

Opinion No. 52-5525

April 9, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. John D. Murphy Assistant District Attorney Second Floor Court House
Albuquerque, New Mexico

{*234} This is in reply to your letter of March 20, 1952, requesting an opinion as to whether a candidate for county office, having filed petitions qualifying him to have his name upon the ballot in the primary election, may withdraw his candidacy. You state that Mrs. Ramona Montoya, County Clerk of Bernalillo County, requested your opinion and has informed you that Bernalillo County was one of the counties deciding against the preprimary convention method of selecting county candidates. Consequently all candidates for county offices, whose names appear upon the ballot, have filed declarations of candidacy and nominating petitions as provided by statute.

There is nothing in the statutes authorizing any candidate from either state or county office to withdraw his candidacy after filing his declaration of candidacy and nominating petitions. In default of any such authority, it must be concluded that once a candidate has filed a declaration of candidacy, together with his nominating petitions and has paid the required filing fee, his name must be included upon the ballot, no matter what his wishes may be upon that point at that time.

In providing for non-acceptance of designation by candidates so designated by party convention, the Legislature in the 1951 primary code provided the means whereby any individual thus chosen by his political party could exercise his free choice as to become an actual candidate. Once that choice has been made in this fashion, however, the individual's name must appear upon the ballot (56-802c, N.M.S.A.). unless death intervenes prior to the primary election.

It appears that the Legislature, in not providing any means for candidates to withdraw as such candidates whether designated by convention or declaring as candidates, by the nominating petition method, had in mind that once the individual exercised his choice in electing to become a candidate, he has no alternative but to submit his name to the electorate.

I trust this fully answers your inquiry.