

Opinion No. 56-6407

March 14, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Natalie Smith Buck, Secretary of State, State Capitol Building, Santa Fe, New Mexico

On March 12, we received an inquiry from your office concerning the alleged withdrawal of a candidate who filed for one office earlier on the date of filing, then later filed for a second office without filing a formal notice of a withdrawal, but merely by obtaining his original declaration of candidacy and penning in the name of the second office. This inquiry was directed to your office by the County Clerk of Torrance County.

You ask the following questions:

1. Whether that candidate is a candidate for the first or second office, or any office at all?
2. Whether the filing fee can be returned to the candidate?

This office has held repeatedly that the filing of any document at the time it is handed to the proper filing officer accompanied by the proper fee is a filing. The new primary election law, § 3-11-66, N.M.S.A., 1953 Compilation, Pocket Supplement, provides as follows:

"Withdrawal of candidates. -- The name of any person certified for inclusion upon the official ballot shall not be withdrawn from such ballot unless the person whose name has been certified shall notify the secretary of state or county clerk in writing by sworn statement signed by the candidate that he is not a candidate. Upon receipt of such notice not later than twenty-five (25) days prior to the date of the primary election the secretary of state shall certify to the various county clerks the fact that the name of such person is to be withdrawn from the ballot."

We believe that this withdrawal section applied at any time after the filing of any declaration. Hence the candidate would be required to file an affidavit of withdrawal on a separate sheet with the county clerk and then file a second declaration of candidacy. Hence the original attempted withdrawal from the first office filed for was not complete and the county records must show that the person filing is a candidate for the first office filed for if he is otherwise qualified.

In answer to the question of whether or not a refund can be made of the additional amount of money paid for the attempted filing for the second office, it has been held that without a general refund statute no moneys paid in to the county clerk or secretary of state, or any other officer of the state, may be repaid under any conditions whatsoever.

Therefore, it is the opinion of this office that the person who filed for an office and then without the benefit of a formal withdrawal changed his original declaration and filed for a second office is eligible to run for the first office filed for and not the second as no withdrawal has been accomplished. The moneys paid by that person cannot be refunded and must be treated as a filing fee despite the mistake which was made by the candidate.

We sincerely hope this answers your inquiry.

By Fred M. Standley

Assistant Attorney General