

## Opinion No. 50-5308

July 14, 1950

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Barbara Lee Owens County Clerk, Lea County Lovington, New Mexico

{\*164} I am in receipt of a request, through the Secretary of State, Alicia Romero, of an official opinion on the question of whether a person who did not file his petition of candidacy in the recent primary but received write-in votes during the primary has received a proper nomination for office.

As the facts were related to me, two persons received write-in votes on the Republican ticket for the office of State Representative and County Commissioner, respectively. These persons now desire to be certified as properly nominated under our primary law.

The precise question that you ask has been determined by the Supreme Court of the State of New Mexico in the case of State ex rel Van Schoyckkv. Board of County Commissioners of Lincoln County, et al., 46 N.M. 472, 131 P.2d 288, 1942. The facts in that case were exactly similar to {\*165} the facts in the instant case except for the office involved.

In State v. Board of County Commissioners, supra, the office involved was that of County Clerk and she desired to compel the Board of County Commissioners to certify her name as the Republican nominee for the office of County Clerk by virtue of 42 votes cast for her as such nominee by writing in her name on the ballot at said primary election, which were duly certified by the judges and clerks thereof. In that case she also requested that the County Clerk be required to accept and file a certificate of nomination issued to relator by the vacancy committee of the Republican Central Committee as nominee of said party and to accept the fee required of candidates for that office, and to print the relator's name on the official ballot of the general election to be held in November.

The Supreme Court, in the above case, after thoroughly discussing the primary election law, held that write-in method of nominating a candidate for public office was unavailable under the primary law, either to a political party participating in the primary or to any number thereof thus seeking to place himself on the official ballot as his party's nominee in the general election. The court further held that the only proper way to be nominated under the primary system is for a person to file his declaration of candidacy as specifically required by the statute and pay the necessary fee with the necessary petitions. The court further held in that case that if no person of a certain political party filed for a certain office then there could not be a vacancy of said office whereby the Central Committee of a political party could designate a candidate for the general election.

It is my opinion that neither of these persons desiring to be candidates in the November election for office can qualify under our primary law and under the decision in the above case. Therefore, certification of their nomination is unavailable to them and their names cannot be placed on the November ballot.