

Opinion No. 59-02

January 13, 1959

BY: OPINION of FRANK B. ZINN, Attorney General

TO: Honorable David C. Montoya State Representative San Miguel County Las Vegas, New Mexico

QUESTION

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Is a political party, or any non-partisan group putting forth candidates for municipal school election entitled to have its candidates run under the party or group emblem?

CONCLUSION

Yes, with certain conditions and qualifications. See opinion.

OPINION

{*5} ANALYSIS

Section 73-10-5, N.M.S.A., 1953 Compilation, provides that municipal school board elections shall be "called, conducted, returned and canvassed by said board as in the case of officers in the respective incorporated cities, towns and villages."

Section 14-14-3, N.M.S.A., 1953 Compilation, which provides the manner of holding municipal elections, requires that "all elections for municipal offices shall in all respects be held and conducted in the manner prescribed by law in cases of county elections."

Sections 3-3-1 through 3-3-40, N.M.S.A., 1953 Compilation, provides for the manner of calling, and conducting of county elections. Certain provisions of the foregoing sections which are in conflict with specific provisions have been held not to be applicable to such elections. However, in the case of *Telles vs. Carter*, 57 N.M. 704, it was held that the general election provisions with respect to the marking of ballots were applicable to municipal elections.

Applying the above holding, the provisions of Section 3-3-4 and Section 3-3-7, N.M.S.A., 1953 Compilation, insofar as they are not in conflict with other specific provisions of the law applying to municipal elections, provide that "the names of all candidates of any party shall be printed on the ballot under the party name and emblem of such party." It specifically provides further that no political party shall select any emblem or party name the same as, similar to, or that is likely to be confused with or mistaken for the emblem or party name then in use by any other political party. The

emblems of political parties heretofore certified to the Secretary of State, and party names heretofore used, shall be used by said political parties respectively until changed as herein provided.

Accordingly, it is the opinion of this office that if any political party or group desires to run its candidates under a party emblem in the municipal school election, only such emblems as have been registered by them with the Secretary of State may be used on the ballots to identify those candidates.

A non-partisan group desiring to run candidates and have them listed under the names and emblem of such party, or group cannot select an emblem or party name the same as, similar to, or that is likely to be confused with or mistaken for the emblem or party name then in use by any other political party.

By: Hilario Rubio

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