

Opinion No. 54-5921

March 18, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{*366} We have your letter of March 17 in regard to a candidate for office whose registration in one of the political parties was purged by reason of his having failed to vote in the county wherein he was registered since 1944. You state that he registered, after having been purged, on February 26, 1954 and asked whether or not he may be entitled to be placed on the primary ballot for nomination by one of the dominant political parties.

§ 56-802 (d), N.M.S.A., reads as follows:

"No person shall become a candidate for nomination for any office who has changed his party affiliation within six (6) months prior to the issuance of the proclamation herein required by the governor of the state of New Mexico.

"No person shall become a candidate for nomination of any political party except the party with which such person shall be shown to be a member by his affidavit of registration, nor unless such affiliation shall have been shown by the registration books of the county clerk of the county wherein such candidate resides, for a period of at least six (6) months next preceding the date of the proclamation of such primary election."

You will note that the last paragraph of that section prohibits a person from being a candidate of a political party unless such affiliation is shown for a period of at least six months next preceding the date of the proclamation of such primary {*367} election. The proclamation was issued on February 1, 1954, by Governor Edwin L. Mechem, pursuant to § 56-808, N.M.S.A., 1941 Comp., as amended.

This question was before the New Mexico Supreme Court in the case of Roberts vs. Cleveland, Secretary of State, 48 N.M. 226, 149 P. 2d 120, wherein a candidate for Congress had changed his registration from Democratic to Republican within the twelve months restriction then provided in the law. The Court said:

"(3) Our statute providing for primary elections recognizes the existence of organized political parties and their right in general to regulate and control their own organizations for the purposes for which they are created, subject to statutory regulations. It imposes upon them certain restrictions as to the method of presenting their candidates to the voters at the general election. In the construction of the various statutes involved, we must consider both the right of the voter and the right of the candidate, and of the party he seeks to represent. Every voter has a right to be a candidate for a public office if he possesses the qualifications required to fill the office. It does not necessarily follow that

he can be the candidate of a particular political party. If he cannot fill the requirement so as to be the candidate of the political party of his choice, he may still be a candidate at the general election by petition. The right of the voter to vote at the general election for whom he pleases cannot be limited. Whether the legislature can limit the voter in selecting a candidate for the various parties might be a debatable question, but is not here debated. The important question here presented is as to the power of the legislature to protect the various political parties in their right to present candidates at the general election who affiliate with the party that presents them. And, if the legislature has such power, has it also the power to establish reasonable tests of the sincerity and substantiality of such party affiliation?

"At § 137 of the article on 'Elections' in 20 C.J. is the following:

'Under some statutes, a party may nominate as its candidate one affiliated with another party, but under others this is prohibited. 29 C.J.S., Elections No. 131.'

"See also 29 C.J.S., 'Elections', § 114, where it is said:

'The primary election laws of the various states impose certain requirements on a candidate at a primary election, and in accordance with these statutes the candidate may be required to file a paper in some prescribed form containing his declaration of candidacy and certain statements of affidavits as to his qualifications, **party affiliations**, etc. (Emphasis supplied.)'

"See also 18 Am. Jur., 'Elections', Sec. 154, p. 282."

The Court went on to say:

(5) But no political party under our system can be compelled to put forward as its candidate one who does not affiliate with it. The voter at the general election may vote for whom he pleases but may not be deceived by false labels. It surely is within the {*368} power of the legislature to prevent such deception, and we think it clearly appears that it was intended to do so and, likewise, that it was not intended to enlarge upon or subtract from the constitutional qualifications of our citizens to hold public office. We are determining the qualifications for nomination as the candidate of a political party, and not the right to be a candidate for election to the office."

The Court held that the restriction was constitutional. The restriction is not upon becoming a candidate as there is provided in the law a method of becoming a candidate independent of a political party. The Constitution, in Article 7, Section 2, states that any citizen may be a candidate for public office except as otherwise provided in that Constitution. The case of Roberts vs. Cleveland, supra, merely holds that this does not mean that a person may become a candidate under the sponsorship of a political party though he cannot be prevented irrevocably from becoming a candidate for office.

Therefore, it is the opinion of this office that a person whose name was purged from the registration cannot, under Section 56-802 (d), become a candidate for a political office under the label of one of the political parties unless such person has been registered for six months prior to the proclamation and under the facts of the case presented, this candidate has not been a registered voter under the party of his choice for the requisite time; thus he may become a candidate but not a candidate of the political party.

By: Fred M. Standley

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