

Opinion No. 52-5585

September 4, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*292} This is in reply to your letter of August 4th, in which you request an opinion on the legality of a refund from the Catron County Primary Election Fund of a fee paid after the primary election was held, by one Van Snyder of Reserve, New Mexico for \$ 75.00. From the letter from Mr. Hugh McMahon, County Treasurer of Catron County, attached to your request, I see that Mr. Snyder claims to have been advised by the Office of the Secretary of State that he could file a petition for Sheriff of Catron County after the primary election had already been held. According to our records, on May 29, 1952, the Secretary of State Beatrice B. Roach requested an opinion from this office on the interpretation of Section 56-817 of the 1941, N.M.S.A., and on June 12th we wrote an opinion for Mrs. Roach, copy of which I am herewith enclosing and which is Attorney General Opinion No. 5547.

As you will note from the opinion which we wrote for the Secretary of State, the Supreme Court has rendered an opinion interpreting Section 56-817 of the 1941, N.M.S.A., and as you will see by the opinion that is the only way that a vacancy after the primary election can be filled for any County or State office.

The County Clerk of Catron County through ignorance or bad advice, accepted a fee for filing a candidacy which could not be done legally. I find no law that prevents the County Clerk from refunding the sum of \$ 75.00 to Mr. Snyder, which was collected from him illegally.

It is therefore my opinion that the County Clerk of Catron County should refund Mr. Snyder the \$ 75.00 which he collected from him for filing his candidacy as County Sheriff after the primary election, illegally and contrary to law.

Trusting that this fully answers your inquiry.