

Opinion No. 56-6478

June 22, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Charles B. Barker, Assistant District Attorney, First Judicial District, Santa Fe, New Mexico

You have asked our opinion as to whether, in the contemplation of Section 3-11-63, N.M.S.A., 1953 Compilation, Pocket Supplement, the office of State Senator is a State office or a county office, inasmuch as the Senator is now nominated and elected from one county only.

The section to which you refer relates to the time when recount of the result in a primary election shall be asked and provides, in part:

". . . shall within five (5) days after the issuance of the certificates of nominations in the case of precinct or county offices, and within ten (10) days after the issuance of the certificates of nomination in the case of all other offices filed with the county clerk. . . ."

Following the reasoning of *State ex rel Ward vs. Romero*, 17 N.M. 88, a State Senator would, for some purposes at least, be considered a State officer. This however, in our opinion, does not preclude the Legislature from considering such an officer or a nominee for such an office as being a county officer. It is a matter of legislative intent and to determine that intent we deem it necessary to examine other pertinent provisions of the Election law.

We call your attention to the following: Section 3-11-44, N.M.S.A., 1953, Compilation, Pocket Supplement, relating to declarations of candidacy provides:

"Such declarations shall in the case of precinct and county offices and legislative offices filled by one (1) county, be filed with the county clerk of the county wherein such declarant seeks office. For offices filled by the State at large and districts comprising more than one (1) county, such declaration of candidacy shall be filed with the Secretary of State."

Section 3-11-45, N.M.S.A., 1953 Compilation, Pocket Supplement, relating to filing fees, provides in part:

"All fees collected from candidates for precinct offices and county offices, comprising (1) one county, shall be remitted to the county treasurer of the county where the declaration is filed. All fees collected from candidates for district offices filled by more than one (1) county shall be divided as hereinafter provided and remitted to the county treasurer of each county comprising the district."

Section 3-11-49, N.M.S.A., 1953 Compilation, Pocket Supplement, provides in part, as follows:

"Such primary election shall be held, the voters shall vote therein, the method of voting, counting and canvassing, and the returns made in the same manner as by law provided for general elections, except as herein otherwise provided or inconsistent with the provisions of this act (3-11-36 to 3-11-68) and such primary elections shall in all respects conform to the laws governing general elections, except as herein otherwise provided. All provisions of law governing general elections in this state not in conflict herewith are hereby made applicable to and shall govern primary elections. The powers and duties conferred or imposed by law upon boards and judges and clerks of elections, canvassing boards and other public officials in connection with general elections, are conferred and imposed upon all such officers of primary elections and shall be exercised by them in connection with primary elections, except as otherwise herein provided or in conflict herewith."

Section 3-11-51, N.M.S.A., 1953 Compilation, Pocket Supplement, provides as follows:

"In the same manner required to be done at all general elections, the county and state canvassing boards shall canvass and certify the results of each party primary election and shall issue a certificate of nomination to the successful candidates of each party participating in the primary.

"Upon the completion of its canvass of the primary election, the county canvassing board shall certify to the secretary of state the results of the canvass and certify to the county clerk the name of each person nominated by each political party as its candidate for each precinct or county office to be filled at the ensuing general election. Said county canvassing board shall issue the proper certificates of each of such persons as the nominee of his party for the office to which he was nominated in said primary.

"Upon the completion of its canvass of the primary election, the state canvassing board shall certify to each county clerk in the state the name of each person nominated as a candidate for state office, or district office comprising more than one (1) county. Said state canvassing board shall issue the proper certificates to each of such persons as the nominee of his party for the office to which he was nominated in the primary."

Section 3-11-54, N.M.S.A., 1953 Compilation, Pocket Supplement, provides in part, as follows:

"If for any cause a vacancy shall occur in the list of candidates of a political party entitled to be placed on the official general election ballot, after the primary, such vacancy may be filled by the political party committee of the state or county or by the political party committees of counties comprising any district, as the case may be, by filing the name of its candidate for such office with the officer with whom declarations of candidacy are filed. . . ."

You will note that Sections 3-11-49 and 3-11-51 above quoted provide for canvassing in the same manner as is done in the case of General Elections. Therefore, Section 3-6-13 relating to certification of results in the case of General Election becomes material. This section provides as follows:

"When the county canvassing board shall have completed the canvass of the returns and ascertained the results, it shall issue election certificates to all county officers and to members of the legislature elected from such county only, and shall declare the result as to all questions affecting such county only, and shall immediately certify to the state canvassing board the number of votes cast for all other candidates and questions, respectively, and immediately deliver to the county chairman of each of the dominant political parties in the county a certificate showing the total number of votes cast for each candidate at such election."

It appears from the foregoing quotations that the intent of the Legislature was that counties should handle all matters relating to officials who were elected by the electors of one county alone. The fact that a candidate is nominated by the electors of only one county determines the place where he is to file his declaration of candidacy, who is to issue his certificate of nomination, and who is to fill a vacancy in case the nominated candidate dies or withdraws. It does not seem logical to assume that the Legislature intended that a different standard was to prevail in the case of recount. This conclusion is further fortified by the provisions of the General Election Code regarding the certification of results as above quoted.

It is, therefore, our opinion that for the purposes of Section 3-11-63, supra, a State Senator is to be considered as a county officer and must file his petition for recount within five days after certificate of nomination has been issued by the Board of County Commissioners sitting as a Canvassing Board.

By: Walter R. Kegel

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