

Opinion No. 54-5911

March 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr. District Attorney Third Judicial District Second Floor Court House Las Cruces, New Mexico

{*352} Receipt is acknowledged of your letter dated February 16, 1954 in which you request an opinion on the following questions:

1. Whether in view of Section 56-802d, N.M.S.A., 1941 Comp., p. s., a person who has registered less than six months prior to issuance of proclamation calling the election, can file his petition to become a candidate in the primary election.

Section 56-802d, N.M.S.A., 1941 Comp., p.s., reads as follows:

"No person shall become a candidate for nomination for any {*353} 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 of 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.

The first paragraph of the above quoted section specifically prohibits any candidate from being a nominee at a primary election unless said candidate has changed his party affiliation more than six months prior to the issuance of the proclamation herein required by the Governor of the State of New Mexico. According to your letter, this particular person that you have reference to desires to run for probate judge but he will have been in this State for one year on April 1st. In order to comply with the other provision of the law, a person must be a resident of the State for one year before such person is qualified to register.

Since the filing of a candidate for office either after being selected at the convention or by petition will be before April 1, 1953, this person will not possibly be qualified to be a nominee by either the convention or the petition route.

The second paragraph of the above quoted statute also specifically limits any nominee from obtaining nomination by any political party unless his affiliation is shown by the registration books of the County Clerk wherein such candidate resides, and that he has lived and resided, and been registered in his precinct for at least six months next preceding the date of the proclamation of such primary election.

It is therefore the opinion of this office that the person that you have in mind is ineligible to be a nominee either by the convention or the petition route at the primary election to be held next May because he has not resided and been registered in his precinct six months prior and next preceding the date of the proclamation of such primary election.

2. Your next question concerns whether or not this person can become a candidate at the General Election if no candidate runs in the primary election, and the position of probate judge is left vacant.

Our Supreme Court decided in **Van Schoyck vs. Board** of County Commissioner, 46 N.M. 472, 131 P. 2nd 278, and again in the case of **Granito vs. Grace**, 56 N.M. 652, 248 P. 2nd 210, that a candidate for office has to run and be a candidate in the primary election, and cannot be a candidate in the General Election by appointment or designation as he would not have run at the primary election.

In view of the above quoted statute and the two cases decided by the Supreme Court, it is our opinion that this candidate for probate judge which you mention in your letter cannot become a candidate for probate judge at the General Election for the reason that he appears not to qualify for the primary election.

Trusting that this fully answers your inquiries, I remain,

By: Hilario Rubio

Assist. Attorney General