

Opinion No. 58-125

June 12, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

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

QUESTION

FACTS - QUESTIONS

When only one candidate of a party files for nomination to a State or congressional office in the primary election but dies before that election and is succeeded after the primary by a candidate designated by his party's State Executive Committee --

1. Shall a filing fee be collected from the designee?
2. If a filing fee is to be collected in such instance, what is the proper disposition thereof?

CONCLUSIONS

1. No filing fee should be collected.
2. Not necessary to answer.

OPINION

ANALYSIS

Although not on point precisely, Attorney General's Opinion No. 5173, issued September 30, 1948, is of interest herein. The same question as to filing fees was therein raised when a vacancy occurred on a county ticket before the official ballots were printed but after the primary. That opinion held that the silence of the then effective statute on the question of filing fees for such candidates indicated that no filing fee was intended to be charged by the Legislature.

That opinion also held that it was the legislative intention indicated in § 56-810, 1941 Compilation, that candidates participating in the primary election "should help pay the costs of conducting the election." The opinion goes on further and states:

"The fee is not one charged against the successful candidate only, but against all, regardless of their subsequent success or failure, and refers only to the placing of the

candidate's name on the ballot in the primary election and has no connection with the general election."

This office reiterates the above opinion and believes that it is equally applicable to the present situation even though § 19, Chapter 218 of the Laws of 1955 intervened, establishing a new primary code.

Section 3-11-54, N.M.S.A., 1953 1957 Supp., is the present statute controlling the situation you describe in the above facts. It reads:

"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 . . . State political party committee for the purpose of this section shall mean the state executive committee,

In the event only one candidate has filed for the nomination for any office the candidate for which is to be nominated in accordance with the provisions of this act and he dies, then another candidate may be selected subsequent to the primary election and his name shall be placed upon the general election ballot in the same manner and as though the vacancy had occurred subsequent to the primary election."

Nothing further regarding filing fees in this situation is contained in the Primary Election Code. And it is plain that the obligation of any candidate to pay a filing fee is one imposed entirely by statute. Hence, in this situation where the vacancy occurred prior to the primary election but where the designation of a candidate was duly made pursuant to law subsequent to the primary election, the reasons arrived at in Attorney General's Opinion 5173 obtain and no filing fee is required to be paid or collected by the designee as described in the above facts.

In light of our conclusion on question 1, no answer is required on question 2.