, 1994

The Honorable Mike Everett  
State Senator  
412 Broadway  
Marked Tree, AR 72365

Dear Senator Everett:

This is in response to your request for an opinion on the following question:

In a democratic primary, assuming there are three candidates for county judge, and that no candidate receives the majority of the votes in the preferential primary, will there be a run off?

The answer to this question is "yes." A general primary election will be held in that instance, and this election will be the runoff election. Arkansas Code Annotated § 7-7-202 (Repl. 1993) states as follows:

(a) Whenever any political party shall, by primary election, select party nominees as candidates at any general election for any United States, district, county, township, or municipal office, the party shall hold a preferential primary election and a general primary election on the respective dates provided in § 7-7-203(a) and (b).<sup>[1]</sup>

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<sup>1</sup>I have enclosed a copy of Attorney General Opinion 94-011, which addresses the primary election dates.

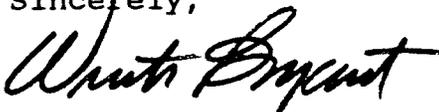
(b) A general primary election shall not be held if there are no races where three (3) or more candidates qualify for the same office or position as provided in subsection (c) of this section, unless a general primary election is necessary to break a tie vote for the same office or position at the preferential primary.

(c) If there are no races where three (3) or more candidates qualify for the same office or position, only the preferential primary election shall be held. If all nominations have been determined at the preferential primary election, or by withdrawal of candidates as provided in § 7-7-304(a) and (b), the general primary election shall not be held.

Thus, in response to your specific question, where there are three candidates in the preferential primary and no candidate receives a majority of the votes, a general primary election must be held. The names of the two candidates who received the highest number of votes in the preferential primary will be on the ballot at the general primary. A.C.A. § 7-7-304(a)(3) (Repl. 1993). This general primary election is the so-called "runoff primary." See Whitfield v. Democratic Party of State of Ark., 686 F. Supp. 1365 (E.D. Ark. 1988), rev'd in part, 890 F.2d 1423 (8th Cir. 1989), aff'd, 902 F.2d 15 (8th Cir. 1990). The nominee of any political party for the office of county judge must be certified as having received a majority of the votes cast for the office, or as an unopposed candidate, at a primary election. A.C.A. § 7-7-102 (Repl. 1993). See also Ark. Const. amend. 29, § 5 (requiring, in part, the nomination of political party candidates by a majority vote in a primary election.) The preferential primary and the general (runoff) primary (A.C.A. § 7-7-202) are the mechanisms for carrying out the majority vote requirement embodied in A.C.A. § 7-7-102 and Ark. Const. amend. 29, § 5. This is the so-called "majority-vote double primary system." Whitfield, supra, 686 F. Supp. at 1368.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Elisabeth A. Walker.

Sincerely,



WINSTON BRYANT  
Attorney General