

Opinion No. 56-6559

December 12, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Natalie Smith Buck, Secretary of State, Office of the Secretary of State, Santa Fe, New Mexico

We have your letter of December 5th requesting an opinion from this office on two questions. You first ask the following question:

Under the provisions of Sections 3-12-2 and 3-12-3, N.M.S.A., 1953, do the county political organizations have to file their rules and regulations with the Secretary of State as well as with the County Clerks?

We are of the opinion that there is no requirement that the county party rules be filed with the Secretary of State in addition to the required filing with the County Clerk.

Section 3-12-2, N.M.S.A., 1953, reads as follows:

"Within ninety (90) days after the passage and approval of this act, each political party that desires to have the names of its candidates for presidential elector, United States senator, representative in congress, state officers, district officers and members of the legislature chosen by the electors of more than one (1) county printed on the official ballot at the general election or any special election shall, through its state central committee or other governing body, make, adopt and file with the secretary of state a set of rules and regulations . . . Any political party failing to file such rules and regulations as provided herein shall not be permitted to have the names of its nominees placed on the official ballot at the general election or any special election for the election of such candidates for public office."

From this it is clear that where a party wishes to place candidates on the ballots for national, state, district and legislative offices from multiple county districts, that such party must comply with this section by filing its rules and regulations with the Secretary of State.

Section 3-12-3, N.M.S.A., 1953, reads as follows:

"Within ninety (90) days after the passage and approval of this act, each political party that desires to have the name of its candidate for any county office on the official ballot at the general election or any special election shall, through its county central committee or other governing body, make, adopt, and file with the county clerk of the respective counties a set of rules and regulations. . . . Any political party failing to file such rules and regulations as provided herein shall not be permitted to have the names of its

nominees placed on the official ballot at the general election or any special election for the election of such candidates for public office."

It is apparent from this section that if a party is interested in having candidates on the ballot for county offices, that such party must comply with this section by filing its rules and regulations with the County Clerk. There is nothing in either of these sections to indicate that the county organization is to file anything with the Secretary of State. There is no reason why the county organization should file with the Secretary of State because the Secretary of State has nothing to do with the candidates at the county level. There is a division of authority here. For the offices above the county level the Secretary of State is the place for filing of the party rules and regulations, and this office is given the duty of rejecting filing certificates of nomination of non-complying parties. (§ 3-12-4, N.M.S.A., 1953)

For the offices at the county level, the county clerk is the repository of the party rules and regulations, and also has the duty of rejecting the names of candidates from non-complying parties. (§ 3-12-5, N.M.S.A., 1953)

You ask the second question as follows:

"Is it beholden upon the Secretary of State under Section 3-12-4 to ascertain whether such rules and regulations and amendments thereto, have been duly filed with the county clerks -- in connection with certification by the State Canvassing Board of nominations or election to the office of District Attorney?"

We are of the opinion that the Secretary of State is not concerned with the question of whether there have been party rules and regulations filed with county clerks with reference to the nomination or election to the office of the District Attorney. The office of District Attorney is a State office. *Ward vs. Romero*, 17 N.M. 88. Since this office is a State office the failure of a party to file its rules and regulations with the county clerks would in no way affect the candidates for this office. The place where the rules and regulations would have to be filed by the party wishing to have its candidate on the ballots would be in your office of Secretary of State, under the provisions of Section 3-12-2, N.M.S.A., 1953.

Trusting we have answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General