

## **Opinion No. 58-59**

March 25, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

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

### **QUESTION**

#### QUESTION

In view of the provisions of Secs. 3-11-47 and 3-6-23.2 as to certain responsibilities of the Secretary of State concerning preparations for election what action, if any should be taken by this office to effectuate uniformity of the listing of the congressional and State candidates as they shall be shown on voting machines in various counties within New Mexico at the forthcoming primaries?

#### CONCLUSION

See opinion.

### **OPINION**

#### ANALYSIS

The above stated question arises from the requirements of law whereby are provided the manner and form for the preparation of ballots and the setting up of voting machines to be used in primary elections. Specifically, from discussions had concerning the question put, there is a need to determine the categories of candidates required to be placed on the state and county ballots and likewise on voting machines as may be used in any precinct.

Prime responsibility for the conduct of elections and the administration of laws applicable thereto is charged to the Secretary of State. The general provisions relating to the authority and power considered are found, in part, compiled at § 3-6-23.2 (p.s.):

"The secretary of state, as secretary of the state canvas sing board, in addition to other powers and duties conferred upon him by law, shall have the power, and it shall be his duty, (a) to generally supervise all elections and administer the election laws of the state in their statewide application and especially as they relate to federal and state elective officers; (b) to prepare instructions for the conduct of election and registration matters in accordance with the laws of the state; (c) to advise with county clerks, boards of county commissioners, and boards of registration as to the proper methods of conducting duties imposed upon them by virtue of the election laws of the state of New Mexico, . . ."

Searching further, with reference to the immediate determinations and procedures considered, § 3-11-46 (p.s.) requires, in addition to other matters, that:

"The secretary of state, within fifteen days after the time for filing declarations has expired, shall transmit by registered or certified mail a certified list of all candidates for nomination for congressional and state offices, including district offices, to the county clerk of each county, **together with the order in which they are to be placed upon the ballot as hereinafter provided.**" (Emphasis ours).

And as indicated, the order in which individual candidates' names shall appear on the printed ballots is provided by § 3-11-47 (p.s.) as follows:

"Not less than twenty days before the date of the primary, the county clerk of each county shall group all the candidates for each party by themselves and prepare at once in writing a separate ballot for each party and have such ballots for each party printed in the following manner:

. . .

The name of each office for which a candidate or candidates are to be nominated with the names of the candidates for that office shall be separated from the following name of office and list of candidates by a heavy black line to designate each position clearly. The position of officers on the ballot shall be arranged as follows:

First, candidates for United States senator; next, congressional candidates; next, state candidates to be voted upon by the state at large in the order certified by the secretary of state; next, legislative candidates; next, other district candidates to be voted on in more than one county; next, county candidates; next, **justices of the peace; and last, constables.**

**The names of the candidates for each office upon the ballot shall be arranged upon the ballot in an order to be determined by lot** by the secretary of state for congressional, state and district candidates, and district legislative candidates representing more than one county, and by the county clerks of each county for other legislative and the county **and precinct candidates** of the respective counties. . . ." (Emphasis ours).

It will be noted that the aforequoted section provides, in addition to the arrangement of offices and order of candidates declared therefor, that justice of the peace and constable offices shall also be included and made a part of the ballot.

At this point, it may be well to refer to an earlier law. Section 3-11-26 provided for a separate ballot prepared in the style of the general state and county ballot, but presenting only the names of candidates for precinct offices. This section was repealed by Chapter 218, Sec. 34, Laws 1955. Accordingly, and under existing provisions only one ballot is called for.

Under the present primary election code, enacted as Chapter 218, Laws 1955, the offices specifically covered by the act include United States senator, representative in Congress, and ". . . all elective state, district, legislative, county and **precinct offices.** . . ." And specifically by § 3-11-56 (p.s.):

"It shall be the duty of the county commissioners at the time of the preparation of the general state and county ballots for a primary, **to provide on the ballots allocated to each precinct or voting division, proper places to vote for candidates for justice of the peace and constable.** Write-in candidates shall not be permitted in the primary for any office whatsoever." (Emphasis ours).

Article 4, Chapter 3, N.M.S.A., 1953, is generally concerned with the purchase and use of voting machines in place of paper ballots otherwise provided. A search of this article reveals that candidates' names shall be printed on the ballot label (§ 3-4-13) as will fit the machine, and

"Prior to opening the polls, the election officials shall place the sample ballots in a conspicuous place and the facsimile diagrams of the voting machine as herein required; shall compare the ballot labels on the machine with the sample ballots and return sheets, and see that they are correct; . . ."

No distinguishing provisions are found with reference to the order of placing candidates' names on voting machines. Section 3-4-24, however, does require that:

"The provisions of all other laws relating to the conduct of elections or primary elections shall so far as practicable apply to the conduct of elections and primary elections where voting machines are used, unless herein otherwise provided; . . ."

Accordingly, it is our opinion that the office of Secretary of State should issue instructions which direct that ballots will be prepared to include the names of all congressional, state, legislative, district, county and precinct candidates, as required for each respective voting division; that separate precinct ballots will not be used, and where voting machines are employed, that the names of all candidates, including precinct, must appear on the ballot labels prepared therefor.